



**BCCA**

# **GUIDE TO BUSINESS**

SHORT TERM LENDING



MAY 2011

## **INTRODUCTION**

*In the current regulatory environment, there is a lot of legislation and regulatory guidance that you, as a short term lender need to make sure you comply with.*

*This document has been drafted by the **BCCA** ([www.bcca.co.uk](http://www.bcca.co.uk)) and intends to provide you with some basic tips about the main pieces of legislation and guidance that you need to be aware of, and where you can go to get further information.*

***This document is non-exhaustive and is intended to act as a guide only. It is not a definitive interpretation of the law.***

*Businesses are advised to seek legal advice from, for example, their local trading standards department and if necessary contact a solicitor.*

BCCA

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## CONSUMER CREDIT LICENCE



In order to lend money/ carry out other specified credit activities such as brokerage, you will have to be licensed by the Office of Fair Trading (OFT). You will have to pay for your licence and the cost will depend upon the business structure. For example the fees are cheaper if you are a sole trader rather than a partnership or limited company.

Further information regarding consumer credit licences can be found at:

<http://www.offt.gov.uk/OFTwork/credit-licensing/>

Most licences are now issued as 'lifetime licences' i.e. they are indefinite, but a review is usually carried out after 5 years. However, the OFT has the power to revoke, suspend, vary the licence or impose requirements at any time.

A public register of Consumer Credit Licence holders can be found at:

<http://www2.crw.gov.uk/pr/default.aspx>

*Once your licence is in place, it is always worth checking your entry to make sure all the information is correct, especially if you have subsequently made variations to your licence.*

## CONSUMER CREDIT ACT 1974 (updated by the Consumer Credit Act 2006)

It is vital that, as a business, you are aware of and understand your obligations under the Consumer Credit Act and associated legislation. Most of what you do will in some way involve it.

The OFT provides lots of useful information (including guidance) on its website at:

[www.offt.gov.uk](http://www.offt.gov.uk)



## CONSUMER CREDIT AGREEMENTS

It is essential to not only comply with the law but to protect your commercial interests that you use compliant Consumer Credit Agreements. The recent EU Consumer Credit Directive introduced revised requirements for credit agreements and pre-contractual information, which can be found in:

Updated 15.12.2011

- [The Consumer Credit \(Agreements\) Regulations 2010](#)
- [The Consumer Credit \(Disclosure of Information\) Regulations 2010](#)
- [The Consumer Credit \(EU Directive\) Regulations 2010](#)
- [The Consumer Credit \(Total Charge for Credit\) Regulations 2010](#)

Although a solicitor can draft these credit agreements for you it can prove expensive. The BCCA is able to provide members access to credit agreements (including the pre-contractual information or SECCI) for a modest charge.

### **THE EU CONSUMER CREDIT DIRECTIVE**

The Consumer Credit Directive (CCD) was adopted by the European Council in May 2008, and legislation implementing its provisions came fully into force on 1 February 2011.

The following regulations implement the CCD in the UK:

- [The Consumer Credit \(EU Directive\) Regulations 2010](#) (Statutory Instrument 2010 No. 1010)
- [The Consumer Credit \(Total Charge for Credit\) Regulations 2010](#) (Statutory Instrument 2010 No. 1011)
- [The Consumer Credit \(Disclosure of Information\) Regulations 2010](#) (Statutory Instrument 2010 No. 1013)
- [The Consumer Credit \(Agreements\) Regulations 2010](#) (Statutory Instrument 2010 No. 1014)
- [The Consumer Credit \(Advertisements\) Regulations 2010](#) (Statutory Instrument 2010 No. 1970)
- [The Consumer Credit \(Amendment\) Regulations 2010](#) (Statutory Instrument 2010 No. 1969) were made to correct errors in SI 2010/1010, 2010/1013 and 2010/1014.
- [The Consumer Credit \(Amendment\) Regulations 2011](#) (Statutory Instrument 2011 No. 11) were made to correct errors in SI 2010/1010, 2010/1011 and 2010/1013.

More information can be found on the Department of Business, Innovation and Skills (DBIS) (formerly the Department for Business, Enterprise and Regulatory Reform (DBERR)) Consumer Credit Directive information page at:

<http://www.berr.gov.uk/policies/consumer-issues/consumer-credit-and-debt/consumer-credit-regulation/ec-consumer-credit-directive>

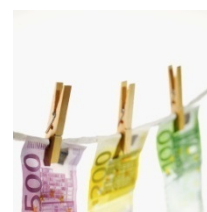
The link above provides details of how to access the individual statutory instruments named.

Guidance from DBIS on implementation of the CCD can be found at:

<http://www.berr.gov.uk/assets/biscore/consumer-issues/docs/c/10-1053-consumer-credit-directive-guidance.pdf>

## **ANTI MONEY LAUNDERING**

The **Money Laundering Regulations 2007** require that if you are lending money you should make sure that you have policies and procedures in place to prevent your business being used to launder money or support terrorist financing.



A copy of The Money Laundering Regulations 2007 can be found at:

<http://www.legislation.gov.uk/ukxi/2007/2157/contents/made>

The Office of Fair Trading (OFT) will be your supervisor for this legislation. However, there are exceptions to this rule. For example, if you are registered with the Financial Services Authority (FSA) or with Her Majesty's Revenue and Customs (HMRC) as a Money Service Business (MSB).

### **MOST CATEGORY A CONSUMER CREDIT LENDERS WILL NOW HAVE TO REGISTER WITH THE OFT FOR ANTI MONEY LAUNDERING.**

Details regarding OFT registration can be found at:

<http://www.offt.gov.uk/OFTwork/aml/>

The OFT has produced guidance on compliance with the Money Laundering Regulations for the businesses it supervises at:

[http://www.offt.gov.uk/shared\\_offt/business\\_leaflets/general/off954.pdf](http://www.offt.gov.uk/shared_offt/business_leaflets/general/off954.pdf)



## ADVERTISING

Any means by which consumers are told that credit is available is likely to be an advertisement. Therefore if you are offering online loans, you will have to make sure that your website complies with the **Consumer Credit (Advertisements) Regulations 2010**. A copy of these regulations can be found at:

<http://www.legislation.gov.uk/2010/1970>

DBIS has provided guidance on this legislation which businesses may find useful (see link under CCD section).

The OFT website has some further information:

<http://www.offt.gov.uk/about-the-offt/legal-powers/cca/guidance>

From March 2011 the Advertising Standards Authority (ASA) are also policing websites.

## WEBSITE COMPLIANCE

The **Electronic Commerce (EC Directive) Regulations 2002** apply to virtually all commercial websites. Part of the requirements of the legislation is that certain information is provided to the recipient of the service i.e. the customer '*in a form and manner that is easily, directly and permanently accessible*'.

A copy of Guidance to the Regulations can be found at:

<http://www.berr.gov.uk/files/file14635.pdf>

### **Information that should be provided:**

- Give the name of the service provider. If you are using a trading name, explain it. 'For example **Joe Bloggs Loans Limited trading as Joe's Loans**'.
- Provide a geographic address
- Provide the email address of the service provider
- Include your Consumer Credit Licence number
- Include your VAT number if you are VAT registered
- Include details of any professional body (trade association) that you are members of and include registration details if known. If you become a BCCA member, we would expect details of your membership to appear on your website



**PLEASE NOTE THAT THIS IS A NON-EXHAUSTIVE LIST AND THE LEGISLATION HAS OTHER REQUIREMENTS WHICH YOU SHOULD COMPLY WITH.**

There are now additional information requirements for limited companies (and limited liability partnerships (LLPs)) which should appear on all websites, business letters and order forms whether in hard copy or electronic form.

The following should be stated in legible characters:

- Place of registration
- Registered office address
- Company registration number
- If the company is being wound up



Most businesses include this information on all their emails as they are often considered a form of electronic business letter.

### **FINANCIAL SERVICES (DISTANCE MARKETING) REGULATIONS 2004**

This legislation applies where financial services are sold at a distance, for example, credit. The regulations have been amended by the Consumer Credit (EU Directive) Regulations 2010 to ensure consistency and fit with the requirements of the EU CCD. Compliance with certain aspects of the Financial Services (Distance Marketing) regulations 2004 may be achieved by providing certain information required by the CCD implementing regulations.

If you have not already done so, we would recommend that you seek legal advice about complying with this legislation.

### **UNFAIR TERMS IN CONSUMER CONTRACTS REGULATIONS 1999/ CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS 2008 (CPRs)**

The law prescribes the information that should appear on a Consumer Credit Agreement. Very often, businesses also include their standard terms and conditions at the back of or attached to the agreement.

Businesses often feel that these standard T's and C's will protect them if things go wrong. However, if a business relies on a term(s) which is deemed 'unfair' by a Court, this may mean that it is struck out of the contract. Therefore the protection that the business thought they had in place is, in fact, worthless. However, the contract will continue to bind the parties if it is capable of existing without the unfair term.

In summary, the UTCCR's legislation states that:

*'A standard term is unfair if it creates a significant imbalance in the parties' rights and obligations under the contract, to the detriment of the consumer, contrary to the requirement of good faith.'*

However, it is important to remember that this legislation *only applies in business to consumer contracts* and not business to business contracts. In addition **CORE TERMS** (such as price and a description of the product) are **EXCLUDED** from the test as long as they are in plain, intelligible language.



**NOTE: BE VERY WARY ABOUT USING OTHER BUSINESSES TERMS AND CONDITIONS - THERE IS EVERY POSSIBILITY THAT YOU COULD BE REPLICATING UNFAIR CONTRACT TERMS**

## **CPRs**

The **Consumer Protection from Unfair Trading Regulations 2008 (CPRs)** came into force on 26 May 2008. They implement the Unfair Commercial Practices Directive (UCPD) in the UK, and replace several pieces of consumer protection legislation that were in force prior to 26 May 2008. The regulations introduce a general duty not to trade unfairly and seek to ensure that traders act honestly and fairly towards their customers. They apply primarily to business-to-consumer practices (but elements of business-to-business practices are also covered where they affect, or are likely to affect, consumers).

Further information can be found at

<http://www.offt.gov.uk/business-advice/treating-customers-fairly/protection>

## **DEBT RECOVERY**

If you wish to collect debts you should make sure that your practices are in line with the OFT's Debt Collection Guidance at:

[http://www.offt.gov.uk/shared\\_offt/business\\_leaflets/consumer\\_credit/oft664.pdf](http://www.offt.gov.uk/shared_offt/business_leaflets/consumer_credit/oft664.pdf)

**You do not need Category F Debt Collection on your Consumer Credit Licence if you are collecting your own debts in the normal course of business.**

However, if someone else is collecting debts on your behalf, then they should have this detailed on their Licence.

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It is always preferable to engage the services of a collector who is a member of the **Credit Services Association (CSA)**. This is a trade association for debt collectors. A list of CSA members can be found at:

<http://www.csa-uk.com/uk-members-list>

The CSA and DBSG have produced some guidance on debt collection letters in conjunction with the OFT, which can be found at:

[http://www.offt.gov.uk/shared\\_offt/business\\_leaflets/consumer\\_credit/debt-letters.pdf](http://www.offt.gov.uk/shared_offt/business_leaflets/consumer_credit/debt-letters.pdf)

The BCCA has an arrangement with a debt collector that offers discounted rates to members on their collection services and operates on a **no win, no fee basis**.

The OFT's Irresponsible Lending Guidance (see below) also covers arrears management and debt collection. In the section on "handling of default and arrears", examples of practices the OFT considers may, depending on the circumstances, be specific irresponsible lending practices are covered .

Two such examples are:

- Failing to establish and implement clear, effective and appropriate policies and procedures for dealing with borrowers whose accounts fall into arrears
- Failing to treat borrowers in default or arrears with understanding and due consideration, and with forbearance



## **DATA PROTECTION**

The Data Protection Act 1998 requires that data controllers should be registered with the **INFORMATION COMMISSIONERS OFFICE**. There are also strict rules on how you handle customer's personal data and what you do with it.

We ask you for your registration number on your BCCA membership application form. However, further details about the register can be found at:

[http://www.ico.gov.uk/what\\_we\\_cover/promoting\\_data\\_privacy/keeping\\_the\\_register.aspx](http://www.ico.gov.uk/what_we_cover/promoting_data_privacy/keeping_the_register.aspx)

The link above also gives information about how you can search the online register.

## **IRRESPONSIBLE LENDING GUIDANCE (OFT 1107)**

On 31 March 2010 the Office of Fair Trading (OFT) published its "Irresponsible Lending – guidance for creditors" (ref OFT1107) covering some 95 pages. An updated version was issued in August 2010.

In the Foreword, the OFT states "*the primary purpose in producing this guidance is to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (OFT) considers may constitute irresponsible lending practices for the purposes of section 25(2B) of the Consumer Credit Act 1974. It indicates types of deceitful or oppressive or otherwise unfair or improper practices which, if engaged in by a consumer credit business, could call into consideration its fitness to hold a consumer credit licence*". (our italics)

The guidance covers each stage of the lending process, including detailed sections on explanations of credit agreements and assessment of affordability, and identifies business practices which may, in the view of the OFT, depending on the exact circumstances, constitute irresponsible lending practices, however it is not an exhaustive list.

Further information, including a link to the published guidance, can be found at:

<http://www.offt.gov.uk/about-the-offt/legal-powers/legal/cca/irresponsible>

The BCCA has developed a template Irresponsible Lending Guidance policy for members to use and personalise to their own business.

## **COMPLAINTS PROCEDURE**

You have to advise customers of your complaints procedure. If a customer does have a complaint about a loan that he or she has taken out with your business, they have the right to refer the matter to the Financial Ombudsman Service (FOS) but **ONLY** if you cannot resolve the matter with them (although strict timescales apply). The FOS will adjudicate on the matter and the decision is binding on you but not on the consumer.

The BCCA has drawn up a "two part" complaints procedure for members to adopt and this means that an unresolved complaint has to be referred to the BCCA **BEFORE** the customer can approach the FOS.

A copy of the BCCA's complaints procedure is on page 11-12 and can also be found at Annex A of the Association's Code of Practice.



If your complaint involves **SHORT TERM LOANS OF 6 MONTHS DURATION OR LESS, FOR EXAMPLE A PAYDAY LOAN**, you should follow the procedure detailed below:

- Upon receipt of your complaint we will do our best to resolve your complaint by the end of the next business day.
- If we can't do this, we will send you a prompt written acknowledgement of your complaint and tell you who is dealing with it.
- We will send you our full response within four weeks of receiving your complaint. We will include details of how, if you are dissatisfied with the way we have handled your complaint, you can go to stage 2 of the procedure by referring your complaint to the BCCA which is our Trade Association and acts on our behalf. Our letter will explain that you will have ultimate recourse to the Financial Ombudsman Service if you remain dissatisfied after stage 2 referral - also that we will regard the complaint as closed if the BCCA does not receive a reply from you within eight weeks of our full response.
- The BCCA will investigate your complaint and will provide you with a final response within four weeks of receiving notification of your continuing dissatisfaction.
- If you are dissatisfied with the final response from the BCCA, *you can ask the Financial Ombudsman Service for an independent review*. The BCCA will enclose a leaflet from the Financial Ombudsman Service in their final response letter to assist you if you decide to pursue this further course of action. You should contact the Financial Ombudsman Service within **six months** of receiving the final response from the BCCA.

## CONTACTS

<b>Chief Executive</b>	<b>Financial Ombudsman Service (FOS)</b>
<b>BCCA</b>	<b>South Quay Plaza</b>
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