BCCA
british cheque cashers association
newsletter

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The Quarterly Newsletter of the British Cheque Cashers Association

THE ARRIVAL OF FOS!

What can BCCA members expect?

From 6 April 2007, the role of the Financial Ombudsman Service (FOS) was extended by the Consumer Credit Act 2006 to cover all disputes involving regulated consumer credit agreements (previously it only covered those involving FSA-regulated lenders). In our Winter edition of the Newsletter, we printed an item which gave readers details of what this might mean in practice. This included comment from Brigitte Philby, the Financial Ombudsman Service's External liaison Manager, who has been extremely helpful guiding us through the procedures and giving us advice generally.

All businesses which offer consumer credit products should now have in place a compliant complaints procedure. To assist its members, the BCCA's approach has been to draw up a model complaints handling procedure which will help to resolve disputes between members and their customers as quickly as possible. In addition, we have incorporated into it a second step so that, before a customer can refer a dispute to FOS, he / she must first refer it to the BCCA's own dispute resolution service. We will then assess the issue in question and try to bring about an amicable settlement. In fact, the BCCA's Chief Executive has thirty years experience of mediating over disputes and complaints involving consumer credit agreements of all types. We hope, therefore, that very few cases should remain unresolved after this stage and hence be referred to FOS.

In reality, the rules governing complaints procedures are actually produced by the Financial Services Authority and are known as "DISP". Under DISP, the BCCA's procedure is known as a "two stage complaints procedure" which is slightly more bureaucratic but, we think, worth it. We have tried to ensure that our procedure complies fully with DISP. Any BCCA member who would like a copy of this model complaints procedure should contact us at Chester – as usual, our contact details are on the back page.

However, to get an independent opinion of what all this will mean in practice, we asked compliance expert Jeanette Harwood of Leeds-based law firm Walker Morris for her thoughts. Jeanette kindly agreed and we print her report below.

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All BCCA members who offer regulated consumer credit products, typically "pay day advance" type products, are now subject to FOS's jurisdiction. Of course, there is a cost to this and all consumer credit licensees will have to pay a levy to FOS, which will be collected on its behalf by the Office of Fair Trading. If you haven't already received your levy notice you can expect it when your licence is next due for renewal. Hopefully, none of you have been on the receiving end of a claim as yet, but no lender can rule it out going forward. This article considers the minimum complaints standards FOS requires of all lenders and looks at the problems the case fee structure is likely to present. There is also a quick round up of previous FOS decisions on credit (made in respect of FSA regulated lenders over the past year) which help give a flavour of its approach.

Complaints handling procedures

To comply with the new requirements, you must have in place – and make sure you implement – complaints handling procedures which comply with the rules established by FOS.These procedures must be written down and publicised by:

- making the customer aware of the procedures at, or immediately after, the point of sale;
- supplying a copy of the procedures on request; and
- automatically supplying a copy of the procedures when a complaint is received.

You must be able to identify a complaint early. For those which you cannot resolve by close of business the next working day, FOS requires you to provide a prompt, written acknowledgement. You then have up to eight weeks to investigate and respond. If you have not provided a final response within four weeks, you must write to the customer to explain that you are still investigating the complaint.

After eight weeks, you must provide the customer with a final notice, and tell him or her that they have the right to refer the complaint to FOS if they are not satisfied. If you decide that the customer's complaint is valid, you should offer the consumer "appropriate redress" (if you don't, FOS may order you to). "Appropriate redress" means fair compensation for any acts or omissions for which you were responsible. It may mean offering a financial settlement, but this will not always be the case – if the customer has not lost anything but

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We are pleased to announce that BCCA members are now entitled to full membership of the FPB, free of charge. Full membership of the FPB – which is worth around £100 to you – not only gives you a voice in the FPB's highly effective campaigning activities, but also gives you access to several important products and services that we think will be of benefit to your business. These include a free business helpline, available from 8am to 6pm, and excellent publications, such as the FPB's *Health & Safety Guide* and *Employment Guide*. Specially-negotiated contracts include:

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merely suffered inconvenience appropriate redress may be a simple apology, or a token gesture like a bunch of flowers.

If you fail to provide a final notice within the stipulated eight weeks, or if the customer is dissatisfied with your response, the customer will be able to take his complaint to FOS.

Fortunately for BCCA members, your Association has drawn up a model complaints procedure which you can adopt and this is available from the BCCA office.

Costs

FOS is free to complainants, being funded wholly by lenders. The cost is split into two parts - a levy of £150, paid when a licence is taken out or renewed, and case fees. Every lender gets two free cases per year but for the third and successive customers who complain to FOS in any one year, the business has to pay £400 per case.

One does not have to be a mathematical genius to spot the flaw in this system, especially for low value loans. For any payday loan under £400 it will be cheaper to write off the debt than allow a customer to complain to FOS. If customers quickly wise up to this fact, the threat of a FOS claim may become commonplace. However, FOS does have the discretion not to pursue vexatious claims, or to decide not to take claims where the lender has already made a reasonable offer. It is to be hoped that any trend in the widespread threat of a FOS complaint to lower-value credit providers would be resisted and brought to the attention of FOS and the OFT.

This aside, the potential cost of complaints is another reason why you should put into place appropriate complaints procedures and to attempt to resolve as many complaints as possible yourselves. Businesses which ignore customer complaints are likely to be hardest hit.

FOS and unfairness

This new jurisdiction came into force at the same time as the new "unfair credit relationship" test under the Consumer Credit Act 2006 (the Act). It is uncertain how this test will be interpreted by FOS, although he clearly has the discretion to consider the relevant law in his decision making process. The OFT guidance on unfairness states that the consumer in an unfair relationship may seek redress via an application to court or making a claim to FOS. It is not difficult to conclude which is more likely given that FOS is free to the consumer and court action can be notoriously expensive.

The new unfairness test looks at the entirety of the

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relationship between the lender and the borrower, from pre-agreement to after it has been paid up. There is no definition of what constitutes an "unfair relationship". The OFT guidance on how it will interpret the new unfairness provisions does not assist –it seems that nothing is to be ruled out of the equation in applying the broadest possible approach.

Nothing to fear?

FOS has tried to play down the impact of its new jurisdiction, stressing that it has covered around 70 per cent (by value) of consumer credit business in the UK for several years, and that this is not unchartered territory. The unfair relationships legislation is new, but FOS's approach has always been to decide what is fair and reasonable in the circumstances of each particular case. Hence FOS will not consider cases where there has been no financial loss, material distress or material inconvenience. Frivolous or vexatious complaints will also be dismissed without a consideration of their merits.

In order to illustrate its approach, FOS has published details of a number of recent consumer credit cases which were decided under the previous jurisdiction of FSA authorised companies. There are no cheque cashing cases as one would expect, but the decisions on longer term lending make for interesting reading.

In one case, FOS rejected a claim brought by the mother of a 20 year old student (with his knowledge and agreement) against a bank which had provided the student with a £2,500 loan to purchase a motorbike. The mother claimed that the bank had been irresponsible in lending to her son, had taken advantage of his inexperience and encouraged him to purchase a powerful motorbike. FOS held that the bank had carried out a proper assessment of the son's financial position prior to agreeing to lend him the money. The son was an intelligent young man who clearly understood the commitment involved in a loan.

In another case, FOS upheld a complaint against a bank where a loan had been given to a vulnerable customer, who had learning difficulties and relied on his family and his community support worker for help in managing his finances. FOS determined that the lending officer was fully aware that the borrower had only limited understanding of financial matters, that his only income came from state benefits and that he had no savings, yet did not consider how he would afford the repayments. FOS found it difficult to see how any reasonable lender, faced with the same facts, would have agreed to the loan. The bank was required to write off the remaining loan debt, refund all charges

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which had built up on the customer's current account, and to pay the customer £300 for the distress and inconvenience it had caused him.

However a number of the examples given were in the lenders favour, including that of a borrower who failed to disclose all of her outgoings when applying for a loan and got into arrears. FOS did not agree that the bank was under a duty to check the accuracy of the information given on the loan application against the outgoings on her current account.

These case studies should reassure consumer credit businesses that FOS has historically taken a common sense approach to investigating and resolving consumer credit complaints. Overall, the majority of FOS cases are determined in the favour of the trader. It is to be hoped that FOS will be vigilant to the opening of any floodgates and the 'ambulance chasing' approach of claims management providers who see credit as the natural successor to the endowment gravy train.

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EU CONSUMER CREDIT DIRECTIVE

Our quiet optimism that this long-running issue (five years, as you ask) might at long last be kicked into very long grass, never to be found, was misplaced. Germany, which currently holds the European Presidency, has abandoned its rather detached attitude and now seems determined to get a deal agreed before the end of its term on 30 June. However, at the time of writing, there is still nothing settled and exactly what will be in the draft "text" is yet to be determined but it is likely to be a huge compromise and a typical example of "Eurofudge". However, from what we can make out, it seems inevitable that an E U Consumer Credit Directive will eventually come into effect. Exactly when is a matter for conjecture but it will be a matter of years.

However, Oxera, Europe's foremost independent economics consultancy, has produced an excellent new 46-page report on the impact of the proposals contained in the last recognised "Text" issued in November 2006, when the Finns had the presidency (see page 12 of our Winter 2006/7 edition).

The Oxera report contains disturbing conclusions. For example, some of the report's key findings are:

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The proposed Directive, if implemented, could result in a serious impact on users of credit and the UK economy. The medium scenario prepared in this study shows the following

– consumer spending falling by around 0.21% (or around £1.4 billion/€2 billion) within two years of the implementation of the Directive;

– overall GDP falling by around 0.08% (or around £850m/€1.2 billion) within two years of the implementation of the Directive;

– a significant proportion of consumers (estimated at between 1m and 1.7m) could be affected by a reduction in the amount of credit that lenders would be prepared to make available to them. They would either not be able to access legal sources of credit at all, or would be constrained in the amounts they could borrow.

The main causes of these outcomes are likely to be the following.

– A direct increase in the cost of providing credit—in particular, both the enforced duty to explain and the provision on responsible lending/assessing creditworthiness are likely to require lenders to store more information about credit applications and assessments.

Furthermore, the duty to explain is likely to result in a more costly and time-consuming sales process. Given that the same process would be applicable to all amounts of credit, a flat cost would be imposed on each credit contract. At the smaller end of the scale, the cost of providing credit will become relatively expensive, possibly making the provision of smaller loans unattractive to lenders.

– A reduction in the availability of credit, particularly to those with lower credit ratings—the provisions on responsible lending/assessing creditworthiness would confer a new set of legal rights on consumers. Consumers would be able to activate these through new (free) out-of-court dispute settlement systems (which the CCD requires Member States to set up). The overall effect is likely to be to increase lending risk with the potential to cause lenders to cut back on supply. The effects would be most serious for those with low and/or irregular incomes, and those in the sub-prime market.

– A number of other changes are likely to add indirectly to the cost of providing credit, and may lead to common forms of credit no longer being as widely available. Changes of this type include, in particular, the provision for a cooling-off period for credit contracts concluded on retailers' premises.

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This is bad enough but the report also comments on the impact of the proposed Directive on the UK economy. It concludes:

The effects of the proposed Directive would not be limited to the users or potential users of consumer credit, but would affect the whole UK economy. An increase in the cost of credit faced by consumers and a reduction in the availability of credit to those with low credit ratings would reduce the use of consumer credit, leading to lower consumer spending and a reduction in GDP in the years following the implementation of the Directive. A number of scenarios of increases in the costs of credit and a reduction in the availability of credit were designed in order to model the impact of the proposed Directive on consumer spending and GDP in the UK. The medium scenario shows the following:

– consumer spending falling by around 0.21% (or around £1.4 billion/€2 billion);

– overall GDP falling by around 0.08% (or around £850m/€1.2 billion) within two years of the implementation of the Directive.

………..A higher cost of credit and a restriction on the availability of credit resulting from the Directive would also lead to a welfare loss to consumers. All users of credit would end up paying higher charges to cover the costs that would result from the Directive. Also, a significant proportion of consumers could be affected by a reduction in the amount of credit that lenders would be prepared to make available to them—between 1m and 1.7m consumers in the UK are likely to be affected.

These are serious issues. However, E U officials have voiced confidence that these dire predictions will not come to pass. But bearing in mind the possible downside versus the extremely limited benefits of these proposals, why take the risk? All is not lost, however. There is a long way to go before the final version of the Directive is agreed – and implementation will be some time after that. Having said that, expect some sort of triumphal announcement in a few weeks time, but then that's what the Finns tried to do in December. If only the Germans had stuck to banning tungsten filament light bulbs – but that's another story. Better pop down to B&Q and stock up now!

The full report, "What is the Impact of the Proposed Consumer Credit Directive", can be found at www.oxera.com but you will have to register, free of charge, with the website. It was commissioned by APACS, BBA, CCA and FLA for which we thank them.

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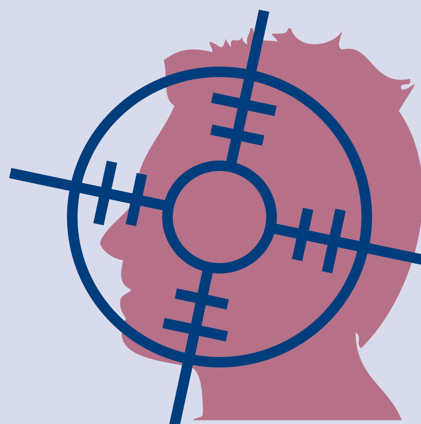

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MONEY LAUNDERING UPDATE

Not much good news here, we're afraid. We learned recently that the annual fee for each registered MSB premises will rise by an eye-watering 58% from £60 to £95 with effect from 1 June. This increase was simply announced with no consultation or any real explanation, other than it is allegedly necessary to cover the costs of the registration scheme. Even worse, when the new Money Laundering Regulations come into effect, proprietors, owners, MLROs the office cat etc will have to face up to a "fit and proper" test which will in all likelihood involve a criminal record check and, of course, a fee, the amount of which is as yet undetermined. Actually, exactly what will be involved in the F&P check has yet to be finalised but the BCCA, along with other interested parties, is lobbying hard to ensure that it is realistic and as "light touch" as possible, whilst still complying with the Third E U Directive which is responsible for all this.

The draft Regulations themselves were put out for consultation earlier this year and the consultation period closed on 6 April. The BCCA contributed to a joint response from the MSB Forum, where representatives of all MSBs and large players meet on a quarterly basis to discuss and debate issues with representatives of HMRC. HM Treasury is still assessing the responses. However, one major issue continues to be over the legal position of principals and their agents. This is a highly complex area and we will not go into it now. However, we will no doubt return to it in future editions when the final version of the Regulations has been published.

BCCA MEMBER BENEFITS

The Forum of Private Business

As we mentioned in our last edition, increasing the benefits of BCCA membership is high on our list of priorities. Last summer, we launched our web-based Cheque Alert Scheme in the "members only" section of the BCCA website. This has proved very successful in preventing members from becoming victims of fraud, which is all the more important these days with commission fees hitting all-time lows. Indeed, any member who has not yet signed up for this service should contact us at Chester.

We are also negotiating with companies in several sectors, making use of members' collective purchasing power to negotiate contracts on favourable terms. These include on-line ID verification, pre paid cards, credit reference agencies, debt collectors and energy suppliers.

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However, all this takes time to come to agreement and then even longer to put a system into effect but we hope to speed up this process in the second half of this year.

Meanwhile, we have now launched our partnership venture with the Forum of Private Business – see page three for more details. BCCA members can now join the FPB free of charge and take advantage of a range of centrally negotiated contracts for goods and services which will help cut your costs. Naturally, any reduction in your on-costs flows straight to the bottom line and can have a significant affect on your profit.

For example, if your customers pay you with credit and debit cards to any extent, it is highly likely that the FPB will be able to offer you a better deal than you have currently. One member reduced his credit card processing fee by 0.75% and halved his debit card fee. We would therefore suggest that you at least have a look at what the FPB can offer you – contact details are on page 3.

ENFORCEMENT USA-STYLE

Appeal Lost in Fast Cash Lending Case

We like to keep an eye on developments worldwide when it comes to cheque cashing, pay day advances and, indeed, consumer credit issues in general. In reality, this is pretty easy to do in this information age and one of our searches produced this item from "The Daily Citizen", Arkansas. The fines are eye-watering. *A payday lender who had two offices in White County has lost an appeal of a state ruling that he violated the law.*

Dennis Bailey, who operated 13 offices in Arkansas including Searcy Fast Cash, 3205 E. Race, and Beebe Fast Cash, lost his appeal in Pulaski County Circuit Court. The Arkansas State Board of Collection Agencies had previously ruled Bailey had engaged in the check cashing business in violation of the Arkansas Check-Cashers Act, and Judge Marion Humphrey agreed on April 13.

In June, the board ordered Bailey to cease all operations immediately, fining him $1,317,450. Bailey was fined $562,000, which was $1,000 for each check cashing transaction; $725,250, which was $250 for each deferred presentation transaction; $20,200 for the illegal operation of his Pine Bluff store; and $10,000 in attorney's fees.

One of Bailey's major contentions at the appeal hearing was there was not sworn testimony taken at the hearing and that the board's findings of fact and conclusions of law were based solely on the argument

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of Peggy Matson, the board's executive director. At the board's hearing last year, Matson presented a five-inch stack of documents as evidence, but did not read them to the board. Humphrey ruled that method of presenting evidence at the board's hearing was legal.

The board ruled Searcy Fast Cash had been operating without a license. The businesses' parent company is BMB Finance Company of West Plains, Mo.

"All of his stores are closed, and now we're asking the court to give us a judgment in that case so we can execute against all of his assets," Matson said. "He will be personally liable."

Bailey is now attempting to transfer his assets, but they have already been tracked by the state.

"We have another hearing coming up in Faulkner County that is almost the same as the Bailey case," Matson said.

Every check cashing store is audited twice a year by the board. Items which are required include: Posting their license on the wall; showing customers the actual adjusted percentage rate on their particular transactions; holding checks only until the due date and not beyond; posting fees on the wall; allowing no customer more than one transaction per location; exceeding legal loan limit (checks cannot be more than $400, and the highest amount of a loan is $350).

Matson said Bailey was ordered to refund any fees for cashing checks and making loans to customers, and said customers did not have to repay outstanding loans.

"They owe him no money," Matson said. "They do not have to repay these loans."

The equivalent annual percentage rate for loans offered at the Searcy office, which closed last year, was 521 percent.

Bailey had also been found guilty of selling tobacco without a permit by the Arkansas Tobacco Control Board and had violated regulations of the Arkansas Beverage Control.

Although we tend to complain about the UK's regulatory regime, examples such as this rather bring things into perspective. UK enforcement authorities generally prefer to build co-operative relationships with those businesses which are

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genuinely trying to comply with our rules and regulations, whilst cracking down hard on unlicensed (and hence unregulated) loan sharks –please see next item. Having said that, there are certainly exceptions to this but the principles of "proportionate" enforcement, championed by the Cabinet Office, are becoming more widespread. The UK is still a pretty good place to do business when compared with some other countries. Let's hope it remains that way.

OFT BANS ESTATE AGENTS

Just to prove that the OFT isn't just interested in the consumer credit industry, we report that it has recently made prohibition orders against two estate agents banning them from estate agency work.

On 24 March 2006 at Knutsford Crown Court, Janice Griffiths of Janice Griffiths & Company, 101 London Road, Stockton Heath, Warrington, was sentenced to a total of 30 months imprisonment after admitting two counts of theft and being found guilty of perverting the course of justice. Mrs Griffiths stole £95,000 from clients after informing them that their money was being invested in a guaranteed investment bond. She also forged an insurance document to try to avoid paying £11,000 in rent.

On 19 June 2006, at Warwick Crown Court, Leslie Pattison was convicted of offences involving dishonesty after being found guilty of two offences under the Proceeds of Crime Act 2002 and sentenced to three years imprisonment. Mr Pattison bought a property for less than a third of its value despite knowing or suspecting that the owners of the property had bought it with the proceeds of crime and were selling it in order to avoid its confiscation by West Midlands Police.

Interestingly, the Estate Agents Act, under which both these prohibition orders were made, introduced the concept of "negative licensing", although the expression doesn't actually appear in the legislation. What this means in practice is that anyone engaged in "estate agency business" is automatically assumed to be fit to carry on that business unless subsequent events prove otherwise. Then, the OFT can take action, as in the two cases above. There is no vast bureaucracy administering a formal licensing system and no fees, just a register of those who have been warned or banned. Local trading standards departments keep an eye on complaints about estate agents in their area and report any matters of significant malpractice to the OFT.

This actually works very well and is, in the

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personal opinion of the BCCA's Chief Executive, a far better system than the "positive licensing" system we have under the Consumer Credit Act, where something like 99.5% of licence applications are successful. In fact, the Chief Exec, in his previous job, proposed replacing the CC licensing regime with a "negative licensing" scheme but this, of course, would have led to a loss of civil service jobs – and that would never do, would it?

BIRMINGHAM LOAN SHARK JAILED

Yet again, the Birmingham Loan Shark Team has had an excellent result with another successful prosecution. On 16th April, Lee Reece Walker, described as a loan shark "parasite" who kidnapped a customer and beat him with a baseball bat before cutting him with a machete, was sentenced to three and a-half years at Birmingham Crown Court, after he was found guilty in January of kidnap, wounding, assault and blackmail at Birmingham Crown Court.

Following a prosecution by Birmingham City Council's Illegal Money Lending Team, Walker also pleaded guilty to running an illegal money lending business (loan sharking) and 10 counts of counterfeiting.

He was sentenced to three years for kidnap, nine months for assault causing actual bodily harm, 18 months for unlawful wounding and 18 months for blackmail, all to be served concurrently. He was sentenced to six months for illegal money lending, to be served consecutively.

Walker's son, Christopher, earlier found guilty of kidnap and assault, was today sentenced to 12 months imprisonment for kidnap and a concurrent nine month sentence for assault.

On 31st May 2006 Lee and Christopher Walker pulled up outside a bus stop on Coleshill Road, Birmingham, bundled a man into the back of their car and drove off. The victim was a client of Lee Walker's loan shark business who had fallen behind with payments on a loan. The original loan was for £800, Walker added indiscriminate charges increasing it to £2000.

The Walkers assaulted their victim in the back of the vehicle before driving to his family's home, where they threatened his mother. They then drove to a second location where they attacked their captive with a machete and baseball bat, before letting him go.

Lee Walker charged interest rates of 1500% to 117,000% APR.

Now they have settled down, the two pilot teams in Birmingham and Glasgow have started to produce some excellent results and we congratulate them. As well as protecting the victims of loan sharks, they are also protecting the commercial interests of licensed, regulated businesses such as BCCA members. The Government has decided to extend these teams to cover the whole of the UK, starting initially with Liverpool, Sheffield and West Yorkshire and the rest of England and Wales in 2007-08. There's plenty of scope for this – according to research published by the DTI, approximately 165,000 households in the UK use illegal money lenders.

CONSUMER REPRESENTATIVES CAN DAMAGE YOUR WEALTH

We do, on occasions, invite our Special Correspondent to write an item for the Newsletter on any subject about which he has strong views. We invariably publish these items unedited but should point out that they do not necessarily reflect the views of the BCCA itself (but are probably pretty close). We print the latest such article below.

Over the last twenty years the legislative and regulatory frameworks, both domestically and internationally, have – quite rightly – shifted significantly in favour of consumers. Many changes have originated in the EU. Some of these have been sensible, but others have been ill-thought through and poorly drafted. All too often the UK has compounded any resultant problems by "gold plating" the EU Directives when transposing them into domestic legislation.

Be that as it may, there are further problems for UK consumers which arise directly and solely from the actions of the very domestic bodies which supposedly protect their interests. All too often these bodies' actions are fuelled by a potent mixture of arrogance, ignorance, organisational ambition and a complete failure to learn from past experience.

We have drawn attention on a number of occasions in the past to the NCC's ill-considered "supercomplaint" on weekly collection. Despite prolonged investigation by the OFT and the Competition Commission, our perception is that, far from benefiting, many users of weekly collection will suffer as suppliers withdraw from the market. Indeed, some may well be thrown into the waiting arms of unlicensed loan sharks.

However, the immediate reason for penning this article is the ill-advised intervention of the OFT in the pricing of credit cards and bank accounts. The last time that the OFT intervened in credit card pricing in the 1980s, the majority of consumers were saddled with annual fees for their credit

cards as a direct result of that intervention. It took a long time for competition to reverse that.

It is not surprising that since the OFT intervened on penalty fees last Autumn, there has been a constant drip of revised terms and conditions being fed out to the market by the great majority of card providers, nearly all of which are detrimental to the interests of the great majority of credit card customers, who use their accounts responsibly.

Similarly, the vast majority of UK bank account users have benefited enormously from free in credit banking for more than thirty years, although the banks have spent much of the last twenty years looking for ways of backing out from that arrangement. A recent study by Nasrin Janmohamed of CapGemini found that the average cost to consumers of running an account in Britain was significantly lower than in either North America or the eurozone. Of particular note, the proportion of total bank account costs attributable to management fees is 35% in the eurozone, compared with only 6% here. However, thanks to the OFT that looks very likely to change and the great majority of customers who operate their accounts responsibly and in accordance with the terms of their contracts will inevitably end up paying significantly more.

It is also worth noting that of the – largely sensible - recent changes introduced to the Consumer Credit Act, after the most comprehensive possible consultation by the DTI of both industry and consumer representatives, the parts which made the least sense were pushed through at the insistence of the OFT and without the support of either lenders or consumer representatives.

Unfortunately, the OFT is no longer the small, responsive, tightly managed outfit that it was some time ago under the deft guidance of Sir Gordon Borrie. It is now a large, over-blown bureaucracy. If, as seems likely, the future of the DTI is given careful consideration after Gordon Brown takes over the helm of state, it would make a lot of sense if the role and nature of the OFT were to be reviewed at the same time.

Strangely enough, another body which has previously disadvantaged significant numbers of consumers, "Which?", which, in its previous incarnation as the Consumers' Association, pushed through the 1992 Cheques Act, against the advice of both the Treasury and the banking industry, may recently have taken a step which could really benefit consumers, provided, of course, that ill-drafted EU legislation does not stand in the way of implementation of a sensible solution: Its supercomplaint on the discrepancies which exist in the methods of calculation of credit card APRs is, if soundly researched, at least worthy of careful consideration, even if a universally applicable solution is difficult to achieve. We will watch progress with considerable interest.

In the meantime, it would be nice if bodies vested with representing and protecting consumer interests were, before they act, to reflect on history, to consider that there are often countervailing interests within the total body of consumers and to recognise that those consumers who shout loudest are not always the ones whose interests should be most actively protected, particularly if the "problems" which those vocal consumers face are largely of their own making, whether through greed, stupidity or even, on occasions, downright dishonesty. (Thanks to GC).

FINANCIAL CRIME AND TERRORISM

HM Treasury Launches New Strategy Document

HM Treasury has recently launched a new policy document which sets out the government's strategy to tackling the issues of abuse of the financial sector for the purpose of crime and terrorism. Dominic Thorncroft, Chairman of the UK Money Transmitters Association and Timon Molloy of the Money Laundering Bulletin analyse key issues for the MSB sector.

'The 'Financial Challenge to Crime and Terrorism' report (published by H M Treasury in February 2007 and available on their website) notes that estimated social and economic harm from 'organised' crime to the UK is £20 billion; criminal 'capital formation' of seizable assets is about £5 billion annually of which around £3 billion is exported.

The government estimates that £10 billion is laundered through the regulated sector each year, although they take the view that that underestimates the total for UK laundering by excluding matters such as the cash economy and tax evasion. By comparison, £96.8 million was recovered by way of criminal property in 2005/6, or less than 1% of the money laundered through the regulated sector. This doesn't sound like a lot.

However, the government target for criminal property to be recovered in 2007/2008 is £125 million, rising to £250 million in 2009-10. There has been a four-fold increase in the prosecutions for money laundering since 2002, and it is estimated that there will be around 600 prosecutions in 2007. Around 200 bank accounts linked to terrorist suspects have been frozen, and the authorities are tackling *'some 200 terrorist*

groupings or networks, totalling over 1600 identified individuals'. However, the report mentions that there will be many more such networks still not known to the government.

The report also states that 40% of Suspicious Activity Reports (SARs) are judged to refer to genuinely suspicious transactions worth in the order of £2-3 billion a year. Initial matching studies of small numbers of SARs against the Police National Computer indicated that between 30% and 40% of the subjects of SARs are known to law enforcement.

MSBs will want to know what the government AML/CTF strategy will mean for them – and the new strategy promises a mixed bag of good news, less good news and unresolved issues.

Bad news first – the government is clear that in adopting an overall 'risk based approach', MSBs will continue to be targeted as a high risk industry. This means that lead departments and supervisors (e.g. HMRC) will continue to focus on the MSB sector – the government is mindful of the statistic that MSBs feature in one in five of money laundering investigations and one in three terrorist finance enquiries; a third of all SARs on businesses report activity of MSBs. Additionally, the government can point to information from HMRC that 45% of operations (i.e. MSB premises) visited by HMRC were "defective".

The government states that it will publish an action plan 'to root out abuse in the MSB sector aggressively' by June 2007. Some of the measures in this action plan are already known. Reference is made to the 'fit and proper' tests, which will be implemented with effect from December 2007 on those who own/run MSBs. The government is also indicating that there will be heavier intervention by law enforcement through asset recovery and prosecutions. The government is also saying it will provide greater feedback to the wider private sector on the shape and size of the threat posed by MSBs.

Finally, the government is indicating that they will publish the register of legitimate MSB traders on the internet – however, the signs emerging from HMRC suggest that this is unlikely to happen before the end of 2008, so traders and customers will have to rely on the HMRC National Advice Service in the meantime, which has often not been an efficient source of information in the past.

There is some limited good news for MSBs in the AML/CTF strategy. The government is indicating that it will be reviewing the consent and 'tipping off' rules (Home Office to publish details shortly). Any review in this sector will be welcomed by money transmitters who have to deal practically with this complicated legislation.

The government is also indicating that it is looking to improve co-operation between the public and private sectors around information sharing – this ought to mean that MSBs receive more feedback on the SARs which they have submitted, helping them to tailor a more 'risk based' company AML policy.

There must be a suspicion that the authorities are coming after MSB's because they represent an easier target than other parts of the financial sector, although the figures in the report make it clear that much (indeed, the vast majority) of money laundering is going on through organisations other than MSBs.

Geoff Holland, BCCA Chief Executive, Comments: Firstly, thanks to Dominic and Timon for this interesting analysis. Regarding HMRC's "risk based" approach to enforcement, which, by the way, should now apply to ALL enforcement agencies, it is generally acknowledged that, within the MSB sector, third party cheque cashing itself is considered "low risk". However, what are of greater concern to the authorities are the sources of funds utilised by cheque cashing businesses. We therefore reiterate our oft-repeated advice that members should ensure that they keep accurate records of their sources of cash to ensure traceability in the event of an inspection or investigation.

Additionally, many BCCA members are also money transmitters and Bureau de Changes and operate these functions in conjunction with their cheque cashing operation. In cases such as these, it is imperative that strict procedures for identifying suspicious activities and subsequently filing SARs are in place and strictly adhered to, along with compliance with the other requirements of the Money Laundering Regulations.

COMPANIES ACT 2006

Are You complying?

The Companies Act 2006 is a mammoth piece of legislation. In fact, it is far and away the biggest Act of Parliament that we can recall, a real doorstopper running to 760 A4 pages, 1300 sections and 16 schedules. A printed paperback copy will set you back £60.50. It is guaranteed to keep corporate lawyers and accountants in business for a lifetime. It will be brought into force gradually, the final provisions coming into effect in October 2008.

The company law provisions restate almost all of the provisions of the Companies Act 1985 Act

along with the Companies Act 1989 and the 2004 Act, Companies (Audit, Investigations and Community Enterprise). The 2006 Act provides for a single company law regime to the whole of the UK, so that companies will be UK companies rather than GB companies as at present. It also codifies certain existing common law principles, such as those relating to director's duties; implements the European Union's Takeover and Transparency Obligations Directives; and introduces various new provisions for private and public companies. Certain general provisions of the Act cover such matters as: company formation; constitutional documents; corporate capacity; share capital; shareholder meetings and communications; and auditor's liability. Despite all this, the Government states that *"The proposals are designed to minimise the regulatory burden on business, particularly small and medium sized enterprises."* Really?

Well, one burden that it imposes is a new set of requirements regarding information on websites, e-mails, letters and official orders and this part of the Act is already in force. Any BCCA member which operates as a limited company (and indeed the BCCA itself) must comply as from 1 January 2007. In reality, this just amends and extends previous provisions.

So what does it mean for BCCA member companies? Well, here's a summary of the provisions.

Every limited company registered for trading in the UK must now include certain regulatory information on its website and email footer. That has been the law now since 1st January 2007. So regard this as a timely reminder. If your company has yet to comply, please do so now as you are in breach of the Companies Act and risk a fine.

Below is a summary of the information you need to include on your website, your e-mail footers and your order forms and business letters:

On your website:

- Company name, geographic address and email address.

- The company registration number, place of registration and registered office address.

- Trading name, if this is different from your company name, e.g. "BCCA Limited trading as The British Cheque Cashers Association".

- Details of any membership of a trade or professional association, including any registration number.

- VAT number, if your company is VAT registered.

On your email footers:

- The company registration number, place of registration and registered office address.

- An address at which legal and official documents can be served - this shouldn't be a PO Box (this can be your registered office address).

On order forms and business letters:

- The company registration number, place of registration and registered office address.

- An address at which documents can be served – again, this shouldn't be a PO Box (this can be your registered office address).

The BCCA's advice is to make sure that you review and amend your pre-printed stationery before the next reorder, unless you have several years supply due to that unfortunate misunderstanding with your printer. We would hope that the regulatory authorities will take a sympathetic (and indeed "green") approach to this. However, amendments to e-mail footers and websites should not cost too much to implement but it's yet another regulatory burden.

BCCA MEMBERSHIP

Membership of the BCCA continues to grow. Franchisees and agents of larger organisations are classed as members in their own right and these, along with independent members, currently number nearly 900. The total number of outlets operated by BCCA members is now over 1,450, although the exact number changes literally every day. From 1st January to 30th April this year, we sent out 40 information packs to enquirers who are considering starting a third party cheque cashing business. However, many new entrants start by entering an agency, franchise or "associate" arrangement with an existing member. This is usually for two main reasons. Firstly, these types of arrangements usually include guidance and support on all issues, such as documentation, operating procedures, anti-fraud measures and compliance. All of these are important, if not vital, when you're in the business of handing over large amounts of cash to strangers in exchange for pieces of paper.

The other reason is that the banks are increasingly reluctant to grant third party facilities to businesses with whom they are not already

familiar and even then, it is often an uphill struggle unless, of course, you're big enough to deal with the banks' corporate arms. New cheque cashers who enter the business via an arrangement with an existing member frequently become members of the BCCA via that arrangement but in these instances, the principal / franchisor takes full responsibility for ensuring that the business complies with all aspects of the law and also the BCCA's Code of Practice.

Businesses which apply for membership independently have to complete a detailed application form and submit copies of their MSB registration confirmation, consumer credit licence if applicable, agreement forms and also support information. Once all the documentation has been received, a representative of the BCCA then carries out a site visit and an interview. If all appears satisfactory, the application is considered by the BCCA Executive, usually at its next meeting, unless this is some time off, whereby a fast-track system is implemented when necessary.

This procedure is stringent but essential in ensuring that only compliant businesses can gain membership. It is extremely unusual for an application to be accepted without a request for further information or a requirement that the applicant amends his / her procedures. However, The BCCA does give all enquirers and applicants pragmatic advice on all aspects of cheque cashing and pay day advances. If you require any further information about the BCCA, please contact us at Chester. Our details, as usual, are on the back page.

BOOK REVIEW

"Consumer Sales Law" by Professor John Macleod

Professor John Macleod, who is well known within consumer credit circles, retired from Liverpool University in 2004 where he taught sales and financing law for forty years. Within this discipline, he specialised in credit and consumer law in general. John originally published "Consumer Sales Law" in 2002 and, following his retirement, has finally had the time to review and update it completely.

Running to some 1100 pages in total, it is indeed a mighty tome. It is a comprehensive and thorough analysis of what has become a highly complex area of law. The book contains detailed sections on Bills of Exchange Act and the Consumer Credit Acts 1974 and 2006. Priced at a mere £31.99, it is indeed a bargain for a legal reference work and should find a place on the bookshelf of anyone who is involved in this area of law.

"Consumer Sales Law" by Professor J K Macleod is published by Routledge Cavendish, priced £31.99 paperback. ISBN 978-0-415-41566-8.

SPRING *07*

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