



## **Bar Council response to the HM Treasury Consultation on Consumer Credit Act Reform (Phase 1)**

This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the HM Treasury Consultation on Consumer Credit Act Reform (Phase 1).<sup>1</sup>

The Bar Council is the voice of the barrister profession in England and Wales. Our nearly 18,000 members – self-employed and employed barristers – make up a united Bar that aims to be strong, inclusive, independent and influential. As well as championing the rule of law and access to justice, we lead, represent and support the Bar in the public interest through:

- Providing advice, guidance, services, training and events for our members to support career development and help maintain the highest standards of ethics and conduct
- Inspiring and supporting the next generation of barristers from all backgrounds
- Working to enhance diversity and inclusion at the Bar
- Encouraging a positive culture where wellbeing is prioritised and people can thrive in their careers
- Drawing on our members' expertise to influence policy and legislation that relates to the justice system and the rule of law
- Sharing barristers' vital contributions to society with the public, media and policymakers
- Developing career and business opportunities for barristers at home and abroad through promoting the Bar of England and Wales
- Engaging with national Bars and international Bar associations to facilitate the exchange of knowledge and the development of legal links and legal business overseas

To ensure joined-up support, we work within the wider ecosystem of the Bar alongside the Inns, circuits and specialist Bar associations, as well as with the Institute of Barristers' Clerks and the Legal Practice Management Association.

As the General Council of the Bar, we are the approved regulator for all practising barristers in England and Wales. We delegate our statutory regulatory functions to the operationally independent Bar Standards Board (BSB) as required by the Legal Services Act 2007.

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<sup>1</sup> [Consumer Credit Act Reform – Phase 1](#)

**Question 1: Do you agree with our vision for a reformed regime?**

We agree with the proposed vision for a reformed regime. In our view, the proposals will advance the principles of proportionate and simplified reform which we identified as particularly important in our response to the consultation published on 9 December 2022.<sup>2</sup>

The proposals will better align the regulation of consumer credit with the wider regulation of financial services through the Financial Services and Markets Act 2000 ('FSMA') and FCA rules. However, the vision and principles for reform only take matters so far. The success of the reformed regime will depend on the detail of the amended regime, in particular any core amended definitions and the form of the replacement FCA rules. Consequently, if this vision is pursued, we think it is important that the FCA's proposals for replacement rules are provided at the same time as any concrete proposal for repeal such that an informed decision on the merits of the reformed regime can be made.

**Question 2: Do you agree with our preferred approach to legislation?**

**Question 3: Do you think the challenges in relation to the transitional provisions have been captured and what further thoughts do you have on possible appropriate transitional provisions?**

We think it is appropriate to answer these questions together as the merit of the proposed approach to legislation is directly related to the appropriateness of the transitional provisions put in place.

We agree that it is preferable to implement a reformed regime through one legislative vehicle. Given the interconnected nature of the proposed Phases 1 and 2, legislating in stages could give rise to problems as a result of implementing part of a reformed regime before the second part of the reformed regime. Further, a key challenge of the current regime is the complex web of interconnected pieces of legislation which make it inaccessible for consumers. Whilst we note the possibility of future pieces of secondary legislation, to the extent that it is practically possible, implementing the reformed regime through one legislative vehicle will promote simplicity.

If the legislation is to be largely replaced by FCA rules as per the proposed vision, it is crucial that the Government and the FCA work closely together. This is especially the case in respect of managing the transition from the current regime to the reformed regime. When considering how to manage the transition and, in particular, the issue of historic non-compliance identified at paragraph 3.15 of the Consultation Paper, we consider that the focus should be on proportionality. The transitional provisions should ensure that robust consumer protection is retained where it is warranted, but we do not consider it objectionable for the transitional

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<sup>2</sup> Available here: <https://www.barcouncil.org.uk/static/d7c481cc-f1dd-4b7e-b984a2918443adaf/Response-to-HM-Treasury-consultation-on-Reform-of-the-Consumer-Credit-Act.pdf>

provisions to remove or reduce consumer protections which are disproportionate, draconian or otherwise unwarranted. See further our response to question 5 below.

**Question 4: Do you agree with our proposal to repeal the information provisions from the legislation and for these to be recast as appropriate into FCA rules?**

We support that proposal and consider that it is desirable to make such a change.

How and to what extent the information requirements are recast will require careful consideration. For example, whilst the Consumer Understanding outcome in the Consumer Duty goes some way towards obviating the need for prescription, it is unlikely to be beneficial for no detailed rules to be implemented. First, it is likely that consistency of information provision will benefit consumers, especially for pre-contractual information where a comparison of similar or identical documents is likely to be helpful in choosing between products. Second, if under the new regime, a failure to comply with information provision requirements will result in sanctions (to which see below), it is important that firms know exactly what they are required to do in order to comply.

**Question 5: Do you agree with our conclusion that the FCA regime without sanctions provides a robust consumer protection?**

Yes. In our view, the FCA's current powers, including redress and public sanctions provide robust consumer protection.

We also note that: (i) where a customer has suffered loss as a result of a breach of the FCA's consumer credit rules, they can bring a claim under s.138D of FSMA; (ii) where a relationship between a consumer and a firm is unfair, the consumer can bring a claim under the unfair relationship provisions in the CCA; and (iii) consumers also have the right to complain to the Financial Ombudsman Service which has wide ranging powers to achieve what it considers to be fair and just outcomes.

**Question 6: What are your views on the following approaches for criminal offences? Officials would need to review these options in the context of the wider CCA Reform proposals. (a) Repealing all the criminal offences in the CCA, allowing the FCA to take enforcement action where possible; (b) Keeping all the criminal offences in the CCA; (b) Keeping all the criminal offences in the CCA; (c) Repealing all criminal offences (allowing the FCA to take enforcement action where possible) except those that relate to minors and canvassing off trade premises where criminal offences would remain.**

We are not aware of any prosecutions, recent or otherwise, in relation to the criminal offences currently contained within the CCA. That would tend to suggest that these are not practices which are considered problematic in the current climate. Further, we note that some of the

conduct covered by these offences would likely also give rise to an offence under the Digital Markets, Competition and Consumers Act 2024 (for example, as an aggressive commercial practice under s.228). We therefore consider that these offences are either unnecessary or redundant, and we would be surprised if repealing the offences would lead to any material detriment. We are supportive of option (a).

**Question 7(a): Has this paper captured the key issues and barriers for each of the cross-cutting themes of:**

**Green Finance**

The paper has captured a number of the issues and barriers relating to Green Finance. However, in our view, it is important to consider the desirability of introducing a bespoke regime to address these key issues and barriers. A credit agreement for a “green product” is not intrinsically different to a credit agreement for another product and the issues identified can apply to credit agreements generally. It is unclear why consumers should be provided with more or less information or greater or lesser protection for green finance than for other finance.

If a bespoke regime is to be introduced, careful consideration will need to be given to how the two regimes interact; for example, what will happen to an agreement that was drafted in accordance with the “green rules”, but it later transpires did not qualify for that regime?

**Islamic Finance:**

In our view yes, however those responding on behalf of the Bar Council cannot profess any particular expertise in relation to Islamic finance, and we would defer to those who do have that expertise.

**Technology:**

Yes.

**Questions 7(b): Is there anything else you think needs to be considered in our Phase 2 policy work?**

We have nothing to add.

**Question 8: Do you agree with the provisional assessment that, on balance, the Government's proposed proportionate approach to reform mitigates the negative impacts on those sharing particular protected characteristics and retain the positive equalities impacts of the products?**

We have nothing to add.

**Question 9: Do you have any further data you can provide on the potential impacts on persons sharing any of the protected characteristics?**

We have nothing to add.

**Bar Council<sup>3</sup>**

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For further information please contact:

The General Council of the Bar of England and Wales  
289-293 High Holborn, London, WC1V 7HZ

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<sup>3</sup> Prepared by the Law Reform Committee.