# HM Treasury Consultation

# Reforming the Consumer Credit Act 1974

## Submission by The Financial Inclusion Centre

**March 2023**

**About The Financial Inclusion Centre**

The Financial Inclusion Centre (FIC) is an independent, not-for-profit policy and research group (www.inclusioncentre.org.uk). The Centre's mission is to promote a financial system and financial markets that work for society. The Centre works at two main levels:

**Promoting system level change**

Research and policy development to promote sustainable, resilient, economically and socially useful financial markets that: benefit the environment; encourage responsible corporate behaviours and create a positive social impact; and efficiently allocate long term financial resources to the real economy.

**Ensuring households' core financial services needs are met**

Promoting fair and inclusive, efficient and competitive, well-governed and accountable, properly regulated financial markets and services that meet households' core financial needs. We do this by undertaking research into the causes of market failure in the sector, formulating policies to address that market failure, developing alternative solutions where the market cannot deliver, and campaigning for market reform. We focus on households who are excluded from, face discrimination in, or are underserved by financial markets and services.

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**INTRODUCTION AND SUMMARY**

The Financial Inclusion Centre (FIC) is pleased to make a submission to this very important consultation. We are unable to respond to all the questions and have focused on those which we believe have potentially the most impact for consumers, particularly vulnerable consumers.

FIC very much supports the government's overall aim to update the system of legislation and regulation relating to consumer credit. We agree with the general thrust of the government's approach to move, where appropriate, core elements of consumer protection from legislation to regulation. We agree that regulation can be more flexible and agile than legislation. The Consumer Duty, ***if*** robustly supervised and enforced with enhanced regulatory transparency, could be very effective.[1]

However, there are some very important specific aspects of the consumer protection regime which should be left in legislation either because those aspects are not possible to replicate in regulation or the deterrence effect supplied by the threat of legal action. In other cases, it is very difficult to reach a firm conclusion without a full comparative analysis of the 'before and after' position for each of the important measures contained in the existing legislation.

In the case of certain measures, there is merit in implementing the intention of the consumer protection measure on an ongoing basis via FCA rules but retaining a legal backstop to protect the most vulnerable consumers in the most challenging circumstances. This would also act as a much needed deterrent for the consumer credit industry which history tells us has been a consistent source of consumer harm for the most vulnerable consumers.

Moreover, while the government recognises the need to make legislation and regulation more agile and responsive post Brexit, it does not appear to be proposing any significant changes in the general approach to enable regulators to take the initiative in response to financial 'innovations' which create risks for consumers.

For example, it is now two years since the Woollard Review recommended that buy now, pay later (BNPL) should be regulated by the FCA. Yet, it is only recently that the government has decided that this should be given the powers to regulate BNPL.

However, the consultation paper does not include proposals that would enable the FCA to use its initiative to quickly respond to future high risk innovations. The FCA would still have to wait for the government to decide whether to include any new product or activity within its remit. This is not optimal particularly with regards to markets such as consumer credit which are fast moving and where has tended to be a high risk of consumer detriment.

[1] See: FCA consultation on a new Consumer Duty | The Financial Inclusion Centre

The lack of agility is partly down to the historic approach adopted in the EU where legislation and regulation tended to be determined according to legal and corporate forms rather than consumer needs. The UK now has an opportunity to introduce more agile legislation and regulation.

FIC argues for an approach based on purpose-based regulation where financial products and activities are presumed to fall within general categories based on their purpose. For example, any commercial activity, product, or agreement which advances a consumer the means to transact, and which is to be repaid either as in a lump sum or instalments (with or without fees/ charges), would be presumed to be consumer credit. Any new product or activity which facilitates an advance would be presumed to fall within the FCA's remit with specific rules developed by the FCA using a fast track process. This approach would have caught BNPL.

Linked to this, UK financial regulation has tended to be permissive, with policymakers and regulators intervening *ex post* after there is evidence of harm which cannot be ignored. See, for example, payday lending, rent to own, and BNPL. It would be much more efficient and effective if regulators were given the powers to apply a more precautionary approach to financial regulation, particularly if combined with the purpose based definition approach outlined above. It is much better that harm is prevented rather than continually clean up markets after the event. *Ex ante* regulation is more effective than *ex post* regulation.

Increasingly, there is a blurring of the lines between finance and technology, and finance, technology, and retail consumer markets (known as 'embedded finance'). Yet, the intersection between these markets is poorly regulated. The FCA's Consumer Duty measures are weak on this.[2] The proposals in this consultation paper do not adequately address the growing intersection risks either.

Finally, we are very concerned at the emphasis in the consultation paper given to supporting economic growth. The government is already mandating, in the Financial Services and Markets Bill (FSMB) that financial regulators should have a secondary growth and competitiveness objective. The FCA's role is to protect consumers, not support economic growth and promote the competitiveness of the very industry it is meant to be protecting consumers from.

The recent emphasis on using financial regulation to support growth and competitiveness threatens to compromise regulatory independence. It is all too easy to envisage situations where regulators are put under pressure by industry lobbies to reduce consumer protection to make the industry more competitive[3] (or to stimulate lending to support economic growth.[4] The FCA should be able to concentrate on protecting consumers, this reform of the CCA should focus on enhancing the consumer protection regime.

[2] See: FCA consultation on a new Consumer Duty | The Financial Inclusion Centre

[3] Based on disingenuous arguments that regulation is stifling innovation and/ or imposing unnecessary costs

[4] Reducing regulations might well encourage growth in consumer credit but this would be a false economy as it would be likely to just encourage the selling of unfair, unaffordable, and unsustainable lending.

**RESPONSES TO SPECIFIC QUESTIONS IN THIS PAPER**

**Question 1: Do you agree with these proposed principles, and do you have views about tensions between them or relative prioritisations?**

We have some concerns about the implications of the principles as currently articulated.

**Proportionate** We are concerned about how the proportionate principle is approached including the use of the term 'burdens on business'. The use of the term burden to describe regulation is becoming all too common. Words matter. It is important to note that consumer protection measures and regulations are necessary because the industry cannot be trusted to protect consumers. It is more correct to think of consumer protection as a responsibility or expectation for commercial financial services firms. The description which accompanies the proportionate principle implies that high levels of consumer protection will be maintained for vulnerable consumers. This approaches the issue in the wrong way. The aim should be to ensure that consumers generally can expect a consistently high level of protection with additional protections for the most vulnerable consumers at times of heightened vulnerability.

**Aligned** We have no real comment on this principle other than to reiterate our concerns made in the introduction about the emphasis in the consultation paper given to supporting economic growth and the inclusion of the secondary growth and competitiveness objective in the Financial Services and Markets Bill (FSMB).

**Forward-looking** We agree that regulation should be forward-looking. But, as we explain above, there appears to be little in the proposals that would allow the FCA to respond more quickly to 'innovations' in this market. The process of applying the FCA regime would still be cumbersome and slow. Moreover, there seems to little consideration given to how to reform consumer protection to deal with the harms created at the intersection of digital and financial services, and digital, financial, and retail consumer products (embedded finance).

**Deliverable** Again, we would argue that this should be approached in a different way. Clearly, consumers remain exposed to harm if policymakers and regulators are slow to close gaps in, and upgrade, the consumer protection regime. The emphasis should, therefore, be on prioritising reforms that protect consumers, committing to implementing those reforms as quickly as is possible without compromising the quality of policymaking, and sending a clear message to the industry that it is expected to implement changes.

**Simplified** We agree that the regime should be simplified and streamlined where appropriate. There is an important caveat though. Even if it is possible to radically simplify communications, this should not be used by the industry to justify reducing firms' responsibilities towards consumers.

We would have preferred that other principles be used to guide the reforms.

**Consumer-first** The overarching principle used to guide the reforms is that any measure should be considered first for its positive and negative consequences for consumers. To reiterate, the aim should be to ensure that consumers generally can expect a consistently high level of protection with additional protections for the most vulnerable consumers at times of heightened vulnerability. What matters is not expanding choice or innovation per se, but whether innovations lead to better consumer outcomes. Sometimes less choice is better than too much choice. Good regulation does not stifle economically and socially useful innovation and improvements in consumer outcomes.

**Legislative agility and responsiveness** It is important that the legislative process is agile so that 'innovations' can be rapidly brought within the remit of the FCA. As outlined above, we argue for a purpose based approach to defining and categorising financial products and activities. We believe this would be more effective than the current permissive and ex post approach which has been slow to respond to harmful innovations such as payday lending and BNPL.

**A precautionary, interventionist, and *ex ante* approach to regulation** Speeding up the process of bringing products and activities within the FCA's remit is one part of enhancing the overall consumer protection regime. We also need a more effective approach once products and activities are within the FCA's remit. The FCA prefers to rely on promoting competition and switching to make markets work for consumers despite this having little effect in improving standards or value in financial services. The regulator has been slow to deploy tools such as product regulation and price caps which have been shown to be effective. Government should make it clear that it expects the FCA to consider price caps as a first resort, not a last resort. If there is any uncertainty about whether the FCA can use price caps, product regulation, or even product banning then the government should clarify that the regulator does have the powers to deploy those tools on its own initiative.

**Effectiveness** As mentioned in the introduction it is difficult to reach conclusions on the merits of transferring certain provisions in the legislation to the FCA regime. The necessary comparative analysis has not been undertaken to enable this. But, the decision should be based on which approach is the most effective at achieving the desired consumer outcome.

**Transparency and accountability** The Consumer Duty is very weak on transparency as the FCA is not mandating how firms report on compliance with the duty. Therefore, government should use this opportunity to improve levels of transparency on how the consumer credit market is serving consumers with characteristics of vulnerability and consumer with protected characteristics.

**Fairness** A guiding principle of the reforms should be that firms and intermediaries will, in most cases, have the advantage over consumers in credit related transactions – whether during marketing, product development and design, the point of sale, and ongoing relationships. Therefore, to ensure fairness, the presumption should be that responsibility for ensuring a fair outcome lies primarily with the firm and/ or intermediary.

**Question 2: Noting the governments' Net-Zero targets, how can CCA reform remove barriers that may otherwise prevent lenders from being able to offer financing for renewable energy solutions, such as electric vehicles and green home improvements?**

It is not at all clear what legislative or regulatory 'barriers' prevent lenders from financing 'green products'. A product may be green, but consumer credit still finances the purchase of that product just as credit finances the purchase of other products such as cars, home improvements and so on.

Care must be taken not to fall into the trap of weakening consumer protection to promote innovation. The environment and green finance has moved up the agenda of the industry and consumers. The history of financial services tells us that harm follows the money. Weakening rules would increase the risk of misselling as well as facilitate greenwashing.

If purchasing an electric vehicle or home insulation reduced a consumer's expenditure, then this should and could be reflected in affordability assessments. The government should also be considering the risks associated with 'embedded finance'. In this case, the consumer credit would be embedded with the marketing and selling of the green product.

Of course, we must consider not just the consumer protection regime relating to the provision of the credit which enables the purchase of an electric car or home insulation. The quality of the goods and services must also be of sufficiently high quality. So, it is worth considering how the benefits provided by Section 75 Connected lender liability could be adapted and enhanced to protect consumers if the market for green products grows as expected.

If the government is concerned about promoting the financing of climate positive products and services, then it would be better to require prudential regulators to apply penalties to deter financial institutions from financing climate damaging activities.

**Question 3: Are there any existing definitions or concepts in the CCA which should be updated and clarified when moved to FCA rules?**

**Question 4: Are there concepts in the CCA which are not currently defined but which should be?**

See above. We propose adopting purpose based categorisation of financial products, activities, and arrangements. This would allow for more agile regulation as it would avoid

having to constantly update definitions and for regulators to have to wait until government specifies new activities are to be brought within the FCA's remit via legislation.

**Question 5: Do you believe the business lending scope of the CCA should be changed?**
No comment.

**Question 6: Do you support the conclusion of the Retained Provisions Report that most Information Requirements could be replaced by FCA rules without adversely affecting the appropriate degree of consumer protection, and that it is desirable to do so? Are there any additional factors the government should consider given the context changes since the report's publication in 2019?**

Yes. We very much support the view that in principle most of the Information Requirements could be replaced by FCA rules. This should provide for a more flexible, agile approach to the provision of key information. But, it is important that this should not undermine the ability of consumers to exercise certain key rights in the CCA and should not remove the options of legal sanctions for failing to comply with requirements on information provision.

**Question 7: In what circumstances is it important that the form, content and timing of pre-contractual and post-contractual information provided to consumers is mandated and prescribed? What are the risks to providing lenders more flexibility in this area?**

**Question 8: The Consumer Understanding outcome in the Consumer Duty posits that consumers should be given the information they need, at the right time, and presented in a way they can understand it. Does the implementation of this section, and the Consumer Duty more broadly, go some way to substitute the need for prescription in CCA information requirements?**

We are very much of the view that consistency on the form, content, and timing of information provision is needed. This needs to be mandated and prescribed along the product supply chain from initial marketing to consumers, selling of the credit, during the ongoing relationship and especially at times when consumers may be in financial difficulty and need support. It should cover the key risks associated with the product including important terms and conditions, consumers' rights, information about redress, and sources of independent support. The risks of allowing lenders and intermediaries flexibility and discretion on the presentation of information is all too obvious. It is sensible to assume that less scrupulous firms will game the opportunities provided by flexibility. This will harm consumers and those firms who do behave responsibly.

**Question 9: Given the increasing using of smartphones and other mobile devices to take out credit products how can consumer information be delivered on devices in a way that sufficiently engages consumers whilst ensuring they receive all necessary information?** As the consultation rightly highlights, financial products are increasingly marketed and distributed online via smartphones and other mobile devices. Business models are driven by technology and data, often embedded in the sale of more 'interesting' retail consumer goods and services. The increased use of tech/ data, far from enabling inclusion, actually allows providers and intermediaries to profile consumers with even greater precision. This can result in greater exclusion and outright discrimination. It also allows firms and intermediaries to actively identify and manipulate behavioural biases and psychological weaknesses to encourage consumers to make sub optimal choices including overconsume credit. One advantage of tech/ data is that firms are in a position to test the delivery of information in 'real time' and use feedback to enhance how information is delivered and cease the use of practices which manipulate consumer behaviours. Therefore, the emphasis should be on requiring firms to identify and cease practices that manipulate consumers. Moreover, in terms of encouraging considered choices, we argue that steps should be taken to insert friction into the marketing and selling process to ensure that consumers think carefully before committing to credit. Greater responsibility should also be placed on the boards of lenders and intermediaries for understanding the consequences of using algorithms, technology, and data to power business models and lending decisions.

**Question 10: Are there any areas where, in your view, consumer protection legislation, rules and/or guidance, outside of the CCA, makes for appropriate levels of consumer protections and mirrors or replicates the effects of the provisions in the CCA?**

**Question 11: If other consumer protection legislation, rules and/or guidance, outside of the CCA, falls short of replicating the effect of the provisions in the CCA, where do these gaps exist and how significant are they?**

**Question 12: The FCA's Consumer Duty mandates a consumer support outcome. How does the Consumer Duty interact with the rights and protections provided to consumers in the specific consumer credit regulatory regime, which currently consists of the CCA and FCA rules?**

**Question 13: If it is possible to amend the FCA's FSMA rule-making power to enable FCA rules to replicate the effect of rights and protections currently in the CCA, what is your view on the risks and benefits of doing this?**

**Question 14: Are there any rights and protections provisions which you feel should not be moved to FCA rules and should remain in legislation? Please provide an explanation of why you hold these views.**

We take Q10-14 together as they cover the same basic theme of whether rights and protections could be safely moved to FCA regulation.

We think that a number of the key protections in the CCA legislation could be *delivered* more effectively through FCA regulation.

On *S56 Deemed agency*, we think it would be possible to adapt the rules the FCA has in place to cover the role of introducers, intermediaries, and other distributors and the responsibilities of product manufacturers with regards to distributors.

Similarly, regarding *S93 Interest not to be increased on default, S94 The right to complete payments ahead of time,* and *S95 The entitlement to a rebate on early settlement* could be delivered through FCA rules. The FCA could make rules and issue guidance making it clear to firms that these protections form part of the Consumer Duty. A S93 equivalent would be seen as part of the requirements to treat vulnerable consumers fairly. S94 and S95 could be seen as forming part of the requirement not to lock consumers into a product.

But, as mentioned elsewhere, while the intentions of these measures could be better *delivered* through FCA regulation there is merit in also retaining these in legislation to provide backstop protection for vulnerable consumers. This could be particularly relevant for unregulated firms and intermediaries. Moreover, the specific rights and entitlements in the CCA mean that inconsistent contract terms can be made void. This is an important deterrent against unfair practices by firms.

As the consultation points out, the one measure which cannot be replicated using the FCA powers is S75. This important legal protection must be retained in legislation. However, as explained elsewhere, we are concerned that the current consumer protection regime (legislation and regulation) does not properly deal with the risks associated with embedded finance.

We are not quite sure what is meant by Q12. The consumer support outcome intends that firms provide support that meets consumers' needs and expectations throughout the life of product or service. This means that consumers: need to be provided with the right information before making decisions; should be able to trust that firms and intermediaries have their best interests at heart, are made aware of any potentially negative features of products and services, and trust that firms and intermediaries are not attempting to manipulate psychological and behavioural vulnerabilities; and can rely on firms to treat them fairly and sympathetically in the event of encountering financial difficulties. It is not possible to determine whether the Consumer Duty and the current CCA/ FCA rules interact effectively to ensure the consumer support outcome will be delivered without a more comprehensive gap analysis.

**Question 15: Given this, to what extent do time orders provide additional protections to these rules and guidance? What evidence are you aware of that the existence of this right changes firm behaviour and improves consumer outcomes?**

We do think that time orders should be retained. It is difficult to provide quantitative evidence on the impact on firm behaviours. But, we have been told by debt advisers that the existence of time orders does act as a deterrent. Moreover, it does seem reasonable to presume that their existence does act as a deterrent. Even if there is no evidence of time orders being used in large numbers, this could be due to the fact that the very threat of an order being used causes firms to alter their behaviour towards vulnerable consumers.

Moreover, if it is the case that time orders are not commonly applied for, then retaining them should not create much difficulty for firms.

**Question 16: What is your view on the usefulness of the right to voluntary termination and its role in protecting consumers? Are there improvements that could be made to the functioning of this right?**

No comment.

**Question 17: To what extent do the FSMA and FOS regimes make the unfair relationship provisions unnecessary? If these provisions are to be kept in legislation, with other rights and protections moving to FCA rules, does this create more complexity and confusion for lenders and borrowers and what will the effect on innovation in the sector be?**

We disagree that FSMA and FOS regimes would make the unfair relationship provisions unnecessary. The consultation document makes the case for retention very well in paras 4.29-31. The courts have more powers than the FOS whether in making a determination, awarding redress, and the application to unregulated credit agreements and unauthorised firms.

**Question 18: Would you be supportive of HM Treasury exploring the option of amending FSMA rule-making powers in such a way to enable unenforceability to apply to breaches of FCA rules in a similar manner to how unenforceability applies under the CCA, noting there would not be a role for court action in this scenario?**

We would be supportive of FSMA rule-making powers being amended to enable unenforceability to apply to breaches of FCA rules. It would be an advantage for the FCA to be able to use these sanctions in the normal course of its operations. But, we do not see why a role for the courts should not be retained as a backstop and deterrent. After all, as the consultation document recognises, the market for consumer credit is in many ways unique and presents varying risks for consumers.

**Question 19: Do you agree that the government should consider the proportionality of sanctions and ensure that they are relative to the consumer harm caused/potentially caused?**

If the FCA was given the power to use these sanctions then, by default, the regulator would apply a proportionate approach as is the case with how it deploys its supervisory and enforcement powers now.

**Question 20: What types of breaches of CCA rules do you think that sanctions should attach themselves to and why? For example, should the disentitlement sanction be limited to the small sub-set of cases giving rise to unenforceability, where there is the greatest risk of harm?**

No comment.

**Question 21: How valuable are the CCA provisions that give rise to a criminal offence? (See Annex 2 for list of CCA provisions that give rise to criminal offences)**

We take the view that these provide a necessary deterrent against the most egregious behaviours and should be retained.

**Question 22: Are there are any provisions that are outdated because the practices they pertain to are not used anymore, or would removing some CCA provisions lead to the return of these practices?**

Yes, we do think that removing CCA provisions would encourage a return of certain practices. The provision of credit is associated with aggressive practices and behaviours towards the most vulnerable households. The full armoury of consumer protection needs to be retained – and, if anything, deployed more frequently.

**Question 23: What is your view on the merits in increasing the standards of conduct for consumer hire agreements to make them comparable to those for consumer credit?**

We would fully support improving the standards of conduct for consumer hire agreements to ensure a consistently high standard of consumer protection across all forms of consumer credit provision.

**Question 24: Should the section 17 provisions which enable exemptions from specific elements of the CCA and CONC continue to exist? What would be the impact of these provisions not applying?**

No comment.

**Question 25: How can this reform ensure that firms provide information to consumers which is accessible for a wide range of financial literacy and numeracy levels?**

The best way to ensure that firms and intermediaries provide accessible and understandable information to consumers with different levels of literacy and numeracy is to require the industry to stress test consumer understanding of products and services before selling those products and services. The onus should be clearly on the boards of firms and intermediaries to ensure this happens.

We must be realistic. Even with the simplest information, the balance of power in the relationship between consumers and industry will remain with the industry primarily due to the opportunities provided by AI/ big tech/ big data to manipulate consumer behaviours. The overall aim of the reforms should be to constrain the behaviours of firms and intermediaries and ensure they behave responsibly and fairly.

**Question 26: In what ways should this reform ensure that consumers' mental health and wellbeing is supported throughout the consumer credit product lifecycle?**

Again, the most important intervention would be to ensure that firms and intermediaries use AI/ big tech/ big data responsibly. There are very serious downsides associated with the greater use of AI/big tech/ big data.[5] But, the same technology can be used responsibly to test consumer vulnerability in real time. As outlined above, firms and intermediaries should be required to stress test products including understanding of features before selling those products.

There are some fairly minor specific reforms relating to County Court Judgments (CCJs) which could have a big impact, namely satisfying CCJs and including the name of the claimant on the public Register of Judgments.

Registry Trust, which operates the Register of Judgments on behalf of the Ministry of Justice (MoJ), estimates 4.5 million individuals and small/ micro businesses have an outstanding CCJ (around one in 12 of the adult UK population).

A CCJ stays on the Register for six years so this can affect consumers' ability to access affordable credit and good value products and services in the future. So, it is important from a *consumer* rights perspective that information held on the Register is a true and up to date record of a consumer's financial position.

A major problem is that a very low proportion of CCJs are marked as 'satisfied' on the Register. It is not commonly known that CCJs are only marked as satisfied if the debt is repaid ***and*** proof of payment is supplied to the courts in England and Wales (and to Registry Trust for other jurisdictions). But, worryingly, just 16 percent of CCJs are marked as satisfied, and that proportion has been falling.

This can happen for a number of reasons such as people moving house and failing to notify a creditor. In other cases, people may just forget to notify the courts. It is well documented that people in debt can face a vicious circle of mental health issues making it more difficult to manage finances, while getting into financial difficulty can exacerbate mental health issues. At times of severe stress and anxiety, understanding that there is yet another step to take of having to remember to inform the courts and sending proof of payment can be difficult.

Whatever the reason, many consumers who have already repaid their outstanding debt could still be penalised if the CCJ has not been marked as satisfied. The simple and most effective solution would be for the consumer protection regulators who are part of the UK Regulators Network (UKRN) to introduce a rule or issue guidance requiring firms to notify the courts when a debt has been settled as part of treating vulnerable consumers fairly

[5] See for example FIC discussion paper Fintech – beware of geeks bearing gifts? Fintech – beware of 'geeks' bearing gifts? | The Financial Inclusion Centre

obligations. This notification could be done by email on receipt of settlement of the debt so would not impose any onerous requirements on firms.

Notifying the courts that a debt has been repaid would show that firms are taking all reasonable steps to support vulnerable consumers through what can be a very difficult period in their lives. It could also help consumers repair their credit files and recover more quickly from a difficult financial position. Improving the information on the register could enable access to more suitable and affordable products and services.

There is also the basic issue of natural justice. It seems only fair and reasonable that a consumer who has been able to repay their outstanding debts should see this effort reflected in the information held about them on a public register.

There has been support for this position. The Woolard Review[6] recommended that the FCA should consider the case for introducing rules to require creditors to report to the courts when a CCJ has been satisfied or partially satisfied, to drive up the quality of existing credit information.

With regards to claimant names, as it stands, Registry Trust can publish the name of the claimant for Scotland and Northern Ireland judgments but not for England and Wales, which is by far the largest jurisdiction.[7]

There are a number of potentially significant benefits for including the name of the claimant on the Register. If the Register held the name of the claimant, the 'real-time' data could be a useful tool to allow regulators to monitor how regulated firms treat consumers in a vulnerable financial position, particularly important given the expected impact of the cost of living crisis.

Specifically, it could be a useful supervisory tool for regulators. It would allow regulators to identify detrimental practices and respond more quickly. Claimant data would allow regulators to spot which firms within their remit are most aggressive in using enforcement action against vulnerable consumers, and compare their stated treating customers fairly policies against their actual practices.

It could also provide a helpful indicator of the quality of controls lenders have in place to prevent irresponsible lending or the effectiveness of policies intended to support consumers in financial difficulty.

Claimant data could also be a helpful corporate accountability tool for civil society groups. It would also help academics and other analysts obtain better insights into the source of problem debt within the economy.

[6] The Woolard Review - A review of change and innovation in the unsecured credit market (fca.org.uk)
[7] This is due to the contract Registry Trust has with the MoJ which specifies which data it can include on the Register.

It could also be a useful input for determining the funding of debt advice based on the harm caused. Including the claimant name on the public register would help government, the Money and Pensions Service (MaPS) and other stakeholders identify with more precision which activities, sectors, and firms are responsible for causing financial problems for consumers.

Including the name of the claimant on the register would require government to introduce a small amendment to the legislation which determines the information Registry Trust can hold. However, our understanding is that this would just be in the form of a statutory instrument, and not new primary legislation.

These relatively minor reforms would help regulators ensure that firms are treating vulnerable consumers fairly at all parts of product lifecyle.

**Question 27: What are the key considerations that the government need to take into account when reforming the CCA to ensure that Sharia compliant loans can be expressly accommodated? Which areas of the CCA are not currently compatible with Islamic Finance, and how could they be amended to accommodate Sharia compliant loans?**

**Question 28: If interest rates are prohibited for Islamic Finance products, how does the government ensure that Islamic finance and non-Islamic finance products can be easily compared, given that APR values are used for comparative purposes?**

Unfortunately, we have not undertaken research and analysis into Sharia loans so we do not feel in a position to comment.

**Question 29: Are you aware of any implications of our policy approach on people with protected characteristics?**

**Question 30: Do you have any views on how the government can mitigate any disproportionate impacts on protected characteristics?**

We take the view that improving the consumer protection regime (legislation and regulation) could be of significant benefit to people with protected characteristics. But, for this happen requires a significant enhancement in the level of transparency and reporting by the FCA.

Worryingly, as it stands, the FCA is not mandating how firms report on compliance with the Consumer Duty. Moreover, the FCA is to a large degree restricted in the amount of data and information it can publish on firms behaviours due to the protection afforded commercial interests in FSMA.

Therefore, the FCA should mandate how firms report on compliance with the Consumer Duty. Moreover, we recommend that the FCA publish regular reports on the degree to

which consumers with protected characteristics are being served by the market especially on whether there is evidence of discrimination (direct or indirect) happening.

We appreciate that the FCA is primarily a market regulator, not a social policy regulator. Where markets are unable to meet the needs of vulnerable consumers on fair terms, it should be primarily a matter for Parliament and government to address by ensuring availability of alternative products and services. Nevertheless, the FCA could aid this process by making formal reports and recommendations to Parliament and government when it concludes that the market is unable to meet the needs of vulnerable consumers and that social policy interventions are needed.

**This marks the end of The Financial Inclusion Centre's submission**
**March 2023**