

## Broader public interest concerns

1. Since the outset of our investigation we have been alive to the broader social and/or public policy issues beyond competition which arise on home credit in particular, on financial inclusion more widely and on consumer credit generally. We have observed that these issues give rise to continuing, sometimes intense, debate and periodic regulatory action. We note below certain of the significant activity either preceding, or concurrent with, our investigation.

### Legislation

2. In July 2001, the Government announced a review of the Consumer Credit Act 1974. It published on 8 December 2003 a White Paper.<sup>1</sup> During 2004, it made a series of regulations<sup>2</sup> under existing legislation giving effect to some of the proposals. Those relevant to this investigation are dealt with in paragraphs 2.35 to 2.55 of the main report. The remaining proposals required primary legislation and are dealt with in the Consumer Credit Act which received Royal Assent on 30 March 2006.
3. The EU has proposed replacing the current EC Directives on consumer credit. In February 2005 the DTI issued a consultation paper on a proposed text. In October 2005 the European Commission published a revised text. In March 2006, the DTI issued a further consultation paper on the revised text and the consultation period closed in May 2006. The outcome of the consultation will be relevant to the continuing negotiations on the revised text between EU member states and the European Commission. The DTI told us that it was possible that political agreement for the proposed Directive will be reached by the end of 2006. However, even if political agreement is reached by the end of 2006, it is unlikely that any Directive resulting from the agreement would be in force before 2009.

### Financial exclusion/access to credit

4. More specifically, much research and policy work has been done in recent years on access to credit for people on a low income (seen by many commentators as an essential means of managing finances and a key component in combating financial exclusion). Our paper on pre-existing customer research (published on our website) summarizes some of the research we consider most relevant to our investigation. In this context, the NCC told us that the supercomplaint<sup>3</sup> which gave rise to this reference formed part of a broader campaign focused on poor people having to pay higher prices for many basic services.
5. The Government has provided a focus for policy on combating financial exclusion. In December 2004, alongside the 2004 pre-Budget Report it published *Promoting Financial Inclusion*, outlining its strategy for tackling exclusion and setting out a range of measures within its three priority areas: increasing access to banking; to free face-

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<sup>1</sup>*Fair, Clear and Competitive—The Consumer Credit Market in the 21st Century*, DTI, 8 December 2003.

<sup>2</sup>The Consumer Credit (Advertisements) Regulations 2004, the Consumer Credit (Agreements) (Amendment) Regulations 2004, the Consumer Credit (Disclosure of Information) Regulations 2004, the Consumer Credit (Early Settlement) Regulations 2004, the Consumer Credit (Miscellaneous Amendments) Regulations 2004, the Consumer Credit (Enforcement, Default and termination Notices) (Amendment) Regulations 2004 and the Consumer Credit Act 1974 (Electronic Communications) Order 2004. Some of their implications are discussed in paragraphs 2.42 to 2.56.

<sup>3</sup>[www.ncc.org.uk/moneymatters/index.htm](http://www.ncc.org.uk/moneymatters/index.htm).

to-face money advice; and to affordable credit. It established at the same time a Financial Inclusion Fund of £120 million over three years and a Financial Inclusion Taskforce to oversee progress on the strategy. The Taskforce, under the chairmanship of Mr Brian Pomeroy, comprises 12 members (several of whom have given written or oral evidence to our investigation from their professional perspectives) drawn from across the financial service sector, the voluntary and community sector and academia. It has a secretariat located in HM Treasury. Among other things, it is responsible for monitoring and encouraging progress towards the target agreed by the Government and the banks of halving the number of adults in households without a bank account.

6. In December 2004, the Government also announced the intention to include among its commitments from the Financial Inclusion Fund:
  - (a) £36 million for a growth fund, administered by the DWP, to support third sector (ie voluntary sector, not for profit) lenders providing affordable credit. In addition, the Government announced the intention to increase the maximum rate of interest chargeable by credit unions, and has consulted on the extension of Community Tax Relief to personal lending by community development finance institutions. £10 million within the Financial Inclusion Fund would be used to support a scheme where, under certain circumstances, lenders could apply for repayment of arrears through deduction from benefits;
  - (b) £45 million to support an increase in the provision of free to client face-to-face debt advice to the financially excluded in England and Wales; and a further £6 million to pilot money advice outreach; and
  - (c) £20 million for broader financial inclusion objectives, including stimulating demand for mainstream financial services.

## **Financial capability**

7. Other initiatives under way include:
  - (a) implementation of a national strategy for financial capability developed by the FSA working in partnership with the Government, the financial services industry and stakeholders;
  - (b) inclusion of financial capability in the GCSE programme so as to translate into practice the policy of financial education at an early age;
  - (c) strengthening adult financial capability among groups with special needs;
  - (d) introduction of the 'stakeholder's suite' of simple, low-cost, risk-controlled savings and investment products to encourage medium and long-term saving;
  - (e) the DWP's concentration of its efforts and resources on improving the administration and processing of Housing benefit and Council Tax Benefit; and
  - (f) doubling, from April 2006, the capital limits which preclude applications for Social Fund grants and loans.
8. On 15 November 2005 the House of Commons Treasury Committee launched its own investigation into Financial Inclusion. It told us that it intended during 2006 to consider in particular:

- (a) access to banking services;
  - (b) access to affordable credit;
  - (c) financial education and access to financial advice;
  - (d) incentives and barriers to savings for people on below-average incomes;
  - (e) the role of the Government, the Financial Services Authority and other bodies and organizations in promoting financial inclusion; and
  - (f) the benefits of financial inclusion and the extent to which financial exclusion measures can contribute to combating poverty and reducing barriers to employment.
9. We have made available to the Committee through its Clerk core investigation documents such as our Emerging Thinking published in October 2005; our provisional findings published in April 2006, drawing the Committee's attention to our focus on competition issues; and our Proposed Remedies published in August 2006. On 16 November 2006 the Committee published its Twelfth Report for the 2005–06 session on *Financial inclusion: credit, savings, advice and insurance*, in which it referred to our provisional findings and proposed remedies and added that 'Promoting competition amongst providers of high cost credit can play an important role in reducing interest rate charges ... We expect due consideration of the full range of possible remedies followed by rapid implementation of measures to increase competition and benefit consumers.'<sup>4</sup>

## Illegal lending

10. We noted (see paragraphs 2.38 to 2.40 of the main report) the need for home credit providers to obtain a licence from the OFT in order to conduct their businesses lawfully. Unlicensed money-lending operations also exist. Little has been known about this illegal activity and that little has derived in the main from anecdote and local gossip. It has been inherently difficult to find out about the characteristics, the extent and any local prevalence of a criminal activity which by its very nature operates with a degree, usually a very high degree, of concealment. No research carried out before we started our investigation significantly illuminated this dark corner. Nor did the Government, government agencies or voluntary sector agencies appear to have any authenticated insights to offer. Significant progress, however, in intelligence about the illegal sector now promises to be made.
11. The DTI is providing £2.6 million to fund two pilot teams in Birmingham, covering the West Midlands and in Glasgow, covering Scotland. It chairs the project management board steering the pilots. The OFT is represented on the board, provided initial training on the background legislation and supplies continuing information and support.
12. These illegal money-lending pilots were set up in September 2004 initially for two years, subsequently extended until the end of March 2007. Their objectives are:
- to have an impact on illegal money lending, initially seeing more prosecutions for illegal lending, eventually reducing the incidence of illegal money lending;

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<sup>4</sup>Source: House of Commons Treasury Committee: *Financial inclusion: credit, savings, advice and insurance. Twelfth Report of Session 2005–06. HC 848-1.*

- to obtain a clearer understanding of the scale and impact of illegal lending as well as learning lessons on the best way to enforce;
  - to create a climate where victims can come forward—confident that prosecutions will be undertaken, and convictions obtained, without fear of reprisals;
  - to change the perception among those lending that illegal money lending is rarely prosecuted; and
  - to develop ways of replacing the removed lenders with more support for their victims.
13. The pilots have had a clear impact in identifying cases of illegal money lending, instituting proceedings against illegal lenders and securing prosecutions (with more expected to follow). Where illegal lenders have been removed, the teams have worked, where appropriate, to replace them with money advice and signposting to other sources of credit. This has had an impact on the quality of life of the victims and, in some cases, on the entire community in which the lender operated.
14. The information available from the pilots has been supplemented by research commissioned by the DTI. The aim of the research was to map the scope and extent of illegal money lending nationally, to classify the different types of illegal lenders and their impact, and to identify the drivers behind the illegal lenders. The report suggests that the most effective strategy for combating illegal lending might be maintaining a regulatory environment that encourages legal credit options whilst supporting those most at risk and creating alternative credit options. More specifically, it proposes the creation of specialist units supported by dedicated funds working in partnership with other agencies and the adoptions of a holistic approach to addressing the complex problems encountered by users of illegal lending. In practice this is likely to mean providing victims of loan sharks with information about legal credit options, notably credit unions, and ensuring the availability of legal credit options, especially in areas where loan sharks have been removed.
15. The research, together with the evaluation of the illegal money-lending pilots, will help to inform policy decisions on taking forward this work as part of the wider social exclusion and financial inclusion agenda.

### **Other Parliamentary and Government scrutiny**

16. In the meantime, the public, Parliament, Government and regulators continue to give attention to other parts of the consumer credit industry. Salient developments on this front include the following:
- (a) Before tackling Financial Inclusion (see paragraphs 9 and 10 above), the House of Commons Treasury Committee had inquired in the last Parliament into credit card charges and marketing. The Committee initial report, published on 10 December 2003, set out its concerns about a lack of transparency in the credit card market and noted certain marketing practices which it considered to be dubious. After follow-up investigation, the Committee issued a further report on 4 February 2005, noting progress made but identifying key areas in which further progress was still needed. These included better summary boxes for customers, clearer interest calculation methods, reasonable penalty charges, comprehensive data sharing, unsolicited issuing of credit card cheques which customers had not asked for and appropriate payment protection insurance (PPI). The OFT and the

Government responses to this further report were published on 11 April 2005: [www.publications.parliament.uk/pa/cm200405/cmselect/cmtreasury/508/50802.htm](http://www.publications.parliament.uk/pa/cm200405/cmselect/cmtreasury/508/50802.htm).

- (b) On 6 September 2005, the OFT issued an infringement Decision under Article 81 of the EC Treaty and the Chapter I prohibition of the CA98 against the rule of MasterCard UK Members Forum Limited (MMF) which set the 'multilateral interchange fee' (MIF) paid on purchases in the UK made using UK-issued MasterCard consumer credit and charge cards between 1 March 2000 and 18 November 2004. The MMF rule was rescinded on 18 November 2004 and new arrangements for setting UK domestic MIFs were put in place by MasterCard. MMF, MasterCard International (MCI) and the Royal Bank of Scotland Group (RBSG) appealed this decision to the Competition Appeal Tribunal (CAT). On 19 October 2005, the OFT issued a Statement of Objections (SO) against Visa, proposing to find that Visa interchange fee arrangements between members infringed the prohibition in Article 81, EC and the Chapter 1 prohibition. This followed the same principles as those set out in the MasterCard Decision. Visa and the British Retail Consortium were given the right to intervene in the appeal proceedings initiated by MMF, MCI and RBSG. The MasterCard decision was set aside by the CAT on 19 June 2006 and the appeal proceedings came to a close. The Visa SO was also withdrawn on 19 June 2006. In February 2006, the OFT launched an investigation into MasterCard's new arrangements for setting the MIFs that apply to UK domestic transactions made using UK-issued MasterCard consumer and commercial credit and charge cards, introduced by MasterCard on 18 November 2004. The OFT's investigations into MasterCard's and Visa's current arrangements continue.
- (c) On 1 March 2006, the OFT published its response to the DTI consultation paper on credit card cheques, urging legislation to protect consumers. The DTI published a Government response to the consultation on 7 September 2006 which said it would introduce any new legislative measures for the time being in the light of fresh industry initiatives to provide more transparency about the operation of credit card checks.
- (d) The CC's investigation into the market for Store Card Credit Services reported on 7 March 2006. The report can be found on the CC website: [www.competition-commission.org.uk/rep\\_pub/reports/2006/509storecards.htm](http://www.competition-commission.org.uk/rep_pub/reports/2006/509storecards.htm).
- (e) At the end of April 2006 the FSA and the OFT published an Action Plan setting out a number of areas in which they considered that closer collaboration could improve regulation and benefit consumers and businesses as a result. The Action Plan focuses on those businesses jointly regulated by both the FSA and OFT. A report on progress made on the matters discussed in the Action Plan, and an outline of further collaborative working, will be published at the end of November 2006.
- (f) On 29 March 2006 the OFT launched new forms for businesses applying for, renewing, varying or notifying changes to their consumer credit licences.
- (g) On 3 April 2005, the OFT announced, following a supercomplaint from Citizens Advice to which it had responded on 8 December 2005, a market study of the PPI sector. The OFT report, published on 19 October 2006, provisionally calls for the UK PPI market, with one exception, to be referred to the CC for further investigation. The OFT provisional decision invites comments by 30 November, with a final decision likely by early 2007.

(h) On 5 April 2006, the OFT announced the result of its investigation under the Unfair Terms in Consumer Contracts Regulations 1999 into eight credit card issuers' standard contractual default charges (ie charges for failing to pay a minimum payment on the due date, exceeding a credit limit or failing to honour a payment made). The OFT concluded that credit card default charges had generally been set at a significantly higher level than was legally fair; and said that it expected all credit card issuers to recalculate their default charges in line with principles set out in a statement published in parallel (the OFT also indicated that these broad principles were relevant to default charges in other standard consumer contracts such as those for bank overdrafts, store cards and mortgages). The OFT set a £12 threshold for intervention unless there were exceptional business factors. On 7 September 2006, the OFT announced that, in response to its April statement, credit card issuers have agreed to reduce their default charges—the majority by almost half (although many of them stated that they did not agree with the OFT's legal analysis). In the light of this change in the market, the OFT said that it was satisfied that no further intervention was warranted in this area at that time. The OFT is now holding discussions with the British Bankers Association on the application of the principles set out in its April statement to bank current accounts, in liaison with the FSA.