

Joint response from the Baptist Union of Great Britain, the Methodist Church and the United Reformed Church to:

**Office of Fair Trading Consultation: “Irresponsible lending– OFT guidance for creditors.”
Closing: 20th October 2009**

The Baptist Union of Great Britain, the Methodist Church and the United Reformed Churchⁱ are pleased to respond to this consultation. The Churches have a longstanding concern for those in debt and are active in the Credit Union movement to provide affordable sources of credit for those on low incomes. While we understand it is outside the remit of this consultation in our view a maximum legal interest rate would be one of the most effective mechanisms to reduce Irresponsible Lending.

The Churches welcome the proposals set out within this document as a large step forward in protecting some of the most vulnerable and disadvantaged in society.

Summary

It is important to recognise that some consumers come to the credit relationship in a vulnerable position. This may be because of urgent material need, lack of information, or real or perceived lack of choice. We welcome these regulations where they redress the balance in this relationship by insisting on transparency in pre-contract and post-contract communications and requiring the creditor to make a realistic assessment of the borrower’s ability to meet their obligations. We particularly welcome the “borrower-focused” nature of the tests required.

Many of our comments relate to a request for increased transparency in terms of organisations’ policies and procedures, which as they are required so as to be available for OFT inspection, would not give rise to any extra financial burden on the industry but would allow increased scrutiny and potentially increased public trust in this industry.

The emphasis on commitment to honesty and integrity, while an obvious requirement, is a very welcome part of these regulations.

Chapter 1- INTRODUCTION

General Comments.

It is clear that prior to the current economic crisis that all sectors of the financial industry engaged in irresponsible lending practices. It is also clear that the current financial situation means that large numbers of individuals will be in vulnerable financial positions and potentially seeking credit. It is important that these regulations do not allow these people to be exploited, and that the OFT is both willing and able to take strong measures against creditors who do not comply with this code.

The requirement to comply with the spirit of the code is viewed as extremely important as this is a fast moving and innovative sector where it would not be possible to circumscribe the details of every unfair practice as it arises.

Chapter 2 - GENERAL PRINCIPLES OF LENDING

We welcome the principles set out in this chapter and believe that Sections 2.2 and 2.3 are at the heart of these proposals and should not be diluted in any way in the final guidance.

Section 2.3. The welcome implication of this paragraph is that borrowers should not only be able to service their debts but be able to clear their debts. There is an assumption that needs to be made in each individual case as to what a reasonable amount of time to clear debts would be. This will vary according the circumstances of the both the borrower and the loan type, but in the interests of transparency this assumption (which is already needed in order to perform the assessments required by chapter 4) should be communicated to the borrower as their view of a reasonable amount of time to discharge a debt may vary from the creditor's. Other specific instances of this problem are highlighted below.

Chapter 3 - EXPLANATIONS OF CREDIT PRODUCTS

Section 3.6 The second bullet point suggests that small loans require less explanation:

“The nature and extent of the explanation required in any individual circumstance will depend in part on a number of factors including:

... • the amount of credit to be provided and the associated cost to the borrower “

While in some circumstances this will be true, the key factor will be the size of the loan relative to the borrower's ability to pay as an inappropriate small loan may have catastrophic financial consequences to someone on a low income.

This issue is partly addressed in section 4.13 and consolidation of these two paragraphs may provide a satisfactory new wording.

Section 3.20 Home Loans and Pay Loans: The cost of rolling over loans should be calculated in relation to the initial amount borrowed and not the amount owed at the end of the first contract.

Consolidation Loans: Where applicable the increase in duration of the loan compared to the loans consolidated should be made clear.

Answer to Specific Questions:

Q13. While it is preferable that borrowers be able to access telephone help-lines free of charge, it should be unacceptable for “shared revenue” phone lines to be used.

Q14. Appropriate information should be available at the point of sale. If that can be provided either by the staff present or in the form of leaflets/electronic material, then that is sufficient. Access to a telephone helpline should be available if it is needed to meet the requirements to provide appropriate information.

Chapter 4 - ASSESSMENT OF AFFORDABILITY

The churches welcome the requirement of the creditor to assess the affordability of loans in a “borrower-focused” manner.

Section 4.2 We agree with this definition of ability to repay debt “in a sustainable manner”.

However bullet point 2 -

“... • within a reasonable period of time”

carries within it the need for an assumption of what a reasonable period of time should be. As argued in section 2.3 above, it would be important that this assumption is transparent and shared between the creditor and lender at the pre-contract phase.

Section 4.3 This appears to offer some companies the opportunity to offer loans that are borderline unaffordable so long as their policies’ do not penalise the borrower for missing payments. We would argue that a loan is either affordable or unaffordable by the criteria set down in paragraphs 4.1 and 4.2.

This paragraph allows companies to build in default charges into the up-front pricing structure and incentivises creditors to lend to people who will have difficulty repaying the debt. Evidence to the Competition Commission inquiry into Home Credit suggests that this is already a damaging and common practice.

We believe this paragraph undermines the excellent principles set out in paragraphs 4.1 and 4.2 and should be removed.

Section 4.4 There is a requirement that in the case of running credit, where there is no fixed term, there is a requirement for the total debt to be repaid over a reasonable period. As in section 2.3 and 4.2 there is a need to be explicit and transparent about what the “reasonable period” is. This will clearly vary on a case by case basis.

Section 4.16 We believe the policies and procedures to assess affordability should be publically available. This would not be an additional cost to credit businesses and allow scrutiny of these policies by organisations other than the OFT. Such transparency would also expose unsatisfactory lenders, allow responsible lenders to gain competitive advantage and also assist better compliance.

Chapter 5 - PRE-CONTRACTUAL ISSUES

We have no specific comments to make on this chapter.

Chapter 6 - POST-CONTRACTUAL ISSUES

Section 6.2 There is a requirement that minimum repayments are set at a level which would repay both capital and interest within a reasonable period of time. As in Sections 2.3, 4.2 and 4.4 it is necessary to be transparent about what a reasonable time period is. We would recommend that in running credit accounts it should be clear the date at which all debts will be repaid should only minimum payments be made.

Section 6.10 A number of churches and church groups have expressed concern about Credit Card Cheques, viewing them an incentive to imprudent borrowing. We welcome the ability to opt-out of receiving these cheques but question why it is not an opt-in service.

It is clear that these regulations are designed to allow the consumer make an informed decision as to the both the initiation and magnitude of any credit relationship. Unsolicited credit card cheques would seem to unnecessarily blur this principle.

Section 6.16 We are particularly pleased to see the issue of repeated roll-over lending and refinancing listed as evidence of unfair practice and irresponsible lending. Many low income borrowers become trapped in relationships of 'credit dependency', reliant on regular refinancing in order to release further cash for essential expenditures. We believe that this type of lending has become a key part of irresponsible and exploitative business models in recent years and welcome OFT action to address it.

As suggested in Section 3.20 information on all roll-over loans should be made with reference to the initial sum borrowed and not only the amount being borrowed in subsequent loans.

Chapter 7 - HANDLING OF DEFAULT AND ARREARS

General Comments

While default and arrears are an inevitable part of the lending industry, we believe that it is important that those in financial difficulties are treated with dignity and respect. Conversations with church organisations suggest that this is not always the case and that there is the need to build up trust in the industry's practices. Therefore we believe it is important that the clear, effective policies and procedures mentioned in section 7.1 are publically available. This would not be an additional cost to credit businesses and allow scrutiny of these policies by organisations other than the OFT. Such transparency would also expose unsatisfactory lenders, allow responsible lenders to gain competitive advantage and assist in better compliance.

We particularly welcome 7.10 and the statement of responsibility as to the positive identification of the true debtor *before* passing the debt over third parties, as incorrect identification is an issue raised by churches and church organisations working with people with concerns around debt.

Answer to specific Question

Q32. Debt recovery should be postponed if the borrower lacks both the capacity to make decisions relevant to the recovery process or someone legally enabled to act on their behalf. Borrowers in this position are clearly vulnerable. Pursuance of debt in these circumstances is like to be detrimental to their welfare and has the potential to be highly exploitative.

Chapter 8 - REGULATORY COMPLIANCE AND ENFORCEMENT

Section 8.6 and 8.7 requires creditors to demonstrate the compliance of their policies and procedures to the code. For the reasons argued above we believe that these policies and procedures should be as far as is reasonably possible open to public and consumer scrutiny. As section 8.7 requires these policies to be readily available to the OFT this requirement for transparency would not expose creditors to extra costs.

There is a need for joined up policy between the OFT and the Financial Ombudsman's Service. It is important that the OFT is able to act upon creditors behaving unreasonably, and that the consumers who have been unreasonably treated by those creditors are able to get recourse via the ombudsman service. A shared definition of what constitutes unreasonable behaviour is essential to this process being both just and understandable.

We would suggest that a leaflet explaining these regulations, the ombudsman's role, and also the unfair credit relationship test within the Consumer Credit Act 2006 will be required to enable consumers who believe they have been treated unfairly to understand all the possible means of redress available to them.

We would like to thank the OFT for the opportunity to respond to this consultation and would welcome further communication should you feel it would be of assistance in finalising these regulations.

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ⁱ The **Baptist Union of Great Britain** (BUGB) is the Baptist family in England and Wales (there is also the Baptist Union of Wales). It is made up of churches, regional associations, the national resource centre and Baptist colleges. The

Union works with others in mission locally, regionally and internationally. There are some 150,000 members of Baptist churches associated with the Baptist Union of Great Britain. www.baptist.org.uk

The **Methodist Church** has about 265,000 members and 800,000 people are connected with the Church. It has about 5,800 churches in Great Britain, and also maintains links with other Methodist churches totalling a worldwide membership of 70 million. www.methodist.org.uk

The **United Reformed Church** comprises 100,000 people in 1600 congregations. It has brought together English Presbyterians, English, Welsh and Scottish Congregationalists and members of the Churches of Christ. Worldwide, more than 70 million Christians are members of the Reformed family of churches, the largest Protestant tradition. The name 'Reformed' is used because the churches began to emerge with reform movements in the sixteenth century. www.urc.org.uk

The three denominations are the largest of the Free Churches in Britain.

The **Joint Public Issues Team**, created in September 2006, combines the expertise of the Baptist Union of Great Britain, the Methodist Church and the United Reformed Church in the area of public issues. Through close collaboration, the churches aim to increase the effectiveness of their engagement in public life and parliamentary affairs. www.jointpublicissues.org.uk