

## Advertising Association response to the Treasury consultation on reforming the consumer credit regime

### 1. The Advertising Association

The Advertising Association is the only organisation that represents all sides of the advertising and promotion industry in the UK - advertisers, agencies and the media. In the UK, the advertising industry employs nearly 250,000 people. In 2009, advertising expenditure was £14.5bn.

We promote and protect advertising. We communicate its commercial and consumer benefits and we seek the optimal regulatory environment for our industry. Our goal is that advertising should enjoy responsibility from its practitioners, moderation from its regulators, and trust from its consumers.

### 2. Overview

The Advertising Association supports any moves towards less and better regulation. As such, the overriding policy objectives of simplification and deregulation set out in the consultation paper are ones that we as an industry support. The Government's drive towards greater clarity, appropriate consumer protection and proportionality when undertaking this structural reform is something that we would support.

We establish in this paper our view on the broad approach to the reform of the consumer credit regime; we anticipate that as this process continues there will be a need for the Advertising Association to engage with the Treasury to address some of the specific technical issues relevant to advertising. We look forward to working with the Treasury -and the Financial Conduct Authority (FCA) when it is created - to ensure that self-regulation for credit advertising is not undermined by the reform of the consumer credit regime.

### 3. The current regime for consumer credit advertising

Any advertising by a lender must comply with the Consumer Credit (Advertisements) Regulations 2004 (CCAR). This is supported by OFT Guidance, as well as the broader requirements of the broadcast and non-broadcast advertising codes, upon which the Advertising Standards Authority (ASA) adjudicates. These advertising codes approximate the provisions of the Consumer Protection from Unfair Trading Regulations 2008. Article 4 ("Standard information to be included in advertising") of the Consumer Credit Directive contains provisions aimed at further enhancing protection in respect of the advertising to consumers of credit products. For broadcast advertising, the system benefits from having advance central clearance for credit advertising, provided by Clearcast and the RACC, who pre-vet advertisements prior to them being broadcast.

In non-broadcast advertising, the ASA will refer advertising complaints for technical issues to Local Trading Standards Departments for a view under the CCAR, rather than adjudicating on them themselves. In broadcast advertising the ASA is responsible for regulating all aspects of credit advertising, including both the 'softer' issues and the technical aspects. The ASA works closely with both the FSA and the OFT (depending on the product) when dealing with complaints about financial advertisements. The current system is very effective and we urge Treasury to protect this self-regulatory structure for advertising when reforming the broad consumer credit regime.

#### **4. Consumer protection**

In the Government's paper, references made about the benefits for consumers of moving regulation to the FCA are not specified, and nor is there substantial evidence-base to the assertions made in this paper which suggest that the consumer is not protected in the current system.

The current market for consumer credit works well both for businesses and for consumers. Indeed, there is a range of different types of products on offer for consumers. The full range of consumer credit products are marketed in different ways and, as one would expect, are targeted to the consumers who are most likely to be interested in such products.

The advertising and marketing of consumer credit enables this important component of the economy to grow, increasing competition between businesses as consumers choose between different providers. In an economic environment in which credit is in short supply, advertising has an important role in informing consumers about where credit is available. Competition is a highly effective means of protecting consumers' interests. The FCA should have creating a competitive market place as a primary objective.

High-cost credit products (and its advertising) are much maligned in the press and by some politicians. We believe that such credit providers meet an important need for many people who cannot access credit elsewhere. The prices of credit reflect market realities and the Government should look at the macro-economic environment before assessing this particular sector, and the advertising it uses to promote its operation. When assessing consumer protection, it is imperative that any policy is evidence-based, and not reactive to media-hysteria.

#### **5. Self-regulation**

Consumer protection can often be best delivered through self-regulation which drives up standards and promotes good practice. The reputation of the financial services sector has undoubtedly been assisted by the work of the Advertising Standards Authority (ASA), which makes sure that consumers are given legal, honest, truthful, and decent information. This helps consumers are able to make the right decisions on credit. The (relatively few) consumer complaints to the ASA in this area are effectively dealt with by the ASA who have a good understanding of the "soft" issues – such as making judgments on whether credit is treated too "light heartedly" in advertising. We believe that the system in place is effective and works in the interest of both business and consumers. In reforming the consumer credit regime, it is essential that the role of the ASA is fully understood, and that unnecessary new layers of statutory legislation are not introduced.

#### **6. Restructuring the system**

Clearly with any fundamental restructuring of a system, there is a concern that the new entity may not be as clear for businesses. We would, therefore, support a model that retains as much of the existing legislation as possible. To encourage consistency, we support the CBI's recommendation that the OFT consumer credit team should move across to the FCA and should be tasked with responsibility for developing a new regulatory regime based closely on the current statutory regime and with a light touch approach.

Given that the ASA works closely with both the OFT and the FSA, plus the clearance houses Clearcast and RACC, the streamlining of the consumer credit environment may present an opportunity for providing both consumers and businesses with greater clarity. A new single regulator with a degree of continuity could improve the consumer credit market. However,

this is an understandably complicated system and when the specific issues relating to advertising are raised, we would urge for the Government to engage with the Advertising Association, the ASA, and BCAP/CAP, Clearcast and RACC. There is naturally a concern that a “simplified” approach may inadvertently undermine the self-regulatory process and, in effect, make the entire system complicated.

The Government must provide industry with clear information on the interim arrangements between the current system and the new regime. All organisations, and particularly the OFT, must be adequately funded before they are dismantled or created, and clear lines of responsibility must be created. The Government must work to minimise costs for business which will be very significant if the regulatory rules and approach are changed, particularly for SMEs.

## **7. The future of the OFT**

The Advertising Association is greatly concerned about the future location of certain competition and general consumer functions that currently fall to the OFT as part of the Public Bodies Act. While this specific issue does not relate to consumer credit products, it is an example of how attempts to simplify a system can inadvertently threaten to undermine self-regulation. The proposal to dismantle the OFT will have a significant impact on the work of the Advertising Standards Authority (ASA) as the OFT currently acts as the ASA’s legal backstop for misleading non-broadcast advertisements.

The Government is proposing that Trading Standards could be given responsibility for enforcement of almost all consumer law, and that expert teams from within Trading Standards could be coordinated at a national level for national and regional threats. The AA is keen to ensure that the new structure for enforcing consumer law retains within it a strong, national body that is able to serve effectively as a legal backstop to the ASA.

It is such measures as this which would inadvertently damage the self-regulatory structure for advertising and we encourage the Government to ensure that the new regime does not weaken the strong statutory backstop for consumer credit advertising, nor is this statutory body unnecessarily strengthened. We do not support any strengthening of statutory powers of the OFT, the FSA or, when it is created, the FCA. Nor would we support ASA’s expansion into what is currently the statutory enforcement role of trading standards officers. A careful balance is required and we would want to work with Government to ensure that the correct balance is met.

## **8. Conclusion**

The Advertising Association encourages the Government to ensure that the new regime for consumer credit is strong, transparent and effective. To do so, we believe that new regime must retain as much of the existing legislation as possible and, while we support the Government’s proposal to simplify the regime, we urge for this to be done carefully to ensure that there are no unintended consequences. Thus, we are very keen to engage with the Government on the specific issues relating to advertising as the process of reforming these integral organisations goes forward.

For further information, please contact William Blomefield – 020 7340 1109 / william.blomefield@adassoc.org.uk
---