9 *February 2012*

Jane Shepherd
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Debt collection: draft OFT guidance

Dear Jane,

Consumer Focus welcomes the OFT's supplementary consultation on the guidance for debt collection. The issue of the use and mis-use of continuous payment authorities (CPAs) has been a concern to us particularly in relation to the payday loan market.

The continuous payment mechanism is a powerful tool for payday loan firms and, if mis-used, can allow companies to continually dip into an account in an attempt to obtain repayment. This can cause huge hardship for consumers with debt problems who may not be left with enough money to pay priority bills such as rent or mortgage, heating and food.

The expansion of payday loan companies may in part have relied on the use of continuous payment mechanism as a substitute for proper affordability and credit checks. Certainly we have come across many operators who promise to provide money with few or no credit checks.

Citizens Advice and the Consumer Credit Counselling Service (CCCS) have informed us that the number of people seeking debt advice who have one or more payday type loans has quadrupled over the last two years so it is important debt collection practices are improved in this market.

We have already shared with the OFT the findings of background research commissioned from IRN[1] on this topic. In summary we found CPAs can cause problems for consumers in a number of ways:

Difficulty in stopping a CPA

Consumers have had difficulty stopping a CPA, as the contractual relationship is between the bank and the business concerned. If, for whatever reason, the business does not stop the CPA when requested, as a last resort, the consumer may have to cancel their card.

[1] IRN March 2010 unpublished

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Payments taken under a CPA on a cancelled card being debited from a replacement card

There have been instances of a payment being taken on the basis of CPA on a cancelled card and debited on a new card linked to the same bank account.

Consumers not being aware they are agreeing to a CPA

The setting up of the CPA may not be clear and explicit within the terms and conditions of the agreement. Often agreements are made over the telephone or on the internet and there is no paper record of the transaction and what was agreed or understood by the consumer.

Additional charges

Businesses have used CPAs to take additional charges over and above the payment for the product or services being subscribed to, eg fees for debt recovery.

Lack of control on payments

Since we conducted our research we have been made aware by advices agencies and the media of numerous incidents of payday loan companies repeatedly dipping into customers' bank accounts in attempt to obtain repayment. Where a customer is in financial difficulties this may prevent them from being able to pay other priority bills/ buy food etc.

Specific comments on OFT draft guidance

The OFT has consulted about new guidance for payday loan companies regarding CPAs and we agree that companies should only be able to take out pre-agreed amounts on a pre-agreed date and no more. As stated above the practice of "dipping" for different amounts on different dates does not allow consumers in financial difficulty to manage their money and pay priority debts.

Payday loan companies may argue that without this ability to re-attempt to obtain repayments consumers may deliberately avoid their debts but we do not find this argument compelling. This is because while consumers must of course be responsible for their debts Payday loan companies should not be able to avoid agreed principles on forbearance and ability to pay. All the research suggests that in the vast majority of cases non-repayment of debt is more a case of can't pay rather than won't pay so proper affordability checks by Payday loan companies would be a more reliable tool in this regard.

Q2 Do you consider that there are any significant omissions?

There is already guidance in the FSA Know Your Rights booklet based on the Payment Services Regulations. These regulations state that consumers can cancel a CPA with their supplier and/or with the bank. The OFT guidance on CPAs needs to replicate and reference these regulations.

Firms should be obliged to make it clear to their customers that they have the right to cancel CPAs with them or with their bank with immediate effect. The consumer can be made aware that the firm will still be able to pursue the loan liability through other debt recovery avenues taking into account the customer's ability to repay.

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The lack of clarity on this issue makes it harder for consumers to assert their rights. This is problem is compounded by lack of knowledge of the rules within the banks themselves. Our mystery shopping research[2] shows that in a third of cases bank staff wrongly advise customers that they must cancel a continuous payment authority with their supplier rather than with their bank.

Q3 Do you have any other suggestions for improvement?

We have already recommended to the Payments Council that where businesses are found to have been in breach of FSA requirements they should have their access to card payment services withdrawn. We believe the OFT should consult with the Payments Council and FSA on this issue. The OFT could then report breaches of the rules on CPA usage to the relevant authorities.

Yours sincerely,

Sarah Brooks
Director of Financial Services

[2] Forthcoming research based on 300 plus mystery shops – January 2012

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