

Consumer Focus submission to Payments Council regarding continuous payment authorities

We are concerned about problems emerging relating to continuous payment authorities (CPAs).

This issue first came to our notice in relation to payday loans. The Office of Fair Trading recently took action against payday lenders who engaged in the misuse of CPAs (<http://bit.ly/nj0nHb>¹).

After this issue came to our attention, we commissioned IRN Research Ltd to look into the area in more detail. IRN discovered that the problems with CPAs were more widespread than simply payday loans. The information on difficulties with CPAs set out below comes largely from that study.

CPAs or recurring transactions are set up on either credit or debit cards by many legitimate businesses for making regular payments for on-going subscriptions or bills. However, problems have arisen with the usage of CPAs principally because of the lack of control on the part of the consumer in relation to them.

Problems found in relation to CPAs in general have been:

- **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.

One example of this is in relation to subscriptions, where a consumer has signed up to a contract for a minimum period, but they want to cancel the agreement before the end of the contract period (eg digital TV subscription, gym membership). The business may refuse to cancel the CPA before the end of the contract period.

- **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.

- **'Free trials' which incorporate a CPA**

Consumers have signed up for a 'free trial' and found that once the free trial period has expired they are having money deducted from their accounts under a CPA which was buried in the terms and conditions.

¹ Please note that although this press release refers to Direct Debits, we understand that this was an error and the press release should have referred to CPAs.

As referred to above, the payday lending market has been a source of problems in relation to CPAs, where CPAs on debit cards is a common form of payment. The CPA on the consumer's debit card effectively gives the business the ability to adjust the dates and amounts of payments at will. Hence, if a payday borrower defaults on repayments, the lender can take payments direct from the borrower's account. The recent OFT cases highlighted that lenders may make repeated attempts to take payments from the borrower's account. This can result in the borrower getting deeper into debt and/or being unable to pay essential bills such as rent and utilities. This can act to increase the borrower's reliance on payday loans and generate dependency on high cost credit on the part of the borrower.

The ability to rely on CPAs to ensure repayment direct from the borrower's bank account may result in payday lenders not carrying out thorough credit and affordability checks. In addition, where a CPA remains live, payday lenders can use CPAs to circumvent Debt Management Plans, entered into by defaulting borrowers.

We understand from the UK Cards Association (UKCA) that they have Best Practice Guidelines in relation to CPAs or 'recurring transactions' in place (<http://bit.ly/pr8wKe>). However, it appears that these guidelines are not being followed by a number of businesses. For example, it is not being made clear to consumers that they are agreeing to a CPA at the time of entering into the contract for the product or services concerned and advance notification of changes of the amount and/or date of the payment is not being given. In the cases dealt with by the OFT, it is noticeable that the payday lenders concerned were 'dipping into' consumer's accounts at will, as a substitute for carrying out proper credit and affordability checks on the individual concerned.

The Financial Services Authority (FSA) advice as set out in its *Know Your Rights* booklet, is that if the bank makes a payment after the consumer has cancelled the CPA, then it will be an unauthorised transaction and therefore (as per the Payment Services Regulations 2009) the consumer will be entitled to an immediate refund from the bank. We doubt that many consumers are aware of their rights in this situation. Furthermore, we are concerned that this is not how banks have been consistently dealing with this problem, as illustrated with the issue of cancelled CPAs being charged to new cards (referred to above).

In addition, we believe that the situation should be remedied by the consumer having control over the CPA and its cancellation in particular. Both the business and the bank concerned must be required to cancel the agreement upon notification from the consumer.

The problems should also be dealt with by businesses being required to make explicit to consumers when they are entering into a CPA with a clear written agreement to this effect. In addition, as with a direct debit payment, any changes as to the dates or amounts of payments must be notified to the consumer in advance.

Where businesses are found to have been in breach of these requirements, they should have their access to card payment services withdrawn.

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