



Iain Adlington  
Consumer Credit Team  
Department of Trade and Industry  
Consumer and Competition Policy Directorate  
Bay 428  
1 Victoria Street  
London  
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10<sup>th</sup> May 2006

**Re: Response to the proposal for an EC consumer credit directive –  
supplementary consultation**

Dear Mr Adlington,

This response is submitted by the Association of Mortgage Intermediaries (AMI). AMI is the trade association representing over 75% of UK mortgage intermediaries. Over 60% of mortgage transactions are originated by the mortgage intermediary community. In addition to first charge mortgages, many mortgage intermediaries also provide access to other credit products, such as second charge mortgage loans and unsecured personal loans.

Although the current scope of the directive is likely to impact on only a minority of our members, there are some areas in which we would like to raise concerns. We intend to comment only on those areas where this is the case:

- the scope of the directive, and its potential unintended consequences,
- the definition of 'credit intermediary',
- pre-contractual information,
- the regulation of creditors and credit intermediaries, and
- the obligations of credit intermediaries.

**Scope**

We support the exclusion of all secured lending from the scope of the directive. Short term low value credit agreements such as unsecured credit cards and overdrafts do not present the same level of risk to the consumer as secured lending products. The introduction of any regulatory regime applying to each of these two types of products will need to be considered in this context.

Any regulatory regime for credit products should be designed to be appropriate for the risks to which the consumer is exposed to in entering into the agreement, and the inclusion of secured lending within the scope of this directive would lead to a disproportionate regime between secured and unsecured credit products.

The exemption for credit agreements secured by mortgage will lead to some products which could meet the objective of financing house purchase still being caught by the scope of this directive. We have identified two credit products which are potentially affected in this manner:

- some home purchase plans (such as Ijara mortgages),
- unsecured personal loans which form part of house purchase mortgage scheme (usually a top-up arrangement), for example, where the lender will offer a first charge mortgage of up to 95% of the property's value, and an unsecured loan of up to a further 30% of the property's value.

In relation to home purchase plans described above, we are fully supportive of the UK government's proposal that these plans be regulated by the Financial Services Authority in the UK, alongside home reversion plans and lifetime mortgages.

In the UK, both of the products identified above can be used to meet a consumer's need to finance the purchase of their home, and will generally be of a long term nature. Consumers will therefore consider these products as alternatives to a first charge mortgage, rather than comparing them against other short and medium term credit products (such as credit cards, overdrafts etc) within the scope of the directive. We are concerned that the difficulties of applying a different regulatory regime to that of first charge mortgage products could ultimately lead to:

- creditors being discouraged from supplying such products, and intermediaries from distributing them,
- distortion of the market and restricted product innovation in this area, leaving consumers with a reduced choice of products to meet their needs for home purchase financing,
- differing levels of consumer protection for similar products dependent upon which type of product is purchased, even though both products meet the same need,
- lack of clarity for consumers over the levels of consumer protection available,
- a reduction in consumer confidence when purchasing credit products due to this lack of clarity.

### **Definition of 'credit intermediary'**

We agree that the definition of 'acting as' an intermediary is unnecessary. However, we have concerns over the definition of 'credit intermediary', in particular it appears this definition only captures those intermediaries who act on behalf of the creditor.

Many intermediaries offer access to products of more than one creditor, selecting a suitable product and creditor to meet the needs of the consumer, as opposed to offering access to the products of only one creditor. The definition should recognise that not all intermediaries act 'on behalf of the creditor', but that many instead act on behalf of their clients, i.e. the consumer.

Clarity is required as to whether intermediaries will nevertheless be caught by the activities of 'presenting' and 'concluding' regardless of the fact that they act on behalf of the consumer or creditor.

We would support the inclusion of all credit intermediaries in the scope of this directive, regardless of whether or not they are acting on behalf of the creditor or the consumer. Failure to capture all credit intermediaries within the scope of this directive could lead to differing levels of consumer protection and therefore reduced consumer confidence in the intermediary market. Lack of clarity for consumers over the level of protection available through different distribution channels could reduce consumer confidence and lead to instability in the credit market.

## **Pre-contractual information**

We are supportive of the need for creditors to adhere to the principle of responsible lending. In our view, the requirement to lend in a responsible manner can only apply to creditors - those who are responsible for making a decision to provide credit to a consumer. Shifting any part of this responsibility to persons who are not involved in making the decision to lend, such as intermediaries, will blur the established lines of responsibility that currently exist between creditors and intermediaries. This will lead to enhanced risk for creditors which will be difficult to assess, and ultimately drive up the cost of credit.

The wording of Article 5 (2) appears to indicate that both the creditor and credit intermediary are required to supply the information needed to conclude the credit agreement. In our view, where an intermediary is used in the sales process, the intermediary must be responsible for issuing this information to the consumer, and the creditor must be responsible for supplying this information to the intermediary. Taken literally, the current wording requires that this information be issued to the consumer in duplicate, where an intermediary is used.

We are fully supportive of the proposal to remove from the directive the requirement for intermediaries and creditors to provide advice to consumers, and that it be replaced with a requirement for creditors, or intermediaries where relevant, to instead supply sufficient information to allow the consumer to make an informed decision on the merits of each credit agreement.

We have concerns over the use of the word 'adapted' in Article 5 (5) and would suggest that this be replaced with the word 'suitable' as it is unlikely that creditors will adapt credit products to suit the specific needs and financial situation of individual consumers.

We believe that consumers should be permitted to decide whether they wish to seek advice, and if so, from whom they wish to seek it. Requiring credit providers to supply consumers with advice could lead to consumers receiving advice which is limited to the products of one creditor, discouraging them from seeking good quality independent advice based on their specific needs and circumstances.

## **The regulation of creditors and credit intermediaries**

We support the regulation of creditors and credit intermediaries, providing that it delivers a regime which is appropriate to the risk presented to consumers and the financial market as whole. Any regulatory regime must be proportionate to these risks, and be subject to industry-wide consultation at Member State level.

## **Obligations of credit intermediaries**

We fully support disclosure of status by intermediaries at an early stage of the sales process. In our view, the requirement to include status information in all advertising and documentation intended for consumers is unnecessary, providing it is disclosed at the earliest meaningful contact between the consumer and the intermediary. The cost of duplicating this disclosure through advertisements and other documentation is disproportionate to the benefits which would be received by consumers.

We are in full support of the requirement for intermediaries to agree any fee with consumers before it is incurred, and that this agreement is recorded in a durable medium prior to the receipt of such a fee. We also support the requirement for the intermediary to supply the information needed to calculate the annual percentage charge to creditors.

Article 20 prevents intermediaries from charging fees to consumers where a fee is also received from the creditor. We have a number of concerns regarding this article:

- We do not believe it is for regulation to determine the economics of consumer behaviour and market competitiveness. Consumers should be free to select firms on the basis of what they believe is best for them - a consumer may wish to use a firm because of the level of service that firm offers. For example, a consumer may value access to independent professional advice and be willing to pay a fee for this service and the resulting ongoing access to advice. The issue is transparency: so the consumer is clear, before entering into a contract, or even selecting an adviser, what level of fees and charges are applicable.
- The current regulatory structure for FSA regulated intermediaries in the UK sets out a transparent, consumer-focused system for financial advice and remuneration. To call themselves "independent" firms must not only be free to select the products of providers from across the whole of the market, but they must also offer their clients the option to pay for advisory services entirely by fee (and rebate any commission a creditor may pay). Many firms operate a system where the client agrees to offset any commission received from the creditor against the fee charged by the intermediary – enabling consumers to access independent advice at little or no direct cost. Maintaining this approach ensures market competitiveness and leads to clarity for consumers.
- Our third area of concern covers a consumer's need for holistic financial advice. Often consumers will require advice across a range of areas – and be willing to pay for this service as they value it. Only allowing firms to be remunerated by the creditor risks distorting the market through discouraging this wider-ranging advice.
- Finally, the creditor-remuneration insistence may work in markets where intermediaries are tied to offering the products of one creditor, however it risks bringing about competition issues - the adviser is the agent of the client, not of the creditor, so we are concerned that a restrictive payment arrangement may cause consumer confusion regarding their adviser's role, influencing product choice.

I hope you find this input useful, and should you wish to discuss any aspect of our response further, please do not hesitate to contact me.

Sincerely,



Chris Cummings  
Director General  
Association of Mortgage Intermediaries