

SAFER AND STRONGER COMMUNITIES SCRUTINY COMMITTEE

3 SEPTEMBER 2012

Briefing on the Consumer Credit Market and High Risk Lending Practices

Report by the Director of Social and Community Services

Introduction

1. This paper provides an overview of the legal controls concerning the provision of consumer credit and the recent changes to the consumer credit market place. It also identifies the involvement that the County Council has with consumer credit through the Trading Standards Service.
2. The officer that leads on consumer credit related activity for the Trading Standards Service will attend the committee meeting to present this report. The committee are invited to consider the report and comment on the Trading Standards Service involvement in this market.

Statutory Framework

3. The UK consumer credit market is regulated by the Consumer Credit Act 1974. The Act creates a licensing regime operated by the Office of Fair Trading (OFT) and contains detailed requirements for:
 - Defining types of credit and hire.
 - Entering into business (including advertising, creditworthiness and affordability checks and pre-contractual information).
 - Protections for consumers in certain types of agreement for breaches of contract.
 - Annual statements and information to be provided by lenders to customers.
 - Termination and default in credit agreements.
 - Civil protections for consumers in cases of unfair relationships between lenders and borrowers.
4. The majority of the provisions of the Act are civil with no criminal sanction for any breaches that arise. The two main criminal sanctions that apply to the market are:
 - unlicensed trading (known as loansharking), and
 - breaches of the Consumer Protection from Unfair Trading Practices Regulations (the general consumer protection legislation that replaced the Trade Descriptions Act 2008 and criminalises unfair business practices).

Licensing

5. In 2008 the OFT changed the consumer credit licensing regime. Licenses are now issued for the lifetime of a business (they previously lasted for five years and then required renewal). A new test of fitness to obtain and hold a licence was introduced at this time. An assessment of the prospective licensee's competence forms part of this fitness test as do previous convictions and any history of previous unfair business practices.
6. There are 11 categories of credit licence, for example "consumer credit business" and "credit brokerage". The OFT divide these business types into high risk and low risk. High risk businesses include:
 - Debt collectors (only those dealing with "regulated" credit debts).
 - Fee charging debt management companies.
 - Home lenders.
 - Secured lenders in the sub-prime market.
 - Credit reference agencies.
 - Payday lenders.
 - Pawn brokers.
 - Rent to buy lenders.
7. These business should all receive a competence visit on behalf of the OFT before being given a credit licence. The OFT has limited enforcement capacity and has agreements with the regional trading standards groups (Oxfordshire is part of Trading Standards South East (TSSE) partnership) to enable trading standards staff to carry out these visits on behalf of the OFT.
8. Licenses which were valid at the time that the regime changed continue to be valid until they expire. Therefore, large numbers of existing credit businesses will not have been through the fitness test and will not do so until their licence is due for renewal.
9. Until now, Oxfordshire Trading Standards has not been asked to carry out any compliance visits prior to a business being granted a license. However, a visit has now been requested by the OFT to an Oxfordshire business and this visit is to be carried out in August 2012.
10. As well as the statutory requirements of the Act, the OFT has issued some detailed guidance on which fitness to hold a credit licence can be assessed and which can help in assessing whether a business is in breach of the Consumer Protection from Unfair Trading Regulations. In particular there is guidance on-
 - Irresponsible Lending
 - Debt Collection
 - Debt management and credit repair
 - Credit brokerage
 - Advertising
11. The OFT has the power to refuse to grant a license, apply conditions to it, suspend it (soon to be an immediate power where there is an urgent need to

SSC9

protect consumers) or revoke it. This July, the OFT stripped a Sunderland based business of its home credit licence after the trader failed to disclose criminal convictions. In March the OFT revoked the brokerage licence of one of the country's largest brokers after finding deceitful and oppressive business practices.

Developments in the credit market

12. Since the 2008 changes and credit crunch, the consumer credit market has changed dramatically. For example, prior to 2008 there was a large market in selling secured consolidation loans in which consumers were encouraged to bundle all their unsecured debt (e.g. credit cards) into a single "manageable" loan, usually secured on their home. This kind of lending has almost disappeared.
13. Instead there has been a dramatic rise in "payday lending" which is short term and very high interest borrowing of small amounts (the average for one lender is £290) and pawnbroking appears to be on the rise again. A new market has also been created in commercial debt management where a commission is charged by a company for making repayment arrangements on behalf of debtors in difficulty with their creditors.

OFT market reviews

14. The OFT has carried out 2 reviews to do with high risk credit activity and is now carrying out a third:
 - OFT Review of High Cost Credit (published June 2012)
 - OFT Debt Management Guidance Compliance Review (published September 2010)
 - OFT Review of Payday Lenders and Compliance with Irresponsible Lending Guidance (on-going, to be reported on by end of 2012)
15. The Review of High Cost Credit found that, in many ways, the markets work reasonably well but that there is an underlying problem with consumers' weakness in financial capability. The high cost lenders were found to fill a gap in the market not served by more mainstream lenders, the level of complaints was found to be low and there was evidence of forbearance with consumers in difficulties.
16. However, the poor levels of financial capability among consumers and the lack of alternative, mainstream sources of credit impeded competition, leading to higher prices for credit than seemed reasonable.
17. Oxfordshire Trading Standards has contributed two inspections to the on-going review of payday lenders.
18. Concerns which prompted the OFT's review of payday lenders include:
 - Marketing of high cost, short term loans for inappropriate purposes (e.g. holidays, home improvements, entertainment, saving or improving credit ratings).

SSC9

- Failure to carry out affordability checks prior to providing payday loans.
- Rolling over payday loans so that they are no longer short term.
- Unfair treatment of defaulters in financial difficulties.
- Misuse of continuous payment authorities which allow consumer's bank accounts to be accessed numerous times without specific permission.

The Oxfordshire Picture

19. It is difficult to get a clear view of the scale of problems in Oxfordshire with high risk credit for the following reasons:
 - Many consumers do not see their issues as "criminal" and so do not report them to Trading Standards.
 - While Trading Standards ran a consumer advice service for the public until April 2012, we did not offer specialist debt advice and so many consumers seeking help will have gone to either commercial debt management companies, specialist debt advice charities, local advice agencies such as Citizens Advice Bureaux which do offer debt advice or Consumer Direct.
 - Trading Standards has never needed to identify levels of credit related matters reported to the service. Therefore, there is no easy way to retrieve records of all credit related matters over any given period.
20. Illegal money lending, or loansharking, is known to be a significant problem nationally and to be greatly under-reported. It targets the most economically vulnerable sectors of society. Oxfordshire is covered by the Department of Business Innovation and Skills funded Illegal Money Lending Team. This is a specialist area of enforcement and victim support that has been discussed by the committee before.
21. Oxfordshire Trading Standards Service hosts quarterly meetings of the locally based charitable debt advice agency group called The Oxfordshire Money Advice Group. It is clear from discussions at this group that problems with debt are on the increase in the County although, to our knowledge, the Group has not discussed whether these problems originate with high risk lenders in particular.

John Jackson
Director of Social and Community Services

Background papers: none

Contact Officer: Richard Webb
August 2012