



Response from the Association of Finance Brokers to the OFT unfair relationships draft guidance

This response is submitted on behalf of the Association of Finance Brokers (AFB). AFB is the trade association representing intermediaries operating in the secured loan industry. In the secured personal loans market, intermediaries are by far the largest distribution channel – in 2004, intermediaries were responsible for approximately £3 billion of the £4.6 billion advanced. Intermediaries active in this market act on behalf of the consumer in selecting an appropriate lender and product from within their panel of lenders to meet the individual consumer's loan requirements. Our members also provide access to associated protection products such as payment protection insurance and life insurance.

For many consumers, arranging a secured loan can be a daunting process, particularly as their home could be at risk in the event of financial difficulty. For this reason, consumers greatly value the services of a professional intermediary who is independent of the lender, and rely upon their knowledge and experience when arranging credit in this manner.

AFB was officially launched in July 2006 and therefore was not involved in the consultative process of the Consumer Credit Bill. We do have concerns about the uncertainty which exists for our members in section 140 of the CCA. This section does not appear to take account of the role of intermediaries who act on behalf of the consumer in the second charge loan market, rather than on behalf of the lender.

There is a lack of clarity for both intermediaries and lenders over the effects of the unfair relationships provisions where the loan is arranged via an intermediary. In the secured loans market, the lender is responsible for the design of the terms and conditions of the loan, and for enforcing and exercising the loan agreement. Section 140A (93) of the CCA make reference to anything done or not done by an associate of the lender, rather than to an intermediary that acts on behalf of the consumer.

We believe our members, as representatives of the consumer rather than as associates of the lender, are outside of the scope of the unfair relationships provisions. We would welcome the opportunity to meet with OFT to discuss this and gain clarity for our members.

The Financial Services Authority has recently released a discussion paper on the responsibilities of providers and distributors in treating customers fairly in the markets it regulates. This affects our members as the majority are regulated by the FSA for their insurance activities. Our sister trade bodies, the Association of Mortgage Intermediaries and the Association of Independent Financial Advisers, have worked closely with the FSA and other key stakeholders in this project. We believe that the secured loans industry could benefit from the publication of similar guidance. We would be willing to

work with OFT and other key stakeholders within the secured loans industry to make such guidance available.

Whilst we believe our members are outside of the scope of the unfair relationships provisions, we would still like to comment on the OFT draft guidance.

Q1 Is the draft guidance sufficiently clear?

We do have concerns over the definition of 'guidance', which we have outlined in further detail in our answer to question 4.

Taking into account that the scope of the guidance is restricted to enforcement action under Part 8 of the Enterprise Act, and does not seek to define an 'unfair relationship' further, there are no other areas of the draft guidance which we have identified as unclear.

Q2 Does it summarise the relevant legal provisions clearly and accurately?

Yes.

Q3 Does it provide an adequate summary of the OFT's approach to enforcement?

Yes.

Q4 Does it indicate clearly the kinds of matters to which the OFT may have regard in considering possible Part 8 action?

We agree that relevant regulatory rules and legislation should be taken into account as a factor when considering what circumstances might give rise to an unfair relationship. However, we have some concerns over paragraphs 4.40 to 4.42 of the draft guidance, in particular the interaction between 'other relevant guidance' and assessments of 'unfairness'.

As the draft does not define 'guidance', it does leave several questions unanswered including: which organisations have the authority to publish 'guidance'? By what process are the industry and consumer bodies consulted on the contents of 'guidance'? How will such guidance be kept up to date? How can consumers understand the standards required by firms to comply with 'guidance' where it is not made publicly available? How do businesses deal with conflicting 'guidance'? How do businesses ensure that they remain up to date with all 'guidance' issued from the various different sources?

Without such clarification, uncertainty will remain for businesses over both their obligations and their level of exposure to risk through non-adherence to 'guidance'.

The examples given as 'other relevant guidance', such as industry codes or similar, do not have the same legal status as regulatory rules, nor is it compulsory for firms to comply with them. Industry 'guidance' in this context also includes documents which have not been subject to the process of public or industry consultation (such as the FSA's treating customers fairly papers). Care must be taken to ensure that such guidance is not viewed as or used as second-tier regulation, and that it is consistent.

We agree that it is sensible for OFT to have regard to findings made by the Financial Ombudsman Service (FOS) in individual disputes where appropriate, however information on such findings should also be made available to businesses. Our members already value the information made available by FOS through its 'Ombudsman News' publication and are able to make use of this to improve business practices and complaints handling procedures where appropriate. There is a need for significantly more of this information to be made available to businesses from FOS.

Q5 Are there sufficient cross-references to other material?

No comment.

Q6 Does the draft guidance have any significant omissions

We would refer to our answer to question 4.

Q7 Are there any parts which need amplification or clarification, and if so, in what respects?

Yes. The guidance must define 'industry guidance' to ensure that there is clarity for firms. We would again refer to our answer to question 4.

Q8 Are any parts of the draft guidance not needed?

No comment.

Q9 Do you have any other suggestions for improvement to the guidance?

We have no further suggestions.

Q10 Do you have any views on how the final guidance should be disseminated to those who may need to see it?

It is essential that all firms affected are made aware of the availability of this guidance. This could be achieved through close dialogue with industry representatives such as trade associations. The guidance should also be published on the OFT website and all consumer credit licence holders should be officially notified of its existence by OFT.

Q11 Do you have any views on how the OFT might access details of court judgements on individual cases?

No comment.

Q12 Do you have any views on how the OFT should publicise such information or details of Part 8 enforcement actions?

Information and details on Part 8 enforcement actions should be publicised by the OFT through its website. It would also be helpful if CCA licence holders could be made aware each time cases are added to the website.