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**Looking Beyond Our Shores:
Consumer Protection Regulation Lessons from the UK**

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Introduction

UK credit regulation has been undergoing substantial reform in the past three years. This paper reviews these reforms and discusses how they take account of criticisms of previous regulatory regimes. It then attempts to draw out some of the strengths and weaknesses of regulation in the UK from the consumers' perspective. In doing so, there is a need to distinguish between mortgages, and other forms of consumer credit as there are two quite different regulatory regimes for the conduct of business, including consumer protection. It is also important to note that the paper is restricted to retail markets and does not cover prudential regulation.

Mortgage regulation

Since 31 October 2004, all mortgage lending has been fully regulated by the Financial Services Authority (FSA) through its mortgage *Conduct of Business Rules*¹. This includes all sub-prime as well as prime mortgages and also all intermediaries that sell mortgages to the public.

The FSA is a relatively new regulatory body and was set up under the *Financial Services and Markets Act 2000* with four statutory objectives covering: market confidence; public awareness; consumer protection, and reduction of financial crime. It now covers all retail and wholesale financial markets, with the single exception of unsecured consumer credit.²

At the time that the FSA was set up, mortgages were still covered by a self-regulatory regime through the *Mortgage Code*. This had been introduced for prime lenders in 1997 and for intermediaries in 1998. Some 98 per cent of lenders and more than 20,000 intermediaries signed up to the code, but there was still evidence of bad practice and non-compliance³. When the FSA was established as the single regulator, covering all aspects of financial services, consideration was also given to bringing aspects of conduct of business that were subject to self-regulation within its framework.

An independent review for HM Treasury⁴ recognized that the *Mortgage Code* had delivered a number of consumer benefits but was not 'a sufficiently strong regime for service standards for mortgages' as 'mortgages involve a long-term commitment and for many

¹ http://www.hm-treasury.gov.uk/documents/financial_services/mortgages/fin_mort_reglend.cfm

² In addition, although retail banking is regulated by the FSA, in practice the powers to regulate the conduct of business in this area are currently switched off and devolved to the Banking Code – self regulation by the industry – which is described under unsecured consumer credit below.

³ HM Treasury (1999)

⁴ HM Treasury (2000)

consumers represent their largest financial undertaking. It therefore recommended that only a statutory regulatory regime for mortgages, including intermediaries as well as lenders, offered sufficient protection to consumers. Consumer groups supported this conclusion as did the bulk of the mortgage industry, including the Council of Mortgage Lenders (their trade body)⁵.

Under the new regime, lenders and intermediaries have to be authorized to carry out business and must comply with the FSA's *Conduct of Business Rules*. This rule book is wide-ranging and over 300 pages in length. It covers sale and advice standards; pre-application disclosure; disclosure at the offer stage, start of contract and after sale; equity release advising and selling standards; equity release product disclosure; APRs (and total cost of credit); responsible lending; charges (including early settlement and arrears charges); and the handling of arrears and possessions. Some of the important changes it introduced include:

- Consumers must receive *pre-sale* clear information about mortgage terms, conditions and costs in a standard 'key facts' format to enable them to shop around more easily. This includes information about the firm itself (its charges and the range of products on which it is authorized to give advice) as well as a document setting out the adviser's understanding of the borrower's needs and intentions, full details of the product they are recommending, the fees involved (including any redemption fees likely to be incurred by settling an existing mortgage early,) and any insurance or investment products being sold alongside the mortgage.
- Where firms give advice, they must ensure they offer the consumer a suitable mortgage product. This involves the completion of a very detailed fact find of consumer's personal circumstances, income and financial commitments.
- Price information (including the APR) in any mortgage advertising and marketing material must be clear, and any advantageous features of products quoted in advertising must be balanced by a description of any associated drawbacks.
- Both lenders and advisers have to consider the affordability of any mortgage that they identify for individual consumers. Again, this involves the completion of a detailed fact find of consumers' personal circumstances, income and financial commitments.
- Lenders must put in place measures to help borrowers in arrears on their mortgage, has a sale shortfall or is facing repossession. This includes: having a written policy to make reasonable efforts to reach an agreement with the customer; adopting a reasonable approach over time

⁵ Council of Mortgage Lenders (2001)

including setting up a payment plan; where payment plans break down giving consideration to the borrower being allowed to remain in possession to effect a sale, and repossessing the property only where all other reasonable attempts to resolve the position have failed.

- Lifetime mortgages (a form of equity release or home equity loan) are subject to additional disclosure requirements to take account of the higher risks associated with these products.
- And mortgage borrowers have access to an independent dispute resolution service – the Financial Ombudsman Service (FOS) (see below) - and to the Financial Services Compensation Scheme (FSCS). These services are free to consumers and paid for by a levy on the industry.

In general, the rules do not distinguish sub-prime lending from other forms of residential mortgages. So firms involved with sub-prime mortgages need to comply with all the standard rules. That said, some of the standard rules are likely to have increased relevance for sub-prime mortgages, and in the current climate it is worth spelling some of these out. For example:

- sub-prime advertising referring to paying off unsecured debts must include a specific risk warning (MCOB 3.6.13R(2));
- advertising targeted at sub-prime borrowers must include an APR (MCOB 3.6.17R);
- where the APR in a promotion will vary depending on the consumer's circumstances, the promotion must include a risk statement encouraging the customer to seek a personalized illustration (MCOB 3.6.25R);
- if the intermediary may charge a fee for advising or arranging, as is often the case for sub-prime business, any promotion must disclose this (MCOB 3.6.27R);
- a firm specializing only in sub-prime business will not be able to describe itself as either 'whole of market' or 'independent' (MCOB 4.3.4R);
- where debt consolidation is a main purpose of any mortgage, there are added obligations on the adviser when they are recommending the most suitable product (MCOB 4.7.6R); and
- mortgage lenders have to report to the FSA quarterly on the level of advances they have made to consumers with an impaired credit history.

Supervision of mortgage lending

FSA supervision of firms takes a risk-based approach and uses two main methods: assessing risk in individual firms and thematic supervision, which assesses risk across a range of firms within a particular market or industry sector⁶. This has included major reviews of mortgage market generally⁷, as well as specific reviews of, for example, the sub-prime market⁸ and self-certification of income⁹.

This work has shown that there are still some significant short-comings in the behaviour of firms that sell and advise on mortgages. Despite this, there is general consensus that bringing mortgages within the regulatory framework of the FSA has delivered higher levels of consumer protection.

Regulation of unsecured consumer credit

As noted above, unsecured consumer credit is the only area of retail financial services that is not covered by the FSA. Indeed, regulation in this area is much less straightforward and has aspects to be commended and ones that are not!

After many years of waiting¹⁰, the legislation covering unsecured credit has recently been revised – by the *Consumer Credit Act 2006* which up-dates, but does not entirely supersede, the *Consumer Credit Act 1974*. Both pieces of legislation (as with almost all UK legislation) are enabling, with most of the detail set out in a set of specific regulations laid under them and precise interpretations often being set through case law. The 2006 Act covers all forms of consumer credit –including payday lending, which was not previously covered.

This Act and the regulations laid to bring it into force have already (since April 2007) introduced three important changes:

⁶ See <http://www.fsa.gov.uk/pages/About/What/thematic> for a the major thematic work plan for 2007/2008

⁷ See http://www.fsa.gov.uk/pubs/other/mortgage_review.pdf

⁸ See http://www.fsa.gov.uk/pages/Doing/small_firms/mortgage/practice/subprime/index.shtml
http://www.fsa.gov.uk/pages/Doing/small_firms/mortgage/practice/sub_prime.shtml

⁹ See http://www.fsa.gov.uk/pages/Doing/small_firms/mortgage/practice/self-certification_mortgages.shtml
http://www.fsa.gov.uk/pages/Doing/small_firms/mortgage/practice/scm_details.shtml
<http://www.fsa.gov.uk/pubs/consumer-research/cpr46.pdf>

¹⁰ There had been many changes in the regulations laid under the 1974 Act during this period and, as time went on, there was a need to consolidate these. Two things slowed this down: the prolonged gestation of a new European Consumer Credit Directive and the need for Parliamentary time for primary legislation. Indeed, one Bill fell because a general election was called and time had to be found in a busy legislative programme to re-introduce the Bill and, effectively start again.

- introducing a new ‘unfair relationship’ test to protect consumers from abuses in the market;
- bringing consumer credit within the remit of the Financial Ombudsman Service, and
- from 2008, there will be a tightening of the licensing regime for lenders.

Each of these is discussed more fully below.

Credit licences

To lend in the UK, a company needs to hold a consumer credit licence, which is issued by the Office of Fair Trading (OFT), the UK's consumer and competition authority and a non-ministerial government department established by statute in 1973. Local Trading Standards Officers (employed by local authorities, not the OFT) investigate alleged breaches of licenses and report to the OFT who are responsible for enforcement. In the past the licensing regime has been heavily criticised – not least by Trading Standards Officers – with criticisms centring on the ease of obtaining a licence, the very low likelihood of a license being rescinded even when lenders have engaged in criminal activities, and the fact that individuals who had lost a license were able to find their way round the rules and obtain a new license enabling them to start a new lending business¹¹. There have also been growing concerns about the activities of unlicensed lenders and the failure to take action against them.

From April 2008, the licensing regime will be tightened considerably. The OFT will have an enhanced ability to ensure applicants are fit to hold a licence and to monitor their ongoing conduct. They will also have stronger powers to investigate suspected cases of misconduct and to apply a wide range of sanctions where lenders breach the terms of their licence, including fines of up to £50,000 (about \$100,000) or the suspension of credit licences – previously the only sanction was to revoke the licence. The OFT has recently put out two consultation papers on the proposed licensing regime. The first of these covers the factors it intends to consider when assessing whether or not a consumer credit license holder or an applicant is fit to hold a license and how it plans to exercise its powers to impose requirements on license holders¹². The second consultation covers key factors the OFT will consider when assessing whether or not to impose a financial penalty on a license holder who has failed to comply with a requirement imposed on it and sets out the factors it will take into account in

¹¹ Kempson & Whyley (1999)

¹² Office of Fair Trading (2007)

assessing the amount of any penalty it will impose. The final guidance should be published by the end of 2007.

The new legislation does not address the issue of illegal (that is unlicensed) lending but, in 2004, the Government established two pilot schemes, in Glasgow and Birmingham, to tackle this problem. In these two cities, specially trained Trading Standards Officers working with the police have identified 200 'loan sharks' (unlicensed lenders) and shut down loan books worth more than £3 million (about \$6 million). An evaluation of the pilots concluded that they had been effective and represented good value for money¹³. Consequently, the Government has allocated £3 million (about \$6 million) to enable the pilot scheme to be rolled out across Britain, with an expansion of the geographical coverage of the existing two teams and the establishment of six new ones.

Unfair credit bargains

Consumer credit legislation has for some time sought to protect consumers against extortionate credit bargains, but the 1974 Act defined this narrowly and primarily in terms of charges. It did not, however, set a usury level, although the *Moneylenders Act 1927* (which it replaced) provided that a rate of more than 48 per cent was *prima facie* excessive. It was widely acknowledged the extortionate credit provisions of the 1974 Act did not work as intended for two main reasons. First, it set the definition of extortionate too narrowly, and was interpreted as referring to basic charges, while many of the market abuses related to wider terms and conditions. Secondly, the legislation relied on individual consumers to apply to a court to have the terms of their agreement reviewed and very few did. It has been estimated by the OFT that between 1977 and 1989 only 23 cases went to the courts. Although this has been challenged as an underestimate it is unlikely that more than a few hundred cases have reached the courts in the 30 years since the provisions were enacted¹⁴. Consequently, the great majority of judges have no personal experience of such cases and almost no case law to guide them should they get one. It is not, therefore, surprising to find that many did not feel competent to form judgements in this area¹⁵. Moreover, class actions cannot be brought in the UK and so even in

¹³ Ellison and Collard (2007)

¹⁴ Kempson and Whyley (1999)

¹⁵ *ibid*

the small number of cases where judges found that credit terms were extortionate, only the individual plaintiff benefited and the defendant continued to lend to others on the same terms¹⁶.

The 2006 Act has sought to tackle these problems by introducing an ‘unfair relationship’ test which replaces the extortionate credit bargain provision in the 1974 Act. This test is considerably wider and allows a court to consider all the relevant circumstances of a credit relationship to determine its fairness including:

- any of the terms of the credit agreement and any related agreement;
- the way in which the creditor has exercised or enforced any of its rights, and
- ‘any other thing done by or on behalf of the creditor either before or after the making of the agreement or any related agreement’.

The Act itself does not define an ‘unfair relationship’ beyond setting out in general terms these broad classes of factors which can give rise to unfairness. The Office of Fair Trading has, however, issued guidance for firms, indicating the sort of factors that are likely to inform its enforcement action¹⁷. It will, however, be for the courts to determine what is unfair to a borrower.

The intentionally broad scope of this test therefore gives sweeping powers to the courts to examine every aspect of a credit relationship, not just the written terms of any credit agreement. The provisions apply to all new agreements made on or after 6 April 2007 and any existing agreements that continue beyond 6 April 2008. It is, therefore too early to tell how well they are working, although they have received a warm welcome by the major consumer bodies.

Supervision of compliance with consumer credit legislation

Responsibility for the supervision of compliance with consumer credit legislation lies with the OFT, through the credit licensing regime. As indicated above, this was somewhat circumscribed by the 1974 legislation, added to which there were complaints that the OFT did not use the powers it had at its disposal. The proposed new licensing arrangements will give the OFT much wider powers and a broader range of sanctions. It remains to be seen how this will operate in practice, but it is still likely to fall short of the mortgage supervision exercised by the FSA.

¹⁶ There is, however, provision for a small number of nominated bodies to initiate a ‘super-complaint’ under the *Enterprise Act 2002*, which may result in a full inquiry by the Competition Commission. Two recent cases have resulted in investigation of the charges on credit and store cards and of lending terms and practices in the sub-prime home credit industry. Both resulted in lenders as a whole having to take remedial action.

¹⁷ Office of Fair Trading *Unfair relationships: OFT guidance*. 2006
http://www.oft.gov.uk/shared_of/business_leaflets/enterprise_act/oft854.pdf

Self regulation of unsecured consumer credit

Perhaps because of past failures in the supervision of compliance with consumer credit legislation, consumer credit lending in the UK is also subject to self-regulation through the *Banking Code*¹⁸ and the *Finance and Leasing Association (FLA) Lending Code*¹⁹.

The *Banking Code* is sponsored by three trade associations: the British Bankers Association (representing banks) the Building Societies Association (representing the mutual building societies – most of whom do not offer unsecured credit) and the Association of Payment Clearing Systems (APACS – representing credit card issuers). The first Code came into effect in March 1991, with the seventh edition being published in March 2005. All retail banks and building societies that offer consumer credit and credit card issuers in the UK are signatories of the *Banking Code* and between them cover 63 per cent of UK unsecured lending. Companies that have signed up to the *FLA Lending Code* include those that offer consumer and car finance – including store cards and in-store finance. The association has 53 companies in membership who, between them cover 30 per cent of unsecured lending in the UK. Many of these specialise in the sub-prime market. In other words, less than 10 per cent of unsecured lending is not covered by either Code. For the most part, this will be mail order and traditional sub-prime lenders, such as home credit companies and pawnbrokers (who have their own self-regulatory regimes, although these fall short of the Banking and FLA Codes).

Broadly speaking the content of these two Codes is similar. Both have sections on marketing and advertising, on responsible lending and on dealing with customers in financial difficulty. In both cases, the requirements placed on lenders with regard to dealing with customers in financial difficulty have been the subject of extensive consultation with independent, not-for-profit debt advisers. The *Banking Code* also has a separate section dealing with credit cards. The key difference lies in the fact that the *Banking Code* is accompanied by detailed *Guidance for Subscribers*, which provides details of how they are expected to interpret and implement the Code.²⁰

In contrast, the procedures for revising the content of the two Codes are rather different, with *Banking Code* procedures being rather more rigorous than those of the *FLA Lending Code*. The *Banking Code* is subject to independent review every three years (previously every two

¹⁸ <http://www.bankingcode.org.uk/libraryhome.htm>

¹⁹ <http://www.tlr.ltd.uk/fla/lendingcode.aspx>

²⁰ <http://www.bankingcode.org.uk/libraryhome.htm>

years). An independent reviewer is appointed who takes written evidence from a broad range of stakeholders and, following one or more round-tables, makes recommendations for changes to the Code and Guidance²¹. This report is then considered by the three sponsoring bodies who issue a public response and amend the Code and Guidance accordingly²². In theory the Code sponsors can ignore the recommendations of the Code reviewer. In practice they accept the great majority of them. One of the areas where recommendations have not been implemented in full relates to responsible lending.

Supervision of compliance with the Codes

The Banking Code has an independent monitoring body – the Banking Code Standards Board²³. The Board itself includes the chief executives of the three sponsoring bodies but independent non-executives are in the majority and the chair is drawn from these independents. It has an executive whose primary role is to assess compliance with the Code. This is done through a range of methods that are very similar to those used by the FSA in monitoring compliance by mortgage lenders. All subscribers are required to file a detailed annual statement of compliance. In addition, BCSB staff undertake general compliance monitoring and themed investigations. Both involve visits to subscribers, scrutiny of files and sitting in while staff do their jobs, including taking calls from the public. In addition mystery shopping is used in themed reviews. General reports are produced on themed reviews and are available through the BCSB website. See, for example, the 2007 review of credit assessment²⁴.

Detailed discussions are held with Code subscribers who are not fully compliant, with a view to putting things right. Serious breaches are referred to the disciplinary committee of the Board members (with independents in the majority) that has an independent chair who does not sit on the Board. There is a right of appeal to the full Board. The BCSB does not have the power to fine, but it can require a subscriber to compensate customers. It can also ‘name and shame’, which is a very powerful sanction as breaching your own Code of Practice is seen as worse than breaching an externally imposed rule. See, for example, the disciplining of Capital One for breach of the Code sections prohibiting the mailing of credit card cheques to people

²¹ http://www.bba.org.uk/content/1/c4/47/59/Full_Kempson_review1.pdf

²² http://www.bba.org.uk/content/1/c4/47/61/Subscribers_response.pdf

²³ <http://www.bankingcode.org.uk/home.htm>

²⁴ <http://www.bankingcode.org.uk/wpdocs/Credit%20assessment%20themed%20review.doc>

likely to be in financial difficulty²⁵. Very serious breaches would result in a subscriber being ‘expelled’ from the Code.

The *Banking Code* regime is, therefore, as rigorous as that applied by the FSA. Indeed, the review of self-regulation conducted for the Treasury described it as ‘*an exemplar*’²⁶ and that, unlike mortgages, conduct of business in the area of retail banking (including unsecured credit offered by subscribers) should continue to subject to self-regulation under the Banking Code. It was not, therefore, brought under full regulation by the FSA.

In contrast, compliance monitoring of the *FLA Lending Code* is less extensive and until recently has been primarily based on complaints received and annual compliance statements from subscribers. Part of the explanation for this lies in the nature of the subscribers. In contrast to the *Banking Code* which has a relatively small number of large subscribing institutions, the *FLA Lending Code* has a large number of small institutions in membership. It is overseen by a Lending Code Group (with independent members in the majority) and the compliance regime has recently been strengthened by visits undertaken by the chair of the Group, a second group member and the FLA compliance officer. As with the *Banking Code*, detailed discussions are held with Code subscribers who are not fully compliant, with the aim of improving procedures and practices. Serious breaches are referred to the Lending Code Group for the subscriber to explain their procedures and proposals for improvement. The ultimate sanction is expulsion from the Code and there are plans to establish a Disciplinary Committee of the FLA Board to carry out this function²⁷.

The Financial Ombudsman Service

The Financial Ombudsman Service, like the Financial Services Authority, was set up under the *Financial Services and Markets Act 2000* and was formed in 2001 from a merger of seven Ombudsman schemes covering specific aspects of financial services.

The function of the Financial Ombudsman Service is to resolve individual disputes between consumers and financial services firms ‘*fairly, reasonably, quickly and informally*’. It covers all retail financial firms that are regulated by the Financial Services Authority (FSA) and

²⁵ <http://www.bankingcode.org.uk/press/BCSB%20-%20Capital%20One%20Press%20Release%20%20FINAL%20071106.doc>

²⁶ www.publications.parliament.uk/pa/cm109899/cmselect/cmtreasy/73/73ap13htm

²⁷ <http://www.fla.org.uk/downloads/download.asp?Ref=4357&hash=fa12c724b96a2cbb59a694269ea539f9>

deals with all complaints about activities that are regulated by the FSA, including mortgages, accepting deposits, providing insurance policies and providing or advising on investment products. Since 2007 it has also handled all complaints about consumer credit, bringing in 60,000 businesses that had never before been subject to an ombudsman scheme – previously it could only deal with credit offered by regulated firms (principally the banks). The service is free to consumers and informal in nature.

Complaints are handled first by the Customer Contact Division where they can discuss the matter and be advised whether or not their complaint falls within the jurisdiction of the Financial Ombudsman Service. If the complaint is within jurisdiction and remains unresolved, the case is passed to an adjudicator for assessment and investigation. Cases may be resolved through mediation and or by formal adjudication. Complainants or firms can ask for their case to be referred to an ombudsman if they are dissatisfied with the assessment or adjudication issued by an adjudicator. Disputed cases may also be referred directly to an ombudsman by an adjudicator.

The approach taken by adjudicators and ombudsmen when looking at cases is to decide what is fair and reasonable in the circumstances of each particular case. This includes taking into account relevant law, codes of practice, and regulatory rules and guidance. If the evidence is contradictory, or the two sides of the story do not tally, they make decisions on the basis of what they believe is most likely to have happened on the balance of probability. Although the ombudsman service is not bound by legal precedent, adjudicators and ombudsmen aim to be consistent in the approach they take to particular types of complaints. Decisions are binding on firms although consumers who do not accept the decision they receive may take their case to the courts.

If the Service upholds a complaint it can require the firm at fault to make appropriate redress to the complainant. The aim is to put complainants back into the financial position that they would have been in, had the situation giving rise to the complaint not occurred.

In 2006-2007, the Service received 627,814 enquiries- half of which were about endowment mortgages. A total of 94,392 new cases were taken on by adjudicators, with 46,134 of these relating to endowment mortgages. Just 1,755 were about other types of mortgage, secured or unsecured loans and 2,731 about credit cards. This, of course, pre-dates full coverage of consumer credit. Three quarters of all new cases were initiated by consumers themselves; the remainder by bodies acting on their behalf²⁸.

²⁸ Financial Ombudsman Service (2007)

Ann independent review of the Service concluded that it provided a high quality and accessible service that was fair and reasonable in both the decisions it made and the procedures it followed²⁹. A second review has just been commissioned.

Strengths and weaknesses of the current system

Recent changes have led to much more wide-ranging and robust statutory regulation of both mortgages and unsecured credit. This goes far beyond requirements for information disclosure and provides extensive consumer protection, both when they purchase products and afterwards. Regulation of mortgages is, currently more extensive than that of consumer credit, which is supplemented by self-regulation. That may change as the *Consumer Credit Act 2006* is implemented in full.

At present, self-regulation plays an important part in providing full consumer protection in areas of responsible lending and dealing with customers in financial difficulty (both of which are covered by the FSA conduct of business rules for mortgages). This is not necessarily a weakness, however, as self-regulation has proved itself able to respond more quickly to abuses in the marketplace than full regulation. As self-regulation involves a mutual acceptance of the need to conform to mutually-agreed norms of behaviour, it has also driven up standards across the industry. Companies are expected to comply with the spirit not the letter of the *Banking Code* or *FLA Lending Code*. A key weakness is that only 63 per cent of unsecured lending is covered by a rigorous Code and compliance monitoring that approaches the level for mortgages. 30 per cent is covered by a less detailed but still rigorous Code, but one where compliance monitoring is weaker and just under 10 per cent of lending is not covered by adequate self-regulation at all. As this sector specialises in small loans to people on low incomes, it means that many vulnerable consumers have inadequate protection.

A key omission from the UK regulatory framework is that there is nothing similar to the US *Community Re-investment Act* or *Home Mortgage Disclosure Act*, although have been various calls for CRA-like legislation. In general, there is little evidence of red-lining and geographical discrimination, although that is not to say that everyone has access to mortgages and credit. Instead debates centre on providing access to affordable consumer credit and a

²⁹ Kempson, Collard and Moore (2004)

Financial Inclusion Taskforce has been set up by Treasury Ministers to oversee work in this area, reporting annually to Ministers and, through them, to Parliament.

Legislation alone is not sufficient to ensure consumer protection; compliance needs to be monitored and enforced. Compliance monitoring by statutory regulators is, undoubtedly, far more extensive for mortgages than it is for unsecured credit, where it has primarily been undertaken through self-regulation. In the past the Office of Fair Trading has had limited powers and been slow to use them. Even when the new credit licence regime is introduced in 2008, it is likely to fall well short of the supervision of mortgages by the Financial Services Authority. Mindful of this shortcoming, the banking industry has put in place a robust system of compliance monitoring of the *Banking Code* – which mirrors the procedures of the FSA. Other consumer credit companies, through their trade body the Finance and Leasing Association, are also tightening the way that compliance with their *Lending Code* is monitored and enforced. Together this ensures that most firms do act responsibly in their dealings with their customers. Self-regulation does not, however, include the power to fine or to remove to right of a company to trade. The maximum penalty is ‘naming and shaming’ and expelling a firm from membership of the Code. In practice, though, this is seldom needed and the real value of self-regulation is the way that firms approach it. BCSB compliance officers, for example, achieve a great deal through informal negotiation with firms to ensure that policies and procedures are fully compliant with the *Banking Code*. The overwhelming majority of firms feel a strong pressure not to breach their own mutually-agreed rules.

Compliance monitoring, especially for unsecured credit, is a complex system that requires Memorandums of Understanding between the main players to avoid over regulation (and double jeopardy) and under-regulation. It is open to criticism for its complexity, resulting in periodic calls for consumer credit also to be brought within the ambit of the FSA. In time that seems the most likely outcome.

Finally, until very recently, the only means of redress for consumers with extortionate credit agreements was, individually, through the courts and very few cases had been brought. Bringing consumer credit into the remit of the Financial Ombudsman Service should mark an important improvement in consumer redress. But, without provision for class actions through the courts, there are limits on wider benefits deriving from individual complaints. Input from the Financial Ombudsman Service to the independent review of the *Banking Code* has brought about

substantial changes to its provisions. And the 'super-complaints' brought by consumer bodies, under the *Enterprise Act 2002*, that have resulted in an inquiry by the Competition Commission have also tackled market abuses. But neither has the direct impact of a class action.

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