



Consultation Document

CP13/7 High level proposals for an FCA regime for consumer credit

Response from:

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Response to FCA

Executive Summary

We welcome the opportunity to comment on the high-level proposals from the Financial Conduct Authority (FCA) on the regulation of consumer credit.

The BVRLA and its members have a wealth of experience in the consumer credit market and recognise the importance of the two over-arching objectives of the FCA in:

- increasing protection for consumers; and
- having a proportionate regime that only places requirements on firms if there is a clear benefit for consumers.

We note that the FCA state the benefits of this will be a stronger, more flexible regime, better resourced to deal with problems. It will be tailored to the risks of the consumer credit markets, minimising burdens on industry where risks are lower.

However, we believe that the framework, as currently proposed, will not achieve these benefits and would call on the FCA to recognise that further tailoring is required to minimise the burdens on industry. The vehicle leasing sector is one such sector where the burden of compliance far outweighs the risk to the consumer. Vehicle leasing to consumers is sold through a motor dealership, a leasing broker or directly by a vehicle leasing company. With vehicle leasing which is sold through a dealership already classified as lower risk we are calling for the FCA to put all sales channels for vehicle leasing on the same level playing field and classify vehicle leasing, defined as any finance which is secured against a vehicle, as a lower risk activity in the new regime. The sector has minimal complaints, low default rates and already operates to a very high professional standard and should therefore be treated the same regardless of the sales channel the product is sold through.

We are also calling for the FCA to recognise the role of trade associations in ensuring compliance and would ask that the BVRLA's Codes of Conduct are recognised as providing a minimum level of compliance for companies.



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Background

BVRLA members provide financial products to businesses and consumers for the leasing of vehicles. The products are low risk to the consumer in their nature as the lease is typically for a three year period and is secured against the vehicle. The potential for harm to be caused to the consumer in taking out a vehicle lease is minimal, as is shown by the low level of complaints, less than 0.02% of leases on our member's books resulted in a complaint in 2012 and the default level for our member's was 0.55%.

In addition, the BVRLA has leasing brokers in membership who offer a range of services to help customers find the most suitable vehicle lease and vehicle type for their needs.

Vehicle leasing includes:

- Personal contract hire – Personal contract hire sees a consumer hire a car for a set period of time and pre-determined mileage at fixed monthly rentals. There is no option for the consumer to purchase the vehicle and at the end of the contract it is returned to the leasing company.
- Personal contract purchase – Personal contract purchase essentially sees a consumer agree to purchase a vehicle via a series of monthly instalments. Ownership passes to the consumer either at the outset or the end of the contract, depending on whether a conditional sale or credit sale agreement is used.
- Conditional sale – Under a conditional sale agreement, legal title to the vehicle will pass to the customer at the end of the contract following a final balloon payment.
- Credit sale – Under a credit sale agreement, legal title usually passes at the outset.

Size of market

The market for new vehicle leasing to consumers is relatively small in comparison to the total amount of consumer credit offered each year. Based on figures from the Finance and Leasing Association the number of new cars financed in 2012 was 662,052. The amount of finance totalled £9,408,000,000. The average cost of finance against each car was therefore £14,000. The total amount of consumer credit offered in 2012 was £54.9 billion. Vehicle leasing is therefore less than 17% of the consumer credit market.



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Vehicle leasing as a lower risk activity

Of the 662,052 new cars financed last year the majority of these were sold through motor dealers which the FCA are classifying as lower risk due to the motor dealer's main business being selling goods. We fail to see why the sales channel used makes any difference to the level of risk posed to a consumer we would therefore urge the FCA to ensure that all sales channel are on a parity and classify vehicle leasing as lower risk regardless of the sales channel.

The Financial Ombudsman Service (FOS) as part of their review of complaints dealt with in 2011/12¹ highlighted that they received 240 complaints relating to leasing, hiring and renting out of 7,416 complaints which the FOS looked at relating to consumer credit products and services. This is less than 3% of the total complaints looked at in this area. It is important to note that the FOS does not record how many of these leasing, hiring or renting complaints related to vehicles. Given that figures from the BVRLA's own conciliation service represent 10% of the above it can be assumed that 24 of the 240 complaints looked at by the FOS are relating to vehicle leasing.

The BVRLA also operates a conciliation service for customers of its members who have exhausted the member's own complaint process and not been able to come to an amicable resolution.

In 2012 the BVRLA investigated 24 complaints against its members from consumers relating to financial aspects of the lease against the 454,129 leases on our member's books in 2012.

The BVRLA has surveyed its members to understand the level of default rate from consumers with regards to vehicle leasing and the volume of complaints which members are dealing with. The survey of the members who do not sell their products through a dealer network, represent 40% of the leases on our member's books in 2012 and had a default rate level of 0.55%. The number of complaints they dealt with against the number of leases on their books was less than 0.02%.

From the above information it is evident that the vehicle leasing industry is not causing any significant consumer harm and the approach of the FCA is disproportionate in regulating the sector and we believe is unnecessary and excessive.

¹ [FOS Annual Review of Consumer Complaints \(2011/12\)](#)



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As we have mentioned with vehicle leasing, financial interest is secured against the vehicle leased. To help a consumer determine how to finance their vehicle a consumer will be provided with a quotation which clearly states what the product offering is, this will include:

- Full vehicle details including: Vehicle make and model, including model year where relevant, Colour Options and accessories selected
- Mileage details including: Mileage restriction, Annual permitted mileage, Excess mileage charges (clearly stating the cost per mile)
- Maintenance - Details of whether a maintenance agreement is included and the responsibilities for maintaining the vehicle.
- Additional services and products - Details of any additional services offered, such as accident management, breakdown and recovery service and gap insurance.
- Payment details include: First payment/deposit (date to be paid and amount), Number of subsequent payments, Method of payment (ie standing order, cheque, direct debit, etc), Payment amount and frequency
- Administration charges, first registration fee, delivery/inspection fee and number plates

All of the above is clearly explained in a simple quotation document prior to the customer agreeing to the terms of the lease. The customer is therefore aware of what they are committing to prior to agreeing to the vehicle finance.

Credit worthiness is checked and the ability for the customer to afford the finance verified which is supported by the low default rate.

Without vehicle leasing being categorised as lower risk we believe that the number of businesses offering vehicle leasing to consumers will reduce significantly. We have already been advised by several leasing brokers and leasing members that if vehicle leasing is classified as higher risk they will simply stop offering their products to consumers and only deal with business customers. With less competition in the marketplace the consumer will have less choice and inevitably the cost of finance will increase to the detriment of the consumer.



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We note the FCA have recognised that consumer hire presents minimal risks to the consumer, given the provisions that will remain in the Consumer Credit Act that protect consumers from getting tied into long-term contracts. Vehicle leasing also presents minimal risks to the consumer as they can volunteer to terminate the agreement after half the payments have been made and as mentioned the finance is secured against the vehicle.

Given the size of the market, the low risk to the consumer in entering into a vehicle lease arrangement and the lack of consumer harm this sector is causing we firmly believe that vehicle leasing to consumers should be a lower risk activity. The high standards which our members operate at through the BVRLA Code of Conduct and their own professional conduct means that only customers who are credit worthy and financially sound are sold a vehicle lease.

We believe the above helps to demonstrate that leasing should be a lower risk activity. An appropriate definition for vehicle leasing would be “any finance which is secured against a vehicle will be a lower risk activity”.

BVRLA Code of Conduct

The BVRLA has two Codes of Conduct one for rental and leasing companies and one for leasing brokers.

Breaches of the Codes of Conduct are dealt with very seriously and ultimately may result in expulsion from membership of the BVRLA.

The BVRLA also audits its members when they join the association. A number of key areas are assessed as part of the application process. In terms of on-going auditing requirements the BVRLA's leasing brokers are subject to audit by the funders who they work with.

We believe that the BVRLA Codes of Conduct should be recognised by the FCA as a first level compliance and if a company applying for authorisation with the FCA is able to demonstrate that they are a member of the BVRLA then certain assumptions should be made such as they comply with the threshold conditions.

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Timetable

We believe that the timetable for implementation is completely unrealistic and should be reviewed. Given that the Consumer Credit Directive has only just been implemented this sector will now have to reassess everything again to take into account the FCA regulation.

We are also concerned that given the likelihood of the timetable slipping this could mean that businesses are operating under an interim permission approach for a longer period than originally anticipated. This will restrict business growth because if a business wants to diversify and this requires them to have different permissions they will need to apply for full authorisation. To avoid this restriction we would suggest that interim permissions should cover all types of consumer credit activity to allow businesses to grow and continue to function as normal.

Specific Comments

- 1. Do you agree that our proposals strike the right balance between proportionality and strengthening consumer protection?*

No, we believe that the framework as currently proposed places too much of a burden on businesses that provide vehicle leasing and brokering given that there is little evidence to show that consumer protection needs to be strengthened in this area.

As we have mentioned, the survey of the members who do not sell their products through a dealer network, represent 40% of the leases on our member's books in 2012 and had a default rate level of 0.55%. The number of complaints they dealt with against the number of leases on their books was less than 0.02%. It is clear from these figures that vehicle leasing is not a high risk activity.

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2. *Do you agree that we have included the right activities in the higher and lower risk regimes?*

No, vehicle leasing defined as “any finance which is secured against a vehicle” should be a lower risk activity. Vehicle leasing should be lower risk for the reasons we have expressed above which include:

- There is a lack of consumer harm in the sector as demonstrated by the lack of complaints
- The sector lends responsibly
- The product is low risk over a fixed period and secured against the vehicle
- The product is similar to consumer hire in that it presents minimal risks to the consumer and there are provisions in regulation which protect consumers from getting tied into long-term contracts.
- The vast majority of vehicle leasing is sold to consumers through a motor dealer network as this is already classified by the FCA as lower risk it therefore would seem sensible to simply classify vehicle leasing as lower risk regardless of the sales channel.

3. *Do you agree that our proposals minimise the impact on competition within the regulated consumer credit market?*

No we have already been advised by several leasing brokers and leasing members that if vehicle leasing is classified as higher risk they will simply stop offering their products to consumers and only deal with business customers. With less competition in the marketplace the consumer will have less choice and inevitably the cost of finance will increase to the detriment of the consumer.

We also believe that a differing level of regulation for motor dealers and lease providers will create a distortion in market as detailed above. Further the restrictions on activity within the interim permission period will give a competitive advantage to those firms that are called to obtain full authorisation first as they will then be resume normal trading (e.g. diversifying products and services, mergers and acquisitions, structured finance through special purpose vehicles) for an unknown period before the rest of the market. Such period could be extended given the likelihood of the proposed timetable not being met.

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4. Do you have any comments regarding our proposals for the interim permission regime?

We are concerned that given the likelihood of the timetable slipping this could mean that businesses are operating under an interim permission approach for a longer period than originally anticipated. This will restrict business growth because if a business wants to diversify and this requires them to have different permissions they will need to apply for full authorisation. To avoid this restriction we would suggest that interim permissions should cover all types of consumer credit activity to allow businesses to grow and continue to function as normal.

5. Do you agree that we should apply the Threshold Conditions as proposed?

We believe that the threshold conditions for lower risk activities are at an appropriate level for firms who provide or broker vehicle leasing. We would also recommend that firms which are BVRLA members are recognised automatically as reaching these conditions.

6. Do you agree that it would be appropriate for the FCA to apply the approved persons regime activities as proposed?

There is concern from our members that the responsibilities of an approved person are too onerous for many small firms and that no employee would be willing to take on that burden of responsibility. We would suggest that for lower risk activity the financial responsibilities for an approved person should be reduced and not include personal financial liability.

We are concerned that the timetable for the introduction of the approved person regime will not give small firms that have no previous experience operating under FSA style regulation, sufficient time to identify and train an approved person. This is exasperated by the fact that firms may not see the final approved person requirements until March 2014.

7. Do you agree with our proposal not to apply a customer function to any consumer credit activity, particularly debt advice?

Yes we support this approach.

8. Do you agree with our proposed approach to appointed representatives and multi-principal arrangements?



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We have reviewed the proposals for appointed representatives and discussed this approach with several major leasing companies who use leasing brokers in the vehicle leasing sector. All of them said that the appointed representative route was not a solution for their leasing brokers due to the burden of responsibility from the leasing company's perspective.

This therefore leaves smaller companies who are leasing brokers in a situation where the costs of compliance will far outweigh their ability to trade profitably.

As a solution, we would suggest that the FCA consider reducing the responsibility of the company who is in charge of the appointed representative to ensure wider take up.

9. Do you agree with our proposals that the new high-level conduct requirements should apply from 1 April 2014?

We believe that the timetable for implementation is completely unrealistic and should be reviewed. Given that the Consumer Credit Directive has only just been implemented this sector will now have to reassess everything again to take into account the FCA regulation.

We are also concerned that given the likelihood of the timetable slipping this could mean that businesses are operating under an interim permission approach for a longer period than originally anticipated. This will restrict business growth because if a business wants to diversify and this requires them to have different permissions they will need to apply for full authorisation. To avoid this restriction we would suggest that interim permissions should cover all types of consumer credit activity to allow businesses to grow and continue to function as normal.

10. Are there provisions within industry codes that you think should be formally incorporated into FCA rules and guidance?

The BVRLA has two Codes of Conduct one for rental and leasing companies and one for leasing brokers.

Breaches of the Codes of Conduct are dealt with very seriously and ultimately may result in expulsion from membership of the BVRLA.



Response to FCA

The BVRLA also audits its members when they join the association. A number of key areas are assessed as part of the application process. In terms of on-going auditing requirements the BVRLA's leasing brokers are accredited and audited by the funders who they work with.

We believe that the BVRLA Codes of Conduct should be recognised by the FCA as a first level compliance and if a company applying for authorisation with the FCA is able to demonstrate that they are a member of the BVRLA then certain assumptions should be made such as they comply with the threshold conditions.

We support the FCA's intention to ensure that any codes of conduct incorporated into rules or guidance do not go beyond maximum harmonising provisions within the relevant EU directives.

11. Do you have any comments regarding our proposed approach to supervision and regulatory reporting?

As we have mentioned we believe that the approach for high risk activity is over burdensome for companies involved with vehicle leasing.

12. Do you have any comments regarding our proposed approach to enforcement?

As above

13. Do you have any comments regarding our proposed approach to complaints and redress?

As above

14. Do you have any comments on our proposed interim permission fees?

The fees for interim permission fees seem sensible, however, we believe it is more important that the full fees are made available as soon as possible to allow businesses to start planning.

15. Do you agree with the costs and benefits identified?



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No we believe there are very little benefits for firms. We are somewhat surprised with the approach of the Government to Consumer Credit Licensing as the over-riding objective of this Government has been to cut red tape and reduce business burdens. The FCA proposals will create additional costs and burden for business at a time when they are struggling to recover from these tough economic times. We would urge the Government to consider whether this is the right approach and what impact this will have on the wider economy. To reduce the impact we would suggest the FCA takes the approach of making most consumer credit licensing activity as lower risk.

Closing Comments

We would welcome the opportunity to continue our constructive dialogue on the new FCA regime and hope that our comments go some way to shaping and developing the regulation of consumer credit in the future.

Leasing Members

In general, vehicle leasing is an arrangement where the user simply hires the use of the vehicle and assumes operational responsibility for a predetermined period and mileage at fixed monthly rental from the owner (the leasing company). Legal ownership is, in the majority of cases, retained by the leasing company.

Short Term Rental Members

Rental Members offer hourly, daily, weekly and monthly rental of vehicles to corporate customers and consumers. As explained above, rental members are the owners of the vehicle.



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Bona-fides **BVRLA, the industry and its members**

- The BVRLA is the trade body for companies engaged in the leasing and rental of cars and commercial vehicles. Its members provide rental, leasing and fleet management services to corporate users and consumers. They operate a combined fleet of 2.75 million cars, vans and trucks, buying nearly half of all new vehicles sold in the UK.
- Through its members and their customers, the BVRLA represents the interests of more than two million business car drivers and the millions of people who use a rental vehicle each year. As well as lobbying the Government on key issues affecting the sector, the BVRLA regulates the industry through a mandatory code of conduct. www.bvrla.co.uk