

**Advice NI Response to the Office of Fair Trading's Power to suspend Consumer
Credit Licenses – Draft OFT guidance for licence holders.**

Deadline: 15th January 2013

Advice NI welcomes the opportunity to respond to the Office of Fair Trading Power to suspend consumer credit licenses- Draft OFT guidance for licence holders. **Section 1** includes background information on Advice NI and a general overview. **Section 2** then highlights our response to the consultation questions.

Section 1: Background & Overview

Advice NI is a membership organisation which exists to provide leadership, representation and support for independent advice organisations to facilitate the delivery of high quality, sustainable advice services. Advice NI provides its members with the capacity and tools to ensure the delivery of effective advice services. This includes: advice and information management systems, funding and planning, quality assurance support, NVQs in advice and guidance, social policy co-ordination and ICT development. Membership of Advice NI is normally for organisations that provide significant advice and information services to the public. Advice NI has over 65 member organisations operating throughout Northern Ireland, providing information and advocacy services to approximately 100,000 people each year and dealing with over 269,000 enquiries on an extensive range of matters including: debt, social security, housing, consumers and employment issues. For further information, please visit www.adviceni.net.

Presently the OFT has the power to suspend or revoke a consumer credit licence however businesses can appeal this decision which can result in firms being able to continue trading during the appeal period, which can last for up to two years. This can often be detrimental to consumers and their health. The OFT issues broad guidance, under section 25A of the Consumer Credit Act, covering areas such as irresponsible lending and debt collection practices. This guidance is meant to provide clarity for consumer credit licence holders about what is expected of them in order to show they are fit to hold a consumer credit licence. However despite this guidance, there are several instances where consumer credit businesses and/or ancillary credit businesses do not comply with the guidance. For example;

- Our advisers inform us that many debt collectors who act on behalf of creditors, are more threatening and intimidating towards debtors. This can take the form of incessant phone calls on any given day and a stream of letters that can have a significant impact on consumers' health – with increased stress causing both physical and mental health issues.
- Payday loan companies often collect repayments through Continuous Payment Authority (CPA) - a method which allows a business to take a series of payments using a customer's debit card or credit card without having to seek express authorisation for every payment. Whilst CPAs can provide an efficient and convenient payment method for some customers mis-use of this form of payment can often cause both financial and emotional consumer detriment.

Advice NI's Debt Action Project, aimed at helping the most financially vulnerable in Northern Ireland has provided free independent debt advice to 8460 consumers and dealt with nearly £155 million pounds of debt for the period November 09-Jan 2013 of which a proportion are consumer credit related. Consumer Credit is vital to the UK economy. This is evident from recent Credit Action statistics which reveals that at the end of November 2012 outstanding unsecured (consumer credit) lending stood at £156 billion. In October 2012 29m plastic card purchase transactions were made every day with a total value of £1.424 billion.

There is also anecdotal evidence that suggests that the economic down turn has created a sense of urgency amongst creditors trying to reclaim their monies quickly from debtors to avoid cash flow problems. Given all of this it is important that sufficient protection is in place for consumer credit consumers in Northern Ireland particularly vulnerable customers or those on low incomes who seek help from Advice NI's Debt Action project. We therefore welcome the powers given to the OFT to suspend consumer credit licences.

Section 2: Response to Consultation Questions

Question 1 Do you have any comments about the structure and format of the guidance document.

No, Advice NI is happy with the structure and format of the guidance which clearly shows the grounds for suspension of a consumer credit licence.

Question 2 Is the guidance clear on the circumstances in which the power to suspend may be employed?

We believe the guidance outlining the circumstances in which the power to suspend may be employed is sufficiently detailed. We also welcome section 3.8 outlining the factors which make it urgently necessary for the suspension of a licence with immediate effect.

Question 3 Are there any substantive aspects with which you disagree?

No

Question 4 Are the case studies and the rationale for the decisions clear?

Whilst we believe the case studies and rationale for the decisions are fair we consider Case Studies 1 & 3 on pages 10 & 13 of the guidance are similar as they both refer to aggressive and misleading sales practices targeting the vulnerable. We also believe a wider range of case studies may be helpful for both customers and consumer credit licence holders. We were also surprised where a licensee with 20 years of convictions would result in no suspension, considering the serious nature of his offences. (as demonstrated in case study four

We would also like to highlight a couple of typos within the guidance;

- Page 10 of the guidance states “The licensee appeared to focus its sales practices on more vulnerable customers, including the elderly or **inform**”.
- Page 13 of the guidance states “The nature of the complaints (actively targeting and **misspelling** to a potentially vulnerable group with an apparent disregard for their consumer rights”

Question 5 Do you consider that there are any significant omissions particularly in respect of the circumstances in which you would expect to see OFT suspend with immediate effect?

Given the recent rise in payday loans and issues associated with it we believe it would be useful to illustrate further case studies highlighting Payday loan lenders lending irresponsibly. We refer to recent press articles highlighting;

- Where many lenders had failed to carry out credit checks, adequately explain the borrowing costs involved, as well as offering to roll over loans so that charges escalate and the loans become unaffordable.¹
- Payday Loans Company Yes Loans licence being revoked when the company was found to have used high-pressure sales tactics to persuade consumers to provide their debit or credit card details on the false premise that they were needed for an identity or security check. It was also deducting fees without consumers' consent or making it clear that a fee was payable.²

Question 6 Is the decisions-making model clear?

Yes, in particular we welcome 4.18 on page 22 of the guidance which permits the OFT to issue press notices concerning the suspension if it helps protect consumers.

Question 7 Do you have any concerns about the process for decision making, including representations?

No we do not have any concerns about the process for decision making which appears to be very thorough, independent and fair.

Question 8 Is the guidance clear on representations and appeals mechanism?

We welcome the flowchart on page 34 of the Guidance however we do find the diagram confusing and would suggest this is reviewed. The flowchart Stage 1 – Decision to suspend does not follow a numerical order i.e. step 1- 8 as you would normally expect. We would also suggest that a key is inserted to inform readers that the flowchart has two possible options (1) step 1-5 or (2) step 1-6-7-8.

Question 9 What is your opinion on the time it will take for decisions to be made once representations have been made?

Page 21 of the Guidance states that written decisions will be issued to the trader no later than 14 days and the whole process from issue of notice, representations and

¹ <http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=25406>

² <http://www.guardian.co.uk/money/2012/mar/08/oft-yes-loans-consumer-credit-licence>

reconsideration of the decision by the adjudicator would take approximately 1 month. We believe this is a fair timeframe given the process involved.

Question 10 An alternative to issuing a detailed record of the adjudicator’s reconsideration of the decision within two weeks of representations, is the option of a short (skeleton) record provided in a quicker timeframe. What would be your thoughts/preferences on this as an option?

We would be happy for a short record to be provided in a quicker timeframe providing that the record contains the necessary information and that an option to have a detailed record of the decisions still exists.

Question 11 Are there any substantive aspects with which you disagree?

There are no substantive aspects with which we disagree.

Question 12 Do you consider that there are any significant omissions?

No, we don’t believe there are any significant omissions.

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