



Consumer Finance Association Lending Code for Small Cash Advances

1) THE CONSUMER FINANCE ASSOCIATION ('THE ASSOCIATION') AND THIS CODE

- a) The Consumer Finance Association (CFA) is a trade association which represents the interests of businesses offering short term, unsecured personal loans, sometimes known as payday loans. All CFA members are licensed and regulated by the Office of Fair Trading (OFT).
- b) Members of the Consumer Finance Association offer small cash loans predominantly from high street outlets or online.
- c) This type of loan allows customers to borrow a relatively small amount of money, (usually between £50 and £1000) which they repay over a short period (typically one or two months). This loan is not designed for longer term borrowing, but to improve short term personal cash flow.
- d) The purpose of this Code is to ensure compliance by members with the minimum standards set by the Association, as specified in this Code, and accordingly protects and benefit consumers.
- e) The Association and its members shall publicise the existence of this Code, highlighting it to customers and making it available upon request and where appropriate provide details of the Complaints Procedure.

2) MONITORING AND COMPLIANCE

- a) The Association, through its Council, shall monitor the compliance of members with this Code and will require members to submit Annual Compliance Audits as a condition of membership of the Association. The Association or any other authorised person(s) will conduct Annual Compliance Audits of the member's business. These will be conducted in accordance with and respect of competition law and member confidentiality.
- b) Members shall promptly notify the Director General or Council member of the Association of any conduct that comes to their attention of any member, which is not consistent with this Code.
- c) The Association will record all incidences of reported breaches of this Code, including misconduct and breaches identified through Compliance Audits.
- d) The Association, through its Council, may take action against any member found to be in breach of this Code. Such action may include unscheduled compliance audits, written warnings to the member, and requests for written explanations and meetings to discuss the matter.

- e) The ultimate sanction, which the Association may impose, is the suspension or expulsion of a member from the Association. Where a member has been expelled from the Association, the Director General shall inform the OFT of that decision.

3) GENERAL OBLIGATIONS

Members shall:

- a) Conduct their business lawfully and comply with all relevant legislation.
- b) Trade honestly, responsibly and treat customers with respect.
- c) Behave at all times with integrity and endeavour to ensure, where applicable, that all other persons with whom the member has commercial relationships do likewise.
- d) Act fairly, reasonably and responsibly and with care in the day-to-day conduct of their business.
- e) Not misrepresent facts to a customer concerning any aspect of a credit transaction. Members shall also take all reasonable steps to ensure, where applicable, that brokers, lead generators and any other intermediaries do not misrepresent facts regarding such transactions to a customer.
- f) Respect confidential information supplied to them in the course of their business.
- g) Ensure that credit documentation embodies, in plain and intelligible language (unless legislative requirements require otherwise), all the express terms and conditions of the agreement.
- h) Provide adequate training for members of their staff, agents, associates and any other person who performs any duties on behalf of the member, bringing this Code and the principles contained in it to their attention and requiring them to carry out their duties in accordance with it and in addition members shall monitor their actions and decisions to ensure they are in line with this Code.
- i) Comply with obligations and any conditions which may be imposed by the Office of Fair Trading (OFT) with regard to their respective licences, including but not limited to, under the Consumer Credit Act 1974 (the Act) and the Money Laundering Regulations 2007.
- j) Members will have regard to all relevant OFT Guidance where applicable (including but not limited to Irresponsible Lending Guidance (ILG), Debt Collection Guidance, Mental Capacity Guidance).
- k) Follow, where applicable, any guidance notes issued by the Association, which refer to this Code.
- l) Ensure fairness in all dealings with customers including, but not limited to, their dealings with customers both before and after the making of the agreement and the manner in which those agreements are enforced.
- m) Where the terms of an agreement are variable, members shall give customers at least 30 days written notice before any variation to the terms and conditions of their agreement.

- n) Members shall supply copies of documentation and statements of account as required by law and within the prescribed timescale.

4) SPECIFIC LENDING OBLIGATIONS

a) Advertising and Marketing

- i) Members will commit to transparency in credit advertisements, including compliance with the Advertising Regulations issued under the CCA.
- ii) Members shall not target individuals by marketing the payday loan where the product would be wholly inappropriate.
- iii) Members shall ensure that all advertising is truthful and not misleading and raise awareness to the short term nature of the loan.
- iv) Members shall ensure that all advertising and promotional literature is fair and reasonable, does not contain misleading information and complies with all relevant legislation. This includes the inclusion and disclosure of the representative example and/or the 'APR' in the statutory form, where required by legislation.
- v) Members shall ensure that all advertising complies with the UK Non-Broadcast and Broadcast Codes of Advertising, Sales Promotion and Direct Marketing, the Radio Advertising Standards Code, the Television Advertising Standards Code, OFCOM and other relevant codes of practice of similar standing.
- vi) Members shall prominently display their membership of the CFA in all stores and on the home page of their website to alert customers to membership of the CFA. All members will also prominently display a link to this Code of Practice on their websites, and will make available hard copies on request.
- vii) Members will commit to transparency in ensuring that customers are aware of the lending company where brand names are being used.
- viii) Members will not pressurise customers to enter into any loan agreement or to extend the term of an existing loan.
- ix) Members will not specifically target their marketing on groups of people known to be financially vulnerable or credit-impaired.

b) Brokers and lead generators

- i) Members shall only accept business introduced by brokers and lead generators who hold a consumer credit licence issued by the OFT or equivalent passport authorisation recognised by the OFT and who agree to comply with the OFT Guidance on Credit Brokers and Intermediaries (Nov 2011).

c) Financial product explanations

- i) Members shall use plain and intelligible language in all communications with customers.

- ii) Members shall advise potential customers of the short term nature of the loan and that it is unsuitable for long term use.
 - iii) Members shall advise customers of interest rate(s) or fee(s) applicable to their loans and the basis on which they are charged.
- d) Pre Contractual Information
- i) Members shall commit to transparency in their dealings with consumers including providing adequate explanations in accordance with law.
 - ii) Members shall clearly explain the total amount payable in the adequate explanation.
 - iii) Before the customer is bound by any credit agreement, members shall provide the customer with pre-contractual credit information in accordance with the Standard European Consumer Credit Information (SECCI).
 - iv) Members shall explain to the customer either face to face or by other appropriate means where face to face is not possible that the customer may take away the pre-contract credit information, allowing them time to consider the terms of the offer of credit before completing the agreement.
 - v) Members shall provide explanations to the customer, to enable them to assess whether the proposed credit agreement is appropriate to their circumstances by explaining, but not limited to:
 - that small cash loans are intended to improve short term cash flow, and therefore not suitable for longer term borrowing;
 - that extending a loan can substantially increase the total cost of a small cash loan;
 - the risk, on default of the agreement, that additional interest and default fees may be charged; and
 - the 14 day right to withdraw and the terms and conditions which apply to that right
 - vi) Where a member has reasons to suspect that the explanation provided has not placed the customer in a position whereby he is able to assess whether the agreement is appropriate for his needs and circumstances, members shall provide the customer with any further explanations and clarification so the customer is put in a position to assess the suitability of the agreement.
 - vii) In all circumstances members should provide the customer with an opportunity to ask questions about the credit agreement. Members should also advise the customer how to ask for further information and explanation about the credit agreement.
- e) Assessment of affordability
- i) Members shall, before granting credit or substantially increasing the amount of credit to be provided to the customer, undertake a sound, proper and appropriate assessment of the creditworthiness of the customer to assess the borrower's ability to afford any proposed credit commitment, or specific additional credit commitment.
 - ii) Highlight to the customer the short term nature of the loan and encouraging the customer to consider longer term implications if it becomes apparent that the customer is using short term loans for sustained borrowing.

- iii) The assessment of affordability should be based on information and evidence obtained from the customer, having provided evidence of their ability to repay the credit (specifically the requirement of a regular form of income); and a credit reference agency, where appropriate.
 - iv) Where the customer requests the option to “extend” the loan, members shall carry out appropriate and proportionate affordability assessment before an extension is granted.
 - v) Members shall, on request, explain in general terms to customers the information that they take into account when assessing affordability.
 - vi) Members shall continuously monitor their credit granting practices and their assessment techniques to ensure that they are prudent and realistic in the prevailing economic circumstances.
 - vii) Members shall ensure that where a customer is refused credit and believes the refusal to be unreasonable the customer is given the name or title of a senior official who will review the application.
- f) Extending a loan.
- i) Members shall never extend interest or fees due on a short term loan. Only the original principal sum may be extended.
 - ii) Members shall not operate automatic extensions, but instead, will discuss the options available with the customer and only extend repayment after express agreement with the customer.
 - iii) Where the customer requests the option to extend the loan, members shall carry out an appropriate and proportionate affordability assessment before an extension is granted.
 - iv) Members shall not allow customers to extend a short term loan on more than three occasions.
 - v) Where the customer requests an extension the member shall endeavour to discuss with the customer the reason why the customer has not been able to repay the loan and whether he or she is in financial difficulty. Members should consider what additional information or advice may be made available to customers in this position, including information on hardship policies as well as how to access free debt advice.
- g) Fixed Repayment Plan
- i) Members shall offer a facility so that a customer may, no more than 5 days before their loan is due for repayment, apply for a Fixed Repayment Plan.
 - ii) Any customer may request a Fixed Repayment Plan, no more than 5 days before their loan is due to be repaid no more than once in any 12 month period regardless of their situation. The Fixed Repayment Plan will allow a customer to pay their outstanding balance over equal repayments over a period of not more than 8 weeks. There will be no additional fees or interest charged for the granting of the Fixed Repayment Plan period.
- h) Continuous Authority

- i) Members will ensure that customers are aware of the nature and extent of the use of continuous payment authority by explaining this in the adequate explanations used and highlighting to the customer details included in the pre-contractual information (SECCI) and agreements on the use of continuous payment authority. Members will set out the customer's right to cancel a continuous payment authority, reminding them that if they cancel they will still owe the outstanding debt and of the need to provide an alternative method of payment.
 - ii) Members will never seek to claim amounts in excess of the sum due under the credit agreement when using continuous payment authority to recover amounts due.
 - iii) Members will always give the customer at least 3 days warning by telephone, email or SMS (subject to the customer accepting or being willing or able to receive such warning) before attempting repayment of outstanding amounts due on the repayment date using continuous payment authority. This notice will encourage the customer to contact the member if the customer is in financial difficulties and cannot make the payment.
 - iv) Where the use of continuous payment authority for the purposes of collecting loan repayments in arrears has placed the customer in severe financial difficulty, then the member will make an immediate assessment and refund making alternative arrangements with the customer to repay their loan based on their individual financial circumstances.
 - v) Members shall send further regular reminders to customers when a continuous payment authority is being used and the customer has not made the payments due on the agreed repayment date. These reminders will provide a contact point where customers can contact the member if they are experiencing payment difficulties.
- i) Mental Capacity
- i) Members shall not discriminate against borrowers who have or are suspected of having mental capacity limitations by unfairly, or inappropriately, denying them access to credit.
 - ii) Within this Code, and in the practices or procedures of members, assistance is provided to overcome the effect of any capacity limitation. The aim being, wherever possible, to place them on an equivalent standing to borrowers who do not have such a limitation.
 - iii) Members shall also seek to ensure that appropriate protections are in place to mitigate the potential risks to such potentially vulnerable borrowers.

5) DEBT COLLECTION

- a) Members shall ensure, by regularly reviewing their debt collection procedures and those of any third parties they employ, that they conform to high ethical standards and allow for proper consideration of the customer's circumstances.
- b) Members shall establish and implement policies and procedures for dealing with customers whose accounts fall into arrears that are fair, clear, not misleading and members shall have regard for the OFT Debt Collection Guidance and the section entitled 'Handling of default and arrears' of the OFT Irresponsible Lending Guidance.

- c) Members should suspend the recovery of a debt from a customer where it is known that the customer has mental health problems. The customer should be given reasonable time in which to provide evidence of his or her health and in appropriate circumstances, use the standard Debt and Mental Health Evidence Form (DMHEF), developed between MALG and the Royal College of Psychiatrists.
- d) Members shall not impose default charges on customers who are in arrears unless the nature of those charges are disclosed in the pre-contract information and agreement and are limited to doing no more than recovering the member's costs and expenses of debt collection.
- e) Members shall allow for alternative, affordable, payment amounts when the borrower or his appointed debt advisor or representative makes a reasonable proposal.
- f) Members shall put in place a policy to freeze interest and charges on the amount the customer owes during debt collection after a period of no more than 60 days of non payment or where a reasonable repayment plan is agreed with the customer.
- g) If a member passes a customer's account to another person to collect overdue payments, such as a debt collector or solicitor, the member will inform the customer. Members will always choose debt collection firms that agree to abide by this Code and have regard for the OFT Debt Collection Guidelines.
- h) Members shall ensure that any debt collection agencies they employ shall be licensed under the Consumer Credit Act 1974 and have regard to the OFT Debt Collection Guidance. Members should monitor any debt collection agency used to ensure continued compliance.

6) DEALING WITH CUSTOMERS EXPERIENCING FINANCIAL DIFFICULTIES OR HARDSHIP

- a) Members shall consider cases of financial difficulty sympathetically and positively, treat customers in default or with arrears difficulties with understanding, forbearance and due consideration and not bully or threaten but encourage their customers to contact them should they experience financial difficulty.
- b) Members will have in place procedures to 'signpost' any customers identified as experiencing financial difficulty to the Money Advice Service (who will provide information about independent free debt advice) either in communications and/or by providing a link on their website.
- c) Members shall, where appropriate, refer customers to debt counselling organisations and notify customers where they can get free advice, such as Citizens Advice Bureaux, Money Advice Centres, National Debtline or the Consumer Credit Counselling Service.
- d) Members shall engage appropriately with any debt advisor where instructed by the customer unless such debt advisor behaves unreasonably.
- e) Breathing space - Members shall suspend, for a period of not less than 30 days, the active pursuit of recovery of a debt from a customer in default or payment difficulties under circumstances in which a debt advisor is engaged by the customer and is agreeing to a repayment plan.

- f) Where customers have demonstrated previous financial difficulty members will take this into account in any future loan application, where appropriate customers may be referred to a debt advisor before any future lending may be granted and not allow customers to enter into further loan agreements until all outstanding loans to the member have been repaid.
- g) Members shall make available to customers, considered to be in severe financial difficulty due to unforeseen financial circumstances a Hardship Program.
- h) Upon proper receipt of customer notification, including any evidence and a completed Hardship Program application, the lender shall assess the customer's circumstances and where the customer qualifies will immediately freeze any interest and charges and calculate a suitable repayment plan for the customer based on their individual circumstances. The repayment plan will not be less than four repayment instalments and may be longer.
- i) Customers engaged in a Hardship Program will also be provided with information, by the member, about free debt advice services that can provide additional help.

7) DATA PROTECTION AND CONFIDENTIALITY OF INFORMATION

- a) Members will have policies and procedures on data protection ensuring that the consumer has adequate opportunity to opt in or out of having their personal data passed to marketing companies, lead generators, brokers and others for purposes not connected with the advance made.
- b) Members shall respect personal information supplied to them by customers and shall inform customers of the purposes for which this information is intended to be used and disclosed, before it is given by the customer.
- c) Members shall observe a strict duty of confidentiality about their customers (and former customers) personal financial affairs and shall not disclose details of customers accounts or their names and addresses to any third party, except for the purposes of filing with credit reference agencies and in the following cases:
 - I. where they are legally compelled to do so;
 - II. where there is a duty to the public to disclose;
 - III. where disclosure is made at the request, or with the consent, of the customer; or
 - IV. where there is good reason for them to do so (for example, legal reasons).
- d) Members who use the services of credit reference agencies and/or fraud prevention agencies shall ensure that any information they supply about customers and the conduct of their accounts to credit reference agencies and/or fraud prevention agencies is complete and accurate.
- e) Members shall at all times comply with the Data Protection Act 1998 when obtaining and processing customers' personal data and shall explain to their customers that they have the right of access, under that Act, to their personal records held on computer files.
- f) Members shall advise customers of their right not to receive marketing information from the member or a third party with whom the member is connected. Members shall comply in that regard with the requirements of the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003.

8) MILITARY PERSONNEL

- a) The Consumer Finance Association recognises that debt can be considered a military discipline issue; the mobile nature and demands of the job can make personal financial management difficult; and it is vital, for reasons of safety, that personnel on operations are not distracted by concern over personal, including financial, matters at home.
- b) Where a Serving member of HM Armed Forces, or family member of, is experiencing difficulty with repayments, we will treat them with the utmost sympathy and discretion.
- c) Where we become aware that a customer is in financial difficulty, every effort will be made to negotiate a realistic repayment package that is affordable to the customer, avoids additional charges and penalty fees, and we will consider freezing interest. The same approach will be taken when such individuals are represented by The Royal British Legion's Benefits and Money Advice Service.
- d) When an individual indicates financial hardship, or it becomes clear from interaction that there may be financial hardship, or they are considering extending their borrowing, we will recommend that they contact the Legion's Benefits and Money Advice Service, the Citizens Advice Bureau or National Debtline.

9) COMPLAINTS PROCEDURE

General

- a) Members will hold and make available comprehensive information on their company's complaint procedures including appropriate contact details and reference to the Financial Ombudsman Scheme (FOS).
- b) Members shall deal promptly and at an appropriate management level with complaints. Members shall establish a complaints procedure and furnish information at the time a customer makes a complaint or where a customer requests a copy of their complaints handling procedures. Members shall carry out a full investigation of all complaints and shall ensure that the final response letter to the customer explains whether the complaint has been upheld or rejected. Where it has been upheld and compensation is to be paid then members shall ensure that such compensation shall be paid promptly. Customers shall be told what further steps are available if they are unhappy with the outcome of the complaint. These steps include the options of a complaint being referred to the CFA and the Financial Ombudsman Service (FOS).

Customer Complaints

- c) The following shall apply to complaints made by member's customers to the Association in relation to customer transactions.
- d) If a customer makes a complaint to the Association in relation to an account or an agreement with a member, the Association shall, in the first instance, refer the complaint to a senior executive of the member, for consideration.

e) If the customer is not satisfied with the progress of their complaint they may refer their complaint to the Association. The Association (through an appropriate representative) shall review the customer's complaint and conciliate between the customer and the member to endeavour to resolve the complaint. The Association shall accept, for conciliation, complaints made against members and subsidiary companies of members.

f) During this process the customer shall be entitled at any time to seek resolution by FOS.

g) The Financial Ombudsman Service can be contacted at:

The Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR

<http://www.financial-ombudsman.org.uk>

h) Nothing in this Code restricts or is intended to restrict the rights of a customer or a member to pursue remedies through the Courts or FOS.

i) The conciliation scheme shall not be invoked where a customer's complaint has already been considered under the dispute resolution scheme of other relevant Codes of Practice or of FOS or where the complaint has been the subject of a judicial decision.

j) Members shall notify customers of their complaints procedure, including the customer's right to seek resolution of the complaint under the CFA conciliation scheme and the FOS.

10) INTERPRETATION

a) In this Code reference to Acts or Regulations shall be construed as such Acts or Regulations respectively, as amended or re-enacted from time to time.

11) FORMAL PROCEDURES

a) The Council may make such changes to this Code, as it may consider appropriate from time to time, by a majority of the members of the Council present and voting. In the event of an equality of votes the Chairman of the Council shall have a casting vote in addition to the vote to which he is entitled as a member of the Council.

b) The Council shall give members at least 30 days' notice in writing of any intended changes to this Code.

Published 25th July 2012