



OFFICE OF FAIR TRADING

Consultation Document

Credit brokers and intermediaries

Draft OFT guidance for brokers, intermediaries and the consumer credit and hire businesses which employ or use their services

Response from:

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Response to draft OFT guidance for credit brokers

Executive Summary

The BVRLA welcomes the opportunity to comment on the Office of Fair Trading (OFT) draft guidance for credit brokers and intermediaries.

Whilst we welcome the benefit of consolidating OFT guidance into a single guide, we have specific concerns with the proposed Chapter 4 which relates to the introduction of a level of transparency for credit brokers and intermediaries in relation to the payment they receive for arranging the financial service for a creditor.

Whilst we note that one of the objectives behind the guide is to address a specific consumer protection concern, we wish to bring to the OFT's attention that we believe such a move will in fact have the opposite effect, and would instead lead to an increase in consumer harm and may also lead to appreciable impact on the operation of a competitive market.

Key consequences of forcing firms to disclose commissions

1. **Create consumer harm:** Consumers may be misled by the disclosure of commission, as they may incorrectly assume that the broker has recommended the creditor purely on the basis of the level of fees they are likely to earn for arranging the deal. This, we believe, could then adversely influence the consumer's decision, which could lead to them selecting a different product based on lowest commission to the broker which in fact is less suitable for their particular circumstances and/or does not represent the best value for money.
2. **Value-shifting:** We believe the proposal could lead to a potential for value-shifting so that the commission paid by the creditor is hidden and instead built into the bonus paid on the sale of an asset which is subject to finance. For example a motor dealer may be rewarded a high level of bonus on the sale of the vehicle in lieu of a specific commission for arranging the finance on behalf of a captive finance firm. If the transparency proposed was to be introduced, then we believe consumers may end up falsely assuming that the broker is not being paid a commission means that they are getting the best deal.
3. **Un-competitive markets:** We are also concerned that the disclosure of commission may lead to a far less competitive market as it results in a level of transparency which puts the commercial and market sensitive information competitors hold in jeopardy.

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We also strongly suspect the OFT will be concerned that if such a level of commercially sensitive data was readily available, the openness could lead to price convergence, thus reducing the benefits of a competitive market which consumers currently have access to and benefit from.

- 4. Commercial impact:** Confidentiality issues may arise within commercial contracts prohibiting disclosure of commission. These clauses may need to be renegotiated which could again be to the potential detriment of the consumer. In addition, the guidance introduces a risk of revocation of credit licence if creditors are involved with brokers who engage in unfair business. This is currently worded so as to impose increased cost pressures on creditors for monitoring, as well as potentially deterring creditors from associating with legitimate brokers for fear of losing their licence. Increased clarity is also required to help brokers understand how 'independence' is satisfied, so they can avoid criminal prosecution.

It may be helpful to explain that BVRLA leasing broker members act as an intermediary for the leasing of motor vehicles, making them akin to credit intermediaries for the purpose of this guidance.

OFT may wish to note that BVRLA leasing broker members are already subject to a strict code of conduct and have access to a no cost conciliation service in the case of disputes arising between the member and consumer.

Appreciably, the guidance is partly in response to a wealth of complaints by consumers and aims to address specific issue such as upfront fees being charged. We would agree that the guidance on this, as well as increased transparency in respect of status and refunds, is necessary and something we would support.

However, we would welcome evidence of an impact assessment which clearly shows that consumers would benefit from the disclosure of commission. In absence of any such credible evidence being presented, we believe it would be wholly inappropriate and unjustified to force firms to disclose this. We would therefore urge the OFT to revise its approach by removing such disclosure requirements and ensuring the disproportionate and adverse impacts outlined are avoided.

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Unintended consequences:

1. Consumer harm

If the guidance is introduced in its current form, we believe there could be the following potential for consumer harm:

Mislead consumers:

- If leasing brokers are forced to disclose the commission received from the creditor, the information provided could mislead the consumer. For example, a customer who is looking to lease a car may assume that the broker will recommend the option from which they would receive the highest level of commission. This could deter the customer from choosing that option, even if it was in fact the most suitable and cost-effective and result in the selection of a different package which may be far less appropriate.
- If disclosure of commission was imposed, then we also believe that some brokers, for example motor dealers, could reduce the commission they receive from a captive leasing company and instead recover the commission by value-shifting it to the sale of the car, in the form of volume related bonuses, in order to give the false impression that they were not receiving a form of payment for arranging the finance. This could mislead consumers into believing that the product is the most suitable for their needs, as the consumer incorrectly believes they are getting a better deal because there is no apparent commission.

Arguably at present, consumers are provided with sufficient information about the credit offering to be able to compare it with other offers available in the market. This set of information includes the total cost of the credit, the period, the monthly repayment and the APR.

It is also worthwhile highlighting here the Financial Services Authority's (FSA) decision on commission disclosure for general insurance. After careful consideration, the FSA did not in fact deem the disclosure of commission to be appropriate and viewed the competitive open market cost of the insurance as the primary consideration for consumers. This has relevant comparisons to consumer credit where, as stated above, the disclosure of the cost of the total credit is already clear and transparent.

If there are more pieces of information that consumers require to make a decision, it is arguable that the status of the broker and the extent of their market reach are far more valuable than knowledge of the exact commission the broker is receiving from the lender.

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2. Market distortion

We also believe the guidance could have the potential to distort the market in the following ways:

- **Reduce consumer service and choice:** We remain concerned that the disclosure of commission may lead to a far less competitive market as it results in a level of transparency which harms the commercial sensitive information competitors hold. This openness could result in a common or standard level of commission being offered.

3. Commercial impact

In addition to the above, the guidance may have the following impacts on commercial behaviour:

- **Confidentiality issues:** Within the agency agreements in place with the creditor, there may be clauses which prohibit brokers from disclosing the amounts of commission. If the disclosure of commission became mandatory, these agreements would need to be renegotiated and this could result in less favourable terms being agreed in exchange for removing such a clause. Changes to the terms would be likely to be passed on to consumers, generating potential detriment.
- **Section 25 'Fitness Test':** The guidance requires creditors to take reasonable steps to satisfy themselves that agents and 'associates' are not engaging in unfair business practices. If the creditor engages in business with any agent or 'associate' which it suspects, or reasonably ought to have reason to suspect, is engaged in unfair behaviour, the creditors own fitness to hold a licence may be called into consideration (Section 1.24 of guidance). We believe that this will need to be redrafted to make it clear that, although reasonable steps should be taken by the creditor, the credit broker/intermediary itself is ultimately responsible for fulfilling regulatory requirements. In its current wording, it represents a significant change and imposes a new and penal risk to creditors. This risk would not only impose a great burden on creditors to constantly monitor the actions of intermediaries, but could also deter them from associating with legitimate brokers, for fear of having their licence revoked. Therefore not only would costs be likely transferred to the consumer in some form, but it could also reduce competition and create consumer harm that way.

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- **Criminal prosecution risk:** Credit intermediaries are required by the Consumer Credit Act 1974 to disclose the extent of their independence, breach of which is a criminal offence. With such a penalty at stake, we feel that it is vital to provide a clear explanation of what independence is, preferably including a definition and test to be applied to determine it. From a practical viewpoint, brokers will of course not wish to breach this and so may disclose all links, even those which are not relevant. This could mislead consumers and so it is vital that there is clear and detailed advice for brokers on how to comply with this requirement. More specifically, we would also want to provide our Members with absolute clarity and as such would require such clarity to be apparent throughout the guidance.

Closing Comments

We hope that the reasons we have outlined above clarify our concerns adequately and we would be happy to assist with any additional information you may require. As it stands, the guide will not only adversely impact our member's, but could also potentially place consumers in a more vulnerable position than they are currently. We trust that our comments will be taken into consideration and that a balanced outcome can be achieved.



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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 2.5 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