

Time to 'do your sums' (again) on motor finance

Yet more legislation is on the way affecting credit deals for car buyers. Phil Davies looks at the implications.

The European Consumer Credit Directive (CCD) is intended to "harmonise" legislation across the EU and will entail some mandatory and also optional changes to our existing Consumer Credit Act, which was only fully implemented in October 2008.

CCD was initially due to be part of English law by June of this year. It's now been postponed until February of next year, but rather than wait until this deadline, lenders are being encouraged to start giving customers their additional rights under the Directive as soon as possible.

Here are the main changes:

Advertising

Current regulations will be replaced by new ones in which any advertisement that includes an interest rate or any figure relating to the cost of credit will need to include "standard information" (including borrowing rate, particulars of charges, amount of credit, duration, cash price, total amount payable and instalments) by means of a "representative example". It must also include a "representative APR" at or below which it is expected that credit would be provided under at least 51 per cent of

agreements resulting from the advertisement.

This is a change to the 'Typical' examples and the need for two-thirds of applicants to be provided with the credit facility.

In other words, you will need to review any advertising which includes reference to finance deals to ensure you comply.

Pre-contract information

Lenders will have to provide PCI in a more comprehensive nature than is currently the case and in the exact format of the 'Standard European Consumer Credit Information' document (SECCI). Examples of the new SECCI can be found on the Department for Business



Innovation & Skills (BIS) website www.bis.gov.uk. The SECCI must also be provided 'in good time' before the agreement is made.

'Adequate explanations'

The CCD introduces a general requirement that creditors (or credit intermediaries – motor dealers) provide adequate explanations to the consumer in order to assess whether the proposed credit agreement is adapted to specific needs and financial situation. The regulations will set out a list of matters on which explanations must be given and allow the consumer an opportunity to ask questions.

Creditworthiness

Lenders will be required to check the creditworthiness of the consumer before offering or extending credit. This means collating and confirming relevant information from the consumer and credit reference agency checks.

Another area that links in with this is the Office of Fair Trading (OFT) guidance on 'irresponsible lending'. For example, policies and procedures for assessing the customer's 'ability to pay'. Lenders who fail to follow this guidance face being stripped of their credit licences.

Loan size

The CCD will in the most part cover consumer loans between

£160 and £60,260 (don't ask how these figures are arrived at!).

Right to withdraw

Consumers will have the right to withdraw from a credit agreement within 14 days without any obligation to provide a reason. (Note: the Government has proposed not to extend the right of withdrawal to credit agreements above £60,260). This applies only to the finance agreement, not the purchase of the vehicle.

Again, dealership sales processes and controls will need to be reviewed to protect the transaction.

Early repayment of loan

The CCA gives the consumer the right to settle his credit agreement early and receive a rebate of charges; this only applies, however, on full settlement of the loan.

The CCD will provide for an approach which is similar to the existing CCA provisions but extend them to partial early repayment as well as to full settlement. This is potentially an added encouragement for consumers to enter into a finance agreement, knowing that they will get the benefit of reduced charges if their financial circumstances change for the better.

What will happen to the CCA?

The CCA will continue to exist and any agreements currently

governed by the Act but not by the CCD will continue to be regulated by the CCA.

What are the next steps?

The Department for Business Innovation & Skills expects an "imminent announcement" on the final CCD regulations, along with guidance on the detail of the new provisions. These need to be understood and practically applied to all aspects of motor finance, both from a lender and dealership perspective.

Note: This article is intended to provide a general guide. It is always advisable to consult a lawyer before drafting a new consumer credit agreement and/or a modifying agreement, or if you have any concerns about the enforceability of existing agreements.

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