THE ACCESSIBILITY OF CREDIT AND THE PROTECTION OF CONSUMERS IN THE HIGH-COST CREDIT SECTOR: A MULTIFACETED CHALLENGE

A KARIM ALDOHNI*

I
INTRODUCTION

Financial inclusion, accessible credit and sustainable finance: These terms are more than just buzzwords thrown around by international financial organizations and politicians who want to be elected or re-elected. They are not abstract terms. Rather, they are interconnected concepts with profound social impacts if materialized. In fact, these concepts can aid in addressing some of the key challenges posed by the high-cost credit market in the United Kingdom. However, it is argued in this Article that the United Kingdom has not yet managed to take the required steps to advance financial inclusion, accessible credit, and sustainable finance in the market.

For the purpose of this Article, it is important to understand these concepts in the context of consumer credit, more specifically high-cost credit. The concept of financial inclusion is multidimensional and encompasses an array of elements, key among which is the access to financial services, such as savings, credit, and insurance, and transactions accounts by those who are disadvantaged.[1] Although accessible credit is not the only objective on the financial inclusion agenda, it remains part and parcel of this agenda. This is because one of the main characteristics of those who are financially excluded is the inability to access credit.[2]

Relatedly, accessible credit means credit that is both available and—more importantly—affordable to consumers, with the latter being central to this concept. Those who are financially excluded tend to be in the lowest income brackets,[3] which restricts their access to mainstream credit even though they may

* Senior Lecturer in Law, New Castle Law School, Newcastle University, Newcastle Upon Thyne, UK.

1. *See Financial Inclusion: Overview*, WORLD BANK, https://www.worldbank.org/en/topic/financialinclusion/overview [https://perma.cc/577C-BBXF] ("Financial inclusion means that individuals and businesses have access to useful and affordable financial products and services that meet their needs . . . .").

2. RESOLUTION FOUND., IN BRIEF: FINANCIAL EXCLUSION 1 (2014), https://www.resolutionfoundation.org/app/uploads/2014/08/Financial-exclusion.pdf [https://perma.cc/3VGL-MB7T].

3. *See* STEPCHANGE DEBT CHARITY, WHAT SORT OF CREDIT CAN HELP LOW INCOME HOUSEHOLDS? 5 (2018), https://www.stepchange.org/Portals/0/documents/Reports/stepchange-debt-ch

have transaction accounts. The main reason for this is the institutional assessment of their creditworthiness that focuses primarily on their risk of default, or credit risk.[4] On the face of it, it may seem that those borrowers do not have a credit availability problem as they can always resort to the high-cost credit market for their borrowing needs. However—as the name suggests—the cost of this type of credit is substantially higher than mainstream credit, due to customers' sub-optimal credit risk profiles, which further disadvantages those consumers.[5] In this context, to describe credit as accessible to consumers, borrowers must, at least in principle, afford to repay it without adversely impacting their financial position.[6]

Addressing financial inclusion and accessibility and affordability of credit is not a one-off challenge. There is a need to ensure that the solutions put in place to achieve these objectives are sustainable. The term sustainable finance is not used in this Article to reflect the sustainable development objectives, where any act should equally consider ecological, social, and economic factors, that are essential to meet the present and future needs.[7] Rather, it is used to denote the continuous access to transactional accounts and financial services, particularly affordable credit. Regarding the latter, sustainability further concerns the continuous review of the suitability of debt and its impact on the borrower's financial position, that is, their ability to continue to repay the debt as it affects their ability to pay necessary expenditures.

As mentioned earlier, this Article primarily focuses on the 'United Kingdom's high-cost credit market. This market doubles as a subprime credit market, given that its customers are considered less creditworthy, and therefore financially excluded as explained above. The U.K. high-cost credit market offers a range of products that attach more weight to creditworthiness than affordability. It encompasses: home-collected credit, catalogue credit, pawnbroking, logbook loans, and high-cost short-term credit (HCSTC), also

---

arity-affordable-credit-march-2018.pdf [https://perma.cc/3EYT-9YYR] (stating that households living below the poverty line are likely to rely on high-cost credit to finance unexpected costs).

4. FIN. CONDUCT AUTH., DETAILED PROPOSALS FOR THE FCA REGIME FOR CONSUMER CREDIT, 2013, CP13/10, at 66 (UK), https://www.fca.org.uk/publication/consultation/cp13-10.pdf [https://perma.cc/97WY-7RY5] (demonstrating more concern with lenders' ability to seek repayment).

5. For instance, back in 2008, the cost of high-cost short-term credit (such as payday lending) reached 4000% APR. Abdul Karim Aldohni, *The UK New Regulatory Framework of High-Cost Short-Term Credit: Is There a Shift Towards a More "Law and Society" Based Approach?*, 40 J. CONSUMER POL'Y 321, 321 (2017).

6. FIN. CONDUCT AUTH., FCA HANDBOOK: CONSUMER CREDIT SOURCEBOOK, CONC 5.2A.20R(3-k), https://www.handbook.fca.org.uk/handbook/CONC.pdf [https://perma.cc/3TJA-33WP] ("The extent and scope of the creditworthiness assessment, and the steps that the firm must take to satisfy the requirement that the assessment is a reasonable one, based on sufficient information, are dependent upon, and proportionate to, the individual circumstances of each case.").

7. *See generally*, WORLD COMM'N. ON ENV'T AND DEV., REPORT OF THE WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT: OUR COMMON FUTURE (1987), https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf [https://perma.cc/Q873-VGJP] (describing the goal of the sustainable development objectives).

widely known as payday lending.[8] This Article discusses the successive polices that have been introduced to govern this segment of the consumer-credit market. It also provides an assessment of the extent to which these policies and their regulatory implementations have managed to advance financial inclusion and affordability and sustainability of credit. In this regard, it argues that the challenge posed by the high-cost credit market is multidimensional and that there is room for further developments in regulatory response. Part II of the Article provides an overview of the high-cost credit market in the United Kingdom Part III describes policies implemented by the government to combat issues posed by the market. Finally, Part IV details the shortfalls of these policies and provides argument for different, potentially more effective approaches.

II

AN OVERVIEW OF THE U.K. HIGH-COST CREDIT MARKET

The consumer-credit market in the United Kingdom is diverse. Various segments cater to different types of consumers and play a vital role in the lives of its ordinary citizens. High-cost credit is an important segment of this market, and it provides a lifeline to those who constantly struggle to make ends meet. Although the premise of the consumer-credit market is simple, its reality is perplexing. In principle, this market should be serving those who are less financially able, yet the reality is the more money you own the easier access to cheaper credit you have and vice versa. This troubling reality persists in the U.K. consumer-credit market generally and in the high-cost credit market more specifically, although its governing framework and landscape have changed over the centuries.

As for the governing framework, since the abolition of Usury Laws in 1854, the cost of credit gradually but steadily was left entirely for the market to control.[9] The Money Lenders Act 1900—and its amendments by the Money Lenders Act 1927—introduced a price cap on interest rates (forty-eight percent) above which an agreement could be set aside.[10] The Act, however, did not automatically set aside such an agreement.[11] Instead, breach of the statutory interest rate cap only raised a presumption of unenforceability. The moneylender could challenge this presumption and provide evidence to the contrary before the court.[12]

8. FIN. CONDUCT AUTH., CALL FOR INPUT: HIGH-COST CREDIT INCLUDING REVIEW OF THE HIGH-COST SHORT-TERM CREDIT PRICE CAP 8 (Nov. 2016), https://www.fca.org.uk/publication/call-for-input/call-input-high-cost-short-term-credit.pdf [https://perma.cc/3ZV7-XV8W].

9. *See* Constant J. Mews & Ibrahim Abraham, *Usury and Just Compensation: Religious and Financial Ethics in Historical Perspective*, 72 J. BUS. ETHICS 1, 8 (2007) (discussing how the abolition of usury laws led to market deregulation).

10. Abdul Karim Aldohni, *Loan Sharks v. Short-term Lenders: How Do the Law and Regulators Draw the Line?*, 40 J. L. & SOC. 420, 432 (2013).

11. *Id.*

12. OFF. OF FAIR TRADING, REVIEW OF HIGH-COST CREDIT ANNEXE B – PRICE CONTROLS: EVIDENCE AND ARGUMENTS SURROUNDING PRICE CONTROL AND INTEREST RATE CAPS FOR HIGH-COST CREDIT, 2010, OFT1232b, at 41, https://webarchive.nationalarchives.gov.uk/20140402161801/http://oft.gov.uk/shared_oft/reports/consumer_credit/High-cost-credit-review/OFT1232b.pdf [https://per

The Money Lenders Acts received their fair share of criticism and were found deficient by the Crowther Committee Report of 1971,[13] and as a result the Consumer Credit Act 1974 (CCA) was introduced.[14] However, the CCA only further strengthened the market approach to controlling the cost of credit by abandoning the statutory ceiling interest rate and providing the court with discretionary power to intervene when the credit bargain is deemed "extortionate."[15] Even though the CCA factored in the interest rate of the credit bargain to decide whether it was extortionate, the Act further reduced protections for the financially excluded. By abolishing the statutory cap, the CCA clearly acknowledged that the market price of credit is the benchmark in any assessment of the credit bargain. Those who resort to high-cost credit usually lack access to mainstream credit, which makes their bargaining power in relation to the interest rate extremely limited. Additionally, the test set by the CCA used vague criteria—setting a "grossly exorbitant" standard and "fair dealing" requirement—as a means to protect credit consumers.[16]

As a result, the Consumer Credit Act 2006 amended the CCA and replaced the "extortionate credit" bargain test with the "unfair relationship" test.[17] The new test meant to be an improvement from the extortionate credit bargain test. However, in reality, the test did not help consumers, especially those parties to high-cost credit agreements. The problem with the test lies in the fact that the court would always consider the common market price of credit as the reference point when the fairness of the credit agreement was challenged on the basis of the high interest rate charged.[18] In the absence of any regulatory or statutory cap on interest rates, and considering the weak bargaining powers of the financially excluded, the market rate always favored the high-cost credit providers.[19] This continued to be the case until 2014.

With regard to the high-cost credit market landscape, it has continued to change since 1850. Back in the second half of the nineteenth century new forms of high-cost credit emerged—such as pawnbroking, mail order or catalogue

ma.cc/4HWZ-9ELE] ("[A]greements with rates above 48 per cent per annum were presumed to be unconscionable (and thus could be re-opened by the courts), although the presumption could be rebutted by the moneylender providing evidence to the contrary.").

13. *See* GEOFFREY CROWTHER, CONSUMER CREDIT: REPORT OF THE COMMITTEE 175–81 (1971) (highlighting then-present deficiencies in the law related to consumer transactions).

14. Consumer Credit Act 1974, c. 39, §§ 137–40 (UK).

15. *Id.*

16. *Id.*; *see also* ELAINE KEMPSON & CLAIRE WHYLEY, PERS. FIN. RSCH. CTR., EXTORTIONATE CREDIT IN THE UK: A REPORT TO THE DTI 32 (1999), http://www.bris.ac.uk/geography/research/pfrc/themes/credit-debt/pfrc9903.pdf [https://perma.cc/C7NQ-NBGL] (the Personal Finance Research Centre was commissioned by the United Kingdom's Department of Trade and Industry to undertake this research).

17. Consumer Credit Act 2006, c. 14, §§ 19–22 (UK), which inserted §§140A-140C in CCA.

18. *See* Aldohni, *supra* note 10, at 441.

19. In a number of cases the court considered the fact that borrowers were in the financially excluded group of consumers and would increase the credit risk, hence the high interest rate was accepted. For more analysis of these cases, *see* Aldohni, *supra* note 10, at 436–41 (analyzing the impact of the "unfair relationship test").

credit, hire purchase, credit drapers, and check traders[20]—with pawnbroking as the most prevalent form of high-cost credit.[21] However, the twentieth century witnessed the decline of pawnbrokers,[22] and the re-emergence of other types of high-cost credit. For example, credit traders and check traders' businesses had their heyday in the first half of the twentieth century and then went into stagnation by the late 1960s.[23] In the late 1970s to early 1980s, moneylending, more specifically doorstep money lending, became the most prominent form of high-cost credit.[24] Major credit traders and check traders, such as Provident and Cattles, shifted their core business activities into doorstep credit.[25]

Moneylending in the twenty-first century continues to be a big business in the U.K. high-cost credit market. Further, the 2008 financial crisis played an instrumental role in the proliferation of one particular type of high-cost credit: payday lending. Payday lending is also known as high-cost short-term credit, or HCSTC, which is a more accurate description of this business given that it is the high cost of credit, rather than the length of the lending period and the occasion of repayment, that defines them. The 2008 financial crisis triggered a regulatory response that brought more stringent rules on traditional lending with a focus on creditworthiness rather than affordability. As a result, more credit consumers were pushed into the financial exclusion zone, due to lack of access to mainstream and relatively more affordable credit. This was not helped by the austerity measures brought by the government that increased financial hardship, which in turn increased demand for credit by the financially disadvantaged.

Accordingly, high-cost credit became the only available option for these consumers. For instance, HCSTC lending increased from approximately £100 million in 2004 to £1.9 billion in 2010, with a price tag that reached 4214% APR in November 2012.[26] This is not to suggest that the other forms of high-cost credit such as catalogue credit, home-collected credit, and rent-to-own (RTO) no longer occupy their shares of the U.K. high-cost credit market. The Financial

20. Sean O'Connell & Chris Reid, *Working-Class Consumer Credit in the UK, 1925–60: The Role of the Check Trader*, 58 ECON. HIST. REV. 378, 378 (2005).

21. *See generally* MELANIE TEBBUTT, MAKING ENDS MEET: PAWNBROKING AND WORKING CLASS CREDIT 115–17 (1983) (providing further context to the prevalence of pawnbrokers and their impact on the working class); *see also* MARGOT C. FINN, THE CHARACTER OF CREDIT: PERSONAL DEBT IN ENGLISH CULTURE, 1740–1914, at 78 (2003) (describing the rise of pawnbroking in the late eighteenth and early nineteenth century).

22. *See* AVRUM TAYLOR, WORKING CLASS CREDIT AND COMMUNITY SINCE 1918, at 58 (2002) (noting the decline of pawnbroking as a result of "city redevelopment" and "slum-clearance" programs).

23. *See* O'Connell & Reid, *supra* note 20, at 380–84, 386 (describing the rise of check traders in the twentieth century).

24. SEAN O'CONNELL, CREDIT AND COMMUNITY: WORKING CLASS DEBT IN THE UK SINCE 1880, at 185 (2009).

25. *Id.*

26. NAT'L AUDIT OFF., REGULATING CONSUMER CREDIT, 2012-13, HC 685, at 15 (UK), https://www.nao.org.uk/wp-content/uploads/2012/12/1213685.pdf [https://perma.cc/5AJF-MQBV]. APR calculation factors certain variants in the total cost of credit including the interest rate and other payable charges, however, it does not include default charges. *See* The Consumer Credit (Total Charges for Credit) Regulations 2010, SI 2010/1011, Sched. (UK).

Conduct Authority (FCA) found that 700,000 people took out home-collected credit in 2016. At the end of 2016, 1.6 million people had outstanding home-collected debt, with an overall value of £1.1 billion.[27] As for catalogue credit, the total value outstanding of catalogue-credit debt at the end of 2016 was £4 billion, which is a significant increase on 2014 and 2015, despite the fact the over 700,000 fewer people took out catalogue credit in 2016 than did in 2013.[28] Finally, RTO is another type of high-cost credit that is worth mentioning although it has a smaller share of the high-cost credit market. In 2016, 200,000 people took RTO loans with a total value of £0.5 billion at the end of that year.[29]

III
DEVELOPING POLICIES AND EMERGING REGULATORY RESPONSES IN THE UNITED KINGDOM

This Part examines the development in the regulatory response to the changes charted earlier in the U.K. high-cost credit market. Two periods of time are particularly illuminative to examining this regulatory development: pre-2014 and post-2014.

A. Pre-2014: Market Driven Minimum Regulations

It has been suggested that, prior to 2014, neoliberalism strongly influenced the overall regulatory approach to consumer credit in general, and high-cost credit more specifically.[30] Some of the clear signs of a neoliberal approach to regulating consumer credit can be traced back to the Crowther Committee's work. Its report stated:

> [O]ur general view is that the state should interfere as little as possible with the consumer's freedom to use his knowledge of consumer credit market to the best of his ability and according to his judgement of what constitutes his best interests . . . it remains a basic tenant of a free society that people themselves must be the judge of what contributes to their material welfare . . . the right policy is not to restrict [the consumers'] freedom of access [to credit] by administrative and legal measures but to help the minority who innocently get into trouble to manage their financial affairs more successfully.[31]

In simple terms, this meant limited regulatory intervention in how the high-cost credit market operated. While acknowledging that some consumers can be harmed by this approach it insisted that the solution lay in improving consumers' knowledge to make a better judgement.

The manifestation of this approach is first seen in the CCA. The CCA's abandonment of the statutory interest rate ceilings and focus on extortionate

27. FIN. CONDUCT AUTH., HIGH-COST CREDIT: FEEDBACK STATEMENT, 2017, FS17/2, at 38 (UK), https://www.fca.org.uk/publication/feedback/fs17-02.pdf [https://perma.cc/2KFS-LM5A].

28. *Id*. at 41 (noting that 2.7 million people took out these products in 2013, compared to 1.9 million people in 2016).

29. *Id*. at 34–35.

30. Aldohni, *supra* note 5, at 326–27.

31. Crowther, *supra* note 13, at 151.

credit bargains, later replaced with unfair relationships, gave parties greater latitude to set the terms of their agreement and gave courts more discretion to allow high-interest agreements.[32] Up until 2014, consecutive governments headed by different parties acknowledged the presence of some major problems in the operation of the high-cost credit market in the United Kingdom yet made very little intervention. For example, the former Department of Trade and Industry (DTI), in a 2003 White Paper,[33] expressed the government's concerns about the protection of consumers on low incomes.[34] However, the cost of the credit—the high interest rates charged—was not viewed as a source of concern.[35] Further, despite identifying default charges as an area of concern,[36] no meaningful intervention was made to address this problem. Instead, the DTI focused on the importance of making information transparent and clear, and ensuring that consumers had the ability to understand this information. The DTI report suggested that financial education and raising financial awareness played a greater role in providing consumer protection than other measures.[37] In this regard, the Financial Services Market Act 2000 advanced this agenda through the creation of Money Advice Service.[38]

Although financial awareness is an important aspect of consumer-credit protection, it is not the most effective means to protect consumers from the earlier identified problems as other concerning factors exist. It has been suggested that relying primarily on information in order to make consumers solely responsible for making their financial decisions is central to the neoliberal quest for market-driven regulations and the minimization of state intervention.[39] However, the concept of responsible credit consumers is based on a false conception that credit consumers are "wholly autonomous."[40] On the one hand, there are the well-identified behavioral biases that severely impact the assumed

32. Despite being comprehensive in their coverage, the CCA2006 amendments do not acknowledge the link between unfairness and extortionate interest rates neither does the judiciary. For more discussion, see Aldohni, *supra* note 10, at 442–49.

33. DEP'T OF TRADE & INDUSTRY, FAIR, CLEAR AND COMPETITIVE: THE CONSUMER CREDIT MARKET IN THE 21ST CENTURY, 2003, Cm. 6040 (UK), http://webarchive.nationalarchives.gov.uk/20070603164510/http://www.dti.gov.uk/files/file23663.pdf [https://perma.cc/5V9B-7NVB].

34. *See id.* at 52 ("Those who have financial problems or are on low incomes are especially vulnerable and susceptible to exploitation.").

35. *Id*. at 62.

36. *Id.* at 53.

37. *See id.* at 30–31 ("The Government, therefore, intends to introduce measures designed to ensure greater consistency and transparency in credit advertising, so that consumers . . . make informed purchasing decisions"); *see also id*. at 80–81.

38. Financial Services and Marketing Act 2000, c. 8, § 6A (UK). The Money Advice Service was set up as "the consumer financial education body." Financial Services Act 2010, c. 28, § 2(5) (UK).

39. *See* David Harvey, A BRIEF HISTORY OF NEOLIBERALISM 73 (2005) (noting "investors should in principle be responsible for their own mistakes" under neoliberal theory).

40. Toni Williams, *Empowerment of Whom and for What? Financial Literacy Education and the New Regulation of Consumer Financial Services*, 29 LAW & POL'Y 231, 241–42 (2007).

autonomy.[41] On the other hand, there is also the combination of the lack of options and the weak bargaining position of those who are financially excluded, more specifically the lack of access to affordable credit.[42]

Further, the Office of Fair Trading (OFT)—the former regulator of the U.K. consumer-credit market—in its 2010 *Review of High Cost Credit*,[43] demonstrated the continuous lack of appetite to interfere in this segment of the consumer-credit market.[44] The report took the view that any imposed price control would have adverse effects on consumers and the market despite many consultation respondents requesting a cap on the price of credit.[45] Clearly, the government accepted the industry's justification for charging an extortionately high interest rate and a variety of charges. This justification stemmed from the fundamental market mechanism of pricing, where higher credit risk would automatically justify higher interest rates. In this regard, the high-cost credit providers enjoyed high discretion in modeling credit risk and factoring it into their APR calculations.

B. Post-2014: Substantive Regulations

In the period that preceded the transfer of the regulatory powers of the consumer-credit market to the FCA, more specifically from 2008 to 2012, consumer credit campaigners raised alarms with regard to the malpractices in the high-cost credit market, more specifically the HCSTC industry. They urged the regulator at the time, the OFT, to look into practices such as: lending without first adequately assessing the affordability of the credit or borrowers' ability to repay, the inappropriate targeting of particular groups of people with clearly unsuitable or unaffordable credit, the practice of rolling over loans at the point of repayment so that charges escalate and the loans become unaffordable, and the unfair treatment of borrowers who get into financial difficulties.[46] These malpractices were demonstrated by a survey conducted by the campaign group "Which?"[47] showing that 45% of those who were surveyed and used HCSTC have

41. *See* Geraint Howells, *The Potential and Limits of Consumer Empowerment by Information*, 32 J.L. & SOC. 349, 360 (2005) (describing the biases which affect how consumers may engage with credit markets).

42. For more detailed discussion, see generally Aldohni, *supra* note 10.

43. OFF. OF FAIR TRADING, REVIEW OF HIGH-COST CREDIT: FINAL REPORT, 2010, OFT1232 (U.K.).

44. *Id.* at 4 ("We have found that, in a number of respects, these markets work reasonably well.").

45. *See* OFF. OF FAIR TRADING, *supra* note 12, at 24–25 (noting that the report believed market competition would remedy market issues better than a government cap); *see also* OFF. OF FAIR TRADING, *supra* note 43, at 4 ("We have considered the case for price controls for pawnbroking, payday loans, home credit and rent-to-buy credit and have concluded that they would not be an appropriate solution to the particular problems found in these high-cost credit markets.").

46. Press Release, Off. of Fair Trading, OFT Launches Review Into Payday Lending (Feb. 24, 2012), http://webarchive.nationalarchives.gov.uk/20131101180011/http://oft.gov.uk/news-and-updates/press/2012/11-12 [https://perma.cc/B3YX-KU3N].

47. Which? is a charitable organization that campaigns to protect consumer rights, review products and offer independent advice. *See Who we are*, WHICH?, https://www.which.co.uk/about-which/who-we-are [https://perma.cc/M4CJ-VY4V].

rolled over their loans at least once and 57% were encouraged by HCSTC providers to take out further HCSTC.[48] Further, the National Debtline published some figures that showed a significant increase in the received calls for help with payday loans in the first three months of 2012, which was 58% more than the previous quarter and 133% more than the same quarter in 2011.[49]

In response, the OFT launched in February 2012 its investigation into the malpractices of HCSTC lenders.[50] In March 2013 the OFT published its final report, *Payday Lending Compliance Review: Final Report* (OFT 2013 report). The report confirmed the abusive practices that riddled the industry and were highlighted by consumer campaign groups. More importantly, it described these malpractices as systemic rather than "confined to a few rogue traders."[51] The key identified problems included irresponsible lending and rolling over loans, which was associated with significant charges levied on the borrowers. The OFT review found evidence of insufficient assessment of creditworthiness and, more importantly, affordability by the majority of HCSTC providers.[52] The OFT 2013 report also found that irresponsible lenders not only allowed but encouraged rolling over loans, and in cases presented it as a feature of the loan.[53] This earned them significant financial benefits as the report estimated that fifty percent of the sector's revenue came from loans rolled over or refinanced.[54]

The actual transfer of responsibilities to the FCA for the consumer-credit market, including high-cost credit, took place on April 1, 2014. This followed from the redesign of the regulatory architecture in 2013, which abolished the Financial Services Authority and replaced it with these two regulators. First, the Prudential Regulatory Authority at the Bank of England is in charge of prudential regulation and supervision and, second, the FCA is responsible for supervising the conduct of all of the retail and wholesale financial market participants and, more importantly for the purpose of this discussion, is also charged with the protection of their consumers.[55]

48. *New Which? Research exposes payday loan failings,* WHICH? (May 18, 2012), http://www.which.co.uk/news/2012/05/new-which-research-exposes-payday-loan-failings-286258/ [https://perma.cc/HE9K-Y5MU] (taking a survey of 3786 consumers, 301 of whom had taken out payday loans).

49. Lisa Bachelor, *Payday Loan Firms Agree to Voluntary Guidelines*, GUARDIAN (May 24, 2012), http://www.guardian.co.uk/money/2012/may/24/payday-loan-firms-agree-voluntary-guidelines [https://perma.cc/TG2R-HZB3] (4725 calls were received in the first three months of 2012).

50. Press Release, Office of Fair Trading, *supra* note 46.

51. OFF. OF FAIR TRADING, PAYDAY LENDING COMPLIANCE REVIEW: FINAL REPORT, 2013, OFT1481, at 3, http://webarchive.nationalarchives.gov.uk/20131213013305/http://oft.gov.uk/shared_oft/Credit/oft1481.pdf [https://perma.cc/383R-YR5C].

52. *Id*. at 12.

53. *Id*. at 14–15.

54. *Id*.

55. MEMORANDUM OF UNDERSTANDING BETWEEN THE FINANCIAL CONDUCT AUTHORITY AND THE BANK OF ENGLAND, INCLUDING THE PRUDENTIAL REGULATION AUTHORITY, 2013, at 1, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/243451/9781909096950.pdf [https://perma.cc/SK4Z-4J73].

Many important preparatory measures took place before April 1, 2014 to ensure that the FCA not only has the mandate but also the powers required to effectively regulate this market. In this regard, the Financial Services Act 2012 empowers the FCA to make rules regarding the cost of credit and duration of credit agreements.[56] Further, the Financial Services (Banking Reform) Act 2013 amended the Financial Services Market Act 2000, placing a duty on the FCA to protect consumers against excessive charges, in other words, a duty to introduce a price cap where judged as necessary.[57] Finally, the FCA expressed their broad vision for the consumer-credit market in a consultation paper entitled *High-level Proposals for an FCA Regime for Consumer Credit* in March 2013.[58] This was followed in October 2013 by a more detailed and comprehensive consultation paper, *Detailed Proposal for the FCA Regime for Consumer Credit*.[59]

In the October 2013 consultation paper, the FCA provided its detailed vision for the governance of the consumer-credit market in general. At the top of its agenda was HCSTC, where it dedicated a whole chapter to the governance of HCSTC market.[60] The FCA also proposed a number of measures to address irresponsible lending without the required affordability checks and loan rollovers. This included capping debt rollover to two times, requiring risk warning on HCSTC financial promotions, and requiring HCSTC lenders to provide information on free debt advice before the point of rollover.[61] The measures taken by the FCA, in relation to HCSTC and the wider high-cost credit products, indicate a shift towards a more "society and law" based approach.[62] This means that market forces in the high-cost credit market are not given priority over the interest of its participants.

On July 1, 2014, the FCA limited the number of HSCTC rollovers to two and required that lenders give customers an information sheet designed to inform them about their rights and responsibilities and where they can get help.[63] Further, HCSTC providers are required to include a risk warning in any

56. *See* Financial Services Act 2012, c. 21, § 24 (UK) (substituting section 138–164 FSMA 2000 and inserting the FSMA 2000 s137C).

57. *See* Financial Services (Banking Reform) Act 2013, c. 33, § 131 (U.K.) (amending section 137C of the Financial Services Market Act 2000).

58. FIN. SERVS. AUTH., HIGH-LEVEL PROPOSALS FOR AN FCA REGIME FOR CONSUMER CREDIT, 2013, Cm. 13/7, https://www.fca.org.uk/publication/consultation/fsa-cp13-07.pdf [https://perma.cc/C3UV-MDNS].

59. FIN. CONDUCT AUTH., *supra* note 4.

60. *Id.* at 52.

61. *Id.* at 9.

62. The FSA and its "principle based approach" had a more neoliberal regulatory ethos. FIN. SERVS. AUTH., THE TURNER REVIEW: A REGULATORY RESPONSE TO THE GLOBAL BANKING CRISIS, 2009, *available at* http://www.actuaries.org/CTTEES_TFRISKCRISIS/Documents/turner_review.pdf [https://perma.cc/K4V9-D4WH].; s*ee also* Aldohni, *supra* note 5, at 321.

63. FIN. CONDUCT AUTH., *supra* note 6, at CONC 6.7.23 R. Regarding the requirement of information sheet, see, for example, Consumer Credit Act 1974, c. 39 (UK); FIN. CONDUCT AUTH., DETAILED RULES FOR THE FCA REGIME FOR CONSUMER CREDIT INCLUDING FEEDBACK ON FCA QCP 13/18 AND 'MADE RULES,' 2014, Cm. 14/3, at 66, https://www.fca.org.uk/publication/policy/ps14-03.pdf [https://perma.cc/5SPV-D3BW].

communication of financial promotion and how to get debt advice.[64] In order to ensure that HCSTC consumers are getting the best deal, Price Comparison Websites (PCWs) are required to allow users to search by amount and duration of the loan and must present their ranking of HCSTC products on the basis of price only, unaffected by any commercial interests or relationship that the PCW has.[65] The FCA also required HCSTC providers to explain to consumers the Continuous Payment Authority, which allows HCSTC providers to take payment directly from a customer's debit or credit card whenever they consider themselves owed.[66]

As for the affordability assessment, the FCA developed its rules—in its *Consumer Credit Sourcebook,* Chapter 5 (CONC 5)—to apply to all regulated credit agreements including the high-cost credit ones.[67] The key feature of these rules is that they are not only concerned with the risk of default but they also consider the credit affordability for the customer. Therefore, it is not entirely centered around the interests of the lender. To this end, the high-cost credit provider must consider, among a host of issues, "any other potential adverse consequences for the customer arising under the agreement from a failure to make a repayment by the due date."[68] The CONC 5 includes other provisions designed to safeguard the effectiveness of the creditworthiness and affordability assessment.[69]

Refinancing seems to be a recurring problem in the high-cost credit market, particularly in home-collected credit and HCSTC. In relation to the former, the FCA set clear guidance on their expectation with regard to the implementation of section 49 of the CCA. It makes it a criminal offence for home-collected credit firms to offer new loans or refinancing during home visits without a previous specific written and signed request.[70] Further, the FCA requires home-collected credit firms to design their agent incentive schemes in the way that manages the risk of consumer harm.[71] As for HCSTC, the FCA provides rules that require

64. FIN. CONDUCT AUTH., *supra* note 6, at CONC 3.4.1R.

65. *Id.* at CONC 2.5A.2R, CONC 5.2A.20R.

66. *Id.* at CONC 4.6.2R, CONC 7.6.13R.

67. *Id*. at CONC 5R.

68. *Id.* at CONC 5.2A.21R(3-k).

69. For instance, CONC 5.2A.36R states that: "A firm must not accept an application for credit under a regulated credit agreement where the firm knows or has reasonable cause to suspect that the customer has not been truthful in completing the application in relation to information relevant to the creditworthiness assessment." *Id.* at CONC 5.2A.36R. Further, CONC 5.2A.33 R requires firms to "establish, implement and maintain clear and effective policies and procedures" in relation to creditworthiness/affordability assessments. *Id.* at CONC 5.2A.33 R.

70. *Id.* at CONC 3.10.3G; s*ee also* FIN. CONDUCT AUTH., HIGH-COST CREDIT REVIEW: FEEDBACK ON CP18/12 WITH FINAL RULES AND GUIDANCE AND CONSULTATION ON BUY NOW PAY LATER OFFERS, 2018, Cm. 18/43, at 16, https://www.fca.org.uk/publication/consultation/cp18-43.pdf [https://perma.cc/QFZ6-82MY] (stating failure to comply is a criminal offense).

71. *Id.* at 17. *See also* FIN. CONDUCT AUTH., NO INCENTIVES, REMUNERATION AND PERFORMANCE MANAGEMENT IN CONSUMER CREDIT, 2018, Cm. FG 18/2, at 24, https://www.fca.org.uk/publication/finalised-guidance/fg18-02.pdf [https://perma.cc/BR9X-H4N3] (suggesting ways to mitigate risks of consumer harm).

HCSTC providers, before entering into a new HCSTC agreement, to send the information sheet that warns the consumer about the risk and liabilities and include information about debt advice.[72] The FCA explains that HCSTC providers should not refinance where it is unsustainable or otherwise harmful to the consumer,[73] and in any case, HCSTC providers may only refinance two times, unless exercising forbearance.[74]

Moreover, the FCA makes it clear that HCSTC lenders should not allow a customer to enter into consecutive agreements where cumulatively the total amount paid by the customer is unsustainable.[75] In this regard, the FCA addressed the issue of credit limit increase in catalogue credit, where the FCA extended its credit card rules to catalogue credit.[76] This means that catalogue-credit providers cannot increase or offer to increase the credit limit where they have been advised that the customer does not want the increase.[77] This shows the FCA's general concern with the sustainability of debt in the context of high-cost credit in general.

While the FCA refused to introduce a price cap on home-collected credit citing the lack of evidence to support such strong intervention,[78] it implemented a price cap on two types of high-cost credit, namely HCSTC and RTO. As for the HCSTC, the FCA's price cap came into effect in January 2015. It is designed to deal with three main sources of concern in the HCSTC market, namely, interest, fees and charges, and default charges.[79] In this respect, the cap applies to various types of interest and charges which include, but are not limited to, interest on credit, late payments or default charges, transmission charges, early repayments, refinancing or termination charges, credit broker's charges when the broker is in the same group as the lender or the credit broker agreed to share the charge with the lender, ancillary services charges, and interest on any of the mentioned charges.[80] The cap also applies to any charges under connected agreements,[81] and it provides an outright prohibition of compound interest.[82]

72. FIN. CONDUCT AUTH., *supra* note 6, at CONC 6.7.20 R.

73. *Id.* at CONC 6.7.21 G.

74. *Id.* at CONC 6.7.23 R. *See also id.* at CONC 7.3.4 R (stating that "forbearance and due consideration" must be exercised by the firm in the case of arrears or default).

75. *Id.* at CONC 6.7.22G.

76. *Id.* at CONC 6.7.4 R–6.7.13 R (regulating "[c]redit card and retail revolving credit requirements.").

77. *Id.* at CONC 6.7.7 R.

78. *Id.* at 17.

79. FIN. CONDUCT AUTH., DETAILED RULES FOR THE PRICE CAP ON HIGH-COST SHORT-TERM CREDIT INCLUDING FEEDBACK ON CP14/10 AND FINAL RULES, 2014, PS14/16, at 6, http://www.fca.org.uk/your-fca/documents/policy-statements/ps14-16 [https://perma.cc/42S4-FB87].

80. Ancillary services "include, but are not limited to, services related to processing the application and to the transmission of the money being lent, and insurance or insurance-like services ancillary to the agreement." FIN. CONDUCT AUTH., *supra* note 6, at CONC 5A.2.18 R, 5A.3.22 R, 5A.4.18 R, 5A.1.6 G.

81. *Id.* at CONC 5A.4 16 R.

82. *Id.* at CONC 5A.2.19 R, 5A.3.24 R, 5A.4.19R.

The first layer of the cap, the initial price cap, covers interest rates and fees and charges—excluding default charges subject to default caps—as HCSTC providers cannot now charge more in interest and fees than 0.8% per day of the amount borrowed.[83] The second layer targets default charges as it restricts the amount paid in default to a total of £15, whether the debt is being repaid in installments or in a single payment.[84] This means that HCSTC providers cannot charge £15 for each instance of default when borrowers are paying back by installments.[85] The third layer is a total cost cap where a borrower should never pay more in interest, fees, and charges than 100% of the amount borrowed.[86]

With regard to RTO, the FCA found convincing evidence to cap the price of credit paid by consumers. Central to the FCA's decision are: first, the fact that most RTO consumers would fall within the financially excluded group, and second, the extortionate price paid by RTO consumers which in some cases is four times the retail price of the same goods.[87] On April 1, 2019, the FCA introduced its RTO multi-layered price cap. First, the FCA imposed a total cost of credit cap of 100%, in other words, the interest charges are not allowed to exceed the cash price of the goods.[88] Second, RTO firms must benchmark base prices—including the price of delivery and installation—against the prices charged by three mainstream retailers.[89] Finally, firms are prohibited from increasing the prices of any goods and services related to RTO agreements as a way to recover revenue lost due to the total cost of credit cap.

Undoubtedly, the level of intervention demonstrated above has redefined the relationship between the regulator and the high-cost credit market. The regulator no longer shies away from interfering directly in favor of consumers who, due to their disadvantaged financial position, do not have strong bargaining powers. However, there are some areas of concern with which the FCA still needs to keep up.

83. *Id.* at CONC 5A.2.3 R, 5A.3.3 R, 5A.4.3 R. *See also* FINANCIAL CONDUCT AUTHORITY, *supra* note 71, at 6.

84. FIN. CONDUCT AUTH., *supra* note 79, at 35.

85. FIN. CONDUCT AUTH., *supra* note 6, at CONC 5A.2.14R, 5A.3.18R, 5A.4.14R; *see also* FIN. CONDUCT AUTH., *supra* note 79, at 10 (stating the cap on default charges is £15).

86. FIN. CONDUCT AUTH., *supra* note 6, at CONC 5A.2.2R, 5A.3.2R. *See also* FIN. CONDUCT AUTH., *supra* note 79, at 8 (stating a "100% price cap" provides the "least onerous way to achieve the necessary level of protection for consumers").

87. FIN. CONDUCT AUTH., RENT-TO-OWN PRICE CAP-FEEDBACK ON CP18/35 AND FINAL RULES, 2019, Cm. PS19/6, at 10, https://www.fca.org.uk/publication/policy/ps19-06.pdf [https://perma.cc/5VB4-X9AR]; *see also*
Press Release, Fin. Conduct Auth., FCA Confirms Introduction of Rent-to-Own Price Cap (Mar. 5, 2019), https://www.fca.org.uk/news/press-releases/fca-confirms-introduction-rent-own-price-cap [https://perma.cc/C6L5-C2CS].

88. FIN. CONDUCT AUTH., *supra* note 6, at CONC 5B.2.11R.

89. *Id.* at CONC 5B.2.2R.

IV

THE SHORTFALLS AND ROOM FOR IMPROVEMENT

Problems remain in the context of high-cost credit that the regulator and the government should respond to in a timely manner in order to ensure the continuous protection of consumers. These problems arise largely from two main areas: the adaptive and evolving nature of the high-cost credit business model and the credit supply vulnerability dilemma.

A. Adaptive and Evolving Industry

As demonstrated earlier, HCSTC is one of the main segments of the high-cost credit market that received significant regulatory attention and experienced the highest level of intervention by the regulator. Despite all the regulatory efforts, however, evidence suggests that HCSTC remains a major source of over-indebtedness in the United Kingdom[90] HCSTC providers have moved to installment loans. Instead of requiring a single payment after thirty days, the loans are now repayable typically over three to four months.[91] Although this may explain the decrease in default rates,[92] it also explains the rise in arrears rates.[93] With the new structure there is higher risk of missing an installment, and the cost of borrowing is increased due to the longer term of the loan.[94] Further, the use of online platforms and digital technology has widened the group of users of this type of credit and brought in the younger generation, increasing their risk of over-indebtedness.[95]

Offering HCSTC online also exacerbates the behavioral biases associated with this type of borrowing,[96] as there is neither human interaction nor time for reflection. Therefore, it can be suggested that the FCA should consider ways to influence the consumers' attitude towards HCSTC in order to minimize their

90. *Consumer Credit: High-Cost Short-Term Credit Lending Data*, FINANCIAL CONDUCT AUTHORITY (May 15, 2019), https://www.fca.org.uk/data/consumer-credit-high-cost-short-term-credit-lending-data-jan-2019 [https://perma.cc/GAH9-TFAS] (noting that users' HCSTC loans are much more likely to be over-indebted than the average person).

91. FIN. CONDUCT AUTH., *supra* note 27 at 24; *see also* STEPCHANGE DEBT CHARITY, PAYDAY LOANS: THE NEXT GENERATION 9 (2017), https://www.stepchange.org/portals/0/documents/reports/payday-loans-next-generation.pdf [https://perma.cc/7NVJ-GKSE] (showing most clients have 3–4 repayment plans).

92. STEPCHANGE DEBT CHARITY, *supra* note 91, at 9; s*ee also* CITIZENS ADVICE, FCA HIGH-COST CREDIT CALL FOR INPUT: CITIZEN ADVICE RESPONSE 2 (2017), https://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/Citizens%20Advice%20-%20HCSTC.pdf [https://perma.cc/H8LG-GBPS].

93. FIN. CONDUCT AUTH., *supra* note 27, at 14–15, 23–24.

94. *Id.* at 14.

95. The FCA has reported that 49.8% of HCSTC consumers are aged 18–34 (16.4% aged 18–24 and 33.4% aged 25–34). *See* FIN. CONDUCT AUTH., HIGH-COST SHORT-TERM CREDIT LENDING DATA (May 15, 2015), https://www.fca.org.uk/data/consumer-credit-high-cost-short-term-credit-lending-data-jan-2019 [https://perma.cc/VAJ2-DUWT].

96. SHARON WORTON, IAM SPARHAM, SAM GREW, ANDREW SHAW, KATIE WISE & ANN YEATMAN, PRICEWATERHOUSECOOPERS, USAGE AND EXPERIENCE OF HIGH COST CREDIT: CONSUMER RESEARCH REPORT 9–12 (2018).

exposure to these risks and eventually enhance consumer protection. In its October 2013 consultation, the FCA referred to the need to conduct more behavioral research into ways to nudge credit consumers to make better choices.[97] Since then, the FCA has published a number of papers exploring the use of behavioral economics in the credit market.[98] The most recent one explored the use of nudges regarding credit card debt and found "the semblance of success."[99] In this regard, the FCA needs to further explore this avenue for intervention in the context of HCSTC and its wider use in other high-cost credit products.

B. The Credit Supply Vulnerability Dilemma

The term vulnerable is often utilized in the literature to describe high-cost credit consumers. The primary use of the term, in this context, is to denote the disadvantaged social and economic status of those consumers. In this regard, vulnerability can be viewed from two perspectives.[100] First, information vulnerability which concerns high-cost credit consumers' ability not only to access the required credit information but also to assess and understand it. Second, supply vulnerability that is connected to their access to credit sources, more specifically affordable credit.[101] It is the latter that poses the most significant challenge at the moment with the loss of jobs and the rise of unemployment caused by the COVID-19 pandemic.

The availability of alternative credit sources, more specifically accessible and affordable credit, is central to the protection of the financially disadvantaged and to the achievement of financial inclusion. Yet, the financially vulnerable are the consumers most affected by the stringency of micro-prudential regulations. Since the financial crisis of 2008, prudential regulation has become a cornerstone of the worldwide regulatory response. In the United Kingdom, the Bank of England, through the Prudential Regulatory Authority and the Financial Policy

---

97. FIN. CONDUCT AUTH., *supra* note 4, at 78.

98. *See, e.g.*, KRISTINE ERTA, STEFAN HUNT, ZANNA ISCENKO, WILL BRAMBLEY, APPLYING BEHAVIOURAL ECONOMICS AT THE FINANCIAL CONDUCT AUTHORITY (FCA Occasional Paper No. 1, 2013), https://www.fca.org.uk/publication/occasional-papers/occasional-paper-1.pdf [https://perma.cc/YNE2-UJMB]; FIN. ADVICE WORKING GRP., HM TREASURY & THE FINANCIAL CONDUCT AUTHORITY, RULES OF THUMB AND NUDGES: IMPROVING THE FINANCIAL WELL-BEING OF UK CONSUMERS (2017), https://www.fca.org.uk/publication/research/fawg-rules-of-thumb-nudges.pdf [https://perma.cc/J4NU-RHQL]; PAUL ADAMS & LAURA SMART, FROM ADVERT TO ACTION: BEHAVIOURAL INSIGHT INTO THE ADVERTISING OF FINANCIAL PRODUCTS (FCA Occasional Paper No. 26, 2017), https://www.fca.org.uk/publication/occasional-papers/op17-26.pdf [https://perma.cc/73XU-NYVS].

99. PAUL ADAMS, BENEDICT GUTTMAN-KENNEY, LUCY HAYES, STEFAN HUNT, DAVID LAIBSON & NEIL STEWART, THE SEMBLANCE OF SUCCESS IN NUDGING CONSUMERS TO PAY DOWN CREDIT CARD CEBT (FCA Occasional Paper No. 45, 2018).

100. Aldohni, *supra* note 10, at 421.

101. *Id.* at 446–47.

Committee, oversees the micro and macro aspects of prudential regulation.[102] While prudential regulation is a complicated subject, for the purpose of this discussion, micro-prudential regulation means simply that mainstream credit providers—for example banks and building societies—are now very restricted in terms of the risks they can take in their operations, and further all risk must be accounted for and encountered in their capital buffers.[103] This clearly applies to their retail lending, where financially disadvantaged consumers do not measure well on a creditworthiness assessment.[104] Therefore, because these consumers pose credit default risks, among other risks—which should be avoided at all costs under micro-prudential regulations—mainstream credit providers have largely stopped supplying credit to these consumers.

Although the FCA has been recently looking into the credit supply issue and exploring the options, it does not seem to be focusing on a centralized solution. Instead, the FCA is focusing on the regional level by reviewing the role of credit unions, local charities, and local authorities or councils in supplying funds.[105] However, some of these options have limited financial capacity and are not capable of dealing with the existing high demand. For, example, the cuts to the local councils' funding since 2008 have adversely affected these councils' ability to create emergency funding schemes for individuals as they are struggling to fund their essential services.[106] Further, not all those who are financially excluded would qualify to use these sources. Take for instance credit unions. They are membership-based and the legislative cap of three percent interest rate per month may prevent them from extending credit to higher risk consumers.[107]

This is not to suggest that social finance in the broad sense of this term does not have a role to play in addressing the lack of affordable credit problem. The forms of sources encompassed by social finance, such as cooperative finance,

102. *What is the Prudential Regulation Authority (PRA)?*, BANK OF ENGLAND, https://www.bankofengland.co.uk/knowledgebank/what-is-the-prudential-regulation-authority-pra [https://perma.cc/A3C8-9DTY].

103. For more detailed explanation of capital adequacy and micro-prudential regulation, see IRIS CHIU & JOANNA WILSON, BANKING LAW AND REGULATION 329 (2018).

104. *See* Becky Rowe, et al., MIND THE GAP 49 (2015) (discussing how some financially disadvantaged consumers lack understanding of credit scores and how to improve them); *see also* FIN. CONDUCT AUTH., CONSUMER CREDIT AND CONSUMERS IN VULNERABLE CIRCUMSTANCES 25 (2014) (noting credit score can restrict consumers' access to credit); *see also* SHARRON WORTON, ET AL., CONSUMER CREDIT RESEARCH: LOW INCOME CONSUMERS 36 (2014), https://www.fca.org.uk/publication/research/optimisa-research-low-income-report.pdf [https://perma.cc/37UL-FNVD] (addressing factors which influence certain consumers' willingness to pursue credit).

105. FIN. CONDUCT AUTH., ALTERNATIVES TO HIGH-COST CREDIT REPORT, at 5, 12–13 (2019), https://www.fca.org.uk/publication/research/alternatives-high-cost-credit-report.pdf [https://perma.cc/3PVH-ECAU].

106. It has been estimated by Unison that £10 billion is needed for councils funding in England in order to carry out their social care and environmental services otherwise there will cut to child and adult cares services and environmental services. *See* Press Release, Unison, Ministers Must Fix Council Funding to Avoid "Catastrophic Cuts", (July 6, 2020), https://www.unison.org.uk/news/press-release/2020/07/ministers-must-fix-council-funding-avoid-%E2%80%8Bcatastrophic-cuts/ [https://perma.cc/7BW7-K5JE].

107. FIN. CONDUCT AUTH., *supra* note 105 at 9–10.

social banks, and crowd funding, empower individuals as they try to carry out market-based activities while delivering on important social objectives.[108] However, they are restricted in terms of their resources, and when operating in the form of mainstream credit providers they are subject to the same regulatory constraints discussed earlier. The United Kingdom needs a more comprehensive solution to increase the supply of credit available to financially disadvantaged consumers. Meanwhile the United Kingdom also needs to further ensure that those who are still relying on high-cost credit are not subjected to extortionate costs and practices.

V
CONCLUSION

The challenge posed by the high-cost credit sector in the United Kingdom is multi-dimensional, therefore, a multi layered solution is needed. The vulnerable nature of this sector's consumers adds more pressure on the regulator to act quickly and effectively.

Central to this solution is a tailored national scheme designed specifically to deal with the issue of accessibility of affordable credit by the financially excluded. This scheme can be entirely funded by the government or by a collaboration between the government and the banking sector.[109] Clearly this is a matter that requires far more detailed research in order to strike the right balance between the public and private interaction.

In the meantime, a key factor for this to succeed is ensuring that the consumer-credit regulations are capable of protecting the most vulnerable who turn to high-cost credit while this arrangement is being figured out. This means keeping the current regulations under continuous review in order to respond to any evolution in the business model of the high-cost credit providers designed to circumvent these rules.

Moreover, the FCA needs to further explore the role that behavioral finance can play in the context of high-cost credit products. The FCA should investigate how the decision-making mechanisms of high-cost credit consumers can be aided to improve their borrowing decisions. The FCA needs to further examine whether this can be achieved by a simple nudge or a more complicated behavioral intervention is required.

108. Othmar M. Lehner & Alex Nicholls, *Social Finance and Crowdfunding for Social Enterprises: A Public–Private Case Study Providing Legitimacy and Leverage*, 16 VENTURE CAP. 271 (2014).

109. STEPCHANGE DEBT CHARITY, *supra* note 3, at 6–7.