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Emailed to: highcostcreditcfi@fca.org.uk

Dear Mr Malcolm

FCA Call for Input: High-cost credit & review of the high-cost short-term credit price cap

SCOTSS (The Society of Chief Officers of Trading Standards in Scotland), is an association of professional trading standards managers representing every Scottish local authority trading standards service. The Society liaises with local council colleagues across the UK, and engages with government and others around the operation of the consumer protection landscape, providing leadership and consistency to Scotland's 31 trading standards teams. SCOTSS has its own constitution but is also a section of the Chartered Trading Standards Institute (CTSI).

I refer now to your [Call for Input](#) on high-cost credit and review of the high-cost short-term credit price cap first published on 29 November 2016. Members of the SCOTSS Fair Trading group have put together a summary of their shared concerns about one aspect of your high-cost credit review – namely the 'rent-to-own' sector. The group's concerns are set out in the schedule overleaf.

On behalf of SCOTSS I would ask you to consider the findings of our Fair Trading group and formally submit our contribution into your call for input. Please do not hesitate to contact me for further information on these matters.

Yours sincerely

A handwritten signature in black ink that reads "Peter Adamson".

Peter Adamson
Chairman SCOTSS

SCHEDULE

Members of the SCOTSS Fair Trading group (SFTG) are concerned that key participants in the online rent-to-own sector, namely www.perfecthome.co.uk and www.brighthouse.co.uk, are flouting fundamental consumer credit 'truth in lending' principles.

It appears that the goods offered for supply on the websites of both of these companies are only available on credit terms and goods are **not** apparently sold or available for cash. The goods only appear to be available on hire purchase terms. [Section 45](#) of the Consumer Credit Act 1974 (CCA74) created the offence relating to the '*Prohibition of advertisement where goods etc. not sold for cash*'. The section stated:

"If an advertisement to which this Part applies indicates that the advertiser is willing to provide credit under a restricted-use credit agreement relating to goods or services to be supplied by any person, but at the time when the advertisement is published that person is not holding himself out as prepared to sell the goods or provide the services (as the case may be) for cash, the advertiser commits an offence."

SFTG understands that this provision of the CCA74 was in due course [replaced](#) with FCA rule [CONC 3.5.2](#)

Prohibition on financial promotion where goods etc. not sold for cash CONC 3.5.2R01/04/2014

A [financial promotion](#) must not be [communicated](#) where it indicates a [firm](#) is willing to provide [credit](#) under a regulated [restricted-use credit agreement](#) relating to [goods](#) or services to be supplied by any [person](#), when at the time the [financial promotion](#) is [communicated](#), the [firm](#) or any [supplier](#) under such an agreement does not hold itself out as prepared to sell the [goods](#) or provide the services (as the case may be) for cash.

[Note: section 45 of [CCA](#)]

The following extract from 'Goode: Consumer Credit Law and Practice' is useful in understanding the rationale of this provision:

"Not holding himself out ... for cash"

The purpose of the section is to prevent an advertisement stating a low or nil rate of charge for credit when, since there are no cash supplies with which to compare the credit supply, there is no means of determining whether this statement is accurate or deceptive. It is not however necessary that the terms on which the goods or services are supplied for cash should in all respects, other than the means of payment, be the same as those on which they are supplied on credit. But it is quite easy for an advertisement to infringe CCA 1974, s 46, where it fails to draw attention to differences in the terms available to credit and cash customers.

"Holding out" need not be by advertisement, it seems, let alone the same advertisement as that to which this section applies; but it is unclear whether it is sufficient that the advertiser does in fact supply the goods or services for cash, if required, or whether there must be some positive act by which he holds himself out as doing so."

Ref: Goode Consumer Credit¹

The SFTG takes the view that both these businesses are fundamentally challenging the validity of APRs. The whole basis of a truthful APR is a genuine cash sale price. You can only get a genuine cash sale price if you are willing and [able](#) to sell the goods for cash. SFTG are

¹ <http://lexisweb.co.uk/guides/sources/goode-consumer-credit-law-and-practice>

concerned that the motivation for these commercial practices is to generate a fabricated cash price which in turn leads to a more acceptable and much lower APR.

Looking at one Perfect home product – a Hotpoint dishwasher² (model FDFEX11011K), the price in the representative example of £533.49 is probably about £185 above the average genuine online price calculated at £348.42³. The APR might be more like 199% (instead of 69.8%) if you based this on a cash price of £348 and 104 x £8.35 instead of the ‘cash price’ of £533.

The Brighthouse offer is complicated by adding on compulsory ‘service charges’ and it is therefore difficult to make direct comparisons but the same concerns exist with these published APRs.

The SCOTSS fair trading group have reached the view that it would be undesirable for rent-to-own businesses to further proliferate and flourish through the use of misleading and disingenuous commercial practices – particular those that appear to be direct criminal breaches. It would also be a less than even playing field for those participants offering genuine credit and cash sales offers. These matters are now outside the remit of Trading Standards and are primarily for the FCA to enforce under the terms of the 2014 FCA/Trading Standards memorandum of understanding.

² <https://www.perfecthome.co.uk/appliances/dishwashers/131/hotpoint-8-programmer-dishwasher> (25 Jan. 17)

³ www.google.co.uk/shopping/product/14548993000226276260/online?q=FDfEX11011K&oq=FDfEX11011K