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From the Editor

Articles

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[From the Editor]
Restrictions on banking services create new problems

The majority of banking services are classified as essential services. The enterprises offering them are not free to choose their customers, but rather have to make the services available to everyone. Basic banking services may not, for instance, be restricted to only those who are willing and able to use online banking.

As banks continuously prune their networks of branches it seems unreasonable that the few remaining branches are now providing some basic services only at certain times of the day. Some banks have adopted a policy of not accepting bill payments or cash withdrawals after one o'clock in the afternoon. What does this mean for consumers who do not own a computer or have a car at their disposal, or those who are refused online banking services due to having a bad credit record? Shouldn't the development of essential services be done on the terms of different kinds of customers and their needs?

Finland now has some much-needed new legislation governing credit. However, there are still certain parties that are unwilling to be patient and see what the impact of the new regulations will be, instead clamouring for the implementation of a positive credit register that would cover all citizens and, according to its proponents, somehow solve all problems.

I have written about this matter before in both the Consumer Protection Magazine and the Current Issues in Consumer Law newsletter. I still maintain that creditors making credit decisions are far from helpless in the face of the consumer. Tax records include details on credits previously granted to the person by banks or other credit or finance institutions, which means that the creditor hardly needs to make the credit decision based on the consumer's memory alone.

Some creditors know to ask credit applicants to provide information on expenses, tax records and pay slips. Others yearn for a mammoth register that would always give the right answer. Is this kind of move towards paternalism really necessary?

Nevertheless, I do understand the concern of debt advisors who frequently deal with consumers whose indebtedness is spiralling out of control and wonder whether a more extensive credit information register would help prevent some of these problems. As this issue of our online newsletter indicates, undisciplined borrowing and the withholding of information by debtors are not the largest cause of debt problems. Life circumstances can change unexpectedly and, in order to reduce risk, enterprises marketing credit must create processes that are based on actual human behaviour.

Perceiving the customer as Homo economicus with the ability to be knowledgeable and rational whenever he or she wants to, but acting wrongly only deliberately and out of ill intention is also off the mark. There is always a part - a small part - of the population that acts contrary to generally accepted rules. Under the principle of proportionality we can ill afford to create our rules with this minority in mind.

I am pleased to note that the new credit legislation includes a mention of good credit granting practices. Creditors themselves must create and develop effective and reliable processes. After all, they are professionals at what they do.

Responsibility in business requires responsibility in granting credit and developing good practices is always worthwhile. They play a large role in having consumers be able to manage their credit properly, which is in the best interest of all concerned.

Anja Peltonen
Director

A bad credit record must not result in all credit being terminated

A line of credit that has been well managed by a consumer should not be subject to termination simply on the basis of expected payment problems. Consumers need credit to balance their finances when their life circumstances change suddenly. One blotch on a credit record doesn't always mean that more problems are forthcoming.

The general reform of consumer credit legislation included the approval of a provision that gives creditors the right to terminate a consumer's rolling credit if there is a significantly elevated risk of the consumer not being able to repay it. In other words, a creditor may be entitled to terminate a line of credit even if the debtor has made every payment on time. The creditor's right to terminate credit is based on an overall assessment. The Payment Services Act includes a corresponding provision for credit cards and other credit-based payment instruments.

According to the preamble to the related provision in the Consumer Protection Act, a single blotch on a consumer's credit record could only justify the termination of other existing lines of credit in highly exceptional circumstances. The creditor's right to terminate credit on that basis would also need to be specified in the credit agreement in question.

Conflict with other legislation

Credit agreements concluded prior to the legislative reform taking effect generally do not include such a provision, as it was previously considered unfair to the consumer. The reform is also in conflict with legislation aimed at promoting the restoration of the debtor's financial capacity and preventing exclusion.

Amendments to the Credit Information Act and Enforcement Code result in more information being available to creditors. Starting from the beginning of April 2012, information on the long-term attachment of recurring income will be noted on the credit information register. The government proposal that led to the amendment specifically states that a new instance of bad credit does not constitute grounds for terminating an appropriately managed line of credit.

Under an established principle of consumer law, a credit agreement may not be terminated on the basis of the consumer having a bad credit record on their credit information register resulting from the failure to make payment for other credit. This principle concerning the fair division of risk is also included in a number of special statutes.

For example, under the Telecommunications Market Act, a telecommunications company's right to require collateral on the basis of anticipated inability to pay is restricted to the point in time when the contract is signed. The aim of this restriction is to ensure the continuity of the provision of essential services to the consumer and prevent consumer exclusion and deepening financial difficulties.

Credit is not an essential service. Nevertheless, it is a commodity that plays a key role in consumers' finances. In a credit society financing purchases by credit or maintaining rolling credit to be prepared for unexpected expenses is common practice.

The abrupt termination of the capacity to balance one's household income and expenses through the use of credit puts the consumer in an unreasonably difficult position. Bad credit records are generally the consequence of unexpected changes such as becoming unemployed, falling seriously ill or getting divorced. Credit can help consumers cope with these types of changes in circumstances without having their financial difficulties become even worse. Credit gives consumers much needed time to sort out their finances.

Consumers also tend to prioritise their expenses when they are low on disposable income. Important expenses are usually paid as agreed even when times are tight. For instance, a consumer may use a credit card to buy petrol to be able to drive to work. Making payments on credit related to this type of expense would be assigned a high priority to ensure that the consumer's ability to commute to work is not compromised.

Risk must be assessed at the time of concluding the credit agreement

A creditor can adequately protect their receivables by carefully assessing the consumer's facility and ability to pay when concluding the credit agreement.
Successful repayment of credit can also be promoted by creditors acting responsibly regarding debt adjustment. It is important to prevent situations where consumers spiral deeper into debt by taking on new credit to pay back existing credit. Flexible debt adjustment can often prevent this. Consumers strive to pay their bills and manage other obligations to avoid penalty interest, debt collection fees and having bad credit on their record. With rolling credit, the creditor also has the right to terminate the credit if payment is delayed by more than a month.

Basic banking services incomplete without online banking

Hundreds of thousands of Finns have a bad credit record. This significant proportion of the population is in danger of not having effective banking services available to them as a result of the banking industry not classifying online banking as a basic banking service.

Under the Act on Credit Institutions, consumers have the right to receive basic banking services. A bank may not refuse to provide basic services such as opening an account without having weighty grounds. The Act defines basic banking services as including an ordinary deposit account, the instruments needed to use the account and the opportunity to pay bills from the account.

The banking industry does not consider online banking to fall under the sphere of basic banking services. A consumer may not be granted access to online banking services if he has a bad credit record, for instance.

However, banking services are today increasingly used online rather than through other channels. Banks are cutting down on the number of branches, shortening in-branch service hours and even pruning their networks of ATMs and self-service payment machines. They also use service fee structures to encourage customers to use online banking services rather than visiting branches. At the same time, service providers and other companies are increasingly issuing their bills as e-invoices sent to consumers' online bank rather than paper invoices sent by mail.

With an ordinary bank account used for paying bills, a bad credit record should not pose an obstacle to a customer being granted online banking access. A bad credit record is significant in assessing a consumer's ability to pay, for instance when granting credit, but accounts that fall under the definition of basic banking services do not have overdraft facilities.

Policies to prevent money laundering should not lead to consumers being denied service

The Consumer Agency is now calling attention to the fact that, according to the preamble to the government proposal regarding basic banking services, basic banking services include an ATM card, a bank card and online banking access.

The Commerce Committee of the Finnish Parliament amended the proposed regulations by adding more restrictions. Under the amendments, a bank can refuse to provide services to a customer who doesn't present reasonable justification for why he or she needs to become the customer of a Finnish bank. The right to basic banking services also doesn't apply in cases where the prospective customer can't be identified, the threat of money laundering is suspected or there appears to be no actual need for the person to be a customer of the bank. These acceptable grounds for denying customers basic banking services should not be used to refuse consumers the right to use online banking, even if they have a bad credit record.

Bank refused to open an account

Banks should ensure that all their employees are familiar with the regulations concerning basic banking services. A customer's application to open a bank account may not be declined without a valid reason.

A consumer filed a report with the Consumer Agency after being refused a current account at a bank. The bank officer had asked the customer for an employment certificate and the three most recent pay slips. When the customer did not have these documents, the application to open the account was refused.

In its response to the Consumer Agency, the bank stated that they do not, in fact, have a policy to require customers who open a current account to be employed at the time.

The availability of basic banking services is a consumer right stipulated by the Act on Credit Institutions. The Act provides everyone the right to open a normal deposit account, receive a card or other instrument for using the account and make transactions such as paying bills.

The Consumer Agency reminded the bank that customer service personnel may not give customers false or misleading information concerning their rights. A bank may not have policies that set additional requirements for opening a normal bank account. Banks must also provide justifiable grounds for refusing to open an account for a customer.

KUV/5852/41/2009

Minimum interest rate melted into nothing

The marketing materials for a bank's deposit account conveyed a misleading impression of the minimum applicable interest rate. The bank's right to adjust the minimum interest rate was buried deep within terms, conditions and loyalty programme details.

Nordea Bank's EtuTili account product is linked to the bank's customer loyalty programme. The interest on deposits is determined by the customer's benefit level in the bank's customer loyalty programme. Under the terms and conditions of the account, a minimum and maximum interest rate could be set for each benefit level.

When the consumer deposited funds in the account in 2008, the minimum rate of interest set for his benefit level was 1%. Based on the bank's marketing communications, the customer had understood that this minimum rate of interest would be applied even if the interest paid on deposits were to change. The bank adjusted the minimum interest rate in the summer of 2009. The new minimum rate was to be 0.15% regardless of the customer's benefit level in the loyalty programme. The change also applied retroactively to previously concluded account agreements.

The bank's marketing communications did not clearly disclose the fact that the minimum interest rate could change. The account brochure simply stated that the bank reserved the right to make changes to the contents of the customer loyalty programme. The fact that a change to the loyalty programme could also mean a change in the minimum interest rate was not disclosed in connection with that provision.

The bank's unilateral right to change the minimum interest rate applicable to the account was specified in the account's terms and conditions along with a number of other provisions. The terms and conditions stated that the interest on deposits was linked to the prime interest rate. As such, the bank's marketing was not in line with the contents of the terms and conditions for the account.

The bank's marketing of the account conveyed a misleading impression of the account's characteristics and the nature of the minimum interest rate. The bank neglected to inform consumers that rather than being fixed, the minimum interest rate was one that could be unilaterally changed by the bank. The bank was reminded that marketing may not convey a misleading impression of an enterprise's obligations or a consumer's risks. The Consumer Agency called on the company to clearly communicate key terms and conditions pertaining to interest rates in its marketing and clarify the terms of Etutili account agreements in such a way as to make the bank's right to unilaterally change the minimum interest rate clear. The bank agreed to make the changes.

Legal protection for paying by mobile phone still not up to standard

Consumers should have the opportunity to review payments made by mobile phone in as much detail as purchases made by credit card. In addition to that, an upper limit should be set for a consumer's liability for the unauthorised use of a mobile phone for telecommunication services.

Originally developed as a communication device, the mobile phone has since become widely used as a payment instrument. Today, it is comparable to credit cards as a method of payment. The consumer's legal protection should be the same regardless of the technical nature of the payment method.

This principle is also noted in the full harmonisation directive on payment services and the Payment Services Act based on it. Where the use of any payment instrument is restricted to minor payments with lower financial risks, regulation is less strict. The provisions of the Payment Services Act apply to payments made by mobile phone to sellers other than the mobile phone operator. In other words, it applies to cases where the mobile phone operator acts as a middleman for payment.

If a mobile phone ends up in the wrong hands and is used to make payments, the rightful owner's liability is comparable to that in the case of a lost or stolen credit card or bank card. This was true even before the Payment Services Act entered into force. New in the Payment Services Act, however, is the provision stating that the rightful owner's liability for unauthorised use of the mobile phone to make payments is generally restricted to 150 euros.

This limitation of liability does not apply to other unauthorised use of the mobile phone. The rightful owner's liability for the unauthorised use of the phone for telecommunications services is still not limited. It would be advisable to make these questions of liability consistent by amending the Communications Market Act.

No receipt provided

Under the Payment Services Act, the provider of a payment service has the obligation to provide the payer sufficient information on individual payment transactions. The information provided must be detailed enough to allow for the payer to identify each transaction. The details must facilitate the verification of payment transactions both in terms of their basis and the amounts paid.

The problem with paying by mobile phone is that the existing regulations and their preamble do not require payers to be provided details on the basis of a payment transaction. In other words, the products or services the payer has purchased do not need to be itemised.

While it is true that even a credit card invoice doesn't generally include details on all the products or services included in each transaction, consumers who pay by credit card receive a receipt when making payment, which they can hold on to for checking their credit card invoice at a later time. Receipts generally include an itemised list of the products or services purchased.

When paying by mobile phone, however, there is no receipt. Even if the buyer receives a message or some other type of confirmation of purchase in their mobile phone, they rarely include exact details of purchases and are often difficult to store or print out.

The Payment Services Act provision will be applied to payments by mobile phone from the beginning of September onwards. Legislation concerning communications services is presently in the process of being amended. The Consumer Agency's view is that the amended legislation should include accurately worded provisions on the obligation to offer itemised invoicing for payments by mobile phone and thereby give payers the opportunity to verify that all their payments are correctly invoiced. Telecommunications operators would be responsible for ensuring the appropriate implementation of this requirement.

Police asked to investigate alleged usury

The Consumer Agency's campaign of monitoring quick credit products resulted in the police being asked to investigate alleged usury. The request to investigate concerned the quick credit products with the highest costs on the market.

The investigation request was based on the Penal Code's amended provisions on usury, which entered into force in February. The amendment was intended to have the provisions create a foundation for a more effective response to the present problems on the credit markets. Under the wording of the relevant provisions in the amended Penal Code, usury is defined by charging interest or collecting other financial benefit that is clearly disproportionate to the service performed by the creditor.

Prior to the amendment, the legislation defined usury as an interest rate that is clearly higher than a bank's interest rate for similar credit. In practice, it was not possible to compare the costs of quick credit products to interest rates offered by banks for their loans, as banks do not offer the same type of credit products as quick loan providers do.

The Penal Code does not specify a particular interest rate level for usury. Rather, cases are investigated on the basis of an overall assessment of elements that are essential to usury. The legislation defines what aspects are taken into consideration in determining whether the financial benefit to the creditor is disproportionate to performance. These include the total amount of credit, the period of credit, other credit terms, credit risk, the creditor's costs arising from granting credit, general expenses and the costs of financing the credit. A quick loan product can meet the definition of usury even despite the fact that interest rates and costs are generally at a high level in the quick credit market. This is specifically stated in the government proposal.

Quick credit products usually do not require that the debtor has a regular income or puts up collateral. This results in higher credit risk for the creditor. The credit granting operations of the companies that charge the highest costs and, as such, were named in the investigation request to the police, are based on the same information that is available to other quick credit companies. This means that the higher costs can't be justified by suggesting that those creditors cater to debtors with particular credit risks associated with them.

Unexpected life changes often the reason for indebtedness getting out of hand

In a recent Consumer Agency survey, over 50% of debt advisors indicated that unexpected life changes are increasingly causing indebtedness. Two years ago this view was only held by 14% of the respondents.

The results suggest that problems of excessive indebtedness and difficulties in making payments are still primarily the result of circumstances beyond consumers' control. Becoming unemployed, falling seriously ill or getting a divorce can wreak havoc with personal finances. When the economy on the whole is struggling, consumers suffer from increased debt problems, a fact that debt advisors are often among the first to witness. Among the factors contributing to indebtedness, substance addiction and inability to manage one's personal finances were also slightly on the increase.

In the most recent survey, 63% of debt advisors held the view that granting credit without assessing the applicant's ability to pay is a very significant factor contributing to indebtedness. The general reform of legislation governing consumer credit approved by the Parliament in June 2010 is set to improve the situation. The reform includes a provision on good credit granting practices as well as a provision on the creditor's obligation to assess the consumer's creditworthiness. A creditor must always check an applicant's credit history. With larger credit, the creditor must also calculate the consumer's disposable income.

Some 60% of the advisors surveyed were of the opinion that quick credit causes a great deal of indebtedness. At this point in time, it is still too early to assess what impact the recent legislative reforms, such as the new usury provision, will have in the future. According to the survey, quick credit is not only used to fund partying and nights out, but also as a quick fix for lack of funds resulting from low income.

Social credit not available in half of the municipalities

Increasing the availability of social credit in municipalities would be one solution to reducing the problems caused by quick credit. With this in mind, the surveyed debt advisors were asked whether social credit was offered in their region and, if so, for what types of purposes. Some 53% of the advisors indicated that social credit is not available in their region. In all the regions where social credit is available, it is used for debt adjustment. In half of the regions where social credit is used, it is also used to finance purchases.

The Consumer Agency carried out a survey of debt advisors in the spring of 2010 to find out their views on the factors contributing to indebtedness among consumers. A similar survey has also been carried out in the two previous years. Among factors contributing to indebtedness, the significance of unexpected life changes, rising living costs, poverty, substance addiction and the inability to manage one's own finances was examined.

EU investigation into the tying and bundling of financial services

A recent report by the European Commission finds that the tying and bundling of financial products is having a negative effect on consumer mobility on the financial markets.

According to the Commission's report, the various forms of tying and bundling financial services are widespread. The most common among them were bundles where among the package components at least one was not available for purchase separately, as well as pure bundles where none of the package components was available separately.
In other words, tying financial products results in a situation where the consumer must purchase the entire bundle even when he or she might only be interested in one of the package components.

Other forms of tying and bundling include models based on pricing and contract terms. They are based on offering consumers who purchase the entire bundle a cheaper price or more attractive terms than consumers who purchase products separately. Consumers often end up deciding to purchase the bundle due to the fact that it's easier and perhaps cheaper than comparing prices and product contents.

Tying and bundling poses an obstacle to free competition

The Commission's report states that all forms of tying and bundling financial products and services result in weakened consumer mobility on the markets. The most substantial impact on mobility was associated with contracts in which the current account is the gateway product. Other gateway products in bundles include housing loans, home insurance and consumer loans. The report's section on Finland identified pricing and contract term based models that steer consumers to bundled products.

The Consumer Agency finds the report highly significant in terms of the legal and financial position of consumers. The impacts of tying and bundling financial services on the effectiveness of markets has not been given sufficient attention in the past. Some of the impacts may not even be very well understood at this time.

However, it appears clear that the retail financial service sector is not operating in the best possible manner. Comparing products is difficult. Changing service providers and products is fairly rare. One of the reasons for this is the tying and bundling of services.

Special legislation needed

The European Union's current legislation does not provide sufficient opportunities for intervention in the problems identified in the report. The report covered EU directives on unfair contract terms, unfair commercial practices, the remote selling of financial services, the marketing of financial instruments as well as the consumer credit directive. The Consumer Agency considers it necessary to implement sector-specific legislation to govern the tying and bundling of financial services.

The Commission published an extensive report on the tying and bundling of financial services on the retail financial service sector on 15 January 2010. The objective of the report was to examine the types of tying and bundling financial services in member states and assess the extent to which such practices are unfair from the perspectives of both consumer policy and competition policy. The Commission organised a public hearing on the findings of the study and the possible solutions for improving the situation.

Buy everything on credit

Part of responsible credit granting operations is conservative marketing. A cash card is convenient for paying for small purchases, but consumers should not be encouraged to pay for them by credit card.

A recent advertising campaign for a credit card included stickers on the backs of bus seats as well as outdoor advertising at bus stops. The primary message of the advertisements was: ”This winter, use Visa to pay for even the smallest purchases. Pay by Visa to win great prizes, including tickets to the 2010 Winter Olympics in Vancouver”. The images associated with the text also supported the message of using a Visa credit card to pay for minor purchases.

The advertisement did not disclose the credit card's annual fees and interest rates with the same emphasis. Near the bottom of the advertisements there was small print stating that the fees incurred through use of the card depend on the type of card, the manner in which it is used and also the fact that paying by credit card can result in extra costs. As such, the advertisement conveyed a somewhat confusing overall message. The advertisement could also be understood by some as being a campaign that only concerns a debit card.

The Consumer Agency considered the advertisement to be in breach of the Consumer Protection Act. Paying for small purchases by credit card can lead to consumers making more impulse purchases than they might when paying by cash. Credit providers must play their part in preventing debt problems by following the principles of responsible credit operations. The campaign urged consumers to pay for all their purchases, even the smallest ones, by credit. Despite the fact that a credit card gives the consumer one month of interest-free payment time, it always entails paying for what you buy at a later time.

Visa Europe responded by agreeing to discontinue the type of marketing involved in the case.

KUV/8982/41/2009

EU Commission's recommendation: Cash must be accepted as payment

According to the Commission, consumers in the euro area should have the right to make payment in cash.

The Commission's recommendation also states that paying in cash should not be more expensive to the consumer than other methods of payment. No surcharges should be imposed on cash payments. Sellers should also refrain from rounding prices to the nearest five cents.

Policy of not accepting cash must be disclosed in advertising

According to the Commission's recommendation, a seller may only refuse cash payment when a valid and acceptable reason for doing so exists. This applies, for instance, when the retailer has no change available.

Finland does not, at present, have legislation requiring sellers to always accept payment in cash. The recipient of a payment has the right to choose what methods of payment are accepted.

According to the Consumer Agency, however, the payment options provided must not be unreasonable from the consumer's viewpoint. A consumer being offered the opportunity to make payment with the standard instrument for using basic banking services, i.e. a payment card linked to a bank account, is generally an acceptable alternative for cash payment.

With card payments having become very commonplace in recent years, it may be impossible for sellers to accept a large amount of coins or high denomination banknotes in retail transactions. According to the so-called euro decree, a seller is not required to accept more than 50 coins per payment. If the recipient of payment accepts cash but sets restrictions on the type of tender accepted, the consumer must be informed of such restrictions prior to sale.

For instance, if a retailer refuses coins in denominations of 1 or 2 cents, it should post a notice of this on the door, the Consumer Agency recommends. According to the Commission's recommendation, however, even coins in denominations of 1 or 2 cents should be accepted as legal tender.

The Commission issued its recommendation on the use of cash as legal tender in March 2010. The Commission reviews the status of cash as legal tender once every three years to assess whether regulatory measures are needed.

More information:
Payments and invoices, Consumer Ombudsman's Guidelines (in Finnish and in Swedish).
Commission recommendation 2010/191/EU.

Accident insurance did not cover costs of treatment

If an insurance product is called an accident insurance, it must correspond with the general insurance coverage levels in Finland. If coverage is less extensive, it must be clearly disclosed in marketing.

Members of Stockmann's customer loyalty programme were marketed an accident insurance product by ACE European Group through direct marketing. The marketing materials described the insurance product as a diverse accident insurance product that improves financial security.

One consumer who bought the insurance contacted the Consumer Agency to express surprise at the insurance not covering the costs of treatment resulting from an accident. This did not become clear to the customer in question until after the accident. The brochures for the insurance product had conveyed an entirely different impression to the customer.

In Finland, accident insurance products generally cover the costs of treatment. This particular accident insurance, however, did not cover any costs of treatment beyond separately defined compensation hospital expenses.

The insurance product had been marketed as an accident insurance. In truth, the insurance was a limited type of additional insurance. The brochure included information on expenses covered by the policy. However, those details alone did not serve to help consumers understand the nature of the insurance product.

Both the marketing letter and the brochure included expressions suggesting that the product was specifically customised for valued loyal customers. This in itself can convey a misleading impression of the insurance product perhaps providing even better coverage and benefits compared to other types of accident insurance.

The company and insurance provider were reminded of the legal requirement that marketing must clearly and understandably communicate the nature of the insurance product in question. Unclear facts alone are not enough to meet the company's obligation to provide information. Providing misleading information on the type, quality and other key characteristics of a consumption good and the obligations of the business is against the law.

KUV/1396/41/2009

Monitoring campaign examined legislative compliance among quick credit companies

The majority of quick credit companies have not been in compliance with legislation in their field. Some of the problem areas include electronic identification, indicating the actual annual interest of the loan as well as SMS marketing. A few of the companies have still deposited the loaned amount to the customer's account at night.

New legislation that entered into force in February states that the actual annual interest must be disclosed in the marketing of all one-time credit. In a monitoring campaign by the Consumer Agency and the Data Protection Ombudsman last spring, 13 of the 80 inspected companies failed to provide information on the actual annual interest in the manner required.

The interest rate must always be disclosed when marketing specifies the amount of credit in question. The monitoring sweep revealed that most of the companies disclosed the actual interest rate, but only in their terms and conditions. This is not enough. The interest rate must be clearly displayed next to the amount of credit.

On some of the quick credit companies' websites, the actual annual interest rate was behind a link such as "Costs and prices". This would be easily remedied by adding the words "Actual annual interest rate" in the title. The requirement to disclose the actual annual interest rate applies to all marketing. It is not dependent on the medium used. For instance, outdoor billboards and posters on lamp posts are no exceptions to the rule.

No more credit at night, terms and conditions shown in advance

The new provisions in the Consumer Protection Act prohibit creditors from depositing loans in customers' accounts at night. If a customer applies for credit after eleven o'clock at night, the company may only deposit the borrowed funds in the customer's account after seven o'clock in the morning. Four of the monitored companies continued to deposit loans on customer accounts at night.

The campaign also focused on whether the companies send contract terms to customers prior to concluding the agreement. Despite the fact that this has been a legislative requirement since 2005, some companies still fail to do so.

Text messages to wrong recipients

Many consumers have received SMS marketing from quick loan companies despite never having been in a contractual relationship with the advertiser. In addition to advertising, consumers are also offered additional payment time, which can be applied for by replying to a text message that involves extra messaging charges. This even happened to consumers who had never taken a loan from the companies in question.

The monitoring campaign also indicated that the customer registers of quick loan companies are not current. Consumers who changed their mobile phone numbers have received text messages from quick loan companies concerning invoicing and debt collection as well as SMS advertisements due to the previous owner of the phone number having been a customer of a quick loan company.

Under the Act on the Protection of Privacy in Electronic Communications, a consumer may not be sent direct marketing materials by e-mail or SMS without the recipient's prior consent. The contact information received from a consumer in conjunction with a sales transaction can be used in the direct marketing of similar products and services. Customers must be given the opportunity to refuse the use of their contact information both at the time of purchasing the product or service and in conjunction with each message sent. The company must ensure that the customer relationship is still valid and that the consumer has given their consent.

Quick loans must use two-factor identification

Starting last February, quick loan companies have not been allowed to grant credit electronically without using a two-factor identification method. What does this mean?

In two-factor electronic identification, a person is identified on the basis of a reliable electronic method. At the same time, the authenticity of the provided identification is verified. When two-factor identification is used, the method of identification and its use can always be linked with the credit applicant's real identity. Identification methods included in the register maintained by the Finnish Communications Regulatory Authority automatically meet these statutory requirements.

In the monitoring sweep of the quick loan industry carried out by authorities last spring it was revealed that only 30 of the 80 monitored companies identified credit applicants in the manner required by law. Many of the companies left the identification up to the customer. For instance, customers were given the opportunity to choose whether or not to use their online banking identification when applying for a loan.

According to law, credit companies must appropriately verify the identity of not only all new customers, but also all previous customers with whom the company has prior transactions before February 2010 and who apply for new credit.

Due to the fact that technological development is continuous, the Consumer Protection Act does not specify a concrete method of reliable verification of identity. Initial verification of identity must always happen in person. The customer's identity is verified for instance by using a passport or a personal ID card issued by the police. It is no longer sufficient to have the credit applicant send a signed agreement along with a photocopy of an ID card to the lender.

No alternatives for two-factor identification

The monitoring sweep indicated that many quick loan companies had implemented the Tupas authentication method of Finnish banks. However, credit applicants were also offered weaker authentication methods as alternatives, for instance simply filling out an electronic credit application.

Initial electronic authentication of an applicant's identity must always be based on two-factor identification. It cannot simply be offered as an alternative authentication method.

The quick loan company comparing the credit applicant's information with the information of the owner of the telephone connection does not count as acceptable two-factor identification, nor does comparing bank account information and mobile phone subscription information.

The Consumer Protection Act states that creditors must diligently verify a credit applicant's identity prior to concluding a credit agreement. If identity is verified electronically, the creditor must use an identification method that meets the statutory requirements concerning two-factor electronic identification and electronic signatures. At present, these methods include Tupas authentication and authentication maintained by the Population Register Centre, for instance on bank cards and personal ID cards. The Finnish Communications Regulatory Authority maintains a public register of companies and organisations offering electronic authentication and certification services.

Two-factor identification is based on something the user knows (e.g. a PIN code), something the user owns, for instance a list of passwords, or something the user is, such as a fingerprint.

Two of these factors must be present simultaneously for a system to meet the definition of two-factor identification. Creditors who use an identification method that is not listed in the register maintained by the Finnish Communications Regulatory Authority must provide evidence of the method's compliance with legislative requirements.

The Consumer Agency and industry participants prepared joint guidelines in January 2010 on how the energy efficiency labels of new cars can be used in marketing. Identity can be authenticated, for instance, by a personal security code created for the customer.

Duration of repayment programme for debt adjustment shortened to three years

The entry into force in the beginning of August of a legislative amendment concerning the duration of repayment programmes for debt adjustment saw their duration shortened to three years. The duration of zero programmes and repayment programmes confirmed despite obstacles to payment, however, remain at five years.

The normal duration of a repayment programme for an individual in debt adjustment is now three years instead of five. If a debtor's ability to pay is non-existent or debt adjustment has been granted despite obstacles, the duration of the repayment programme is five years as before. However, if the debtor is permanently unable to repay the loan due to illness, age or similar reason, the repayment programme can be shorter than five years. The amendment does not apply to repayment programmes confirmed prior to the amendment's entry into force.

The Consumer Agency was in favour of the amendment. The clear objective of the legislative reform is to speed up the process of having excessively indebted persons restored as active operators in society. When the legislative reform was circulated in parliamentary committees, however, the Consumer Agency highlighted the need to give more consideration to the position of a private debtor, such as a guarantor. The committee took note of this and the legislative proposal was changed in Parliament. The Parliament amended the provisions concerning the extension of a repayment programme for the benefit of a private debtor in such a way as to ease the requirements for extension to improve the position of private debtors.

The Consumer Agency also called the parliamentary committee's attention to the possibility to leave room for flexibility in the legislative provisions concerning the general three-year duration for debt adjustment in exceptional cases. This might apply in cases where the debtor has paid off a debt during an extended debt adjustment process due to petitions for changes.

This opportunity for flexibility did not, however, get included in the provision. The repayment programme for debt adjustment still can't be shorter than three years.

The legislative amendment is part of a broader reform of the Act on the Adjustment of the Debts of a Private Individual. The Ministry of Finance set a working group in 2009 to prepare the legislative reform. The work will progress in two phases. The first phase focused on shortening the repayment programme. The legislative amendments related to this have now entered into force.

The working group is presently working on the second phase and its term will conclude at the end of the year. The Consumer Agency has expressed a number of views in the preparatory stages concerning the second phase of the working group. At this stage, the Act on debt adjustment is subject to a more comprehensive reform.

The Consumer Agency sees this as an important opportunity to focus on the prevention of debt problems, expediting the commencement of debt adjustment, taking excluded groups into consideration and amend the statute of limitations on receivables.

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More information:
Reform of the Act on the Adjustment of the Debts of a Private Individual is going ahead (Current Issues in Consumer Law 3/2010).

Payment Services Act entered into force - contract terms under review

The Payment Services Act entered into force in May with the exception of certain provisions subject to a transition period. The Consumer Agency has been in discussions with both the banking and telecommunications industries on a number of key issues.

The new provisions apply to payment services offered by banks, credit card companies and telecommunication service providers, such as account transfers, direct debit, card payments and certain mobile payments.

From the consumer's viewpoint the most important thing is that payment services are now broadly covered by law. Prior to the Act's entry into force, a lot depended on contracts between consumers and businesses.

The new provisions strengthen consumer rights or, in some cases, provide added detail regarding them. The new legislation includes more accurate provisions on, among other things, the obligation of businesses to provide information on agreements and payment transactions, the consumer's liability for unauthorised payment transactions, the creditor's right to terminate or interrupt service to a device used as a payment instrument and the amendment of contract terms.

The Act also includes provisions related to making payment traffic in the EU more efficient. The speed of domestic payments already met the standards required even before the new legislation.

The provision on liability for damages included in the Act was amended during parliamentary discussion as proposed by the Consumer Agency. The service provider's provision on the limitation of liability can only apply to indirect damages arising from the processing of payments. The Commerce Committee emphasised the need to monitor the markets and stated that there may be a need for further regulation.

Increasing differences between banks

The Consumer Agency's discussions with the banking industry have particularly focused on the application of the Payment Services Act on old contracts. This has included, among other things, questions of how the terms of old contracts can be amended based on the legislative reform and for other reasons.

Questions concerning the delivery of account statements have also surfaced repeatedly. If a bank wants to change the communication method previously agreed upon with old customers, it must first specifically agree on this with the customers concerned.

Last spring, the Consumer Agency issued comments on the standard terms and conditions of the Federation of Finnish Financial Services. The Agency called for particular attention on the wording of provisions pertaining to compensation for damages and the need to specify the relevant supervisory authorities in the terms and conditions. Content that is of high priority to consumers must be more clearly stated in contract terms. Having consumer rights only be expressed in legislation is not enough.

Several questions remain for individual banks to settle themselves. Two central questions are that of what alternatives are there for delivering a free-of-charge account statement to a customer and that of how long account statement information must be retained. These are governed by bank-specific terms.

Payment services undergoing changes

The Payment Services Act is the national implementation of the EU Payment Services Directive, which provides a consistent legislative framework to support SEPA, the Single Euro Payments Area. The implementation of the Single Euro Payments Area is presently in progress. Existing Finnish payment service services are gradually replaced by new European services. The Consumer Agency has been in discussions with various related parties on how these changes can be communicated to all those concerned in a timely manner.

More information:
Legal protection for paying by mobile phone still not up to standard (Current Issues in Consumer Law 7/2010).
Changes to payment services - what will happen to the account statement? (Current Issues in Consumer Law 5/2009).
New legislation to straighten out payment services (Current Issues in Consumer Law 2/2009).
Conflicting information disseminated on the discontinuing of direct debit (Press release 5 July 2010, in Finnish).

Joint liability of creditor and seller to remain

The general reform of consumer credit was approved by Parliament in June. The provision concerning the joint liability of the creditor and seller survived the reform.

During the legislative reform process there were discussions on whether the joint liability of the creditor and seller for a defective product purchased on credit should remain in force. In the end, the provision survived the reform, continuing to protect the consumer's position as before.

The Consumer Protection Act has included a provision since 1987 on the creditor's joint liability with a seller or service provider for defective products and delayed delivery.

This provision has proved very necessary for the legal position of consumers. If a product is defective or its delivery is delayed, the consumer is entitled to withhold payment at an amount corresponding to the magnitude of the defect. This is one of the most effective weapons in the consumer's arsenal for having the seller remedy a problem. This right would practically lose all significance if it only applied to the seller and the purchase price would have to be paid to the creditor regardless of defects or delayed delivery.

Co-operation gives rise to responsibility

In a credit society retailers' own credit services and paying in instalments have become uncommon. Most purchases are paid for by general purpose credit cards. Consumers are encouraged to buy on credit through both highly visible marketing for credit and co-operation between retailers and creditors. Financing plays a visible role in a lot of advertising, especially for furniture, home appliances and cars. A consumer who is about to get his or her first credit card may be able to purchase the first home appliance or piece of furniture they buy on credit at a rate that is lower than the normal interest rate.

The joint liability to the consumer is a logical consequence of the close co-operation between credit companies and retailers. The Supreme Court of Finland has also justified the application of the joint liability provision to credit cards by the closeness of the co-operation between creditors and retailers.

Credit companies can choose which retailers they partner with. If a creditor observes illegal or inappropriate practices in a retailer's operations, the right to accept credit card payments can be terminated. For instance, in the United States, Visa discontinued partnerships with a hundred retailers that had charged consumers for products they had not intended to order.

In June 2010, the Parliament approved the government proposal on the general reform of consumer credit legislation. The purpose of the reform is to implement the EU directive on consumer credit agreements.

Complaints can be filed with the credit company

The consumer has the right to choose whether to address claims to the credit card company or the seller when making a complaint.

A consumer had ordered an item from an American website after reading the marketing messages and thinking that it was a free trial. Later, the consumer noticed a monthly charge of USD 4.99 on his Visa bill. The Finnish card payment service provider Luottokunta informed the consumer that it cannot stop the service provider from charging the consumer's Visa card.

However, the consumer has the right to choose whether to turn to the retailer or the creditor in case of problems. If a consumer files a complaint with the credit company, it is obligated to resolve the issue. The creditor is also responsible for refunding the purchase price and consequences the seller's breach of contract has for the consumer, if the seller does not take care of these**.**

Supreme Court decision on a credit company's liability

The Supreme Court of Finland has issued a decision related to the Consumer Protection Act provision in question. The case involved a consumer having ordered items from a foreign seller and paying by Visa card. Despite the consumer's repeated enquiries and complaints, the seller never delivered the products ordered. The consumer filed a complaint with Luottokunta, demanding a refund of the purchase price.

According to the Supreme Court decision, Luottokunta was liable for the seller's breach of contract against the card holder under the Consumer Protection Act. Luottokunta was ordered to pay the consumer the purchase price paid to the seller plus penalty interest.

The Supreme Court stated that the consumer had the right to make the same demands concerning withholding of payment, refund of the sales price, compensation for damages or other forms of monetary compensation to the creditor that financed the purchase of a consumer good as he would be entitled to make against the seller.

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The task of the Finnish Consumer Agency is to safeguard and strengthen consumers' position in society. The Director General of the Consumer Agency also acts as the Consumer Ombudsman, and the Ombudsman's tasks are included in the activities of the Agency.

The Ombudsman's responsibilities are to monitor and enhance the legal position of consumers, and to ensure that marketing and contractual terms comply with the rules. Matters concerning warranties and collections from consumers are also within the Ombudsman's jurisdiction. The Ombudsman may also assist consumers in court.

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