Toynbee Hall

Response to Money and Mental Health's In Control consultation

About us

Toynbee Hall has worked on the frontline in the struggle against poverty for 130 years. Based in the East End of London we give some of the UK's most deprived communities a voice, providing access to free advice and support and working together to tackle social injustice. Toynbee Hall helps over 13,000 people a year.

We are also leaders in the UK's financial inclusion, capability and debt advice sectors. Our years of experience in providing people with the skills to improve their financial health means that we are in an ideal position to help others improve their financial health policies and practice.

In November 2015 Toynbee Hall launched the Financial Health Exchange, a network of professionals across the UK who are engaged in financial health work. Through the Financial Health Exchange we help policy-makers and practitioners stay up to date on the latest financial health thinking and ensure that financial health good practice is followed in all of their work with clients and service users. Our publications, research, good practice examples and thought-leadership pieces are accessible to all those who want to improve the financial health of others. We currently have over 400 members from across the sector including: housing associations, advice agencies, local community charities, financial services, local authorities, and research/policy professionals.

Barriers to removing self-restrictions

Question 1: What are the risks and benefits of each approach, and what legal or regulatory protections would need to be included for each level of friction?

We have assessed, and provided comment for, each level of friction for risks and benefits:

Double-confirmation by the user required to remove restrictions

Risks: an individual experiencing a manic episode, for whom spending or over-spending is common occurrence, may simply be able to navigate the double-confirmation system and spend regardless.

Benefits: This option gives an adequate level of friction without jeopardising personal freedoms. A similar concept is that of the "Double Opt-In" (DOI), which is most commonly used for security reasons with email addresses. From what we understand, in the context of an online subscription a new subscriber gets an email list gets a confirmation email telling them they will begin to receive emails if they take no action. This level of security seems to be very popular among online subscriptions. A variant on this could really work in the context of consumers wishing for more friction online, however we would stop short of advocating this completely without more evidence.

Alerts to a third party when restrictions removed

Risks: An individual might not have a trusted third party they could rely on, or a third party could attempt to coerce an individual in need. Sadly we know of instances where relatives and caregivers become perpetrators of financial crime (see for example Johnson (2003): http://www.popcenter.org/problems/crimes_against_elderly/) so any reliance on trusted third parties should be mindful of this often unseen reality.

Benefits: This would provide a fail-safe in case the individual in need manages to find a way to "beat the system" and exploit a loophole allowing them to remove restrictions or 'leapfrog' the friction.

Mandatory cooling off period before restrictions removed

Risks: Companies may wish to restrict the ability to do this in order to reduce occurrences of "buyer's remorse". In which case, evidence to prove why an individual would need to have a mandatory cooling off period could become intrusive and work better for some rather than others.

Benefits: Increases the chances that episodes have been managed before the full transaction has become irreversible.

Cognitive/mental capacity assessment before restrictions removed

Risks: This could be extremely time-consuming, which may put off some companies who support some sort of intervention, and could prove rather intrusive for individual consumers.

Benefits: This will be the surest way of accuracy over a situation of over-spending.

Third party sign-off before restrictions removed

Risks: The same risks here apply to our previous answer on the role of third parties: an individual might not have a trusted third party they could rely on, or a third party could attempt to coerce an individual in need. Sadly we know of instances where relatives and caregivers become perpetrators of financial crime (see for example Johnson (2003): http://www.popcenter.org/problems/crimes_against_elderly/) so any reliance on trusted third parties should be mindful of this often unseen reality.

Benefits: This would relatively straightforward to enforce, notwithstanding the above risks, and would guarantee peer/familial input into the spending behaviours of those at risk.

Restrictions permanently applied

Risks: This would be too rigid and, while probably well-meaning, risks removing the autonomy of individuals to act in a responsible manner as consumers. Therefore the experience of having permanent restrictions could be discomforting. We would also like to make clear our position that just because someone has a mental health problem this does not mean they are unable to manage their finances. We just want to see the appropriate protections in place to ensure people don't be put in difficult financial positions because of their conditions.

Benefits: It would save time for companies, though perhaps at the expense of the above risks.

Question 4: What scope is there for better capacity assessment (eg online) in credit processes?

It makes for very worrying reading that 50 per cent of people surveyed by MoneySavingExpert.com in 2011 with a mental health problem also had a serious debt problem. This shows that the two problems are not just being tenuously tacked together.

As we are sure any regulator would approve of, we at Toynbee Hall would expect creditors to take the specific circumstances of such borrowers into account upon considering an applications for consumer credit, including, in the words of the former consumer credit regulator, the Office of Fair Trading, "when considering what steps they might take with a view to better enabling such borrowers to make an informed borrowing decision." Any creditor should be mindful of a prospective borrower's circumstances at the time at which their credit application is made. We believe that "affordability" should include an assessment of the impact on the borrower's overall financial circumstances, not just whether they can find the money to make the repayments.

We are aware that the Consumer Credit Act specifies that a creditor takes appropriate steps to take a view as to whether or not the borrower appears able to understand, remember, and weigh-up the information and explanations provided to him, and, when having done so, make an informed borrowing decision. We agree with this in principle and in action.

Our primary concern is that while creditors *ought* to be taking these appropriate steps, in reality they are not. This then becomes an issue not so much of changing legislation, but enforcing existing regulation. We are thinking in particular of firms that fail to take into consideration certain vulnerabilities at the point of sale such as mental health difficulties or learning difficulties (see for example p.12 of this report: https://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/Payday%20Loan%20Report%202.pdf).

We would also like to make it very clear that in addition to seeing online credit processes and applications improve to assess capacity issues, so too should representatives of the debt collection industry. This would include communication between lenders and the third parties they use for debt collection. There are many anecdotal instances of a breakdown in the rules around treating customers fairly, particularly those whose mental health means they need particular treatment, by debt management companies. Here we refer to a complaint published by the Financial Ombudsman Service and upheld (see 119/9: http://www.financial-ombudsman.org.uk/publications/ombudsman-news/119/119-short-term-credit.html):

> During a period of poor mental health, Mr S was sectioned under the Mental Health Act and admitted to a psychiatric ward. While he was in hospital, his mother, Mrs S, found out that he had borrowed £100 from a short-term lender shortly before he was sectioned. The loan was due to be repaid before Mr S would be discharged.
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> Mrs S phoned the lender to explain what had happened – and asked them to stop interest and charges being applied to the loan. When the lender told Mrs S that they needed medical evidence about her son's situation, she gave them contact details for Mr S's doctor. But the lender said that they couldn't contact third parties because of data protection issues.
>
> In the meantime, the lender had been sending Mr S – who was still in hospital – frequent text messages about the loan. Worried about the impact of the situation on her son's health, Mrs S found the money to clear the loan account herself. Then, with Mr S's agreement, she complained to the lender. She said that Mr S shouldn't have been given a loan in the first place – and in any case, he shouldn't have been harassed while he was in hospital.

However, the lender defended their decision to lend to Mr S – and wouldn't refund the loan, interest or charges. Mrs S didn't think this was right and referred the matter to us.

Self-exclusion from Credit

Question 5: Are lenders, regulators or consumers aware of any instances where credit is given in contravention of a Notice of Correction requesting no lending?

While we have no direct evidence to suggest that lenders are providing credit in contravention of a Notice of Correction (NoC), we would point out the ample evidence that some lenders are not using credit reference agencies at all as part of their credit checks on consumers. From this, we can in turn assume that these lenders are ignoring any points of notice that consumers themselves are adding to their own credit files in the form of an NoC.

Historic evidence provides many instances of where payday lenders, for example, were failing to carry out thorough credit checks on applicants. The previous consumer credit regulator, the OFT, accused payday lenders of relying on continuous payment authority (CPA) payments rather than paying for affordability checks on prospective borrowers. This led to many customers' bank accounts being drained.

As regulation over the payday loans industry, under the Financial Conduct Authority, has got tougher we hope the worst excesses of that industry have ground to a halt. However recent evidence of Citizens Advice clients shows that such lenders are still failing to carry out credit checks on all borrowers in 2016 (see: https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/payday-lenders-still-failing-to-carry-out-credit-checks-on-all-borrowers/). If this is the case we are worried that those lenders could miss NoCs and be lending irresponsibly to people who would want to make it known to creditors that more caution and care should be taken with their application.

Question 6: How can we make it easier for consumers to add a Notice of Correction to their file?

Many Britons are unsure of the details around their credit score. A recent Which? survey found for example that 53 per cent said they had never checked their credit score or obtained a credit report, 77 per cent wrongly believed that banks had a uniform credit blacklist preventing consumers from getting loans anywhere, and 60 per cent felt credit reference agencies made decisions on whether banks provided credit or not. Toynbee Hall also knows that many low income households are unaware of their credit score, and many make decisions about their finances based on a negative assumption about their credit score.

We would recommend that in order to make it easier for consumers to add a Notice of Correction to their file a multi-agency approach is taken between campaigning organisations, think tanks, credit reference agencies and charities such as our own at Toynbee Hall who work with people in deprived communities manage their money as best they can. This should include facilitating a dialogue between the credit reference agency and the consumer about the query/correction, rather than the current rather static process.

Question 7: How can we make it possible for consumers to prevent themselves from removing such a notification from their file? Suggestions from consumers include:

• Third party approval

• A time-delay before the notification is removed

• **A cognitive capacity assessment.**

We would strongly recommend gathering more evidence for advocating both third party approval (as well as strictly defining who a third party can be) and a time-delay. We feel that though this means more work for the likes of credit reference agencies and banks, it needs to be done as part of a commitment towards treating customers fairly.

Question 8: How can we create a self-exclusion regime that applies to lenders who do not use Credit Reference Agencies? Would a standalone register outside the CRA process of people who did not want to be offered credit be more or less effective and appropriate?

If lenders are not using credit reference agencies then regulators need to make sure that they are asking relevant questions as part of an general/affordability assessment, considerate of sensitivities and privacy.

Where a person wants to proactively register themselves onto a self-exclusion database, we would be very interested to see what the Financial Conduct Authority says about the collection and distribution of such a register, including privacy issues, before advocating on one side or another.

Question 9: How could a consumer define the forms of credit from which they wish to self-exclude?

We would expect consumers in this context to define the forms of credit as those which they have readily available access to. Given its historical controversies around this issue, we would expect consumers to focus on forms of consumer credit that have historically been the easiest to access in general and which offer a level of anonymity that many other forms of credit do not. A payday loan may be a good example of this.

Question 10: How could this restriction be managed as part of responsible lending processes?

We would hope that lenders could identify themselves as being a potential target for people who want to, in certain instances of their lives, easily access credit. Forms of credit that advertise as being near-frictionless and relatively easy to access, such as a payday loan, may wish to proactively revise their policies on consumer self-exclusion and restrictions to take into consideration the potential risks of their product/service being accessed by someone, for example, experiencing an manic episode.

Question 11: How could individuals block themselves from making credit applications online?

Internet Service Providers could make it easier for individuals to identify and block certain websites based on certain terms, for example “online loan application” or “online credit application”. Lifting this restriction could be subject to the Double-Confirmation requirement discussed at the beginning of this response.

Question 13: How can we incentivise companies to develop more products that offer consumers a wide range of money management options, and how can we incentivise consumers to make greater use of those products?

A key issue is to examine the role of competition in the market in meeting needs. We tend to assume that a competitive market will work well enough to meet needs, and thus assume that competition is the most appropriate market tool to address new or unmet needs. Yet we know that this is not always the case; for example, banks needed a clear requirement from HMT to address detriments arising for low income and vulnerable consumers in the Basic Bank Account market, and the Payment Systems Regulator has recognised that competition is failing to work effectively in meeting payment needs and has thus established the Payments Strategy Forum and tasked it to identify where collaboration/cooperation is required to enable the industry to meet user needs. Many financial services providers have told us that they see money management tools as an area for creating competitive advantage. We would argue that this is failing to understand that the design of financial products has a direct impact on their users' financial health, and thus there is a responsibility on all providers to design products in such a way as to support good financial health for their users. So we think there is room for a debate over whether such money management tools are in the competitive or collaborative space, and whether there is a regulatory role to ensure that providers understand their responsibilities in this area.

Users are simply humans; we are most likely to use tools that are simple and effective. Thus the most effective way to incentivise users to use money management tools is to ensure that designers understand people's real needs and preferences. We see too many financial tools designed in response to new technology, rather than placing the intended user at the heart of the design. So encouraging the industry to move to human-centred design which is truly inclusive (and not just for "people like us") is the single most important factor.

Question 15: What further tools can be developed to help people monitor their behaviour with the introduction of the Open Banking API standard?

Most obviously we would welcome tools which allow people to view their financial patterns across all their financial products and services, and which alerts them to specific times or locations, or relationships between spending "moments", so they can understand how their behaviour changes depending on time/geography/co-location of either. For example, being able to identify that unplanned spending is clustered around certain locations or times, or that a particular type of expenditure appears to trigger other spending, would give users the knowledge to adapt their behaviour. Example: We developed a protype app which low income cash budgeters used to track their spending, including noting activities, times and locations. One user was able to identify how much unplanned money she spent on the journey home from school with her children due to their persistent requests for sweets etc, and alter her behaviour accordingly, instead taking cheaper and healthier snacks with her. She has now reduced this type of expenditure and identified that emotional pressure from her children tends to lead to overspending. Similar time/date/geolocation data could help users understand their spending in the context of their wider lives and thus identify patterns.

Question 16: What capacity is there to allow people to describe and notify their financial institution of their own patterns of behaviour when unwell – spending money at a particular merchant category or withdrawing cash on a credit card, for example?

The Consumer Credit Act specifies that a creditor takes appropriate steps to take a view as to whether or not the borrower appears able to understand, remember, and weigh-up the information and explanations provided to him, and, when having done so, make an informed borrowing decision. However we know that individuals will also want to be proactive in how they communicate with their financial institution. As such, financial institutions should consider what ways they can explore making it easier for their customers to pass on information about mental health issues, in a way that is sensitive to the personal nature of the request.

We at Toynbee Hall are very keen to see (and gather) more evidence on the success of "high control options" for banks which allows them to spot unusual spending patterns and put blocks on any further spending. Toynbee Hall would be interested to help provide evidence for how long an account should be frozen for in the event that a bank spots unusual spending patterns.

Question 17: What are the limitations and barriers to creating restrictions - including with a third party involved - that kick in when financial behaviour appears risky?

It’s very possible that creating restrictions to unusual financial behaviour would become too rigid and, while probably well-meaning, risks removing the autonomy of individuals to act in a responsible manner as consumers. Therefore, as we’ve mentioned before, the experience of having permanent restrictions could be discomforting. This is why Toynbee Hall would like to see more evidence become available looking at what the most appropriate length of time should be for a frozen account. We would also be interested, with our network and community, to be a participant organisation testing this issue.