

Current issues IN CONSUMER LAW

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EDITORIAL

Consumers want value for their money

Some operators, both major and minor, appear to have problems complying with consumer legislation in financial services. The Finnish Consumer Ombudsman regularly finds it necessary to approach companies in this sector about such aspects as the marketing and collection of consumer loans and minor loans and various basic issues related to banking services in order to ensure that they comply with the law in their operations and that consumer rights are respected as intended by the legislator.

This issue of our online publication focuses on financial services, or payments, loans and banking services, and the contract terms and marketing of such services. These issues are an elemental part of the every-day lives of many consumers.

In financial services – similarly to communication services – we also take to the Market Court cases that are about particularly important questions of principle. A Market Court ruling on whether or not companies providing utility services are entitled to charge a fee for paper invoices is expected in spring 2014.

Before the provision of Finnish direct debit services is discontinued in early 2014, companies have the possibility of using a conversion service to replace consumers' direct debit services by e-invoices and direct payments. During this conversion, particular attention must be focused on special groups. As not everybody is using online banking, services must also be secured for those consumers for whom a paper invoice or visiting a branch is the best option.

In 2013, consumers have come across many questions related to selecting a payment method, while they have also had to weigh whether or not the fees charged for banking services are reasonable. Earlier this year, certain banks modified the contract terms of their services in Finland, in some cases increasing the various service charges paid by the consumers in a month many-fold depending on what types of card and loan combinations or prior customer discounts the customers had. At the yearly level, these will add up to considerable sums of money. Whether or not the terms of modifying contract terms are reasonable will be decided by the Market Court if necessary.

The availability of online banking IDs has re-emerged this autumn. The Finnish Consumer Ombudsman has brought this theme up repeatedly over the years, and the Finnish Competition and Consumer Authority's statement on the proposal for an EU payment services directive was in favour of this issue. Under the proposal for a directive, online banking should be part of basic banking services. This theme is discussed in greater detail later in this issue of our online publication.

In addition to ensuring the availability of banking services, online banking IDs were also highlighted in the Finnish Consumer Ombudsman's theses issued during the Finnish Competition and Consumer Authority's FCCA stakeholder day on 24 October 2013. The theses were selected on the basis of the reports made by thousands of consumer who contacted the Consumer Ombudsman in 2013, in which certain basic problems reoccur, despite the wide range of subjects. The theses will direct our activities in the years to come, and in addition to addressing acute market issues, the focus of our work will be on resolving these wider problems. Financial matters play an important role in the consumers' every-day lives, and several of the Consumer Ombudsman's six theses touch upon this theme.

Päivi Hentunen

The Finnish Consumer Ombudsman

[Consumer Ombudsman issues theses on improving the position of consumers.](#) FCCA Press release 24.10.2013.

COLUMN

The changing credit market

Lending is an area that has been supervised for some time and that continues to be supervised this year, with credit regulation having been amended as a consequence of the debt problems caused by instant loans. This was the third amendment related to instant loans since 2005, the year in which this type of credit came to the market.

The market situation of minor loans changed from the beginning of June 2013. The new interest ceiling regulation curtailed the offer of instant loans in their previous form. We can indeed ask if it is any longer relevant to even talk about an instant loan market. An instant loan usually refers to an unsecured one-time credit of short duration that is offered by mobile phone or on the Internet. Some of the lenders also continued offering loans of this type after June, but many companies have developed other credit products. Some of the actors stopped offering loans completely or for a time. Several companies have been removed from the register of lenders maintained by the Regional State Administrative Agency of Southwest Finland. The amendment's more long-term overall impact on the credit market remains to be seen.

In summer 2013, the Finnish Competition and Consumer Authority (FCCA) examined the websites of prior instant loan providers with the intention of checking compliance with the interest ceiling provision in particular. At the same time the Authority sought to ensure that the lenders do not break the law by using text messages subject to additional fees. As a result of this investigation, more than ten companies were sent a request for clarification stating that the information on their website indicates that the company does not comply with the interest ceiling. In one case, attention was also paid on illegal text message charges. These supervisory efforts have to a great extent already been completed, as the companies have modified their websites or taken them down.

However, various types of loan forms currently exist in the market which raise some questions, and an interpretations provided by the supervising authority is needed. The problem concerns assessing whether or not a certain credit product is subject to the interest ceiling regulation. The interest ceiling applies to loans where the amount borrowed or the credit limit is less than EUR 2,000. However, the credit ceiling is not applied to loans that have been granted for purchasing goods or services if the consumer is not offered the possibility of withdrawing cash. For example, the interest ceiling provisions cannot be evaded by ostensibly announcing a minimum credit limit of EUR 2,000 while restricting the consumer's right to use the credit up to the credit limit by contract terms or practices.

Requests for clarification have been sent to operators, for example concerning whether the credit limit advertised by the company is the genuine limit when the credit appears to be subject to various types of withdrawal restrictions. Clarification is also required for concepts where it is unclear whether the operator is offering individual one-off loans of a few hundred Euros to which the credit ceiling applies, or a genuine continuous credit contract, which is not subject to the interest ceiling provisions because of a credit limit of at least EUR 2,000. Information has also been requested from many companies about whether all costs have been appropriately included in the actual annual interest rate.

The amendment of June 2013 also laid down more stringent requirements concerning the evaluation of creditworthiness. The consumer's financial standing must now also be assessed in case of smaller loans, and checking for any payment default entries alone is not enough. The Finnish Consumer Ombudsman has requested information about the processes of certain companies, and the Ombudsman's opinions will in time be communicated to the entire sector.

Paula Hannula

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[Enforcement campaign reveals shortcomings in marketing of consumer credit](#). FCCA 30.5.2013.

[Police asked to investigate alleged usury](#) Current Issues in Consumer Law 7/2010

ENFORCEMENT CASES

A switch to e-invoices requires the consumer's active consent

The Finnish Consumer Ombudsman intervened in an e-invoice campaign where a company changed consumer customers' billing method based on their passive consent. The Consumer Ombudsman considered changing the billing method in a one-sided procedure unreasonable and found it a breach of the Communications Market Act and the Consumer Protection Act. The case also involved inappropriate action in a customer relationship.

Alerted by consumer reports, the Finnish Consumer Ombudsman investigated a joint e-invoice campaign of Elisa and Sampo Bank (currently Danske Bank). The campaign targeted Elisa's consumer customers who had an account and online banking services provided by Sampo Bank and who had previously within a certain period used online banking to pay their invoices to Elisa's account.

In the autumn of 2012, Sampo Bank sent to these consumers a letter announcing that in the future, they would be receiving e-invoices for Elisa Vahti or Viihde services, unless they specifically wished to continue receiving paper invoices. The customers were urged to inform Sampo Bank's customer service within two months in case they did not wish to have their paper invoices replaced by e-invoices.

Key contract terms cannot be modified one-sidedly

The payments and billing terms must be subject to as precise an agreement as any other conditions of a deal between a consumer and a company. The same general principles of modifying contract terms apply to them as to any other terms. As a rule, one party to the agreement cannot one-sidedly modify contract terms while a contractual relationship is valid.

Under the Communications Market Act, the telecommunications operator may only amend the terms, including payments, in a communications service agreement to the detriment of the customer in certain cases specified in the Act, including on grounds specified in the agreement terms. Even this is subject to the precondition that the content of the agreement does not essentially change as a whole. The policy of the Finnish Consumer Ombudsman is that if a company wishes to make essential changes to the detriment of the consumer in their contract terms, this will comprise a new contract offered by the company rather than a continuation of existing contracts.

The Consumer Ombudsman also notes that companies must respect the principle of fairness in their consumer relationships. Additionally, the ban on unreasonable contract terms laid down in the Consumer Protection Act also applies to contract term practices. The company must also comply with the principle of fairness when offering billing and payment options to consumers.

Is the change favourable to the consumer?

The Finnish Consumer Ombudsman primarily assessed the procedure for changing the billing method in the relationship between the company issuing the invoices, or Elisa, and their consumer customers. According to Elisa's statement, the switch to e-invoices was favourable to the customers, and this procedure would thus be permissible under Elisa's general contract terms and the Communications Market Act. The Consumer Ombudsman finds, however, that Elisa cannot know which customers find the switch to e-invoices favourable to them and which would prefer to continue receiving paper invoices.

Neither does the fact that a consumer has at a certain point in time used online banking services necessarily mean that the consumer in question would be willing to change billing methods. The

Consumer Ombudsman considers that converting paper invoices into e-invoices is an essential contract change, as billing is a key part of the service contract between the consumer and the company.

Active consent is the main rule in changes of billing method

The Consumer Ombudsman finds it inconsistent with the principles of contract law and unreasonable for consumers that the change of billing method – in this case, consent to receiving e-invoices – is associated with lack of action by consumers. On the other hand, consumers are expected to take action if they wish to continue the existing contract terms, or hold on to their prior billing method.

The Consumer Ombudsman's opinion is that the transition to e-invoices must be subject to a specific agreement between the company and the consumer customer. In other words, the consumers must actively accept the new billing method. E-invoices cannot be introduced in case of customers who remain passive.

The Consumer Ombudsman found Elisa's practice of one-sidedly modifying the contract terms concerning the billing method unreasonable and thus in breach of the Consumer Protection Act. It was also unreasonable for consumers in the sense that it constituted a breach of the Communications Market Act.

In spring 2013, Elisa stated to the Consumer Ombudsman that the company will no longer use campaigns of this type and that they will require the consumers to actively consent to the new billing method in the future. The Consumer Ombudsman also urged Danske Bank in the future to only agree upon e-invoicing campaigns that meet the requirements of the Consumer Protection Act with companies issuing invoices.

The Consumer Ombudsman had not previously expressed an opinion on an e-invoice campaign where the company would have changed the billing method of their consumer customers based on the passive consent of the consumers, and such campaigns have not been implemented in consumer relationships.

The Consumer Ombudsman has only approved of the silent consent method in the replacement of consumers' direct debit agreements by new services through the conversion service as the national direct debit system is about to be discontinued. In this case, the Consumer Ombudsman stressed the exceptional and one-off nature of this procedure warranted by an amendment in European legislation, under which national direct debit services will be discontinued by the end of January 2014.

[Controlled switch to e-billing](#). Current Issues in Consumer Law 6/2011

Legality of charging for paper invoices to be decided by the Market Court

The provision of national direct debit services will be discontinued in the EU area by the end of January 2014. For this reason, changes in billing methods are now topical for many consumers and companies. A conversion service will be used to replace old direct debit mandates by new services, such as direct payments and automatic payment of e-invoices, or paper invoices will be sent to the consumer. Some companies send out paper invoices free of charge, while some apply a charge.

Saunalahti (Elisa Oyj's auxiliary company name) has charged new customers a fee of EUR 0.95 for printed mobile telephone bills. Since April 2013, the fee charged Saunalahti's mobile customers for a paper invoice has been EUR 1.90/invoice. A great number of consumers have contacted the Finnish Consumer Ombudsman about paper invoices subject to a fee.

To obtain a preliminary ruling on the fees charged by the company for paper invoices, the Finnish Consumer Ombudsman took them to the Market Court in June 2013, demanding that the Market Court prohibit the company from applying a contract term under which it charges consumers a separate fee for a paper invoice. The main hearing at the Market Court will take place in early 2014.

Paper invoice is the normal billing method

In the Consumer Ombudsman's opinion, a paper invoice is the normal billing method for telephone subscriptions, and consequently, a separate fee may not be charged for it. The Consumer Ombudsman considers that charging a fee for a paper invoice is an unreasonable contract term in breach of the Consumer Protection Act. Some of the consumers do not have an Internet connection, the skills required to use online banking or even access to online banking IDs. No more can consumers be expected to start using new services or purchase new devices in order to make the switch to e-invoicing.

The billing method for a utility service must be fair

Due to their character, communication services, including telephone subscriptions, are utility services in the information society. A telephone subscription is a utility service for all types of user groups, including various special groups.

Using a billing method that offers equal access to all customers can be considered a basic requirement for utility services. Providers of utility services must offer the possibility of receiving paper invoices, and no separate fee may be charged for them. In addition, the so-called more vulnerable consumer groups may not be placed in a less favourable position in the contract terms of utility services than other consumer groups who have the possibility of and capabilities for using e-invoices as the billing method.

For many older people, a paper invoice is a necessity, as they either do not have a computer and an Internet connection, or they are unable to use them safely and effortlessly enough. A paper invoice can be entrusted to another person for payment without disclosing user names and passwords.

The basic elements of a contractual relationship cannot be priced separately

The Finnish Consumer Ombudsman finds it a fundamental principle of contract law that the basic elements of a contractual relationship, including signing a contract, cannot be productised and priced separately. In contracts where the buyer cannot perform their duty to make payments without first receiving a bill from the seller, this also applies to delivering the bill.

A payment protection policy may not be cancelled because the policy-holder is seeing a debt adviser

Consumers take out payment protection insurance to make sure that they can repay their loans in case their life situation changes. A company that brokered loan insurance policies asked customers to cancel their valid loan insurance policies that had been managed in compliance with the contract terms when a debt advisor had requested a balance statement for the customer. The wording of the request put the recipients under pressure to comply with it. This met the criteria for unreasonable contract practices and aggressive procedure and was in breach of good lending practices and consumer protection.

On the basis of observations made by financial and debt advisers, the Finnish Consumer Ombudsman investigated the actions of Finaref Oy in cancelling payment protection insurance policies. The insurance terms forwarded to the Consumer Ombudsman indicate that the provider of the loan on which the evaluation was based and the insurance agent for the payment protection insurance is Finaref Oy. The insurer is ACE European Group Limited.

Situations in which the insurer can cancel an insurance policy are specified in the legislation and the contract between the insurer and the policy-holder. However, under no circumstances does the insurer have a right to put pressure on consumers to cancel their insurance policies. As a basic assumption the policy-holder, or the consumer, has the right to cancel the insurance policy at any time during the insurance period.

In addition to the relevant special legislation, cancellations of payment protection policies, similarly to other insurance policies, must also be assessed in the light of the Consumer Protection Act. The procedure used to cancel the payment protection insurance may thus also fulfil the definition of prohibited aggressive procedure under the Consumer Protection Act.

Payment protection is needed when the consumer encounters difficulties with repayments

The purpose of the payment protection cover is to secure the repayment of a loan taken by the consumer in certain unexpected situations. For example, the consumer chooses a payment protection policy that covers the repayment of the loan in case of death, unemployment or disability. The insurance terms differ regarding the cover they provide.

The fact that the customer is seeing a financial or a debt adviser or that their payment arrangements are being examined for some other reason do not exclude the possibility of the policy-holder being affected by insured events cited in the insurance terms. In this case, the circumstances for which the payment protection policy was originally taken out would be realised.

Consumers may not be pressured to cancel a contract

Debt advisers send out balance statement requests to clarify the overall situation of their customer's debts. Finaref Oy asked their customers to cancel their payment protection insurance policies in cases where the company received a balance statement request concerning the customer in question from a debt adviser, or the customer had applied for voluntary debt arrangement. The wording of the letter concerning the cancellation put pressure on the consumer and exploited any payment difficulties they may have had.

If the consumer subsequently cancelled their payment protection policy under pressure from the insurance agent, their repayments of the loan were not covered, even if they had made payments in compliance with the contract terms while the payment protection policy was valid.

Contract term practices in which consumers are pressurised to cancel a payment protection insurance that has been managed in compliance with the contract terms must be considered unreasonable as referred to in the Consumer Protection Act.

The Finnish Consumer Ombudsman also notes that the mere request for a balance statement must not result in the insurance agent cancelling a payment protection policy or persuading the consumer to cancel the policy by putting pressure on them. Similar procedures in situations where the policy-holder goes for voluntary debt arrangement must also be assessed in the same way.

The duty of complying with responsible lending practices extends to all stages of the credit relationship from marketing to concluding the credit contract and resolving any problems. Among others, this means a responsible attitude towards insolvency procedures. The company put pressure on consumers to cancel their payment protection insurance when they encountered possible payment difficulties. The company's actions thus also were in breach of good lending practices and aggressive in the sense referred to in the Consumer Protection Act.

In summer 2013, the company undertook not to ask policy-holders to cancel their payment protection policies because a request for a balance statement has been made or because a consumer takes part in voluntary debt arrangement.

Revisions of regulations on marketing credit cards on line

A joint inspection sweep by EU consumer authorities on websites offering consumer loans led to a few further-reaching investigations in Finland as well. As a result of them, two banks fixed the way that they market credit cards to consumers on their web sites.

The aim of the inspection was to ascertain that the information that was given in the advertising of credit cards was in accordance with the Consumer Protection Act and the Consumer Credit Directive (2008/48/EC) with respect to the displaying of the name and geographical address of the creditor, and the possible impropriety of methods used in the marketing of the card.

In Finland, the Consumer Ombudsman investigated the pages of five different banks. The Consumer Ombudsman gave closer examination of the credit card marketing taking place on the websites of two banks.

The marketing of consumer loans has usually been examined in print, radio, and television, where the totalities of the advertising are clear. Web pages are multidimensional totalities, but this does not remove the requirement of clarity and ease of perception of the information that is given.

Online marketing has been increasingly present in decisions handed down by the Finnish Consumer Ombudsman, and for the first time, the Consumer Ombudsman examined the marketing of loans on the internet on the basis of Chapter 7, Section 8 of the Consumer Protection Act.

Information on loan conditions must be presented clearly to the consumer

The information in the marketing of consumer loans, as required by law, must be provided to the consumers in connection with the same marketing effort in which any item of information is given concerning the conditions of a loan agreement. In practice this means that if advertising - on a website in this case - displays a figure describing the costs levied on a loan, or some other information on the conditions of a loan agreement, the Consumer Protection Act requires that the real annual interest should be reported in the same connection. In addition, such advertising must also disclose all other information required by law.

The purpose of the mandatory disclosure of the information on the loan, and especially the real annual interest rate, is to facilitate making comparisons, and to ensure that the consumer has the possibility to calmly assess the need for the loan.

Legally mandatory information cannot be scattered over different web pages

When an advertisement for consumer loan provides information such as the amount of loan or the credit ceiling, the consumer must be given the other legally required information in such a way that he or she can find the information easily and can read it without difficulty. The consumer must not be required to take special action to get the information, and the consumer cannot be expected to look for the information.

The Consumer Ombudsman drew attention to the advertising of the Finnair Plus Visa card on the web pages of Sampo Bank (now Danske Bank) and the dispersal of legally required information over several pages. Some of the conditions of the credit agreement were described already on the front page but information of the real annual interest rate was given only on linked pages.

The Consumer Ombudsman emphasised that consumers must not be forced to search for legally required credit information, including example clauses, from any page other than the one where the credit information was given the first time. Attention needs to be paid to the distribution of information on a web site so that the real annual interest and other credit information is sufficiently conspicuous in relation to other information on the conditions of the credit agreement.

Loan costs must be disclosed in connection with discounts

The Consumer Ombudsman also took issue with the disconnectedness of the information, as well as other shortcomings in connection with the marketing of the MasterCard credit card on the Tapiola Bank website. The marketing of the credit card was dispersed over several pages, and neither the real annual interest of the consumer loan nor the interest rate of the loan could be found anywhere on the website other than in a separate PDF link.

Additional benefits of the credit card were presented on a separate page. The page contained information about the benefits offered by the company to its customers, which in the case of the credit card in question was a discount of 50 - 100 per cent in the annual fee. When evaluating the pages used in marketing the credit card as a whole, the additional benefits of the credit card were not inappropriately dominant.

However, the Consumer Ombudsman noted that in granting loan, good practice requires the disclosure of the costs, - that is, the information required by the Consumer Protection Act - on the same page alongside the discount. The discount in the annual fee specifically concerns the other credit costs mentioned in the Consumer Protection Act, and therefore, presenting the discount separately from the credit costs is not in line with good practice in granting credit. Drawing the consumer's attention exclusively to the discount that is offered, and not the cost of the credit, tends to significantly weaken the consumer's ability to give careful consideration to taking the credit.

A consumer cannot be asked to search for information in a link

Tapiola Bank rectified the shortcomings found by the Consumer Ombudsman by, among other things, cutting back on separate pages, and disclosing that the legally required information on the loan was available in a PDF link that opens at the bottom of the advertising page called "Standard European consumer credit information" as a PDF link. In addition, consumers are urged to examine the fees linked with the credit card, as well as a sample calculation on the real interest rate in the link in question.

However, the Consumer Ombudsman felt that in this case, it was not sufficient that the standard information of the loan needed to be found in a linked PDF file, in which the consumer needs to go to the second page of the document to find the information on the real annual interest.

Danske Bank and Tapiola Bank have made the changes required by the Consumer Ombudsman on the web pages marketing the credit cards in question, and the handling of the matter was concluded by both sides in the spring of 2013. Finland reported on the overall results of the inspection to the European Commission already in the autumn of 2012.

[Consumer Credit Directive \(2008/48/EC\)](#)

[EU Consumer Credit Sweep: Majority of websites offering credit are fine.](#) Finnish Consumer Agency press release 23.11.2012

Instant loan advertising flawed

The outdoor advertising campaign of a company offering small loans put a special emphasis on the time of payment. The other legally required information on the loan should have been disclosed in this connection. The advertising gave the impression that the loan would have been without cost and interest-free, although this was not the case. The same was repeated on the company's website. The advertising was in violation of both good practice in granting loans, and the Finnish Consumer Protection Act.

In the first half of 2013 the outdoor advertising campaign of Vipster Oy (vipster.fi) in the Helsinki region in Finland marketed free loan for seven days without giving information on the loan required by the disclosure obligation of the Consumer Protection Act, such as the real annual interest. The advertisement under evaluation stated that a "Quick loan costs nothing!" and in smaller print below that "Each time, a 7-day loan for free" and "0% interest/€costs". In addition, at the bottom of the signs in very small print it was stated, among other things, that the company offers customers loans of 50 - 1 000 Euros with a payback time of up to 90 days.

On the company's website, the loan was promoted in the early part of 2013 as follows: "Offer of the day: Now a 7-day loan for free!" and "Cost-free and interest-free 7-day loan". On the front page of the website there was also a loan calculator with a sample calculation for a loan of 500 Euros with a repayment time of 14 days. In fine print it was revealed that the real annual interest on the loan is 7382.84%. Additional information on interest was available from the adjacent link.

According to the company's website, the loan application was to be for 14 days, and if the money is paid back within 7 days there would be no costs. The advertised 7-day period of no cost therefore only applied to 14-day loan that was subject to a charge.

Loan information must be disclosed clearly and conspicuously

According to the Consumer Protection Act the real annual interest must be disclosed in advertising, if the advertising mentions a figure indicating the interest rate or other expense, or some other information referring to the conditions of the loan agreement. In such a case, the advertising must also indicate the interest and other expenses, the amount of loan, or the credit limit, the duration of the loan agreement, the cash price of the product, and the possible down payment and the combined amount of loan costs and the number of instalments.

The Finnish Market Court has ruled (MAO:224/12 and MAO:225/12) that a practice, in which a condition of the loan agreement is given in an advertisement for a loan, with nothing about the information listed in the Consumer Protection Act, or if the information is not stated in a clear and

easily noticeable manner, is in violation of the Consumer Protection Act. The second of the aforementioned rulings of the Market Court concerned a street advertisement in which information required by the Consumer Protection Act was disclosed in such a small font at the bottom edge of the poster that the presentation of the information fell short of the requirements of clarity and conspicuousness.

The campaign under investigation did not disclose all of the legally mandatory information concerning the loan, or it was presented in a considerably inconspicuous manner compared with the information of a 7-day free loan, or the lack of costs or interest-free nature of the loan. In the loan calculator on the front page of the website the real annual interest was also presented in a manner that was less conspicuous than the other credit information, such as the loan period or the amount of the loan. This was in violation of the Consumer Protection Act.

Responsible credit practice does not incite indebtedness

According to legislation on consumer loan, those offering the loans must act in a responsible manner, taking the interests of the consumer into consideration. Among other things, responsibility means, in practice, that advertising does not encourage consumers to take on poorly-considered debt, and that consumers should not be deprived of information that would help them evaluate the suitability of the loan for their own needs.

The advertising that was examined violated the Consumer Protection Act, as it did not disclose all of the legal information linked with the loan in a clear and easily discernible manner. In addition, deceptive information suggesting that the loan was cost-free and interest-free, and the prominent position that this information is given in the advertisements, distract the consumer's attention from the terms of repayment, and other conditions of the credit agreement, and consequently, of the significance of the credit arrangement for the consumer.

The company's marketing of the loan was in violation of good lending practice, and as such, was in violation of the Consumer Protection Act. The company has confirmed to the Consumer Ombudsman that it will not engage in such marketing again.

[Credit marketing still has room for improvement](#) Current Issues in Consumer Law 1/2013.

[Excessive charges for postponing debt settlement date abolished.](#) Current Issues in Consumer Law 2/2012.

[The Market Court finds two instant loan companies in violation of marketing legislation.](#) Finnish Consumer Agency Press release 21.6.2012.

Marketing ban over fine print in loan advertising

The Finnish Consumer Ombudsman has taken issue with the television advertising of two companies offering consumer loans, as the advertisements did not disclose significant information with sufficient clarity. The use of such so-called fine print in advertising has been condemned previously in decisions of both the Market Court and the Supreme Administrative Court. The Consumer Ombudsman imposed marketing bans on the companies.

Marketing methods are occasionally used in television advertising in which information that is significant from the point of view of the product or service, or the restrictions involving the offer are described in a very small font at the bottom of the screen. As a result of the use of this so-called fine print, the consumer cannot make proper comparisons between the prices of different services and products, and competition also suffers.

In the summer of 2013 the Consumer Ombudsman closely monitored television advertising, making note of the way the information was presented. Four advertisements arose, in which information was

not presented with as much clarity as the law would have required. Two of the advertisements involved consumer loans.

Sufficiently large font size required

In the television advertisements of Delta Motor Group and Santander Consumer Finance, with durations of between 15 and 20 seconds, the important information concerning the service and the loans were shown for a few seconds at the bottom of the screen in small print. The information could not be discerned from a normal TV viewing distance. Displaying the terms using a very small print size is the equivalent of not displaying the terms at all. The marketing was therefore in violation of the Consumer Protection Act.

The Consumer Ombudsman forbade companies from presenting information on the loan terms in the marketing of consumer loans, unless they also disclose information such as the real annual interest and other information required by law in a clear and easily recognisable manner. Failing to comply with the ruling is subject to a fine of 100 000 Euros. The companies did not oppose the marketing bans.

[The Consumer Ombudsman took DNA to Market Court for small print – marketing bans for Elisa, Santander and Delta Motor.](#) FCCA Press Release 17.10.2013.

Market Court forbids massive increase in overdue parking penalty

The Finnish Market Court forbade a private parking control company from imposing a condition in their consumer contract according to which an overdue violation fee of 40 Euros would be raised to 60 Euros. The Market Court found that the practice violated the Interest Act. Because of the contract clause, some drivers may have been compelled to pay the company an amount for the delay that exceeds the penalty interest set in the Interest Act.

Oy Parknet Ab, which is engaged in private parking control, has used an unreasonable stipulation in its consumer contracts, under which it has increased the penalty fees by 50 per cent if there is a delay in payment.

Procedure that violates the Finnish Interest Act

Regulations on interest to be paid on delayed payment are set in the Interest Act. As the contract condition used by the company has been in violation of the Interest Act, the condition has been unreasonable from the point of view of consumers.

The Finnish Consumer Ombudsman has held negotiations with the company in 2012 on the contract clause in question, and asked for clarification of how the company plans to refund the excess costs billed to the consumers. The company told the Consumer Ombudsman at that time that it feels that the procedure is not covered by the Consumer Protection Act, and it does not plan to take action on the matter. Because of this, the Consumer Ombudsman brought the matter before the Market Court in 2012, saying that the company should be ordered not to use the unreasonable and unlawful clause in the contracts that it produces.

The Market Court's decision came in October 2013. In its decision, the Market Court forbade the company from using the clause in question in its consumer contracts, under which the penalty fee is increased by 50 per cent in situations in which it becomes overdue. The company can appeal the

decision, but the prohibition took effect immediately. The deadline for asking for permission to appeal and making an appeal is 13 December 2013.

[Clear rules for parking control in private areas](#) Current Issues in Consumer Law 6/2012.

Consumer Ombudsman's new guideline on debt recovery for companies

The Finnish Debt Recovery Act was updated with new stipulations that took effect in March 2013. Key issues included the reduction of the maximum for collection charges, but at the same time qualifications were made to good practice in collection. Because of the changes in the legislation, the guideline for consumer protection on "Good collection practice in collection from consumers" is currently under consideration. The guideline has been open for comment on the website of the Finnish Consumer and Competition Authority and in addition, key parties were invited to a public hearing.

The hearings in September 2013 sparked discussion on a number of interesting and important themes, such as debt collection on those below legal age and on interpretations of good collection practice related to payment arrangements and debt settlements.

An updated guideline will be ready by the end of 2013. Guidelines for consumer protection made by the Consumer Ombudsman are intended for companies as a way of assisting in the planning of activities. They contain, in concentrated form, the most important regulations to be applied, their foundations, the stands taken by the Consumer Ombudsman and the decisions of the courts, that the guideline is based on.

[Key reforms in collection and instant loan legislation.](#) Current Issues in Consumer Law 1/2013.

[Guidelines for Consumer Protection by the Finnish Consumer Ombudsman.](#)

POSITION PAPERS

Support for improvements in consumer protection for payment services

A hearing was held in the Parliament's Commerce Committee in Finland October 2013 on a proposal for a directive on basic payment accounts. The Finnish Consumer Ombudsman supports the goals of the Commission's proposed directive to promote consumer protection by improving the possibilities to compare the prices of payment services, and the transferability and availability of payment account services. Under the proposal, online banking codes would also become part of basic payment account services.

The situation in Finland is generally good with respect to the availability of payment account services. There have been problems in getting user IDs for online banking, and they are not part of basic banking services that would be secured on the basis of national legislation. According to the proposed directive, an online banking ID would be part of basic the payment account service, which is worthy of support. The Consumer Ombudsman has long taken the view that online banking IDs are currently essential to all consumers.

A proposal by the Commission with respect to the availability of a basic payment account has certain characteristics that cannot be considered worthy of support. The aim, or the possible final outcome cannot be the establishment of separate basic payment accounts or special banks for providing payment services to a restricted group of consumers. Instead, the right of all consumers to basic payment services as part of regular bank account services needs to be secured. Limiting the consumer's right to just one basic payment account also cannot be seen as worthy of support.

Proposals by the Commission on the easy comparison of prices, such as an annual debit statement, can be supported from the point of view of consumer affairs.

There are parts in the proposed directive that are not compatible with principles of Finnish consumer law. The Finnish Competition and Consumer Authority notes in a statement that Article 11, which makes reference to termination fees, and Article 18, which concerns the unilateral conclusion of a framework agreement, should be affected through negotiations on the directive.

Uniform obligations for providers of payment services

A Parliamentary hearing has also been held about the Commission's proposal for a directive on payment services on the internal market, - that is, for a second payment service directive. In 2013 the Commission has put forward three key proposals, all of which are interlinked. In addition to the proposed directives on basic payment accounts and payment services, there is also a proposal for a decree on transfer prices, concerning issues related to payment by card.

A re-examination of the first payment service directive is necessary. The Finnish Consumer Ombudsman feels that it is especially important to clarify the coverage with respect to payment-type services offered by telecommunications service providers. It is important that all legislation should set common obligations and rights for providers of payment services regardless of, for instance, the background of the service provider or other activities. The parts of the proposed directive concerning so-called third parties, or overlay services, still require further consideration in the negotiation phase.

The aim of the proposed directive is to harmonise regulations on additional fees charged by merchants. It is important that the requirement for the approval of a single method of payment that is in general use without incurring an additional fee for the method of payment is considered, and that any additional fees should have cost correlation.

[Commission's attention to basic principles governing payment practices](#) Current Issues in Consumer Law 5/2012

Contract terms for financial services need to be reasonable for consumers

The Finnish Consumer Ombudsman has given the Financial Supervisory Authority a statement on regulations and instructions concerning customer agreements of financial services. Their aim is to present in a unified fashion the basic principles that are linked with the contract relationship between the provider of a financial service and the customer.

The law requires that the contractual terms that are used must not be unreasonable from the consumer's point of view. This is a starting point for the supervision of contract terms, and in the view of the Consumer Ombudsman, this starting point should be more conspicuous in the draft instruction.

The regulations and instructions of the Financial Supervisory Authority cover the agreements to be made with consumers, small enterprises that are comparable to consumers, and with non-professional investors. With respect to consumers, the question therefore involves the same contract relations, whose conditions, and whose methods used are supervised by the Consumer Ombudsman and the Financial Supervisory Authority on the basis of parallel jurisdiction. Supervisory authorities work in cooperation in their task.

In a statement on the matter, the Consumer Ombudsman drew attention to regulations concerning the unreasonableness of contract terms, and the aims of the draft, the uniformity of basic principles in all contracts, the principles governing the alteration of contract terms, unreasonable termination fees, special regulations on changes in interest rates, and other special regulations concerning changes in interest rates in Chapter 7 of the Finnish Consumer Protection Act.

In the statement the Consumer Ombudsman noted that a contract stipulation reserving the right to use a customer's credit as a guarantee for a bond backed by a real estate security with restrictions related to the right of setoff, can be seen as unreasonable in a consumer contract.

[Guidelines for the marketing of financial services](#). Current Issues in Consumer Law 1/2013
[The web pages of Financial Supervisory Authority Finland](#).

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The responsibilities of the Finnish Competition and Consumer Authority relate to implementing competition and consumer policy, ensuring good market performance, implementing competition legislation and EU competition rules, and securing the financial and legal position of the consumer. The agency also handles the supervision responsibilities of the Consumer Ombudsman.

The most essential responsibility of the Consumer Ombudsman is to supervise that the Consumer Protection Act and other laws passed to protect consumers are observed. Particular attention is paid to ensuring that marketing activities, contractual terms, and collection activities conform to the laws. The goal of the supervisory activities is to have the company cease or alter its marketing activities or unfair contractual terms so that they conform to current legislation.

According to law, the Consumer Ombudsman must be particularly active in areas that are of substantial importance to consumers or where problems can be presumed common to consumers. The focuses of the supervisory activities are to vary between different industries.

Further information: www.kkv.fi/en-GB/