Department for Business Innovation & Skills

GOVERNMENT RESPONSE TO THE CONSULTATION ON PROPOSALS TO BAN THE USE OF BILLS OF SALE FOR CONSUMER LENDING

JANUARY 2011

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Introduction

1. On 21 December 2009, the previous administration published a consultation on the proposal to ban the use of bills of sale for consumer lending. The consultation closed on 15 March 2010. This document is the Government response to that consultation.

2. A bill of sale, in the context of consumer lending, is used to secure a loan on an item of personal property, typically a car, most commonly where the consumer already owns the asset.

3. In 2009 there were about 38,200 registered bills of sale, compared to 27,900 in 2006. During the first six months of 2010, more than 19,000 new bills of sale were registered, which represents a similar level of use seen in the first half of 2008 and 2009. It is difficult to assess accurately the overall value of consumer loans secured through bills of sale, but we estimate that the size of the market in 2010 to be in the region of £38m-40m. Evidence provided to the Department during the consultation also indicates there has been an increase in the number of small businesses using bills of sale loans, with 18% of loans being advanced to small enterprises and sole traders.

4. The consultation was set in a backdrop of rising levels of consumer indebtedness, increasing consumer complaints about loans secured against a bill of sale, and concerns about the complexity and fairness of key features of this specialised loan. The consultation sought to explore concerns that bills of sale loans:

   - are unfair to consumers;
   - can lead to instances of severe consumer detriment;
   - put those in vulnerable circumstances at the risk of exploitation; and
   - are unsuitable instruments for consumer lending.

5. Four options were put forward as possible solutions to these problems (with the fourth option being the previous administration's preferred option):

   - Option 1 - Do nothing beyond forthcoming legislation and regulatory activity;
   - Option 2 - Introduce a voluntary code of practice and other non-statutory requirements;
   - Option 3 - Reform the Bills of Sale legislation[1] to make it more appropriate for consumer lending;
   - Option 4 - Ban the use of bills of sale for the purpose of consumer lending.

6. Following detailed consideration of all the responses to the consultation, the Government has decided not to regulate at this time and will give the industry a chance to put its own

[1] Bills of Sale Act 1878 and Bills of Sale Act (1878) Amendment Act 1882

house in order. The second option in the consultation is the Governments preferred option.

7. The consultation asked 16 questions covering a range of issues. A list of the consultation questions is attached at Annex A. Over the period of the consultation we received 39 formal responses from a range of lenders, consumer groups, legal experts and enforcement agencies. All of these have been read and analysed by BIS officials to inform our thinking on this matter and have been taken into account in the Government response. A list of those who responded, excluding those who responded in a confidential capacity, can be found at Annex B

8. To supplement the consultation process, BIS officials held a series of meetings and workshops with a number of relevant organisations. BIS officials also held a series of meetings on an individual basis with industry participants, legal experts and enforcement agencies.

9. In addition to the formal consultation BIS also incorporated questions about bills of sale into the quarterly YouGov DebtTrack (YDT) survey. It should however be noted that due to the low incidence of borrowing at the national level, the sample size is too small for robust analysis. The survey showed that less than one quarter of the logbook loan borrowers indicated that they were “quite dissatisfied” with the loan whilst no one was “very dissatisfied”. The survey also showed that more than half of consumers borrowing with a logbook loan had a poor or very poor understanding about the circumstances in which their vehicle could be repossessed.

10. Of the organisations and individuals who responded to the consultation, two were in favour of option 1 (do nothing beyond forthcoming legislation), thirteen were in favour of option 2 (introduce a voluntary code of practice), twenty were in favour of option 3 (reform of the Bills of Sale Acts) and sixteen were in favour of option 4 (ban of the use of bills of sale for the purposes of consumer lending). One respondent did not express a preference. It is worth noting that a number of respondents expressed a preference for a combination of two options, typically a combination of option two and three.

11. The Government is grateful for all the consultation responses received and comments made directly to BIS. We recognise that ideally Government would have responded to the consultation earlier. However, the consultation showed that this is a complicated area with many different opinions and views on the best way forward. This is also a different administration to that which issued the consultation, with a stronger emphasis on exploring non-legislative solutions.[2]

12. The Government would like to take this opportunity to correct two errors in the consultation document. Firstly, in paragraph 32 of the consultation document, the total cost of a typical £750 loan over 6 months is given as £3,000. The correct figure is likely to be £1,300 - £1,500. Secondly, paragraph 33 of the consultation document says that in some cases a lender who repossesses a vehicle and sells it may recoup more than the value of the loan and keep the surplus. In fact, as with the sale of any security, the lender would have to return the surplus to the borrower, as it would be illegal for the lender to keep it.

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[2] Figures quoted add up to more than the total number of respondents as number of respondents expressed a preference for more then one option.

Summary of responses

13. We will now set out the views of the respondents to the four options proposed in the consultation document:

    1. Do nothing beyond forthcoming legislation and regulatory activity

    2. Introduce a voluntary code of practice and other non-statutory requirements

    3. Reform the Bills of Sale legislation to make it more appropriate for consumer lending.

    4. Ban the use of bills of sale for the purpose of consumer lending

Option 1: Do nothing beyond forthcoming legislation and regulatory activity

14. This option was very unpopular with consumer groups and enforcers/experts.

15. Of the lenders who responded, only one cited option 1 alone as their preferred option, stating that existing legislation and the forthcoming EU Consumer Credit Directive (CCD) coupled with enforcement powers the Office of Fair Trading (OFT) already has to address rogue lenders was sufficient.

16. Consumer groups and enforcers/experts were not convinced that the forthcoming CCD and the OFT's Irresponsible Lending Guidance would sufficiently improve consumer protections and argued that do nothing was not a viable option because:

    - current legislation does not provide consumers who use bills of sale loans with sufficient protections, especially when compared to similar Consumer Credit Act (CCA) regulated agreements;

    - wording in a bill of sale agreement is complex and difficult for consumers to understand;

    - there is unfair treatment by some lenders of consumers who experience difficulties or fall into default;

    - many consumers do not understand that they no longer own the asset (car) whilst the loan is outstanding. Nor do they understand the implications that a bill of sale loan may have on their car insurance and

    - the lack of protection for innocent third parties who unknowingly buy a car with a bill of sale attached would remain.

Option 2: Introduce a voluntary code of practice and other non-statutory requirements.

17. This option was popular with lenders, and unpopular with consumer groups and enforcers/experts.

18. All of the lenders who responded favoured the introduction of a voluntary code of practice. Benefits cited included that it would leave the option of this type of borrowing open to those consumers who would find it difficult to find legitimate credit elsewhere, and that it would result in fewer costs being passed on to consumers than the more burdensome, interventionist options.

19. Some lenders thought this would be enough on its own to address the problems with bills of sale lending identified in the consultation document, while others thought it should be combined with other measures. These included:

- legislating to remove the archaic language of bills of sale, and the requirement to register them with the High Court;
- the OFT using its existing powers to tackle the few unscrupulous lenders who don't follow existing rules;
- better training for trading standards officers, so they understand how bills of sale lending works;
- Government to raise awareness of asset finance registers (e.g. HPI) to help protect third party consumers from buying cars with a bill of sale attached.

20. Two of the lenders and one of the representative bodies suggested that the code of practice should be not voluntary but mandatory, with meaningful penalties up to revocation of their lending licence for failure to comply with it.

21. Almost all of the remaining respondents said a voluntary code of practice would not be effective because:

- lenders using bills of sale often do not abide by current legislation, and would be even less likely to follow a voluntary code;
- there would be insufficient sanctions for not following the code;
- there is no trade association that represents all lenders using bills of sale that would be able to maintain such a code; and
- a voluntary code could not require lenders to obtain a court order before seizing property secured with a bill of sale.

22. On the issue of asset registration, there was a general acknowledgement on all sides that third party buyers needed better protection. In general, lenders thought a code of practice requirement for bills of sale to be registered with an online electronic asset finance register would provide sufficient protection. Others thought this would be a good first step, but probably not enough; further protections such as those available under the Hire Purchase Act might be necessary.

Option 3: Reform the Bills of Sale legislation to make it more appropriate for consumer lending

23. Over a third of consumer groups who responded cited option 3 as their preferred option. Over half of the lenders who responded stated that this option in conjunction with option 2 was their preferred option.

24. Consumer groups and experts/enforcers who favoured a reform of the Bills of Sale legislation mainly did so out of a desire not to restrict access to credit to those consumers who would find it difficult to obtain credit elsewhere. They stated that a reform of the legislation should include the following:

- simplify the language used in a bill of sale agreement, removing archaic terminology so that consumers can fully understand the terms and conditions of the loan agreement;
- give consumers the same protections they would have with other CCA regulated agreements e.g. hire purchase;
- require lenders to obtain a court order before seizure of assets;
- grant innocent third party private buyers good title when they buy in good faith and without knowledge of the bill of sale (as is the case with hire purchase agreements);
- give consumers better information (prior to purchase) about the risk of repossession if they default; and
- ban the practice of balloon re-payment loans - all loans should have linear repayments where a proportion of the capital and interest is repaid each month.

25. A proportion of consumer groups and experts/enforcers argued that lenders should be prohibited from using a bill of sale for the purchase of goods as this is a blatant attempt to circumvent consumer protections under a hire purchase agreement. Lenders who wished to continue granting loans for the purchase of second hand cars should be required to use a hire purchase agreement. Some also called for the Bills of Sale Acts to be renamed to make it clearer to consumers that whilst the loan is still outstanding they no longer own the goods secured against the loan.

26. Respondents recognised that the reforms set out above, if implemented, could result in lenders exiting the market as lending in this sector may no longer be profitable, or beginning to use sale-and-rent-back agreements as an alternative.

27. Of the lenders in favour of reform (typically in conjunction with option 2), the majority considered that reform should include the following:

- updating and simplifying the archaic language in the bill of sale agreement so that consumers fully understand the terms and conditions of the loan agreement;
- requiring lenders to register bills of sale with an online asset register; and

- removing lenders rights to gain entry to inspect the asset and replace it with a requirement to take reasonable and proportionate actions to recover goods.

28. Three lenders went further and suggested:

- an interest rate cap;
- banning balloon payments;
- Bills of sale should be unenforceable if they aren't registered with a recognised asset register;
- requiring court orders for seizure (one lender recommended that a minimum threshold for repossession should be implemented);
- if an innocent third party buys a car with a bill of sale attached which is not registered on an electronic asset register then ownership should pass to the third party;
- banning bills of sale for the purchase of goods.

29. A more controversial suggestion was that where an asset is repossessed it should end the consumers' liability. One lender argued this should happen after a proportion of the loan had been repaid with another lender and representative body claiming this should happen regardless of the amount repaid.

30. However lenders cautioned that if reforms introduced were too stringent, lenders may exit the market due to lack of profitability and consumers would be forced into the hands of illegal money lenders.

31. Representatives of high net worth individuals and small business lenders were also concerned that reforms should not prohibit them from securing loans against their personal assets or overburden lenders who have to comply with multiple Acts.

Option 4: Ban the use of bills of sale for the purpose of consumer lending

32. This option was very unpopular with lenders, but over half of other respondents, consumer groups, enforcers and experts stated that it was their preferred option.

33. Amongst lenders, opposition to a ban focused on the following arguments:

- it would be disproportionate to ban an entire industry for the actions of a few rogue lenders;
- a ban would restrict consumer access to credit, thus reducing choice, pushing up prices, and potentially forcing some consumers into the hands of illegal lenders;
- industry has shown it is willing to tackle the problems;

- a ban would result in businesses closing, leading to loss of jobs, as well as the social cost of families not having access to credit.

34. The rest of the responses were more mixed, but the majority supported a ban. There was some conflation of the concepts of a ban on the use of bills of sale for the purpose of consumer lending, and the repeal of the Bills of Sale Acts. Several implied this would be synonymous with banning the use of bills of sale, whereas others recognised that it would not in fact achieve this, but would instead remove what few protections consumers already have when borrowing in this way. Most of this latter group stated that new legislation to regulate chattel mortgages in general would need to be put in its place, suggesting that they were not opposed to the idea of secured lending against personal assets per se.

35. Support for a ban tended to focus on the consumer detriment currently caused by bills of sale lending, mostly reiterating problems stated in the consultation document, but backed up with anecdotal evidence:

    - Bills of sale use archaic language and are difficult for consumers to understand;
    - consumers have fewer rights under bills of sale than they do under other secured lending agreements (e.g. pawn-broking and hire purchase);
    - Bills of sale loans are generally very expensive, and involve punitive fees and charges that can quickly add up; and
    - better alternatives, in particular credit unions, are available.

36. Non-lenders who did not support a ban were largely concerned that access to credit for sub-prime borrowers should not be restricted. This group stated that a reform of the Bills of Sale legislation was necessary to give consumers the same level of protection as pawn-broking and hire purchase agreements, ensuring that consumers have sufficient protections should things go wrong.

The Government's position

37. Following careful consideration of all the responses to the consultation, Government has come to the conclusion that a package of measures based on Option 2 (introduce an industry wide code of practice) is the most appropriate and proportionate way forward. These measures are:

- a code of practice that contains increased protections for consumers, especially for those who are having difficulty repaying the loan;
- a consumer information sheet explaining in plain English how bills of sale work and what the customer can expect from the lender;
- new Consumer Credit Act requirements from 1 February 2011;
- OFT monitoring under Irresponsible Lending Guidance; and
- a commitment to look again at reforming bills of sale for consumer lending if problems continue.

38. Over the last ten years, individuals have relied heavily on credit to fund purchases, with household indebtedness increasing steadily over the period. Government is keen to encourage more people to save and to be able to protect themselves and their families from future financial shocks, but we recognise that borrowing remains an appropriate course of action for many people in many different circumstances. Therefore, the Government wants credit markets that are competitive and work in such a way as to enable consumers to make sound financial decisions. Empowered consumers and responsible lenders are at the heart of our vision for a healthy credit market.

39. The Government notes that many of those who have responded to the consultation are keen for bills of sale to be banned completely (Option 4). However, the evidence received in response to the consultation did not indicate that the problems identified were sufficient to justify a ban on using bills of sale for consumer lending. There are certainly examples of bad practice by lenders and of consumers experiencing problems with bills of sale loans. But the size of the problem is comparatively small. The value of bills of sale lending is estimated at £38-£40m, compared to £7.5bn for high cost credit generally. It is estimated that a secured vehicle is repossessed as a result of default in only 2%-3% of cases (800-1200 loans out of about 38,000).

40. We also recognise that bills of sale are an important source of credit for some consumers and small businesses and we do not feel that at this time it would be right to cut off this particular supply of credit. This is especially so at a time when mainstream sources of credit are becoming more difficult to access.

41. Reforming Bills of Sale legislation to make it more appropriate for consumer lending (Option 3) could deliver additional consumer protection and some benefits for lenders with potentially less of an adverse impact on lending. However, the size of this task compared to the size of the problem and the long time lag before consumers would see any benefits made this an unattractive option.

42. However, we do share many of the concerns expressed by respondents to the consultation. We are aware that there are too many unhappy consumers for the Government to be confident that the bills of sale market is putting consumer protection at the heart of its business practices. Therefore we have thought very hard about the most appropriate course of action.

43. A legislative response may ultimately be necessary, but the Government believes that the industry should have an opportunity to put its own house in order first. This is consistent with the Government’s approach to policy making of pursuing alternatives to regulation and only regulating when it is clear that policy objectives can’t be achieved by self-regulatory or non-regulatory approaches.

44. A credible code of practice has been produced by the main trade organisation for the bills of sale lenders, the Consumer Credit Trade Association (CCTA), a copy of which is contained at Annex C. The CCTA has confirmed that its members who use bills of sale support the code and will comply with it from 1 February 2011.

45. Introducing a code of practice will give lenders a chance to show that they are serious about improving practices and willing to do so voluntarily. It will also allow consumers to benefit from increased protection much more quickly than if they had had to wait for legislation to be enacted.

46. The code aims to address many of the key concerns that were highlighted during the consultation process, placing an obligation on bills of sale providers to trade honestly and responsibly, and to treat customers fairly. The code limits the practice of ‘balloon payments’ to those seeking a loan for business purposes. It makes clear that any charges on customers in arrears must be transparent and limited to doing no more than covering the lenders costs and that alternative payment plans must be allowed for customers in difficulty. In addition the code contains an agreement that consumers who are in arrears will have an option to voluntary surrender the assigned vehicle as full and final settlement of all claims against the customer. Where a vehicle is repossessed as a result of default, the lender must ensure that it is sold for the best obtainable market price. The code also gives some additional protection for third parties who have unwittingly purchased a car with a bill of sale attached

47. The CCTA will monitor compliance with the code and will suspend or expel any of their members who fail to comply with the code and forward their details to the OFT.

48. In addition to the code, bills of sale lenders have agreed to adopt a standard information sheet for customers considering taking out a bill of sale. This sheet will give a summary in plain English of what a bill of sale is, what the customer will be expected to do and what the customer can expect from the lender, including what the lender will do if things go wrong and the customer has difficulty repaying the loan. Crucially it explains that the vehicle can be repossessed on default without the need for a court order and that the consumer will be subject to any shortfall if the sale of the vehicle does not satisfy the debt. A copy of this is contained at Annex D.

49. However, the Government is not complacent. We recognise the very serious concerns that many have regarding this industry, and introducing a code of practice is not the end of the matter.

50. New regulations implementing the Consumer Credit Directive will come into force in February 2011. These will apply to a loan taken out under a bill of sale. They will give consumers new rights and impose new requirements on lenders:

- Lenders will have to make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner.
- Lenders will have to explain the key features of the credit agreement to enable the borrower to make an informed choice.
- Prospective borrowers will be given an information sheet setting out all the relevant information about the credit agreement. The information sheet will be in a standard format for all lenders so borrowers can easily compare the costs of different loans. (The proposed new information sheet for bills of sale will complement this by setting out the key features of a bill of sale.)
- Consumers will have an absolute right to withdraw from a credit agreement within 14 days, paying back only the money lent and any interest accrued over that time.

51. Government is also keen that enforcement bodies are closely involved in monitoring lending practices in this market. For example, the OFT recently introduced its Irresponsible Lending Guidance. It will give all consumers, including bills of sale customers, added protections by making it clearer what business practices the OFT considers constitute irresponsible lending practices, throughout the lifecycle of a credit agreement. It sets out the standards OFT expects lenders to meet if they are to be considered fit to hold a consumer credit licence. The Irresponsible Lending Guidance will make it clearer what behaviour is acceptable, giving OFT a firmer basis on which to take enforcement action against unacceptable behaviour. They can also undertake audit-type visits to lenders to check practices and compliance. The OFT can impose a range of penalties, including suspending the lender’s credit licence, for those not complying with the law or the guidance or otherwise engaging in unfair or improper business practices.

52. The Government has launched a consultation on whether responsibility for consumer credit should be transferred from the OFT to a new consumer protection and markets authority (CPMA) (provisional title). If a transfer of consumer credit to the CPMA is to take place, then subject to further consultation, we expect that bills of sale lending would remain covered by consumer credit rules, as is presently the case under the Consumer Credit Act 1974.

The Devolved Administrations

53. In Northern Ireland, bills of sale are regulated separately under the Bills of Sale Ireland Act (1878). The Minister for Enterprise for Northern Ireland asked that Northern Ireland be included in the consultation with a view to ensuring that the people of Northern Ireland would benefit from any reforms introduced. The CCTA has confirmed that their members who operate in Northern Ireland will be signing up to the code. As a result the code will cover bills of sale lending in Northern Ireland as well as England and Wales and. In addition, the new regulations implementing the Consumer Credit Directive and the OFT’s Irresponsible Lending Guidance will also have effect in Northern Ireland.

54. Bills of sale are not used in Scotland and the package of measures is therefore not relevant to Scotland.

Annex A: List of Consultation Questions

What is the problem?

Q1. The Government would welcome further evidence about the current nature of the bills of sale consumer lending market, including in particular:

- The incidence of bills of sale used for consumer lending, particularly among vulnerable consumers with no access to mainstream credit;
- The use of bills of sale loans for business purposes for the self-employed and owners of small firms;
- The consumer experience of accessing bills of sale loans and dealing with their lenders;
- The profitability of bills of sale lending and the impact of the economic downturn on both consumers and lenders.

The proposals

Option 1: Do nothing beyond current legislation and regulatory activity

Q2. We would welcome evidence on the extent of consumers' understanding of the terms of bills of sale, and their options in the event of default should they wish to prevent the seizure of the secured asset.

Q3. Is it fair and reasonable to have fewer protections for consumers borrowing money under a bill of sale than under other forms of consumer credit agreement including hire purchase agreements?

Q4. Will the implementation of the Consumer Credit Directive, combined with OFT guidance, provide sufficient additional consumer protection in this area? If not, what other measures (not covered in this consultation) would you suggest to improve consumer protection?

Option 2: Introduce a voluntary code of practice or other non statutory requirements

Q5. Would a voluntary code of practice, if adopted by bills of sale lenders, coupled with ongoing enforcement action, provide sufficient additional protections for consumers?

Q6. Would a code of practice requirement to register a bill of sale loan agreement with online electronic asset finance registers provide sufficient protection for third party consumers?

Option 3: Reform Bills of Sale legislation to make it more appropriate for consumer lending

Q7. To what extent would reform of the legislation rectify the problems identified in relation to bills of sale?

Q8. If you consider that a bill of sale type instrument for consumer lending should be preserved, what would make a credible package of reform measures to ensure sufficient consumer protection?

Q9. What might be the unintended consequences of this option, including the implications for access to affordable credit for vulnerable consumers?

Q10. What might be the costs to lenders of this reform and adopting a new secured lending instrument?

Option 4: Ban the use of bills of sale for the purpose of consumer lending

Q11. Should bills of sale for consumer lending be banned?

Q12. If bills of sale for consumer lending were banned, are there real alternative forms of borrowing available to consumers?

Q13. What would be the benefits and risks of a ban on the use of bills of sale to consumers?

Q14. What might be the costs to lenders of using alternative methods of lending?

Q15. What might be the unintended impacts on consumers and lenders of a ban on the use of bills of sale?

Overall

Q16. Of the 4 options proposed, which do you prefer?

Annex B: List of Respondents

- Advertising Association (The)
- Anthony Sharp Associates
- Arminius Associates
- Autopawn
- Birmingham City Council
- Bob Spink
- Christians Against Poverty UK
- Citizens Advice Bureau
- Citizens Advice Bureau Northern Ireland
- Community Development Finance Association (cdfa)
- Consumer Credit Counselling Service (CCCS)
- Consumer Credit Trade Association
- Coventry Trading Standards
- Credit Action
- Dr Duncan Sheehan
- HPI Ltd
- Institute of Credit Management (ICM)
- Loans 2 Go
- Loans 4 Logbooks
- Local Authorities Coordinators of Regulatory Services (LACORS)
- Local Better Regulation Office (LBRO)
- Log Book Loans
- Log Book Loan Shop
- Maurice Turnor Gardner LLP

- Merthyr Tydfil County Borough Council
- Mobile Money Ltd
- Money Advice Trust
- Paymex Group
- QuickClick Loans Ltd d/b/a AutoMoney
- Retail Motor Industry Federation
- Southampton City Council Trading Standards Service
- Telford Trading Standards
- The Consumer Council
- The Funding Corporation Ltd
- Trading Standards Institute (TSI)
- University of Oxford (joint response with University of Warwick)
- Wales Trading Standards
- Which?

Annex C: Code of Practice for bills of sale lenders

CONSUMER CREDIT TRADE ASSOCIATION

CODE OF PRACTICE

(BILLS OF SALE FOR LENDING REGULATED UNDER THE CONSUMER CREDIT ACT)

"A Commitment to Responsible Lending"

1 THE CONSUMER CREDIT TRADE ASSOCIATION ('THE ASSOCIATION') AND THIS CODE

1.1 The Association represents finance houses, retailers, building societies, credit-brokers, professional firms, debt collection companies and others acting in providing credit, hire and leasing facilities and ancillary services to consumers and businesses.

1.2 This Code is specific to those members who engage in the use of Bills of Sale for Lending regulated under the Consumer Credit Act 1974.

1.3 The purpose of this Code is to ensure compliance by members with the minimum standards set by the Association, as specified in this Code.

1.4 The Association and its members shall publicise the existence of this Code and where appropriate provide details of the Complaints Procedure.

2 MONITORING AND COMPLIANCE

2.1 The Association, through its Council, shall monitor the compliance of members with this Code and will require members to submit to Annual Compliance Audits (ACA's) as a condition of membership of the Association. The Association or any other authorised person(s) will conduct the ACA's at the member's business premises.

2.2 Members shall promptly notify the Chief Executive or other officer of the Association of any conduct that comes to their attention of any member or any other person engaging in Bills of Sale for Consumer Lending, which is not consistent with this code and which might adversely affect the reputation of the consumer credit industry or of the Association.

2.3 The Association will record all incidences of reported misconduct, including misconduct identified through Annual Compliance Audits, and will make those records available to the Office of Fair Trading (OFT).

2.4 The Association, through its Council, may take action against any member found to be in breach of this Code. Such action may include unscheduled compliance audits, written warnings to the member, requests for written explanations and meetings to discuss the matter.

2.5 The ultimate sanction, which the Association may impose, is the suspension or expulsion of a member from the Association. The Association will also promptly notify the OFT of any members who they suspend or expel and the reasons why.

3 GENERAL OBLIGATIONS

Members shall:

3.1 Conduct their business lawfully; comply with all relevant legislation, regulatory guidance, judicial decisions and general rulings of regulatory authorities.

3.2 Trade honestly, responsibly, ethically and treat customers fairly.

3.3 Behave at all times with integrity and endeavour to ensure, where applicable, that credit-brokers and all other persons with whom the member has commercial relationships do likewise.

3.4 Act responsibly and with care in the day-to-day conduct of their business.

3.5 Not misrepresent facts to a customer concerning any aspect of a credit transaction. Members shall also take all reasonable steps to ensure, where applicable, that brokers and any other intermediaries, when acting, as agents of the member, do not misrepresent facts regarding such transactions to a customer.

3.6 Respect confidential information supplied to them in the course of their business.

3.7 Ensure that credit documentation embodies, in plain and intelligible language, all the express terms and conditions of the agreement, which affect the customer's rights and obligations.

3.8 Provide adequate training for members of their staff, agents, associates and any other person who performs any duties on behalf of the member, bringing this Code and the principles contained in it to their attention and requiring them to carry out their duties in accordance with it.

3.9 Comply with obligations and any conditions which may be imposed by the OFT with regard to their respective licences under the Consumer Credit Act 1974 (the Act).

3.10 Follow, where applicable, any requests conveyed by the Association and emanating from the Bank of England, the OFT, the Financial Services Authority (the FSA) (or other relevant authority), and the enforcement authorities.

3.11 Follow, where applicable, any guidance notes issued by the Association, which refer to this Code.

3.12 Ensure fairness in all dealings with customers including, but not limited to, their dealings with customers both before and after the making of the agreement or any related agreement and the manner in which those agreements are enforced.

3.13 Ensure that the member's interest in the assigned vehicle is registered, within 24 hours of the making of the agreement, with a recognised Asset Finance Register such as HPI Ltd.

3.14 Members shall not use Bills of Sale, as a security instrument, to finance the purchase of any goods sold to the customer by the member, or by any third party suppliers.

4 SPECIFIC OBLIGATIONS

4.1 Advertising and Marketing

4.1.1 Members shall not use direct mail indiscriminately, shall act responsibly and prudently in their advertising and marketing and ensure that all their advertising is truthful and not misleading.

4.1.2 Members shall ensure that all advertising and promotional literature is fair and reasonable, does not contain misleading information and complies with all relevant legislation, in particular the provisions of the Consumer Credit Act 1974 (the Act) and the Regulations made under it. This includes the inclusion and disclosure of the ‘APR’ in the statutory form, where required by domestic and community law.

4.1.3 Members shall ensure that all advertising complies with the British Code of Advertising, Sales Promotion and Direct Marketing, the Radio Advertising Standards Code, the Television Advertising Standards Code, OFCOM and other relevant codes of practice of similar standing.

4.1.4 Members shall not engage in high-pressure selling or other aggressive sales practices such as pressurising a customer to sign up to a credit agreement without affording him the opportunity to consider the Pre-contract information, ask questions about the agreement and ask for and obtain further information and explanation.

4.1.5 All advertising carried out by members shall carry and prominently display the CCTA logo or reference to being CCTA members. This will help customers identify that loans provided by the individual member are transacted to a high standard. All members will also prominently display this Code of Practice on their websites and will make available hard copies to send on request to interested customers.

4.1.6 In this code and in particular clause 4.1 above, “advertising” includes every form of advertising including Internet Websites. The Consumer Credit Act 1974, s 189(1) makes it clear that any form of publicity is an advertisement for the purposes of the Act. “Advertisement” includes every form of advertising, whether in a publication, by television or radio, by display of notices, signs, labels, show-cards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way, and references to the publishing of advertisements shall be construed accordingly.

4.2 Responsible Lending

4.2.1 Members shall not engage in any behaviour that the OFT considers may constitute ‘irresponsible lending’. Members must have regard to: ‘Irresponsible Lending-OFT guidance for creditors’- August 2010 and as amended from time to time.

4.2.2 Where members make available agreements comprising a balloon payment option, representing the full loan amount (also known as the principal), members agree to make that option available only where their customer is proposing to enter into the agreement which is wholly or predominantly for their business purposes (a business carried on or intended to carry on). Where that is the case, members agree:

(a) to offer both balloon and capital repayment options to the customer and to provide adequate explanations of the key features and risks of each of the agreement options in order to place the customer in a position enabling him to assess which agreement (if any) is adapted to his needs and his financial situation.

Freedom shall be given to the customer to select the payment option that is best suited to his needs and financial situation;

(b) to carry out reasonable specific assessments of affordability in order to establish from the customer that sufficient funds will be available by him to repay the loan in a sustainable manner and in full at the end of the contractual term;

(c) that where credit is granted to customer on the basis of a balloon payment option, the term of the agreement shall not exceed 12 months. In addition, any subsequent agreement entered into with such customers, as a result of their inability to pay the final balloon payment on the earlier agreement, will be repayable by periodical capital and interest repayments of an amount not greater than the amount of the periodical interest only payments in the earlier agreement.

4.3 Explanations of the credit product

4.3.1 Before the customer is bound by any credit agreement or offer, members shall provide the customer with Pre-contractual information (PCI) by means of the form required by law at that time. Members shall explain to the customer that they may take away the PCI to consider the terms of the offer of credit before the making of the agreement and the customer should be afforded such an opportunity.

4.3.2 Members shall provide adequate explanations to the customer, in order to place the customer in a position enabling him to assess whether the proposed credit agreement is adapted to his needs and to his financial situation by explaining, but not limited to:

(a) the Pre-contractual information to be provided;

(b) the risk, on default of the agreement, that additional interest and default fees may be charged;

(c) the risk of losing the asset (usually a vehicle) on which the credit is secured, how it would be repossessed, and the loss this could entail;

(d) that repossession under the Bill of Sale can take place without a court order and that members may enter customer's premises to take possession of the vehicle;

(e) that repossession can result in significantly higher additional costs and may not clear all of the debt owed ; and

(f) that there is a provision for voluntary termination and the terms and conditions which apply.

4.3.3 Where a member has clear grounds to suspect that the explanation provided has not placed the customer in a position whereby he is enabled to assess whether the agreement is suited to his needs and his financial situation, members shall provide further explanation to the customer.

4.3.4 In all circumstances members should provide the customer with an opportunity to ask questions about the credit agreement. Members should also advise the customer how to ask for further information and explanation about the credit agreement from him.

4.4 Assessment of affordability

4.4.1 Members shall, before granting credit or increasing the amount of credit to be provided to the customer, undertake an assessment of the creditworthiness of the customer to assess the borrower's ability to undertake any proposed credit commitment, or specific additional credit commitment, in a sustainable manner, without the customer incurring (further) financial difficulties and/or experiencing adverse consequences.

4.4.2 The assessment of affordability should be based on information and evidence obtained from:

(a) the customer, having provided evidence of his ability to repay the credit; and

(b) a credit reference agency, where necessary.

4.4.3 Members shall take particular care in relation to applications for credit from young people in the age range 18-21 years.

4.4.4 Members shall continuously monitor their credit granting practices and their assessment techniques to ensure that they are prudent and realistic in the prevailing economic circumstances. They shall not be less rigorous in assessing the customer’s ability to repay by reason of the sole fact that security is offered.

4.4.5 To the extent that they use credit-scoring techniques, members shall abide by the principles set out in the publication “Guide to Credit Scoring 2000”, as subsequently amended or updated. Where members do not use credit-scoring techniques they should be prepared to make clear to a declined applicant whether or not a refusal relates to a credit reference agency report.

4.4.6 Members shall ensure that where a customer is refused credit and believes the refusal to be unreasonable the customer is given the name or title of a senior official who will review the application.

4.4.7 Members shall provide appropriate assistance, in the form of information and guidance, to young (as defined in 4.4.3) and/or vulnerable customers.

4.5 The Regulated Consumer Credit Agreement

4.5.1 Members shall use plain and intelligible language in all agreements, Pre-contract information documents and communications with customers. Members shall use prescribed wording where that is required by law.

4.5.2 Members shall ensure that their agreements (and any related agreements) with consumers do not contain unfair contract terms.

4.5.3 Members shall advise customers of the contractual interest rate(s) applicable to their agreements for credit, the basis on which default interest and charges, repossession charges and any other charges are calculated and, when they will be charged.

4.5.4 Members shall advise customers how any agreed variation of the terms and conditions of their agreement will be notified and shall give customers at least 14 clear days written notice before any variation takes effect.

4.5.5 Members shall comply with all statutory and other reasonable requests by customers for information about their agreements and accounts within 14 days of receiving a written request or otherwise within the period specified by law.

4.5.6 Members shall supply copies of documentation and statements of account as required by law and within the prescribed timescale.

4.5.7 Members, where applicable, shall comply with their legal obligations in relation to the provision of Pre-contractual information and the 14 day right of cancellation in respect of distance contracts under the Financial Services (Distance Marketing) Regulations 2004.

4.5.8 Members shall assist customers seeking advice and guidance.

4.6 GUARANTEES AND BILLS OF SALE

4.6.1 Guarantees

4.6.1.1 Members shall advise individuals proposing to give a guarantee or other security for a customer's liability that:

(a) by giving the guarantee or security he or she might become liable for payment of the loan amount instead of or in addition to customer;

(b) he or she should seek independent legal advice before entering into the guarantee or security.

4.6.1.2 Members shall be deemed to have complied with the requirements of 4.6.1.1 where guarantees and other securities contain a clear and prominent notice to the above effect.

4.6.2 Bills of Sale

4.6.2.1 Members shall comply with the requirements of The Bills of Sale Act 1878, the Bills of Sale Ireland Act 1878 and the Bills of Sale Act (1878) Amendment Act 1882, the standard industry practice of ensuring that the members' interest in the assigned vehicle is registered, within 24 hrs of the making of the agreement with a recognised Asset Finance Register such as HPI Ltd, other relevant laws, codes of practice and this Code insofar as it is compatible with the foregoing.

4.6.2.2 Members shall provide the customer with the Industry Standard 'Bill of Sale Borrower Information Sheet'.

4.7 DEALING WITH CUSTOMERS EXPERIENCING FINANCIAL DIFFICULTIES

4.7.1 Members shall establish and implement policies and procedures for dealing with customers whose accounts fall into arrears that are fair, clear, not misleading and members agree to fully comply with both the word and spirit of the section entitled 'Handling of default and arrears' of the OFT Irresponsible Lending Guidance.

4.7.2 Any policies and procedures for dealing with customers whose account falls in arrears shall make specific provision for, amongst other matters, the fair and appropriate treatment of vulnerable customers such as those known to or reasonably believed to lack the mental capacity to make relevant financial decisions at a particular time.

4.7.3 Members shall consider cases of financial difficulty sympathetically and positively, treat customers in default or arrears difficulties with understanding, forbearance and due consideration and encourage their customers to contact them should they experience financial difficulty.

4.7.4 Members shall, where appropriate, refer customers to debt counselling organisations and notify customers where they can get free advice, such as Citizens Advice Bureaux, Money Advice Centres, National Debtline, the Consumer Credit Counselling Service or Consumer Direct. Members will work with debt counselling organisations to assist their customers.

4.7.5 Members shall suspend, for a period of not less than 30 days, the active pursuit of recovery of a debt from a customer in default or payment difficulties under circumstances in which a bona fide debt advisor is assisting the customer in a agreeing a repayment plan.

4.7.6 If a member passes a customer’s account to another person to collect overdue payments, such as a debt collector or solicitor, the member will inform the customer. Members will always choose debt collection firms that agree to abide by this Code or the Credit Services Association Code and the OFT Debt Collection Guidelines.

4.8 Enforcement and Debt Collection

4.8.1 Members shall have due regard to the Debt Collection Guidance issued by the Office of Fair Trading (the OFT) and in particular shall not engage in any unfair business practices identified in that Guidance.

4.8.2 Members shall have due regard to: ‘Irresponsible Lending-OFT guidance for creditors’ and in particular shall not engage in any irresponsible lending practices identified in that Guidance under the heading ‘HANDLING OF DEFAULT AND ARREARS’.

4.8.3 Members shall ensure, by reviewing annually their debt collection procedures and those of any third parties they employ, that they conform to high ethical standards and allow for proper consideration of the customer’s circumstances and in particular:

(a) encourage customers in financial difficulties to inform them of their difficulties at the earliest possible moment (and members will endeavour to respond sympathetically, without prejudice to members’ rights);

(b) provide in all relevant correspondence the name or title of a specially trained member of staff who may be contacted if difficulties arise; and

(c) take into consideration, before determining whether to enforce an agreement, all information supplied by the customer or otherwise in relation to the cause of any default and the customer’s future ability to repay. If the customer has disclosed multiple debt problems, members shall inform the customer of the availability of advisory services.

4.8.4 Members should suspend the pursuit of recovery of a debt from a borrower, under circumstances in which notification has been given and/or it is reasonably believed that the borrower lacks the mental capacity to make relevant financial decisions regarding the management of his debt at that time, unless or until a reasonable period of time has been allowed for relevant evidence to be provided as to the likely impact of the capacity problem on the borrower's ability to manage his debt and deal with a debt recovery business. The appropriate means of collecting evidence, in appropriate circumstances, could be to use the standard Debt and Mental Health Evidence Form (DMHEF), developed between MALG and the Royal College of Psychiatrists.

4.8.5 Members shall not impose charges, of whatever nature, on customers who are in arrears unless the nature of those charges are disclosed at the Pre-contract stage and are limited to doing no more than covering the member’s costs.

4.8.6 Members shall allow for alternative, affordable, payment amounts when the borrower or his appointed debt advisor or representative makes a reasonable proposal.

4.8.7 Members shall regard the lawful seizure of a secured asset as a serious enforcement option, to be taken only when attempts of have failed with the customer, to mutually agree a realistic and sustainable arrangement to clear arrears.

4.8.8 Members should not, except in exceptional circumstances such as proven identity fraud, consider seizure of the vehicle unless-

1) the amount of the customers arrears shortfall is no less than the equivalent of:

a) the sum of the last two payments required to have been made, under a monthly paid agreement, before that time; or

b) the sum of the last four payments required to have been made, under a weekly paid agreement, before that time; and

2) the requirements of section 87B (Notice of Sums in Arrears) of the Act have been complied with prior to serving a Default Notice under section 87 (1) of the Act.

4.8.9 Notwithstanding the provisions of the Bills of Sale Act 1878, the Bills of Sale Ireland Act 1878 and the Bills of Sale Act (1878) Amendment Act 1882, members shall, upon the lawful seizure of the vehicle, hold the vehicle in safe keeping for a period of not less than 14 days to allow the customer to make representations to resolve the matter or to make application to the court under section 7 of the Bills of Sale Act (1878) Amendment Act 1882 to restrain the member from selling the vehicle. Members shall take all reasonable steps to ensure that seized vehicles are sold for the highest obtainable market price.

4.8.10 Members shall not apply for a charging order on the customers home (the property) to secure an outstanding debt, except under the following circumstances:

(a) the outstanding debt is no less than £500 and, for whatever reason, a member is unable to gain lawful possession of the assigned vehicle; or

(b) the outstanding debt is no less than £500 and ‘bad faith’ by the customer is shown, which includes; intent to deceive or mislead a member to gain some advantage, dishonesty or fraud in the transaction.

4.8.11 Where members have obtained a charging order under 4.8.10 (a) or (b), those members shall not seek an order of the court for the sale of the judgments debtors home.

4.8.12 Members shall allow customers who are in arrears under the agreement, the option to voluntary surrender the assigned vehicle as full and final settlement of all claims against the customer except where:

a) a default notice has been served under s87 of the Act, the default notice remains unsatisfied and instructions have already been issued to an authorised person to recover the vehicle; or

b) it is established that the vehicle has sustained malicious damage of whatever nature.

Members shall provide the customer with information on the voluntary surrender option at the Pre-contract information stage and at the time a default notice is served. Members shall not place undue pressure on the customer to adopt this option.

5. THIRD PARTY PURCHASERS

5.1 Members shall afford innocent purchasers of vehicles, that are subject to a Bill of Sale, the same protection as afforded under the Hire-Purchase Act 1964 Part III - ‘Title to Motor Vehicles on Hire-Purchase or Conditional Sale’, but only insofar as title shall transfer to the innocent purchaser in the event that the Member failed to register his interest in that vehicle with a relevant Asset Finance Register Company within 24 hours of execution of the agreement.

6 DEBT COLLECTION AGENCIES

6.1 Members shall ensure that any Debt Collection Agencies they employ shall be licensed under the Consumer Credit Act 1974.

6.2 Members shall monitor those Debt collection agencies compliance with the Consumer Credit Act 1974, regulations under that Act, relevant codes of practice, debt collection guidance issued by the Office of Fair Trading and this Code insofar as it is compatible with the foregoing.

7 DATA PROTECTION AND CONFIDENTIALITY OF INFORMATION

7.1 Members shall respect personal information supplied to them by customers and shall inform customers of the purposes for which this information is intended to be used and disclosed, before it is given by the customer.

7.2 Members shall observe a strict duty of confidentiality about their customers (and former customers) personal financial affairs and shall not disclose details of customers accounts or their names and addresses to any third party, except for the purposes of filing with credit reference agencies and in the following cases:

(a) where they are legally compelled to do so;

(b) where there is a duty to the public to disclose;

(c) where the interests of the member requires disclosure;

(d) where disclosure is made at the request, or with the consent, of the customer.

Members shall not use exception (c) above to justify the disclosure for marketing purposes of details of customers' accounts or their names and addresses to any third party, including other companies within the same group.

7.3 Members who use the services of credit reference agencies and/or fraud prevention agencies shall ensure that any information they supply about customers and the conduct of their accounts to credit reference agencies and/or fraud prevention agencies is complete and accurate.

7.4 Members shall at all times comply with the Data Protection Act 1998 when obtaining and processing customers' personal data and shall explain to their customers that they have the right of access, under that Act, to their personal records held on computer files.

7.5 Members shall advise customers of their right not to receive marketing information from the member or a third party with whom the member is connected. Members shall comply in that regard with the requirements of the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003.

8 COMPLAINTS PROCEDURE

8.1 General

8.1.1 Members shall deal promptly and at an appropriate management level with complaints. Members shall establish a complaints procedure and furnish information on request about their complaints procedure. Customers shall be told what further steps are available if they believe that the complaint has not dealt with satisfactorily. These steps include the complaint being referred to a senior manager of the Member, to the CCTA and the ultimate resort of the unresolved complaint being referred to the Financial Ombudsman Service (FOS).

8.2 Customer Complaints

The following shall apply to complaints made by member's customers to the Association in relation to customer transactions.

8.2.1 If a customer makes a complaint to the Association in relation to an account or an agreement with a member, the Association shall, in the first instance, refer the complaint to a senior executive of the member, for consideration.

8.2.2 If the complaint is not resolved to the customer's satisfaction, unless the customer wishes to refer the complaint to the Financial Ombudsman Service, the Association (through an appropriate representative) shall endeavour to conciliate between the customer and the member to restore communication between the customer and the member where this has broken down. The Association shall accept, for conciliation, complaints made against members and subsidiary companies of members.

8.2.3 Where a complaint cannot be resolved by conciliation, the customer shall be entitled to seek resolution by the Financial Ombudsman Service.

8.2.4 Nothing in this Code restricts or is intended to restrict the rights of a customer or a member to pursue remedies through the Courts or the Financial Ombudsman Service.

8.2.5 The conciliation scheme shall not be invoked where a customer's complaint has already been considered under the dispute resolution scheme of other relevant Codes of Practice or of the Financial Ombudsman Service or where the complaint has been the subject of a judicial decision.

8.2.6 Members shall notify customers of their complaints procedure, including the customer's right to seek resolution of the complaint under the Conciliation Scheme and the Financial Ombudsman Service.

9 PREVENTION OF FRAUD AND MONEY LAUNDERING

9.1 Members shall satisfy themselves about the identity of a person seeking to enter into an agreement or to open an account, to assist in protecting their customers, members of the public and themselves against fraud and money laundering.

9.2 Members shall establish, maintain and implement fraud prevention and anti-money laundering procedures and client identification procedures and train their staff in operating such procedures.

9.3 Members shall comply with all relevant legislation and guidance relating to the prevention of fraud, money laundering and client identification including relevant Money Laundering Regulations and guidance issued by The Joint Money Laundering Steering Group.

10 INTERPRETATION

In this Code reference to Acts or Regulations shall be construed as such Acts or Regulations respectively, as amended or re-enacted from time to time.

11 FORMAL PROCEDURES

11.1 The Council may make such changes to this Code, as it may consider appropriate from time to time, by a majority of the members of the Council present and voting. In the event of an equality of votes the Chairman of the Council shall have a casting vote in addition to the vote to which he is entitled as a member of the Council.

11.2 The Council shall give members at least 30 days' notice in writing of any changes to this Code.

Annex D: Customer Information sheet

This is an information sheet for borrowers who are offering their vehicles as security for a loan. [Lender's name] ("we" or "us") are regulated under the Consumer Credit Act 1974 (as amended), and the security is offered by a Bill of Sale, under the Bills of Sale Act 1882. We have signed up to the Industry Code of Practice (you can find the full Code of Practice on our website).

The following is written in plain English to explain what this means for you. However, this information sheet is not a comprehensive guide and independent legal advice should be obtained if you are unsure of your rights or liabilities under a bill of sale. This document is provided as guidance to you and does not form, or amend, any loan agreement we enter into with you.

What is a Bill of Sale?

A Bill of Sale, or Log Book Loan, is what gives us our security over your vehicle. This means that:

Until you have repaid your loan **we are technically the legal owner of your vehicle**. However, you can still keep driving it and once you have paid off your loan the ownership goes back to you.

The Bill of Sale will be registered with the High Court in London and the register is open to public inspection.

If you default on the payment of your loan, or other terms within the loan agreement, we will have the right to serve a Default Notice on you under the Consumer Credit Act 1974. If you do not make good the default, within the time stated in the notice, **we will be entitled to take possession of your vehicle and sell it. You should note that we do not need a court order to repossess your vehicle**.

If your vehicle is repossessed and sold for an amount of money that is insufficient to pay off the money you owe us **you will still have to pay the shortfall. The sale of the vehicle does not put an end to the loan**.

What can you expect from us?

We will:

- Lend responsibly and treat our customers fairly and with due consideration.
- If we apply charges to your account we will only do so where such charges are reasonable and to recover costs we have incurred.
- If you have a material change of circumstances we will take this into consideration and may agree to reduce your repayments until such time as you are able to continue with your original contractual repayments.

- If you have a complaint we will take it seriously and deal with it properly and promptly.

- Until we have terminated the loan agreement you may return the vehicle to us in full settlement of the debt to us, provided that instructions have not already been issued to an authorised person to recover the vehicle and you act in good faith and the vehicle has not been maliciously damaged.

- We will only repossess a vehicle after we have taken reasonable steps to obtain contractual payments from you by other means.

- If we do repossess your vehicle we will provide you with a 14 day period in which to repay the debt and re-purchase it or we may reach an alternative suitable agreement with you. If we do have to sell the vehicle we will endeavour to obtain the best price for it. If the vehicle is sold for an amount more than you owe then we will pay the excess amount to you.

- Repossession is an expensive process. If we are forced to recover the vehicle on which your loan is secured significant extra costs may be added to your account.

What do we expect from you?

We require that you:

- Make your payments on time and in the right amount.

- If your circumstances change you should contact us immediately to discuss any problems that you may have with keeping your payments up to date.

- We expect you to look after and maintain the vehicle to the same condition (subject to reasonable wear and tear) as it is now (i.e. at the time you borrow from us), and keep the vehicle insured in accordance with our agreement with you, until you have repaid all amounts due to us, unless we agree to waive these requirements.

Annex E: Impact Assessment

Title:	Impact Assessment (IA)
Impact Assessment of proposals to address problems in relation to the use of Bills of Sale for consumer lending	**IA No:** BIS0121
Lead department or agency:	**Date:** October 2010
Department for Business, Innovation and Skills	**Stage:** Final
Other departments or agencies:	**Source of intervention:** Domestic
	Type of measure: Other
	Contact for enquiries: Peter Lovitt (020 7215 0189)

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Bills of Sale are a lending instrument used to secure loans against personal goods (usually cars). Evidence suggests that some consumers do not understand the terms of such loans, which indicates the potential for information asymmetry that could potentially be exploited by lenders and result in consumers not making optimal decisions. This information asymmetry can extend to consumers who unknowingly buy vehicles that already have outstanding Bills of Sale loans attached to them. There has also been a government failure in the regulation of the market, in that Bills of Sale loans also lack the consumer protections that are afforded to all other credit agreements, including those where the consumer retains possession of the asset.

What are the policy objectives and the intended effects?

The policy objectives are to enhance consumer protection, as well as encourage responsible lending and borrowing in relation to consumer credit. Bills of Sale can be a useful method of securing a credit agreement against goods, but may not offer sufficient consumer protection compared to other types of credit arrangements such as hire purchase and conditional sale agreements, potentially leaving customers susceptible to poor business practices.
The intended effect is to maintain a flow of credit on fair and reasonable terms, but to prevent unscrupulous lenders from circumventing protections under the Consumer Credit Act and offering products that are of detriment to consumers.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Three options have been considered, in addition to a 'do nothing' option:

1. Introduce a code of practice, or other non-statutory regulation
2. Reform the Bills of Sale Acts 1878 and 1882, and
3. Ban the use of Bills of Sale for the purposes of consumer lending

Following consultation, the option being taken forward (the Government's preferred option) is to implement a self-regulatory solution (Option 1), complemented by the legislation implementing the Consumer Credit Directive and the OFT's enforcement of its Irresponsible Lending Guidance. We believe this is a proportionate response to the problems identified in the market. In the event that the preferred approach fails to remedy these problems, with supporting evidence from ongoing monitoring and/or the Post-Implementation Review, Government will re-visit Bills of Sale lending at a later date.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed 2015
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

Ministerial Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:.. Date:......................................

Summary: Analysis and Evidence Policy Option 1

Description: Voluntary Code of Practice (Preferred Option being taken forward)

Price Base	PV Base	Time Period	Net Benefit (Present Value (PV)) (£m)		
Year 2010	**Year** 2010	**Years** 10	**Low:** -0.53	**High:** 77	**Best Estimate: 38.3**

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	0.35	1	0.85	**7.7**
High	0.44		0.85	**7.8**
Best Estimate	0.39		0.85	**7.7**

Description and scale of key monetised costs by 'main affected groups'

The Consumer Credit Trade Association and its members will incur a compliance cost to meet the requirements set out in the Code of Practice, as well as set-up costs (e.g. systems development, training, legal costs). Lenders will also lose revenue from the voluntary termination and balloon payment provisions in the Code. Industry estimates indicate that the one-off (or set up) costs will be £350,000 - £435,000 whilst the on-going costs are around £850,000 p.a., most of which is a transfer to consumers.

Other key non-monetised costs by 'main affected groups'

One lender that uses Bills of Sale lending to finance vehicle purchases is not a member of the trade association responsible for monitoring and enforcing the Code of practice, which means that its customers will not benefit from the Code and third parties will not benefit from its additional protection. This may potentially confer a slight competitive advantage on this firm relative to others, but consumer may be less likely to use this firm as a result.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low		N/A	0	**0**
High			9.84	**84.7**
Best Estimate	0		4.92	**42.3**

Description and scale of key monetised benefits by 'main affected groups'

Improving consumers' access to information before they enter a loan agreement should allow them to engage fully with the market and benefit from shopping around for different products within the Bills of Sale industry. BIS estimates that the potential savings for this range from £0 - £9 milllion per year. Furthermore, some consumers may benefit from £840,000 in savings per year by not making capital repayments and not paying a shortfall should they became unable to repay their loan and are forced to cede their asset.

Other key non-monetised benefits by 'main affected groups'

Consumers would continue to have access to this type of credit and should enjoy clearer and more reasonable borrowing terms. Up to 7,000 small businesses and sole traders will also continue to have rapid access to funds when they are needed.

Key assumptions/sensitivities/risks	**Discount rate (%)**	3.5
The code of practice is not legally binding so lender adherence is not certain; consumers may continue to suffer from poor protection if companies fail to comply. This will be mitigated by monitoring lender compliance and evaluating whether problems identified have been sufficiently addressed. Failure to fully comply with the Code may lead to suspension or exclusion from the CCTA. In addition, the OFT is empowered to investigate whether lenders are following the Irresponsible Lending Guidance. Failure to comply can ultimately result in removal of a lender's consumer credit licence. However, there is some uncertainty about the extent to which problems identified with Bills of Sale lending could be addressed by existing and forthcoming measures (e.g. CCD, ILG), which could reduce the overall benefits of intervention.		

Impact on admin burden (AB) (£m):			**Impact on policy cost savings (£m):**	**In scope**
New AB: 0	**AB savings:** 0	**Net:** 0	**Policy cost savings:**	No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England and Wales		
From what date will the policy be implemented?			October 2010		
Which organisation(s) will enforce the policy?			Self-regulatory		
What is the annual change in enforcement cost (£m)?			0		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A		**Non-traded:** N/A
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** N/A		**Benefits:** N/A
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro** Unknown	**< 20** Unknown	**Small** Unknown	**Medium** Unknown	**Large** Unknown
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[3] Statutory Equality Duties Impact Test guidance	Yes	33
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	

[3] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

Summary: Analysis and Evidence Policy Option 2

Description: Reform the Bills of Sale Act

Price Base Year 2010	**PV Base Year** 2010	**Time Period Years** 10	**Net Benefit (Present Value (PV)) (£m)**		
			Low: -94.7	**High: 86.1**	**Best Estimate: -4.3**

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	0	N/A	0	**0**
High	0		12	**103.3**
Best Estimate	0		6	**51.6**

Description and scale of key monetised costs by 'main affected groups'

Lenders argue that reforming the Bills of Sale market in order to ensure that a court order is required to repossess vehicles and that a protected goods clause is included in contracts will increase the cost of lending and potentially render the business model unprofitable. Alternatively, the costs could be passed on to the consumer in the form of higher prices. This could reduce consumption by up to £5 million and business investment by up to £7 million.

Other key non-monetised costs by 'main affected groups'

The scope of reforms are significant and would require primary legislation. This would entail the associated resource costs for Government and Parliament.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low		N/A	1	**8.6**
High			10	**86.1**
Best Estimate	0		5.5	**47.3**

Description and scale of key monetised benefits by 'main affected groups'

This benefit stems from consumers shopping around and avoiding products that are more expensive than the best option available, which BIS estimates to be £0 - £9 million per year. Furthermore, requiring lenders to register Bills of Sale with approved asset finance registers rather than with the courts would reduce costs to industry by around £1 million per year. This would also create a more efficient system for consumers to find out whether a car has an outstanding Bill of Sale debt than the current court-based system.

Other key non-monetised benefits by 'main affected groups'

Bills of Sale lending could continue in a modified form with all the protections afforded to other types of consumer credit. Consumers at risk of having their asset foreclosed will have more options and greater protection to keep their vehicle and agree an alternative solution.

Key assumptions/sensitivities/risks	**Discount rate (%)**	3.5

There is some uncertainty about the extent to which problems identified with Bills of Sale lending could be addressed by existing and forthcoming measures (e.g. CCD, ILG), which could reduce the overall benefits of intervention. The timescale involved in implementing the necessary legislative changes may stretch over 2 years. Reforms could increase the cost of providing credit, which would result in higher prices and/or credit rationing. It is also not certain that borrowers would be able to access suitable alternatives given the relatively small penetration of credit unions and third-sector lending in the UK and the fact that other forms of sub-prime credit do not tend to offer loan amounts as high as those offered by Bills of Sale lenders. This could lead some consumers to borrow from unlicensed and illegal lenders.

Impact on admin burden (AB) (£m):			**Impact on policy cost savings (£m):**	**In scope**
New AB: Unknown	**AB savings:** Unknown	**Net:** Unknown	**Policy cost savings:**	No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England and Wales			
From what date will the policy be implemented?			January 2013			
Which organisation(s) will enforce the policy?			OFT, Trading Standards			
What is the annual change in enforcement cost (£m)?			Negligible			
Does enforcement comply with Hampton principles?			Yes			
Does implementation go beyond minimum EU requirements?			N/A			
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A		**Non-traded:** N/A	
Does the proposal have an impact on competition?			Yes			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** 100		**Benefits:** 100	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro** Unknown	**< 20** Unknown	**Small** Unknown	**Medium** Unknown	**Large** Unknown	
Are any of these organisations exempt?	No	No	No	No	No	

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[4] Statutory Equality Duties Impact Test guidance	Yes	33
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	33
Small firms Small Firms Impact Test guidance	Yes	33
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[4] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence Policy Option 3

Description: Ban Bills of Sale for Consumer Lending

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	**High:**	**Best Estimate: -103.3 + unquantifiable benefits**

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low		N/A		
High				
Best Estimate	0		12	**103.3**

Description and scale of key monetised costs by 'main affected groups'

It is estimated that banning the use of Bills of Sale for consumer lending would result in the following annual costs: fall in household consumption (£5 million), and; reduction in small business investment (£7 million).

Other key non-monetised costs by 'main affected groups' Bills of Sale companies may be shut down if they cannot diversify to other products. Some consumers would also be excluded from accessing credit, including more than half of Bills of Sale borrowers that rely on the product for immediate needs such as short-term cash flow, bills, debt consolidation, vehicle repair and home improvements. Primary legislation would also entail resource costs for Government and Parliament.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low		N/A		
High				
Best Estimate	Unquantifiable		Unquantifiable	**Unquantifiable**

Description and scale of key monetised benefits by 'main affected groups'

There could be benefits for borrowers that are able to access alternative and cheaper types of credit such as home credit, pawnbroking or pay day loans; this is most likely to apply to consumers that borrow relatively low amounts (possibly up to £500-600) with Bills of Sale loans. It is not possible to quantify these potential savings in the absence of evidence on the supply side, namely whether non-Bills of Sale lenders would be willing to lend to consumers that are unable to access Bills of Sale loans.

Other key non-monetised benefits by 'main affected groups'

Around 6% of Bills of Sale borrowers face the threat of repossession, whilst 2-3% (800 -1,200) actually lose their asset. Under this option, these consumers would retain their vehicles. Aside from the benefits of retaining the asset, use of the vehicle is likely to be important to individuals' livelihoods, for example in maintaining employment. In addition, the 15% of Bills of Sale borrowers that default on their loan could possibly use another type of credit that does not exacerbate the potential financial difficulty they are in.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

There is some uncertainty about the extent to which problems identified with Bills of Sale lending could be addressed by existing and forthcoming measures (e.g. CCD, ILG), which could reduce the overall benefits of intervention. There is an even greater risk than under Option 2 that Bills of Sale lenders will fail to adapt to the new regulatory framework and offer alternative (or revised) forms of credit, leading to credit rationing. This could force some consumers to turn to unlicensed lenders, particularly borrowers that currently use Bills of Sale loans for urgent needs.

The time scale involved in implementing the necessary legislative changes may stretch over 2 years.

Impact on admin burden (AB) (£m):			**Impact on policy cost savings (£m):**	**In scope**
New AB: Unknown	**AB savings:** Unknown	**Net:** Unknown	**Policy cost savings:**	No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England and Wales		
From what date will the policy be implemented?			01/01/2013		
Which organisation(s) will enforce the policy?			OFT, Trading Standards		
What is the annual change in enforcement cost (£m)?			Negligible		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			Yes		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** 100	**Benefits:** 100	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro** Unknown	**< 20** Unknown	**Small** Unknown	**Medium** Unknown	**Large** Unknown
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

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Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	33
Small firms Small Firms Impact Test guidance	Yes	33
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	

[5] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Bills of Sale Act - http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1882/cukpga_18820043_en_1
2	Consultation - http://www.bis.gov.uk/Consultations/ban-use-of-bills-of-sale-for-consumer-lending
3	OFT Irresponsible Lending Guidance - http://www.oft.gov.uk/about-the-oft/legal-powers/legal/cca/irresponsible
4	Government response (website address)

+ Add another row

Evidence Base

The following table shows how the costs and benefits of the Government's preferred option (Option 1) will materialise over a ten year period.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs	0.39	0	0	0	0	0	0	0	0	0
Annual recurring cost	0.85	0.85	0.85	0.85	0.85	0.85	0.85	0.85	0.85	0.85
Total annual costs	1.24	0.85	0.85	0.85	0.85	0.85	0.85	0.85	0.85	0.85
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	4.92	4.92	4.92	4.92	4.92	4.92	4.92	4.92	4.92	4.92
Total annual benefits	4.92	4.92	4.92	4.92	4.92	4.92	4.92	4.92	4.92	4.92

* For non-monetised costs and benefits please see summary pages and main evidence base section

** UQ indicates costs that are unquantifiable

Evidence Base (for summary sheets)

Overview

1. Concern has been expressed, by enforcement agencies and consumer groups, about the increasing use of Bills of Sale as an instrument of securitisation for consumer lending in England and Wales[6]. The Bills of Sale Act (the Act) dates back to 1878 and regulates an archaic and complex method of lending money, using personal goods (chattels[7]) as security. This type of lending may be suitable for commercial entities, such as a sole trader covering a period where they are waiting for payments to come in, or a brewery requiring a freehold tenant to sign an agreement against their assets to act as security against the provision of credit on a supply account.

2. For consumers, however, the complexity of the arrangement means that they may not be aware of key aspects of the method of lending, such as the rights of possession that the lender has, which permits seizure without the requirement for a court order upon default. The use of an instrument with such powers of seizure that most consumers believe they are protected from, presented as a modern form of borrowing and bound by a potentially confusing and impenetrable contract (which may be explained in plan English, but also contains more archaic language, in accordance with the requirements of the legislation) are key to the difficulties consumers have understanding the risks. There is also concern that some lenders may be acting irresponsibly in areas such as marketing, lending terms, enforcement and default procedures.

3. In December 2009, BIS launched a consultation on the proposal to ban the use of bills of sale for consumer lending. Since the consultation closed in March 2010, a new Coalition Government has been elected and has committed to, “protect consumers, particularly the most vulnerable… (and) to promote more responsible corporate and consumer behaviour through greater transparency”.[8]

4. BIS has analysed consultation responses from stakeholders (including lenders, enforcement agencies, consumer groups and debt advice agencies) and evidence collected from a range of sources - including lenders, OFT high-cost credit research, survey data and qualitative evidence from advice agencies and consumers. The evidence suggests that banning Bills of Sale for consumer lending is currently a disproportionate response to the problems that have been identified. It also risks closing off a source of credit and causing detriment to businesses and consumers that rely on the product for urgent and immediate funds.

5. The Government’s preferred approach is a new voluntary industry-led code of practice. Lenders have produced an acceptable code of practice, with which they are willing to comply, administered by the Consumer Credit Trade Association (CCTA). This will be complemented by legislation which will shortly come into force implementing the Consumer Credit Directive (CCD) and the OFT’s enforcement of

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[6] In Scotland, the Bills of Sales Acts do not apply and Bills of Sale are not used. For consumers in Scotland unable to access mainstream finance, lending using a sale and hire purchase arrangement is typically available against vehicles, offered by at least one of the companies met by BIS.

[7] Chattel is defined as a personal possession. The Bills of Sale Act permits a ‘Chattel Mortgage’ where the Chattel is defined as any item of personal property, moveable or immoveable, except real estate.

[8] http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf

its new Irresponsible Lending Guidance (ILG), published in March 2010. The risk of lenders failing to comply with the Code will be mitigated by monitoring compliance and conducting annual audits. In the event that a lender fails to fully adhere to the Code, the CCTA has the right to suspend or expel them from the association.

6. In the event that the proposed approach fails to meet its objective and remedy the problems in the market, supported by evidence from the Post-Implementation Review, there is scope to re-visit other options at a later date.

One In, One Out

7. The Coalition Government has made a commitment that red tape will be cut by introducing a 'one-in, one-out' rule whereby no new regulation with net costs to business is brought in without other regulation being cut by an equivalent or greater amount. However, because the preferred option is a voluntary Code of Practice and does not have statutory backing, an Out is not required. This voluntary code is the least burdensome option for business, which has been taken into account in developing this policy, in line with coalition commitments.

Background

8. There has been criticism from the legal profession about the use of Bills of Sale for many years. Within just a few years of introduction of the Bills of Sale Act (1878) and the Bills of Sale (Amendment) Act 1882, the legislation was drawing adverse judicial comment in the courts and concern about the mass of litigation the Act was producing. Over 80 years later the Crowther Report[9] was equally critical about the technical pitfalls of the Bills of Sale legislation and recommended repeal of the Bills of Sale Acts. More recently, the Law Commission concluded in 2002 that serious consideration should be given to reform[10]. In July this year, Mr. Justice Vas stated in a High Court case that, "the introduction of a modern system of registration, offering protection and clarity to creditors, consumers and chattel owners alike, is long overdue"[11].

9. Loans offered in conjunction with a Bill of Sale are increasingly being secured against the value of a car and are often referred to as 'logbook' loans[12]. In 2009 there were about 38,200 registered Bills of Sale, compared to 27,900 in 2006. During the first six months of 2010, more than 19,000 new Bills of Sale were registered, which represents a similar level of use seen in the first half of 2008 and 2009. Evidence suggests the majority are used in relation to consumer credit and based around the 'logbook lending' model – for example, the top 10 companies who register Bills of Sale are logbook lenders. Such loans typically take one of two forms:

   - A loan secured against the value of a vehicle which the borrower already owns, or

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[9] The Crowther Committee Report on Consumer Credit was presented to Parliament in March 1971: http://hansard.millbanksystems.com/lords/1972/jun/28/consumer-credit-the-crowther-report

[10] The Law Commission consultation paper no 164 on "Registration of security interests: company charges and property other than land"

[11] Chapman v Wilson, Pitts and LawFinance Limited [2010] EWHC 1746 (Ch)

[12] The term 'logbook lending' refers to the fact that creditors generally retain the original logbook, or V5 registration document, of the vehicle

- A loan used to finance the purchase of a new (or second-hand) vehicle.

10. Evidence currently suggests that the former is much more prevalent, with only one lender specialising in the use of Bills of Sale to finance car purchases. Information submitted by the lender during the consultation suggests around 10% (4,400 per year) are used for the purchase of a vehicle.

11. In order to use Bills of Sale for logbook lending, there are certain preconditions that must be met – typically, the vehicle must be less than eight years old or of high value, and the car must be finance-free, or almost finance-free. The amount that consumers are able to borrow will depend on the value of the vehicle. For example, one logbook loan company submitted data for a sample of its portfolio which indicated that the median loan-to-value ratio is 50%.[13] Their average loan is estimated to be £1,400 although this is higher than BIS' industry-wide estimate of £1,000.

12. Bills of Sale may be a useful tool for sole traders, freelancers or other users operating outside the immediate scope of consumer credit. Based on lender responses to the consultation, it is estimated that around 18% of Bills of Sale loans are taken out for business purposes, with the ratio likely to be higher when calculated by value (for example one lender indicated that business loans accounted for 25% of total loans by number and 40% by value).

13. Some, such as the High Court, argue that there is nothing intrinsically wrong with Bills of Sale as a financial instrument but that its misuse by some traders is the problem and this should therefore be more tightly regulated. Views have also been expressed that an appropriate use of Bills of Sale is to raise money against personal items of worth, such as a valuable painting or antique, and that this should not be lost. However, enforcement agencies argue that Bills of Sale as an instrument is inappropriate for lending to consumers.

14. One of the key concerns for consumer groups and enforcement agencies is the fact that lenders that use Bills of Sale for consumer lending can seize secured goods without the need for a court order. Anecdotal evidence also indicates that, in a minority of cases, certain organisations are engaging in aggressive collections procedures, which can be threatening for certain consumers.[14] However, lenders argue that the fact that Bills of Sale do not require a court order to allow the recovery of secured property is fundamental to their lending model, as it allows them to operate with lower running costs. Lenders argue that, as a result, logbook lending – if used responsibly and appropriately – can provide a source of credit to people who would not otherwise be able to borrow money. In particular, they highlight their ability to serve people with a bad credit history, who are bankrupt or who are self-employed.

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[13] The lending criteria from another lender allows a customer to increase the maximum loan amount, if they sign up for certain risk-sharing features of the loan – for example, by providing spare keys or electing to make repayments by direct debit

[14] 'Evidence journal – Autumn 2009', Citizens Advice

Current legislation/regulation

Bills of Sale Act

15. Bills of Sale are governed by two sets of legislation, the Bills of Sale Act 1878 and an amending Act of 1882[15]. The Bill of Sale Act 1878 allows personal property to be given as security for a loan. As with other mortgage arrangements, ownership is transferred to the lender, by way of security upon the condition that the asset will be reconveyed to the debtor when the secured sum has been paid. In addition, if the lender fails to meet their repayment commitments, the lender can use the security to pay the debt. Any excess funds arising from the sale must then be returned to the consumer. The advantage to the consumer is that they retain the use of the property whilst they repay the loan. The Bills of Sale Acts provide that when security is given in writing it must be in a prescribed form and it also requires the loan to be registered with the Court. If the consumer defaults on repayment the lender must serve a default notice (which is the same as the default notice under the CCA) but can then seize and sell the property without the need to go to court. They may also pursue the consumer for any shortfall from the proceeds of the sale.

Consumer Credit Act

16. Loans made in conjunction with a Bill of Sale share features with hire purchase; in particular they allow the consumer to retain and use the product even where they do not own it whilst they make payments. However, under the Consumer Credit Act, hire purchase offers two key protections over a Bill of Sale loan – ‘voluntary termination’[16] and ‘protected goods’[17].

17. Voluntary termination allows a consumer to stop making repayments and hand back the goods to the credit provider. The consumer could still be liable for some reasonable excess charges under voluntary termination, but has the opportunity to ‘cut their losses’. Financing using Bills of Sale offers no such safeguard and a consumer who might wish to exit from a deal part way through would have no mechanism to do so, without being liable for the whole amount of the loan.

18. In the case of hire purchase and conditional sale under section 90 of the Consumer Credit Act, if the consumer is in breach, has not terminated the agreement and has already paid one third or more of the total price, then the goods become “protected goods”. In such circumstances, the lender cannot gain possession of the goods without a court order. The Act imposes serious sanctions if a lender tries to recover the goods without a court order. If not already terminated, the agreement will be terminated, the consumer released from all further liability and she can recover from the lender all sums paid under the agreement. This protection does not exist under a Bills of Sale finance agreement as, once the consumer is in default, the lender can recover the goods after serving a default notice and complying with the requirement of the Bills of Sale Acts (namely not to sell until 5 days after seizure). There is no need for a court order. One lender indicates that a protected goods clause would affect around 30% of consumers that default on logbook loans (i.e. 70% of borrowers that default have not yet paid one-third of the loan).

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[15] http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1882/cukpga_18820043_en_1

[16] Able to be exercised once half of the loan has been paid

[17] Able to be exercised once one-third of the loan has been paid

19. In addition, section 92 of the CCA ensures that lenders under hire purchase agreements must obtain court orders to recover property from a debtor's premises. Bills of Sale borrowers are not protected in this way. Furthermore, legislation gives additional protections to third parties in relation to hire purchase and conditional sale arrangements. Under Part III of the Hire Purchase Act 1964, if a private purchaser buys a vehicle, in good faith, without notice of a hire purchase agreement or a conditional sale agreement, then they obtain good title. Third parties who innocently buy a car which is encumbered by a bill of sale have no such protection.

20. It appears that Bills of Sale are used by one lender as an alternative to hire purchase to finance the sale of cars to the riskier, non-standard market[18], but with none of the protections afforded for hire purchase agreements under CCA. This lender registered an average of 4,400 Bills of Sale per year during the period 2005-2009.

21. Under a Bill of Sale agreement, the consumer gives their car as security for the loan and so – as with other security arrangements – title passes to the lender until the debt is fully repaid, when ownership will revert back to the consumer. If the consumer defaults on the loan, the lender or car financier retains the right to recover the borrower's car until the total amount has been paid.

Consumer credit licensing

22. As a 'logbook loan' secured by a Bill of Sale is an agreement by which the lender provides the borrower with credit, it is subject to regulation under the CCA. Accordingly, all those offering lending under Bills of Sale must be licensed by the OFT to carry out a consumer credit business under the CCA. In addition, any protections under the CCA which apply to consumer credit agreements also apply to those credit arrangements linked to Bills of Sale (e.g. section 140A which regulates unfair relationships between creditors and debtors, but not the specific provisions on hire purchase and conditional sale, which are set out in the CCA).

23. Lenders are subject to rigorous scrutiny by the OFT in order to get a consumer credit license. Furthermore the OFT has a wide range of powers in carrying out its enforcement activity, from the ability to place conditions on a licence to imposing a fine[19], or ultimately taking away the licence. The Consumer Credit Act 2006 also provided consumers with the ability to challenge through the courts any credit relationship which they believe is unfair[20] and extended the right to free and independent dispute resolution via the Financial Ombudsman Service (FOS), to cover all consumer credit licence holders.

Forthcoming legislation/regulation

24. There are several initiatives either recently implemented, or close to implementation, that will impact on lenders who use Bills of Sale. As discussed later, although these measures will address some of the problems identified in relation to Bills of Sale lending, there are some outstanding issues which remain (see analysis under 'do nothing' below).

[18] The 'non-standard' market includes individuals who are systematically refused credit by mainstream lenders

[19] Of up to £50,000 for failure to comply with a single requirement

[20] http://www.oft.gov.uk/advice_and_resources/resource_base/legal/cca/CCA2006/unfair/

Consumer Credit Directive

25. The Regulations implementing the CCD[21] come into force on 1 February 2011. They impose a number of new requirements on all lenders, including those using Bills of Sale. Lenders will have to explain their products to consumers adequately before they enter into a contract, including the consequences of any failure to repay. This should require Bills of Sale lenders to provide sufficient information to the borrower to enable them to understand the possessory nature of the deal and the consequences of failing to repay, such as the threat to an individual's home, or other assets, in the event that the Bill of Sale security is worth less than an outstanding debt. In addition, they must provide key information about fees, charges and repayment schedules. Lenders must provide this information in a standardised form, making it easier for consumers to compare different loans.

26. Lenders will be required to check the creditworthiness of consumers before they lend to them. Some Bills of Sale lenders already perform basic income and expenditure checks, such as completing a personal budget planner and taking copies of bank statements proving salary deposits. Lenders may, however, have to take further steps to meet this obligation. This could include using the credit reference agencies and performing more detailed checks in the borrowers' ability to repay[22]. However, analysis from one Bills of Sale lender, using data from a credit reference bureau, indicates that use of credit scoring would have led to 25% of credit to good[23] customers being declined. They found no evidence of a correlation between a consumer's credit history and their behaviour when making repayments against the logbook lending product.

Irresponsible Lending Guidance

27. Guidance on lending behaviours and practices which the OFT considers to be irresponsible was published in March 2010.[24] It covers all forms of consumer credit lending which the OFT licenses. For lenders using Bills of Sale, the greater certainty provided by the guidance should ensure that consumers are protected from irresponsible lending practices while not unnecessarily reducing the supply of sustainable credit, particularly to those most in need.

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[21] http://www.berr.gov.uk/whatwedo/consumers/consumer-finance/credit_regulation/ec-directives/page29927.html

[22] The OFT's Irresponsible Lending Guidance states that failing to undertake reasonable assessments of affordability or failing to undertake assessments of creditworthiness will amount to an irresponsible lending practice.

[23] "Good book" refers to the loan book where consumers repay the loan on time. Conversely, the "bad book" refers to accounts that ended up in default.

[24] http://www.oft.gov.uk/shared_oft/business_leaflets/general/oft1107.pdf

28. In relation to Bills of Sale, the following are specifically identified as features that should be included in an explanation of the credit agreement:

- the risk of losing the asset on which the credit is secured, how it would be repossessed, and the loss this could entail
- repossession under a Bill of Sale can take place without a court order
- repossession may not clear all the debt owed
- unlike under a hire-purchase agreement, there is no protection from repossession having paid off a third of the amount owed or provision for voluntary termination

OFT high-cost credit review

29. In June 2010 the OFT published its final report for the review of the high-cost credit sector[25], which it estimates to be worth be around £7.5 billion annually. The sector is characterised by loans which are often for small amounts, repayable over short periods, and with high Annual Percentage Rates (APR) of interest. They include home collected credit, pawnbroking, payday loans and retail POS loans. Many of the customers of products in the sector have limited access to credit and are on low incomes and represent a vulnerable consumer group.

30. The review found that in a number of respects the markets for high-cost credit work reasonably well, with suppliers filling a gap in the market not fully served by mainstream financial suppliers. They also found evidence of lenders showing forbearance with repayment difficulties and did not find a high level of consumer complaints. However, several problems were identified including: low ability and effectiveness of consumers in driving competition between suppliers; limited competition on price resulting in some suppliers charging higher prices than would be expected in a competitive market, and sources of additional suppliers such as mainstream financial suppliers are limited.

31. The OFT made a number of recommendations to remedy these problems, which centered on improving information for consumers and promoting best practice amongst suppliers. The proposed remedies include the following:

- Provide information on high-cost credit loans through price comparison websites (either in collaboration with industry or, if that fails, through legislative means)
- Include a ‘wealth warning’ statement on advertisements
- Explore ways that high-cost suppliers can provide suitable information to credit reference agencies about the payment performance of their customers (thus allowing borrowers with good payment records to use mainstream lenders more easily in the future)
- Relevant trade associations should establish a code of practice that covers best practice policy in a number of areas (e.g. complaints processes, advice to consumers, policies on rolling over of loans etc.)

Bills of Sale Market

32. As shown in the table below, the number of registered Bills of Sale showed strong growth in 2007 and 2008, before leveling off last year. Historic figures are difficult to

[25] http://www.oft.gov.uk/OFTwork/credit/review-high-cost-consumer-credit/

acquire, as electronic records of registered Bills of Sale were not kept by the High Court prior to 2005. However, figures sourced from the Law Commission report shows that in 2001 only 2,840 Bills of Sale were registered. Assuming that the second half of 2010 follows previous trends (see Chart 1), there will be between 38,000 and 40,000 new loans this year. It is possible that there are also a number of oral, unregistered Bills of Sale used for consumer lending, which we are unable to account for. Any Bills of Sale made in writing that are not registered at the court are also void, though once again there is no evidence on the incidence of these.

33. The High Court noted that there was a very large increase in the registrations of Bills of Sale about ten years ago. The increase in registered Bills of Sale from 2001 to 2007 can be linked to a period where more consumers owned a vehicle, or felt financially secure enough to purchase a vehicle, meeting the borrowing criteria for logbook-style lenders.

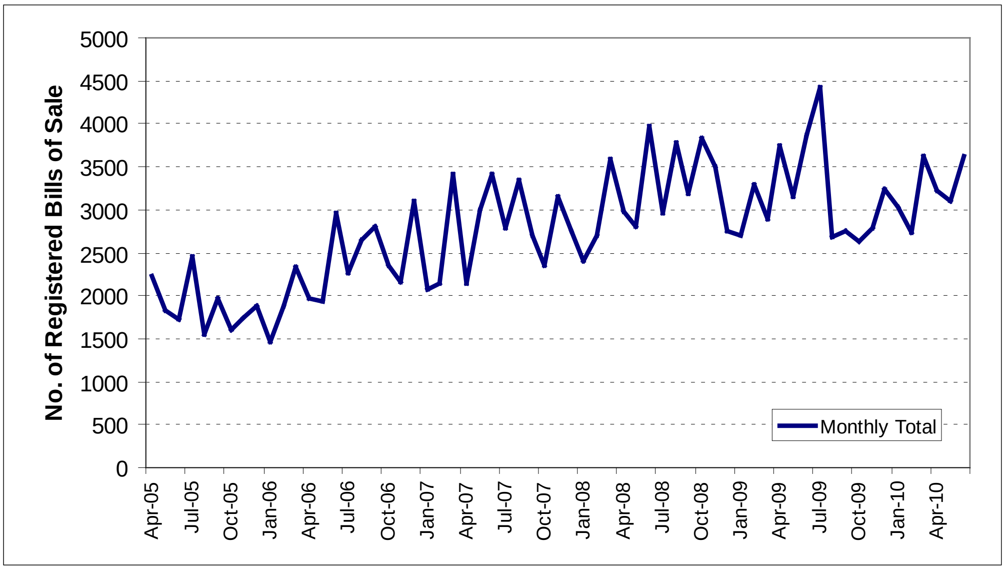
34. It appears that Bills of Sale lending has remained steady during the recent economic downturn, which may be the result of conflicting forces. On the one hand, there may have been higher demand as mainstream credit providers tightened their lending criteria; on the other hand, as noted in the OFT’s interim high cost credit research report[26], consumers reduced their expenditure and debt exposure during the recession and increasing their saving. The majority of individuals said that they are now less likely to use borrowed funds to finance their lifestyles. On the supplier side, specialist lenders’ access to funding from banks was also restricted and a number of them sought to restrict both the amount that they lent and the types of consumers to whom they lent.

Table 1: Number of registered Bills of Sale, 2006-2009

Date	Registered Bills of Sale
2006	27,891
2007	33,266
2008	38,462
2009	38,153
January – June 2010	19,356

[26] http://www.oft.gov.uk/shared_oft/reports/consumer_credit/oft1150.pdf

Chart 1: Monthly Trends in registered Bills of Sale, 2005-2010



Source: Royal Courts of Justice

Logbook Loans

35. Logbook loans secured by a Bill of Sale are generally for amounts ranging from £500 to £2,000 (sometimes more). The average across the industry is estimated to be £1,000 (based on lenders' submissions to the consultation), typically repaid over a 6-18 month period. APRs vary according to lender but tend to range between 200% and 500%, which is similar to other high-cost credit products where loans are taken out over a similar period (e.g. home credit).

36. Many lenders also charge consumers arrangement and registration fees (ranging from £10 to £100 depending on the size of the loan), which will be included in the APR calculation. If payments are late or missed, there will be late payment charges (one lender costs these at £12 per item), visit charges, chasing calls and the cost of external recovery agents (which can range from £150-£250 according to one lender). Most of these are conditional payments that will not be included in the APR cost, although consumers are made aware of them in the terms and conditions of the contract.

37. Repayment of a logbook loan can either be divided equally (i.e. a regular amount of interest and capital is paid each month) or follow a "balloon" profile, whereby the borrower pays only the interest each month and at the end of the term the entire capital is paid off. One lender indicated that around 70% of its portfolio was repaid on an "interest-only" basis, although only a minority of loans offered by the two largest lenders (accounting for more than four-fifths of the logbook loan market) are on an 'interest-only' basis.

38. Evidence from one lender indicates that approval rates for logbook loans are low – around 18% of all applications. It argues that the low approval rate is due to a combination of their assessment of the individual's ability to repay and/or the suitability of the security. This could suggest that there are still a significant number of individuals whose credit needs remain unfulfilled, and who may go to less reputable credit providers (such as loan sharks or other less scrupulous Bills of Sale lenders). On the other hand data from the YouGov DebtTrack survey indicates that 70% of consumers applying for a Bill of Sale loan are successful, with the remainder either offered a reduced amount or refused completely. However, this result should be treated with caution due to the small sample size.

39. During the consultation, Government requested evidence on the proportion of Bills of Sale loans that were taken out against existing vehicles. Evidence submitted suggests that the majority of logbook loans are secured on the borrower's current vehicle, with only one lender using Bills of Sale to finance car purchases. This lender indicated that they registered 22,067 Bills of Sale in total during the five year period 2005-2009, which suggests that around 4,400 logbook loans are used for new purchases each year (or about 10% of annual registered Bills of Sale)[27].

40. Bills of sale are also used for business purposes (e.g. vehicle repair for taxi drivers, financing for property developers, materials for tradesmen) due to their potential offer of a rapid release of funds. Based on lender submissions to the consultation, it is estimated that around 18% of logbook loans are used by sole traders and small businesses[28]. In the case of one of the larger lenders, the proportion is higher at 30%. The ratio is likely to be greater when calculated by value; for example one lender indicated that business loans accounted for 25% of total loans by number and 40% by value.

Market size

41. Given the evidence available, it has not been possible to accurately assess the aggregate value of Bills of Sale loans. In estimating the overall market size of Bills of Sale lending, we have multiplied the annual number of new Bills of Sale loans by the average loan value in the market, estimated to be around £1,000. This is calculated by using the average loans submitted by lenders during the consultation and taking a weighted average (according to market share[29]).

42. On this basis, the total amount lent through Bills of Sale lending could be £38m-40m in 2010. In relation to other high-cost or sub-prime credit, this is relatively small. For example, the OFT estimated that approximately £7.5 billion was lent across the entire high-cost credit market in 2008, comprising sub-prime retail credit (£4.25 billion), home collected credit (£1.26 billion), payday loans (£900 million), pawnbroking loans (£600 million) and credit union loans (£340 million).[30] Therefore, in spite of its recent growth the size of the market remains relatively small. Evidence from a consumer survey commissioned by OFT found that around half (49%) of UK adults have not even heard of log book loans; only text loans were less well-known[31].

Chart 2: Market Size for Bills of Sale Lending

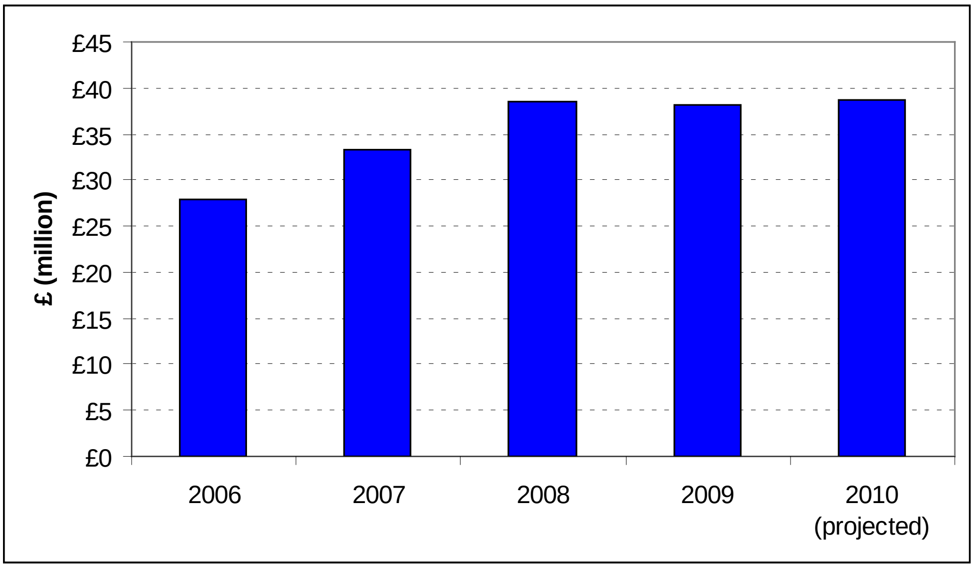
[27] Given the profile of Bills of Sale use shown in table 1, it is unlikely that these loans were evenly distributed across the past 5 years. It is possible that they were more prevalent in 2007 and 2008 but without further evidence, the average is used as an approximation.

[28] Submissions from the three main lenders made up approximately 90% of the market in terms of the number of Bills of Sale loans (based on a figure of 38,153 loans in total). In order to estimate the proportion of loans used for business purposes for the remaining 10%, the average rate was taken from the three biggest lenders.

[29] A company's market share is calculated based on the number of loans it registered in 2009

[30] OFT, Annex E of 'Review of High Cost Credit: Final Report' (June 2010)

[31] http://www.oft.gov.uk/shared_oft/reports/consumer_credit/oft1150a.pdf



Note: estimate based on average loan size of £1000
Source: BIS calculations based on High Court figures and lender submissions to the consultation

Defaults and Repossessions

43. Three of the major lenders included details about default rates in their responses to the Government consultation and they ranged from 10% to 33%. An average industry default rate of 15% was calculated by taking a weighted average according to the market share of the company.[32] A default notice can be issued when the borrower is in arrears on two repayments, although the point at which it is utilised varies depending on the lender. This is higher than arrears rates for certain types of mainstream lending (e.g. 4%-6% for personal loans and credit and store cards[33]), although this is to be expected given the higher risk profile of customers making use of loans from Bill of Sale lenders. The default rate is more closely aligned with the arrears rates for some non-mainstream loans, such as home credit (18%) and payday loans (8%) although these figures should be treated with extreme caution due to small sample sizes.

44. Using a similar method for the calculation of the above default rate, BIS estimates that the 'repossession' rate in the industry is around 6%. However, this figure includes repossession orders that do not necessarily result in recovery of the vehicle - lenders may show forbearance or agree a new repayment plan such that the borrower's asset is not foreclosed. One lender stated that although they had a repossession rate of c. 3%, almost half of the vehicles (45%) that are repossessed are returned following full payment or after agreement to a payment plan. Therefore, in the case of this lender, around 1.5% of customers lose their vehicle permanently. Similarly, another lender estimates that they move to recover roughly 40% of vehicles that they are entitled to repossess. This suggests that the actual repossession or recovery rate is closer to 2-3%. Therefore, it appears that only a

[32] Submissions from the main lenders made up approximately 90% of the market in terms of the number of Bill of Sale loans (based on a figure of 38,153 loans in total). In order to estimate the default rate of the remaining 10% of loans, the average default rate was taken from the three biggest lenders.

[33] Using survey data from YouGov DebtTrack, these figures represent the proportion of borrowers that are more than 3 months behind on their repayments. This is not completely analogous to the default rate on Bills of Sale loans as the latter can include borrowers that are two months behind. However, the figures are used here to provide an illustrative comparison.

minority of loans in default (around 800-1,200 per year) end directly with repossession.

Consumer research

45. As part of their high-cost credit review, OFT commissioned a consumer survey and a behavioural study of high-cost credit users. BIS also incorporated some questions about Bills of Sale into the quarterly YouGov DebtTrack (YDT) survey; however, due to the low incidence of borrowing at the national level, the sample size is too small for robust analysis. Some of the evidence collected, however, provides useful illustrations and also corroborates OFT research and survey data submitted by lenders during the consultation. The following section provides a summary of the findings from OFT, YDT and evidence submitted during the consultation. Further detail can be found in Annex 2.

Bill of sale users

46. The OFT found that consumers of high-cost credit encompass a wide spectrum of demographic groups that vary by product, although in general borrowers tend to have lower than average incomes and are not as financially literate as consumers that purchase mainstream credit products[34]. The variation in borrower characteristics is also likely to apply to Bills of Sale loans, especially given the fairly high incidence of borrowing for business purposes and the fact that a customer holds an asset worth, on average, more than £2,000. Survey data from one of the lenders also indicated that one third of their borrowers were homeowners.

47. There are a number of important behavioural traits that high-cost credit borrowers tend to exhibit though. These include:

- Not shopping around when considering loan agreements
- Valuing the speed with which a loan can be arranged
- Focusing on the weekly or monthly repayment rather than the total cost of a loan, and
- Valuing the flexibility offered by products that allow repayments to be missed.

48. Evidence from the OFT review and the YDT survey indicate that the first two of these, along with the higher loan amount, were particularly important in choosing to take out a logbook loan.

49. One of the key aspects of Bills of Sale loans is that consumers can borrow relatively large amounts relative to other types of high-cost credit. Typical loans for the latter vary between £100 and £500, compared to the logbook loan average of £1,000 (although some lenders indicated that their average loan is closer to £1,500). This suggests that not all borrowers can easily substitute a logbook loan with another type of high cost credit, although home credit may be an alternative option for individuals using Bills of Sale to borrow lower amounts, around £500.

50. One of the main lenders submitted the results from a customer survey that asked the main reason for taking out a logbook loan. Excluding those that did not specify a reason, the most common (46%) was to address short-term cash flow problems or pay bills/rent. A significant minority (23%) used it to fund a large expense (wedding, vehicle repair, home improvements or holiday) whilst 7% used the loan

[34] See the OFT's final report for full details. http://www.oft.gov.uk/OFTwork/credit/review-high-cost-consumer-credit/

to consolidate other debts. This is reasonably consistent with the OFT's finding in its interim report on high cost credit.

51. In terms of customer satisfaction, lenders submitted evidence from company surveys suggesting that the vast majority of their borrowers (98-99%) are satisfied with the service provided. Less than one quarter of the logbook loan borrowers surveyed in the YDT indicated that they were "quite dissatisfied" with the loan whilst no one was "very dissatisfied". BIS has also analysed the complaint database held by Consumer Direct, which contains more than 1,000 complaints during the past six years related to logbook loans, though it is important to note that a significant minority of those 'complaints' would be better classified as enquiries. The fact that the number of complaints is relatively small compared to the total number of loans issued suggests that consumer detriment in the Bills of Sale market is not as widespread as anecdotal evidence might suggest.

52. Nevertheless, there is also evidence to suggest that Government, consumers and lenders should be concerned with certain aspects of the Bills of Sale market. One of the most important is customer understanding of the product; evidence from the YDT survey showed that more than half of consumers borrowing with a logbook loan had a poor or very poor understanding about the circumstances in which their vehicle could be repossessed.[35] This is consistent with the general findings from the OFT's consumer survey for the high cost credit review, which showed that around half of respondents find loan and credit agreements complex and confusing.[36]

53. More than ten percent of the Consumer Direct complaints related to poor understanding of the loan agreement, whilst the most common complaints were about the cost of the loan (including arrears and other additional charges) and the seizure (or threat of seizure) of the borrower's vehicle. Qualitative evidence submitted by debt advice agencies also highlight numerous case studies of borrowers encountering financial difficulty or instances where the lender seized the secured vehicle without informing the customer. It is not known whether these were due to poor lender practices or consumers failing to understand all the terms of their loan agreement, but both are cause for concern.

Issue

54. Consumers, consumer groups and enforcement agencies have all raised concerns that loans secured by Bills of Sale are unfair to consumers and that borrowers in vulnerable circumstances, such as low-income families, may suffer severe detriment and are at risk of exploitation.

55. Consumer groups have cited examples of poor practice and the misuse of Bills of Sale by some 'logbook lenders' and have called for Bills of Sale to be banned. The OFT and Local Authority Trading Standards Services also have concerns about the activities of several 'logbook' lenders and the nature of consumer complaints they have received. OFT is particularly concerned that Bills of Sale afford consumers

[35] While this may not be significantly different from general levels of understanding relating to consumer credit product features, other types of credit do not carry such severe consequences for default

[36] This groups together users of logbook loans, payday loans, text loans, pawnbrokers, credit union loans and personal loans from impaired credit providers due to small sample sizes.

fewer protections than are available to borrowers of other regulated consumer credit products.

56. Government recognises that the Bills of Sale market for consumer lending is relatively small compared to other types of credit and that, within the market, the majority of consumers are able to repay their loans without difficulty. However, the problems encountered by a minority of borrowers are still a cause for concern.

57. Evidence, as highlighted in the background section above, indicates the existence of the following problem areas to be addressed:

- Bills of Sale are difficult to understand and borrowers may not realise that, within the context of a security arrangement, ownership of the asset passes to the lender (on condition that the asset will be reconveyed to them when the debt has been paid off)
- Borrowers do not typically spend much time or effort looking for different suppliers
- Bills of Sale loans lack the consumer protections associated with other lending arrangements and property can be seized without the lender having to obtain a court order if borrowers default
- Borrowers can be subjected to debt collections practices that they consider ‘unfair’ and have few rights when a lender seeks to repossess assets
- Borrowers are often unaware that if they default, they may be pursued for the shortfall debt where it is not covered in full by the value of the underlying security, typically a car which may depreciate rapidly
- Third party buyers have little recourse if a lender recovers a security, typically a second-hand car, to which a Bill of Sale is still attached in respect of a loan made to the previous owner.

<u>Bills of Sale language and formalities difficult to understand</u>

58. Bills of Sale are arcane and technically complex instruments to use for modern day consumer lending. The evolution of Bills of Sale legislation was to curb the use of the Bill of Sale as a means of defrauding innocent persons[37]. However, the language of the Bills of Sale Acts – and consequently the language of the prescribed form for a Bill of Sale used to secure ‘logbook loans’ (which dates back to the 19th Century) – is outdated and unclear. One response to the consultation indicated that even lawyers experience difficulties understanding some of the legal intricacies of Bills of Sale.

59. The modern consumer may fail to understand and appreciate the nature of the terms being entered into. Evidence highlighted above suggests that some borrowers may not realise, for example, that this is a security arrangement and within that context the title of the security passes to the lender and that the borrower cannot sell the property without the lender’s consent and, usually, without first paying off the debt they owe.

60. The complex and old-fashioned language can create problems for enforcers, as well as borrowers. Local Authority Trading Standards Services have indicated that it is difficult for their officers to ascertain if the lender has acted within the law.

[37] The original Bills of Sale Act 1854 was repealed and re-enacted by the Bills of Sale Act 1878, which prescribes the form which a Bill of Sale should take and introduced more protection for borrowers.

61. Finally, the archaic formalities of the Bills of Sale Acts can also be disadvantageous for lenders, as even a minor technical error can mean that the Bill of Sale is void[38].

Consumers do not usually shop around

62. In its review of high cost credit, the OFT found that 62 per cent of high cost credit users did not consider any other options when taking out their credit agreement, whilst only 15 per cent said they actually considered and investigated alternatives[39]. In the YDT survey, results suggest that around one third of logbook loan users are not aware of other sources of credit. This is likely to be partly driven by a borrower's need to access funds quickly; 43% of high cost credit users say that speed of arrangement is the reason they choose their product, whilst many lenders argue that customers are attracted to Bills of Sale because of the speed and ease with which they can borrow (although evidence from the YDT indicates that quick access to money is not so important for logbook loan users). This has the effect of reducing competitive pressure on suppliers.

Lack of consumer protections and risk of seizure

63. Borrowers of loans issued using Bills of Sale do not enjoy one of the main protections afforded to consumers under hire purchase and conditional sale arrangements, namely that in the event of a default by the borrower, the lender would have to go to court in order to enforce repayment of the debt[40]. In the Consumer Law Review, the Trading Standards Institute[41] and the Institute for Consumer Affairs[42] argued that the use of Bills of Sale caused significant consumer detriment because borrowers were not afforded the same protections as under hire purchase arrangements.

64. Under a 'logbook' loan secured with a Bill of Sale, if a borrower misses a payment, the lender can seek to take possession of the car 14 days after issuing a default notice. Under section 7 of the 1882 Act, the lender must also retain the goods for a further 5 days, before they can be sold. This means that vulnerable consumers may suffer sudden and potentially unforeseen detriment, with little scope to protect themselves. Whilst consumers can apply to the court for a time order, with a view to getting more time to pay the debt, they may not have the confidence to do so.

[38] This differs from the Consumer Credit Act 1974 (CCA), where a breach of the formal requirements for a secured loan does not necessarily make the agreement unenforceable. Instead, the court is granted discretion to decide whether or not it remains enforceable (section 129(1)(b)(i) of the CCA).

[39] http://www.oft.gov.uk/shared_oft/reports/consumer_credit/High-cost-credit-review/OFT1232.pdf

[40] In addition, a consumer in a hire purchase agreement has the right to end the agreement, in accordance with Section 99 of the CCA, at any time before the last instalment is due. The consumer may then return the goods and settle 50% of the balance, plus costs. If a consumer has paid a third or more of the total amount payable, the goods become "protected goods" and, unless the debtor gives consent for the goods to be removed, the creditor must go to court for an order for the goods to be returned.

[41] Trading Standards Institute response to Consumer Law Review - http://www.berr.gov.uk/files/file52000.pdf (p.53)

[42] Institute of Consumer Affairs response to Consumer Law Review - http://www.berr.gov.uk/files/file51998.pdf (p.272)

65. In relation to loans used to purchase new (or second-hand) vehicles, there is a suggestion that Bills of Sale are being used instead of hire purchase (HP), to avoid providing customers with such regulatory protections.

<u>Borrowers may be unaware of liability for shortfall debt</u>

66. The borrower's liability may not end with seizure of the secured asset. Given that vehicles depreciate over time, the security may not be sufficient to cover the outstanding balance, particularly under circumstances where the debtor becomes liable for interest and other charges. Logbook loans can be made over 18 months – some are repaid over 2-4 years - during which time a car can depreciate significantly, due to market conditions, damage or wear and tear. In such circumstances, borrowers remain liable if there is any shortfall after the sale of the secured goods, potentially putting them in a worse situation than before taking out the loan. If the sale of the vehicle raises more than the value of the loan, the lender will return the surplus to the borrower, as it would be illegal for the lender to keep it.

67. Charging orders may be taken out against the borrower's home as a result of outstanding debt. Consumer groups have examples of charging orders being raised against debtors homes, after the sale of a repossessed vehicle failed to cover the balance of an outstanding loan, but these were largely taken out by debt purchasers rather than by the original lender. One lender acknowledged that they had used charging orders several times but stated that they had never applied for an order for sale as this would have been disproportionate given the size of the amount outstanding.

<u>'Unfair' debt collection and enforcement practices</u>

68. Once a lender has issued a default notice, there is no need to secure a court order – creditors are within their rights to seize the car even if the missed payment is the last but one. Under section 7A of the Bills of sale Act 1882, the creditor must serve a default notice 14 days before seizing the asset (this is the same as the default notice under section 87(1) of the CCA). In theory, the debtor can apply to the court for a 'time order' against the Bill of Sale to allow for more time to satisfy the loan agreement. However, the process is not free (although the consumer may recover his costs from the creditor at court) and in practice few borrowers will have the knowledge or wherewithal to apply to the courts or they may not receive the default notice with sufficient time to act.

69. If the borrower does not apply for a time order or resume payments, the lender will legally be able to seize the secured goods without a court order, unless the Bill of Sale is defectively drafted, or the instrument has not been properly registered. However, a borrower is unlikely to know whether a Bill of Sale was defective or whether it was properly registered (if at all), in which case the consumer could be subject to adverse consequences.

70. In addition, under section 7 of the Bill of Sale Act 1882, once the property is seized, it must not be sold for 5 days. During that time, the borrower can apply to the High Court or a judge in chambers who may rule that if a payment can be made, the lender can be restrained from removing or selling the goods. Unfortunately, the language in section 7 is not clear and a court application is unlikely to be made by a vulnerable consumer who would be unaware that he had the right to do so.

No protection for third party buyers

71. An additional problem is that a third party could purchase a financed vehicle (on which a Bill of Sale has been raised), complete with replacement logbook.[43] Some consumers, particularly when purchasing an older vehicle, may accept that the logbook is simply missing and purchase a vehicle without one.

72. This is partly caused by the process by which Bills of Sale are registered at Court. Cars subject to outstanding finance under a hire purchase agreement will be registered on one of the asset finance registers operated by credit reference agencies (e.g. HPI, Experian). The three largest logbook lenders all register their agreements both at court and on HPI. Therefore the majority of loans are recorded on an asset finance register. However, if a Bill of Sale is not registered with HPI or another asset finance register, the only way to find out whether a Bill of Sale is attached would be to search the registry at the Court where Bills of Sale are registered. The search needs to be done either in person or by written request, with the latter usually taking 2 weeks, and is subject to a charge (£40 according to one lender). Furthermore, while the lender may hold onto the car's V5 logbook, it is quite common for cars to be sold without the original logbook, a copy of which can obtained on request from the DVLA.

73. In the event that a third party consumer purchases a used car and is not aware that it has been secured for financing by a Bill of Sale, they will not obtain good title and the car can be seized by the original Bill of Sale lender. The third party has no protection except to sue the person who borrowed under the Bill of Sale. This is different to the position of a third party who buys a car which is subject to a hire purchase agreement. That innocent third party (who has to have no notice of the existence of the hire purchase agreement), does get good title, under the provisions of the Hire Purchase Act 1964. Evidence submitted by lenders suggest that this problem affects around 0.5% of Bills of Sale per year[44], or just less than 180 vehicle purchases. Lenders argue that a significant proportion of these transactions are agreed for a price significantly below market value, which could indicate that the third party knows the borrower (e.g. friend or family member) and is colluding to protect the asset from legitimate recovery.

74. The best way any third party has to protect themselves would be to search against HPI before they purchase a car, in the hope that both existing HP agreements and Bills of sale are registered. The fact remains that if these agreements are not registered on HPI, third parties who buy where a Bill of sale is in place would not get good title whereas those who buy where a hire purchase agreement is in place will get good title. It should be noted that many Bills of Sale lenders do register on HPI or an approved registry as a matter of routine.

Rationale

75. Bills of Sale lending have been characterised by both market and government failures.

[43] Replacement logbooks, or V5 documents, are available from the Driver and Vehicle Licensing Agency (DVLA) and can be obtained even though a Bill of Sale is attached to a car

[44] The two largest lenders indicated that between 0.4%-0.5% of vehicles subject to a bill of sale under their company is sold by the borrower and subsequently seized from the purchaser. The average of these two figures was applied for the remaining logbook loans.

Market failure

76. The market failure derives from the complexity of the law and consumers' consequent lack of understanding about how the loans work. If consumers do not fully understand or do not have access to the terms and conditions of such loans, this can lead to adverse selection, which is a form of asymmetric information. This can result in consumers deviating from an optimal choice in their purchase of financial products; that is, if they had access to full information, they might choose an alternative form of lending.

77. The two largest lenders who use Bills of Sale provided operational documentation to BIS, which demonstrated that they have made efforts to provide customers with a 'plain English' explanation of an antiquated act. Despite this, evidence from Consumer Direct, Citizens Advice and Trading Standards suggests that some consumers do not always fully understand the Bills of Sale agreement they are signing, particularly the ramifications of failing to maintain payments.[45] They may not appreciate the fact that the vehicle can be repossessed without a court order or the lack of action they can take to prevent this (whilst they can go to court, it may be too late to get advice and they may not have the funds or the information about the court process).

78. This problem of asymmetric information also arises where customers unwittingly purchase second-hand vehicles that have Bills of Sale attached and which are subsequently repossessed. However, because the lenders are not required to go to court prior to repossessing the vehicle there is no course for redress for these consumers, only a civil case against the previous owner (if they can be identified).

Government failure

79. There has also been a government failure in the regulation of the market, in that Bills of Sale loans lack the consumer protections that exist for other types of lending. This includes the right to seize the secured property without the lender having to obtain a court order, making it relatively easy (compared to other secured loans) for lenders to foreclose on the collateral. The Crowther Report was critical about the technical pitfalls of the Bills of Sale legislation and recommended repeal of the Bills of Sale Acts[46].

Consumer detriment

80. In its review of the high cost credit market, the OFT identified consumer detriment[47] based on consumers lacking awareness of alternative options and demonstrating low levels of financial literacy, which means they are likely to struggle to compare products. They may also have a distorted perception of the marginal benefit they could receive from additional search activity, which further reduces competitive pressure on suppliers.

81. The OFT attempted to quantify the potential benefits from switching by comparing the amounts borrowed and repaid in the pawnbroking, payday and home credit markets and compared this to a counterfactual scenario where consumers choose the best deal available (i.e. the one with the lowest APR or lowest charge per

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[45] It was reported in BIS's recent Consumer Law Review that even Judges had commented on the complexity and impenetrability of the Act

[46] http://www.parliament.uk/briefingpapers/commons/lib/research/briefings/snha-05631.pdf

[47] http://www.oft.gov.uk/shared_oft/reports/consumer_credit/High-cost-credit-review/OFT1232d.pdf

£100). The difference between the two scenarios (£155 million) represented the potential savings that would result if all consumers had chosen the best deal available.

82. In order to quantify the consumer detriment in the Bills of Sale market, a similar approach is used. Bills of Sale lenders offer a range of APRs to potential customers, ranging from 214% to almost 500%. Table 2 provides average loan details for the three largest lenders in the market; it shows how much the average borrower repays and the amount they would pay in the following scenarios:

    (i) 214% APR[48] (cheapest of all lenders)

    (ii) 312% APR (cheapest of the main lenders)

    (iii) 8% monthly interest[49] (cheapest of main lenders)

83. For the purpose of this exercise, loans that finance new car purchases are not included, given the differences with a loan secured on an existing vehicle and the fact that only one lender specialises in it. A borrower that purchases a car with a logbook loan is unlikely to be able to access funds from other logbook loan providers and it is not certain whether they would be able to utilise hire purchase or other motor finance. Once this lender is excluded from the analysis, the Bill of Sale market is dominated by three suppliers.

[48] Details of APR calculations can be found at http://www.oft.gov.uk/shared_oft/consumer_leaflets/credit/oft144.pdf

[49] Monthly interest is charged on the loan principle rather than the amount outstanding

Table 2: Calculation of benefits from switching logbook loan providers

	Lender 1	Lender 2	Lender 3
Estimated Market Share[50] (%)	52	34	4
Average Loan	£800	£1,400	£1,600
Length of Loan	6 months	18 months	6 months
Advertised APR (%)	385.2%[51] (10% per month)	437.4%	151% (312%)[52]
Total Repayment	£1,360	£3,930.42	£2,370
Total Repayment at 214% APR (cheapest lender)	£1,102.26	£2,961.83	£2,204.54
Saving for all customers (£m)	**5.12**	**12.71**	**0.25**
Total Repayment at 312% APR (cheapest main lender)	£1,184.83	£3,423.54	£2,370
Saving for all customers (£m)	**3.48**	**6.65**	**0**
Total Repayment at 8% monthly interest (cheapest main lender)	£1,264	£3,416	£2,370
Saving for all customers (£m)	**1.9**	**6.8**	**0**

Source: BIS analysis, lenders' websites, responses to consultation

84. The results suggest that Bills of Sale borrowers could save around £18 million per year if they used the cheapest provider – savings are calculated by multiplying the average saving per customer by the total number of loans registered by the lender in 2009. However, this is likely to be a gross over-estimate as the lowest-cost supplier has a very small share of the market and is unlikely to have the capacity to finance a larger number of loans. Therefore, the table also includes an analysis where consumers borrow from the cheapest of the main lenders in terms of APR (at 312%) and monthly interest (at 8%); the latter suggests that they could save about £9 million per year. Comparable figures produced by the OFT for other high-cost credit products include £0.5 million for pawnbroking, £41 million for payday loans and £114 million for home credit.

[50] A company's market share is calculated based on the number of loans it registered in 2009, which is most relevant to this analysis. If defined by the value of loans advanced, the market shares of lenders 2 and 3 are relatively higher.

[51] Although Lender 1 has an advertised APR of 385.2%, the loan example given actually gives an APR of 603.1% (or 454.4% if one excludes the £80 fee for registration and documentation).

[52] Lender 3 structures most of its loans so that only monthly interest payments are required, until the final month when the customer repays the capital as well. This reduces the APR calculation compared to a scenario where equal monthly payments are made; in this case, the APR is 312%.

85. It is important to stress that there are a number of limitations and caveats to the above exercise. Without a detailed database of logbook loans (which includes the loan amount, length of agreement, amount repaid, costs incurred by suppliers etc.) it is impossible to quantify the detriment accurately. Thus the above figure is very general and should be regarded as a rough approximation. It also does not take into account the value that consumers place on product quality (e.g. customer service), which is likely to be a factor given the evidence of repeat borrowing (see Annex 2), or the price elasticity of demand for Bills of Sale loans. The latter cannot be estimated due to a lack of information.

86. In addition, the majority of potential savings come from borrowers who take out loans with Lender 2 because the average length of the loan is much longer than for other lenders. It is possible that some of these consumers would not be able to borrow for 18 months or more from other lenders, or if they could they may be charged more if it involved the creditor taking on more risk (e.g. greater depreciation of the asset). Lastly, the table assumes that no borrower settles their loan earlier than the term specified in the contract – for consumers that repay their loan early, the potential saving will be reduced.

87. It is also important to note that the use of APR as an indicator for the cost of borrowing can be misleading in the case of short-term and low value loans, which is why monthly interest was included in table 2. Short-term loans with high cost relative to value may have very high APRs that are not representative of the cost of the product. Similarly, comparing loans of different duration and cost can affect the simplicity of using the APR as a cost measure. It is also affected by the structure of a loan and whether it is ‘interest only’ (balloon repayments) or full repayment; in the case of the latter, the APR will be higher even if the total cost of the loan is the same. Furthermore, penalty and default charges are not included in the APR; the total cost over the life of the loan may therefore not be reflected in the initial price. An alternative measure to the APR is the charge per £100 but this has not been used in the above analysis as it would be heavily distorted by Lender 2 offering a longer repayment period.

88. Therefore, the calculations from this partial equilibrium analysis (i.e. actual quantities are held constant and only prices are allowed to change) should be regarded as an upper bound; they imply that the detriment from consumers’ failure to fully engage with the market and shop around for the cheapest offer is **up to £9 million per year**.

89. It should be noted that, contrary to what was stated in the consultation document, the cost for a typical loan of £750 over 6 months would not be £3,000. If the lender charged 10% interest per month (combined with an administration fee of £80), then the total cost of the loan would be £1,280.[53] In comparison, one lender’s website gives the overall cost for a £750 loan over 6 months as £1,551.76.[54]

90. In addition, home credit may not be a viable alternative in many cases, as home credit loans are typically for a smaller amount than the average Bill of Sale loan. Although the consultation document noted one home credit provider offering loans of up to £6,000, this is very much the exception.

[53] That is, 6 months’ interest of £75 (£450) added to the admin fee (£80) and principal (£750)

[54] Source: www.logbookloans.co.uk

Objectives

91. In considering what action to take in relation to this particular policy area – i.e. the use of Bills of Sale for consumer lending – the Government is guided by the following principles:

- Credit should continue to be available on fair and reasonable terms to those who wish to use it responsibly;
- Vulnerable consumers, or those with an impaired or no credit history, should be able to access credit without suffering detriment if they can afford the repayments
- Consumers should retain the right to use their possessions as security for a loan, provided such loan is made on fair and reasonable terms;
- Consumers should be able to benefit from an open, competitive and innovative credit market and from transparent products.

Options

92. The following policy options have considered in relation to the use of Bills of Sale for consumer lending:

- Do nothing beyond upcoming measures;
- Introduce a code of practice or other non-statutory regulations;
- Reform the Bills of Sale Act 1878 and 1882, and;
- Ban the use of Bills of Sale for the purpose of consumer lending through legislation.

Do nothing beyond current legislation and regulatory activity

93. Doing nothing beyond the upcoming measures described earlier (e.g. CCD, OFT irresponsible lending guidance) would allow Bills of Sale lending to continue but under the provisions of new legislation and guidance from the OFT. For example, under the provisions in the CCD, lenders will be subject to:

- A requirement to provide adequate explanations of products to borrowers
- A requirement on lenders to check borrowers' creditworthiness

94. Since the launch of the consultation in December 2009, the OFT has also published its Irresponsible Lending Guidance (ILG). It includes the following chapters that lenders must adhere to: explanations of credit agreements; assessment of affordability; pre-contractual issues, and; handling of default and arrears. OFT and Trading Standards are empowered to investigate whether lenders are following the published guidance, either as a result of consumer complaints or other intelligence or as part of a compliance check. Lenders that are found to have breached part of the Guidance can be punished in a number of ways, including a fine, requirements to change processes or, in the last resort, revoking the lender's credit licence.

95. Improved data sharing with Government departments, competitors and the credit reference agencies could also help build credit histories, prevent fraudulent activity and promote responsible lending and borrowing. However, evidence received from

one lender suggests that traditional credit scoring methods may need to be adapted.[55]

96. Lenders have also demonstrated that they have gone to some lengths to make the process of borrowing more transparent, by issuing documents such as a "Borrowers Guide" and "Information Sheet"[56] and producing a list of tariffs and fees with the loan documentation, outlining charges for late payments etc. One logbook lending company met by BIS has also instigated a full income/expenditure process at the point of sale to assess affordability.

97. The OFT also made a number of recommendations to remedy the problems it found in its high-cost credit review. These include: information provision on price comparison websites; a 'wealth warning' statement on advertisements, and exploring ways that suppliers can provide information to credit reference agencies. The Government is currently considering these recommendations, which would most likely affect Bills of Sale lending, and will respond as part of the review of consumer credit and personal insolvency, for which a call for evidence was launched in October 2010.[57]

98. As the credit market recovers, increased activity from sub-prime lenders returning to the market may make loans offered by Bills of Sale lenders less attractive to borrowers. In addition, continued government support of the Growth Fund, Social Fund and credit unions should increase access to funds for vulnerable consumers.

Costs

99. The CCD and ILG will not address the lack of consumer protection associated with Bills of Sale lending, particularly the seizure of an asset without needing to obtain a court order. Evidence suggests that this accounts for around 3% of logbook loans per year. It is likely that some consumers would continue to suffer these losses under this option, including up to 180 third parties that purchase a car secured on a logbook loan.

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[55] Analysis of a sample of customer accounts by Equifax – equally split between good and bad accounts – indicated that 25% of its 'good' book would have had their application declined on the basis of a poor credit score. Analysis also yielded that 89% of the entire 'good book' were 'below-prime'. The company therefore concluded that credit scoring was not necessarily an accurate predictor of their clients' behaviour.

[56] In-house operational documents provided to BIS by lenders

[57] http://www.bis.gov.uk/policies/consumer-issues/consumer-credit-and-debt/managing-borrowing

Benefits

100. By requiring lenders to provide adequate explanations of their products and the issuing of guidance from OFT, the problem of adverse selection should be addressed to some extent. Specifically, the ILG requires lenders to “provide the borrower with adequate explanation” and “an opportunity to ask questions about the agreement and…advise the borrower how to ask the creditor for further information and explanation”[58]. There are also particular features of Bills of Sale that the OFT has identified in the Irresponsible Lending Guidance which lenders must highlight to consumers, for example the fact that there is a risk of losing the asset and that repossession can take place without a court order.

101. This could allow consumers to make more informed decisions when purchasing financial products and therefore reduce part of the detriment estimated earlier (up to £9m pa), incurred by not shopping around before the loan is purchased. Should these measures lead to improved decision-making on the part of consumers, it may increase competitive pressure on suppliers, which in turn could result in lower prices.

102. Furthermore, the ILG requires that creditors assess affordability of loans by conducting a “borrower-focused test”. This involves a creditor assessing a borrower’s ability to undertake a specific credit commitment (or additional commitment) in a sustainable manner, without the borrower incurring financial difficulties and/or experiencing adverse consequences. The consumer should also be able to make the repayments out of income and/or available savings, without having to realise security or assets such as the sale of the car. Sources of information that are suggested to conduct the assessment include records of previous dealings with the borrower, evidence of income, evidence of expenditure, a credit score or a credit report. This should go some way towards ensuring that loans are only advanced to consumers who can afford repayments and will not get into financial difficulty. It will also help ensure that consumers can repay the loan whether it is structured on an equal repayment basis or if it is ‘interest-only’.

103. Lastly, the ILG provides detailed guidance on how lenders should handle borrowers that are in arrears or have defaulted on their loan, including the need to respond proportionately, transparently and fairly (e.g. should not unreasonably require that all arrears are paid in one payment or in large amounts and/or within a short period). This will also help address the problem of borrowers being subject to unfair debt collections; for example the OFT states that it does not expect a lender to apply to the court for an order for sale or for the borrower to be made bankrupt without exploring alternative and more proportionate options. It also considers it to be unfair and irresponsible for creditors to use the threat of court action to intimidate borrowers in financial difficulties to pay more than they can reasonably afford.

Risks and Assumptions

104. Whilst consumer access to information will improve under the new Directive and ILG, consumers will remain vulnerable to the loss of their property without the need for a court order. There is also a risk that biases in consumer behaviour could negate the potential benefits of providing further information. Theories have been developed in behavioural economics that suggest people draw incorrect inferences from product information, focus on inappropriate or unimportant data and/or are

58 http://www.oft.gov.uk/shared_oft/business_leaflets/general/oft1107.pdf

distracted by too much information and choice. Previous research has shown that a good deal of regulated information provided on credit contracts does not reach its target audience, often because there is too much information, or the way that it is provided tends to dissuade consumers from reading it.[59]

105. Where there is a lot of information to process, consumers may also rely on short-cuts or 'heuristics' (rules of thumb) to help them make a decision, which can lead to consumers focussing on a narrow range of features in making their choice. This would not incentivise firms to deliver a more competitive and better-quality product. Research by the OFT suggests this is particularly a problem for high-cost credit users, some of whom purchase credit based on short-term affordability or size of repayments, without considering the long-term costs or total repayment amount. High-cost credit users also tend to be less financially literate than mainstream credit users and can find loans and credit agreements both complex and confusing[60].

Option 1 - Introduce a code of practice

106. The CCTA has submitted a Code of Practice for Bills of Sale consumer lending, which has been discussed with Government, and has agreement from the majority of lenders in the market. The one notable exception is the company that uses logbook loans to finance the purchase of cars.

107. The Code that has been proposed by industry and the CCTA includes a number of provisions that should address the problems outlined earlier, over and above those already addressed by changes as a result of implementation of the CCD and compliance with ILG. These include:

- Information sheet – an short summary information sheet will be included with all Bill of Sale agreements, which sets out the definition of a Bill of Sale, along with the obligations of both the lender and the borrower under the agreement;
- Voluntary termination – a borrower can voluntarily terminate the loan agreement by ceding the vehicle to the lender, who will not pursue any subsequent shortfall on the debt, and
- 'Balloon' repayments – a 'balloon' repayment option will only be available when the customer enters the agreement for business purposes and has proven he/she will have sufficient funds available to repay the loan. Balloon payments are also prohibited where the agreement exceeds 12 months.

Costs

108. The absence of a key lender from the CCTA fails to address the relatively poorer protection of consumers purchasing a car through Bills of Sale relative to an individual using a Hire Purchase agreement (e.g. no voluntary termination, no protected goods clause after paying off one-third of the amount owed). Borrowers that use Bills of Sale to buy a car will not benefit from this option.

109. The CCTA and its members would incur a compliance cost for setting up and implementing the voluntary code, which includes the cost of conducting both annual and unscheduled compliance audits. This has been estimated by the CCTA to be around £7,000-£10,000 per year, depending on whether the audit is

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[59] Better Regulation Executive & National Consumer Council (2007)

[60] http://www.oft.gov.uk/shared_oft/reports/consumer_credit/High-cost-credit-review/OFT1232.pdf

conducted by the Association or an independent auditor. Some lenders that do not currently follow all the practices set out in the Code will also incur costs such as: systems development; registering assets on an official Register; training staff (e.g. handling customers in difficulty, dealing with complaints); amending contracts; legal fees, and providing further explanations of the product.

110. The three largest lenders have submitted cost estimates for complying with the Code; one-off costs range from £45,000-£66,000, whilst ongoing costs are associated the voluntary termination and balloon payment provisions in the Code and therefore vary according to lender. They are most significant for the two largest lenders that write the majority of Bills of Sale loans, who estimate the annual cost to be £800,000 in total, and therefore stand to lose the most revenue from these changes. The third main lender has a smaller share and estimates the ongoing cost to be £8,000; given this is relatively small compared to the larger businesses, BIS estimates that the total annual cost to Bills of Sale lenders compliant with the Code, excluding audit costs, will be around £840,000[61]. It should be noted, however, that this figure represents a transfer to consumers, some of whom will benefit from making capital instead of balloon repayments. Furthermore, borrowers that default and are no longer able to repay their loan will not have to pay a shortfall should the value of their car not cover the outstanding loan.

111. In aggregating these costs with those incurred by the CCTA, the total one-off cost of this option to lenders is estimated at **£350,000-£435,000**[62] and the total ongoing costs are around **£850,000 per year**.

Benefits

112. The Bills of Sale market for consumer lending is fairly concentrated, with three lenders making up around 90% of the market. Each of these is a member of the CCTA and has agreed to comply with the proposed Code of Practice. This should address the majority of the problems outlined earlier and complement the CCD and ILG in reducing consumer detriment in the market.

113. As outlined above, consumers will benefit from savings in making capital repayments and not paying a shortfall should they become unable to pay and are forced to relinquish their asset. This benefit is estimated to be worth around £840,000 per year. As we cannot be certain about the overall level of compliance within the Bills of Sale market, we have assumed a mid-point value for this benefit (i.e. £420,000 per year).

114. There is also a potential benefit from reducing the consumer detriment that is associated with choosing products that are not optimal and therefore expensive. This is estimated to be £4.5 million, which represents the mid-point of the range of costs to consumers in the market as we do not expect a Code of Practice to avoid all of the consumer detriment (though as discussed earlier, the £9m figure is subject to limitations and caveats). This suggests that the potential benefit to consumers can be valued at **£4.92 million**.

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[61] This calculation assumes that the four remaining lenders incur annual costs of £8,000; this is likely to be an over-estimate given they are not as large as the third main lender.

[62] The set-up costs for the three largest lenders (ranging from £45,000 to £66,000 each) are £171,000 in total. A range is given for seven lenders based on a lower bound, where four smaller lenders incur one-off costs of £45,000, and an upper bound where they incur one-off costs of £66,000.

115. In addition, consumers would continue to have access to Bills of Sale credit and, through better practices and tougher enforcement, may enjoy clearer and more reasonable borrowing terms. The majority of logbook loan borrowers (about 85%) are able to repay their loan without difficulty and the significant proportion (46%) that use the loan to address short-term cash problems or urgent bill payments will not suffer additional burdens that could arise from restricting access to the product. Ensuring that this type of credit remains accessible will also benefit the small businesses and sole traders that rely on logbook loans for rapid access to funds.

Risks and Assumptions

116. A voluntary code of practice would not be legally binding, which means that lender adherence to the Code could be uncertain. Consumers may continue to suffer some of the detriment set out earlier if companies are not fully compliant. Therefore, this will be mitigated by monitoring lender compliance and evaluating whether the problems defined earlier have been addressed. In the event that a lender fails to fully comply with the Code, the CCTA has the right to suspend or expel them from the association.

117. The OFT is also empowered to investigate whether lenders are following the ILG, either as a result of consumer complaints, market intelligence or as part of a compliance check. Failure to fully comply can result in a number of penalties, ranging from requirements to change processes to revoking the credit license, which should provide sufficient incentive for lenders to adhere to the practices set out in the Guidance and the industry Code.

Option 2 - Reform Bills of Sale legislation to make it more appropriate for consumer lending

118. Under this option, changes would be made to the Bills of Sale Act to give consumers the ability to challenge repossession and deal with some of the most egregious practices, as set out above (e.g. consumers who find their cars have previous Bill of Sales attached and are subsequently seized; seizure of a vehicle without a court order after unexpected charges are levied, with no the opportunity to contest the action).

119. To modernise the Act, the following provisions would be examined:

- Removing the lender’s rights to seize and sell the borrower’s goods without a court order;
- Protecting the borrower from having goods repossessed under certain conditions (e.g. with low levels of arrears);
- Updating the language of the Bill of Sale form and the administration;
- Improving the registration process for Bills of Sale;
- Setting limits to the size of sum to be lent against goods secured through a bill of sale to protect against inappropriate use of Bills of Sale for small or large value loans[63].

[63] The 1882 Bills of Sale Act introduced a £30 minimum limit for a Bill of Sale. This may have been intended as a form of protection to avoid the widespread use of Bills of Sale for low-value transactions. This sum could be updated to reflect a more realistic present value (e.g. using an average earnings index).

Costs

120. The likely scope of reforms to guarantee the necessary consumer protections would require primary legislation and therefore entails the associated resource costs for Government and Parliament. It is likely that reforms would take up to two years to draft and implement.

121. One lender has argued that its ability to repossess vehicles without going through the court process and not having a protected goods clause in its contracts reduces its costs and therefore allows them to offer loans to high-risk borrowers, who may otherwise be unable to borrow. Increasing these costs could either result in some lenders restricting the supply of credit (e.g. by increasing the minimum value of vehicles accepted as security and/or increasing the price of the loan) or they could be passed on in the form of higher prices. Alternatively, the proposed reforms may well render this Bills of Sale model unprofitable for lending businesses, causing them to exit the market with much the same result as under Option 3.

122. Survey data from one of the main lenders indicates that around 13% of logbook loans are taken out for luxury purchases such as holidays; if one assumes that annual gross lending is £40 million per year, this suggests that Bills of Sale contributes about £5 million per year to household consumption. In addition, given that 18% of logbook loans are advanced to small enterprises and sole traders, we estimate that they contribute approximately £7 million per year to business investment. Therefore, any measure that restricts the supply of Bills of Sale lending could have an economic cost of **£0-£12 million per year** depending on whether there are alternatives to credit available. However, the extent to which such alternatives are available will depend heavily on the credit status of the potential borrower, about which it is very difficult to generalise. At best, if alternatives are available for all potential uses of Bills of Sale lending, this cost will be zero. However, at worst this cost will be £12m as no legal alternatives will be available, which will also involve costs associated with illegal lending.

Benefits

123. Making reforms to this form of lending should remove the areas of concern and the adverse elements associated with the way in which Bills of Sale for consumer lending are currently used. Bill of Sale-type lending secured against personal goods could continue in a modified form, with all the protections of a standard consumer credit or hire purchase agreement. This modified form of lending would also be subject to changes required under the OFT's Irresponsible Lending Guidance and regulations to implement the CCD, described above.

124. In addition, this would lead to the avoidance of costs incurred by consumers of choosing products that are more expensive then necessary, estimated to be around £4.5 million. However, the extent to which these savings are made would depend on the degree to which consumers make better choices about their lending product.

125. Lenders have also suggested that legislation requiring Bills of Sale to be registered with approved asset finance registers (e.g. HPI and Experian) would reduce costs to industry if they no longer had to register loans with the courts. Based on the number of loans that were written in 2009, this represents a saving of around £1 million a year. Therefore, the total benefit of this option for consumers and industry is **£5.5 million**.

Risks and Assumptions

126. It is assumed that the necessary legislation would take up to two years to draft and implement. Furthermore, as discussed above, reforming current legislation could increase the cost of lending. Lenders may respond by withdrawing credit from certain consumers, particularly those considered high-risk, who would therefore require alternative forms of credit. It is not certain that such alternatives exist given the large amounts borrowed using Bills of Sale and the relatively small penetration of credit unions and third sector lending in the UK. This could lead some consumers to borrow from unlicensed and illegal lenders.

127. The analysis above does not include benefits (costs) that consumers (lenders) would receive (incur) from changes to balloon repayments or the potential introduction of voluntary termination (as well as other potential changes). It is not possible to quantify these without knowing the detail of the legislation. However, given that the end result is a transfer from lender to borrower, rather than an actual economic cost or benefit, it should not significantly affect the final calculation.

Option 3: Ban the use of Bills of Sale for the purpose of consumer lending

128. The final option is to ban the use of Bills of Sale for the purpose of consumer lending, in effect preventing Bills of Sale being used to secure lending against personal goods. This would be achieved by repealing the Bills of Sale Acts 1878 and 1882 in respect of the use of Bills of Sale as an instrument of securitisation for the purpose of consumer lending.

129. A number of consumer groups strongly favour a ban, on the basis that Bills of Sale are complex and confusing instruments which consumers do not fully understand, are lacking in consumer protections and are open to abuse. They believe that reform or enforcement may never fully address the issues around seizure and the transfer of ownership and argue that Bills of Sale are being used unfairly and irresponsibly.

Costs

130. Lenders claim that they would not be able to offer viable alternatives to Bills of Sale lending if it was banned. Secured loans that included the protections of Hire Purchase (HP) do not offer sufficient incentives for the lender, as goods under a HP agreement become ‘protected’ after one third of the term and hence are not able to be immediately repossessed. They therefore believe that lenders would have to cease trading should Bills of Sale be banned for the purpose of consumer lending. This would involve a gradual shutting down of their business, starting with the granting of loans and, over the course of around two years, reducing staffing as the loan book is repaid or vehicles repossessed and sold.

131. Although in practice those companies currently using Bills of Sale might be able to find other ways to offer secured loans compatible with the CCA, it is possible that such action could result in a number of companies ceasing to offer logbook loans and firms who lend exclusively (or predominantly) in this manner could cease trading. Based on the above estimate that Bills of Sale contribute £5 million per year in consumption and £7 million in business investment, this indicates that banning the practice would involve a cost of **£12 million per year**.

132. Furthermore the two largest lenders have told officials that between them, and their franchises, they employ in the region of 200 people[64]. On that basis, it is possible that approximately 250-300 jobs would be directly at risk over a two-year period from the date of a ban. Although this illustrates an order of magnitude, we cannot quantify the cost in monetary terms given the lack of information on wage rates. Furthermore, some lenders operate within a larger business network, therefore not all of these jobs may be lost. There would also be further impacts on suppliers and those firms to whom operations have been outsourced.

133. If consumers are unable to access alternative forms of lending, they will face significant borrowing constraints. As discussed earlier, it is possible that the majority of borrowers would be unable to obtain suitable credit elsewhere, as other types of sub-prime credit are usually for lower amounts and have certain requirements (e.g. employment for payday loans, saving and membership for credit union loans). Furthermore although a proportion of logbook loans are taken out for luxury purchases (e.g. holidays), the majority require credit for immediate needs such as short-term cash flow, bills, debt consolidation, vehicle repair and home improvements. Restricting these consumers' access to credit could push them into severe difficulty or force them to borrow from illegal money lenders.

Benefits

134. Consumers (both borrowers and third-party buyers) that face the threat of repossession would retain their vehicle. Aside from the benefits of retaining an asset, use of the vehicle is also likely to be important to individuals' livelihoods, for example in maintaining employment. Furthermore, the 15% of Bills of Sale users that default on their loan would avoid getting into further financial difficulty on their credit commitments.

135. The potential savings of £0-£9 million outlined earlier are not relevant under this option because consumers would not be able to borrow from any Bills of Sale lender. However, there would be saving for borrowers that are able to access alternative and cheaper types of credit such as home credit, pawnbroking or pay day loans; this is most likely to apply to consumers that borrow relatively low amounts (possibly up to £500-600) with logbook loans. However, the extent to which these savings are made would depend on the risk assessment of other lenders (i.e. whether or not they are willing to lend to the borrower) and whether consumers are aware of such alternatives. As discussed earlier, 62 per cent of high cost credit users do not consider any other options when taking out their credit agreement, whilst the YDT survey suggests that around one third of logbook loan users are not aware of other sources of credit. Unfortunately it is not possible to quantify these potential benefits in the absence of evidence on the supply side, namely whether non-Bills of Sale lenders would be willing to lend to consumers that are unable to access Bills of Sale loans.

136. Some lenders may be able to adopt a new style of lending, possibly by means of a new method of securitisation, but with the consumer protections associated with modern credit agreements. A further benefit for HMCS is that resources currently allocated to registering and administering Bills of Sale loans for consumers could be transferred to other areas.

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[64] One of the lenders operates from 23 regional branches with relatively few centralised staff whilst the other runs a franchised operation over larger swathes of the country. The franchise operation model has the entirety of the parent companies staff based at their head office and outsources several key roles such as repossession.

Risks

137. It is not yet known the extent to which oral and unregistered Bills of Sale will continue to be used in the event of a ban, even though – under a ban – such use would be unlawful. There is currently little evidence on the number and value of unregistered loans and therefore it is not possible to analyse the impact of a ban.

138. It is important that in the absence of Bills of Sale, consumers have alternative means of accessing credit. However, as discussed earlier, it is not certain that such alternatives currently exist.

139. A direct impact of banning is that Bills of Sale lenders will either be shut down or forced to provide alternative legal types of credit. The majority of key lenders argue that a the Bill of Sale loan is unique and cannot easily be replaced by another form of lending; as a result, banning the product is unlikely to see another lending instrument meeting demand at a cost that consumers are prepared and able to pay. Furthermore, by eliminating suppliers in the consumer credit market, there will be an indirect effect on other lenders by reducing the number of competitors.

Summary of preferred option

140. Following responses to the consultation and the analysis of evidence received, the Government's preferred approach is to proceed with Option 1 and allow industry to establish a Code of Practice. This will be complemented by legislation implementing the CCD and the OFT's enforcement of its new ILG. This approach is part of the new Government's approach to policy-making, by pursuing alternatives to regulation wherever possible while seeking to minimise the burden on business.

141. The evidence presented in this impact assessment suggests that Option 3 (banning Bills of Sale) is disproportionate to the problems identified in the market. There is also potential to cause detriment to the businesses and consumers that rely on Bills of Sale lending for urgent and immediate funds.

142. However, in the event that the proposed approach fails to meet its objective and address the problems in the market (supported by evidence from the Post-Implementation Review), there is scope to re-visit other options in the future. The OFT will regularly monitor lenders' compliance with the ILG, whilst the CCTA will conduct annual and unscheduled compliance audits for the Code of Practice. Compliance with these, combined with evidence regarding the prevalence of consumer problems in relation to Bills of Sale, will inform Government's consideration of the need for further action in this market.

Summary table of costs & benefits associated with each option

	Costs (£m)		**Benefits (£m)**	
	Transition	Ongoing	Transition	Ongoing
Option 1: Code of Practice	0.39	0.85	0	4.92
Option 2: Reform Legislation	0	6	0	5.5
Option 3: Ban Bills of Sale for Consumer Lending	0	12	0	Unquant.

Monitoring and Enforcement

143. The Code of Practice will be monitored and enforced by the CCTA, which will require members to submit Annual Compliance Audits, conducted by the Association or an independent auditor at the member's business premises, as a condition of membership. The CCTA will take action against any member found to be in breach of the Code; such actions can include unscheduled compliance audits, written warnings, requests for explanations and the suspension or expulsion of a member from the Association.

144. In addition, the OFT can use its information gathering powers in order to seek evidence that businesses are following the ILG in appropriate cases. They can also require lenders to facilitate access to their business premises by an OFT or Trading Standards officer, in order to observe the activities of the business or inspect certain documents. OFT and Trading Standards will investigate lender practices in the event of customer complaints, market intelligence or as part of a compliance check.

Regulatory Policy Committee

145. This impact assessment was submitted to the Regulatory Policy Committee (RPC) on 28th October 2010 for consideration. An opinion was received from the RPC on 9th November, which highlighted three main areas of concern: the potential for double-counting of costs and benefits resulting from other legislation and guidance in this area[65]; a lack of quantification for benefits associated with a ban on Bills of Sale lending, and the additionality of Bills of Sale lending on aggregate consumption and investment levels.

146. In relation to the first of these, it has not been possible to estimate what proportion of the identified consumer detriment could be addressed by existing reforms. For that reason, a range has been calculated, with a lower bound that reflects a situation where existing reforms address all of the identified detriment (hence the marginal effect of the proposed policy is zero) and an upper bound where existing reforms address none of the identified detriment (hence the marginal effect of the proposed policy is £9m per year). However, without further information on how these existing reforms will affect the aggregate consumer detriment, it is not possible to be more precise about the proportion addressed by the proposed policy. This risk has been flagged in both the analysis section of Option 1 and the summary sheet.

147. With reference to the second, it is not possible to include the quantified benefits attributed to other policy options – which pertain to consumer savings from improved selection of Bills of Sale lender – to an option which bans the use of Bills of Sale for consumer lending, as there are no lenders between which to compare, hence no reduction in detriment from that source. There are other benefits that would flow from a ban on Bills of Sale lending, which have been identified above – i.e. benefits to borrowers that are able to access alternative and cheaper types of credit, avoidance of costs associated with threat of repossession and consequent impacts on health, employment prospects and potential exacerbation of financial difficulty. However, as set out above, it has not been possible to quantify these.

148. Lastly, the RPC does not agree that the effects on consumption and investment identified above are permanent, believing that the impact would be transitory – i.e.

[65] Namely, Consumer Credit Directive and Irresponsible Lending Guidance

restricting Bills of Sale use would impact on the timing of consumption and investment, not the aggregate level. This may be true for some Bill of Sale users, but arguments put forward by Bill of Sale lenders is that their business model allows them to lend to some consumers who would not otherwise be able to access credit, which would help to achieve a higher overall level of economic activity.

Specific Impact Tests

Competition Assessment

The Government's preferred option, which is being taken forward for implementation (Option 1), is unlikely to have a significant effect on competition, as it does not constrain Bills of Sale lenders in their ability to offer products in any way. A Bill of Sale lender that does not subscribe to the CCTA code may potentially have a slight competitive advantage compared to those who do adhere to the code. However, as a non-subscriber to the code, consumers may be less likely to use their services, which may have a countervailing negative competitive effect.

In contrast, reforming the Bills of Sale Act (Option 2) might result in some lenders leaving the market, whilst a ban on the use of Bills of Sale for consumer lending (Option 3) would necessitate exit. Lenders whose sole business is logbook lending would be most disadvantaged by this, as they would be least able to supply other types of credit. Lenders who are already active in other types of lending could adapt more easily – this may favour larger lenders, particularly those that are part of a larger parent organisation. For those operators who stay in the market under Option 2, it is likely that any increase in operating costs would result in credit rationing or be passed directly onto consumers in the form of higher prices/charges.

Based purely on the amount of lending which it is estimated to account for, a ban on the use of Bills of Sale for consumer lending (Option 3) would have a relatively small impact. However, some sub-prime (or non-standard) borrowers would be faced with more limited choice of potential lending products, which could reduce competition in the high-cost credit market in general. If proposed reforms under Option 2 were to reduce the profitability of lending via Bills of Sale to the point that a significant number of logbook loan providers exited the market, this could lead to similar outcomes in terms of reduction of consumer choice.

Small firms impact test

The Government's preferred option, which is being taken forward for implementation (Option 1), has some effect on small firms, as all Bill of Sale lenders are SMEs. Therefore, the costs associated with implementation of Option 1 (set out above) are likely to fall entirely on SMEs.

In contrast, a ban on Bills of Sale lending (Option 3) would result in a number of lenders closing down operations, at least until a viable alternative lending model had been tested and proved financially viable. As stated above, reforms to the Bills of Sale Act (Option 2) are likely to see some firms close down if they cannot make similar margins of profit under new legislation. Furthermore, the small businesses and sole traders that rely on Bills of Sale loans would no longer have access to such finance; this would have an impact on up to 7,000 small firms.

Equality impact tests

A separate equality impact assessment was prepared for last year's consultation on Bills of Sale, along with a list of questions asking respondents for information regarding equality issues. However, no substantive responses were received. In line with taking a proportionate approach and to ensure best practice, now that the proposed policy is no longer a non-legislative measure, we have determined that the most suitable approach is to include the relevant analysis as part of the equalties specific impact test of this impact assessment.

After screening of the impact of implementation of this policy on the following groups, there is no significant impact on age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity. As set out below, there may be a minor positive impact on younger households, households with disabled persons and female consumers.

Analysis

Given that it is such a small market, there is no available literature or robust statistics about the characteristics of Bills of Sale users. More detailed data – such as complaints from Consumer Direct and management information from lenders – still does not provide sufficient opportunity for analysis.

Survey data collected for BIS that attempted to capture this group of consumers gathered only 20 responses (less than 1% of the sample), which is not sufficient to analyse. However, in attempting to understand the characteristics of both current and potential users of Bills of Sale, it may be instructive to look at the profile of home credit users. This can be drawn from research undertaken by OFT for their high-cost credit review.[66]

- age

This research finds that users of home credit are more likely to be from younger age group than more general credit users. For example, almost 20% of users are aged 18-24 (compared to around 12% for all types of credit) and around 28% are aged 25-34 (compared to just over 15% for all types of credit).

- gender

According to this research, home credit users are more likely to be female, accounting for around two-thirds of customers, compared to a roughly 50:50 split across users of all types of credit.

- income/socio-economic group

The research also finds that home credit users are more likely to come from a lower socio-economic group – over 35% coming from group E, compared to roughly 8% for users of all types of credit. This is similarly reflected in annual income – over half of home credit users have an annual income below £11,500, compared to around a quarter across all credit users.

Although low-income households do not constitute a “protected characteristic”, it may give some insight to the prevalence of characteristics associated with low income. For example, evidence suggests that disabled adults are twice as likely to live in low-income households as non-disabled adults.[67]

- summary

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[66] http://www.oft.gov.uk/shared_oft/reports/consumer_credit/High-cost-credit-review/OFT1232c.pdf

[67] http://www.poverty.org.uk/40/index.shtml

All of the above implies that current problems affecting Bills of Sale users may be disproportionately falling on younger households, households with disabled persons and female consumers.

The proposed solution to these problems that is being taken forward by Government (a self-regulatory code of practice enforced by the relevant trade association, the Consumer Credit Trade Association [CCTA]) could therefore have a disproportionately positive impact on the above types of consumers.

Other Specific Impact Tests

Greenhouse gas assessment, wider environmental issues, rural proofing, sustainable development, health and well-being, human rights, justice system) have been considered and after screening, it has been confirmed that there is no significant impact.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added to provide further information about non-monetary costs and benefits from Specific Impact Tests, if relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review]; Under Section 2 of the Code of Practice the CCTA is required, through its Council, to monitor the compliance of its members with the Code. Furthermore, under the Consumer Credit Act 1974, the OFT has a duty to ensure that licenses are only given to – and retained by – those who are fit to hold them ('section 25 test'). Within this context, the Irresponsible Lending Guidance and Debt Collection Guidance in particular provides a basis against which the OFT, and Local Authority Trading Standards Services acting on behalf of the OFT, can undertake assessments of whether creditors have the appropriate skills, knowledge, experience, business practices and procedures to be licensed by the OFT to operate a consumer credit business. The OFT will also take action where information suggests that a licensee is involved in unfair or improper business practices (whether unlawful or not).
Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?] Regular monitoring and review is intended to verify whether lenders are following the principles set out in the Code and OFT guidance. This helps to facilitate an environment of responsible lending and borrowing in relation to Bills of Sale lending and ensures that consumers are afforded sufficient protections. In the event that lenders are found to be in breach of their obligations, the review provides an evidence base on which Government can pursue necessary further action.
Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach] Review will make use of the monitoring by the CCTA and OFT on the level of compliance with the Code and guidance respectively. The CCTA shall require members to submit Annual Compliance Audits, conducted by the Association at the member's business premises, as a condition of membership. The CCTA will take action against any member found to be in breach of the Code; such actions can include unscheduled compliance audits, written warnings, requests for explanations and the suspension or expulsion of a member from the Association. The OFT can use its information-gathering powers in order to seek evidence that businesses are following its guidance or where it has other concerns about the activities of a business. They can also require lenders to facilitate access to their business premises by an OFT or Trading Standards officer, in order to observe the activities of the business or inspect certain documents. OFT and Trading Standards will investigate lender practices in the event of customer complaints,

market intelligence or as part of a compliance check. The ongoing monitoring of lenders' practices is necessary to ensure that the preferred approach is effective, as conducting irregular reviews may not provide lenders with a sufficient incentive to comply with the Code and relevant guidance on a regular basis.
Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured] The baseline position is the situation that prevails under the current regime or the 'do nothing' scenario highlighted in the impact assessment. The impact of the preferred option can be measured relative to this baseline.
Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives] Success will be judged against the potential breaches of the Code and guidance, as well as any subsequent or related OFT actions or investigations – if compliance is high, there should be a low level of legitimate consumer complaints and the CCTA and OFT should not find any evidence of a breach or other poor practices during their respective audits and investigations. Over the longer term, the policy will be judged against the amount of detriment that consumers have avoided. This is difficult to measure directly, but could be proxied through monitoring of interest rates on Bill of Sale loans (as an indication of the extent of shopping around by consumers) or management information from lenders (or aggregated across lenders by the CCTA, if possible) about the proportion of Bill of Sale loans that end in default and/or repossession.
Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review] As discussed above, ongoing monitoring is part of the CCTA's and OFT's role in enforcing the Code and their responsibilities respectively.
Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here] N/A

Annex 2: Consumer Research

As part of their high-cost credit review, OFT commissioned a consumer survey and a behavioural study of high-cost credit users. Although this largely covers other types of borrowing (e.g. home credit, payday loans, pawnbroking) that generally offer lower amounts of credit than logbook loans (around £100-£500), the customer profile is likely to be similar with regards to being excluded from the mainstream market and/or having a credit-impaired history. BIS also incorporated some questions about Bills of Sale into the quarterly YouGov DebtTrack (YDT) survey; however, due to the low incidence of borrowing at the national level, the sample size is too small for robust analysis. Some of the evidence collected, however, provides useful illustrations and also corroborates OFT research and survey data submitted by lenders during the consultation.

Bill of sale users

The OFT found that consumers of high-cost credit encompass a wide spectrum of demographic groups that vary by product, although in general borrowers tend to have lower than average incomes and are not as financially literate as consumers that purchase mainstream credit products[68]. The variation in borrower characteristics is also likely to apply to Bills of Sale loans, especially given the fairly high incidence of borrowing for business purposes and the fact that a customer holds an asset worth, on average, more than £2,000. Survey data from one of the lenders also indicated that one third of their borrowers were homeowners.

There are a number of important behavioural traits that high-cost credit borrowers tend to exhibit though. These include:

- Not shopping around when considering loan agreements
- Valuing the speed with which a loan can be arranged
- Focusing on the weekly or monthly repayment rather than the total cost of a loan, and
- Valuing the flexibility offered by products that allow repayments to be missed.

Evidence from the OFT review and the YDT survey indicate that the first two of these, along with the higher loan amount, were particularly important in choosing to take out a Bill of Sale loan. Repayment flexibility is generally more applicable to home credit than logbook loans whilst the time taken to arrange credit varies depending on the lender. One Bill of Sale lender indicated that the average time between a customer applying for a loan and it being granted is four days; this is not as fast as other types of high cost credit (e.g. payday loans, pawnbroking and text loans) given the higher amounts involved but is likely to be quicker than credit card and other mainstream applications. By contrast, another lender said that loans are typically available on the same day by cash payout. This lender submitted the results of a customer survey which showed that one third of respondents chose a logbook loan due to convenience

[68] See the OFT's final report for full details. http://www.oft.gov.uk/OFTwork/credit/review-high-cost-consumer-credit/

whilst 18% required a relatively fast payout. A third lender suggested that the speed at which the loan can be arranged was likely to be a significant factor that their customers regarded as important.

One of the key aspects of Bills of Sale loans is that consumers can borrow relatively large amounts relative to other types of high-cost credit. Typical loans for the latter vary between £100 and £500, compared to a logbook loan average of £1,000. Some lenders indicated that their average loan is much higher, closer to £1,500. This suggests that not all borrowers can easily substitute a Bill of Sale loan with another type of high cost credit; indeed the OFT found that no consumer looking to raise £250 would choose a logbook loan and only 6% said that it would provide fairly or very good value for money for this amount of credit[69]. There are other reasons for low levels of substitutability between Bills of Sale and other types of sub-prime credit; payday loans tend to be repaid within a short time period (often within 30 days) and require the borrower to be in employment whilst credit union loans are only accessible if the individual is a member, which means they must qualify for a common bond to join and have some saving. Home credit may be an alternative option for individuals using Bills of Sale to borrow lower amounts, around £500; OFT research shows that home credit users are likely to use this type of loan to either fund significant purchases (e.g. white goods, Christmas presents) or to help with cash-flow problems[70].

One of the main lenders submitted the results from a customer survey that asked the main reason for taking out a logbook loan. Excluding those that did not specify a reason, the most common (46%) was to address short-term cash flow problems or pay bills/rent. A significant minority (23%) used it to fund a large expense (wedding, vehicle repair, home improvements or holiday) whilst 7% used the loan to consolidate other debts. This is reasonably consistent with the OFT's finding in its interim report on high cost credit, which showed that 36% of "other credit" users[71] were either very or fairly dependent on their credit holdings. The OFT also found that, with the exception of home credit, holders of high-cost credit do not tend to hold more than one loan of that same type (whether with the same or different company)[72].

In terms of customer satisfaction, lenders submitted evidence from company surveys suggesting that the vast majority of their borrowers (98-99%) are satisfied with the service provided. One lender submitted evidence to suggest that around 13% of its lending is represented by repeat borrowing whilst another said that they had a returning customer rate of 20%, indicating that those customers were reasonably satisfied with the product. A third lender estimated its repeat business to be around 60%. Less than one quarter of the logbook loan borrowers surveyed in the YDT indicated that they were "quite dissatisfied" with the loan whilst no one was "very dissatisfied". BIS has also analysed the complaint database held by Consumer Direct, which contains more than 1,000 complaints[73] during the past six years related to logbook loans,

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[69] http://www.oft.gov.uk/shared_oft/reports/consumer_credit/oft1150a.pdf

[70] http://www.oft.gov.uk/shared_oft/reports/consumer_credit/High-cost-credit-review/OFT1232e.pdf

[71] This groups together users of logbook loans, payday loans, text loans, pawnbrokers, credit union loans and personal loans from impaired credit providers due to small sample sizes.

[72] http://www.oft.gov.uk/shared_oft/reports/consumer_credit/oft1150a.pdf

[73] Evidence from Consumer Direct indicates that 1,329 complaints were made between June 2004 and April 2010 that related to Bills of Sale.

though it is important to note that a significant minority of those ‘complaints’ would be better classified as enquiries. The claims of losses by complainants amounted to £1.47 million by July 2009[74]. The fact that the number of complaints is relatively small compared to the total number of loans issued suggests that consumer detriment in the Bills of Sale market is not as widespread as anecdotal evidence might suggest (this does not, however, detract from the seriousness of that detriment when it does occur).

Nevertheless, there is also evidence to suggest that Government, consumers and lenders should be concerned with certain aspects of the Bills of Sale market. One of the most important is customer understanding of the product; evidence from the YDT survey showed that more than half of consumers borrowing with a logbook loan had a poor or very poor understanding about the circumstances in which their vehicle could be repossessed. Over a quarter had a poor or very poor understanding about the level and frequency of repayments for their loan. More than ten percent of the Consumer Direct complaints had regard to poor understanding of the loan agreement (e.g. lack of clear explanation before the contract and uncertainty about consumer rights during the life of the loan). The most common complaints were regarding the cost of the loan (including cases where arrears and other additional charges were imposed) and the seizure (or threat of seizure) of the borrower’s vehicle. Qualitative evidence submitted by debt advice agencies also highlights numerous case studies of borrowers encountering financial difficulty or instances where the lender seized the secured vehicle without informing the customer. It is not known whether these were due to poor lender practices or consumers failing to understand all the terms of their loan agreement, but both are cause for concern.

[74] Sum of values relating to individual complaints received from Consumer Direct, which could represent the balance owing, fines, disputed debt or any loan-related issue.

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