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Payday Lending Market Investigation
Competition Commission
Victoria House
Southampton Row
LONDON
WC1B 4AD

Date: 25 September 2013

Dear Sirs,

Re: Payday lending market investigation: Competition Commission

I write in my capacity as secretary to the Law Society of Scotland's Consumer Law sub-committee and in relation to the Competition Commission's forthcoming investigation into the 'payday loan' sector.

The Society recognises that there is a valid place for lending relatively small amounts of money at short notice to those who need additional funds over a short term period. Meeting that need must be within the context of a properly regulated system which is fair to both borrower and lender and which does not create additional undue financial problems and hardship for the borrower.

The Society notes many of the concerns expressed by consumer representative organisations, financial service regulators and the OFT regarding the activities of some short term loan providers. In particular these concerns relate to the promotion and advertising of short term loan products, affordability assessment, inequality in bargaining power and complaint handling. We welcome the Competition Commission's investigation and hope that this will help to raise standards in the short term loan sector, protecting consumers and improving confidence.

Short term loan products are consistently marketed and promoted as quick and easy access to money. Ease and speed is being used as a marketing tool and by striving to improve speed some lenders may fail to conduct adequate affordability checks and assessments, fully explain to the consumer their obligations and rights under the agreement or make them aware of the full and true cost of the loan. It is important that the consumer makes an informed and balanced decision and that this is not diluted by the 'need for speed'.

The borrower is protected against an unfair relationship arising, to their detriment by the Consumer Credit Act 2006, which provides that the relationship may be unfair for a number of reasons. This includes any unfavourable terms in the agreement, the way the creditor has sought to enforce or exercise any of their rights under the agreement or anything else done by the creditor before or after the making of the agreement. This offers significant protection to the borrower from inequality in bargaining power. Borrowers should be properly advised by the short term lender of their rights and the protection which is afforded to them by this provision of the CCA 2006.

It is important that lender have a robust and transparent complaint handling system and process in place. A failure in dealing with and addressing complaints in a timely and appropriate manner can easily exasperate anxieties and worries experienced by borrowers. We note that the OFT findings indicate that a high number of lenders failed to comply with at least one of the complaint handling rules set by the Financial Ombudsman Service.

We also share concerns regarding continuous payment authorities (CPA's). These provide lenders with unfettered authority to recurring payments from the borrower's bank account, with no restriction on the amount of that payment. In some instances the borrower is not aware in advance how much will be debited by the lender, or on what date the payment will be deducted. We note, and welcome, that the FCA has published guidance (June 2013) for borrowers on CPA's, how these work, the borrowers right to cancel and the obligation on banks to cancel if the borrower so requests. It is important that the nature of CPA's is clearly explained to borrowers, along with their rights to cancel before the loan agreement is entered into. The OFT's 'Principles for use of Continuous Payment Authority' clearly sets out lenders obligations to do this. However, there is no requirement, as we understand to provide this information in writing, which we believe there should be, before the agreement is entered into.

We are pleased to note, that banks do now recognise a borrower's right to cancel and have agreed to refund customers where a payment has been mistakenly made following cancelation.

Many short term loan trade associations have signed up to the Consumer Credit Trade Association's Good Practice Charter, introduced in November 2012. However, this will only benefit and reassure borrowers, and raise industry standards, if compliance with the Charter is actively monitored and enforcement action taken against any member failing to meet their obligations under this Charter. It would also promote confidence if adherence of the Charter were regularly reported.



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We do further note however, that although the Charter has a section relating to complaints handling, it does not set out any kind of service standards or time frame for addressing complaints nor sanctions that can be imposed on the lender or provide any form of compensation that could be paid to the consumer for an upheld complaint.

If you have any questions in relation to this, then please contact me direct.

Yours faithfully

Brian Simpson
Law Reform