

MARKET INVESTIGATION INTO PAYDAY LENDING

Notice of possible remedies under Rule 11 of the CMA Rules of Procedure

Introduction

1. On 27 June 2013, the Office of Fair Trading (OFT), pursuant to [section 131](#) of the Enterprise Act 2002 (the Act), referred to the Competition Commission (CC) for investigation and report the supply of payday loans.
2. On 1 April 2014, the Competition and Markets Authority (CMA) took over many of the functions and responsibilities of the CC and the OFT. Accordingly, the functions of the CC in relation to the reference were transferred to the CMA.¹
3. In its provisional findings on the reference notified on 11 June 2014, the CMA Inquiry Group (the Group) concluded provisionally that there are features of the relevant market which, either alone or in combination with each other, prevent, restrict or distort competition in connection with the supply of payday lending such that there is an adverse effect on competition (AEC).
4. The CMA is currently consulting on a modification of the terms of reference to include lead generators. The decision on whether to modify the terms of reference will be taken by the CMA Board before the publication of the Group's provisional decision on remedies. The reason for this is discussed in greater detail below in paragraphs 49 to 51.
5. This notice sets out the actions which the Group considers might be taken by the CMA, or recommended for implementation by others, for the purpose of remedying, mitigating or preventing the AEC and/or any resulting detrimental effect on customers, and invites parties to comment. We would welcome views on the remedy options set out in this notice from any party with an interest in the effective operation of the UK payday lending market.

¹ Under Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and the Schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6, Transitional Provisions and Savings) Order 2014 (the Order).

Provisional findings on the AEC

6. We describe the AEC we have provisionally found in detail in Section 8 of our provisional findings report. We summarise briefly below the features that we have provisionally found that give rise to the AEC and which we seek to remedy.
7. The Group has provisionally found that price competition between payday lenders is weak, that competition from other forms of credit only imposes a weak constraint on payday lenders' prices and that the following features of the UK payday lending market contribute to, and help to explain, the failure by many payday lenders to compete on price and give rise to an AEC.
8. First, the Group has provisionally identified the following combination of structural and conduct features, which limit the extent to which customer demand is responsive to the price of payday loans, and so reduce the pressure for lenders to compete to attract customers by lowering their prices:
 - (a) The context in which customers take out payday loans – in particular customers' perceived urgency of need and uncertainty of access to credit – is often not conducive to customers shopping around to find a good value loan.
 - (b) It can often be difficult for customers to identify the best-value loan product on offer. Making comparisons across products which differ in their duration and/or other characteristics can be difficult and existing price comparison sites suffer from a number of limitations and are infrequently used.
 - (c) Customer demand is particularly insensitive to fees and charges incurred if a customer does not repay their loan in full on time. Customers tend to be less aware of these potential costs of borrowing when choosing a payday loan provider than they are of the headline interest rate. Given shortcomings in the information provided about such fees and charges, it can be difficult for customers to estimate, and so make effective comparisons about, the likely cost of borrowing if they do not repay their loan in full on time.
 - (d) Many online customers take out their first loan with a lender via a lead generator's website, and the value for money represented by different lenders' loan offerings is not taken into account in the auction process used by these intermediaries, who instead sell customer applications to the highest bidder. Furthermore, there is often a lack of transparency in how the service that lead generators provide is described in their websites – particularly the basis on which applications are matched with lenders –

and many customers do not understand the nature of the service offered by lead generators.

- (e) Where their choice of lender is not dictated by concerns about credit availability, customers can be dissuaded from looking at alternative suppliers by the perceived risks associated with using an unknown lender, particularly in light of the negative reputation of the payday lending sector. Customers may perceive a loss of convenience associated with applying to a new lender, particularly if the alternative is rolling over or topping up an existing loan with an existing lender.

9. Secondly, the Group has provisionally found that the competitive constraint that might otherwise be imposed on payday lenders' prices by the prospect of new entry or expansion is weakened by the following structural features:

- (a) New entrants will face certain disadvantages relative to more established lenders, in particular:
 - (i) The ability of new entrants to expand and establish themselves as an effective competitor is likely to be obstructed by the difficulties associated with raising customers' awareness of their product in the face of the barriers to shopping around and switching summarised above, the strength of the well-established brands that already exist and the costs associated with advertising on a sufficient scale to be effective in overcoming these obstacles.
 - (ii) Because of their greater reliance on new customers and the role of learning in credit risk assessment, new entrants are likely to face some disadvantages in their ability to assess credit risk for a period, which would put them at an initial cost disadvantage relative to more established providers.
- (b) The history of non-compliance and irresponsible lending by some payday lenders and the resulting negative reputation of the sector are likely to reduce the constraint imposed on payday lenders' pricing by the prospect of new entry, reducing the likelihood of entry by parties with the capability to transform the nature of competition in the market. Potential entrants may also be dissuaded by the difficulty – itself linked to the current reputation of the sector – in establishing banking relationships, and the very small number of suppliers currently willing to provide banking services to payday lenders.

Recent regulatory and other developments

10. As described in our provisional findings, the Financial Conduct Authority (FCA) assumed responsibility for consumer credit from 1 April 2014. In October 2013, it published its detailed proposals for the FCA regime for consumer credit, including payday lending which formed the basis of its new conduct of business standards for consumer credit (CONC) rules now in force. Also, following an announcement in November 2014, Parliament passed legislation which places a duty on the FCA to impose a price cap on the cost of high-cost short-term credit by 2 January 2015.
11. As the FCA has a statutory duty to impose a price cap, we have not sought to duplicate the work of the FCA and have not included a price cap in our consideration of possible remedies, nor do we propose to undertake an analysis of the appropriate level or structure of any price cap. Similarly, we note the introduction by the FCA of limits on the number of occasions on which lenders can attempt to obtain payment using continuous payment authority (CPA) and the number of times that a loan can be 'rolled over' and have not considered any similar remedies in drafting this Notice.
12. The FCA also stated that it would continue to engage with the payday lending industry to encourage real-time data sharing and that if the industry could not overcome the obstacles, and the FCA was best placed to bring about data sharing, it would intervene.² We are aware that a number of credit reference agencies (CRAs) are developing enhancements to their systems to allow lenders to provide more frequent updates of lending information, which could then be available to other lenders.³ We reference the possible use of 'real-time' data in our issues for comment in Remedy 3.
13. In reaching a provisional decision on remedies, we will have regard to recent and future developments in the market including regulatory changes. We welcome comment on how these changes would interact with the possible remedies listed below and with any other remedies that parties may wish to suggest.

Possible remedies on which views are sought

14. In this Notice we describe remedy options that we have considered and believe could be effective in addressing the AEC and/or its detrimental effects

² Chapter 5, [FCA Policy Statement, PS14/3 – Detailed rules for the FCA regime for consumer credit](#).

³ This is subject to the basis on which CRAs make this data available. For example, CRAs may charge an additional fee for access to this information, or might only make it available to lenders sharing information with the same frequency; alternatively this information could be available to all lenders who currently obtain information from that CRA.

on customers. We describe each of these remedy options in turn, explaining how this measure would address the AEC and how they are intended to work in practice. We invite views on specific issues that we raise in this Notice as well as on any other issues that the parties to the investigation and other interested parties would like to put to us.

15. We have distinguished in this Notice between those remedies which we currently believe may be effective and those which we currently believe would not be. At this stage we are only minded to consider further those remedies in the first category but we will consider the remedies in the second category and other proposals if parties are able to provide relevant evidence and reasoning as to why these alternatives would be effective.
16. We first set out, in paragraphs 17 to 57, those remedies which we currently believe may be effective and which we are therefore considering further. We invite views on the effectiveness and proportionality of these measures and on the most appropriate means of specifying and implementing them.

Remedies which we are exploring further

17. The CMA invites views on the following possible remedies, which we currently consider may be effective, either on their own or as part of a package, in addressing the AEC:⁴
 1. Price comparison website
 2. Measures to improve customer awareness of additional charges and fees
 3. Measures to help customers assess their own creditworthiness
 4. Periodic statements of the cost of borrowing
 5. Measures to increase the transparency of the role of lead generators

We discuss each of these in turn.

Remedy 1: Price comparison website

Description of the remedy

18. This remedy would result in the creation of a comprehensive and trusted price comparison website for payday loans which would help customers to compare the cost of a loan for specific borrowing scenarios relevant to the customer's

⁴ No significance should be attached to the ordering of the measures set out in this Notice.

requirement. The website would, for example, allow a customer to specify the value of the loan that they are seeking, the period over which they wish to pay the money back and the date on which they require the funds to be borrowed.

Background and contribution of this measure towards remedying the AEC

19. We have provisionally found that customers are unable to make effective comparisons of the prices of payday loans or easily to compare the prices of loans in different scenarios.
20. There are a number of websites which offer some level of comparison of payday loans. However, the functionality of these websites is generally limited, as is the number of lenders included on any given website. We have also found examples of price comparison websites which include lead generators (which do not issue loans) in the list of loan providers. We note that several established price comparison websites active in financial services do not offer comparison services for payday loans. Developing a comprehensive price comparison website tailored to customers' needs would allow customers to compare the full cost of loans and be confident that the comparison was fair and accurate.
21. We have also provisionally found that new entrants may be impeded in their ability to raise customers' awareness of their products. By enabling authorised lenders to participate on the website, regardless of their size or length of participation in the market, barriers to entry and expansion will be reduced as the website would provide an even, open platform for new entrants to compete on price and non-price aspects of their offer, rather than requiring lenders to invest heavily in advertising or to rely on other channels (eg lead generators) to attract new business.

Design and implementation

22. Our view at this stage is that the website should include as large a range of lenders as possible, potentially allowing any lender which offers products within our definition of payday loans,⁵ including instalment products which allow customers to borrow for one year or less, and is appropriately authorised in the UK.
23. At this early stage of our consideration we are not in a position to set out the design of the possible website in detail, but our current thinking is that at a

⁵ Our definition of payday loans are any short-term, unsecured credit products which are generally taken out for 12 months or less, and where the amount borrowed is generally £1,000 or less. In line with our terms of reference, home credit loan agreements, credit cards, overdrafts, credit union loans and retail credit are all excluded from the scope of this investigation.

minimum it should allow customers to provide a number of details about the loan they wish to take out, including, among other things, (i) the loan period (or repayment date), (ii) the value of the loan, (iii) the time period over which they wish to make repayments and (iv) whether fast/instant payment is required. A customer would then be presented with a table displaying the details of each loan available, including, for example, the name of the lender, the name of the specific product, the total cost of credit (and given other regulatory requirements, the APR) and the total amount to be repaid. We also consider that customers should be informed of what the maximum cost of a loan could be if it is not repaid fully on time and we consult further on this issue in Remedy 2 (Measures to improve customer awareness of additional fees and charges).

24. We are also considering other possible aspects of the website's functionality – for example, whether customers could provide feedback on the quality of service offered by lenders on the website, or whether customers should be able to obtain a view on the likelihood of being granted credit from lenders advertising on the website. The latter option would interact with Remedy 3 (Measures to help customers assess their own credit worthiness) (see paragraph 39(d)).
25. To assist us with consideration of this remedy option, we intend to appoint a market research firm to undertake qualitative research with payday lending customers on how customers might use such a website and how it should be designed to maximise its effectiveness in helping customers compare loans.

Issues for comment

26. Views are invited on the specification, effectiveness and proportionality of this remedy and, in particular, on the following:
 - (a) What are the main challenges in establishing an effective price comparison website in this market and how might these be overcome?
 - (b) What features should a customer be able to specify when searching for a loan using the website? For example, should a customer be able to specify:
 - (i) the duration and value of loan required;
 - (ii) the repayment structure of the loan (instalment loans vs traditional single repayment payday loans); and
 - (iii) inclusion of faster payment options, or the date on which customers wish cash to be received by; and

- (iv) other characteristics of the loan or provider (and what those might be).
- (c) What is the best way of providing a comparative cost of a loan and how should the price of payday loans be disclosed for any given scenario – for example, should the total cost of credit and/or the total amount to be repaid be included?
- (d) In which order should products be ranked (eg based on total cost of credit, or other metrics), and should customers be able to specify this ordering?
- (e) How should repayment scenarios in which a borrower does not repay the loan on the originally agreed date be treated on the website – for example, should borrowers be informed of the possible cost of rolling over the loan, the costs associated with repaying the loan late and/or other scenarios in which additional fees or charges might apply?
- (f) Which lenders and products should be included on the website?
 - (i) Should all authorised lenders be required to participate?
 - (ii) Should any non-payday lenders or products (for example, credit unions or instalment loans of longer than 12 months) be allowed to participate?
 - (iii) Should lead generators or other intermediaries be excluded from being listed on the price comparison site?
- (g) How should the website be operated and governed?
 - (i) Who should maintain the website and make decisions about its ongoing development?
 - (ii) How should the website be funded (eg by payday lenders, and, if so, in what proportion)?
- (h) How should the website be promoted?
 - (i) Should lenders be required to include a link to the website on their own websites and in other communications with their customers? Should the website advertise through television and other offline channels?
 - (ii) How could search engines be encouraged to display a link to the site when certain search terms are used?

- (iii) Should the website operator have a budget for advertising and promotion? How large a budget should be allocated for this purpose?
- (i) What should be the relationship between this website and other relevant websites, offering independent information or advice about short-term loan products, such as lenderscompared.org.uk (which offers price comparisons for home credit products and certain other cash loans) and moneyadvice.service.org.uk (which offers general advice about using payday lenders)?
- (j) What are the likely costs of this measure and how do they vary with the design of the remedy?

Remedy 2: Measures to improve customer awareness of additional charges and fees

Description of the remedy

- 27. This remedy would require lenders to provide a clear upfront disclosure to customers of the total amount repayable if they failed to repay the loan in full on time. The remedy may also interact with Remedy 1 (Price comparison website) by requiring this information to be included on any price comparison website established as part of that remedy.

Background and contribution of this measure towards remedying the AEC

- 28. We have provisionally found that customers' over-confidence about their ability to repay their loans on time may cause them to pay only limited attention to late payment and default fees when taking out the loan. This is reinforced by the fact that the information provided by lenders on such fees can be less complete and/or prominent than information on headline rates.
- 29. By requiring easy to understand, upfront disclosure of fees, customers will be in a better position to take these costs into account when taking out a loan.

Design and implementation

- 30. This remedy could be designed in a number of ways but essentially would require the presentation of information on the costs of borrowing and any fees charged as a result of repaying a loan late and/or rolling over. Different information could be presented and in a number of ways.
- 31. For example, the costs to the customer may be disclosed by reference to one or more of the following scenarios:

- (a) the cost of making complete payment a specified number of days after the due date; or
 - (b) maximum cost of a loan if rolled over for an additional one or two months; or
 - (c) another scenario based on common borrowing habits.
32. Likewise, the point at which this information could be required to be presented to customers might vary, such as:
- (a) as an output of the initial form or 'sliders' that customers complete to establish the cost of a loan;
 - (b) as a notice prior to progressing to completing a full application; or
 - (c) as a notice immediately prior to accepting the loan offered.
33. Additionally, a price comparison website could include one or more of these scenarios as a field on which loans could be compared on.

Issues for comment

34. Views are invited on the specification, effectiveness and proportionality of this remedy and, in particular, on the following:
- (a) Should additional fees and charges for late payment and/or rolling over of loans be made more prominent?
 - (b) How and when should any notification of charges be presented in the borrowing process?
 - (c) Should fees and charges be demonstrated using one or more example scenarios? How should such scenarios be specified?
 - (d) Should any information on fees for late payment or rolling over loans be included on any price comparison site, if one were created under Remedy 1?
 - (e) What are the likely costs of this measure and how do they vary with the design of the remedy?

Remedy 3: Measures to help customers assess their own creditworthiness

Description of the remedy

35. This remedy would seek to ensure that customers are better able to establish their likelihood of acceptance by a lender and are therefore in a better position to shop around for the best deal for them.

Background and contribution of this measure towards remedying the AEC

36. We have provisionally found that the availability of credit often represents an overriding concern for borrowers, causing some customers to base their decision on which lender will offer them a loan, rather than which loan offers the best value.
37. We are seeking to address this aspect of the AEC by exploring ways of helping customers to understand more easily their likely access to the products of different lenders, and thereby facilitate their ability to establish the best-value loan that is likely to be available to them.
38. In this context we understand that:
- (a) Many lenders use data from CRAs to assist in making their lending decision, which requires some form of credit check.
 - (b) There are two types of credit check, one an 'enquiry' or 'quotation' search which does not leave a visible 'footprint'⁶ on a customer's credit file, and one an 'application' or 'credit' search which does.
 - (c) At present lenders typically provide updates to CRAs of lending decisions on a monthly cycle. We understand that at least two CRAs are developing systems to allow for a more frequent update cycle, though this may not yet be fully 'real time'.

Design and implementation

39. We set out a number of possible ways that the aims of this remedy could be achieved below, but we would also welcome alternative suggestions. These options include:
- (a) Requiring lenders to state explicitly on their website and on any form requiring customers to enter their details whether they will undertake any form of credit check, and at what stage. This would ensure that customers

⁶ That is, that a third party lender can see that a search has been performed by another lender.

were not deterred from searching by an inaccurate perception of the likelihood of being subject to a credit check.

- (b) Requiring lenders to provide CRAs with a real-time update of any new credit facility granted and also prohibiting the visibility of a credit search by a lender. This combination of measures would enable customers to search the market without adversely affecting their credit history, while enabling lenders to have better visibility of actual loans taken out by customers.
- (c) Increasing customers' ability to discover whether a lender would be willing to offer them credit, without an 'application' or 'credit search' being carried out, for example by:
 - (i) improving clarity to customers about the use of 'application' or 'credit' searches and 'enquiry' or 'quotation' searches by lenders and brokers;⁷
 - (ii) prohibiting the use of application searches by lenders prior to conducting an initial eligibility assessment; or
 - (iii) requiring lenders to provide an indication of the likelihood that they would grant credit to a customer prior to a full application.
- (d) Integrating an initial quotation/enquiry/eligibility check into a price comparison site (see Remedy 1).

Issues for comment

40. Views are invited on the specification, effectiveness and proportionality of this remedy and, in particular, on the following:
- (a) Which of the above approaches, or which combination of approaches, is most likely to achieve the objectives of this remedy? Are there alternative approaches which would be more effective?
 - (b) To what extent are credit checks undertaken before the submission of a formal application for credit?

⁷ We understand that an enquiry/quotation search is currently used for establishing eligibility in mortgage lending and by insurance companies, whereas an application/credit search is undertaken at the point of formal application.

- (i) Where searches are made, are these typically quotation or application searches? What further benefit does an application search give to a lender over a quotation search?
 - (ii) Would there be any benefit to the reference in the FCA's handbook on the ability of a customer to undertake a quotation search without affecting their ability to access credit being elevated in status from guidance to a rule?⁸
 - (iii) Is there any benefit to other lenders and/or customers from searches leaving a footprint if a lender provides real-time CRA data updates of newly-issued loans?
- (c) How can customers' understanding of which lenders would lend to them prior to the point of application be improved?
- (i) Where an initial eligibility check is performed by a lender and the customer is deemed 'eligible', should the lenders be required to ensure that all deemed eligible customers are approved should they make a formal application in the absence of evidence?
 - (ii) Should lenders be required to present an indicative 'credit score'⁹ (from one or more CRAs) that a certain proportion (eg 90%) of their respective customers have at the point of application?
- (d) To what extent are customers aware of and/or concerned about the possible impact of multiple credit searches on their ability to access credit?
- (e) What are the practical challenges of integrating an eligibility check into a price comparison site?
- (f) What are the likely costs of this measure and how do they vary with the design of the remedy?

⁸ The Consumer Credit Sourcebook (CONC 2.5.7) includes guidance for credit brokers that 'A customer is entitled to compare offers of credit without prejudicing the customer's ability to obtain credit. To this end, a firm undertaking a search should not leave evidence of an application on a credit file where a customer is not yet ready to apply.'

⁹ We understand that the largest CRAs will provide some form of credit scoring to consumers that is based on a number of factors in a customer's file.

Remedy 4: Periodic statements of the cost of borrowing

Description of the remedy

41. This remedy would require lenders to send customers periodic statements outlining the extent of the customers' borrowing activity to inform customers better about the long-term cost of their borrowing activities.

Background and contribution of this measure towards remedying the AEC

42. Payday loans are marketed as short-term loan agreements. Customers are made aware of the cost of a single loan at the point of taking a loan out. However, most customers use payday loans repeatedly, taking out an average of around 6 loans per year and may not be aware of the total cost of borrowing relatively small amounts of money over an extended period. By increasing the visibility to customers of the total amount paid by a customer in a given period, this measure could increase the pressure on lenders to offer competitive prices to existing customers so as discourage them from switching to alternatives.

Design and implementation

43. This remedy would present customers with a periodic statement of their borrowing activity. If the date on which statements were issued was the same for all lenders, customers would be better aware of their overall borrowing activities. The effectiveness of the remedy may be affected by the frequency that statements are received and the period that a statement covers. An annual statement would demonstrate the accumulated cost of using payday loans over a 12 month period and may therefore have a significant impact: however, for other customers statements over a shorter period may be more relevant.
44. Any periodic statement of the cost of borrowing would need to be subject to guidance on content and presentation of information and restrictions on any lender-specific promotional information.

Issues for comment

45. Views are invited on the specification, effectiveness and proportionality of this remedy and, in particular, on the following:
 - (a) Should lenders be required to send a regular statement of borrowing costs to customers?

- (b) The period of the statement (for example, quarterly, twice a year or annually), in light of the typical timescale of a payday lending relationship.
- (c) Which customers should receive a statement and at what point and when should they cease to receive a statement?
- (d) The method of distribution of the statement, for example by post, email, online or through other channels.
- (e) The date on which the statement should be sent and whether this should be the same for all lenders.
- (f) What information should be included on the statement (for example, the number of loans, number of days that loans were taken out, total cost of interest, fees and charges over the period?)
- (g) What further material should be include with the statement – for example, where financial advice can be obtained or a link to a price comparison website should one be introduced under remedy 1?
- (h) What are the likely costs of this measure and how do they vary with the design of the remedy?

Remedy 5: Measures to increase the transparency of the role of lead generators

Description of the remedy

46. This remedy would require credit-brokers (and other intermediaries) such as lead generators that are active in the UK payday lending market to state explicitly the nature of their business and the commercial relationship that they have with lenders in the market.

Background and contribution of this measure towards remedying the AEC

47. There are various third parties present in the market which seek to introduce lenders to customers (or act as intermediaries, marketing on behalf of others). Depending on the activity of these entities, they may variously be referred to as brokers, lead generators and affiliates. We have provisionally found that customers' understanding of the service provided by lead generators may often be poor. For example, customers may assume that lead generators act in the same way as brokers on other markets, matching them to the most appropriate (that is, cheapest available) loan,¹⁰ or that the lead generator is a

¹⁰ In many cases, lead generators will sell a customer's details to the lender paying the greatest amount for a customer of that profile.

lender. There are also some lenders which effectively act as lead generators, by selling details of rejected applicants to other lenders.

48. Although credit brokers are subject to regulation (which we discuss in the design and implementation of the remedy) on the information that they present to customers, we think that the information currently provided could be improved. We consider that providing greater clarity on the role of third parties and their relationships with lenders in the market would help to ensure that customers are better informed when making borrowing decisions. However, given that regulation already exists in this area, we are inviting views from parties on how such a remedy could best be implemented.

Our terms of reference

49. The OFT noted the existence of lead generators and brokers in the market when making its market investigation reference (MIR) to the CC, but stated that the evidence relied upon by the OFT did not itself indicate that the features identified by the OFT related to the activities of lead generators and that it had not conducted research into lead generators and brokers. The OFT therefore excluded lead generators from the terms of reference.¹¹ The CMA has provisionally found that the lack of transparency associated with the lead generation distribution channel and the role of this channel in the online market more widely contributes to the provisional AEC which it has found.
50. In light of our provisional findings regarding the role of the operation of the lead generator channel in the AEC and our current thinking about the measures that may be necessary to address that AEC, we have asked the CMA Board to consider amending the terms of reference specifically to include credit-brokers¹² (and other intermediaries) such as lead generators who collect and pass on to providers of payday loans (generally for a fee) details, including personal contact information, of individuals seeking loans.
51. In response to our request, the CMA Board has today issued a Notice of a request for a variation of the terms of reference setting out the revision that we have requested to our Terms of Reference and our reasons for seeking this change and inviting comments. Any responses received will be submitted to the CMA Board who we expect to make a decision on whether or not to amend the terms of reference in advance of publication of our provisional decision on remedies.

¹¹ [Payday Lending: Final decision on making a market investigation reference](#), OFT1492, June 2013, OFT, p43.

¹² Credit brokers are persons who hold a permission under Part 4A of the FSMA in respect of the regulated activity in Article 36A(a)–(c) of the FSMA 2000 (Regulated Activities) Order 2001 (SI 2001/544) introducing potential borrowers to potential lenders.

Design and implementation

52. The remedy would be designed to improve the transparency of how lead generators interact with customers and lenders.
53. Because lead generators are credit brokers, their activities are subject to regulation by the FCA. CONC includes guidance to credit brokers that a firm should, in a financial promotion or in a communication with a customer (among other things):
- (a) make clear, to the extent that an average customer of the firm would understand, the nature of the service that the firm provides; and
 - (b) indicate to the customer in a prominent way the existence of any financial arrangements with a lender that might impact upon the firm's impartiality in promoting a credit product to a customer.¹³
54. However, these aspects of FCA guidance are not rules and therefore do not place a binding obligation on credit brokers. We think that placing an obligation on brokers fully to adopt this guidance would be one way of implementing the remedy. This could either be through a recommendation to the FCA to amend CONC where appropriate, or an order to lead generators. However, we invite alternative suggestions on implementation.
55. We further note that CONC includes a rule¹⁴ that a firm must ensure that a communication or a financial promotion is clear, fair and not misleading. As this is a rule and thus does place a binding obligation on a firm, some of these issues may be capable of being resolved through FCA compliance activities.
56. We invite comment on the issues below.

Issues for comment

57. Views are invited on the specification, effectiveness and proportionality of this remedy and, in particular, on the following:
- (a) Is existing regulation sufficient to ensure that clear information is provided to customers on the relationship between brokers and lenders?
 - (b) Are there any additional compliance activities that the FCA should undertake?

¹³ CONC 3.7.4 G (1) & (2).

¹⁴ CONC 3.3.1 R(1).

- (c) How should any such remedy be implemented?
- (d) Which classes of credit broker or other intermediary should any additional requirements apply to?
- (e) Should lead generators, affiliates and brokers be required to make a declaration as to the service they provide to customers and the relationship they have with lenders?
- (f) What content should the declaration include, for example:
 - (i) the basis on which a customer is introduced to a lender (for example, by selling to the highest bidder in an auction process);
 - (ii) what the cost of credit would be from the cheapest and most expensive lenders that the intermediary sells details to; and
 - (iii) an explicit statement that cheaper loans may be available from other lenders?
- (g) How should any declaration be enforced:
 - (i) by requiring intermediaries to make a declaration; and/or
 - (ii) by prohibiting lenders from using intermediaries that do not display an appropriate declaration?
- (h) How should the declaration be presented:
 - (i) on a landing page or initial pop-up or frame; and
 - (ii) at the point at which details are entered?
- (i) Should lenders be prohibited from selling or providing customer details to third parties?
- (j) Is there any risk that the business model of lead generators could be amended to avoid supervision by the FCA if any proposed remedy was implemented?
- (k) What are the likely costs of this measure and how do they vary with the design of the remedy?

Additional remedies

58. The Group will also consider any practical alternatives to the remedies outlined above that the parties to the investigation or other persons would like

to propose in order to address the identified AEC or any resulting detrimental effect on customers.

Remedies that we are not minded to consider further

59. In this section we set out two remedies that we currently consider would be ineffective and/or disproportionate in addressing our provisional AEC and which, accordingly, we are not currently minded to consider further unless evidence and reasoning to the contrary are put to us. We invite views on these remedies, including whether some or all of them should be given further consideration.
60. These potential remedies are:
- (a) prohibition of additional fees; and
 - (b) accreditation of lender websites.

Prohibition of additional fees

61. We considered a remedy which would prohibit the charging of any fees in addition to interest charges on the principal lent to customers.
62. We have provisionally found that customers are not able effectively to compare prices of loans in different scenarios. By prohibiting additional fees, any comparison of the price of loans would potentially be simpler.
63. We noted that the FCA was considering the most appropriate way of implementing its obligation to deliver a price cap. Given this, we saw little merit in considering additional direct restrictions on fees and charges ourselves. Rather our focus is on measures that will empower customers to find the best-value product for them and thereby impose greater competitive pressure on lenders to offer terms better than those specified by any current or future regulatory requirements.

Accreditation of lender websites

64. We considered a remedy that would allow the websites of lenders to receive accreditation that they were authorised and regulated by the FCA (with the ability for a visitor to confirm on the FCA's website that the lender was authorised). A similar system is used for the registration of online pharmacies. This accreditation could give customers confidence that the lender they were using was being supervised. We also considered whether such an accreditation might include whether the lender was compliant with industry best practice.

65. However, we judged the remedy would not be effective because consumers' expectations of supervision and authorisation might differ from the scope and nature of the FCA's regulatory activities and an unintended 'expectation gap' might arise. Further, we were concerned that any badge may have a deleterious effect on the FCA's ability to change its authorisation and/or supervisory arrangements.¹⁵ While we would expect the strengthening of the regulatory framework to reduce reputational barriers to entry, we did not wish to do anything that would detract from the obligations on lenders themselves to improve their business practices or that could give customers a misleading impression about particular lenders. We are therefore not minded to take this option forward.

Criteria

66. In choosing appropriate remedial action, the Group will have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the AEC and any resulting detrimental effect on customers. When deciding which remedy options to pursue, the Group will consider the effectiveness of different possible remedies, and their associated costs, and will have regard to the principle of proportionality.

Relevant customer benefits

67. The Group will also have regard to the effects of any remedial action on any relevant customer benefits within the meaning of [section 134\(8\)](#) of the Act arising from the feature or features of the market that have given rise to the AEC. Such benefits comprise lower prices, higher quality or greater choice of goods or services or greater innovation in relation to such goods and services. The Group welcomes views on the nature, scale and likelihood of any such benefits.

The next steps

68. The parties to this investigation, and any other interested parties, are requested to provide any views in writing, including any additional or alternative remedies they wish the Group to consider, by Friday 4 July 2014 (see note (ii)).

¹⁵ The need to ensure consistency of any 'badge' might, for example, prevent the FCA from adopting different approaches to different firms.

69. A copy of this notice will be posted on the [CMA's website](#).

(signed) SIMON POLITO
Group Chairman
11 June 2014

Notes

- (i) This Notice of possible actions to remedy the AEC and any resulting detrimental effect on customers is given having regard to the Group's provisional findings notified to the main parties on Wednesday 11 June 2014. The parties to this investigation, and any other interested parties, have until Friday 4 July 2014 in which to respond to those provisional findings. In the light of any responses by the parties, or by other interested or affected third parties, the Group's findings may alter, in which case the Group may consider other possible remedies, if appropriate.
- (ii) Comments should be made in writing to:

Matthew Weighill
Inquiry Manager
Payday Lending Investigation
Competition and Markets Authority
Victoria House
Southampton Row
London
WC1 4AD

or by email to: paydaylending@CMA.gsi.gov.uk.