CMA Market investigation into payday lending notice of possible remedies

Response by the Money Advice Trust

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About the Money Advice Trust

The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money wisely.

The Trust's main activities are giving advice, supporting advisers and improving the UK's money and debt environment.

We give advice to around 140,000 people every year through National Debtline and around 30,000 businesses through Business Debtline.

We support advisers by providing training through Wiseradviser, innovation and infrastructure grants.

We use the intelligence and insight gained from these activities to improve the UK's money and debt environment by contributing to policy developments and public debate around these issues.

We help approximately one million people per annum through our direct advice services and by supporting advisers through training, tools and information.

Public disclosure

Please note that we consent to the public disclosure of this response.

Introductory comment

We welcome the provisional conclusions by the CMA 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.

We understand that the CMA would welcome views on the remedy options set out in the notice of possible remedies.

We have commented on each of the potential remedies identified by the CMA below. We have some concerns about the effectiveness of some of the proposed remedies. We would like to see a clamp down on excessive charges at point of sale, and throughout the lifetime of the loan, particularly those that are added when borrowers are in financial difficulty.

We recognise that the CMA has stated that it will not duplicate the work of the FCA in considering a price cap. However, we would urge the CMA to revisit the issue of fees and charges if this is not fully covered by the price cap once in place.

We would also urge the CMA to take action alongside the FCA to intervene over real-time data sharing. As the credit reference agencies are setting up a database that will not be running in real time, then the regulator needs to put a system in place that will fulfil this requirement.

Responses to individual themes

Price comparison website

We are not convinced that a price comparison website will have a particularly beneficial effect. One of the recommendations from the Competition Commission Home Credit investigation was for a price comparison website to be set up.[1] We are concerned that whilst helpful, that this website does not have the prominence it would need to influence consumer choices when taking out home collected credit. We would suggest that unless substantial promotion and advertising budgets are put in place, that an independent short-term high-cost credit comparison site would not have the hoped for effect on competition.

We are unable to comment on the main challenges in establishing an effective price comparison website in this market as we this is not our area of expertise. However, we have made some general points below.

We agree with all the suggested features that you have identified that a consumer should be able to specify when searching for a loan using the website. If there are any fees that will become payable to brokers and lead generators, these should also be clearly displayed.

This should also include the APR and a representation of the total cost for credit as well as the total amount to be repaid. It would make sense for consumers to be able to rank results according to different fields. However, it needs to be a tool that is simple and straightforward to use so this should be taken into account when looking at desirable fields.

It is vital that lenders are compelled to be clear and upfront about costs to allow consumers to make realistic comparisons. The website needs to show the possible costs of rolling over the loan, and the fees and costs that will be incurred if the loan is repaid late. All additional fees and default charges should be clearly displayed.

The website should also clearly display a strong health warning about the risks of payday lending with the FCA payday warning as a minimum and include clear signposting to sources of free, independent debt advice.

[1] http://webarchive.nationalarchives.gov.uk/+/http:/www.competition-commission.org.uk/inquiries/current/homecredit/

If this is put in place, then all lenders that offer products that meet the definition should be required to participate. We cannot see the point of the website if it is made optional for lenders to participate. Lead generators and credit brokers should be excluded from the site but be required to provide links to the site with prescribed wording on risk warnings and give information on the site in any marketing, calls, texts and websites.

If there is to be a price comparison website put in place then we would suggest that this should be seen as completely independent from the payday industry and seen as providing impartial, accurate information. Should this comparison site be provided by the Money Advice Service (MASe) as they are set up by Government and can demonstrate that they do not receive commission or any incentives for products?

MASe already provide a limited generic loan calculator https://www.moneyadviceservice.org.uk/en/tools/loan-calculator and a series of comparison tables for mortgages and other financial products. https://www.moneyadviceservice.org.uk/en/categories/comparison-tables .

MASe would have the advantage of being seen as independent, whilst any other provider could be challenged as to their true independence from industry. They would also have to start from scratch on brand recognition.

The website would need to be promoted widely. We suggest that all loan companies and lead generation/credit brokers should be required to prominently display links to the website on their home page using prescribed wording. Search engines need to return the website prominently when searches are made for common terms using search engine functionality such as Google AdWords.

The website operator clearly needs a budget for advertising and promotion as otherwise there will be no awareness amongst the general public and it will be eclipsed by the advertising budget held by the major payday lenders. Can it be made compulsory for payday lenders to contribute via a levy to the costs of running the website and for advertising and promotion? As the recent ACCA “Payday lending: fixing a broken market”[2] report found that online payday lenders spend a very high amount on promotions, Google AdWords and on commission to online lead generators.

We cannot comment on the costs of developing and maintaining such a product.

Measures to improve customer awareness of additional charges and fees

We strongly support the idea that lenders should be required to provide a clear, upfront disclosure to customers of the total amount repayable if they fail to repay the loan in full and on time. It is vital that the additional fees and charges for late payment and/or rolling over of loans should be made more prominent.

[2] http://www.accaglobal.com/in/en/technical-activities/technical-resources-search/2014/may/payday-lending-fixing-a-broken-market.html

We support the demonstration of fees and charges in different scenarios. This is likely to have more impact at the outset when the consumer is initially looking at the cost of the loan. We are not convinced that the information will have the desired effect if presented in a notice prior to progressing to complete the full application or immediately prior to accepting the loan offered. Although it is better than not having the information at all, there is a possibility that the consumer will feel "committed" to that particular loan at these stages, and the warning information will be disregarded.

The information on fees for late payment or rolling over loans should definitely be included on the price comparison site. We would see this as a crucial element of the information needed by consumers to reflect upon the true costs of the loan on offer.

We cannot comment on the likely costs of these measures.

Measures to help customers assess their own creditworthiness

We always welcome greater transparency for the consumer. Therefore, we support a requirement on lenders to state explicitly and prominently 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. We also support a requirement on lenders to provide CRAs with a real-time update of any new credit facility granted. A real-time database is a vital tool in helping to address the failures of payday companies to conduct proper credit assessments of potential customers.

We would not generally support any measures that make it easier to take out a payday loan, which it would appear could be the possible consequence of prohibiting the visibility of a credit search by a lender. We would prefer a requirement to display prominent cost warnings and sources of help and guidance for consumers contemplating taking out a payday loan.

We cannot comment on the extent to which credit checks are undertaken before the submission of a formal application for credit. We do not have any comments to make on whether searches are normally quotation or application searches as this is outside our area of expertise.

We would welcome the ability of a consumer to undertake a quotation search without affecting their ability to access credit. Therefore, it might be helpful if the guidance on this point in the FCA handbook was changed from guidance to a rule.

It would appear that consumers are very concerned about their credit rating and their ability to access credit. We have seen suggestions in the press that the mere existence of a record of payday lending on a credit reference file will affect some lenders' decisions on whether to offer a mortgage in the future[3]. We cannot comment on the extent to which consumers are aware of and/or concerned about the possible impact of multiple credit searches on their ability to access credit. The FCA found in their recent research[4] into how low-income consumers behave as follows:

"Lack of confidence can undermine choices, with many people assuming they would not get mainstream credit, therefore self-restricting choice."

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[3] http://www.bbc.co.uk/news/uk-25098810
[4] Consumer Credit Research: Low Income Consumers', Optimisa, 2014

So in some cases, people may opt for high-cost short-term credit when they need not do so.

Therefore, it is important that consumers' understanding of which lenders would lend to them prior to the point of application should be improved.

We cannot comment on the practical challenges of integrating an eligibility check into a price comparison site as this is not our area of expertise.

We cannot comment on the likely costs of these measures.

Periodic statements of the cost of borrowing

We understand that the aim of this remedy is to require lenders to send consumers periodic statements outlining the extent of their borrowing activity to inform customers better about the long-term costs of their borrowing.

Whilst we do not object to this idea in theory we do not see that it will have the desired effect on competition. The CMA paper states:

"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."

We suggest the periodic statement adopt something similar to the new requirements on utility companies who must indicate on regular customer statements if they believe a cheaper tariff is available. Otherwise, there is a danger that consumers will assume that all other loan companies cost the same, and will not move to a different lender. Therefore, there will be no pressure on lenders to offer competitive prices.

If it is decided to go ahead with this requirement, then the statement should be sent out at least quarterly. Given the nature of the typical timescale of a payday loan, then it could be argued that the statement should be sent more frequently than this. Perhaps the consumer should be able to opt for their preferred method of receiving the information, e.g. by email or post.

It makes sense for the statements to be sent out by all lenders on the same day to enable the information to be as consistent and comparable as possible. The information would need to be presented in a prescribed format to ensure consistency of approach and to allow for easy comparison. As well as information on the number of loans, the length of the loan, the total interest, fees and charges over the relevant period, it would be useful to include sources of free debt advice in the statements and links to free, independent information such as the price comparison website.

However, unless there is information provided on alternative sources of credit such as credit unions, or provides price comparisons with other sources of borrowing such as credit cards, bank loans and overdrafts and so on, we are not convinced that this remedy will be particularly effective in dissuading people from taking out repeat payday type lending.

Also, if there is no requirement on other sectors to provide such information on actual borrowing by that individual, the consumer will only be receiving a snapshot of their borrowing that fits into the high-cost short-term credit definition, and not a holistic picture of their entire borrowing.

We cannot comment on the likely costs of these measures.

Measures to increase the transparency of the role of lead generators

We strongly support any measures that would require credit-brokers (and other intermediaries) such as lead generators to state explicitly the nature of their business and the commercial relationship that they have with lenders in the market.

We do not agree that existing regulation is sufficient to ensure that consumers are aware of the relationship between brokers and lenders. FCA guidance should be strengthened in this area and at the very least made into binding rules.

We agree that lead generators, affiliates and brokers should be required to make a declaration as to the service they provide to customers and the relationship they have with lenders. We agree with the proposals that will require clarification of the basis on which the consumer will be introduced to the lender, the cost of credit from the cheapest and most expensive provider, and the suggestion that an explicit statement should be made telling the consumer that cheaper loans may be available from other lenders.

The declaration should be presented at any stage where the potential customer will be most likely to see and absorb the information. It makes sense for this to be at the initial stages of the application as well as on the landing page for the intermediaries company.

All intermediaries should be required to make such declarations. Lenders should also be prohibited from using non-compliant intermediaries. These measures should be enforced by the FCA.

In addition, search engines such as Google could be required to limit allowing lead generators to operate by restricting the purchase of ad-words for payday lending to fully regulated lenders.

We agree that lenders should be prohibited from selling or providing customer details to third parties. Repeat borrowing creates a cash shortfall for borrowers so their situation typically spirals rapidly and generates fast-growing demand for more loans in vain attempt to keep afloat. There is evidence that lenders' business models rely upon this spiral for its profitability.

The ACCA report "Payday lending: fixing a broken market" concludes:

"The damage done to borrowers' financial resilience by unaffordable loans serves only to improve lenders' chances of future profits. It also implies that lenders have little to fear from each other; the more payday loans that are extended, the greater the likelihood that the borrower will need further loans. Unaffordable payday lending creates rather than satiates demand for more loans. This means that the presence of multiple lenders in the market does not necessarily create a competitive environment."

We cannot comment on the likely costs of these measures.

Additional remedies

We share the CMA concerns about the idea of accreditation by the FCA of lender websites and agree that this idea should not be taken forward. We can also appreciate why the CMA has decided not to look at the prohibition of additional fees in the light of the FCA work on instigating a cap on the total cost of credit. However, if this does not cover such charges, then we suggest the CMA review the potential remedy at a later date.

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