

COMPETITION & MARKET AUTHORITY PAYDAY LENDING MARKET INVESTIGATION

SUBMISSION ON BEHALF OF MEM CONSUMER FINANCE LIMITED, INSTANT CASH LOANS LTD AND EXPRESS FINANCE (BROMLEY) LTD IN RESPONSE TO PROVISIONAL FINDINGS, NOTICE OF POSSIBLE REMEDIES AND NOTICE OF A REQUEST FOR A VARIATION OF THE TERMS OF REFERENCE

1. Introduction

1.1 This submission is made by DFC Global Corp (“DFC”) on behalf of MEM Consumer Finance Limited (“MEM” trading as PaydayUK), Express Finance (Bromley) Limited (“Express Finance” trading as Payday Express) and Instant Cash Loans Limited (“ICL” trading as The Money Shop¹) in response to the following CMA documents published on 11 June 2014:

- (i) Provisional Findings (“PF/PFs”);
- (ii) Notice of possible remedies (“Remedies Notice” or “RN”); and
- (iii) Notice of a request for a variation of the terms of reference (“Variation Notice” or “VN”),

1.2 References to DFC in this document should be taken to refer to MEM, Express Finance and ICL collectively as well as to DFC Global Corp.

1.3 As a general point, DFC notes that the market outlook continues to be uncertain with the FCA’s consultation on a total cost of credit cap expected very shortly and new restrictions on the use of CPA and rollovers by high cost short term lenders having come into force on 1 July. The impact of these measures will need to be evaluated alongside any proposed remedies to ensure that the resulting combination of regulation and remedies does not impose too high a burden on all or any particular groups of lenders with the effect of reducing competition. The regulatory framework and the FCA’s Handbook and CONC

¹ In Scotland only, ICL also trades as Duncanson & Edwards and Robert Biggar

Sourcebook will also be relevant when examining the detail of proposed remedies, for example how entries on a price comparison website will comply with the Financial Promotions rules.

2. **Provisional Findings**

2.1 The CMA provisionally finds that:

- (i) the evidence indicates that price competition between lenders is not working effectively, and that, according to the CMA, this assessment is consistent with its profitability analysis which shows that the largest lenders have earned profits significantly above the cost of capital over much of the past five years²;
- (ii) by contrast, levels of non-price competition appear more consistent with a well-functioning market³;
- (iii) competition from other forms of credit imposes only a weak constraint on payday lenders' prices, which the CMA excludes from its definition of the relevant market⁴;
- (iv) there are a number of features in the provision of payday loans in the UK which contribute to, and help to explain, the purported failure by many payday lenders to compete on price and which either alone or in combination give rise to an adverse effect on competition ("AEC").⁵

2.2 The CMA identifies two sources of consumer detriment:

² PFs Summary paragraph 35
³ PFs Summary paragraph 36
⁴ PFs Summary paragraphs 40-42
⁵ PFs, section 8

- (i) that some customers currently pay more for their loan than they would if price competition were more effective⁶; and
- (ii) that there is less innovation on pricing (e.g. risk based pricing or flexible price models) than the CMA would observe in a market in which price competition were more effective⁷.

2.3 The CMA provisionally concludes that the scale of the customer detriment caused by the AEC is likely to be material. In relation to the level of prices that might be observed in a market with effective price competition, the CMA estimates that on average borrowers are overpaying for their loans by around £5 to £10 per loan.⁸

2.4 DFC does not accept the CMA's provisional findings that there are features of the market that give rise to an AEC, nor indeed that there is any lack of price competition.

2.5 In its response dated 19 March 2014 to the CMA's Annotated issues statement and working papers (the "AIS Response"), and its further response dated 29 April 2014 to the CMA's supplemental working papers and presentations (the "Supplemental Response"), DFC made detailed submissions in relation to the CMA's views as set out in the Annotated issues statement and the CMA's review and analysis of the evidence obtained by it as set out in the working papers. The CMA's provisional findings in relation to market outcomes and market features to a large extent replicate the CMA's views and analysis as set out in the Annotated issues statement and working papers. DFC reiterates the submissions already made in its AIS Response and Supplemental Response to

⁶ PFs Summary paragraph 51 (a)

⁷ PFs Summary paragraph 51 (b)

⁸ PFs paragraph 8.11

the extent that they remain applicable. DFC does not propose to rehearse those submissions yet again but relies upon its previous submissions in order to respond to the CMA's PFs. DFC also takes this opportunity to make some specific additional submissions in the paragraphs that follow.

2.6 Profitability

2.6.1 The CMA provisionally considers that the evidence it has reviewed indicates that observed levels of profitability are consistent with a lack of competitive pressure, and that the three largest lenders have earned *"high and in some cases exceptional returns over a significant part of the period 2009 to 2013"*, and that *"Profits earned by the three largest lenders are substantially over our estimate of WACC..."*.⁹

2.6.2 DFC does not accept the CMA's provisional assessment that levels of profitability are consistent with a lack of competitive pressure. DFC instructed an independent economic and accountancy consulting firm, FTI, to review the financial data that it had previously submitted to the CMA and to consider the most appropriate approach to a profitability analysis for its UK businesses including any adjustments to the data already submitted to the CMA. FTI's report formed part of DFC's AIS response.¹⁰ Whilst the CMA accepts some of the analysis set out in FTI's report, the CMA has failed to take account of some crucial aspects of FTI's submission in a way that would allow it to arrive at an economically meaningful and accurate assessment of profitability. In particular, in reaching its provisional conclusions on

⁹ PFs, paragraph 4.186

¹⁰ See Appendix 9 to the submission on behalf of MEM Consumer Finance Limited, Instant Cash Loans and Express Finance (Bromley) Limited, in response to the Annotated issues statement

profitability, the CMA has failed to take into account the following matters:

- (i) DFC's submissions that ROCE and ROE are inappropriate measures of profitability due to the low capital intensity of the industry;
- (ii) that the sector is relatively immature, fast developing (and, until recently, expanding) and is risky which in turn is likely to mean high profitability for some companies as well as high levels of failure;
- (iii) the CMA fails properly and fully to take into account the fact [CONFIDENTIAL] that historical levels of profitability achieved at a time when the industry was relatively immature are not likely to give an accurate picture of future profitability or to provide any meaningful indicator of whether such profits are high or exceptional;
- (iv) the CMA fails properly and fully to take into account a number of current FCA initiatives and the potential consequences of those initiatives, including the impact on lenders' costs resulting from the FCA's announced thematic review on arrears and collections and the review of the significant use of s166 Skilled Person for numerous players in the industry, and the announcement by several providers (most notable Cheque Centres) that they are restricting their operations in some way as a result of moving towards FCA supervision.

2.6.3 DFC submits that all of the above matters are likely to mean that profitability levels in the industry are likely to decline further. Insofar as the CMA's approach to remedies is based in part on its assessment of industry profitability levels, appropriate consideration should be given to the necessity of such remedies bearing in mind the fundamental and far-reaching changes being seen in the industry and their inevitable consequences for profitability levels.

2.7 **The role of lead generators**

2.7.1 DFC acknowledges that, for some lead generators, there is a lack of transparency about how their service is described on their websites. Nonetheless, DFC submits that the CMA overestimates the impact lead generators may have on customers' ability/incentives to shop around. As set out in DFC's AIS Response, around [CONFIDENTIAL] of loan applications approved by MEM and Express Finance [CONFIDENTIAL], based on approved leads from lead generators, are not converted into funded loans because the customer chooses not to proceed with the loan; suggesting that these customers were comparing and ultimately choosing to use an alternative provider.

2.8 **Competitive constraints: Entry and expansion**

2.8.1 In relation to the CMA's PF that there are barriers to entry and expansion (notwithstanding the CMA's observation that historically large numbers of lenders have managed to enter the market and that a few lenders have been very successful in growing their businesses)¹¹, and that therefore entry/expansion does not present

¹¹ PFs paragraph 4.7.

an effective competitive constraint on existing lenders when setting prices, DFC submits that the CMA has failed to take into account the following developments:

- (i) In relation to the information available to new entrants and established lenders about customer repayment behaviour, the CMA acknowledges that information from credit reference agencies may offset information asymmetry to some extent; however, the CMA points to limitations in the available CRA data¹². DFC accepts that certain limitations exist in respect of the data currently available. DFC notes however that the CMA has had no regard to the real-time credit databases currently available and also being developed which, as noted in DFC's AIS Response, will provide payday lenders with much more up-to-date credit information, and allow even those payday lenders without their own scorecards access to more and better information so as to compete on a more even footing. One of the larger CRAs, CallCredit, now offers daily updates through a closed user group database. This product, (MODA) provides new account and significant account change information up to 30 days earlier than would be provided by traditional data sharing. It allows for products structured outside a monthly payment model to be reported more accurately and any missed payments to be reported in a more detailed way.¹³ In addition, a realtime credit database solution is currently being developed by Experian.

¹² PFs paragraph 7.108

¹³ www.callcredit.co.uk. – press release – 'CallCredit's new data sharing service, 'MODA', goes live' 25 June 2014.

- (ii) The CMA itself has produced case studies¹⁴ setting out the experiences of non-standard personal credit provider Provident, which entered the payday lending sector with its 'Satsuma' product in November 2013, and US online lender Think Finance, which – having entered and exited payday lending - launched its 'Sunny' short term loan product in August 2013. According to the CMA, "*Provident told us that the development of its Satsuma product was progressing well. It had deliberately moderated the volume of new loans issued as it built the capacity to support more rapid development.*"¹⁵ and Think Finance expected its product to become profitable. These instances, as well as those already highlighted in DFC's AIS Response, illustrate the ability of a new entrant to enter and quite rapidly achieve significant scale. This threat of new market entry and expansion presents a significant competitive constraint to established payday lenders.
- (iii) The CMA itself acknowledges that historical assessments of the industry may be of limited value given future market developments¹⁶ and that various factors such as regulatory uncertainty, access to banking services, reputational issues, ease of credit assessments and the availability of credit data are likely to decline in importance in the future as the regulatory regime is refined and enforced.

¹⁴ PFs Appendix 7.1

¹⁵ PFs Appendix 7.1 paragraph 4

¹⁶ PFs paragraph 7.4

2.9 Consumer detriment

2.9.1 In relation to the two sources of customer detriment, the CMA provisionally concludes that :

- (i) some customers currently pay more for their loan than they otherwise would if price competition were more effective. This is estimated on average to be £5 to £10 per loan (based on an average advance of £260)¹⁷;
- (ii) there is less innovation on price than the CMA would expect to observe in a market in which price competition were more effective¹⁸. No quantification or detailed analysis has been undertaken in relation to the 'detriment' associated with the overall efficiency of the market and the extent to which prices reflect the cost of supplying different groups of customers.¹⁹

2.9.2 DFC submits that the CMA's calculation of the likely consumer detriment is not properly substantiated in the CMA's PFs. The CMA has set out no clear economic basis for the counterfactual prices per £100 it uses to calculate the purported overcharge, (and in fact these counterfactuals appear to have been chosen arbitrarily). The CMA's calculation of the "overcharge" of £5 to £10 is based upon a number of inaccurate assumptions and generalisations.²⁰

2.9.3 DFC also notes that the purported overcharge has been presented in the PFs and related documents (most notably the CMA's news

¹⁷ PFs Summary paragraph 52; paragraph 8.11

¹⁸ PFs Summary paragraph 52

¹⁹ PFs, paragraphs 8.10-8.12

²⁰ PFs – Appendix 8.1

release) in a way that may be misleading to consumers. In a single paragraph, the CMA refers to an overcharge of £5 to £10 relative to a typical loan of £260, but goes on to refer to the gap between the cheapest and most expensive deals for a month-long £100 loan. A consumer may be misled that the purported overcharge is £5 to £10 per £100 loan. In fact, per typical £100 loan, based on the overcharge calculated by the CMA in respect of a typical £260 loan, the purported overcharge would equate to £1.92 to £3.85.

3. Remedies notice

3.1 DFC sets out below its submissions in relation to the proposals and questions set out in the Remedies Notice. For the avoidance of doubt, any submissions set out in this section are without prejudice to DFC's submission that it does not accept the CMA's provisional findings of an AEC.

3.2 DFC notes that the CMA has the duty to take action that it considers "*reasonable and practicable*" to remedy, mitigate or prevent the AEC it has identified and to remedy, mitigate or prevent any detrimental effects on customers so far as they have resulted from the AEC²¹.

3.3 The CMA's approach to remedies is further expanded in its Guidelines²², in which it is noted that the CMA will favour remedies which meet the following criteria:

- (i) a higher likelihood of achieving their intended effect;
- (ii) are capable of effective implementation, monitoring and enforcement;

²¹ Section 138 Enterprise Act 2002

²² CC3 (Revised) – Guidelines for market investigations; their role, procedures, assessment and remedies.

- (iii) take into account existing laws or regulations either currently applicable or expected to come into force in the near future;
- (iv) will interact effectively as a remedy package; and
- (v) are proportionate in that they are effective, no more onerous than necessary, are the least onerous measures available and do not produce disproportionate disbenefits.

3.4 It is in this context that DFC makes submissions about the remedies set out in the Remedies Notice. DFC submits that there is a high risk that remedies which do not meet these criteria are likely to have the effect of preventing businesses from operating efficiently, and are therefore likely to lead to market exit and/or the creation of barriers to entry, thus ultimately reducing competition in the market and leading to harm to the consumer.

3.5 **Price Comparison Website**

What are the main challenges in establishing an effective price comparison website and how might these be overcome?

3.5.1 DFC is wholly supportive of the provision of transparent, helpful and comprehensive information being provided to payday lending customers and welcomes regulation which ensures that all payday lending operators are subject to the same obligations. Consistent with this approach, DFC has been a committed participant in price comparison websites (PCWs) including moneysupermarket.com as well as Money.co.uk, Allthelenders.co.uk and Whichwaytopay.com. It is DFC's submission that had moneysupermarket.com continued to permit payday lenders to participate in its website, there would be no necessity for this remedy being proposed. [CONFIDENTIAL] DFC

would welcome the intervention of the CMA to encourage the inclusion of payday loans on PCWs [CONFIDENTIAL].

3.5.2 In DFC's submission, there are a number of challenges which would exist in relation to establishing an effective PCW for payday loans. In essence, the principal challenge is that of creating a mechanism by which consumers are able to undertake a clear and meaningful comparison of the wide range of different types of financial products available to them such that consumers are able to identify the best value product which best suits their needs. At the same time it is important that consumers should not be misled about the availability of any of these products as a result, for example, of an early (and inaccurate) indication of credit being likely to be granted by a lender prior to any credit checks being undertaken. The specific challenges include:

- (i) raising consumer awareness of the PCW itself;
- (ii) ensuring that a comprehensive offer of providers with a variety of products participate in the PCW; and
- (iii) ensuring that the metrics used to make any comparison between different products and providers enables a meaningful and effective comparison without also leading to an increase in standardisation of the different types and features of products being offered, such that innovation and development in the market is stifled.

3.5.3 In order to address these issues, DFC proposes that the most effective form of PCW would be:

- (i) one which enabled customers to compare different types of financial products. There may be times when the most appropriate product for a consumer is a payday loan. On other occasions, a longer term personal loan, an overdraft, pawnbroking loan or a credit card (for example) might be a more appropriate choice of borrowing. By restricting the range of products featured on a website to payday loans only, the CMA would make it more difficult for consumers to find the right product to meet their needs. In addition, a PCW which compares different types of financial products would go some way to addressing the CMA's concerns (albeit not accepted by DFC) that payday loans face weak competition from other forms of credit;
- (ii) the most effective means of enabling payday lending customers to compare and to shop around for short term lending would be to adopt measures which would ensure that payday lenders participate in existing PCWs operated by existing commercial operators, such as moneysupermarket.com. Such PCW operators have the required insight into the PCW market together with the appropriate expertise and market presence. On this issue, it is noteworthy that as part of the (then) Competition Commission's evaluation of the remedies in the home credit market investigation, the Consumer Credit Association noted that *"the logistics of dealing with the contract for operating the website had been difficult and expensive and that with hindsight it would have been a good idea to set up*

under the umbrella of a price comparison website such as moneysupermarket.com²³;

- (iii) A newly established website focussed solely on payday lending would not be the most effective means of establishing a '*comprehensive and trusted price comparison website*' even in the medium term. Any new website would suffer from a lack of consumer awareness, even if a substantial amount of money was invested in marketing and even if consumers could be made aware of a newly established website, there is a risk they would simply see it as "*one of many*" rather than the go-to site for payday loans.
- (iv) A number of existing price comparison websites (such as www.moneysupermarket.com, Money.co.uk, Allthelenders.co.uk, and Whichwaytopay.com.) already have an established market presence of which consumers are aware and with which consumers are already familiar;
- (v) there is a risk that a newly established website focusing solely on payday loans would be insulated from competitive developments in relation to alternative financial offerings and that a newly established website would not reflect best market practice or offers as they evolve in response to customer demand; and
- (vi) If the CMA were minded to adopt the approach of requiring payday lenders to participate in existing commercial PCWs and bearing in mind that there are costs implications of participating

²³ See paragraph 121 of Understanding past market investigation remedies – Home credit – February 2013

in PCWs (which are commercial operators), DFC believes it would be appropriate for payday lenders to be mandated to participate in at least 2 sites.

3.5.4 Should the CMA not be minded to incorporate payday loans on existing price comparison sites, DFC would in principle be supportive of payday loans being added to the existing home credit loans website www.lenderscompared.org.uk.

3.5.5 Alternatively, DFC would support the creation of a payday lending specific website which is clear and simple for the consumer to use, in a similar format to that of www.lenderscompared.org.uk.

3.5.6 DFC understands that the CMA's proposed research may identify consumer preferences in relating to any PCWs.

What features should a customer be able to specify when searching for a loan using a website?

3.5.7 Whether or not the comparison site for payday loans is created as a new and stand-alone site or incorporated into one or more existing sites, the features that a consumer should be able to specify when searching for a loan should include:

- (i) duration of the loan;
- (ii) value of the loan;
- (iii) total Cost of Credit;
- (iv) whether the loan is instalment or single payment;
- (v) whether the lender is a member of a Trade Association; and

- (vi) other features such as fast payment options, method of payment, default charges and whether the processing service is 24 hours / seven days a week.

What is the best way of providing a comparative cost of a loan?

- 3.5.8 Providing a comparative cost of different loans taken out for different periods is fraught with difficulties. One way to do so is by a comparison of charges on the basis of total cost of credit per £100 but any such comparison should incorporate a facility which enables a customer to compare the total cost of credit for different loans over different periods of time and which thus enables a customer to make a meaningful assessment of the cost of that loan by reference to the period of time over which the borrowing takes place.
- 3.5.9 DFC does not believe that it would be helpful to include a number of different scenarios by which comparisons are made. The principal purpose of a PCW is, from DFC's perspective, the introduction of a simple, transparent and readily comprehensible comparison mechanism. The introduction of a number of scenarios would only serve to over complicate the exercise. In addition, no one scenario is likely to truly represent each and every lender's model, so some lenders may be disadvantaged by the use of some scenarios and equally customers may be confused or misled. Any requirement to present a set number of scenarios is more likely to lead to standardisation or reduced innovation and/or flexibility in the market (for example, many lenders currently waive fees and/or interest for payments that are only a few days late and it may not be possible to reflect this feature in a scenario).

In which order should products be ranked and should customers be able to specify the ordering?

- 3.5.10 Customers should have the facility to organise the search results by the metric of their choice.

How should repayment scenarios in which a borrower does not repay the loan on the originally agreed date be treated on the website?

- 3.5.11 DFC believes that the introduction of scenarios where payment had not been made on the originally agreed date would not be helpful or informative to consumers, unless the scenario was taken at a sufficiently distant date from the due date (for example, 60 days past the due date) such that variations in lenders' models would not be misrepresented. DFC's principal concern would be that in attempting to present clear information about possible default charges, consumers could be unintentionally misled about the imposition of default charges and that their decision-making might be influenced by inaccurate information. Having to present scenarios when charges and interest are sometimes waived or discounted could be confusing for consumers. DFC is also concerned that such a proposal may serve to incentivise consumers with less desire to pay on time to make their repayment even later if they perceive that incurring a late payment fee (in accordance with a given scenario) is more advantageous than making the required repayment.

- 3.5.12 Default charges and fees are in any event currently required to be set out in the pre-contractual and contractual information, so any consumer can consider this information before choosing to proceed with a loan.

Which lenders and products should be included on the website?

- 3.5.13 If the CMA is minded to establish a new site, DFC would still advocate the inclusion of products other than payday loans on the site (e.g. overdrafts, personal loans and credit cards) to allow consumers to find the most appropriate product for their needs.
- 3.5.14 All authorised High Cost Short Term lenders should be required to participate in a price comparison website. Credit unions should be permitted (but not required) to participate.
- 3.5.15 DFC believes that it would not be appropriate for lead generators and other intermediaries to be permitted to participate. Lead generators offer potential access to a number of different products, many of which may not ultimately be available to a borrower (since the lead may not be purchased from the lead generator). Such offers will be subject to different terms and conditions. It is difficult to envisage a way in which a lead generator's offer could be simply and effectively incorporated into a PCW.

How should the website be operated and governed?

- 3.5.16 As noted above, DFC believes that the website would best be established as part of an existing PCW. If that were the case, the website would continue to be operated as a commercial operation, subject to its existing rules.
- 3.5.17 Alternatively, if the CMA were minded to require that a payday specific website is to be created, the website should be established with the full involvement of lenders in relation to its design and governance and should be funded by all lenders in proportion to their

revenues, that is, a similar approach to that adopted in the Home Credit investigation.

How should the website be promoted?

3.5.18 In the event that the website is established as part of an existing commercial PCW, promotion should be left to the commercial operator. All participating lenders should be required to display a link to the site on their own site. In addition, in terms of the relationship between any PCW and other relevant websites, other advisory sites such as moneyadvice.service.org.uk and Citizens' Advice Bureau should also carry a link to the website. The website should carry links to those services as well as other advisory services websites.

3.5.19 The website address could also appear on other material provided by lenders, for example the Adequate Explanations document, the landing pages the customer sees during the application process and potentially in written communications such as a pre-payment date email. This additional information would ensure that existing payday customers were provided with the details of how to compare prices and other features in a clear and transparent fashion.

What are the likely costs of this measure and how do they vary with the design of the remedy?

3.5.20 The likely costs of this measure are very difficult to predict at this stage particularly when the scope, design and creation of the PCW is so unclear. It goes without saying that the creation of a new website is likely to involve greater upfront expense than requiring lenders to participate in existing PCWs. Equally, the level of expense will vary depending upon the complexity of any PCW.

3.5.21 DFC understands that the creation of the Home Credit Website was a lengthy and complex procedure.²⁴ It will therefore be important to manage any budget agreed for the development, if this is necessary. The development process itself is likely to be resource intensive. Costs will not be restricted to monetary expenses only, as lenders will wish to be involved in reviewing specification documents and testing at a later stage.

3.6 **Measures to improve customer awareness of additional charges and fees**

Should additional fees and charges for late payment and/or rolling over of loans be made more prominent?

3.6.1 DFC supports any proposal to require lenders to provide clear and timely disclosure to customers of the total amount payable if the loan is not repaid on time. DFC already provides this information to customers in a clear form and in some detail in its adequate explanation and SECCI documentation in accordance with its legal obligations. Equally consistent and clear information should be provided by all lenders. DFC would welcome enforcement of this requirement.

3.6.2 DFC is supportive of any proposal which requires that lenders' websites show such costs in a clear and transparent fashion which does not obscure or omit relevant information.

How and when should any notification of charges be presented in the borrowing process?

3.6.3 In particular, the information should be easily available to customers before they have committed to take a loan. The information should

²⁴ See understanding past market investigation - remedies – Home credit. February 2013 at paras 121, 122, 123, 124

be easy to access and not more than one click away from the screen showing basic fees.

Should fees and charges be demonstrated using one or more example scenarios? How should such scenarios be specified?

3.6.4 DFC does not consider that it would be helpful to demonstrate fees and charges by way of scenarios for the reasons explained at paragraph 3.5.11 above. Additional fees and charges should be shown in relation to a specific loan size and duration to enable effective comparison.

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?

3.6.5 In light of the cap on rollovers which came into force in July of this year as well as the reduction in number of loans that have been rolled over following the CFA's voluntary commitments to a reduction in rollovers in 2013, DFC believes that it would be both unnecessary and disproportionate to impose a requirement to inform customers of rollover fees since the information would be helpful to only a very limited number of customers.

What are the likely costs of this measure and how do they vary with the design of the remedy?

3.6.6 Any measure which simply requires lenders to disclose fees and charges on their own websites should not be particularly expensive or time consuming as responsible lenders continually review and update their sites. Any measure which requires new development or amendment of existing documentation will incur more resource, the level of which is very difficult to predict at this stage.

3.7 Measures to help customers assess their own creditworthiness

3.7.1 DFC submits that in relation to this proposed remedy, there is a fundamental conflict between the often expressed concern that payday lenders have failed to undertake appropriate affordability checks in relation to their customers (which the FCA has been at pains to address)²⁵ and the CMA's apparent desire for payday lenders to confirm to its customers that they would meet creditworthiness criteria even before full credit checks have been undertaken. DFC is concerned that the requirement to assess credit worthiness and affordability as set out in the FCA's CONC handbook will be undermined if an indication is to be given as to the likelihood of granting credit prior to appropriate checks being undertaken. Although affordability and creditworthiness checks are distinct assessments and procedures (in that someone who has a good credit record may well not meet the affordability criteria and vice versa), there is overlap between the two processes in that an indication of a customers' creditworthiness may well give rise to an unwarranted expectation on the part of the customer that they also meet the affordability criteria. This may well lead to dissatisfaction on the part of the customer and the sense that they are not being treated fairly in the event that having been given an indication of creditworthiness, they fail to meet affordability criteria. DFC's submissions should be considered in that context.

Which of the approaches set out in the Remedies Notice is most likely to achieve the objectives of this remedy? Are there alternative approaches which might be more effective?

²⁵ See statement of FCA on 3 October 2013 – “We believe that payday lending has a place; many people make use of these loans and pay off their debts without a hitch, so we do not want to stop that happening. But this type of credit must only be offered to those that can afford it; that is why we are imposing tighter affordability checks.”

3.7.2 DFC supports the proposal to require 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. To that end, DFC would be prepared to state explicitly on the home page of its website whether and when a credit check would be undertaken in relation to any application. In addition DFC would also be content to include a general informative paragraph about the objective and possible consequences of any credit searches undertaken. DFC understands that these are requirements as part of the Data Protection Act to inform consumers that their data may be shared and a credit check undertaken.

3.7.3 DFC has serious concerns about the practicability of the other proposals. In particular, the suggestion that lenders should offer a prior indication of the likelihood that they would grant credit on a full application appears to DFC to be unworkable. Such an indication would be inherently unreliable or couched in conditional or uncertain terms. It would also be potentially misleading to consumers and may also contravene some of the FCA's CONC sourcebook section 5.

3.7.4 Arguably this measure would not assist customers to understand their own creditworthiness because DFC believes that all lenders have different scoring methods and models.

3.7.5 As an alternative approach, DFC suggests that it may be appropriate for payday lenders to be required to include links to independent websites such as Credit Expert and Noddle in order to enable customers to undertake individual credit checks by means of an

independent website which is unconnected with any specific application for a loan.

- 3.7.6 DFC would also support providing more information about how consumers can ‘clean’ up their own credit reports, for example, by a requirement to direct borrowers to independent sites that provide such information and assistance to consumers.

To what extent are credit checks undertaken before the submission of a formal application for credit?

- 3.7.7 [CONFIDENTIAL].

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?

- 3.7.8 Application searches do not provide any additional information over and above that provided by quotation searches. However, application searches, as opposed to quotation searches, are useful to lenders as they leave a footprint. Accordingly, a record of the number of application searches made against a potential borrower will show the degree of “credit hungriness” of a potential borrower. In DFC’s experience, [CONFIDENTIAL]. Insofar as it might be proposed that there be a prohibition on application searches, DFC would [CONFIDENTIAL]. However, DFC would support the enforcement of quotation searches rather than application searches in relation to applications made via lead generators (as multiple footprints may in such a case result from multiple applications by the lead generator rather than the applicant, and are therefore not a reliable indicator of “credit hungriness”).

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 rule?

3.7.9 DFC does not consider that there would be any advantage in elevating this guidance into a rule since such a change is unlikely to lead to any real benefit and is therefore likely to be ineffective as a remedy and thus disproportionate. If such action was to be taken, it should be adopted in relation to all consumer credit lending products, not just payday lending since it would be both disproportionate and discriminatory (particularly bearing in mind the size of the sector) to include only payday lending products in this remedy.

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?

3.7.10 See response at 3.7.8 above. A footprint recognises that a search has been carried out. This search may not proceed to a loan payout and the correlation between the existence of a search and a payout is a useful indicator to lenders.

How can customers' understanding of which lenders would lend to them prior to the point of application be improved?

3.7.11 See response at 3.7.5 above.

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

3.7.12 The term "initial eligibility assessment" needs to be defined more clearly in order to provide comprehensive comments on this proposed remedy.

3.7.13 As an initial response, however, DFC believes that it would be inappropriate to require lenders to ensure that all eligible customers are approved prior to any formal application being made. DFC repeats its observations in paragraph 3.7.1 that there is a clear conflict between conducting appropriate and rigorous affordability checks and confirmation, in the absence of full credit assessments, that a customer meets the credit criteria for a loan.

Should lenders be required to present an indicative 'credit score' (from one or more CRAs) that a certain proportion (e.g. 90%) of their respective customers have at the point of application?

3.7.14 DFC does not believe that such an approach would be either workable or effective. Any such indicative "credit score" would be so hedged by caveats, it would be almost meaningless. Credit scores between CRAs are not comparable and lenders' scorecards are continually being revised and updated, so to arrive at 90% (or any other percentage) is highly likely to be misleading and inaccurate.

To what extent are customers aware of and/or concerned about the possible impact of multiple credit searches on their ability to access credit?

3.7.15 DFC is unable to answer this question as it has not undertaken any research in relation to customers' perceptions on this issue.

What are the practical challenges of integrating an eligibility check into a price comparison site?

3.7.16 Much will depend upon the format of the PCW if and when it is adopted and the functionality of any website insofar as any website is established as part of an existing commercial operation. Insofar as any PCW is not established as part of an existing commercial operation (although DFC's view is that such an approach would be the most effective and efficient

way to establish a PCW), DFC believes however, that there is considerable merit in ensuring that any newly established PCW is relatively simple, uncomplicated and user friendly in order to enable customers to compare different types of credit facilities and that the integration of an eligibility check will detract from this principal objective. DFC also considers that it adds to the complexity and expense of this proposal without establishing any sufficiently countervailing benefit.

What are the likely costs of this measure and how do they vary with the design of the remedy?

3.7.17 DFC cannot give a precise response, however costs will increase as the complexity of the requirements increase.

3.8 Periodic statements of the cost of borrowing

Should lenders be required to send a regular statement of borrowing costs to customers?

3.8.1 For the avoidance of doubt, DFC does not believe that any additional, mandatory periodic statement of borrowing costs should be required to be sent to customers. For the reasons set out below, DFC does not believe that such a requirement would be effective, proportionate and/or meet the requirement of being no more onerous than necessary. In the first instance, there are existing rules in relation to the provision of similar statements. The requirement to send a periodic statement has always featured as part of the Consumer Credit Act (CCA). Under the amendments made to the CCA in 2006, creditors have been required since 2008 to send annual statements on fixed sum credit agreements where a customer still has a balance on their account 12 months after the loan has been taken out. DFC already sends statutory annual statements to its customers under fixed sum agreements where this

requirement is triggered. For running account agreements, periodic statements are required. Customers also have the right to request a statement on their account and ad hoc statements are provided in response to such a request.

The period of the statement (for example, quarterly, twice a year or annually), in light of the typical timescale of a payday lending relationship.

Which customers should receive a statement and at what point and when should they cease to receive a statement?

The method of distribution of the statement, for example by post, email, online or through other channels.

The date on which the statement should be sent and whether this should be the same for all lenders.

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?)

What further material should be included 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?

What are the likely costs of this measure and how do they vary with the design of the remedy?

3.8.2 DFC has concerns about this proposal for a number of reasons and responds to the issues raised above in its response below:

- (i) there is a serious risk that some customers will consider such statements as unlooked for and unwelcome contact by payday lenders. This may well lead to complaints;
- (ii) unrequested statements of this type may also give rise to issues in relation to customer confidentiality. Payday lending customers value their privacy and put a high store on confidentiality. There is a risk that both confidentiality and

privacy may be breached by such statements being sent by post. For example, a statement could be sent to an out-dated address (likely, given the mobility of DFC's customers) or to an existing address to which customers would prefer it not to be sent.

- 3.8.3 Post contractual information is required to be sent in certain circumstances, for example Notices of Sums in Arrears and Notices of Default Sums. Where relevant, these also provide information on the cost of borrowing. There is a real risk that customers will feel bombarded by unwanted information from payday lenders.
- 3.8.4 DFC is also concerned that this proposal is unlikely to be effective in achieving its aims. DFC notes that the CMA's assessment of similar remedy in the home credit market has been that it has been of '*limited effectiveness*' and delivered '*relatively little benefit for some credit customers*'.²⁶
- 3.8.5 In terms of implementation, online operations may well be able to implement such a remedy more effectively and at a lower cost by incorporating the requirement into a borrower's personal payday loan account page. However, in terms of retail operations, and, in accordance with the observations above, there are likely to be issues around confidentiality, effectiveness and disproportionate cost bearing in mind the uncertainty of any benefit to customers. In such circumstances, retail operations will bear a disproportionate burden in relation to implementation which may well mean that retail operators are disadvantaged relative to online operators.

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See paragraphs 159 and 160 of Understanding past market investigations remedies - Home credit – February 2013

3.8.6 It follows therefore that DFC is not supportive of this proposal save if the requirement was such that the statement is provided at the specific request of the customer. If that were the case, that would obviate the need to have any rules in relation to the period of the statement, the customer who should receive a statement and the date on which the statement should be sent. The information to be included in the 'on request' statement should include details of number and value of loans, together with total interest costs plus any fees or charges. Where possible, the statement should be provided through customer log-in functionality.

3.8.7 DFC would also suggest that it may be appropriate to include, as part of any information provided post contractually, a reminder to customers that they can request such a statement.

3.9 **Measures to increase the transparency of the role of lead generators**

Is existing regulation sufficient to ensure that clear information is provided to customers on the relationship between brokers and lenders?

Are there any additional compliance activities that the FCA should undertake?

3.9.1 DFC agrees that greater transparency is required in relation to the role of lead generators. In the interests of ensuring comprehensive and transparent information to customers, lead generators should be required to set out the nature of the service they provide on the initial popup frame as well as their home page and, in particular, make clear that the service does not necessarily result in them being provided with a payday loan which amounts to the best value for them. The FCA should monitor brokers' and lenders' websites to ensure that any such requirements are implemented.

3.9.2 DFC also agrees that the existing FCA guidance regarding transparency should be replaced by binding obligations, enforceable by the FCA. The FCA should require brokers (as well as lenders) to display their IP number or full authorisation permission number (or some other relevant reference number) on their website in the form of a link to the FCA website in order that customers are able to confirm that the broker/lender actually has the necessary permissions. This link should be on the first page and the FCA should actively promote this feature on their website.

4. **Remedies that the CMA are not minded to consider**

4.1 The CMA has identified two potential remedies which it is not minded to consider further namely:

- (i) Prohibition of additional fees;
- (ii) Accreditation of lender websites.

4.2 In light of the FCA's current review and consultation in relation to the proposed price cap (which will address the level and structure of price caps to be implemented in January 2015) any such remedy would be duplicative, onerous and disproportionate.

4.3 All lenders with Interim Permission are required to include the GEN4 disclosure on their website "Authorised and Regulated by the Financial Conduct Authority" and DFC does not believe any further requirement is justified. Lenders belonging to Trade Associations should disclose this (although not necessarily on the home page).

4.4 DFC therefore agrees that it would not be appropriate to consider either of these remedies further.

5. **Variation notice**

5.1 DFC notes that lead generators play an important role in the acquisition of online customers and marketing of online payday loans and for that reason, understands why the CMA is considering a variation of its terms of reference to include credit brokers such as lead generators. However a decision on the variation of the notice should be a matter for the CMA alone.

6. **Conclusion**

6.1 Without prejudice to DFC's submission that it does not accept either the CMA's provisional findings that there are features of the market that give rise to an AEC, or to DFC's submissions that remedies are not required, it will be important that all remedies apply to all providers operating in the consumer credit market to ensure that competition is not restricted or distorted.

8 July 2014