Response to the CMA's '*Notice of provisional findings*' and '*Notice of possible remedies*' in its Payday Lending market investigation

on behalf of 118 118 Money

4 July 2014

NON-CONFIDENTIAL

About 118 118 MONEY

118 118 Money (the trading name for Madison CF Ltd) is affiliated to the well-known directory enquiries business 118 118 which launched in the UK in 2002 and soon became the largest and most well-known provider of directory services in the UK. Last year, it handled about 20 million calls, providing both core directory services and a range of enhanced offer, advertising and other information services. 118 118 and 118 118 Money both form part of a larger international group operating in Europe and the United States providing information, e-commerce and contact centre services.

In 2013 118 118 Money launched into the consumer credit market in the UK providing unsecured personal loans. We offer loans of between £1,000 and £5,000, with fixed repayments over 12 to 24 months with no arrangement or set up fees. Although we note that the Competition and Markets Authority (CMA) has slightly amended the scope of its inquiry which now just includes £1000 loans for 12 months, we would highlight that we do not offer any loans for less than £1000 or for periods shorter than 12 months, as that is not a market in which we are in any way focussed.

As such, 118 118 Money does not operate within the traditional payday lending market and we fall outside of the FCA's definition of 'high-cost short-term credit. However, we have a strong interest in regulation of the sector because it is so closely associated with the market in which we operate. Many of our customers may have previously taken out payday loans and many of the issues identified by the CMA in its provisional findings are relevant to the wider consumer credit market. Our particular interest relates to the need for new entrants to be able to access credit information in order to inform lending decisions and provide thorough affordability checks for borrowers. We believe the reputational issues affecting the payday lending market can be explained in a large part by the failure of payday lenders to lend responsibly and that the lack of access to real-time credit information on new customers is a significant competitive constraint to more effective competition in this market.

Overview

118 118 Money welcomes the CMA's provisional findings, with which we largely agree. However, even as a new entrant in the broader consumer credit lending market we are concerned that the features identified overly focus on the behaviour of customers in this market to "shop around" for better value products. The real problem features in this market are the structural and behavioural features on the supply-side of the market that drive irresponsible lending practices. It is these features that have brought the payday lending market into such disrepute and are preventing the development of a more properly functioning market. More specifically, we believe the evidence provided to the CMA clearly demonstrates that a key reason competition is not functioning effectively is the inability of payday lenders to assess credit risk accurately.

As a new entrant, 118 118 Money agrees with the CMA's provisional finding that the ability to assess credit risk accurately is likely to be a particularly crucial determinant of provider's success in the payday lending sector. We are however disappointed that this important feature of the market has not been considered in more detail in the provisional findings and has not been addressed more directly in the Notice on possible remedies.

118 118 Money would like the CMA to give more careful consideration to the proposed remedies, and specifically to reconsider its approach to Remedy 3. In our view, Remedy 3 is misdirected at the customer and should focus instead on the suppliers and issue of mandating industry-wide real-time data sharing through CRAs. We do not believe that any industry self-regulation solutions can be sufficiently comprehensive or robust. While we appreciate there is close cooperation between the CMA and the FCA, we believe that this crucial industry-wide issue needs to be addressed by the CMA as a key feature of the payday lending market that is having an adverse effect on competition. 118 118 Money is strongly of the view that both CRAs and lenders should be required to participate in a process of real-time data sharing.

Although there is an element of 'chicken and egg', 118 118 Money believes that the reason why providers do not market their loans on the basis of cost is because the culture of the payday industry is not (and never has been) to offer the best value product. Crucially, part of the reason why that is the case is because lenders have been unable to price their products competitively due to the unknown and unquantifiable risk of repayment by individual borrowers. The reason why lenders are unable accurately to quantify that risk is because they do not have access to the most up to date credit history of that customer. The greater risk that they face naturally manifests itself in higher charges and therefore an understandable reluctance to market their products on this basis.

If real-time credit information was available, it would begin a virtuous circle whereby lenders would be able to price competitively, thereby incentivising them to market loans on that basis, which in turn would encourage consumers to shop around and pay more attention to relative costs. Conversely, without real-time credit data, it is very hard to see how the current cycle can be broken and therefore cost will continue not to feature in either lenders' marketing activity or borrowers' decision-making processes.

The absence of real-time credit data is an even greater issue for potential new entrants in the consumer credit lending sector because of the information asymmetry that exists between established lenders and new lenders as regards the credit history of consumers. As the CMA discusses at length, new entrants should be able to exert a positive competitive effect, but they have had limited success in doing so within the payday lending sector. The CMA has outlined several reasons why that is the case, but the absence of up to date credit information is absolutely critical.

The CMA has identified why new entrants do not have enough information available to them to assess the likelihood of a customer repaying a loan. Therefore the absence of up to date credit information is a real barrier to entry which is likely to prevent many potential players from ever entering the market. It also generates a significant competitive imbalance between established lenders and those trying to challenge them in the market. Regrettably (and for reasons discussed further below) the product being offered by Call Credit is not the solution to this problem.

In the remainder of this response, we outline why from our perspective as a new entrant, it is that the absence of real-time data-sharing causes significant structural problems within the payday lending market, whereby lenders lack both the incentive and the ability adequately to assess creditworthiness and therefore lend responsibly. This in turn means that lenders cannot price competitively which creates an adverse effect on competition, particularly because the impact is greater on new entrants. We explain that the behavioural features of the industry significantly aggravate this adverse effect. Finally, we explain why any voluntary industry-led solution is incapable of overcoming the adverse effect because it cannot be considered to be inclusive and those that are most needed to participate are those who are least likely to do so.

Real-time data-sharing would improve the poor behavioural features of the payday lending industry

As we have alluded to above, 118 118 Money believes that a large part of the reason why the adverse effect on competition caused by the lack of real-time data-sharing has not already been addressed voluntarily by the payday lending industry is because of the particular culture that pervades it.

Many investigations and reports (most notably from the OFT in March 2013) have highlighted the poor practice and lack of compliance which is widespread (and arguably endemic) across the industry. It is evidenced in many different ways, although there is clearly a common thread of a lack of care and consideration towards their customers amongst many payday lenders, which contributes to a lack of effective competition.

One way in which that lack of care manifests itself is in the underwriting process of assessing borrowers' ability to take on additional credit and to repay it. Whilst the industry may point to the percentage of applicants who are refused loans as evidence of their 'responsible' approach, the CMA has highlighted the high level of default which exists in respect of non-payment, late-payment or loan extensions. It would clearly be an unfair over-simplification to say that payday lenders do not care to whom they lend money. But equally, it would be entirely accurate to say that they could do much more to ensure that they are not lending to borrowers who are already over-indebted and demonstrating clear signs that they will be unable to repay further loans.

The obvious option would be to have introduced real-time credit data-sharing, which (as the CMA has noted) would appear to be of obvious benefit to the short-term loan industry. This would unquestionably give payday lenders a far more accurate view of a borrower's outstanding liabilities and allow them to make a better underwriting decision as to whether or not to advance a loan. Yet, not only have payday lenders not taken steps to implement such a process themselves, they have actively opposed the proposal when it has been raised and have had to be '*dragged kicking and screaming*' by the regulators.

This prompts the obvious question of why lenders would not wish to know everything possible about the credit status of customers to whom they are considering making loans. 118 118 Money believes that there are three principal reasons for this, all of which relate to the culture within the payday industry.

Firstly, it is clear that payday lenders' business models are from the very outset based on an assumption of a high level of default and bad debt. It is viewed as a cost of doing business and therefore the products are designed and very high interest rates set on the basis that a significant proportion of borrowers will default. Because the default is assumed and accepted and built into the price of the products, there is no reason why any payday lender would need to question the accepted wisdom that that is simply the 'way things are'. As a result, prices are kept artificially high.

This effect is amplified by the fact that payday lenders do not seek to compete or distinguish themselves on the basis of the cost of their product. It does not feature in any payday lender's advertising or marketing activity. Because it is not within the psychology or culture of the industry to compete on price, there is simply no reason for any lender to take steps to allow them to reduce their price (such as the introduction of real-time data-sharing).

Secondly, when considering a borrower's ability to repay, there appears to be a belief amongst some payday lenders that '*it's better not to know*'. This may be a very unfortunate unintended consequence of the OFT's guidance on Irresponsible Lending. Where a lender is unaware of a borrower's existing indebtedness, it cannot be accused of irresponsible lending, but if real-time data-sharing provides a lender with that information, it would clearly be irresponsible to advance a further loan to that customer.

The CMA will be well aware that structure of the payday lending market means that borrowers can still be very profitable for lenders in circumstances where they do not pay back the full loan on time (or at all). Regrettably, payday lenders therefore have a strong incentive to lend to these customers and the introduction of real-time data-sharing might fundamentally undermine that part of their business.

Thirdly, established lenders have a strong commercial incentive to maintain the current information asymmetry which exists between them and new entrant/smaller lenders as regards knowledge of borrowers' outstanding liabilities. As the CMA has noted, a significant percentage of the larger lenders' revenues are generated from repeat borrowing by existing customers.

Critically these customers are lower risk because of the information which lenders already have about them and therefore they are very valuable. It is easy to understand therefore why lenders would not wish to volunteer to share information about these important and valuable customers and why they are strongly in favour of defending their entrenched position by maintaining the status quo.

Whilst no individual lender is to blame for these failings, 118 118 Money strongly believes that the pervasive culture within the payday lending industry goes a long way towards explaining why real-time data-sharing does not already exist, when logic might suggest that it should. It also explains why any voluntary, self-regulatory, industry-led solutions may well not succeed in resolving the problems, because the industry does not have the incentive to ensure that they do.

Furthermore, there is a danger that if this poor behaviour and harmful culture is not addressed, it may spread to other parts of the lending industry, as existing payday lenders begin to diversify their business away from the traditionally narrow remit of payday loans into other types of lending. Where this occurs, there is a real risk that they make take their poor behaviour with them, thereby causing detriment to consumers in a whole new sector of the market. This in turn will further contaminate that part of the market and extend the reputational problems currently only associated with payday loans.

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Clearly, the CMA must do everything possible to reverse the very harmful culture that already exists (which has the potential to generate huge detriment to competition and consumers) and certainly prevent it from spreading further.

118 118 Money is somewhat concerned about brief references in the CMA's Provisional Findings, which might suggest that it believes that credit checks (or the 'threat' of credit checks) might dampen competition by discouraging switching. We would strongly urge the CMA to be resolute in its support for proper credit checks, not merely in order that lenders are able to fulfil their legal obligation to assess creditworthiness, but also because it is a vital means of both protecting consumers and enhancing competition.

Evidence of the need for a real-time data-sharing remedy

From our perspective as a new entrant in the broader consumer credit market, 118 118 Money has conducted a detailed analysis of our lending data in order to provide empirical evidence of the urgent need for real-time data.

Naturally, the absence of up to date credit information is itself an obstacle to providing very granular evidence of the impact which its introduction would have i.e. 'we don't know what we don't know'. Nevertheless, we believe that the evidence which we provide below effectively highlights the damaging impact which a lack of real-time data is having on the availability of credit and the information asymmetry which exists between new and established lenders. Consumers are being denied access to credit not because they have a poor credit record or an inability to repay, but simply because lenders (particularly new lenders) are unable to assess their creditworthiness. This has a damaging impact not only on those consumers, but also on the effectiveness of competition within the market.

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Existing CRA data is insufficient to make lending decisions

This graph compares 118 118 Money applicants according to the number of credit searches made against them in the prior 3 months (shown by the blue bars).

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Outstanding loans exceed the number of credit searches made

This graph compares 118 118 Money applicants by the number of credit searches made against them in the prior 3 months set against their number of existing loans.

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Consumers who are being denied access to credit

This table shows the best information that we have available on the type of consumers who apply to (and are offered loans by) 118 118 Money.

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Currently, many of those applicants are being denied loans due to a lack of credit data, rather than because of a demonstrably poor credit record. Real-time data would also allow lenders to understand better their existing customers which makes further lending to them more likely.

Effective regulation remedy: The limitations of industry-led self-regulation

As a new entrant, 118 118 Money does not believe the industry self-regulatory solutions currently under discussion are sufficiently comprehensive or robust. Whilst we appreciate there is close cooperation between the CMA and the FCA, we believe that this crucial industry-wide issue needs to be addressed by the CMA as a key feature of the payday lending market that is having an adverse effect on competition. In that respect, we note that the CMA is broadening out the scope of its investigation to cover lead generators and other intermediaries, and request that consideration also be given to the role of CRAs.
While relevant to the wider personal loans and consumer credit market, we believe this is a specific issue to the payday lending market given the potential vulnerability of customers and the historically poor levels of compliance.

Section 55B of the Consumer Credit Act requires that before making a regulated credit agreement the supplier must undertake an assessment of the creditworthiness of the customer and that the assessment must be based on sufficient information obtained from: (a) the customer, where appropriate, and (b) a credit reference agency, where necessary.

We believe there is a strong argument that “sufficient information” must be obtained from a CRA when considering eligibility of customers for payday loans. The immediate and short-term nature of the product means that information must be made available on a real-time basis and shared across the industry on a regulated [open-access/source] basis.

In recent months, there has been a great deal of political and regulatory discussion and focus on the industry voluntarily introducing real-time data-sharing. Both the Government and the FCA have been outspoken in their apparent support for real-time data-sharing, but they have both indicated a desire to allow industry to produce its own voluntary solution, before imposing mandatory regulation.

To date, this industry-led approach has been manifested most obviously by the introduction of Call Credit's new MODA database. It officially went live on 25 June and is described as a "*near real-time data sharing service*", although it is currently operating on a daily basis. It appears that the FCA is placing great emphasis on the MODA database as a large part of the industry's 'solution' to the need for real-time data-sharing and it may be the basis of a FCA decision that a mandatory regulatory obligation is not required.

118 118 Money welcomes the introduction of the MODA database because it clearly represents an improvement on the status quo. But it is not the solution to the absence of real-time credit data for new entrants such as ourselves. Its limited scope means that it does not (and cannot) achieve all of the objectives and benefits which industry (not just a small number of lenders) and consumers require. Unfortunately, it is no substitute for effective regulation.

There are three principal reasons why the MODA database is not a sufficient response to the requirement for real-time data (particularly for new entrants), which we now outline in turn. However, we must emphasise that in highlighting the shortcomings of MODA, we do not intend to criticise Call Credit's product in particular. We simply use it as an example of why an industry-led solution is insufficient and why mandatory regulation is the only effective response. Many of the points which we now make would apply equally to any industry-led self-regulatory option and so we do not make any particular criticism of Call Credit ✂

Participation is voluntary

The single greatest limitation of any industry-led solution is that providing lending data into it is entirely voluntary. There is therefore no guarantee or certainty as to who will provide lending data or for how long.

Call Credit has named just thirteen lenders amongst those who are initially signed up to using MODA (at least two of whom are part of the same company and several of whom are very small). Although 118 118 Money does not know what percentage of the payday lending (let alone consumer credit) market those lenders represent, it is clearly some way short of the total market. Indeed, it is notable that not even all of those whom the CMA lists as being the ten largest lenders appear to have signed up.

The voluntary nature of the database has several drawbacks.

Firstly and most obviously, the fact that not all lenders are contributing to the database means that it will not provide a comprehensive database of up to date credit information in respect of all potential borrowers. The adverse impact of this should not be underestimated and it may have unintended consequences which the CMA has not fully considered. Self-evidently, when a lender conducts a credit check against a potential borrower on MODA, they will only see the information which it contains. Not only will they not see information from lenders who are not using MODA, but critically, they will not know whether relevant credit data history exists, which they are not seeing. Therefore, whilst lenders may generate some value from any adverse data which is available, it cannot provide certainty as to the borrower's status because the lender will not know what they are not seeing. The uncertainty caused by the fact that the data is not comprehensive, hugely reduces the value of what MODA provides.

Secondly, this reduced value will inevitably have a knock-on effect on the willingness of other potential lenders to sign up to MODA, particularly considering the costs of doing so (which we discuss further below). This of itself will further reduce the completeness of the data, which in turn will further reduce its value and so on in a downward spiral. Limited value will lead to limited interest, especially from new entrant lenders who have most need for reliable data in order to inform their lending decisions and support their entry into the market.

Thirdly, the potential unintended consequences go beyond simply providing incomplete data to lenders. The difference between lenders who do and do not utilise up to date credit information will manifest itself by those lenders who do access it refusing loans to more potential borrowers with poor credit histories. Those borrowers will therefore necessarily gravitate towards the lenders who do not utilise up to date credit information. In simple terms, this will lead to lenders with access to up to date credit information having a greater proportion of 'good' customers and lenders without access to up to date credit information having a greater proportion of 'bad' customers.

Critically, the fact that those lenders that do not access up to date credit information also do not provide up to date credit information, means that over time the database will become increasingly less valuable because it will contain less data about customers with poor credit histories, who are precisely the customers about whom lenders need the most accurate, comprehensive and up to date data. Lenders will begin to realise that information about the customers who present the greatest lending risk is increasingly absent from the database. Once again, this will reduce its value and in turn, the likelihood of lenders wishing to continue to use it and will further entrench the information asymmetry which exists between new and established lenders.

Fourthly, as well as the problems caused by a lack of incentive on lenders signing up to an industry solution at the outset, there is the additional problem of any voluntary industry solution, that lenders could terminate their participation at any time. This has two potential adverse consequences, which once again have a disproportionate impact on new entrants.

The withdrawal of any lenders will obviously lead to a reduction in the quantity of data in the database and therefore its value and potential attractiveness to other lenders. But in addition, the simple knowledge that any lender could withdraw at any time creates a business risk in itself which will be a huge disincentive to other lenders thinking about signing up to the database (again, bearing in mind the costs of utilising MODA). This risk is made all the greater by the fact that the payday lending market is dominated by a very limited number of players. Therefore, smaller new entrants will be very conscious and wary of the fact that the withdrawal of just one or two large lenders will have a huge impact on the value of the database and therefore will have to consider very carefully whether it is worthwhile their singing up.

Costs of participation

Call Credit's MODA database is the only publicly announced 'near real-time' database available, so again we use it as an example of adverse consequences which can occur from an industry-led solution.

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The adverse consequences from a competition perspective of the imposition of these kinds of potentially prohibitive charges will be obvious to the CMA. They create a double barrier to entry.

Firstly, they create a barrier to existing lenders (including new entrants) who are considering whether or not to utilise more up to date data-sharing solutions. We have outlined above the multiple reasons why lenders may feel that there is limited value in engaging with a voluntary industry-led solution and these additional costs might well tip the balance against deciding to sign up. Smaller lenders will have more limited resources and potentially less incentive to utilise real-time credit data for as long as the market is structured such that payday loans are not marketed on the basis of their value for money. For them the costs may be prohibitive and therefore the barrier to using real-time data is very high.

The CMA will recognise that the adverse consequences of these lenders being priced out of using up to date data do not only impact the lenders themselves (and their customers) who will not benefit from the most effective credit check having been undertaken. Rather, because these lenders will also not be contributing up to date data, there will also be an adverse impact on all other lenders who will therefore not have access to the best credit information in relation to those lenders' customers. As is discussed throughout this response, the lack of available up to date credit information has much wider implications throughout the market. Therefore even lenders who do sign up to using MODA will suffer as a result of the costs which exclude others.

Secondly, the costs of accessing real-time data will present a significant barrier to entry for businesses which are considering entering into the payday/consumer credit lending market for the first time. The CMA has correctly identified why new lenders have a much greater need for credit information than existing lenders. Therefore, the availability of reliable up to date credit information is likely to be a significant determining factor in whether these lenders choose to enter the market at all.

Of course the existence of new entrants into any market is a hugely important driver of competition. 118 118 Money notes the CMA's evidence as to why new entrants in the payday lending market are not having the kind of positive impact which may expected in terms of driving switching and lowering prices and we recognise why the CMA believes that other measures are therefore required to assist them. Nevertheless, the effectiveness of these measures will of course be dependent upon there being new entrants in the first place. If the costs of accessing the up to date credit information which they need are too high, businesses are likely to consider other sectors in which the business models are more attractive.

The exclusionary nature

Call Credit has launched MODA within a closed user group of lenders. Only those lenders who are part of the closed-user group are permitted access to the 'near real-time' data which it contains. Other lenders currently have no access and therefore are unable to benefit from the data, which creates the clearest possible example of an information asymmetry between lenders.

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✂ Rather, our intention is to highlight that <u>any</u> industry-led solution has the clear potential to suffer from similar problems and unfairness and it is new entrants who will suffer most. As the CMA looks to identify the adverse effects on competition evident in this market, it must obviously ensure that any remedies which it imposes are truly effective in addressing those effects to the benefit of those new entrants.

In this instance, if the CMA agrees that the lack of access to up to date credit information may have an adverse effect on competition, it must also recognise that an industry led-solution cannot be relied upon adequately to address that effect because it always has the potential to be exclusionary in one way or another. Any solution controlled by private entities with their own commercial agendas and priorities has the clear potential to benefit some businesses at the expense of others.

The Call Credit MODA database provides one very specific current example. Other industry-led solutions may take a different approach, whereby the commercial bias may be more subtle, perhaps in the way in which access to the database is designed (making it easier for some to access than others) or certain preconditions for access which are imposed.

Once again, the point is that there will be no limit on the type of restrictions which might be imposed by commercial entities. <u>The only effective answer is for a regulatory solution to be imposed which requires complete open access on fair and equitable terms</u>.

Remedy 3 – Measures to help customers assess their own creditworthiness

As a new entrant in the consumer credit lending market, 118 118 Money would like the CMA to give more careful consideration to the proposed remedies, and specifically to reconsider its approach to Remedy 3. In our view, Remedy 3 is misdirected at the customer and should focus instead on the suppliers and issue of mandating industry-wide real-time data sharing through CRAs.

As discussed in the previous section, we do not believe that any industry self-regulatory solution can be sufficiently comprehensive or robust. We believe there is a strong argument that up to date information must be obtained from a CRA when considering eligibility of customers for payday loans. But more importantly, those who provide loans must be required to provide details of that loan in real-time to CRAs, so that other lenders can make a full assessment of a borrower's outstanding liabilities when considering making additional credit available. 118 118 Money is strongly of the view that both CRAs and lenders should be required to participate in a process of real-time data sharing.

Real-time data within the Provisional Findings

118 118 Money was disappointed to note that the issue of real-time data-sharing received only brief mentions within the CMA's Provisional Findings, bearing in mind how critical the issue is to new entrants in the market. Aside from the description of the activities of credit reference agencies at the end of section 2, the issue is addressed only briefly in section 7 (Entry and expansion) and in Appendix 2.4 (Product eligibility and approvals).

That Appendix contains a footnote which disputes 118 118 Money's assertion that data can be up to 60 days old, stating that it is more likely to be up to 45 days old, but usually only 30 days old. Whilst we stand by the comments which we made, the question of whether the data is 30, 45 or 60 days old is not the most important one. The issue is that the data is out of date and therefore cannot be relied upon to provide an accurate picture of the borrower's outstanding liabilities. Beyond that, the critical point for the CMA to note is the adverse effect on competition which is created by the absence of real-time data and why new entrants are disproportionately impacted. Not only would it improve the lending decisions, and thereby help address the reputational issues around irresponsible lending, it would also enable lenders to offer better value products, encouraging innovation and entry and expansion and more effective competition.

We are therefore disappointed that the CMA largely restricts itself to a factual description of the credit data-sharing process and the manner and degree to which different lenders engage with it. There is very limited analysis or discussion of the role of credit information in increasing effective competition in the market. In particular, there is hardly any mention of the adverse effect on competition caused by the lack of real-time credit information, especially to new lenders.

For all of the reasons outlined throughout this response (and our previous response to the Annotated Issues Statement and Working Papers) 118 118 Money hoped that the CMA would have had greater regard to what we believe to be an important factor which currently restricts competition in the market.

However, the CMA does briefly touch upon this issue in para 7.108 in which it states that "*the information that is available from the CRAs generally suffers from various limitations*". It identifies these as:-

- *"The frequency with which it is updated. Typically this is monthly, which may be problematic given the very short-term nature of most payday loans. While some steps have been taken by some of the larger CRAs to develop real-time data sharing, it is not yet clear how effective these systems will be or how long they will take to implement.*

- *The level of detail available …..*

- *The completeness of records ….."*

Understanding the proposed remedy

Following these brief observations, the CMA does nevertheless include reference to real-time credit data-sharing within its proposed Remedy 3. However, the context and description of this aspect of the remedy is somewhat ambiguous.

The CMA's description of the remedy is that:-

> *"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"*

Within the context of the evidence which the CMA has presented, 118 118 Money fully understands why the CMA wishes to achieve this objective, but it is very different from our own reasons as to why real-time data-sharing is so important. That is, real-time credit data is a prerequisite to our assessing the risks of lending and therefore being able to price our products competitively.

However, the critical wording is contained within paragraph 39(b) where the CMA describes the design and implementation of its remedy by including an option of:-

> "*Requiring lenders to provide CRAs with a real-time update of any new credit facility granted ….. enabling lenders to have better visibility of actual loans taken out by customers.*"

These few words are potentially very significant, but they are too brief to allow 118 118 Money properly to understand exactly what it is that the CMA is proposing. We would very much welcome clarification on the extent of the remedy being proposed as several questions arise:-

- What does the CMA mean by the term 'real-time'?
- Is the CMA proposing regulated real-time data-sharing, separate from any industry-led initiatives which may exist?
- Will <u>all</u> CRAs be required to accept updates in real-time?
- Will <u>all</u> lenders be required to provide updates in real-time?
- To what type of loans will the obligation be applied?
- Will the obligation relate only to providing updates on whether a new loan has been granted (and if so what details of that loan will be included) or will it also include other information eg in relation to defaults?

In principle, 118 118 Money strongly endorses and supports this aspect of the proposed remedy. However it should have more prominence as a remedy and wider application beyond simply being regarded as a measure "*to help customers assess their own creditworthiness*". For all of the reasons outlined throughout this response, <u>we believe that the introduction of real-time credit data-sharing is fundamental to the promotion of competition within the sector and encouraging new market entry</u>. To the extent to which that is aided by allowing customers better to understand their chances of obtaining credit, we would also support it.

However, the brevity with which this aspect of the remedy is described (and the associated lack of analysis throughout the Provisional Findings) makes 118 118 Money somewhat sceptical as to the extent to which the CMA has fully assessed it. We would therefore very much welcome further clarity and reassurance as to the detail of what is being proposed in order to assist our own understanding of its significance and likely benefits.

Legal requirements for affordability assessments

As well as considering how the introduction of real-time data-sharing will enhance competition, it is important to highlight to the CMA existing legal requirements and the extent to which they may be interpreted as requiring the availability of real-time data.

Section 55B of the Consumer Credit Act sets out the relevant obligations. It states:-

> ***"55B*** *(1) Before making a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the creditworthiness of the debtor.*
>
> *(2) Before significantly increasing—*
>
> > *(a) the amount of credit to be provided under a regulated consumer credit agreement, other than an excluded agreement, or*
> > *(b) a credit limit for running-account credit under a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the debtor's creditworthiness.*
>
> *(3) A creditworthiness assessment must be based on sufficient information obtained from—*
>
> > *(a) the debtor, where appropriate, and*
> > *(b) a credit reference agency, where necessary.*
>
> *(4) For the purposes of this section an agreement is an excluded agreement if it is—*
>
> > *(a) an agreement secured on land, or*
> > *(b) an agreement under which a person takes an article in pawn.".*

In the view of 118 118 Money, the critical words to consider here are "*sufficient information*" in s55B(3). We have described above how the current credit data-sharing process can result in the CRA data available to subscribers being 60 days old and even without any particular delays or fault, it can easily be 30 days old.

Yet, the Consumer Credit Act requires lenders to undertake a creditworthiness assessment which "*must be based on sufficient information obtained from …. a credit reference agency…*" Quite clearly, data which is 30 to 60 days old is not sufficient information to undertake a creditworthiness assessment because it will not reveal any existing credit agreements or defaults or missed payments which occurred during that time. It is a matter of fact (rather than opinion) to state that a creditworthiness assessment cannot be undertaken if the available credit information is not sufficiently up to date.

118 118 Money acknowledges that s55B(3)(b) contains a caveat that the sufficient information be obtained from a credit reference agency "*where necessary*". However, this does not appear to be a meaningful exception for two reasons.

Firstly, it is hard to envisage circumstances in which it will not be necessary to obtain information from a credit reference agency in the vast majority of cases, in order to conduct a creditworthiness assessment of an individual consumer.

Secondly, the "*where necessary*" exception applies to whether or not it is necessary to obtain information from a credit reference agency at all. Having decided that it is necessary to obtain information from a credit reference agency (which we believe will always be the case) there is no further exception in the legislation which would permit the information obtained from the credit reference agency not to be sufficient. Therefore, the "where necessary" exception applies only to whether it is necessary to obtain information from the credit reference agency and not to the sufficiency of the information actually obtained. If Parliament had intended the latter, s55B(3) would read:-

> *(3) A creditworthiness assessment must be based where necessary on sufficient information obtained from—*

But it does not.

As a result, 118 118 Money firmly believes that s55(3)(b) requires a creditworthiness assessment to be based on sufficient information from a credit reference agency and the information cannot be sufficient to undertake that creditworthiness assessment, unless it is sufficiently up to date, by which we mean real-time.