



Payday Lending Market Investigation Order and Explanatory Notes 2015 – Comments from the Consumer Finance Association

General Comments

The Consumer Finance Association (CFA) is the principal trade association representing the interests of major online and store-based short-term lending businesses operating in the UK. The CFA is pleased to have the opportunity to respond to the draft Payday Lending Market Investigation Order and Explanatory Notes 2015.

A price comparison website (PCW) would undoubtedly help consumers shop around but the CFA has some concerns about how this remedy will be implemented. The timing of implementation is unclear and as a result it is difficult for lenders to plan the work and resources needed to implement this remedy. Lenders have already begun to explore options for meeting the CMA recommendations but this work is being done in a vacuum without an indicative timetable. The CFA appreciates that the timing of implementation is dependent on action by both the CMA and the FCA. It would be helpful if a combined timetable could be produced and made public. A publicly available timetable would also help address any consumer confusion around the websites emerging that suggest they provide a response to the CMA recommendations, without being tested against the Order or any additional FCA standards.

The CFA is also concerned about the sheer volume of information that will need to be displayed on any payday loan PCW. There is a risk that the volume of information will either deter consumers from using the PCW or make it difficult for consumers to find the information that is important to them. The FCA has been looking at disclosure in general and is likely to consider what information is displayed, as well as how it is displayed, as part of the FCA work on any additional standards for authorised payday loan PCWs. This is referred to in the Order as 'such other information as may be required by the FCA after implementation of its additional standards'. The CFA believes that more consideration needs to be given to both the type and amount of information that would help consumers to make informed decisions and improve outcomes. This work needs to be undertaken with the FCA to agree this at the outset, as opposed to the FCA potentially imposing additional requirements at a later date, and the Order should simply refer to FCA requirements.

The draft Order imposes significant additional compliance requirements on short-term lenders. Aligning these requirements with FCA supervision would be more logical and reduce the regulatory burden on lenders.

Comments on specific articles in the draft Order are set out below.

Specific Comments

| Article | Comments |
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| 1. Title, commencement, application and scope | <ul style="list-style-type: none"> It is difficult to work out from the order and explanatory notes exactly when the requirements for sharing information with an authorised PCW will come into force. We appreciate that the timing depends on work by both the CMA and the FCA. It would be helpful if the CMA and the FCA could work together to produce, and publish, a proposed timeline for implementation, including the likely timing of the obligation to publish date. This is important to enable lenders to plan the necessary implementation activity. |
| 2. Interpretation – definition of payday loan | <ul style="list-style-type: none"> The CMA definition of a payday loan should be as consistent as possible with the FCA definition (below). The simplest solution would be for the order to simply refer to the FCA definition. <p><u>FCA Definition</u> a <u>regulated credit agreement</u> :</p> <p>(a) which is a <u>borrower-lender agreement</u> or a <u>P2P agreement</u>;</p> <p>(b) in relation to which the <u>APR</u> is equal to or exceeds 100%;</p> <p>(c) either:</p> <p>(i) in relation to which a <u>financial promotion</u> indicates (by express words or otherwise) that the <u>credit</u> is to be provided for any period up to a maximum of 12 months or otherwise indicates (by express words or otherwise) that the <u>credit</u> is to be provided for a short term; or</p> <p>(ii) under which the <u>credit</u> is due to be repaid or substantially repaid within a maximum of 12 months of the date on which the <u>credit</u> is advanced;</p> <p>(d) which is not secured by a mortgage, charge or pledge; and</p> <p>(e) which is not:</p> <p>(i) a <u>credit agreement</u> in relation to which the lender is a <u>community finance organisation</u>; or</p> <p>(ii) a <u>home credit loan agreement</u>, a <u>bill of sale loan agreement</u> or a <u>borrower-lender agreement</u> enabling a <u>borrower</u> to overdraw on a current account or arising where the holder of a current account overdraws on the account without a pre-arranged overdraft or exceeds a pre-arranged overdraft limit.</p> |

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| 2. Interpretation – total amount payable | <ul style="list-style-type: none"> The proposed definition of ‘total amount payable’ does not resemble other definitions of the total cost of credit. In particular, it is not clear why the definition includes reference to taxes when no taxes are payable in respect of short-term loans. In addition, the definition allows for notarial costs to be excluded from the total amount payable. There is no similar provision in the FCA rules governing the cap on the total cost of credit. As with the definition of a payday loan, the Order should be consistent with the FCA rules governing the charges that can be imposed. |
| 5. Information to be supplied | <ul style="list-style-type: none"> The information specified in 5.2 is far greater than the information displayed about other loan products on PCWs. It is not clear whether there has been consideration of how the information can be displayed in the relatively limited space available on a PCW or how useful consumers will find the information. There is also the prospect of the information requirements increasing if the FCA imposes any additional requirements. These requirements are an opportunity to improve and clarify the information that is provided to consumers but, as drafted, the requirements would result in a large amount of information being displayed. More consideration needs to be given to both the type and amount of information that would help consumers make decisions and improve outcomes. This work needs to be undertaken with the FCA to agree this at the outset, as opposed to the FCA potentially imposing additional requirements at a later date. |
| 8. Fall-back position | <ul style="list-style-type: none"> Article 8.1 requires online lenders, in the event that there is no authorised PCW, to individually or collectively commission a payday loan PCW. It is not clear what the position is if there are lenders who do not get involved in commissioning a PCW. Similarly, if one lender proceeds with commissioning a PCW on an individual basis, are other lenders also required to commission a PCW? Consideration needs to be given to ensuring the best outcome for consumers. The circumstances in which proposed prohibition in Article 3.1 would apply, as set out in 8.9 (c) and 8.9 (d) would result in obliteration of the market for short-term loans. In effect, if the CMA decided not to grant an extension under article 8.2 and 8.4, no lender could offer a short-term loan. The CMA holds a significant amount of power here with implications for customers, businesses and their employees. It is not clear what the checks and balances are on the use of this power to ensure that it is used appropriately. |
| 9. Alternative PCW | <ul style="list-style-type: none"> It is not clear how this provision will work if lenders commission a PCW because no other PCW exists. By definition lenders are likely to have a commercial interest in any PCW they are involved in commissioning. Article 8.8 requires lenders involved in the commissioning of a PCW to notify the CMA of their interest. It would be helpful if article 9 could include an exemption where lenders have already notified the CMA of their involvement in commissioning a PCW. |

| Article | Comments |
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| 10. Notification to the CMA | <ul style="list-style-type: none"> The proposed requirement to notify the CMA immediately about the specified issues will impose an additional regulatory burden on lenders. It is unclear why immediate notification will be required. Aligning this requirement with FCA supervision would be more logical and reduce the regulatory burden on lenders. |
| 12. Timing and provision of summary | <ul style="list-style-type: none"> 12.3 (b) requires high street lenders to ask customers at the point of taking out a loan how they wish to receive the summary of borrowing costs. This provision will add additional questions and time to the process of taking out a loan. Asking customers how they would like the lender to communicate with them should be sufficient and removes the need for additional questions that may confuse consumers when they are in the process of taking out a loan. |
| 13. Content of summary | <ul style="list-style-type: none"> 13.3 (a) requires a summary to include confirmation that a customer has not taken out any loans with that lender in the preceding 12 months. If the customer has not taken out any loans in the last 12 months then there would not be any summary. Under article 12.5 the obligations placed on lenders exist for a period of 12 months from the date a loan is paid off. The effect of article 13.3(a) would be to require lenders to produce a summary that does not include any summary of borrowing. This is an additional requirement on lenders that will be of little or no benefit to consumers. 13.3 (e) (f) (g) require high street lenders to include a website address of a PCW on which their loan details are displayed or the web address of a PCW portal or the web address of a PCW. It is unclear what, if any, the benefit will be of providing a web address to high street customers. |
| 15. Obligation to submit compliance reports 16. Obligation to submit compliance reports | <ul style="list-style-type: none"> Articles 15 and 16 impose additional regulatory requirements on lenders and will result in lenders dealing with two regulators. In particular, the requirement to provide quarterly reports to the CMA appears excessive and will impose additional regulatory burdens on lenders. It is unclear why the requirement to provide compliance reports cannot be combined with FCA supervision of lenders. Article 16.7 requires compliance reports to be submitted within a week of the due date. This does not allow lenders much leeway to comply with the proposed extensive reporting requirements. A period of 21 or 28 days would be more realistic and allow some flexibility for lenders to meet what is an additional regulatory requirement. |

Explanatory notes

| Paragraph | Comment |
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| 3(d) | While many customers will have taken out loans via lead generators in the past, this is likely to reduce under FCA regulation. The explanatory notes should take account of this. |
| 32 | This paragraph states that the CMA will expect lenders to 'actively monitor' whether any application for authorisation has been made. It is not clear how lenders who have not been involved directly in commissioning a PCW will be able to monitor whether any applications have been made (see also comments re Article 8 above). |

Consumer Finance Association
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