

# **PAYDAY LENDING MARKET INVESTIGATION**

## **Responses to consultation on the draft Order**

### **Introduction**

1. As a result of the consultation on the draft Order, the Competition and Markets Authority (CMA) received a number of submissions. In this paper, the CMA summarises the changes it has made to the draft Order as a result of the submission accepted and gives its reasons for rejecting other submissions. This and other minor modifications made to the draft Order are not considered to be material so as to require further consultation.

### **Submission accepted**

#### ***Part 5 (compliance reporting)***

2. One consultee said that the requirement in Article 16.7 requiring that compliance reports be submitted within a week of the due date did not allow lenders sufficient time to comply.
3. The relevant period has been amended to 28 days.

### **Changes not made**

#### ***Part 2 (interpretation)***

4. One consultee suggested adding to the definition of 'Interconnected body corporate' a further category – 'd) it has officers and managers in common'.
5. The CMA believes this area is covered by the definition of 'Material interest' and that this proposed change is therefore unnecessary.
6. Two consultees suggested that the definition of 'payday loan' should be identical to, or more closely aligned with, the FCA's definition of High-Cost Short-Term Credit.

7. However, the types of loans to be covered by the FCA definition and the Order are not identical, and the CMA believes the definitions have already been made as consistent as possible, given this constraint.
8. One consultee requested that the Order should contain a clause clarifying explicitly that community development finance institutions are exempt from the Order.
9. The definition of 'Lender' in the Order specifically excludes the corporate forms most commonly adopted by community development finance institutions. The CMA considers that this is sufficient clarification of what constitutes a lender for the purposes of the Order.
10. Similarly, one consultee suggested that the definition of 'total amount payable' did not resemble other definitions of total cost of credit.
11. The CMA is satisfied that the definition provided in the Order is consistent with its purpose.

### ***Part 3 (website)***

12. One consultee was of the view that the requirements set out in Part 3 should also apply to high street lenders, and that where an online lender has a material interest in a website, this should be noted on the website.
13. These suggestions go beyond the scope of the remedies set out in the Final Report and the CMA therefore does not have the power to make any such changes to the Order.
14. A consultee queried whether lenders must publish details of all their products and was concerned that it was not clear what was meant by 'up-to-date details of their payday loan products'.
15. Paragraph 16 of the Explanatory Note has been amended to clarify that 'up-to-date details' means accurate details of all of a lender's currently available payday loan products.
16. One consultee suggested that the Order should include a non-exhaustive list of actions which would amount to 'unreasonable exclusion'.
17. The CMA considers that this point is adequately covered by paragraph 27 of the Explanatory Note.

18. A consultee expressed concern that the PCWs could be designed and operated for commercial gain and not in the interests of transparency for the consumer.
19. The CMA believes that these concerns will be addressed by the standards applicable to payday loan PCWs under the FCA's rule-making instrument concerning PCWs for High-Cost Short-Term Credit agreements which implements the CMA recommendations.
20. One consultee said that the 'above the fold' requirement is too prescriptive.
21. The CMA is retaining this requirement in the Order. This is in accordance with the Group's decision, set out in the Final Report, that the hyperlink should be 'prominently' displayed and also with the statutory requirement that remedies must be 'as comprehensive...as is reasonable and practicable'.
22. A consultee said the requirements of Article 8.1 (the fall-back position) were not clear.
23. Paragraph 32 of the Explanatory Note has been amended to clarify that it is not necessary for every lender to commission its own website or to be involved in commissioning one, but that it is necessary that someone takes the steps required to ensure that a payday loan PCW comes into existence.
24. One consultee requested that Article 9.1 (PCWs in which online lenders have a material interest) be amended to include an exemption for lenders who have notified the CMA of their interest under Article 8.8.
25. Article 8.8 requires online lenders to notify the CMA of their association with any application for authorisation of a payday loan PCW. Article 9.1 sets out the grounds on which an online lender which has a commercial interest in such a PCW can satisfy the terms of the Order by appearing on it. The two Articles relate to different things, and the amendment suggested is therefore not appropriate.
26. A consultee said the notification requirements in Article 10.1 impose an additional regulatory burden on lenders, and that this requirement should be aligned with FCA supervision.
27. The CMA has a statutory duty to monitor and enforce compliance with its Orders, and this information is necessary to enable it to do so.

#### ***Part 4 (summary of borrowing)***

28. One consultee said that it was not entirely clear that Article 12 would only ever trigger the requirement to make a summary of borrowing available once in the lifetime of each loan.
29. Paragraph 51 of the Explanatory Note has been amended to make this clearer.
30. A consultee indicated that the production and provision of a summary would impose additional regulatory burdens on lenders while providing little or no benefit to consumers.
31. The Group assessed proportionality when deciding on the remedies to be adopted, and determined that these requirements were proportionate. Therefore no change will be made to the Order.
32. One consultee suggested that the period of three months in Article 12(1)(c) is too long and should be amended to two months.
33. The CMA considers that it is more reasonable to allow the lender a period of three months since a payment was missed before the requirement to provide a summary is triggered, by which time it will be clearer that the borrower is unlikely to make any further payments under that loan agreement.

#### ***Part 5 (compliance reporting)***

34. One consultee said the compliance reporting requirements impose additional regulatory requirements on lenders and should be combined with FCA supervision of lenders.
35. The CMA has a statutory duty to monitor and enforce compliance with its Orders, and this information is necessary to enable it to do so.