

**CONSULTATION ON  
PROPOSAL TO BAN THE USE  
OF BILLS OF SALE FOR  
CONSUMER LENDING**

Initial Equality Impact  
Assessment

DECEMBER 2009

## **Consultation on proposal to ban the use of bills of sale for consumer lending: Initial Equality Impact Assessment, 18 December 2009**

### **Introduction**

1. This Equality Impact Assessment accompanies the consultation document and the Economic Impact Assessment. These three documents together form the "Consultation on proposal to ban the use of bills of sale for consumer lending"<sup>1</sup>.

2. The past few years has seen a sharp increase in the use of bills of sale to support "log book" lending, a practice whereby consumer loans are secured against a borrower's car. Difficulty in obtaining credit during the recent economic downturn has led consumers, particularly those on low income and with poor credit records, to take out such loans. Many consumers however feel that they are getting a poor deal. There have been high levels of complaint about excessively high interest that consumers are charged, about the very few protections available to consumers if they fall into arrears and about unfair collection practices by the "log book lenders". The Government is concerned that increasing numbers of vulnerable consumers who resort to bills of sale loans are ending up in a much worse position and slipping further into unsustainable debt as a result.

3. In light of this, and following the commitment we set out in the Consumer White Paper: "*A Better Deal for Consumers; Delivering Real Help Now and Change for the Future*"<sup>2</sup>, we have been looking at a proposal to ban the use of bills of sale for consumer lending. We believe that bills of sale when used to secure consumer loans inherently put consumers at an unfair advantage in their relationship with the lender and that more must be done to protect consumers. The consultation document sets out four possible options for addressing these concerns: first, do nothing more beyond current legislative and regulatory activity; second, introduce a voluntary code of practice; third, reform bills of sale legislation; or four, ban the use of bills of sale for consumer lending. We believe that a ban will be necessary to provide sufficient protection for consumers who are currently being exploited and disadvantaged through bills of sale lending arrangements. The consultation seeks views to help inform the Government's decision on whether to proceed with a ban or whether an alternative option will achieve a better result.

4. In considering these options, the Government's overall objective is to secure a better deal for consumers, based on a fairer relationship between individual borrower and lender. We are also determined to tackle areas of poor business practice, while ensuring that any intervention is proportionate, transparent and targeted. We must of course consider properly the impact of

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<sup>1</sup> <http://www.bis.gov.uk/consultations>

<sup>2</sup> <http://www.berr.gov.uk/whatwedo/consumers/consumer-white-paper/index.html>

each option and are particularly mindful to ensure that more vulnerable consumers, and those on low incomes or with an impaired or poor credit record, should have access to credit without suffering harm if they can afford the repayments.

### **About this Equality Impact Assessment**

5. The Department for Business, Innovation and Skills (BIS) is subject to the public sector duties for disability, race and gender equality under section 49A of the Disability Discrimination Act 1995, section 71 of the Race Relations Act 1976 and section 76A of the Sex Discrimination Act 1975 respectively. In addition we recognise the benefits of ensuring that all Government policies are formed so as to avoid as far as possible an adverse impact on any particular group. In anticipation of the Equality Bill which proposes to extend the duty to promote equality of opportunity to sexual orientation, religion or belief, age, gender reassignment and maternity and pregnancy, we aim to show, where possible, the same commitment to the new strands as for the existing ones. Many within these groupings can be defined as “vulnerable consumers”, which is referenced throughout this document.

6. This Equality Impact Assessment takes an initial summary view of the equality impact of the proposals set out in the consultation document. Equality Impact Assessments are an important mechanism for ensuring that we gather data to enable us to identify the likely positive and negative impacts that policy proposals may have on certain vulnerable groups and to estimate whether such impacts disproportionately affect such groups.

7. We will engage with a number of organisations during the period of the consultation and consider equality issues in the context of bills of sale used in consumer lending. We are conscious, however, that we need more evidence and information before coming to a final view on the preferred policy options. This is, therefore, not a full Equality Impact Assessment and we have included some questions where we would find it useful to have your views. These questions are set out through the Equality Impact Assessment. A complete set of all the questions covered by this consultation can also be found at Annex A of the consultation document.

8. This consultation on the proposal to ban the use of bills of sale for consumer lending opened on 21 December 2009. Responses, including specific questions on the Equality Impact Assessment, are sought by 15 March 2010. The responses will inform our final decision on policy options and, where necessary, whether mitigating actions are needed to address any negative impacts on vulnerable groups. Along with the accompanying Economic Impact Assessment, this Equality Impact Assessment will be revised and finalised in light of responses received. The Government

response to be published by the end of June 2010 will include a refined Equality Impact Assessment.

9. Responses should be sent to: Rosemary Ohen, Bay 436, BIS, 1 Victoria Street, London, SW1H 0ET, tel: 020 7215 0946, email: [billsofsale@bis.gov.uk](mailto:billsofsale@bis.gov.uk).

10. When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents, and where applicable, how the views of the members were assembled.

11. This Equality Impact Assessment is available electronically at [www.bis.gov.uk/consultations](http://www.bis.gov.uk/consultations) along with the consultation document and Economic Impact Assessments. You may make copies of this document without seeking permission. Printed copies can be ordered on request from:  
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Where possible, we will make other versions of this document available on request in other languages and other formats.

#### *Confidentiality & data protection*

12. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

13. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

## **Market context**

14. UK consumers currently owe around £1.4 trillion to banks and other financial institutions. The vast majority of this borrowing is for mortgages on houses, in other words secured lending. However, £230 billion is unsecured borrowing, which includes personal loans, overdrafts, credit cards, store cards and some other forms of specialist lending. To put the scale of bills consumer lending secured against bills of sale in perspective, we estimate the size of the 'log book' lending market to be in the region of £30 million a year.

### *Consumer indebtedness*

15. Debt is now the number one advice issue in Citizen Advice Bureaux (CAB), accounting for one in three of all enquiries. A survey from the CAB in July 2008<sup>3</sup> found that more than half of their clients (58%) had no spare money to pay their debts and that those who did have spare money to pay their debts would take on average 93 years to repay them in full.

16. Data from a 2006 ONS study shows that certain groups of consumers are more at risk of struggling with debt than others. In particular, this is true of younger people; tenants, particularly those in social tenancy; low income households and single parents<sup>4</sup>. A 2008 CAB survey<sup>5</sup> further backs up these ONS statistics. This shows that the effects of debt are felt most strongly amongst some of the most vulnerable members of society. More than 20% of CAB debt clients were single parents, 12% came from ethnic minority backgrounds (compared to 7.9% of the UK population), 27% reported that they had a person with a disability or long term illness living in their households (compared to 18% of the UK population) and more than two thirds were renting their homes (compared with less than a third of the UK population). The 2008 CAB survey also showed that low income appears to be the most common cause of indebtedness identified by CAB clients whilst a significant number of people surveyed attributed their debt to the fact that they have taken on too many debts or have poor financial skills. Illness and disability was the third major reason for debt problems given by CAB clients.

17. There is also evidence linking problem debt to those people with mental health disabilities. Recent research shows that debt is a much stronger risk factor for mental ill health than low income<sup>6</sup> and a recent survey by Mind<sup>7</sup> showed that over 90% of respondents said their debt or financial

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<sup>3</sup> [www.citizensadvice.org.uk/a\\_life\\_in\\_debt\\_final.pdf](http://www.citizensadvice.org.uk/a_life_in_debt_final.pdf)

<sup>4</sup> ONS: *The Demographics of Over-Indebtedness*

<sup>5</sup> [www.citizensadvice.org.uk/a\\_life\\_in\\_debt\\_final.pdf](http://www.citizensadvice.org.uk/a_life_in_debt_final.pdf). It is worth noting that these results may be biased in favour of more vulnerable consumers who are most likely to use CAB services.

<sup>6</sup> *Mental Capital and Wellbeing* – Government Office for Science (2008)

<sup>7</sup> [http://www.mind.org.uk/assets/0000/0102/In\\_the\\_red.pdf](http://www.mind.org.uk/assets/0000/0102/In_the_red.pdf)

difficulties had made their mental health issue worse. Data from the ONS<sup>8</sup> shows that people with experience of mental distress often live on lower than average income – over 75% are reliant on welfare benefits.

18. As the Equality Impact Assessment to the Consumer White Paper set out<sup>9</sup>, at risk households, such as those on very low incomes, are particularly susceptible to any small change in income or small increase in expenditure. They typically display low levels of financial literacy, poor or no credit histories and so are vulnerable to aggressive marketing by sub-prime lenders, who offer easily accessible finance at high interest rates. Typically, the level of credit that such low-income consumers require is short-term, low-value borrowing. However, an adverse change in circumstances, such as a fall in income or failure of a durable good, can expose the consumer to repayment difficulties or overuse of credit, such as bills of sale loans and lead to spiralling debt.

#### *Limited access to mainstream credit*

19. It is estimated that at least 3.3 million people have a need and are willing to borrow but do not have ready access to credit from mainstream lenders<sup>10</sup>. 85% of them live in households where there is either no earned income at all or their only earnings are from occasional or part-time employment. About a third are also credit-impaired and would almost certainly find it difficult to access credit and arguably ought not to be borrowing commercially at all.

20. This last group includes people with a history of bad debt, who have a county court judgement, have set up an Individual Voluntary Arrangement with their creditors, have been made bankrupt or had a home repossessed or say that they have a serious adverse credit rating with the credit reference agencies. Almost all of the people who are credit impaired (around 1 million) do not have an income from full-time employment coming into their home.

21. Recent survey results<sup>11</sup> suggest that low income households make less use of, probably because they have less access to, mainstream products such as personal loans, overdrafts or student loans, which are used by 48% of low income households compared to 57% for the average household. By contrast, high cost credit products are more popular amongst low income households (7%) than the average (3%).

22. Consumers could be in a position to be exploited by lenders in relation to so-called high cost credit lenders, including those lending against personal

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<sup>8</sup> ONS, 2002

<sup>9</sup> Pages 7 and 8 at <http://www.berr.gov.uk/consultations/page53299.html>

<sup>10</sup> "Affordable Credit. The Way Forward" Sharon Collard and Elaine Kempson, report for the Joseph Rowntree Foundation, 2005

<sup>11</sup> YouGov Debt Tracker

goods secured by a bill of sale agreement. As a result of particularly difficult financial circumstances, consumers may be extremely limited in their choice of lender. This could give certain types of lender a very strong negotiating position, analogous to some sort of 'market power', in respect of these consumers, which they could then exploit to their advantage.

### *Bills of sale loans*

23. Although the scale of bills of sale lending is still relatively small scale, it has become much more widespread, particularly during the economic downturn, with 28.1% growth forecast for the year ending March 2010<sup>12</sup>. Well over 1,000 complaints have been made to Consumer Direct over the past four year with claims for losses suffered by complainants amounting to £1.47 million. CAB too have seen a rapid 100% increase in enquiries relating to problems with bills of sale loans, recording 177 enquiries in 2007/8 which jumped to 355 in 2008/9<sup>13</sup>. This scale of complaint and potential loss suffered suggests problems with a significantly high proportion of bills of sale loans. The OFT and CAB have submitted evidence to highlight the way that consumers entering into bills of sale agreements can suffer often severe detriment as a result. Complaints relate to the lack of protections available to people if they fall into arrears, unfair collection practices, the complex and confusing nature of the language used in the agreements and the excessively high cost of the loans.

24. The difficulties associated with bills of sale credit agreements are compounded by low levels of financial capability in some cases, which can make it even harder for certain consumers to choose products that best suit their needs. In 2006 the FSA<sup>14</sup> identified low levels of financial capability amongst a significant part of the UK population, particularly young people. This is also a concern for those consumers where complexity of information will be particularly problematic, including for those with underlying disabilities, learning differences and long term health conditions, or for whom English is not the first language.

25. Increasing levels of consumer indebtedness and concerns about the complexity of bills of sale credit agreements affects a growing number of consumers. The evidence above shows that it is of particular concern for many vulnerable consumers including the young, older people, those on low incomes and/or with impaired credit histories, single parents, and those with disabilities, learning differences and long term health conditions.

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<sup>12</sup> See Economic Impact Assessment for this consultation

<sup>13</sup> Citizens Advice Bureau submission of evidence on Bill of Sale lending to BIS, July 2009

<sup>14</sup> [http://www.fsa.gov.uk/pubs/other/fincap\\_baseline.pdf](http://www.fsa.gov.uk/pubs/other/fincap_baseline.pdf)

- 1. Do you have any further evidence on how the use of bills of sale in consumer lending varies amongst different groups of consumers (e.g. older people, younger people, ethnic minorities, people with disabilities, learning differences and/or long term health conditions, single parents, households on low incomes etc)?**
- 2. Do you have any evidence on the impact of the use of bills of sale to secure consumer loans amongst different groups of consumers?**

### **Impact of the proposals**

26. This section takes an initial view on the likely equality impact of the proposals covered in this consultation. The consultation document highlights the following key problems with bills of sale loans:

- i. Loans issued using bills of sale represent a very expensive form of credit, particularly for a secured loan
- ii. Bills of sale are difficult to understand and borrowers may not realise that they do not own the property on which the loan is secured
- iii. Bills of sale loans lack consumer protections associated with other lending arrangements and property can be seized without the lender having to obtain a court order if borrowers default
- iv. Borrowers can be subjected to unfair debt collections practice and have few rights when a lender seeks to take possession of assets
- v. Borrowers are often unaware that if they default, they may be pursued for the shortfall debt where it is not covered in full by the value of the underlying security, typically a car which may depreciate rapidly
- vi. Third party buyers have little recourse if a lender recovers a security, typically a second-hand car, to which a bill of sale is still attached in respect of a loan made to the previous owner.

27. These problems are likely to be felt harder by vulnerable groups. 'Logbook loans' secured against a consumer's car with a bill of sale agreement tend to be marketed to consumers with lower incomes and/or with impaired credit histories and who may have other pressing debt problems. This may make often already vulnerable consumers even more vulnerable to financial hardship and other loss. It is common practice for lenders to offer a cash loan without undertaking credit checks. The ease and speed at which this type of loan can be agreed, albeit at extremely high cost, may encourage such people to slip even further into debt rather than take control of their finances.



28. Such loans are also one of the few types of consumer credit available on an interest-only payment basis, whereby the monthly payment comprises the interest only and the capital is repaid only at the end of the loan period. Given the likely precarious financial position of many bill of sale loan consumers, the risk of default will be higher and the consumer then faces rapid enforcement action by the lender who can seize the goods against which the loan is secured without a court order. This leaves vulnerable consumers exposed to potential exploitation.

29. The consultation document sets out why and how we propose to ban the use of bills of sale for consumer lending. We believe that the alternative options – reform of bills of sale legislation or introduction of a voluntary code practice – would either be too expensive and time-consuming to implement or ineffective in delivering the necessary protections particularly for vulnerable consumers. In considering whether to proceed with a ban, we particularly want to take into account the interests of lower income and/or credit-impaired consumers to ensure that they should have access to credit without suffering detriment if they can afford the repayments.

30. *Our initial view of the equality impact of the proposal to ban the use of bills of sale for consumer lending is that this is likely to benefit the majority of consumers in the long term. However, if this or one of the other options is taken forward, there will need to be careful consideration of their impact on certain groups of consumers, particularly those who may not have access to mainstream credit.*

31. From an equality perspective, the main issue that we need to consider for all the options in this area is whether they will be detrimental to the interests of some or all vulnerable consumer groups. The lenders' practice of marketing "logbook loans" to higher risk groups of consumers allows some consumers who might not otherwise have access to mainstream credit to obtain some form of finance. It might be argued, therefore, that this provides such consumers with a legal form of stop-gap finance and keeps them away from even more unsuitable and potentially more harmful forms of borrowing. It is likely that many of the higher-risk consumers who resort to bills of sale loans are more vulnerable consumers who, for a number of reasons, may not have any credit record or a good credit record. Typically, these could be consumers who are on lower income, perhaps on benefits, out of work for illness or other causes, or recent migrants with no credit history in the UK.

32. Lenders who specialise in loans using bills of sale argue that a ban on bills of sale would remove "logbook loans" from the market, reducing the choice and availability of credit for some consumers. This could leave those unable to secure alternative credit from a mainstream lender possibly with no access to other legitimate or regulated source of finance. We will need to explore these potential impacts carefully and consider whether this might be an unintended consequence and what mitigating action might be needed.

We will need to consider whether the alternative options of reforming bills of sale legislation or introducing a voluntary code of practice would deliver such a positive impact on the most vulnerable consumers.

33. On the other hand, anecdotal evidence from consumer groups suggests that for a large proportion of consumers who obtain bills of sale loans, lenders appear not to take into account the ability of these consumers to repay their loan. This has encouraged consumers further into debt and has not been helpful in allowing them to manage their finances. There is therefore a strong argument that a ban on the use of bills of sale for consumer lending would help protect vulnerable consumers against taking out excessively costly credit. Action which encouraged consumers to consider whether they could afford further credit might help many to avoid entering into unsustainable debt. This is likely to be particularly true for people suffering from certain forms of mental illness such as bipolar disorder. Studies have linked such mental health disorders with exuberant spending sprees and compulsive spending behaviour<sup>15</sup>.

34. Bills of sale loans are typically secured against the consumer's car. If the consumer defaults on payments, the lender may seize the vehicle without recourse to the courts. Consumers on low incomes, who rely on their car as their means of going to work and earning, risk losing very quickly what may be vital to their livelihood and falling rapidly into a crisis debt situation. The interest-only repayment nature of most bills of sale loans can further exacerbate the stress on vulnerable consumers when they need to pay back the capital amount on their loan at the end of the term in order not to have their car seized by the lender. A ban on bills of sale loans will ensure better consumer protections for all and should have a particularly positive impact on the most vulnerable consumers on low incomes.

35. Bills of sale loans are very arcane and technically complex instruments to use for modern day consumer lending. The language of the Bills of Sale Acts and the prescribed form for a bill of sale used to secure 'logbook' loans is outdated and unclear. Consumers may fail to understand and appreciate the onerous nature of the terms being entered into and this is all the more of a problem for those with a low financial capability. A ban on the use of bills of sale to secure consumer loans may particularly help some minority groups, for example, those for whom English is a second language.

36. A ban on the use of bills of sale for consumer lending should mean that fewer vulnerable and potentially over-indebted consumers take on loans that they can ill afford and instead start facing up to the taking control of their finances. As set out in the Consumer White Paper, the Government has taken active steps to improve the provision of debt advice and support for such people facing financial difficulty. In particular, the Government is

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<sup>15</sup> See "In the Red: Debt and Mental Health" Mind 2008  
[http://www.mind.org.uk/assets/0000/0102/In\\_the\\_red.pdf](http://www.mind.org.uk/assets/0000/0102/In_the_red.pdf)

funding a £130 million programme over 5 years (2006-2011) for 500 face-to-face debt advisers in England and Wales focused on helping the financially excluded manage their way out of problem debt.

- 3. Do you have any evidence as to whether certain groups of consumers might be disadvantaged by a ban on the use of bills of sale for consumer lending?**
- 4. Are there any specific equality issues we need to bear in mind when considering whether to proceed with: (a) banning the use of bills of sale for consumer lending; or (b) reforming bills of sale legislation; or (c) introducing a voluntary code of practice?**
- 5. Are there any other equality issues we need to consider in this area?**

## **Conclusion**

37. The consultation on the proposal to ban the use of bills of sale for consumer lending has as its fundamental objective the need to secure a better deal for consumers. It is important, however, that we acknowledge that there are different types of consumers and that what might be good for many consumers might disadvantage others. It is for this reason that we are keen to ensure that the interests of specific groups of consumers are carefully evaluated before any decisions on policy are taken. Ultimately, any firm proposal made by the Government by the end of June 2010 will have the best interests of all consumers at its heart.