

# Payday Lending Market Investigation Order 2015

## Guide for payday lenders

*[This guide is not a part of the Order]*

### Contents

	<i>Page</i>
Introduction .....	2
Scope of the Order .....	2
Community Development Financial Institutions are outside the scope of the Order.....	2
Cost of borrowing definition (Article 2.1).....	2
Article 2.1(a) .....	2
Article 2.1(b) .....	2
Article 2.1(c).....	3
Article 2.1(d) .....	3
Article 2.1(e) .....	3
Publication of information on an FCA-authorised payday loan price comparison websites (Part 3).....	4
Article 4.1 .....	4
Article 10.....	4
Making available a summary of borrowing to the borrower (Article 12).....	4
Article 12.1 .....	4
Article 12.1(c).....	5
Article 12.2.....	6
Article 12.3(a) .....	6
Article 12.3(b) .....	6
Article 12.4.....	6
Content of the summary of borrowing (Article 13) .....	7
Article 13.1 .....	7
Article 13.1(c) – increases in term and/or loan amount.....	7
Articles 13.1(c), (d) and (e) .....	7
Article 13.1(d) .....	7
Article 13.1(f) .....	8
Article 13.1(g) .....	8
The difference between Article 2.1(e) and Article 13.1(g):.....	8

Article 13.2.....	9
Article 13.2(a) .....	9
Compliance reporting (Part 5) .....	9
Article 15.....	9
Article 16.2.....	10

## **Introduction**

This document is intended as a guide for payday lenders to a number of the rights and obligations created by the [Payday Lending Market Investigation Order 2015](#) (the Order). It does not form part of the Order and has no legal force or effect. It is intended for guidance only. More detailed information on the CMA's investigation into payday lending can be found on the [case page](#).

## **Scope of the Order**

### ***Community Development Financial Institutions are outside the scope of the Order***

Community Development Financial Institutions, which comprise registered charities, community benefit societies, and community interest companies limited by guarantee, fall outside the scope of the Order. It will be for individual organisations to seek their own legal advice on whether or not they fit into this category.

## **Cost of borrowing definition (Article 2.1)**

### ***Article 2.1(a)***

Fees and charges include:

- interest on the original loan or credit agreement only; and
- loan set-up fees in relation to the original loan or credit agreement only.

Fees and charges comprise the amount charged to the borrower, not necessarily the amount actually paid by them. For example they may have paid less if they defaulted on the loan.

### ***Article 2.1(b)***

Fees or interest charges arising from roll-over or extension of the loan include:

- any loan set-up fees in addition to those in Article 2.1(a); and

- any further interest charges (but not including any charges for late payment) in addition to those in Article 2.1(a).

Fees and interest charges comprise the amount charged to the borrower, not necessarily the amount actually paid by them. For example they may have paid less if they defaulted on the loan.

### **Article 2.1(c)**

Any fees or interest arising from late payment or default include:

- late payment fees and/or default charges arising from the original loan;
- any further late payment fees and/or default charges arising from the rollover or extension of the loan; ie in addition to those fees and/or default charges arising from the original loan; and
- interest charged for late payment: this must be separated out from the interest charges relating to the otherwise anticipated timely repayment of the loan. For example, if a £300 loan was offered and the interest charge was £50 but the loan was paid late, attracting a further £20 interest charge, the £50 and the £20 interest charges must be split out in the statement of borrowing.

Note that the first two items above do not have to be separated out. They can be combined into one figure. They do not include interest.

Fees and interest comprise the amount charged to the borrower, not necessarily the amount actually paid by them. For example they may pay less if they default on the loan.

### **Article 2.1(d)**

Article 2.1(d) only includes the sum of the figures in Articles 2.1(a), (b) and (c).

Furthermore, no element of any figure in any one of Articles 2.1(a), (b) or (c) should be included in either of the other two of those Articles. For example, if a figure is included in Article 2.1(a), no part of it should be included in Articles 2.1(b) or (c). This avoids the double-counting of figures.

### **Article 2.1(e)**

This figure comprises those of the charges referred to in Article 2.1(d) which the borrower has not paid.

## Publication of information on an FCA-authorized payday loan price comparison websites (Part 3)

### Article 4.1

The 'Obligation to Publish Date' is 26 May 2017.

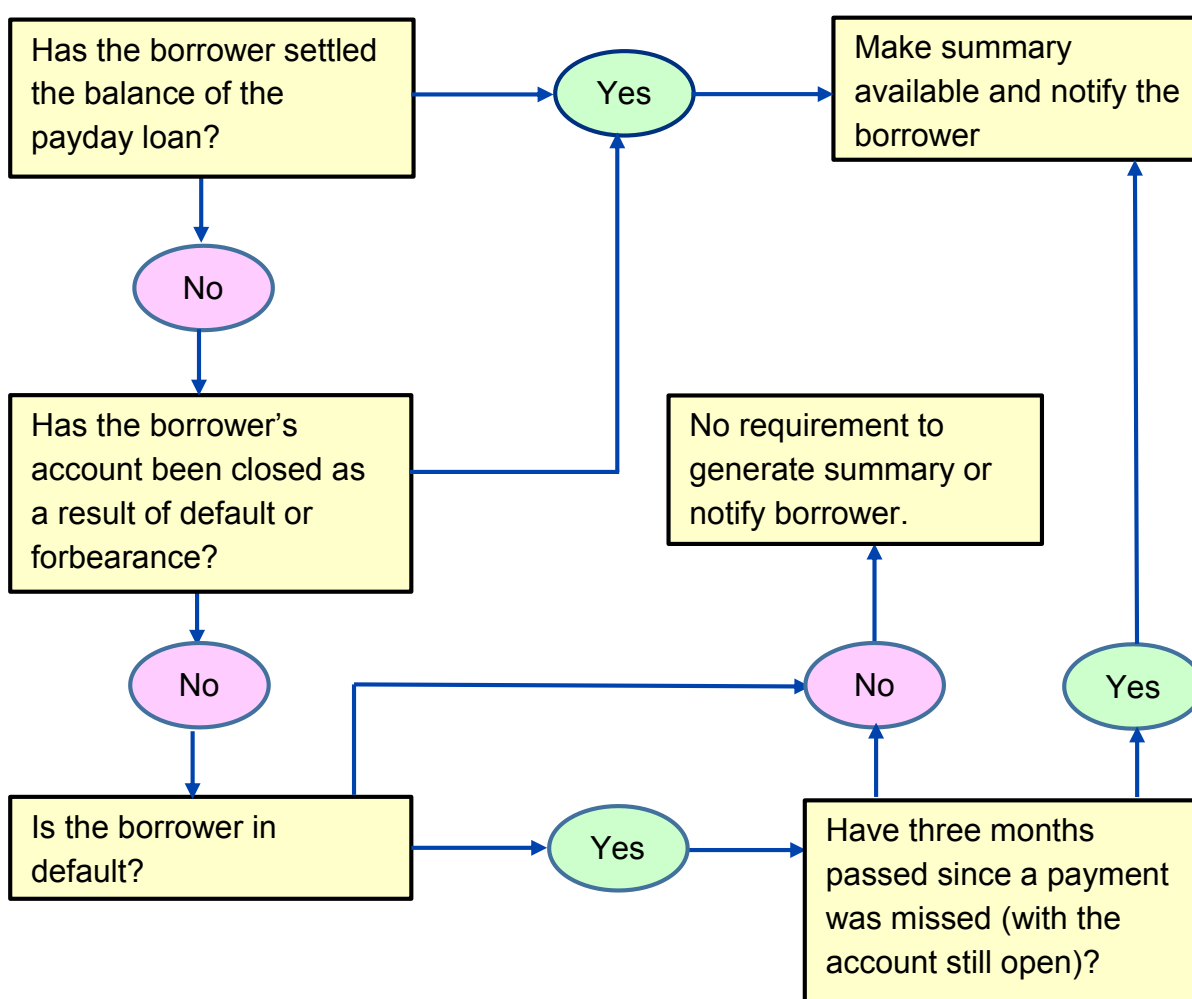
### Article 10

Online lenders must notify the CMA about their engagement with price comparison websites (PCWs) as soon as reasonably practicable, and in any case within seven days.

## Making available a summary of borrowing to the borrower (Article 12)

### Article 12.1

Figure 1: Events triggering when to make a summary of borrowing available



If a debt is sold to another firm there is no default or forbearance, so no summary of borrowing will need to be sent.

*Article 12.1 – the term ‘default’*

This is used to mean the situation where the borrower has ceased to make payments due under the payday loan agreement, which may include any modified payment arrangements agreed as part of forbearance.

**Article 12.1(c)**

This means any payment that may have formed part of a repayment arrangement was missed.

*Article 12.1(c) – scenario 1*

- If a lender closes a customer's account due to default or forbearance and sells it to a third party debt purchase company, a summary of borrowing must be sent because the account has been closed.

*Article 12.1(c) – scenario 2*

- If a customer misses a payment as detailed in the loan agreement and under forbearance and the lender freezes interest and offers the customer a different repayment arrangement, which they adhere to, then the borrower would not be regarded as being ‘in default’ because the agreement has been modified.
- The purpose of this provision is to ensure that there would still be a trigger point for the provision of the summary in circumstances where a borrower simply ceased to make payments and the lender just writes off the outstanding monies without ever closing the account.
- In this example, as long as the borrower continues to make the payments, they will pay off the loan at some point and the trigger will happen then. Alternatively, the trigger will happen three months after they cease to keep up with the new payment arrangements.

*Article 12.1(c) – scenario 3*

- Where a summary has been made available on the lender’s website following an Article 12.1(c) trigger, a further summary is triggered by the balance of the loan being settled or the borrower’s account being closed as a result of default or forbearance (Articles 12(1)(a) and 12(a)(b)).

- The new summary would replace the first summary. In other words there would be no need for both summaries to appear on the website – which could be confusing for consumers.
- Even if the first summary is no longer visible, it will have been made available to the borrower so the Order will have been complied with in this respect.

### **Article 12.2**

A separate summary of borrowing must be sent for each payday loan:

### **Article 12.3(a)**

For loans issued online a summary of borrowing must be available via a personalised secure login on the lender's website, or by email if this was the method requested by the borrower at the time at which the application for that loan was submitted. In addition, the borrower could request a paper copy by post to their verified address.

### **Article 12.3(b)**

For loans provided from high street premises:

- The lender is required to give customers a choice of how they receive their summary of borrowing. This requirement is met by offering customers the summary both by email and by post.
- The lender can also offer borrowers the opportunity to receive the summary in a durable medium in store.

### **Article 12.4**

- A borrower should be asked to confirm that they have had the opportunity to access a summary of borrowing issued at the earliest possible stage in the application process for a new loan and following the conclusion of the borrower's most recent loan with that lender.
- This ensures that the borrower will have access to the information earlier in the process and before becoming more committed to taking out the new loan.

## **Content of the summary of borrowing (Article 13)**

### ***Article 13.1***

If a borrower has only taken out one loan in the previous 12 months the lender should only provide the information required in Article 13.1, plus any relevant information under Article 13.3.

### ***Article 13.1(c) – increases in term and/or loan amount***

The summary of borrowing should record separately each increase in:

- the amount borrowed and the date such increases were applied; and
- the loan period and the date such increases were applied.

### ***Articles 13.1(c), (d) and (e)***

If loan repayments are not kept up:

- the lender could respond by changing the terms of the loan such as freezing interest and spreading the loan over a longer period; and
- this would also trigger a summary of borrowing to be sent which should set out the number of missed original payments and record that the loan agreement was amended to enable the balance to be paid over a longer period.

This would be a contractual change and the purpose of including this information in the summary pursuant to Article 13.1(c) is to remind the borrower that they got into difficulties in repaying the last loan and had to obtain an extension of time for payment.

If the borrower missed the payments in the adjusted loan, the summary should set out exactly what happened; ie x payments from the original loan agreement and y from the repayment arrangement.

### ***Article 13.1(d)***

The summary of borrowing must indicate whether payment was received in full and on time or whether partial or late payments were made, including:

- the dates each instalment under the loan was due;
- the instalment size;

- an indication beside each instalment of the actual amount paid; and
- the date paid.

For example, a table like the following could be included:

Payment due		Payment made	
Amount	Date	Amount	Date

Alternatively, if payments were received in full and on time, confirmation of this would be sufficient to comply with the Order.

Article 13.1(d) applies if a customer misses the last payment on a loan by a few days either by giving notice to the lender that they will do so or by just making the required payment late to close the loan.

- This would not be considered an extension of the duration of the loan to be recorded under Article 13.1(c) but merely an agreement to accept the final payment a few days late.
- This would be a late payment, to be included in the summary under Article 13.1(d) (and Article 13.1(e) if the loan was being repaid in multiple instalments).

**Article 13.1(f)**

The cost of borrowing must be shown by the provision of separate information as set out in Article 2.1(a) to (e).

**Article 13.1(g)**

The information should comprise a breakdown of the information defined in Article 2.1.

Only costs incurred as a result of default or forbearance (so just default interest and default charges) that have not then been paid should be included.

**The difference between Article 2.1(e) and Article 13.1(g):**

In relation to Article 2.1(e) only the numerical information needs to be given, whereas the summary of borrowing should give more detail about the nature of the costs involved, such as whether they relate to one-off or daily penalty charges.



## **Article 13.2**

Lenders should:

- only include information on payday loans;
- if the most recent loan was taken out more than 12 months before the date of the summary, the summary of borrowing should relate to this loan; and
- if a customer has taken out more than one loan in the previous 12 months after the summary of borrowing is made available, the total must include the costs of the most recent transaction in addition to any further loans.

Fees and charges incurred before the 12-month period of the summary of borrowing refers to fees and charges paid and incurred during the preceding 12 month period:

- Lenders should not include any charges or fees related to loans that were taken out before the 12-month period of the summary of borrowing, even if they were incurred and/or collected within the 12-month period.
- Article 13.2 is intended only to apply to information in respect of loans taken out during the 12-month period. It would be confusing for borrowers to include information relating to loans taken out earlier and partially repaid during the 12-month period as this would present only a partial picture of the repayment history in relation to those loans.

### **Article 13.2(a)**

Loans 'taken out' means the entering of a contract to borrow money.

## **Compliance reporting (Part 5)**

### **Article 15**

#### *Submitting a 'Part 3 Compliance Report'*

- The 'Decision Date' is 26 May 2016. This is the date on which the Financial Conduct Authority (FCA) published its rules concerning PCWs for High-Cost Short-Term Credit agreements.
- Quarterly compliance reports are to be submitted covering periods to 26 November 2016, 26 February 2017, 26 May 2017, 26 August 2017 and 26 November 2017.

- The number of quarterly reports required is dependent upon how quickly the lender achieves its first listing on an FCA-authorized payday loan PCW; and the report should be submitted as close to the end of the quarterly or annual reporting period as possible.

**Article 16.2**

Annual 'Part 4 Compliance Reports' must be submitted to the CMA on 13 August each year.

3 February 2017