COMPETITION AND MARKETS AUTHORITY

STRATEGIC REVIEW OF MARKETS REMEDIES

REVIEW OF 33 MARKETS REMEDIES AND CONSULTATION ON WHETHER THOSE REMEDIES REMAIN APPROPRIATE

RESPONSE BY CONSUMER CREDIT ASSOCIATION ON THE HOME CREDIT MARKET INVESTIGATION ORDER 2007

CONTENTS

HOW THE COMPETITION PROBLEM HAS CHANGED

The **Home Credit Market Investigation** conducted by the Competition Commission from 2004 to 2006 was based on a theory of harm centred on **perceived excess pricing arising from weak competition between lenders**.

The investigation took place in a market where multiple specialist providers served lower-income consumers. The principal competition concern was therefore that structural features of the market — such as customer relationships and limited switching — could weaken competitive pressures and allow lenders to charge higher prices than might prevail in a more competitive market.

The remedies introduced through the **Home Credit Market Investigation Order 2007** were designed to address this concern by improving market transparency[1] and facilitating switching between lenders.

Implicit in this approach was the assumption that the market would continue to consist of **multiple active providers (including nationwide firms) competing for customers**.

[1] Through the Lenders Compared website, which has now been closed. Seen from the customer viewpoint, however, the home credit product is flexible, simple and hyper-transparent. Charges are fixed and 'all-in'. If a payment is missed, no extra charges of any type accrue (i.e. no extra interest and no default charges). This means that on a miss, the true *ex post* APR **falls** rather than increases. Lenders' agents will permit a miss (or series of misses or reduced repayments) for any genuine reason. These informal arrangements can be made on the spot.

THE CURRENT MARKET STRUCTURE

The structure of the market has changed profoundly since the introduction of the Order.

Over the last ten years or so, the specialist consumer credit systems developed over many decades to serve lower-income households have **contracted sharply or disappeared entirely**.

This includes exit by the larger firms in the home credit, payday lending, guarantor lending and rent-to-own sectors. [See **Appendix A**]

The result is that the competitive landscape which existed when the original remedies were designed **no longer exists**.

A remedy designed to strengthen competition between multiple suppliers may have limited relevance where firms across **large parts of the market have exited altogether**.

THE EMERGENCE OF CREDIT EXCLUSION

In this new environment, perceived excessive pricing by regulated lenders may no longer be the principal risk to lower-income consumer welfare.

Instead, **credit exclusion** may now be the more significant risk.

Lower-income households have credit requirements just as middle-income consumers do, albeit for much smaller advances. When regulated credit providers withdraw from the market, the underlying need for small-sum, short-term borrowing does not, however, disappear.

If legal providers are unavailable, potential alternatives include:

- borrowing from family or friends,
- missing essential payments such as rent or utilities, or
- turning to **unregulated or illegal lenders**.

Recent major research[2] into illegal lending suggests that reliance on that specific source may have increased exponentially. [See **Appendix B**]

While there are varying estimates on scale (depending on the methodology used[3]), the findings point to the distinct possibility that illegal lending is now tending to fill the gap left by the withdrawal of regulated providers.

[2] *'Access to credit and illegal lending: the shape of the market is as important as the size'*, Fair4All Finance and IPSOS, 24 May 2024. See later.
[3] By, for instance, the FCA in its Financial Lives Surveys, where the researchers use direct questioning and where the sample of potential users of home credit is quite small.

IMPLICATIONS FOR THE CMA's STRATEGIC REVIEW

The CMA's strategic review explicitly recognises that remedies should be reconsidered where there have been **changes in market conditions, consumer behaviour, or the regulatory landscape**.

The developments described above suggest that the underlying competition problem in the lower-income credit market has changed.

Where the original investigation focused on **perceived excess pricing**, the current concern may instead be **the collapse of lawful credit supply and the risk of substitution into illegal lending**.

In these circumstances, it is appropriate for the CMA to consider whether remedies designed for a very different market environment remain appropriate today.

A FUNDAMENTALLY DIFFERENT COMPETITIVE ENVIRONMENT

If illegal lending becomes a significant substitute for regulated credit, the competitive environment changes in fundamental ways.

Illegal lenders operate entirely outside the regulatory framework governing licensed firms.

They do not face:

- affordability requirements
- regulatory supervision
- complaint procedures
- credit reference reporting obligations or
- Financial Ombudsman Service oversight

As a result, they operate with **very different cost structures and obligations** compared with regulated lenders.

Illegal credit markets also raise significant consumer welfare concerns, with in-depth research for the UK DTI in 2006[4] noting that:

> **Most relationships between illegal lenders and their customers are based on fear and intimidation with lenders seeking to control their customers with a range of coercive practices**

And later research for BIS in 2010[5] observing that:

> **Decades of no effective enforcement has made illegal money lending a relatively low risk but highly profitable activity[6]…**
>
> **…a range of lending models has developed, from the relatively less damaging to the ultra-violent operation with a high degree of cross over with other criminality.**

From a competition perspective, a market outcome in which regulated providers withdraw and illegal providers expand cannot be regarded as a functioning competitive market delivering good outcomes for consumers.

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[4] *'Illegal lending in the UK'*, a research report for the Department of Trade and industry ('DTI'), Personal Finance Research Centre and POLICIS, [2006]

[5] *'Interim evaluation of the National Illegal Money Lending Projects',* a research study for the Department of Business Innovation and Skills ('BIS'), POLICIS, 2010. Assessments of the nature and scale of illegal lending in the UK were made through a variety of processes, including quantitative surveys, field research and interviews with domain experts. This 105-page study also includes many detailed insights into the operation of illegal money lenders and the adverse impacts on consumers.

[6] And if the Fair4All surveys [*see footnote 2 supra*] are in any way indicative of true levels of illegal lending, this activity will in reality have already exceeded the State's capacity to enforce against it in any meaningful way.

THE ROLE OF THE FINANCIAL OMBUDSMAN SERVICE

One important development has been the increasing use of the **Financial Ombudsman Service as a quasi-regulatory enforcement mechanism**.

The Financial Ombudsman Service itself acknowledges that **Claims Management Companies (CMCs) have been able to 'weaponise' case-fee arrangements**, submitting large volumes of speculative complaints at little or no financial risk to themselves. [See **Appendix C**]

At the same time:

- firms have historically been required to pay a **case fee of around £650 per case**
- this fee has been payable **regardless of whether or not the complaint was upheld**, and
- claims management companies have carried **little or no financial risk in submitting complaints**.

This created a highly asymmetric system under which, until last year, firms faced substantial costs even where complaints were ultimately rejected[7].

For small-value credit products, such as those typical in the home-credit market, the economics of defending complaints became extremely difficult. Even if a firm successfully defended a complaint, the cost of doing so might well have exceeded the value of the underlying credit.

The Financial Ombudsman Service acknowledged in 2024 that these dynamics placed **severe financial pressures on firms, potentially causing them to exit the market**.[See **Appendix C**]

[7] Changes to the fee rules came into force in April 2025, requiring CMCs to pay an upfront fee when lodging a case (and giving firms a case fee reduction if the firm wins). The result has been a sharp fall in numbers of cases being lodged with FOS. This change came much too late, however, for the firms we describe which were financially overwhelmed by the pre-April 2025 asymmetries.

THE ECONOMIC IMPACT OF ‘MASS CLAIMS’ ACTIVITY

The combination of:

- no FOS fees payable by CMCs
- large volumes of ‘mass claims’ submitted by CMCs (many speculative)
- unavoidable case-handling costs imposed by CONC ‘duty to investigate’
- FOS case fees automatically payable by the lender regardless of outcome
- automated ‘mass claims’ decision-making by FOS using undisclosed algorithms

created a situation in which firms could be **overwhelmed by complaint volumes**.

This dynamic was particularly problematic in lower-income credit markets because loans are very small (relative to the FOS case fee).

In practice, the economics of defending complaints often became **unsustainable**.

Reforms were introduced in April 2025 under which CMCs had themselves to pay a smaller (£250) fee to FOS on lodging a claim.

However, these new rules came into effect **after much of the market had already exited**.

STRUCTURAL ECONOMICS OF LOWER-INCOME CREDIT SUPPLY

In the last five to 10 years, not-for-profit lenders have made serious attempts to enter the market sector previously served by the large home credit firms.

Their internet advertising and rate calculators have given new insights into their charging structures.

Appendix D shows the charges - as at May 2022 - for three CDFI lenders and two small home credit traders. We have taken a typical[8] home credit loan of £400 over a typical 26-week term.

The home credit firms' charges are at the bottom end of the range found in our sector, but we wanted to illustrate just how closely aligned costs can be. Appendix D also draws out some of the key product differences.

The prevailing policy narrative has often assumed that high charges in the lower-income credit sector were primarily the result of exploitative commercial behaviour and that lower-cost alternatives could emerge if high-cost commercial lenders were to exit the market.

However, this evidence from the not-for-profit sector suggests that **the cost structure of lending to this segment may be inherently high**, irrespective of organisational form.

If this is correct, regulatory frameworks that effectively remove commercial providers without enabling sustainable replacement supply may produce a **market-wide contraction of legal credit** rather than improved competition.

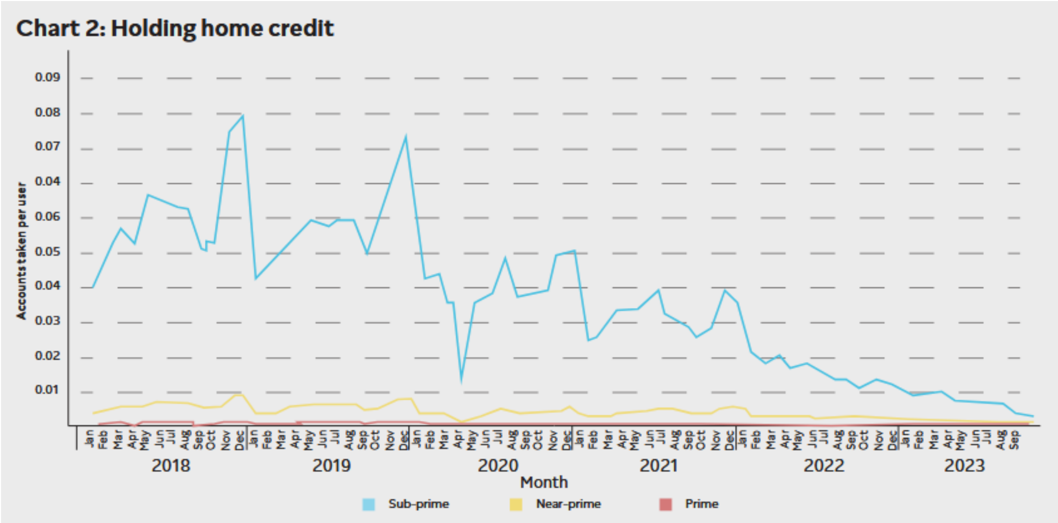
The relevant potential competition concern is therefore not excessive pricing by incumbent firms, but the possibility that **regulatory and dispute-resolution frameworks may have contributed to market exit in a sector where the underlying economics are already fragile**, thereby reducing supply and weakening competitive outcomes for consumers.

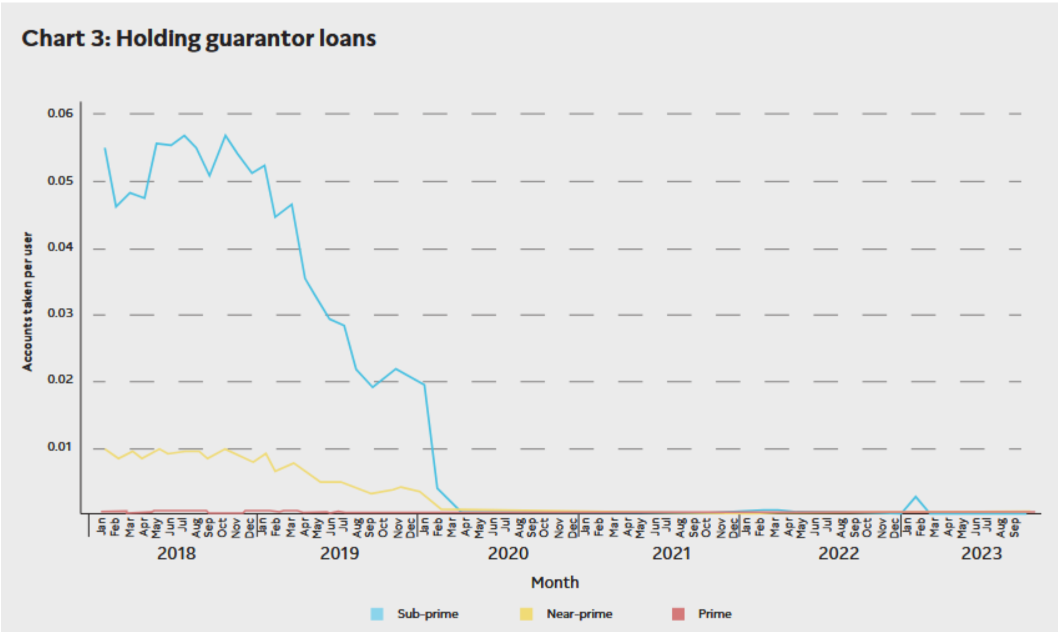
[8] For 2022.

APPENDIX A

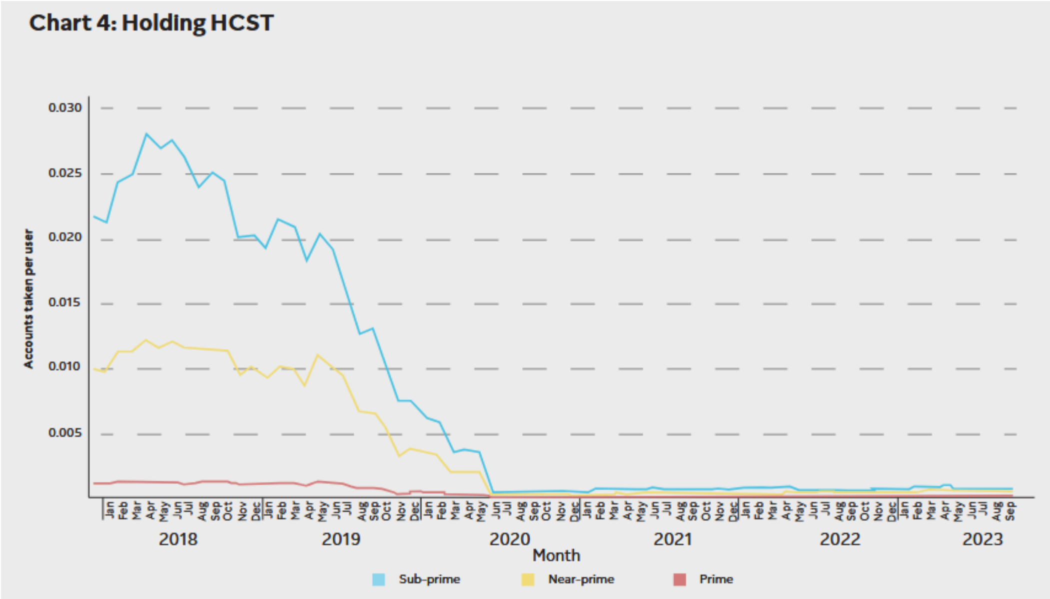
COLLAPSE IN LOWER-INCOME CREDIT SYSTEMS

Graphs in the ClearScore-EY report[9] chart the collapse of home credit, guarantor loans, and HCSTC (payday lending):





[9] *'Building a non-prime market that delivers for UK consumers'*, ClearScore and, Ernst & Young, February 2024. C.J. Woolard (a partner in Ernst & Young) together with the CEO of ClearScore both contributed written introductions to the report. Mr. Woolard was previously the FCA's interim CEO.



In home credit, **Provident** collapsed in 2021, **Loans at Home** in 2022, and **Morses Club in 2023**.

In the guarantor loans sector, both **Trust Two** and **George Banco** collapsed around 2020, followed by **Amigo Loans** in 2023.

In HCSTC (payday), **Wonga** collapsed in 2018 and **QuickQuid** in 2019.

Although the ClearScore-EY report does not address rent-to-own, this sector also collapsed. **Buy-As-You-View** exited in 2017, **BrightHouse** followed in March 2020, and **Perfect Home** ceased trading in 2022.

Large numbers of **mass claims** - **lodged with FOS by claims management companies** (CMCs) - were a recurring factor in these market exits.

Mass claims deploy FOS's computerized claim handling programs to identify alleged unaffordability. Home credit's experience is that these programs appear to identify 'deemed' financial distress - based on undisclosed algorithms - rather than placing reliance on any forensic analysis of borrowers' actual experiences[10].

This all raises natural justice concerns.

[10] An approach that sits uneasily with FCA's Policy Statement 18/19, which says:

1.14 We want firms to make a reasonable assessment, not just of whether the customer will repay, but also of their ability to repay affordably and **without this significantly affecting their wider financial situation**. This should **minimise the risk of financial distress to customers**. [*author's emphasis*]

1.15 At the same time, we want to avoid being too prescriptive, as this could have harmful unintended consequences, including for the cost and availability of credit. We want firms to take a proportionate approach, **taking into account the costs and risks of the credit for the individual customer**. [*author's emphasis*]

1.16 This is in line with the regulatory principles in the Financial Services and Markets Act 2000 (FSMA) relating to proportionality, the desirability of sustainable growth and recognising differences in the nature and objectives of different businesses.

APPENDIX B

ILLEGAL LENDING INCREASES FROM c.310K IN 2010 TO c.3.3M IN 2023

FCA took over regulation of consumer credit in 2014 (from OFT).

In 2010, a UK government study[11] of the Illegal Money Lending Projects found that:

> **An estimated 310,000 individuals borrow £120m p.a. from illegal money lenders on which they repay £450m p.a. This represents some 2% of low-income households and 6% of residents in the most deprived estates.**

In February 2024, a joint report[12] by ClearScore and Ernst & Young trailed an unpublished study by Fair4All Finance:

> **Recent research by IPSOS for Fair4All Finance found that over three million people in Great Britain may have borrowed from an illegal moneylender in the last three years. When asked, 7% of people said they or someone in their household had used an unlicensed or unauthorised lender that charged them interest (sometimes known as a loan shark or illegal moneylender).**

On 22 May 2024, Fair4All Finance published that study[13], giving more detail:

> ***Quantifying the scale of illegal lending***
>
> **In two GB surveys a total of 7% of respondents said that they, or someone in their household had used an illegal lender within the past three years.**
>
> **In January 2023, in a representative online quota survey of 2,547 GB adults aged 18-75 years old 3% of respondents said they, or someone in their household used 'informal, unauthorised lenders'.**
>
> **If scaled up to the GB adult population aged 18-75 years old, this is equivalent to 1.4 million individuals.**
>
> **4% of respondents responded that they or someone in their household had used a 'loan shark'. Equivalent to 1.9 million individuals.**
>
> **It is possible that 3.3 million people may be living in households in which someone is using or has used some form of illegal moneylender. In June 2023, in a representative online quota survey of 1,859 GB adults aged 18 – 75 years, 7% responded yes to a question that they or someone in their household had, to the best of their knowledge used an unlicenced or unauthorised lender or loan shark.**
>
> **Even with caveats, there is significant margin to suggest that the number of people responding that they, or someone in their household uses illegal lenders, is higher than we might otherwise imagine.**
>
> **Many other pieces of research are identifying responses to a variety of questions around use of illegal lenders significantly higher than those referenced by the FCA. [*NB underlining reflects bold emphasis in the Fair4All report*]**

The Fair4All study draws on two IPSOS surveys—one carried out in January 2023 and a second in June 2023.

Although the report offers no explanation for commissioning a second survey in June 2023, the aim may possibly have been to validate the results of the initial survey.

[11] *'Interim evaluation of the National Illegal Money Lending Projects',* a research study for the Department of Business Innovation and Skills ('BIS'), POLICIS, 2010. Assessments of the nature and scale of illegal lending in the UK were made through a variety of processes, including quantitative surveys, field research and interviews with domain experts. This 105-page study also includes many detailed insights into the operation of illegal money lenders and the adverse impacts on consumers.

[12] *'Building a non-prime market that delivers for UK consumers'*, Ernst & Young and ClearScore, February 2024. See supra.

[13] *'Access to credit and illegal lending: the shape of the market is as important as the size'*, Fair4All Finance and IPSOS, 24 May 2024.

APPENDIX C

FOS COMMENTS ON WEAPONISATION OF CASE FEES

In her introduction to a Financial Ombudsman Service consultation paper[14] published in May 2024, the Chairman of FOS, Baroness Manzoor CBE, said[15]:

> **We firmly believe that those who do not meet their obligations should contribute to the costs of putting things right. We also believe that we should act fairly and reasonably in everything we do; including how we meet our costs. At present, these costs fall solely on the respondent firm; they pay both a levy through the Financial Conduct Authority and a case fee per case referred. This was the arrangement established when we were first set up, reflecting that then it was mainly only complainants and respondent firms involved in the cases process.**
>
> **Times have changed, however, and a significant commercial industry has been built up in <u>bringing cases to us for profit by Claims Management Companies ('CMCs') and other professional representatives at no cost to them for our service. These companies can send in significant volumes of cases with little prospect of being upheld or which are poorly presented</u>. This can have a significant impact on our ability to help others who have come directly to us and drives up our costs. [*author's emphasis*]**
>
> **Over the last two years, 20% of cases referred to the Financial Ombudsman Service have been brought by commercial CMCs and other professional representatives who are taking a significant proportion of the awards otherwise due to their clients. Of these cases, fewer than 25% result in a different outcome for the complainant than they have already been offered by the respondent firm. In addition, despite profiting from it, the current funding model means CMCs and other professional representatives do not contribute to our costs.**
>
> **Our case fee to respondent firms has just decreased to £650 from £750, which is payable irrespective of whether or not the case is upheld. <u>This means CMCs and other professional representatives bear very limited financial risk - even though such representatives often increase our costs by, for example, disproportionate referrals of cases without merit, failure to provide full case details</u>, or by making unnecessary escalations to an Ombudsman for a final decision when our approach to the issue is already well established. [*author's emphasis*]**
>
> **Increasingly, respondent firms have highlighted the unfairness involved in them being liable to pay significant sums in fees in these circumstances, particularly those where the uphold rate for cases can be as low as in single figure percentages of the overall cases submitted. <u>At its worst, this reduces confidence and brings the system into disrepute; and we are told could cause firms to go out of business due to the financial pressure of having to process so many cases all at once and pay our fees</u>. [*author's emphasis*]**
>
> **This is not good for consumers or their confidence in the UK's financial services industry overall, or indeed their confidence in our fair alternative dispute resolution service and the financial regulation framework. It is something that could easily be avoided. I passionately believe that anyone who wants to bring a case to the Financial Ombudsman Service should be able to do so directly to us - for free - and will keep 100% of any award that we may make if their case has merit, rather than losing a significant proportion to CMCs and other professional representatives. <u>This present situation cannot be fair for either complainants or respondent firms - and the Financial Ombudsman Service has a role to play in addressing this unfairness</u>. [*author's emphasis*]**

The May 2024 FOS consultation paper [p.5] alludes to Government concerns about 'weaponisation':

> **The policy statement which accompanied the draft Statutory Instrument <u>sets out that Government has heard concerns that CMCs and other professional representatives are able to 'weaponise' case fees charged by us</u>. <u>It described that CMCs and other professional representatives can pressure respondent firms that are subject to our compulsory jurisdiction into settling cases regardless of their merits, on the basis that these cases attract a case fee (alongside internal case-handling costs for a firm) regardless of the outcome reached.</u>**
>
> **<u>Government has said it views the outcomes described as being contrary to our statutory purpose</u>, which is to provide for the fair, proportionate, prompt and informal resolution of disputes between consumers and financial services firms, as an alternative to the courts. [*author's emphasis*]**

FOS had further things to say at p.10 of the May 2024 consultation paper:

> **Our statutory purpose is to independently resolve disputes, quickly and with minimum formality. Over the past two years, approximately 20% of the ~400,000 cases referred to us have been brought by commercial CMCs and**

[14] *'Charging Claims Management Companies and other professional representatives - consultation paper'*, FOS, 23 May 2024.
[15] At page 3.

> **other professional representatives. These representatives can derive economic benefit from these cases, with some receiving a 30-40% portion of any compensation we have awarded to complainants. For example, FCA regulated CMCs can currently obtain up to 30% of redress attained, with a maximum charge of £10,000.**
>
> **In addition, the way some CMCs and other professional representatives work at volume, sending large numbers of cases that have no merit with limited or no due diligence evident, means we use our finite resources doing work on cases that do not then result in an outcome for the complainant that is favourable compared to the one they received when the respondent firm issued them a final response.** [*author's emphasis*]
>
> **We presently charge the full cost of these cases to the respondent firm at a rate of £650. There is limited financial risk to the CMC or professional representative of sending such cases to us; and therefore, for some, little incentive to sift cases properly before referral. Many respondent firms have told us this is not fair, and several have now told us about the significant impact this is having on their economic viability, even though we are finding upon investigation that there is no case for these firms to answer. This behaviour is therefore bringing the complaints arrangement into disrepute.** [*author's emphasis*]
>
> **Numerous members of the industry, spanning various product areas, have shared examples whereby CMCs and other professional representatives submit cases to them in large batches at levels they cannot possibly immediately flex their customer service resource to respond to before the 8-week time period under the DISP Rules expires for a final response letter to be issued. (Note that the period for responding to certain complaints about payment services or electronic money is even shorter: just 15 business days.)** [*author's emphasis*]
>
> **We then see some of these cases are then escalated to us at significant volume, often without the necessary papers gathered or investigations having taken place by the respondent firm. We find we need to ramp up our resources to deal with these surges in casework, and these limited information cases then require significant additional effort on our part to work; requesting information from both parties to obtain satisfactory evidence and arguments for determining the fair and reasonable outcome for the case. All of which diverts our vital resource away from other complainants that require our help…** [*author's emphasis*]
>
> **…Many CMCs and other professional representatives explain in their marketing material that they are experts in claims management, and all have opportunity to be selective about what they refer to us in a way that unrepresented complainants usually cannot. They can do so by carrying out effective due diligence and paying due regard to our previously published decisions, the guidance derived from cases we have determined, or by contacting our support hub.**
>
> **In line with the principle of acting in the best interests of their clients, if a CMC or other professional representative decides to bring a case about a respondent firm to us on behalf of a consumer, certain steps should be taken to substantiate the basis of that case, prepare it for consideration and draw on insight from how we may have previously assessed similar complaint issues.** [*author's emphasis*]
>
> **Cases should be referred and evidenced accordingly. Not doing so, especially across a high volume of cases that are not determined in favour of the complainant or that we cannot consider, negatively impacts our service standards, our ability to help other customers and our operational efficiency…** [*author's emphasis*]

The FOS consultation paper goes on at p.17 to talk about CMC's bringing tranches of cases against firms running into *'tens of thousands'*:

> **Over the course of recent years, CMCs and other professional representatives have brought high volumes of cases to us, often without warning and in tranches of cases against respondent firms that run into tens of thousands.**

APPENDIX D

Cost comparison between Fair Finance, Scotcash[16] and Street UK and two home credit lenders for a weekly-repaid £400 loan over 26 weeks as at 16 May 2022

	Fair Finance	Scotcash	Street UK	Mark Pearse	Park Finance
Term	26 weeks	26 weeks	26 weeks	26 weeks	26 weeks
Stated amount of loan	£400	£400	£400	£400	£400
Amount received by customer	**£370**	**£376**	**£380**	**£400**	**£400**
Administration fee	£30	£24	£20	£0	£0
Loan charges	£211.36	£111	£111.14	£120	£120
Weekly repayments	£22.36	£19.65	£18.89	£20	£20
APR	**556.1%***	**246.4%***	**180.3%**	**187.2%**	**187.2%**
Total to repay	**£611****	**£511****	**£511.14****	**£520**	**£520**
Home collection service included	No	No	No	Yes	Yes
Charges/interest when payments missed	£0***	Extra interest added	Extra interest added	£0	£0

* These two CDFI websites do not show weekly product APRs and these are, therefore, our workings. Our workings (and Street's calculation) deduct the administration fee from the notional amount of the loan. This is because CONC defines the *'total amount of credit'* as the *'total sums made available under…the agreement'*. Sums deducted from the amount lent are not *'made available'*.

CONC also defines *'credit'* as *'any kind of loan… and any other kind of accommodation or facility in the nature of credit'*. Irrespective of how a credit agreement might seek to present things, credit is only credit to the extent that payment is actually deferred in some way.

CONC indicates too that administration fees - whether or not deducted from the loan - should be included in the *'total charge for credit'* (meaning that these CDFI APRs are, in reality, even higher still). Our calculation program does not enable us to carry out this operation.

It is worth adding that commercial lenders have not charged administration fees for many years (since the APR system first came into force) because of the degree to which they can increase APRs.

** Fair Finance and Street include the administration fee in this figure; Scotcash does not. As already mentioned, none of the CDFI APRs we calculated factor the administration fee into the '*total charge for credit'*. This is because our system does not enable us to do this.

***Unclear - website states no *fees* for late payment but not clear whether *interest* continues to accrue.

[16] Scotcash announced in May 2023 that it had ceased lending and would be winding down its services within 6 months.