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Committee

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Business, Innovation and Skills Committee

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The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume. Additional written evidence may be published on the internet only.

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The current staff of the Committee are James Davies (Clerk), Amelia Aspden (Second Clerk), Peter Stam (Committee Specialist), Josephine Willows (Committee Specialist), Ian Hook (Senior Committee Assistant), Pam Morris (Committee Assistant), Henry Ayi-Hyde (Committee Support Assistant).

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Summary

In 2011–12, the payday loan market was worth between £2.0 and £2.2 billion, up from an estimated £900 million in 2008–09. This rapid expansion has been accompanied by a significant rise in the number of people experiencing serious debt problems as a result of using these products. Earlier this year the Office of Fair Trading conducted a review of the sector and found serious problems with how payday businesses were being run. Its findings made clear to us that consumers were increasingly at risk from this form of loan and that an overhaul of sector was necessary.

The regulation of payday loan companies will pass to the Financial Conduct Authority in April 2014. The FCA has made clear that when this happens, the payday loan sector will be given particular attention. The FCA is already consulting on a new regulatory framework for the sector. Our Report has focused on the key aspects of that consultation and where we believe further action, including stronger regulation, is necessary.

We believe that in addition to more stringent affordability checks, every payday lender should be required to resubmit their affordability tests to the FCA for approval before they can continue to work in the sector. This would ensure that only those companies with appropriate mechanisms for judging affordability would be able to operate in the market.

For too long, the sector has failed to deliver real-time data-sharing. This is vital information to ensure robust affordability checks and to stop customers applying for multiple loans. The FCA needs to set a final deadline of July 2014 for sector to deliver this. If the sector fails to meet this deadline, the FCA should mandate its use as a condition of trading in the sector.

The use of rollovers has been a particular problem in the sector and has resulted in spiralling debts for many people. The FCA is consulting on a limit of two rollovers for each loan. We believe the FCA should go further and introduce a limit of one.

We agree with proposals to limit to two the number of times a payday lender can use the Continuous Payment Authority. However, information for consumers on its use is not adequate. Three working days notice should be given before a payday lender uses a CPA and all notices should make clear that the customer has the right to cancel.

The rise of broker companies and unsolicited marketing is an increasing problem in the sector. The '7726' short code has been established so that unsolicited texts can be forwarded on to the Information Commissioner's Office. The FCA and the Information Commissioners' Office need to work together to use these services to get a detailed evidence base on the extent of bad practice. If this evidence base demonstrates inappropriate targeting or marketing, the FCA should act quickly to ban all unsolicited marketing or brokering of payday loans through email, texts and other personal mobile devices.

Debt charities and consumer organisations have made clear that the number of people seeking debt advice for payday loans is increasing at an alarming rate. We believe that the

levy paid to the FCA should be ring-fenced for the funding of front-line debt services.

The FCA has described its consultation as a “once in a generation change in regulation”. Its proposals, together with our recommendations, would deliver a fair but stringent framework which would provide consumers with the protection they need.

1 Introduction

Background

1. In February 2012, we published our Report on debt management. That Report considered—among a wide range of issues—the payday loan sector. Our Report urged action to address the failings in consumer protection in this sector in terms of both advice and regulation. We urged the Government to “act swiftly” should the Office of Fair Trading (OFT) compliance review of payday loan companies find evidence of non-compliance.¹ We also recommended that the Government give particular attention to the following areas:

- limiting the rolling-over of loans;²
- requiring the introduction recording of all loans and the use real-time data-checking;³ and
- reconsidering the use of the Continuous Payment Authority by payday loan companies as the method for receiving payments.⁴

2. In its Response, the Government told us that the OFT had been charged with reviewing:

Levels of compliance with the Consumer Credit Act and the extent to which businesses in the payday sector are meeting the standards set out in the OFT's irresponsible lending guidance.⁵

In addition to this review, responsibility for regulatory oversight of the sector will pass to the Financial Conduct Authority in April 2014. In advance of the formal handover, the FCA is in the process of conducting a review of the sector. The publication of the OFT compliance review, and the FCA's review provided us with a opportunity to return to this matter.

3. We took oral evidence from the Consumer Finance Association and the Consumer Credit Trade Association, who represent, among others, payday loan companies. Each Association brought with them one of their members, Quickquid and Mr Lender respectively. Wonga also gave evidence, as one of the largest payday lenders. The invitation to these particular payday lenders to appear does not necessarily indicate that they epitomise the worst aspects of the sector.

4. We also took evidence from consumer organisations—Citizens Advice, Which?, StepChange and Martin Lewis from moneysavingexpert.com, who provided us with their

1 Business, Innovation and Skills Committee, Fourteenth Report of Session 2010–12, *Debt Management*, HC 1649 para 44

2 HC (2010–12)1649, para 48

3 HC (2010–12)1649, para 58

4 HC (2010–12)1649, para 67

5 Business, Innovation and Skills Committee, First Special Report of Session 2012–13, *Debt Management: Responses to the Committee's Fourteenth Report of 2010–12*, HC 301

research and insight into the payday loan sector. This was followed by the Office of Fair Trading, the Financial Conduct Authority and Jo Swinson MP, Minister for Consumer Affairs at the Department for Business, Innovation and Skills.

Recent Developments

OFT Review

5. In March 2013, the OFT published its compliance review of payday lending. In an overview, the OFT stated that:

- “The payday loans market is not working well for many consumers. Our review has found evidence of widespread non-compliance with the Consumer Credit Act and other legislation. Payday lenders are also not meeting the standards set out in our Irresponsible Lending Guidance”.
- “We are particularly concerned by the evidence of irresponsible lending; too many people are given loans they cannot afford, and when they can’t repay are encouraged to extend them, exacerbating their financial difficulties. This is causing real misery and hardship for a significant number of payday users”.
- “During the course of our review, debt advisers, complainants and consumer representatives have told us that problems in this market are continuing to grow. We have listened and we are determined to tackle these issues. We have made payday lending a top compliance and enforcement priority. We will use all the powers at our disposal—including, if appropriate, the power to suspend a credit licence”.
- “To drive up standards in the sector and to remove those lenders whose actions make them unfit to remain in the market”.⁶

6. The OFT’s key findings were:

- Around a third of loans are repaid late or not repaid at all.
- 28 per cent of loans are rolled over or refinanced at least once, providing 50 per cent of lenders’ revenues.
- 19 per cent of revenue comes from the five per cent of loans which are rolled over or refinanced four or more times.
- Debt advisers reported that borrowers seeking help with payday lending debts had on average rolled over at least four times and had six separate payday loans.
- 30 of the 50 websites examined emphasised speed and simplicity over cost—in some cases making claims that, if true, would amount to irresponsible lending.⁷

6 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf, page 2

7 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf, page 2

7. On 18 September 2013, the OFT announced that:

Fifty leading payday lenders, accounting for 90 per cent of the market, were each given 12 weeks by the OFT to prove they have addressed areas of non-compliance identified during the payday lending review.⁸

Of the fifty companies highlighted by the OFT, 19 informed the OFT that they were to leave the payday market. In addition:

Three firms engaged in payday lending have had their licences revoked after their appeals against OFT determinations were either dropped or struck out by the First Tier Tribunal.⁹

Another three lenders have also surrendered their licences.¹⁰

We note that all three of our witnesses were part of the review, and all three were required to make amendments or adjustments to their working practices as a result.¹¹

Payday loan charter

8. In November 2012, the associations covering payday lending—Consumer Finance Association, the Consumer Credit Trade Association, the BCCA, or the Finance & Leasing Association—issued a Good Practice Customer Charter. The Charter aimed to address failings in the industry. The Charter sets out the standards for member companies in their dealings with customers.

9. The obligations in the Charter are set out below:

When providing payday or short-term loans, we will:

- Act fairly, reasonably and responsibly in all our dealings with you.
- Not pressurise you to enter into any loan agreement or to extend (‘roll-over’) the term of your existing loan agreement.
- Tell you that a payday or short-term loan should be used for short-term financial needs and is not appropriate for long-term borrowing or if you are in financial difficulty.
- Tell you how the loan works and the total cost of the loan (including an example of the price for each £100 borrowed, together with fees and charges) before you apply.
- Check whether the loan is suitable for you taking account of your circumstances.

8 www.offt.gov.uk/OFTwork/credit/payday-lenders-compliance-review#.Uqgv9ntFDcs

9 www.offt.gov.uk/OFTwork/credit/payday-lenders-compliance-review#.Uqgvx3tFDcs

10 www.offt.gov.uk/OFTwork/credit/payday-lenders-compliance-review

11 Qq 41 and 63

- Carry out a sound, proper and appropriate affordability assessment and credit vetting for each loan application and before the loan is extended (rolled over), to check you can afford the loan.
- Explain in general terms what types of information we will consider in making a decision, if you ask us to.
- Explain how we will communicate with you during the term of the loan, how payments will be deducted from your bank account and how you can contact us by phone, email or online.
- Set out clearly how continuous payment authority works (if we use it) and your rights to cancel this authority, so you can decide if this type of repayment is acceptable to you. We will remind you that if you cancel, you will still owe any outstanding debt and will need to provide an alternative method of repayment on the due date to avoid going into default.
- Always notify you by email, text, letter or phone at least 3 days(1) before attempting to recover payment using continuous payment authority on the due date. This notice will ask you to contact us if you are in financial difficulty and cannot repay.

In respect of financial difficulties, the Charter states that companies will:

- Deal with cases of financial difficulty sympathetically and positively and do what we can to help you manage what you owe.
- Freeze interest and charges if you make repayments under a reasonable repayment plan or after a maximum of 60 days of non-payment.
- Tell you about free and independent debt counselling organisations who can also help you.

It also covers the handling of complaints:

- [Companies will] tell you about our complaints-handling procedure when you take out a loan or whenever you ask us to. We will also include details about our complaints procedure on our website or make them available at our business premises (where appropriate).
- [Customers] may be able to refer your complaint to the Financial Ombudsman Service.¹²

Role of the Financial Conduct Authority

10. Responsibility for the regulation of payday loan companies will transfer from the OFT to the FCA on 1 April 2014. On 3 October 2013, the FCA published its consultation on a new regulatory regime for the sector. The key elements of the proposed consumer credit regime are as follows:

12 www.cfa-uk.co.uk/assets/files/PD&STL_Charter.pdf

Affordability checks for every credit agreement to ensure that only consumers that can afford a loan can get a loan.

All advertisements and other promotions must be clear, fair and not misleading. The FCA will be able to ban misleading adverts.

Firms that do higher risk business and pose a greater risk to consumers will face a tougher supervisory approach. Specific rules for the payday sector have been proposed and include.

Limiting loan rollovers to two.

Limiting the number of attempts by a payday lender to use CPAs to pay off a loan, to two.

Information on where to get free debt advice will be given to every borrower that rolls over a loan; and

Clear risk warnings to be displayed on all adverts and promotions along with more information about debt advice.¹³

11. In a press release to accompany the consultation, the FCA set out its approach to regulation of the payday loan sector:

The proposed regime will allow the FCA to provide stronger protection and better outcomes for consumers than the existing OFT regime. There will also be tougher requirements for payday lenders, including a mandatory affordability check on borrowers, limiting the number of loan roll-overs to two, and restricting (to two) the number of times a continuous payment authority (CPA) can be used. There will also be tighter restrictions on what payday lenders can say in adverts, while the FCA will be able to ban any that are misleading.¹⁴

Martin Wheatley, the FCA's chief executive, made it clear at that time that payday lending would be subject to stringent oversight by the FCA:

Today I'm putting payday lenders on notice: tougher regulation is coming and I expect them all to make changes so that consumers get a fair outcome. The clock is ticking.¹⁵

The FCA is expected to publish its final rules and guidance in February 2014.¹⁶

Other proposals

12. In advance of the FCA's publication on new rules and guidance, both the Government and the Official Opposition have put forward proposals to tighten regulation of the sector.

13 www.fca.org.uk/news/firms/consumer-credit-detail

14 www.fca.org.uk/news/firms/consumer-credit-detail

15 www.fca.org.uk/news/firms/consumer-credit-detail

16 www.fca.org.uk/news/firms/consumer-credit-detail

On 25 November, the Treasury announced that it would amend its Banking Reform Bill to introduce a cap on the cost of payday loans. In a press release the Chancellor of the Exchequer said:

We're going to have a cap on the total cost of credit—we're looking at the whole package, not just the interest fee, but also the arrangement fees as well as the penalty fees.¹⁷

13. The Official Opposition also announced that it would consider a ban on daytime advertising.¹⁸

14. We welcome the increased focus, across the political spectrum, on the payday loan sector. Both the Government and the Official Opposition are aware that changes need to be made in this area. While we welcome these initiatives, we believe that further action, including stronger regulation, is necessary to protect consumers.

17 www.gov.uk/government/news/government-to-cap-payday-loan-costs

18 www.bbc.co.uk/news/uk-politics-24886804

2 The Payday Loan Sector

Sector Facts

15. The payday loan sector is one which has experienced a rapid expansion in the past 10 years. In our 2012 Report, we noted that figures provided by Consumer Focus indicated that the payday loans market had increased from 0.3 million borrowers in 2006, to 1.2 million in 2009 and to 1.9 million in 2010.¹⁹ According to the OFT the payday loan market was worth between £2.0 and £2.2 billion in 2011–12, up from an estimated £900 million in 2008–09. The 2011–12 figure represented between 7.4 and 8.2 million new loans.²⁰

16. According to StepChange, a leading debt charity, there has been a corresponding rise in the number of people seeking help with payday loan debts:

Between January and June the charity helped 30,762 people with payday loan debts, nearly the same amount as for the whole of 2012, when the charity helped 36,413 people. While the amounts owed have only risen fractionally, the number of people with five or more payday loans continues to increase rapidly.²¹

Responsible lending and credit checking

17. The Consumer Credit Act requires lenders to assess creditworthiness before issuing a loan. As the Office of Fair Trading pointed out, this must be based on “sufficient information, obtained from a borrower where appropriate and from a credit reference agency where necessary”.²² In addition, the OFT’s *Irresponsible Lending Guidance*²³ makes clear that lenders are expected to assess affordability, which it describes as “each borrower’s ability to repay a specific loan in a sustainable manner and without experiencing financial difficulties”.²⁴

18. The OFT’s Compliance Review noted that 74 per cent of lenders who responded to its questionnaire said that they conducted affordability assessments for all new customers, while 67 per cent said that they did so for every new loan. That figure fell to 23 per cent in respect of each roll-over of an existing loan.²⁵ In coming to its assessment of compliance, the OFT found that the policies and procedures for checking were often:

Incomplete and lacked essential information, such as the loan acceptance criteria or how consumer data should be used to reach lending decisions.²⁶

If also found that companies’ record keeping was poor:

19 HC (2010–12)1649, para 33.

20 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf page 9

21 www.stepchange.org/Mediacentre/Pressreleases/Paydayloanproblemsworsen.aspx

22 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf, page 10

23 www.offt.gov.uk/shared_offt/business_leaflets/general/oft1107.pdf

24 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf page 13–14

25 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf, page 12

26 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf, page 12

Only six of the 50 lenders we visited were able to provide documentary evidence that they assessed consumers' likely disposable income as part of their affordability assessments.²⁷

19. Of more concern was the fact that the OFT found evidence that loans were approved despite the fact that bank statements clearly showed that borrowers were already making payments to other payday lenders.²⁸

20. Responding to these figures, Adam Freeman, Chief Executive Officer at Mr Lender, said that following the OFT Compliance Review, his company discussed "income and expenditure" with "every single customer that we will lend to".²⁹ Andy Lapointe, UK Public Affairs Manager at QuickQuid, declared that his company conducts "an affordability assessment and creditworthiness check with each and every loan and rollover".³⁰ Henry Raine, Head of Legal and Regulatory Affairs at Wonga, also asserted that they were assiduous in assessing affordability. However, he said that the "differentiating factor" of Wonga's approach was that they had invested in "buying as much data as we could" and worked with Callcredit to devise affordability tests:

There is a lot of public data you can buy in the marketplace to assess people's affordability. Obviously, our algorithm has got better the more we have lent, because you learn about people. Without going into too much detail, we also look at how people interact with the sliders and how they interact on the screen in terms of whether they are appropriate for the loan".³¹

21. The trade associations point out that the situation had improved since the publication of the OFT's Report³² and that recent survey data demonstrated that improvements were being made:

We recently surveyed the customers of the businesses I represent using YouGov. 93% of them said that their lender asked them about their income, employment and other financial details before approving a loan. 90% felt they were offered a fair loan based on the employment and financial information they provided.³³

While this is an improvement, the results still fall short of 100% compliance.

22. The FCA confirmed to us that it will incorporate the OFT's affordability guidance in its rules. The rules will state that:

a lender should, depending on the type, amount and cost of credit, consider a number of factors which include: the financial position of the customer; their credit history; the customer's financial commitments including other debts, rent, utilities

27 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf, page 12

28 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf, page 13

29 Q32

30 Q33

31 Q36

32 Q36

33 Q36

and other major outgoings; any future financial commitments; any future change in circumstances; and the vulnerability of the customer.³⁴

However, the FCA envisage some flexibility in companies' affordability tests and said that it would concentrate its focus on "higher-risk" firms.³⁵

23. We welcome the FCA's proposals to adopt the OFT's affordability guidance. However, we remain concerned that payday loan companies will continue to be allowed to adopt "an affordability test suitable to their business". While the FCA is right to concentrate on "higher-risk" firms we recommend that all payday loan companies should be required to resubmit their affordability tests to the FCA for approval before they can continue to work in the sector.

Real-time data

24. Our witnesses from the payday loan sector all highlighted the lack of data sharing as a barrier to more effective affordability tests. Wonga told us that they were working with "a number of industry players" to develop such a system and that "we need to be able to get hold of as much data as we can, on a reciprocal basis".³⁶ Andy Lapointe from Quickquid also said that he had participated in a number of meetings with the credit-reporting agencies in order to "get this built and to push it".³⁷ Andy Freeman, from Mr Lender, also declared that he was in favour of this approach, "If I knew today that this customer has a loan with QuickQuid and Wonga, there is no way I would lend to them".³⁸ He went on to say that "if I had that information, I would be the first to share it and I would be the first to use it".³⁹

25. Our witnesses from consumer and debt organisations also saw the need for real-time data for assessing affordability. Richard Lloyd representing Which? argued that:

If the industry wants to demonstrate that it can behave responsibly, it needs to get itself in a position where in real-time, or at least in quick-time, it can do checks on whether people have got loans with other players within the industry. That would be a minimum.⁴⁰

26. Peter Tutton from StepChange concluded that the industry was moving "extremely slowly" and what was needed was "something to make them move much, much more quickly".⁴¹ He also argued that the FCA should also have access so that it could "spot

34 Ev 30 and 31

35 Ev 31

36 Q38

37 Q38

38 Q39

39 Q39

40 Q122

41 Q124

wrongdoing as it is happening and intervene, rather than coming back months or years later”.⁴²

27. The Minister agreed that there was a need for “more dynamic data and information” and told us that in Autumn 2012 (now over a year ago) her Department had convened a round table on the matter. However, she conceded that “that there has not been the kind of progress and speed that we might have wanted from the industry on this issue”.⁴³ She added that:

If it transpired that the FCA was in need of any further powers in order to mandate that, then obviously, Government would be very sympathetic to any powers that the independent regulator needed that they feel that they do not have currently”.⁴⁴

28. Nadege Genetay from the FCA said that this was a focus of the Authority:

We are aware that progress in this area has been slow in the past. If the market can’t deliver on data sharing, and we conclude that we are best placed to ensure that real-time data-sharing takes place, we will not hesitate to take action.⁴⁵

In written evidence, the FCA also stated that it would be a requirement of payday lenders to submit data on their activities and that it was in consultation with the sector of the details of that data including, product sales and the number of loans they rollover.⁴⁶

29. It is clear that for short-term loans, a real-time database is a key tool for assessing the affordability of loans and whether individuals are applying for multiple loans. It is also possible that this greater transparency will increase competition in the sector and drive down costs for the consumer. Despite the sector’s apparent support for real-time data sharing, little progress has been made. We recommend that the FCA make clear to the sector that if real-time data-sharing has not been established by July 2014, the FCA will mandate its use as a condition of trading in the sector.

30. Six-monthly activity reports from payday lenders will help the FCA assess the market and the working practices of companies. However, we believe that more up to date data is necessary for the FCA to discharge its duty of oversight. We therefore recommend that the FCA has full access to any data-sharing programme established by the sector.

Rolling over of loans

31. According to the OFT, around 28 per cent of loans are rolled-over or refinanced, and one in 20 loans are rolled over or refinanced more than four times.⁴⁷ Of the 50 lenders inspected by the OFT, 44 allowed roll-overs, and 17 actively promoted rollovers in

42 Q122

43 Q156

44 Q156

45 Ev 30–33

46 *Ibid.*

47 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf, page 14–16

marketing material or at the point of sale as a ‘feature’ of the loan.⁴⁸ In addition, 15 lenders proactively alerted customers to the rollover option prior to the loan due date while it also found evidence of some lenders “deliberately encouraging borrowers to roll the loan over rather than repay”.⁴⁹

32. A key finding of the OFT Review was that:

A number [of payday lenders] will agree to roll-over loans even after the borrower had already missed a repayment—in our view, this should be prima facie evidence that the customer is in financial difficulties and the lending is unsustainable.⁵⁰

33. The OFT also highlighted the fact that evidence from debt advisers indicated that their clients had on average “rolled over their payday loans at least four times before seeking independent advice”.⁵¹ However, this may be a low estimate because OFT inspecting officers saw examples of loans which had been rolled over more than 12 times.⁵²

34. In its consultation, the FCA proposes to limit the number of rollovers to two and that lenders will have to “prove that rolling a loan over even once is in their customer’s best interest”.⁵³

35. Our witnesses from the payday loan sector gave a mixed response to placing a limit on the number of rollovers. QuickQuid told us that it had already introduced a limit of two rollovers for its customers.⁵⁴ The Consumer Finance Association has also introduced a limit of three roll-overs per customer for all of its members.⁵⁵ Mr Hamblin-Boone told us that the CFA had not come to a position lowering that limit further but said that there was “an indication that two rollovers may be an option”.⁵⁶ By contrast, Adam Freeman from Mr Lender was opposed, stating that the imposition of a limit would be “detrimental to the consumer”.⁵⁷ Wonga argued that although rollovers were not widely used by its customers, it did not believe that limiting them was “the big issue” in terms of how the industry needed to be regulated.⁵⁸ Greg Stevens from the CCTA was not convinced by a limit either. He believed the figure of two was “arbitrary”,⁵⁹ and that affordability not the number of rollovers was the key issue.⁶⁰

48 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf, page 15

49 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf, page 15

50 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf, page 15

51 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf, page 15

52 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf, page 15

53 Ev 31–32

54 Q82

55 www.cfa-uk.co.uk/media-centre/press-releases/current-press-releases/cfa-responds-to-bis-and-offt-reports.html

56 Q82

57 Q79

58 Q82

59 Q82

60 Q82

36. Concerns were raised that if a limit of two rollovers was to be introduced, there was a risk that debts which used to be rolled-over could simply be repackaged as a new loan.⁶¹ Russell Hamblin-Boone from the Consumer Finance Association did not consider this to be a risk because the consultation made clear that any limit would apply to both rollovers and refinancing⁶². In a similar vein, Mr Raine explained this would not be possible at Wonga because its policy was not to issue a new loan until a customer had paid off an existing loan.⁶³

37. Our representatives from consumer organisations were in favour of limiting the number of rollovers but believed that the FCA could go further. Martin Lewis, from Moneysavingexpert.com was in favour of limiting the number of roll-overs to one,⁶⁴ and Richard Lloyd from Which? while accepting that a limit of two was a sensible place to start believed that one rollover was preferable.⁶⁵ Peter Tutton from StepChange also advocated a limit of one.⁶⁶ Gillian Guy, from Citizens Advice, was in favour of a limit, but did not state a preference between one and two.⁶⁷ In Citizens Advice's subsequent response to the FCA's consultation it stated that "we believe that a cap of one rollover would be more appropriate".⁶⁸ It is also important to note that the Money Advice Service—the Government's statutory body for the provision of money and debt advice—has also advocated a limit of one rollover.⁶⁹

38. Payday loans should only be considered as a solution to a short-term financial shortfall. A limit of two roll-overs, while a welcome development, is not a short-term fix as it would represent a 3-month loan. Therefore, we recommend that the FCA sets a limit of one roll-over for each payday loan.

Continuous Payment Authorities

39. Continuous payment authorities (CPAs) are payment mechanisms involving debit or credit cards which:

Allow business to take regular payments from a customer's bank account, within the terms of the agreed authority, without having to seek express authorisation for each payment.⁷⁰

40. The use of CPAs was highlighted by the OFT as a significant source of complaints. There were two particularly common grounds for complaint:

61 Qq 83 and 163

62 Q83

63 Q83

64 Q133

65 Q133

66 Q135

67 Q132

68 www.citizensadvice.org.uk/index/policy/policy_publications/er_credit_debt/cr_creditanddebt/consumer_credit.htm

69 www.moneyadviceservice.org.uk/en/static/publications#responses

70 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf, page 22

The consumer was not aware that they had signed up to a CPA, or how it would work; and

Lenders taking frequent part payments over several days or weeks, often leaving the consumer facing significant hardship.⁷¹

41. Of the 686 complaints received during a six-month monitoring period, 61 per cent related to aggressive or unsatisfactory debt collection practices.⁷²

42. At present, payday lenders can repeatedly access customers' bank accounts through a CPA.⁷³ In its consultation, the FCA has proposed limiting payday lenders to two uses of a CPA per loan. On each of those two occasions, the lender would only be able to take full payment and not smaller amounts. The FCA also proposes that lenders will have to provide:

Adequate explanations including how to cancel the CPA, how they will use the CPA and whether further attempts may be made to collect payment.⁷⁴

43. Our representatives from the payday sector believed that CPAs were the best way of collecting money for both the lender and the customer. Andy Lapointe from QuickQuid argued that the benefit to the customer was that if there was a failed payment under the CPA "their bank is not going to charge them a fee".⁷⁵ He contrasted this with the fees charged by a bank for a BACS payment or a cheque. Mr Lapointe went on to argue that this was the "primary reason" why the CPA was beneficial to the customer for collections.⁷⁶

44. Adam Freeman from Mr Lender believed that so long as it was used properly, the CPA was "perfect for the product", both for the consumer and the lender.⁷⁷ He argued that limiting the number of CPA attempts would be "detrimental" to the borrower:

They might say that, on 31 October, they are going to earn an income of £1,500. You do not know whether that company is going to pay them at 1 o'clock in the morning or 3 o'clock in the morning; you do not know. If you try to take that money from the customer at, say, 1 o'clock in the morning and it fails, you cannot then, with what the FCA are putting out there initially, try to get that money from the customer, so that customer is now going to become a defaulting customer because you cannot take the money from the customer.⁷⁸

He also saw no issue with trying repeatedly to use a CPA to recover a debt:

71 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf, page 22

72 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf, page 23

73 Ev 31

74 *Ibid.*

75 Q105

76 Q105

77 Q106

78 Q107

If I tried 10 times that day to get £250 from that customer as £250, what is the difference to the customer? There is no detrimental effect to them. It is not costing them anything. It is not costing us.⁷⁹

45. In its survey of payday loan customers, the Consumer Finance Association asked the following question:

“Did the lender explain to you how your bank details would be used to take the money from your account?”

The CFA responded that 85% of respondents said that that was a clear explanation.⁸⁰

46. However, this was disputed by Citizens Advice:

People do not, in the first instance, understand either that they have signed up to a CPA, which is very often the case, or how it differs from a direct debit, or that it does differ.⁸¹

47. Gillian Guy went on to argue that customers did not get notice of when a payment was about to be taken and that this was of particular importance to people coming to the Citizens Advice as often they were “living hand-to-mouth”.⁸² Richard Lloyd from Which? agreed that there should be a requirement for lenders to give notice that they are going to use a CPA.⁸³ In terms of the number of times a lender should be able to use a CPA, Peter Tutton from StepChange said:

We would expect lenders to start thinking, if CPA fails once, “Okay, why has that failed? What should we do as a lender to try to make sure, if this person is in financial difficulty, we are not making it worse?” rather than, “If we have not heard from them, we will just take the money anyway and maybe we will add some more charges”.⁸⁴

48. The Minister told us that BIS research had confirmed that customers were not being given sufficient information about CPAs,⁸⁵ and she welcomed proposals to limit to two the number of CPA attempts over the course of the loan.⁸⁶

49. Even if a customer has signed up to a CPA, they have the right to cancel it. Andy Lapointe from QuickQuid said that his company was fully aware of this right and had a “24/7 call centre” open 365 days a year which customers can call to cancel a CPA. They could also cancel a CPA by e-mail.⁸⁷ In addition, Mr Lapointe said that his customers

79 Q107

80 Q108

81 Q139

82 Q139

83 Q140

84 Q140

85 Q159

86 Q159

87 Q106

received “a notice ahead of time that we are going to be debiting, so it should not be a surprise and it does give them the option to cancel”.⁸⁸

50. Gillian Guy did not agree. She said that the right to cancel a CPA had not been “made clear enough” to customers.⁸⁹ Lesley Titcomb from the FCA also believed that further information on a customer’s right to cancel was necessary:

We absolutely understand that there is a need to make it clearer to people that they have a right to cancel these, and the point that was picked up earlier about the bank’s staff then acting on that. Also, there are various triggers we have put in our rules where the lenders have to refer people for debt advice as well, and also we are very clear that they have to be up-front with people about how the CPA is likely to work and when it is likely to be withdrawn, but we have not put the three-day specific point in yet”.⁹⁰

51. We agree with the FCA’s proposals to limit to two the use of the Continuous Payment Authority by payday lenders. We recommend that payday lenders be required to give 3 working days notice before using a CPA and that each notice sets out, at the start, the right of a customer to cancel the CPA.

Advertising

52. According to the OFT, most websites in this sector made claims which it considered to be “potentially misleading”.⁹¹ The OFT went on to highlight the fact that 30 of the 50 websites it reviewed:

Emphasised the speed and simplicity of loan applications—sometimes to the extent that, if the claims were true, this would imply irresponsible lending and encourage irresponsible borrowing.⁹²

53. In addition, the OFT found that 14 sites failed to show either a representative example or APR where required. In a further 12 cases, examples of the cost of loans were given but were not prominent enough, and there were other examples where the APR was not prominent enough. 20 sites either omitted or downplayed important information about the costs and risks to the borrower.⁹³

54. Examples of what the OFT believed might be misleading or indicative of irresponsible lending included the following statements:

‘No credit checks’

‘No Credit? No Problem!’

88 Q106

89 Q139

90 Q162

91 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf, page 17.

92 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf, page 18.

93 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf, page 18.

‘Loan guaranteed’
‘No questions asked’
‘Applications processed 24/7’
‘Instant cash’
‘Borrow up to £750 instantly’.⁹⁴

Standards expected

55. The OFT set out the standards which it expected payday lenders to meet in term of advertising, which are set out below:

Lenders must not suggest that credit is available regardless of the borrower’s circumstances. Statements such as ‘no credit checks’ or ‘extension guaranteed’ are either misleading or evidence of irresponsible lending.

Lenders must only use speed of process as a selling point where such claims are true and not misleading.

Lenders should be aware that emphasising speed may amount to an ‘incentive’ triggering the requirement to show a representative APR.

Where a representative example or APR is triggered, this must be more prominent than the information triggering it—this means that it must stand out more, so it is likely to be seen by consumers and have an impact.

Lenders should be aware that emails or texts to borrowers, encouraging them to take out a loan or to rollover, may amount to an advertisement and so must comply with the Consumer Credit (Advertisements) Regulations.

Lenders must not specifically target loans at vulnerable consumers.⁹⁵

56. In its written evidence, the FCA said that its proposals would require all payday loan adverts to include “a warning reminding potential customers that many people don’t pay back loans on time and that this can lead to serious money problems”.⁹⁶ It would also need to include a “line directing customers to free, independent debt advice”.⁹⁷ Should the FCA find adverts to be misleading or in breach of its rules, the FAC would have the power to ban them.⁹⁸

57. Russell Hamblin-Boone, representing the Consumer Finance Association, told us that although the payday loan charter did not specifically address advertising and marketing,

94 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf, page 18

95 www.offt.gov.uk/shared_offt/Credit/oft1481.pdf, pages 18 and 19

96 Ev 31

97 *Ibid.*

98 *Ibid.*

these matters were addressed in a broader code of practice used by its members.⁹⁹ He went on to say that the code of practice:

Requires the lenders to comply with all of the marketing and advertising laws that exist. We work very closely with the Advertising Standards Authority, and we have just set up some workshops with them to work on how short term lenders should be marketing and what their adverts should look like.¹⁰⁰

58. Gillian Guy from Citizens Advice believed that there was a wide range of issues which needed to be addressed in terms of advertising, in particular a better analysis of the market payday loan companies are targeting:

We do hear that they are not targeting the people that we are talking about, and yet they are on daytime television; they use cartoons; they put it at times when people that we see with multiple debts might be at home, because they are unemployed. It is that kind of targeting.¹⁰¹

There are no health warnings on these adverts. There is nothing about the dangers that they could present, or, indeed, that they are not the solution to all things and there might be some other way out of a debt situation, rather than more debt.¹⁰²

59. Martin Lewis was more forthright in his concerns about the way in which payday loans were advertised and marketed:

We are in danger of grooming a new generation towards this type of borrowing. If you think we have got problems now, you wait until 10 years' time.¹⁰³

60. Citing a poll from his website moneysavingexpert.com, Mr Lewis highlighted the impact of daytime advertising, especially on children's channels:

14% of parents of under-10s, when they have said, "No, you cannot have your toy," or whatever they have asked for, have had a payday loan company quoted to borrow the money from. 30% of under-10s, in a poll of their parents that we have done on the website, are joking about these slogans, and laughing and repeating slogans of payday lenders.¹⁰⁴

61. While he did not advocate a wholesale ban on advertising he believed that there should be a "blanket ban" on advertising children's television channels and children's television programmes.¹⁰⁵ He also argued that closer attention needed to be paid to the "style and nature" of adverts:

99 Q84

100 Q84

101 Q136

102 Q136

103 Q136

104 Q136

105 Q136

There are cartoon puppets that make it seem fun, and deliberately fly in the face of the messages we know we want to get out there. They say, “It is easy;” they deliberately try and say, “The other messages you are hearing are wrong.” It is inappropriate propaganda. We need, when these adverts come on, all the health warnings that we are saying today to be part of those adverts”.¹⁰⁶

62. Research by Ofcom appears to support the concerns of consumer groups. On 10 December it published research into payday loan advertisement spots on TV. Against a backdrop of a 64% year-on-year increase since 2008, it found that:

- In 2008 there were 12 million ‘impacts’ (the total number of times an advert is seen by viewers) among adults for payday loans adverts. By 2012 this figure had risen to 7.5 billion— an average of 152 payday loan adverts per viewer on TV last year.
- Children aged 4–15 saw 3 million payday loan TV adverts in 2008. This had grown to 466 million by 2011. By 2012, 596 million adverts were seen by 4–15 year olds, accounting for 0.7% of adverts seen by this age group. This meant that the average child aged 4–15 saw 70 payday loan adverts last year.
- More than half (55%) of all payday loans adverts on TV were broadcast in the daytime schedule between 9:30am and 4:59pm. Sixteen per cent were shown between 5:00pm and 8:59pm; 15% between 11:00pm and 5:59am; 9% between 6:00am and 9:29am and the remaining 6% between 9:00pm and 10:59pm.¹⁰⁷

63. In written evidence, the FCA told us that it is proposing that:

Payday loan adverts include a warning reminding potential customers that many people don’t pay back loans on time and that this can lead to serious money problems. Adverts will also include a line directing customers to free, independent debt advice. What’s more, where adverts are misleading and breach our rules, we have the power to ban them.¹⁰⁸

64. We welcome the FCA’s proposals to require all payday adverts to include both a “health warning”, and directions to debt advice services. We recommend that these warnings be subject to the same requirements for prominence as APRs and that the “health warning” should be repeated at every stage of the application process.

65. We further recommend that the FCA include the warning that the use of payday loans could affect an individual’s credit rating for other financial products, including mortgage applications, should evidence support that position.

66. Research undertaken by Ofcom has shown that payday loan advertising is prevalent on daytime television and children’s channels. We do not believe that these are appropriate channels for payday loans. We recommend that payday loan adverts are banned from programming aimed at children.

106 Q136

107 <http://media.ofcom.org.uk/2013/12/10/ofcom-publishes-research-on-payday-loan-tv-adverts/>

108 Ev 31

Referrals and Marketing

67. In addition to television adverts, payday loans are increasingly marketed through text messages and emails. Peter Tutton from StepChange said that his clients were “being bombarded by texts and phone calls”, promoting high cost loans:¹⁰⁹

We know that, very often, those loans make the problem worse. So why is it that unsolicited marketing of what can be a very high-risk product is allowed?¹¹⁰

68. Mr Hamblin-Boone told us that the Consumer Finance Association would “not allow people to be spammed”,¹¹¹ and that it was companies which were not in trade associations that had created the problems with regard to lead generation.¹¹²

69. Andy Lapointe from QuickQuid said individuals had to “opt in to receive texts from us” while Wonga asserted that it does not text people “as a way of getting business”. Adam Freeman also said that Mr Lender would “never randomly text somebody, ‘Do you need a loan? Come to Mr Lender’” and that he had “never purchased lists or done anything like that”.¹¹³ However, he said that Mr Lender used ‘lead-generators’, but insisted that this was not cold-calling by-proxy:

This is online lead generations, where someone has gone to a broker’s website and applied for a loan, and we have purchased that lead. That customer knows they are a Mr Lender customer. It is not a cold call. We know that they are a customer. We can facilitate them.¹¹⁴

70. StepChange described its clients as people who were “at their lowest ebb” and “massively financially vulnerable”, and was opposed to the unsolicited marketing of loans. He argued that the FCA should consider “a ban on unsolicited marketing of payday lending.”¹¹⁵

71. Following the evidence session a Member of our Committee reviewed texts he had received in relation to unsolicited offerings for payday loans. The following is his experience:

I found 9 texts directing me to a website offering payday loans: www.txt4payday.com.

On that website I filled in details asking for a £200 loan over a month period and pressed the button to "GET YOUR CASH" expecting to be quoted a £50 charge as advertised on various payday lenders sites as the example loan.

109 Q137

110 Q137

111 Q84

112 Q15

113 Q102

114 Q100

115 Q137

I then found myself directed to the QuickQuid website where I was being offered £400 over 3 months with a total cost of £754 to pay back. I left it at that and didn't fill in any further details on QuickQuid's website or even press any buttons.

I immediately received emails and texts and calls as follows:

Tuesday 5th November 13.16 email saying there was one more step;

Tuesday 5th November 13.16 email giving pre-contract info;

Tuesday 5th November 13.40 text urging me to sign the contract;

Tuesday 5th November 13.55 call from a USA number to sign me up – I declined;

Tuesday 5th November 14.13 email again giving me pre-contract information;

Wednesday 6th November 6.32 email saying Hurry—Application expiring soon;

Wednesday 6th November 7.59 email again giving pre-contract info; and

Wednesday 6th November 12.09 email giving Account Login Information.

72. A second example was more concerning. In order to test the veracity of these referrers, the same Member made a fictitious application in the name of Boris Peep with the member's constituency office address given as the home address. The loan offer was received by text at 11.35am on 7 November and "Boris" was directed to a website. At 12.00pm the following day, a text was received stating that the loan had been approved. This was followed by another at 12.00pm on 11 November and a third at 1.15pm on 12 November.¹¹⁶

73. Peter Tutton believed that the FCA needed to consider "a ban on unsolicited marketing of payday lending".¹¹⁷ He told us that StepChange is now advising its clients to send unsolicited texts received so that they can try to find out who was sending them. However, Which? is also running a campaign "Call Time" in which it advises people receiving nuisance calls and texts to forward them to the Information Commissioner.¹¹⁸ Nuisance text messages can be simply reported by forwarding them to a dedicated "shortcode" number (7726).

74. Anecdotal evidence from consumer groups and others has demonstrated that unsolicited marketing or brokering of payday loans through texts and emails is an increasing problem. However, there is not yet a sufficient evidence base to understand who is driving this market, which groups are being targeted and when they are sent.

75. We recommend that the FCA highlights the '7726' short code in all its literature on payday loans and discusses with the Information Commissioners Office how texts on payday loans could be disaggregated to establish the extent of bad practice in the sector. If this evidence base demonstrates inappropriate targeting or marketing we

116 Ev 38

117 Q137

118 www.which.co.uk/campaigns/nuisance-calls-and-texts/

recommend that the FCA moves quickly to ban the brokering of payday loans through email, texts and other personal mobile devices. We also recommend that the FCA devises and issues a guidance note for payday lenders along similar lines to that established by the Claims Management Regulator in its Marketing and Advertising Guidance.

76. We further recommend that the FCA conducts a holistic review of the impact of payday loan advertising, the practices of referrals companies working in the payday loan sector and their use of websites advertising payday loans. That review should inform a stricter code of practice in the advertising and marketing of short-term loans.

Debt Advice

77. Earlier in our Report, we welcomed the FCA’s proposals to include links to independent debt advice on all payday loan adverts. Although we did not receive specific evidence on funding for debt advice, it is clear that the demand for that advice is increasing at a significant rate. Peter Tutton of StepChange told us that the payday loan market had doubled in the last four years and that the number of people it was advising on payday loan debts had risen eightfold.¹¹⁹ This increase in consumers seeking advice was also reported by Citizens Advice who estimated that it had seen a “tenfold growth” over the past four years.¹²⁰

78. Government advice on financial matters is provided by the Money Advice Service (MAS), a statutory body established to improve people’s understanding and knowledge of financial matters. It works with and supports organisations in the financial services industry, the third-sector, across government and elsewhere.¹²¹ MAS is funded by an allocation from a levy on financial services firms regulated by the FCA. When payday loan companies come under the FCA regulation they will be liable for that levy.

79. MAS distributes grants to organisations which deliver free debt advice. According to its Annual Review, Directors’ Report and Financial Statements for 2012–13, MAS:

Made over £26.7m of grant funding available to six lead organisations; Citizens Advice, Capitalise, Community Finance Solutions, Greater Merseyside Money Advice Partnership, Bristol Debt Advice Centre and East Midlands Money Advice, to work with over 240 participant organisations to deliver free debt advice over the course of the year.¹²²

These grants come out of the financial settlement agreed to by MAS and the FCA. It is not clear how the introduction of payday loan companies into the levy will affect MAS funding or how any additional funding would be fed through to front-line debt advice. However, it is very likely that the FCA’s proposals for the signposting of debt advice will further increase the demand for debt advice.

119 Q115

120 Q117

121 www.moneyadviceservice.org.uk/en/static/about-us

122 www.moneyadviceservice.org.uk/en/static/publications

80. Debt charities and consumer organisations have made clear that number of people seeking debt advice for payday loans is increasing at an alarming rate. When payday loans come under the authority of the FCA, they will be subject to a levy. This must be additional to the existing levy and not used to off-set the level of payments by other financial organisations. We recommend that the levy paid by payday lenders is ring-fenced by the Money Advice Service solely for the funding of front-line debt advice services.

Conclusions and recommendations

Recent development

1. We welcome the increased focus, across the political spectrum, on the payday loan sector. Both the Government and the Official Opposition are aware that changes need to be made in this area. While we welcome these initiatives, we believe that further action, including stronger regulation, is necessary to protect consumers. (Paragraph 14)

Responsible lending and credit checking

2. We welcome the FCA's proposals to adopt the OFT's affordability guidance. However, we remain concerned that payday loan companies will continue to be allowed to adopt "an affordability test suitable to their business". While the FCA is right to concentrate on "higher-risk" firms we recommend that all payday loan companies should be required to resubmit their affordability tests to the FCA for approval before they can continue to work in the sector. (Paragraph 23)

Real-time data

3. It is clear that for short-term loans, a real-time database is a key tool for assessing the affordability of loans and whether individuals are applying for multiple loans. It is also possible that this greater transparency will increase competition in the sector and drive down costs for the consumer. Despite the sector's apparent support for real-time data sharing, little progress has been made. We recommend that the FCA make clear to the sector that if real-time data-sharing has not been established by July 2014, the FCA will mandate its use as a condition of trading in the sector. (Paragraph 29)
4. Six-monthly activity reports from payday lenders will help the FCA assess the market and the working practices of companies. However, we believe that more up to date data is necessary for the FCA to discharge its duty of oversight. We therefore recommend that the FCA has full access to any data-sharing programme established by the sector. (Paragraph 30)

Rolling over of loans

5. Payday loans should only be considered as a solution to a short-term financial shortfall. A limit of two roll-overs, while a welcome development, is not a short-term fix as it would represent a 3-month loan. Therefore, we recommend that the FCA sets a limit of one roll-over for each payday loan. (Paragraph 38)

Continuous Payment Authorities

6. We agree with the FCA's proposals to limit to two the use of the Continuous Payment Authority by payday lenders. We recommend that payday lenders be

required to give 3 working days notice before using a CPA and that each notice sets out, at the start, the right of a customer to cancel the CPA. (Paragraph 51)

Advertising

7. We welcome the FCA's proposals to require all payday adverts to include both a "health warning", and directions to debt advice services. We recommend that these warnings be subject to the same requirements for prominence as APRs and that the "health warning" should be repeated at every stage of the application process. (Paragraph 64)
8. We further recommend that the FCA include the warning that the use of payday loans could affect an individual's credit rating for other financial products, including mortgage applications, should evidence support that position. (Paragraph 65)
9. Research undertaken by Ofcom has shown that payday loan advertising is prevalent on daytime television and children's channels. We do not believe that these are appropriate channels for payday loans. We recommend that payday loan adverts are banned from programming aimed at children. (Paragraph 66)

Referrals and marketing

10. Anecdotal evidence from consumer groups and others has demonstrated that unsolicited marketing or brokering of payday loans through texts and emails is an increasing problem. However, there is not yet a sufficient evidence base to understand who is driving this market, which groups are being targeted and when they are sent. (Paragraph 74)
11. We recommend that the FCA highlights the '7726' short code in all its literature on payday loans and discusses with the Information Commissioners Office how texts on payday loans could be disaggregated to establish the extent of bad practice in the sector. If this evidence base demonstrates inappropriate targeting or marketing we recommend that the FCA moves quickly to ban the brokering of payday loans through email, texts and other personal mobile devices. We also recommend that the FCA devises and issues a guidance note for payday lenders along similar lines to that established by the Claims Management Regulator in its Marketing and Advertising Guidance. (Paragraph 75)
12. We further recommend that the FCA conducts a holistic review of the impact of payday loan advertising, the practices of referrals companies working in the payday loan sector and their use of websites advertising payday loans. That review should inform a stricter code of practice in the advertising and marketing of short-term loans. (Paragraph 76)

Debt Advice

13. Debt charities and consumer organisations have made clear that number of people seeking debt advice for payday loans is increasing at an alarming rate. When payday loans come under the authority of the FCA, they will be subject to a levy. This must

be additional to the existing levy and not used to off-set the level of payments by other financial organisations. We recommend that the levy paid by payday lenders is ring-fenced by the Money Advice Service solely for the funding of front-line debt advice services. (Paragraph 80)

Formal Minutes

Tuesday 17 December 2013

Members present:

Mr Adrian Bailey, in the Chair

Mr William Bain	Caroline Dinenage
Mr Brian Binley	Rebecca Harris
Paul Blomfield	Ann McKechin
Mike Crockart	Nadhim Zahawi

Draft Report (*Payday Loans*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 80 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Seventh Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report (in addition to that ordered to be reported for publishing on 5 November 2013).

[Adjourned till Tuesday 7 January at 10.00 am

Witnesses

Tuesday 5 November 2013

	<i>Page</i>
Henry Raine , Head of Legal and Regulatory Affairs, Wonga, Greg Stevens , Chief Executive, Consumer Credit Trade Association, Adam Freeman , Chief Executive Officer, Mr Lender, Russell Hamblin-Boone , Chief Executive, Consumer Finance Association and Andy Lapointe , UK Public Affairs Manager, QuickQuid	Ev 1
Gillian Guy , Chief Executive, Citizens Advice, Martin Lewis , moneysavingexpert.com, Peter Tutton , Head of Policy, StepChange and Richard Lloyd , Executive Director, Which?	Ev 15
Jo Swinson MP , Minister for Employment Relations and Consumer Affairs, Department for Business, innovation and Skills, Lesley Titcomb , Chief Operating Officer and Programme Sponsor of Consumer Credit, Financial Conduct Authority, Nadege Genetay , Head of Banking, Lending and Protection Policy, Financial Conduct Authority and David Fisher , Anti Money Laundering, Consumer Credit, Office of Fair Trading	Ev 22

List of printed written evidence

1	118118 Money	Ev 29
2	Financial Conduct Authority	Ev 30
3	Financial Ombudsman Service	Ev 33
4	Ingacity Limited	Ev 34
5	Office of Fair Trading	Ev 37
6	Mike Crockart MP, Member of the Committee	Ev 38

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2013–14

First Report	Women in the Workplace	HC 342-I/II/III(<i>Cm 8701</i>)
Second Report/First Joint Report	Scrutiny of Arms Exports and Arms Control (2013): Scrutiny of the Government's UK Strategic Export Controls Annual Report 2011 published in July 2012, the Government's Quarterly Reports from October 2011 to September 2012, and the Government's policies on arms exports and international arms control issues	HC 205
Third Report	The Kay Review of UK Equity Markets and Long-term Decision Making	HC 603(HC 762)
Fourth Report	Consultation on a Statutory Code for Pub Companies	HC 314
Fifth Report	Open Access	HC 99-I/II(HC 833)
Sixth Report	Draft Consumer Rights Bill	HC 697-I/II/III

Session 2012–13

First Report	The Hargreaves Review of Intellectual Property: Where Next?	HC 367-I/II(HC 579)
Second Report/First Joint Report	Scrutiny of Arms Export Controls (2012): UK Strategic Export Controls Annual Report 2010, Quarterly Reports for 2010 and January to September 2011, the Government's review of arms exports to the Middle East and North Africa, and wider arms control issues	HC 419
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Fifth Report	Apprenticeships	HC-I/II/III(HC 899)
Sixth Report	The Insolvency Service	HC 675 (HC 1115)
Seventh Report	Too Little, Too Late: Committee's observations on the Government Response to the Report on Overseas Students and Net Migration	HC 1015(<i>Cm 8622</i>)
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Third Report	Government Assistance to Industry	HC 561
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Joint Report	Export Controls Annual Report 2009, Quarterly Reports for 2010,licensing policy and review of export control legislation	
Fifth Report	Government Assistance to Industry: Government Response to the Committee's Third Report of Session 2010–11	HC 1038
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Eighth Report	Trade and Investment: China	HC 1421 (HC 1568)
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Tenth Report	Pub Companies	HC 1369-I/II (<i>Cm 8222</i>)
Eleventh Report	Time to bring on the referee? The Government's proposed Adjudicator for the Groceries Code: Government Response to the Committee's Ninth Report of Session 2010-12	HC 1546
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Fourteenth Report	Debt Management	HC 1649 (HC 301)
Fifteenth Report	Stamp Prices	HC 1841-I/II

Oral evidence

Taken before the Business, Innovation and Skills Committee on Tuesday 5 November 2013

Members present:

Mr Adrian Bailey (Chair)

Mr Brian Binley
Paul Blomfield
Katy Clark
Mike Crockart

Rebecca Harris
Ann McKechin
Mr Robin Walker
Nadhim Zahawi

Examination of Witnesses

Witnesses: **Henry Raine**, Head of Legal and Regulatory Affairs, Wonga, **Greg Stevens**, Chief Executive, Consumer Credit Trade Association, **Adam Freeman**, Chief Executive Officer, Mr Lender, **Russell Hamblin-Boone**, Chief Executive, Consumer Finance Association, and **Andy Lapointe**, UK Public Affairs Manager, QuickQuid, gave evidence.

Q1 Chair: Good morning, and thank you for agreeing to appear before the Committee. Before we go into the questions, may I ask you to introduce yourselves for voice transcription purposes?

Henry Raine: I am Henry Raine. I am the Head of Legal and Regulatory Affairs at Wonga.

Greg Stevens: I am Greg Stevens. I am the Chief Executive of the CCTA.

Russell Hamblin-Boone: I am Russell Hamblin-Boone. I am Chief Executive of the Consumer Finance Association.

Adam Freeman: I am Adam Freeman; I am the CEO of Mr Lender

Andy Lapointe: I am Andy Lapointe. I am UK Public Affairs Manager for QuickQuid.

Q2 Chair: Before I open with the questions, can I emphasise that, with five of you, there is no need for every person to answer every question? We only have an hour with you, and we have a considerable number of questions. However, in saying that, if you disagree with a previous answer, or if you feel there is something you need to add to a previous answer, feel free to do so.

I am going to start with the industry charter. As you will know, this was introduced in November of last year. It was designed to ensure responsible lending. Since then, CAB, StepChange and OFT have reported that the reverse seems to have happened. There has been a significant increase in complaints about, and problems with, the industry. What is your reason for that? Who will lead on it? Can you give an explanation?

Greg Stevens: It is important to know what the Consumer Credit Trade Association is, in terms of its membership base. We have 373 members, which range from SMEs to large firms. Many of our members are community commercial lenders and many are second and third-generation businesses. They are, and always have been, attempting to do the best they can do with regard to their customers. We have 61 members who either partially or wholly provide payday-lending products, and that is reducing, because many members have moved away from

payday lending over the course of the last 12 months. The amount of payday-lending members has decreased within the Consumer Credit Trade Association by 13%. Many of our members are coming out of this market, as I said. 70% of members are still in traditional credit granting.

The charter and the code of practice, which were introduced in November 2012, have changed things. We see it in the number of complaints that actually come through to us. The total number of complaints about payday lending for the year 2012 was 15. During the period we have measured in 2013, year to date, there have been 36 complaints, 19 of which came from one member. There is a reduction in terms of the overall number of complaints, because we have people who are doing more loans in those areas. The actual number of loans has increased, even though the number of our members has decreased to an extent. The feedback that we have taken from members is that many things are changing. We do not believe that credit is being given in terms of the changes that have taken place and that continue to take place.

Coming back to the figures and assertions that are made, we would be very concerned if the statistics from Citizens Advice were found to be representative, accurate and up-to-date. We have asked for granularity; we have asked for clarity on the customers, including customer details and agreement numbers. These have not been forthcoming. When assertions about companies are made, we do need evidence in terms of case studies. We need those to take back to our members to understand what is deemed to have gone wrong, so that we can actually work with the members.

The Consumer Credit Trade Association is 122 years old. We have been working with regulators and legislators over that period to ensure best practice for consumers, and we continue to do that. We are doing regular training and compliance meetings with our members to ensure that they actually provide the best service.

Q3 Chair: May I follow up on that? You said that complaints had increased to 36, 19 of which were

from one company. Can you give details of what those complaints are about?

Greg Stevens: No, I cannot. I do not have the breakdown.

Q4 Chair: With respect, you have just criticised others for a lack of granularity. It would appear that you are as deficient in that as they are.

The charter actually does outline that there should be affordability checks. A loan has to be suitable to be taken out, and it must take into account the circumstances of the individual. But the OFT report said that only 74% of lenders actually took affordability into account. 67% said they did not do so for every loan, and 23% said they did so for a rollover. That seems to conflict with the charter that the industry itself has set out. How do you explain that?

Henry Raine: Mr Chairman, I wonder if I could give some context—not on behalf of the industry, but on behalf of Wonga—on the background to this. One thing I would point out—this is not to decry any people on this panel or elsewhere—is that, not surprisingly, perhaps, the OFT found that compliance was better among the larger lenders, because, frankly, we have more sophisticated systems to do so.

I think that the charter was an important development. *[Interruption.]* The charter was an important development. According to the OFT, some 90% of the industry came together to agree those provisions. It will take time for some of the lenders to comply with them. I think actually, the picture is mixed. As far as Wonga is concerned, as people know, we have always done thorough credit-checking; we have always bought and returned data. You are seeing improvements across the sector.

The other thing to be borne in mind is that the OFT has done its own review of the sector. I believe they will tell you later that, of the 50 lenders they visited, 19 are no longer carrying on payday-loan activities. That has to be seen in the context of this process as well. Because we do not have the granularity as to who has done what, we will have to bear that in mind as well.

I think that the charter has made some progress; I think it is absolutely right that people keep focusing on it and the commitments.

Q5 Paul Blomfield: Very specifically on this, I think it was reported earlier this year that Wonga had had a significant increase in the number of bad debts it was writing off. That does suggest a less than robust approach to affordability.

Henry Raine: That is not the case, actually.

Paul Blomfield: It was reported in the papers, was it not?

Henry Raine: I know. It was a mistake.

Paul Blomfield: The papers were wrong, were they?

Henry Raine: I think they took the wrong figure. I addressed this with the Public Accounts Committee. Because in our previous accounts we had not shown the amount of money we had lent, which was over £700 million, the comparison was made between £77 million and a lower number. The National Audit Office confirmed at that meeting that the correct

comparison was to compare the write-off with the amount of money lent. That is roughly 9.7%; it has not changed. That was just a misreporting.

Q6 Mr Walker: £77 million of bad loans is still a substantial number. That is a substantial number of people, considering the average size of the loans that we are talking about, who are presumably left in a position where their credit rating is ruined and they are unable to repay a debt. That, surely, is a matter of concern if you are saying that you are rigorously assessing affordability criteria.

Henry Raine: I think, in one sense, any loan—Wonga's business is aimed to lend to people who can pay us back. That is how we make money. The vast majority of people pay us back on time. We freeze interest after 60 days. 25% of people pay us back early. So in one context, of course, any loan—but we are lending small-sum credit to vast numbers of people, and I think it is fair to say that those figures compare favourably with other lenders in the industry, including credit cards and banks.

We also have a very significant system, as you know, to help people in financial difficulty, including freezing interest after 60 days and allowing people to go online and do their own income-and-expenditure form and, effectively, have a proposal accepted. So we do everything we can to lessen the effect of bad debt.

Q7 Mr Walker: Just coming back on this 60-days point, a lot of your advertising will focus on much shorter periods of time, and argue that you have great cost transparency over 18 days, which a lot of your advertising focuses on. If people end up borrowing for 60 days because they are rolling over loans, they end up paying a lot more.

Henry Raine: To be clear, our average first time loan is £178 for 17 days. People cannot borrow for 60 days. If people cannot pay us back, then interest continues, but three days before the due date, and 24 hours before the due date, they get reminders. They get text messages. They get numbers they can call if they are having financial difficulty. So very few people ever end up paying us that amount of money.

The point of introducing a cap was to differentiate ourselves from the credit-card market, where, as you know, the basic business model, I think, is to lend people money they cannot afford; they pay the minimum amount and they get into a debt spiral. That is why we do it like that.

Q8 Chair: Can you give us figures for how many people owe that amount of money?

Henry Raine: I think around 3% of loans go to that period, but I can confirm that.

Q9 Chair: How many would that be in numbers?

Henry Raine: I do not know. I would have to confirm that to you in writing. I do not know the exact numbers.

Adam Freeman: I can jump in there. It is probably about 2% or 3% with us, as well, who say they are going into financial difficulty.

Chair: I am trying to pin down how many people that involves, to get a picture.

5 November 2013 Henry Raine, Greg Stevens, Adam Freeman, Russell Hamblin-Boone and Andy Lapointe

Adam Freeman: It is pro rata. If it is 100,000 people or 10,000, it is always going to be a percentage of people. It depends.

Q10 Chair: The point is that there still could be an awful lot of people enduring an awful lot of hardship as a result of it.

Henry Raine: To come back on that, we and I am sure other lenders here do everything we possibly can to avoid that, not only by thorough credit-checking, but also by moderating the amount people are borrowing and giving them lots of warnings about the impact, both on our website and throughout the journey. Of course it is regrettable, and our job is to make that number as small as possible.

Q11 Chair: We shall be covering credit-checking in a moment, and I will bring Robin back in to deal with that, but may I go back to the charter for a moment? What sanctions are there for lenders that do not actually abide by the charter?

Greg Stevens: The charter and the addendum to our code of practice, which is the payday-lending addendum, lays down what members should do. We are not a regulator. I pointed this out to the then Minister, which was Norman Lamb, with regard to us being a trade association. We are there to ensure members adopt best practice. We monitor it in the same way that the OFT do: we look in terms of complaints. We take up the complaints with the companies. If we find there are regular complaints about an organisation, the sanctions are we work with them with regard to applying a best practice model, so somebody goes in and works with them. We can then suspend the member and, eventually, we can actually expel the member from the trade association.

Q12 Chair: Do you actually monitor whether the companies abide by the charter as opposed to just responding to complaints?

Greg Stevens: We do not directly monitor on a regular basis. We monitor when the company comes into the trade association. We do not know what takes place after that. We do not do regular monitoring.

Russell Hamblin-Boone: The larger lenders that I represent are independently monitored by an independent panel. We have incorporated the charter commitments into a wider code of practice, and introduced independent monitoring for that.

Henry Raine: In Wonga's case, we are a member of the FLA, which I think many of you know has been going for around 20 years. They have their own code, which we abide by, and of course they have independent monitoring; they do monitor us.

Q13 Chair: But the only sanctions are, basically, suspension from the membership of the association or organisation.

Greg Stevens: Or expelling.

Chair: It does not stop them trading.

Russell Hamblin-Boone: We would also expect, if someone was in breach of our code and had not corrected it given the opportunity, having been identified by the independent monitoring, we would expect them to be reported to the regulator. We would

expect the independent panel to be able to make a statement to that effect and, ultimately, recommend to the Consumer Finance Association that the member be expelled from the trade association.

Q14 Nadhim Zahawi: Very quickly, to Russell and Greg, so how many people have you expelled in the last 12 months?

Russell Hamblin-Boone: Our independent panel has been in place since March and we have not expelled any members yet. They have all been seen to be compliant.

Nadhim Zahawi: Greg, you said you have been going for 120 years.

Greg Stevens: I will answer the question in terms of payday lending, which is what we are talking about. In terms of payday lending, we have expelled nobody. We have had many people who have exited the market because of the charter. We have had people who have left the trade association because they did not want to comply with the charter and the code of practice.

Nadhim Zahawi: But you have not expelled anyone.

Greg Stevens: They have expelled themselves, because they—

Nadhim Zahawi: You have not actually taken action and expelled anyone. That is my question: yes or no.

Greg Stevens: No, as I have said.

Q15 Nadhim Zahawi: Do you think either of your organisations are doing a good enough job in this market, or have you just gone native?

Greg Stevens: The answer is no, we have not gone native. I do not think enough credit is being given in terms of how the market has been tidied up, in terms of the work done by the OFT, by the charter and by the consumer groups. Many people have left the market. You also have to remember there are more companies that are not in trade associations than in trade associations, and many of those companies are the ones that create the problems in the market, certainly with regard to lead generation. There are other factors that play in this market. Many of the complaints that come in are about companies that are not under trade associations.

Q16 Nadhim Zahawi: But also it is a market that gravitates towards the very big guys, because they can afford the advertising. That is the model.

Greg Stevens: Yes.

Q17 Nadhim Zahawi: The market is concentrated in a handful of Wonga-type companies. Let me get this right, Mr Raine: what was your profitability last year on the £700 million of loans that you made?

Henry Raine: The most recent profitability was we lent £1.2 billion and we made a net income of £62.5 million, which is about £5 for every £100 lent.

Nadhim Zahawi: What was it before tax?

Henry Raine: I think it was £80-something million; I do not have an exact figure. We look at the net income.

Q18 Nadhim Zahawi: You said that 2% or 3% were people getting into real pain on your model.

Henry Raine: Around that, yes.

Nadhim Zahawi: It is the same for Mr Freeman, roughly?

Adam Freeman: Correct.

Nadhim Zahawi: You refused to give us an answer, but my calculation would be that there are around 123,000 people that you put in real pain.

Henry Raine: We have around 1.25 million customers, and 3% of that is a much lower number.

Nadhim Zahawi: I worked this out from £700 million. You said the average loan was £174, so I did the calculation. Why do you not just give me the number, instead of me trying to work it out?

Henry Raine: Absolutely. Well, I do not know the number. The average loan—

Nadhim Zahawi: You must know the number, Mr Raine, because you will have that number.

Henry Raine: The average loan across the portfolio is £272.

Q19 Nadhim Zahawi: I just want to know how many people you put in real pain—in a number, not in a percentage.

Henry Raine: I do not accept we put anybody in real pain. If you take 1.25 million customers and 3% of them is the number who, in your definition, have gone beyond 60 days, that will give you the number of customers you are looking for.

Chair: It is around about 40,000, is it not?

Nadhim Zahawi: Yes, it is about 40,000 people—not 125,000; I got it wrong.

Henry Raine: Respectfully, I think that is the way of looking at it, yes.

Q20 Nadhim Zahawi: Do you think that your charges are extortionate and that you are a rapacious organisation?

Henry Raine: No, of course we do not accept that. Indeed—this is an important point—when you look at the market that we are competing in, when the business was started, the aim was clearly to disrupt the financial services market and disrupt consumer credit. What we looked across at were people who were having to borrow fixed-term sums and who had no flexibility. With Wonga, as you know, the first thing you see as you come on to the website is the amount it is going to cost you; you choose how much to borrow for how long. The product actually is used moderately by most people.

Of course, the market that we have opened up is composed of those people traditionally using overdrafts and credit cards. All the surveys show—the research from Bristol rather confirmed this—that, for online customers, that is the market we are serving.

Q21 Nadhim Zahawi: I have had an overdraft. I ran a small business. What is your interest rate when someone goes over the period of time for the overdraft or equivalent in your world?

Henry Raine: If you borrow £100, my understanding—this is from Which?, who I think will be here later—is that the unauthorised overdraft charges for 30 days run up to between £80 and £115. If you borrow the same from Wonga, our most expensive loan for 30 days is £37. Those are some of the comparisons.

People also tell us, and there is evidence from the Friends Provident Foundation, that the vast majority of those people using credit cards are not, of course, paying their debt off every month, and therefore the cost to them of using a credit-card product is considerably higher.

Chair: We are still on our first question and there are a lot more to come. If you could make questions and answers brief, I would appreciate it.

Q22 Ann McKechin: This morning, Wonga admitted that they were one of the 50 companies investigated by the OFT, which covered 90% of the market. Can the other two companies here today confirm whether they were also on that list of 50? 19 of those 50 lenders have now left the market, according to the OFT. Can the trade associations confirm how many of those 19 were one of their members?

Adam Freeman: We had the OFT audit us at the beginning of the year.

Andy Lapointe: Yes, QuickQuid was also one of the 50.

Russell Hamblin-Boone: Of the 19, none of them were members of my trade association.

Greg Stevens: The 19 is a spurious figure. Many of those people were not in trade associations. From the 19, we had two, who have actually changed products. They are still trading as credit granters.

Ann McKechin: They are no longer in payday lending. Thank you for the clarification.

Q23 Mr Binley: I would like to pick up on something that Mr Stevens intimated. He intimated there were good payday lenders and there were bad payday lenders. Could you very briefly define who the bad payday lenders are?

Greg Stevens: I don't think I intimated good and bad. I think there are lenders and lead-generators who have been confusing the market. Their practices were probably not where they should have been.

Q24 Mr Binley: I admire your defence. May I go on? Are all the payday lenders on this panel members of your association?

Greg Stevens: No.

Q25 Mr Binley: Let me pick up a point. Mr Freeman, I shall come to you shortly. On the Mr Lender website, it says, "If, for whatever reason, I can't lend to you, then I will do my very best to ask around and recommend another friend of ours, who may be able to help you out. Providing you have consented I can do this."

On the surface, that sounds very good indeed, but who are the friends? Who do you think the friends are, Mr Stevens?

Adam Freeman: We—

Mr Binley: I will come to you, Mr Freeman. Who do you think the friends are, Mr Stevens?

Greg Stevens: I am sorry; could you repeat the question?

Mr Binley: I want to know who you think those other friends are who are operating in the business and clearly are not operating to the standards that Mr Freeman would want to operate to.

Greg Stevens: First of all, having 373 members, I cannot comment on one company. All lenders work with other companies with regard to people's special circumstances, because the underwriting criteria of most companies are different from everybody else's. There will be times when somebody would fit somebody else's underwriting criteria and might be better placed. The one thing that is not going away in all of this is the fact that people need that money. There is a need for small cash-sum loans. That need is there. People will direct them to a place that is more beneficial and more suitable for that consumer.

Q26 Mr Binley: I know the good side of your business, sir. I am concerned about the bad side. We have got enough reports of the bad side to know it exists. You, as the head of the association of payday lenders, need to help me define who the bad lenders are and who you think the "friends" are, as intimated on the Mr Lender website. Will you do that?

Adam Freeman: Can—

Mr Binley: I will come to you, Mr Freeman.

Greg Stevens: First of all, only 16% of our members are payday lenders, so it is not the payday-lending trade association. In terms of the good friends and the bad friends, that is a situation in terms of looking in terms of referral. Referral is a general practice for all financial institutions. It is nothing dissimilar to what other credit granters do.

Q27 Mr Binley: I find your defence unacceptable. Now let me come to Mr Freeman. What does "friends" mean?

Adam Freeman: It is a kind of branding for us. We hold a consumer credit licence with a broker licence and a lender licence. We probably facilitate one loan out of every 100 people that apply to us. We have very strict lending criteria. If we cannot lend to a customer, we will pass it to other lenders.

Q28 Mr Binley: And who are they?

Adam Freeman: It would be on a broker model, so we would actually give it to a broker to push through to other lenders.

Q29 Mr Binley: So we are not talking about those people who work in the shadows of your industry, then. Somebody considers them to be friends; you are saying it is not you.

Adam Freeman: I see your point.

Mr Binley: Oh good; I am glad about that. Now answer the question.

Adam Freeman: I see your point, and I see why you are making the point, but we are very strict at lending. We literally lend to one in 100 people.

Mr Binley: This is not about you; it is about your friends.

Adam Freeman: That is right. And my friends, or Mr Lender's friends, are obviously people that will facilitate people who are working part-time or are on benefits. We will not lend to people like that.

Q30 Ann McKechin: Do you receive commission for it?

Adam Freeman: Sometimes; sometimes not.

Mr Binley: This is the loophole.

Adam Freeman: Can I ask—can we ask—what am I missing?

Mr Binley: You do not ask the questions; we do.

Adam Freeman: Fair enough.

Q31 Mr Walker: Coming back to affordability, which is absolutely crucial, you all say, as companies, that you have rigorous affordability criteria. You have just said you only approve about one in 100 people, which seems extraordinary. I think Wonga have said that about 60% of people do not get through that particular—

Henry Raine: 80%.

Mr Walker: Thank you. The charter says you will "Carry out a sound, proper and appropriate affordability assessment and credit vetting for each loan application and before the loan is extended (rolled over)". As the Chairman pointed out earlier, the OFT figures rather contradict that. May I ask the three businesses on this panel, do you do that on every loan and every rollover individually?

Adam Freeman: Yes. We have started to since the OFT investigation and since the charter.

Q32 Mr Walker: So you did not before the OFT investigation?

Adam Freeman: Yes, but it is a lot more intense now. We speak to every single customer that we will lend to. We will go through income and expenditure. There is one downside in it at the moment, which I am sure that we will come to: not knowing in real time. That is probably our biggest downside as a lender: not knowing in real time what other loans a customer will have at the time of applying with us.

Mr Walker: I want to come on to that.

Adam Freeman: I am sure you will.

Mr Walker: It is a very important point.

Adam Freeman: We do everything we can. If someone has an income of £1,500 and their expenses are £900, leaving £600 disposable income, we are not going to lend that customer £600. We would probably go up to a threshold of about 50% to 60%—maybe £300 to £350.

As a lender, what we do not know at the time is, "Have they just gone to QuickQuid or Wonga and got a loan with them?" I would love that information, because I like to lend to people who can afford to pay me back.

Q33 Mr Walker: I will come back to that, if I may. Mr Lapointe, does QuickQuid do individual assessments for every loan and rollover?

Andy Lapointe: QuickQuid does an affordability assessment and creditworthiness check with each and every loan and rollover. We do a credit report, an over-indebtedness report and we query a number of other databases. At the time of a rollover, a customer is going to be asked a series of questions to determine whether or not the rollover is suitable for them and nobody would be guaranteed to have access to any rollovers.

Q34 Mr Walker: In what circumstances would a rollover not be suitable? If someone cannot afford to

pay back the principal, how would you then decide that the rollover was not suitable for them?

Andy Lapointe: If a customer went to roll over a loan and advised us that he had just lost his job, a rollover would not be suitable; a forbearance arrangement would be suitable at that point.

Q35 Mr Walker: How often does that happen?

Andy Lapointe: I think it happens fairly frequently.

Q36 Mr Walker: It would be interesting to see some figures on that. Coming back to Wonga on this, I saw that you were nodding in terms of saying that you do an assessment on every loan and every rollover.

Henry Raine: The way Wonga started was by doing everything online and buying as much data as we could. That was the differentiating factor in our model. Early on, we worked with Callcredit, in particular, and with other bureaux to devise as much data as we could. We buy all the raw data from the bureaux; we do not buy reports. We buy the raw data and crunch it ourselves.

We also look at lots of other factors. There is a lot of public data you can buy in the marketplace to assess people's affordability. Obviously, our algorithm has got better the more we have lent, because you learn about people. Without going into too much detail, we also look at how people interact with the sliders and how they interact on the screen in terms of whether they are appropriate for the loan.

In terms of rollovers, we have always checked. Less than one in 15 customers at Wonga ever rolls over a loan once. Rollovers have not been a big feature of our business. Indeed, when we started we did not offer extensions at all. Customers kept phoning up and saying, "It is my due date; can I extend for another five days?" and we had no mechanisms to do it, so we introduced the limited concept of extensions, whereby you could extend for how long you want, i.e. you do not have to extend the whole loan for the whole amount. You can extend £20 for 10 days. That is what we do.

Clearly, the big challenge for us, which is why a number of us here are working together on this with the bureaux, is to find the best method of getting all data from all lending on a real-time basis. For us, as I said, the majority of our customers are coming from bank products and credit-card products, so it is vital we understand their whole credit history, not just whether they borrowed from QuickQuid or Mr Lender. I think real progress is being made on that.

Given that they will be FCA-regulated, the CRAs give us a real opportunity to do something about that. Reciprocity is key, obviously—putting data in and getting it out.

Russell Hamblin-Boone: It is helpful to note, for context, that the OFT report was published some time ago. Since that point, lenders were given a 12-week window in which to put in some additional measures. We are still waiting on a response from that, but it included affordability checks.

We are already limiting the number of rollovers, putting in clear costs, reducing the use of continuous payment authority, putting clear costs in adverts, and working with debt-advice agencies referring people to

free debt advice. All of those things have happened, and are happening, post the OFT report. While the OFT report is an important point of reference, the industry has moved a long way forward since that time.

We recently surveyed the customers of the businesses I represent using YouGov. 93% of them said that their lender asked them about their income, employment and other financial details before approving a loan. 90% felt they were offered a fair loan based on the employment and financial information they provided.

Q37 Mr Walker: There are still significant numbers of people, even in those surveys, who feel that they are not going through the assessment, and that is a matter of concern. Returning to the OFT figures that the Chairman spoke about earlier, only 23% of people responding to that survey said that they were reassessing at the time of rollover. That does seem a matter of concern. I accept that is in the past; it may have improved.

Russell Hamblin-Boone: What is going on behind the scenes is not necessarily transparent to the customer either. They just ask whether they can have a rollover.

Mr Walker: This was lenders giving information to the OFT, not customers.

Russell Hamblin-Boone: And their answers were based on the way that the question was phrased, and the lenders were being honest in the way that they were responding to some of those questions.

Q38 Mr Walker: Coming back to the point that Mr Freeman raised, which I think is very important, about the transparency of knowing whether people have borrowed, Wonga has said that you pay a lot of money for data, or you invest in data. Do you not think the industry should be able to pay for a sharing system or some form of database, which shows all the short-term loans that people have out there, so that you can get that greater picture of affordability?

Henry Raine: I think we are working on that. Obviously, far be it from me to dictate anything; I am not a member of the industry bodies. I think we are working with a number of industry players and Callcredit to develop a system with a recognised CRA.

As I said before, if I may pick up this point, it is more than a payday-lending database. It does not mean we should not do it, by the way, but the challenge is that what we are looking at here is a significant amount of people having other short-term financial products, which are causing them financial difficulty. We need to be able to get hold of as much data as we can, on a reciprocal basis. Obviously, for the larger lenders, there is a downside: that we are putting more data in and getting less out. You may find a situation where, for some of the smaller lenders, the economics simply does not work for them and the technology does not work. Mr Stevens may have a view on that.

Andy Lapointe: I participated in a number of meetings with the credit-reporting agencies to get this built and to push it, so that it does happen. One of the advantages of using an actual credit-reporting agency is that you can take account of all types of credit. The United States has certain databases that only keep

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track of payday loans, and they do not keep track of log-book loans or pawn loans or instalment loans or anything else.

Q39 Mr Walker: I believe Canada has quite a developed system in terms of registering loans and sharing that information. Is that one that any of you have looked at?

Adam Freeman: There is one main credit reference agency that the vast majority of lenders use. I was in a meeting around a year and a half ago when this company was talking about real-time sharing. As I said before, the problem we have is that the data could be up to 60 days old, because if you are doing loans towards the end of the month and you have to report at the end of the next month, you basically have to wait 60 days back.

About a year ago, they identified payday loans as a product. It received its own code, which was “Advance Against Income” or AAI. This is specifically related to payday lending. So I know if a customer has settled payday-loan accounts before, and I know if they have any open payday-loan accounts. You can choose not to lend to that particular person with open payday loans, but the data is 30 or 60 days old. If I knew today that this customer has a loan with QuickQuid and Wonga, there is no way I would lend to them. As I said, I like to lend to people who can afford to pay me back. There might be a £50 or £100 loan, because they still have £200 disposable income, but if I had that information, I would be the first to share it and I would be the first to use it.

Q40 Mr Walker: Improving this information is clearly crucial in making sure that people are not being lent money if they cannot afford it, there are still concerns. One of the lines in the OFT report picked up on this. It said that even where bank accounts were being scrutinised and people could see from the bank accounts that borrowers were already making payments to payday lenders, they were still being given loans. Would you all accept that, from your business’s perspective, this should not happen?

Adam Freeman: If we knew within a few days that they had an open loan with another lender, we would never lend to them. That is not a good business model, because you are not going to get your money back.

Andy Lapointe: That is why we prefer using automated systems to using live people reviewing bank statements and documents.

Q41 Ann McKechin: If I may turn to the question of rollovers, gentlemen, the three companies before us today have all admitted that they were part of the OFT investigation. Could you confirm whether you were censured on the issue of rollovers?

Andy Lapointe: Yes, we were.

Ann McKechin: Mr Freeman?

Adam Freeman: What did you say?

Ann McKechin: Were you censured on the issue of rollovers by the OFT?

Adam Freeman: What do you mean? Are you asking whether we were doing anything wrong with them, or—?

Ann McKechin: Did they raise concerns with your company about the issue of rollovers?

Adam Freeman: No, they did not.¹

Ann McKechin: Mr Raine?

Henry Raine: I am happy to answer that: no. If I may say—it sounds rather pejorative—what the OFT did was, they investigated the 50 largest payday—

Ann McKechin: I will come back to that later; thank you very much, Mr Raine. I have—

Henry Raine: They investigated the largest payday lenders in the market.

Chair: Please do not interrupt a question.

Q42 Ann McKechin: May I follow up on an issue that Mr Freeman raised? You stated that you rejected a significant number of people who applied to you for a loan, but in turn, you referred a percentage of these to other lenders.

Adam Freeman: Correct.

Q43 Ann McKechin: I am just wondering to what extent that commission income is a percentage of your total turnover.

Adam Freeman: It is minimal. It would probably be less than 1%.

Q44 Ann McKechin: Is that practice known to any of the other gentlemen? Is this known amongst the trade members of the two associations, or to Mr Lapointe and Mr Raine?

Adam Freeman: May I intervene? We give this to a broker. We have contracts behind the scenes, where they make sure all of our lenders actually—

Ann McKechin: I am focusing on the issue about this particular type of trade where you are referring a borrower from one lender to the next and how that is regulated. I am just trying to clarify that.

Andy Lapointe: The OFT did say that we should change certain of our processes to make sure that we gave out less rollovers.

Ann McKechin: Okay, but you do offer the alternative of another lender to some of the people who apply.

Andy Lapointe: No.

Ann McKechin: Mr Raine?

Henry Raine: No.

Ann McKechin: Are either of the two trade associations aware of any of your members being people who refer people on to other lenders?

Greg Stevens: I have already said that it is a general model in the market. If someone does not fit their underwriting criteria, they will pass that person on. It is most prevalent in motor finance. Underwriting criteria vary massively; therefore, leads do move around.

Q45 Ann McKechin: Mr Hamblin-Boone, the Consumer Finance Association has introduced a limit of three rollovers for loans. Can you confirm that your members are currently 100% compliant?

Russell Hamblin-Boone: They are 100% compliant inasmuch as they are independently monitored. I cannot confirm this; nor could anybody. I imagine that

¹ Note by witness: Witness subsequently amended this to “Yes, they did”.

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even Marks & Spencer could not say that all of their staff were 100% compliant with something. But it is the policy. It is independently monitored. We do know that the average length of a loan of one of my members' customers is now 41 days, which suggests that they are not rolling over their loan anywhere near that amount.

Q46 Ann McKechin: If 40 days is the average, that implies that quite a number of people are well over that 40 days.

Russell Hamblin-Boone: 41 days is the average length.

Ann McKechin: Yes. If you are saying that the bulk pay on time within 30 days, and the average is 40 days, that would suggest it is much longer.

Russell Hamblin-Boone: 85% pay on the due date. Of the remaining 15%, two-thirds of them roll over their loan at least once. Based on the 41 days, the majority of them roll over just once.

Q47 Ann McKechin: In respect of when a borrower has missed a repayment, in their evidence the OFT said, "In our view, this should be prima facie evidence that the customer is in financial difficulties and the lending is unsustainable". Would that be a criterion of analysis for your independent monitoring?

Russell Hamblin-Boone: As Mr Raine said, when the original loan product first came to market, there was no ability to extend the loan. There are all sorts of reasons for rollovers. Whether this is due to late payments, people not getting the cheques through or people needing to delay their payments in order to pay other debts that are more priority debts, we need to have the flexibility to grant people at least one or two extensions.

Q48 Ann McKechin: The specific question I am asking is whether, if someone has missed a repayment, according to the OFT, that would be prima facie evidence that the lending is unsustainable.

Russell Hamblin-Boone: No, I disagree.

Q49 Ann McKechin: If someone comes to you and says, "I have missed a repayment," would they automatically then be allowed to roll over?

Russell Hamblin-Boone: Not automatically; nobody is allowed to roll over automatically. It is important that there is some flexibility for a short-term loan, and that we do not immediately put someone into default, affect their credit score and not give them any options.

Q50 Ann McKechin: You are carrying out this independent analysis. Presumably, you have only just started, so the figures will not yet be available. But if you are starting it, presumably you will be able to find out on how many occasions, and for what percentage of people, loans are rolled over on the basis that a payment has been missed, so you will be able to provide those statistics in the public domain in the near future. Would that be the case?

Russell Hamblin-Boone: People missing a payment would be contacted by the lender.

Ann McKechin: No, I am asking that you reveal the actual figures of how many missed repayments then

roll over, so we can have an indication of how many of these loans would be deemed, prima facie, to be unsustainable.

Russell Hamblin-Boone: If someone misses a payment and the lender makes contact with them, or they make contact with the lender and say, "My circumstances have changed," "I have lost my job," "My partner has left me," or whatever it may be, that person is deemed to be in financial difficulty.

Q51 Ann McKechin: Okay, so you are not going to provide this evidence.

Russell Hamblin-Boone: That person is deemed to be in financial difficulty. In that circumstance, that definition does apply. We will immediately freeze the—

Ann McKechin: I am not asking how you deal with the process. I am asking how you record the process and how you are transparent about the process, Mr Hamblin-Boone. Thank you very much for that.

Russell Hamblin-Boone: You have asked me to define whether one rollover is someone in financial difficulty or not. In some circumstances, it absolutely is and we take action. In other circumstances, there is a reason they want to extend the loan that is not financial difficulty.

Q52 Ann McKechin: So you do not think the OFT can work out what is and is not financially unsustainable and what is and is not financial difficulty.

Russell Hamblin-Boone: The OFT report was some time ago.

Chair: May I intervene at this point? We are short of time. You will have the opportunity, if you feel that you need to add to any response you have given, to do it in the form of supplementary written evidence after this inquiry. It will be taken into consideration when we produce our Report.

Q53 Ann McKechin: According to the OFT, 17 lenders actively promoted rollovers in marketing material at the point of sale, and 15 proactively alerted customers to the rollover options prior to the loan due date. Do any of you support those practices? If not, how can that promotion be stopped effectively?

Andy Lapointe: QuickQuid does not promote rollovers, and our call-centre representatives are not allowed to present rollovers. We do quality assurance monitoring to make sure that they are not doing so.

Adam Freeman: Same here, with us. Before the OFT, we did actively promote them, but since the OFT review and audits, we do not actively promote them.

Henry Raine: Our practice has never been that. In monitoring, as Andy says, one of the key issues is looking at call-centre training—that is a challenge for all of us—as well as what is on the website. Of course, there is no one here from the storefront sector, so we do not know what goes on in terms of people going into stores.

Q54 Ann McKechin: What is your company's policy on limiting the number of rollovers?

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Henry Raine: We have always had a limit of three², and as I say, less than one in 15 ever extend a Wonga loan once.

Q55 Mr Binley: Mr Stevens, we all want to get rid of the unsavoury element to your business, which we all know exists, and it seems to me the reference area that you referred to, saying that it was reasonably widespread, is a way of sort of operating outside of the charter for some people. Do you accept that particular point?

Greg Stevens: I think people who are—

Mr Binley: It is a simple question: yes or no?

Greg Stevens: Yes.

Q56 Mr Binley: You do accept the point. Then let me ask you this: if you do feel that there is a loophole here, where people are operating in a way that all of us, you included, would not want to happen, how might we close that loophole?

Greg Stevens: As an industry, we have been trying to close several loopholes, certainly with regard to lead-generators, who are not under the OFT. One of the problems is that the marketplace exists on the leads being generated. It depends on the acquisition of those leads to drive the business forward. I do not think enough credit is being given in terms of the work the OFT has done and the work that is going to be done by the FCA. Even the actual consultation report from the FCA will drive people from the business. You will get the thing you want.

Q57 Mr Binley: Fine; wonderful, but you have already admitted that the loophole exists. It is surely in the interests of the decent side of the business to close that loophole. It is also within your area of action to ensure that your members do not operate in that way. I repeat my question: what will you do to ensure that the loophole that you say exists is closed from the perspective of your membership?

Greg Stevens: With regard to the worst cases, we have reported those organisations to the Ministry of Justice. It comes back to the fact that those companies are not regulated by a regulator that covers consumer credit. This is where a lot of the problems occur. If you go on to the internet, the first few pages of websites are lead-generators; they are not lenders. That is how consumers get confused.

Q58 Mr Binley: Why do you not simply get your members to outlaw the practice?

Greg Stevens: In what way do you mean?

Mr Binley: In terms of referrals. Why do you not simply say, “It is outside of the remit of this association; if you are a member of this association, we do not think you should be involved in that particular process”?

Greg Stevens: I am talking about acquisitions.

Mr Binley: I am talking about something else.

Greg Stevens: I am not talking about referrals.

Q59 Mr Binley: I want you to recognise that you are a trade body and have some role in policing the

wellbeing of the trade. You have admitted that there is a loophole in terms of the referral system. Why do you not take action and ensure your members are not involved in any referrals, so that we know that the company we are dealing with does not pass information on to companies that do not act as credibly as your members do?

Greg Stevens: It happens in every market. This is not specifically about payday lending. I have already made the point twice: everybody has their own unique underwriting criteria.

Q60 Mr Binley: You are being very evasive. Why do you not simply say that you can or cannot act as a better regulator, as an association, in this respect?

Greg Stevens: As I have said before, we are not a regulator; we are a trade association.

Chair: I think we have probably pursued this line. We understand you are not taking responsibility for that, and we may wish to comment on that.

Q61 Nadhim Zahawi: You were asked by my colleague, Ann McKechnin, about the OFT and censure. Only QuickQuid said that they had to change the criteria for rollover procedures. To Adam and Henry, have you had to change anything since the OFT investigation into your businesses?

Adam Freeman: We did change the rollover process after the OFT investigation.

Q62 Nadhim Zahawi: So the OFT investigation found that you were basically behaving badly and you had to change.

Adam Freeman: No, it was not badly. No one actually told us what to do at any point, so I would not say we behaved badly. We did what we did as a business. At the beginning, we were assessing people on affordability over two or three months, because that is what we were doing. The OFT came in and said, “You have to do it on your own merits. If someone wants to roll over, at the point of rolling over you have to assess their affordability then.”

We spent a lot of money on system changes and staff training, and we changed our process. One of the options is, “I am in financial difficulty and cannot afford to repay in full”. That is literally an option on a drop-down menu. As soon as that happens, we will not roll over that customer. We will put them on a frozen-interest payment plan and work with them over a month, three months, six months or a year—whatever works for them.

Q63 Nadhim Zahawi: Is that the only change you were asked to make by the OFT?

Adam Freeman: There were about 30. Some were tiny text changes. We had to make our representative APR slightly bigger. I have to say that I was surprised at the opening comment, because I think the OFT have done quite a good job. I have seen people exit the market that should exit the market. I am all for regulation.

Q64 Nadhim Zahawi: Could you let the Committee have those 30 things you have had to change?

² Note by witness: This was amended to “We have had a limit of three for almost two years”

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Adam Freeman: Yes, of course, if I am allowed to share them.

Q65 Nadhim Zahawi: Henry, did you have to make any changes following the OFT report?

Henry Raine: Yes. Can I just make one comment?

Nadhim Zahawi: Before you make it, could you say whether you had to make any changes?

Henry Raine: Yes, we had to make a number of changes to our website.

Q66 Nadhim Zahawi: What were those changes?

Henry Raine: They were about more disclosure. There were some issues about the size of the APR on various pages. Most of the OFT work with us was more on the information-gathering side, i.e. they wanted to understand more about how we do certain things, which was very helpful.

Q67 Nadhim Zahawi: I understand what they wanted to understand, but what were the changes they asked you to make?

Henry Raine: We had to highlight risk factors slightly higher up on our home page, and other things like that.

Q68 Nadhim Zahawi: Will you let us have those changes that you made?

Chair: Could you submit, in written evidence, details of the changes that you had to make, arising from the OFT?

Henry Raine: Yes. Assuming that the OFT is happy with that, of course.

Q69 Paul Blomfield: Still on the issue of rollovers, Mr Raine, you described a rather benign process where you would not have dreamt of having rollovers if it was not for customer demand. There is a question here, is there not? Actually, at the point where people are unable to pay, you do not need to roll over their loan, doubling their interest and imposing a punitive penalty charge. You have an option of sitting down with them and saying, "You are clearly in financial difficulty. Shouldn't we negotiate an affordable repayment plan?"

Henry Raine: First of all, we do not double their interest. People can choose to extend; we do not force them to extend and always credit-check them again before approving an extension. Less than one in 15 people ever do. In the majority of cases like that, people are able to reschedule their debt and make an online repayment. For some people, an extension suits them better. It may be that they are getting the money.

Q70 Paul Blomfield: In what way are they suited by having a penalty charge for rolling over their loan?

Henry Raine: It may be that we have people who are sole traders, who are getting the money next week, who would rather pay us and delay payment for a few days rather than go on to a repayment plan.

Q71 Paul Blomfield: Do you perhaps understand why people are more likely to listen to the OFT's concern that a higher proportion of profitability in your business actually comes from rolled-over loans than those that are repaid within the original terms?

Henry Raine: I agree. One of the—the number of the—

Paul Blomfield: You agree with that.

Henry Raine: No. The OFT's point was that in some cases 50% of revenue was derived from rollovers. In Wonga's case, because only one in 15 ever roll over—

Paul Blomfield: Mr Raine, you keep trying to distinguish Wonga from the rest of the sector.

Henry Raine: I can only answer on behalf of Wonga.

Q72 Paul Blomfield: You certainly can. Why were you censured by the OFT as well, then?

Henry Raine: On rollovers? We were not.

Paul Blomfield: No, but in general, in terms of your business model and your conduct.

Henry Raine: We were not censured. No one has been censured by the OFT. We have been asked to make various changes. The 50 top lenders were all visited by the OFT. All of us have been asked to make changes. It is not a case of censure.

Q73 Paul Blomfield: No, but your practice was criticised.

Henry Raine: No, we were asked to make changes to various things.

Q74 Paul Blomfield: Presumably, that was because your practice was not sufficiently good, in terms of the OFT's assessment in the first place.

Henry Raine: That is an open issue that we still have with them. But many of the changes they recommended were not about censure; they were about making things clearer for customers.

Q75 Paul Blomfield: To go back to my original point, you are saying that rollovers are there to assist the customer. Would it not be of more assistance to a customer in financial crisis to sit down and say, "You are in difficulty; let's have an affordable repayment plan," rather than punitive additional interest and a penalty charge?

Henry Raine: Of course we agree with that, which is why we have a whole hardship plan.

Q76 Paul Blomfield: It is not what you do, is it?

Henry Raine: Less than one in 15 people ever get an extension from Wonga. The vast majority of people who cannot pay back their loan move on to a repayment plan. There are some people for whom an extension obviously works, and that is a small minority.

If I may say so, in terms of rollovers and extensions, Wonga is in a very different position from the rest of the sector. I cannot answer on behalf of the rest of the sector.

Adam Freeman: May I jump in? Just because someone rolls over a loan, it does not mean that they are in financial difficulties. It is circumstantial.

Q77 Paul Blomfield: Do you think they would voluntarily want to take on the punitive additional charges if they were able to afford to repay?

Adam Freeman: It is like a credit card. You get a credit card bill through for £500. In that month you have had to buy some food and clothes, so you cannot

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clear your credit card. You are going to pay £250 plus interest. Just because someone rolls over a loan, it does not mean that they are in financial difficulty. This is on behalf of Mr Lender. If that customer is saying, "I cannot afford to pay this loan in full this month or next month, because I have lost my job," we are not going to roll over that loan. We are not going to charge any interest. There will be no more fees.

Q78 Paul Blomfield: What about Mr Lender's friends?

Adam Freeman: Exactly, yes.

Q79 Paul Blomfield: May I press all of you on the issue of rollovers? The FCA are proposing a limit of two rollovers. Do you agree with that: simply yes or no?

Adam Freeman: It is detrimental to the consumer. You need to give the consumer the option.

Q80 Paul Blomfield: Would the option of an affordable repayment plan not be better?

Adam Freeman: It is circumstantial and you cannot predict your circumstances in the future. They might need one, two or three months, where they are low on cash, to pay it back. Just because someone has rolled over, it does not mean they cannot pay capital towards their loan as well. They do not have to pay you the interest. They might say, "Mr Lender, we are going to pay you £50 capital and the pro rata interest." It is not an additional charge; it is pro rata interest.

Q81 Paul Blomfield: If you roll over a £100 payday loan just three times, you are paying about £120 in interest alone. In what way is that in the interest of the consumer?

Adam Freeman: It is £75, actually. It is £25 per £100. If it is a good customer and they are our friends, it is £20—it is £20, £20, £20, which is £60.

Q82 Paul Blomfield: I have allowed you to distract me, Mr Freeman. My question is whether you each accepted the recommendation of the FCA for a two-rollover limit. Your answer was no, Mr Freeman. What do other members of the panel say?

Russell Hamblin-Boone: We are looking at the data of our members' customers. As I said, the average loan there is 41 days. We have not reached a position yet, but there is an indication that two rollovers may be an option.

Greg Stevens: The figure is arbitrary; we do not know how they have arrived at it. Obviously, we are in the middle of the consultation-response period, and we are asking for more information. Our view has been the same right the way through: in certain cases, one rollover is too many. It is about looking at affordability. Affordability is the question that should be asked, not the number of rollovers.

Andy Lapointe: QuickQuid has a limit of two.

Henry Raine: This is not the big issue, frankly, in terms of how the industry needs to be regulated.

Q83 Paul Blomfield: If the limit of two is introduced, what guarantees can you give and what procedures will you put in place to ensure that debt

that might otherwise be rolled over is not simply repackaged as a new loan?

Henry Raine: In Wonga's case, you cannot get a new loan until you have paid off your old one. We will not be repackaging anything at all. You can check the website. Of course, the FCA will be able to investigate all of this so that it does not happen.

Andy Lapointe: The FCA's guidance says that they are not just going to be a tick-box regulator. What they are saying is, "If the outcome is bad, it does not matter how good your processes were." That would fall into that bucket, and we would have to design our loan products accordingly.

Russell Hamblin-Boone: The consultation makes clear that this applies to rollovers and refinancing.

Q84 Mike Crockart: I would like to quote what the charter says about advertising, but it does not say anything about it at all. Could I have your views on whether there should be something about advertising in it?

Russell Hamblin-Boone: As I said, the charter commitments are incorporated into a broader code of practice that we use. It requires the lenders to comply with all of the marketing and advertising laws that exist. We work very closely with the Advertising Standards Authority, and we have just set up some workshops with them to work on how short-term lenders should be marketing and what their adverts should look like. Customers are in control of marketing, for example. They can opt out of marketing. We will not allow people to be spammed.

Mike Crockart: I will come on to marketing in a minute; I am talking about advertising.

Russell Hamblin-Boone: The other point to make about adverts is that nobody buys directly from an advert. An advert will direct you to a website, and there is a lot of information—all of the information you need.

Q85 Mike Crockart: You will be directed to a website, which the OFT has described like this: "Most websites made claims we consider potentially misleading". The information on the website is not going to be the best.

Russell Hamblin-Boone: The OFT report was some time ago. As Mr Raine has pointed out, he has made changes to his website and, as the other lenders have pointed out, they have made changes to their website. They look very different to when that report was written.

Mike Crockart: There are no more examples of things like, "No credit checks," or, "No credit, no problem," or, "Loan guaranteed, no questions asked".

Russell Hamblin-Boone: No.

Q86 Mike Crockart: None of you would have anything like that on your website. There are still things out there like that, are there not?

Russell Hamblin-Boone: There absolutely are. When we find them, we report them to the regulator.

Q87 Mike Crockart: I have had a look at particular websites this morning. The OFT talked about one of the most misleading things being the promise of

money within a very short time, which effectively was a marketing ploy. All three of the companies represented today advertise, in quite prominent places on all three, the fact that loans can be made within five or 10 minutes.

Andy Lapointe: That is from approval. If someone comes in to apply for a loan and they require manual checking, it might take us three hours to clear them. The five minutes is indicating from the time that they are approved.

Mike Crockart: Absolutely, so let us look at the QuickQuid website, where, in the largest text, at the top, it says, "Cash sent within 10 minutes after approval" and there is a little strange symbol beside it. If we go down to the FlexCredit part, it says, "Get cash sent within 10 minutes of approval", and there is the same strange symbol. It says, "Short-term loans, get cash sent within 10 minutes after approval", and there is another symbol. You have to go right down to the bottom and look in really small text, in the midst of lots of other little symbols, to find out what that means. Is that a fair way of portraying things?

Andy Lapointe: Our responsibility is to do the credit checks. Some of the credit checks are done quickly; some customers have red flags in the approval process, which means they remain there for manual processing. This is something we have to do. It is accurate of our processes. I am not going to say the OFT approved that; it was one of the things that we changed in light of the OFT review.

Russell Hamblin-Boone: We are talking about speed of delivery there. When you are transferring money electronically, you can do it very quickly. If you apply for a credit card, the application process would be as long as if you were applying for a short-term loan. The difference would be that you have to wait a few weeks for your credit card to come through, as opposed to lenders, who are able to transfer money directly.

Q88 Mike Crockart: For all three of the companies represented here, which you are saying are at the better end of the scale of payday lenders, the speed of getting the money is a major selling point.

Russell Hamblin-Boone: That is the value of the product. In fact, the London Mutual credit union has just invested in technology in order to be able to get money into people's accounts quickly, recognising that, if you need to get your washing machine repaired or you need a short-term loan urgently, you do not want to wait to apply for a credit card, because you need the money now. It is what the circumstances demand, and that is why even the credit unions are recognising that this is a need of the customer and a value of the loan.

Chair: It is completely misleading to make a comparison with credit unions, where you have to be a member and there will be some record of that person's creditworthiness and credit history, compared to the approach that is used by payday lenders.

Russell Hamblin-Boone: No. Credit unions do not do the level of checks that we do. Some of them do have longer-term relationships with customers, but, with respect, Mr Chairman, I was not making that point. I was making the point that the process of delivery of

the product, based on speed, is something the credit unions—

Chair: With respect to you, I do not think the process of delivery is really the issue at stake. It is the lack of examination of creditworthiness there and the use of this that is made in marketing.

Russell Hamblin-Boone: The question was, "How quickly after approval can the money go into the account?" That is what the lenders advertise.

Adam Freeman: When the OFT came to us earlier in the year, this was one of the main things they said. I would not say it was their recommendation, but everything forward-facing was being audited. We have got to a place where we have been told that this is what we are allowed to put across. We are only doing what we are allowed to do.

Q89 Mike Crockart: We are running over quite a bit. I will try to keep my questions short, but if you could keep your answers even shorter, that would be great.

Obviously, with using the speed of getting the money as a tool to draw people in comes the recommendation or regulation that you have to promote the APR as prominently as you possibly can. Looking at Wonga's website this morning, it is there: 5,853% APR. Mr Lender, you manage to beat that with 4,849% APR. Interestingly, QuickQuid, you need to have a serious look at your website, because the page which launches and fills the window is not actually the full page. To get to the point where you see the APR, you have to resize.

Andy Lapointe: What is the system of that device that you are using?

Mike Crockart: It is an iPad. It is a fairly well-used thing you might have heard of.

Russell Hamblin-Boone: You have not asked the lenders how much the customer has to pay, because I think that is probably more important than the APR.

Mike Crockart: The regulation is to do with the promotion of the APR, so that is what I am dealing with at the moment.

Andy Lapointe: Our intention with putting it on the side there is that it would be easy for the customer to see, because there are devices that cut off the bottom. If you put it on the bottom, people do not see it. That was placed there for prominence.

Q90 Mike Crockart: It is not, then, a deliberate attempt to hide it from customers.

Andy Lapointe: No. Every time that I have seen that screen, that is right there, rather than having to pan down to the bottom, which is more common, especially on handheld devices.

Mike Crockart: Perhaps I can show you this afterwards and you can take it away and deal with it.

Andy Lapointe: No, I trust what you are saying.

Q91 Mike Crockart: If we can turn then to the calling that you do, which is a particular interest of mine, first of all looking at existing customers, do you follow any guidelines? You have the right to phone them. You have a relationship with them. It is a first-party consent that you will have received from them. Do you have any guidelines about the way in which

you contact them, the number of calls that you make over a period of time, or where you phone them? We have heard some fairly horrendous stories about people being hounded by large numbers of calls, sometimes made to places of work. Do you have guidelines that you follow about the contact that you have with your customers?

Adam Freeman: Again, since the OFT—we were quite good beforehand—if we phone a customer and the customer says, “Do not phone me at work,” we will not phone the customer at work again—period. We are not allowed to. It is treating the customer fairly. If a customer says, “Do not call me at work,” we will say, “Do you have an alternative number?” or an e-mail address or something, but we are not allowed to contact that customer at work again.

Q92 Mike Crockart: What about the number of calls that you would make to them?

Adam Freeman: We would only need to say that once, would we not?

Mike Crockart: No, I mean generally, not about phoning them at work.

Adam Freeman: You would only need to say it once to the customer, so I do not know how many times they have to phone. It is probably once or twice; I do not know.

Q93 Mike Crockart: Again, we had some fairly horrendous stories about people being phoned 10 times a day to be chased for payments.

Adam Freeman: Yes, but we would not phone someone 10 times a day.

Q94 Mike Crockart: That is why I am asking. Do you have any guidelines?

Adam Freeman: Yes, treating the customer fairly. That is not fair, so we would not do that.

Q95 Mike Crockart: Treating the customer fairly can be taken to mean a number of different things. Do you have guidelines?

Adam Freeman: Yes, we have policies and guidelines³ in place, of course. I can send those to you as well afterwards, because I think they will be quite helpful.

Mike Crockart: That is great.

Henry Raine: We do not have people’s employment details. We do not have a way of contacting them at work. There are regulations, which I am afraid I am not entirely on top of, that we follow about when you can call people, what times during the day you can call them, and what happens. The vast majority of our interaction is online with customers, because that is how they have come to us, so we do not have a lot of phone contact.

Q96 Mike Crockart: When you say that there are guidelines, are you talking about your guidelines or the guidelines of someone else?

Henry Raine: No, the debt collection guidance of the OFT, which we all follow. I am afraid I do not know it, but it is all part of our systems, and I suspect the

other lenders’ too. That stipulates how you can contact people and how often, and also, I think, only in certain hours of the day. If people are being contacted by lenders or by representatives outside those hours, then it is clearly in breach of the OFT guidelines, but, as I say, we do not do it.

Q97 Mike Crockart: If I can turn to generating new customers, what do you do in terms of cold-calling? Do any of your organisations cold-call to find new customers?

Henry Raine: No.

Andy Lapointe: No.

Q98 Mike Crockart: Do you use lead-generators to come up with new customers?

Adam Freeman: Yes.

Q99 Mike Crockart: You cold-call by proxy, then, effectively.

Adam Freeman: No, we never cold-call. We never cold-call new business.

Q100 Mike Crockart: If you are using lead-generators, you are effectively cold-calling, but getting somebody else to do the hard work.

Adam Freeman: No, not at all. This is all online. Sorry, maybe there is confusion. This is online lead generations, where someone has gone to a broker’s website and applied for a loan, and we have purchased that lead. That customer knows they are a Mr Lender customer. It is not a cold call. We know that they are a customer. We can facilitate them.

Q101 Chair: May I just suggest, where you have guidelines, can you send them to the Committee for them to examine, and we can make a judgment on them?

Adam Freeman: Definitely.

Mr Binley: Sorry, Mr Chairman, may I add: we do not want your rules; we want your talk guides as they appear on the screen and we want continuation lines.

Adam Freeman: Yes, of course.

Chair: If we are not satisfied with what they cover, then we will come back to you.

Q102 Mike Crockart: Do you use texts in your marketing, to new or existing customers?

Adam Freeman: We would never randomly text somebody, “Do you need a loan? Come to Mr Lender.” No, we have never purchased lists or done anything like that.

Henry Raine: We do not text people as a way of getting business. The day before payment date, we will use a text to text them to say, “Just to remind you that your money is due,” so it is not a PPI-type situation where we are all getting texts the whole time. We do not do any of that.

Andy Lapointe: You would have to opt in to receive texts from us.

Q103 Chair: On that issue, you will know that, on “Newsnight” last night, there was an example of somebody, I think, being texted for a loan during the

³ Note by witness: Witness subsequently amended this to remove the word “guidelines”

course of an evening. Are you saying that that does not apply to Wonga?

Henry Raine: Yes. I am sorry; I did not see “Newsnight” but no, as far as I am aware—if I am wrong, I will confirm to the Committee—we do not do text-marketing.

Chair: I think that needs to be clarified, and if you could send evidence that would clarify that, I think the Committee would be grateful.

Henry Raine: I can confirm it or not.

Q104 Rebecca Harris: I just want to talk about what the current industry practice is around continuous payment authorities. We had a bit of a discussion earlier on about the 3% who default and whether they were the people who were caused real pain. Some of the evidence we have seen is that it is people who have money taken through continuous payment authority who suffer the real pain and who have, therefore, defaulted on their mortgage or been unable to pay a utility bill. My first question is: why do you use continuous payment authorities rather than other forms of payment?

Andy Lapointe: The simple answer is that, with a continuous payment authority, if a customer has a failed payment, they do not have any penalty. Their bank is not going to charge them a fee. If you use a BACS payment or a cheque, and that is returned, the customer is charged a fee. That is the primary reason why a continuous payment authority is a good thing for the customer for collections.

Q105 Rebecca Harris: Are you aware of any better alternatives to a continuous payment authority?

Adam Freeman: I do not think there is. If you do it properly, it is a good way and it works. I think it is the best way.

Q106 Rebecca Harris: For the lenders or for the customer?

Adam Freeman: Both—for the consumer. I think there is a massive misunderstanding about CPA. There is a technical issue there, going back to the roots of Visa. You cannot just dip into someone’s account and take 50 lots of £5 to get £250 from them on a day when the loan is not due, so I think there is a big misunderstanding or misconception of what CPA actually is. It is a date where you agree with the customer to take a payment from them. As long as you are transparent with that, it is perfect for the product, and both the consumer and the lender, if used properly.

Andy Lapointe: You can cancel a CPA at any time. We have a 24/7 call centre, which is open 365 days a year. You can call them up and they will cancel it at your demand. You can also cancel it by e-mail at our company, so it is not something where people are just stuck or trapped using it. They do receive a notice ahead of time that we are going to be debiting, so it should not be a surprise and it does give them the option to cancel.

Q107 Rebecca Harris: Are you confident that customers are pre-notified, do know when money is

going to be taken and have an opportunity to contact you?

Adam Freeman: I do not think it is about the CPA; it is about the transparency. This is going to be a bit of a problem with the FCA as well, because I think they are preliminarily saying you can have two CPAs. Personally, I think that is detrimental to the borrower, because you do not know when a borrower is going to get paid their money. They might say that, on 31 October, they are going to earn an income of £1,500. You do not know whether that company is going to pay them at 1 o’clock in the morning or 3 o’clock in the morning; you do not know. If you try to take that money from the customer at, say, 1 o’clock in the morning and it fails, you cannot then, with what the FCA are putting out there initially, try to get that money from the customer, so that customer is now going to become a defaulting customer because you cannot take the money from the customer.

This is why there is confusion with the CPA. If I tried 10 times that day to get £250 from that customer as £250, what is the difference to the customer? There is no detrimental effect to them. It is not costing them anything. It is not costing us. I have said, ‘On this date, 31 October, I am going to take £250 from you.’ Why should it be that they are the ones that cop out from that because the FCA have said you only get one attempt, and I try at 3 in the morning? A percentage of our customers will not get paid until the following day, because they work for a small company with one person on payroll who is off ill. They are now a defaulting customer. Do we report them to the credit reference agencies as a default? There is a large grey area. We will never—and never have done—go into an account and take seven lots of £50. We will take £350 or we will take the interest amount. I think that is an area that really needs to be looked upon and studied properly, because it is more detrimental to the consumer than the lender.

Russell Hamblin-Boone: If there are insufficient funds for priority debts like mortgages or rent or council tax, or things like that, the lender will not go into the account. If they do go into the account and it has caused somebody difficulty like that, there is the option to refund. If it is proven that it has put someone in financial difficulty, they will refund the money immediately.

Q108 Chair: Has that happened?

Rebecca Harris: Yes, has that happened in practice?

Russell Hamblin-Boone: Yes, that happens in practice. We asked customers a slightly different question to recent surveys. We asked them, “Did the lender explain to you how your bank details would be used to take the money from your account?” 85% of those people said that that was a clear explanation.

Q109 Paul Blomfield: Very quickly, on the Chair’s point, the industry’s code says very clearly that if people do get into financial difficulties as a result of a CPA, you will refund them. You said that happens. Would it be possible for you all to furnish the Committee with detailed information of how often that happens? We have all, in our constituency surgeries, had lots of examples of people who have

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presented with problems as a result of CPA administration. If you could all give us full details of how often you have refunded customers and how often your members have refunded customers as a result of financial difficulties they have created.

Henry Raine: Of course. I think the issue there also is about them contacting the lender. Clearly, that is the other thing, which is why we work very closely with a lot of the debt-advice charities, because they have to make contact with the lender to establish that.

Q110 Chair: We will be talking to them. May I thank you for answering our questions? May I just emphasise that we could probably have spent three hours on this session? We have been constrained by

time. It is almost certain that we will want to table supplementary questions to you, and we would welcome your responses and we will take them into account before we do our Report with its recommendations. Equally, I am conscious of the fact that you may feel that you have not had the opportunity to answer in full every question that has been put to you; feel free to submit anything in terms of supplementary evidence. I would say, anyway, that you can do this but I would emphasise that a number of issues have been raised where we have not felt that you have had the evidence that this Committee would require to come to a robust conclusion, and we would expect you to provide that evidence as we requested.

Examination of Witnesses

Witnesses: Gillian Guy, Chief Executive, Citizens Advice, Martin Lewis, moneysavingexpert.com, Peter Tutton, Head of Policy, StepChange, and Richard Lloyd, Executive Director, Which?, gave evidence.

Q111 Chair: Good morning, and thank you for agreeing to address the Committee's questions. I apologise for having you in rather later than intended, but I felt it was important to explore some of the issues with the previous panel. Could I just, first of all, ask you to introduce yourself for voice transcription purposes, starting with you, Gillian?

Gillian Guy: Gillian Guy, Chief Executive of Citizens Advice.

Martin Lewis: Martin Lewis of moneysavingexpert.com.

Peter Tutton: Peter Tutton, Head of Policy at StepChange Debt Charity.

Richard Lloyd: Richard Lloyd, Executive Director of Which?

Q112 Chair: We are short of time, so do not feel that all of you have to answer every question, if you feel that the issue has been covered by another speaker. I am going to start with a general principle: are you against payday loans in principle or just the way they work? Who would like to lead on that?

Richard Lloyd: I am happy to kick off on that, if colleagues agree. I am not against people having access to short-term emergency loans that are provided on the basis of proper affordability checks and where the cost of that is absolutely clear and fair. People do need and often say to us that they sometimes are in need of that kind of credit. They are sometimes able to manage that credit properly and it is not a problem. It is for the vast majority of people for whom payday lending is a problem—in our surveys, half—

Q113 Chair: Okay. I just wanted to establish your general position on this. You will get plenty of chance to elaborate.

Gillian Guy: I absolutely agree with Richard, but what we do not agree with is that people are force-fed this opportunity when it is not necessarily the solution to their problems, and they should be directed towards debt advice.

Chair: Thank you, but you agree that there is a place in the market for them.

Martin Lewis: They struggle to have a place. The advertising, marketing, operational structures, cost and the inappropriate way they are sold are all problems for me. People often say, "There is a time for a payday loan." I find that very difficult when there are not alternative, cheaper forms of credit. There are two big problems, if we divide it this way: first of all, there are many people who take payday loans when they do not know how they will repay them in a month. If you do not know how you will repay it in a month, it is not for you, so let us wipe those people out first of all, or get rid of those; that is quite easy. Point No. 2: the people who take payday loans and can repay them in a month. My suggestion—forgive me sounding a bit daytime television, but that is what I do—is you get a credit card, even a horrible 56% interest credit card. You put it in a bowl of water and put it in your freezer. Then, when you need it, you are going to have to smash it open, and if you pay that back in a month, which is what payday lenders want, you do not pay any interest on it, so it is interest-free. So when you ask me to answer, on a nerdy basis, "On what occasions is a payday loan the right choice for someone?" I struggle to give you a right answer. So do we really need them? I think we would all be a lot better off without them, and maybe it is worth the sacrifice for the small number of people who do find them rather convenient.

Richard Lloyd: Could I just add, Chair, there are some credit unions that are now offering payday loans, so we need to be focused on the product—not necessarily the institution but the behaviour of the different kinds of lenders that are offering short-term, high-cost credit.

Q114 Chair: There are a variety of opinions there but, in effect, Richard, there is a role for them but the process is what is wrong. Would that be a reasonable summary?

Martin Lewis: If you take 100 people who get payday loans—and I am making the number up—I would

suspect 99% of them would find a cheaper and better alternative doing something else or not doing them. The problem is they are used by far too many people and they are not fit for the purpose they are being used for.

Q115 Chair: There has been concern raised about the increasing number of people seeking debt advice after taking out payday loans. What does this reflect, do you think? Is it just the increase in the number of people seeking them, changes within the industry, failure of the charter that the industry introduced, or what? Who would like to lead on that?

Peter Tutton: We have seen really explosive growth in the number of people seeking help, who have got payday loans amongst their other debts as well. It is not just about the growth of the market. According to the OFT figures, the market has grown about double in the last four years; the number of people we are seeing with payday loan debts has grown eightfold, so we are seeing a much bigger growth in the problem than just the growth of the market. As well as that, we are seeing more people with multiple payday loan debts, and the size of their payday loan debts getting bigger. The average payday loan debt of a StepChange Debt Charity client is now £16,000. Their average income is £12,000. The problem is irresponsible lending and ineffective affordability checking.

Q116 Chair: You have partly answered my question. You said that, in effect, debts have increased hugely, but so has the number of people applying. How far would you say, in rough terms, that is a change in the increasing levels of poverty, or the marketing of payday loans companies? Could you give any sort of weighting to that?

Peter Tutton: It is hard to disentangle the two. Certainly, the people we are seeing are poorer, and lots of households are struggling. The question there, to turn it a bit, is, "Is the payday lending industry, in a sense, taking advantage of people who are struggling and in financial difficulty?" Our evidence suggests that they are. For instance, people we see with payday loan debts are more likely to have debts with council tax, rent arrears and fuel bills. So, far from being emergency cash to get people through a period of financial difficulty, what we are seeing is that payday loans put people on a cycle of using high-cost credit to make ends meet. It makes the problem worse and worse and worse. In a sense, people are in a hole, and a payday loan is helping them dig that hole deeper.

Q117 Mr Binley: Very briefly, I want to know whether you think there is a connection between payday loans and the more unsavoury area of business, and whether that connection operates through what they call "friends." We know, on one website, they talk about, "If we cannot service you, we have friends who might be able to". Does that connection disturb you, or should we not bother too much about it?

Gillian Guy: I think we have to bother about any situation that is exploiting people's difficulty. At Citizens Advice, we have seen a tenfold growth in the number of people coming to us in the last four years

with payday-lending issues. Just to hark back to the previous point, that is people who are already in debt, so they are topping up their debt. They are trying to pay off their debt by further credit, as opposed to getting advice to manage that. We do have concerns about people laying off details to others. If the risk is too high for one company, it may be that they lay them off elsewhere, and then the concern we have is exacerbated about how those people are treated, because they then fall under the radar and we are not necessarily monitoring how those people are doing.

Q118 Mr Binley: That is my concern. Is there a connection with loan sharking in given localities?

Martin Lewis: I am not sure any of us necessarily have that data, but the problem that we have here is that we have a desert of regulation. When you have a desert of regulation, and when it is so easy to get a licence to do this and set up a one-man band to do it, then the slippage—the read-across towards loan sharks—is not that far away. Of course, we are not talking here about the big, high-budget advertising companies that you have probably just taken evidence from. They have their own raft of problems, but we are talking about the oneman-band lack of regulation. We have been given a glass of water in the form of what the FCA is doing next April. It should be welcomed, but it is a glass of water, not an oasis, to continue my analogy. We need a lot more.

Q119 Nadhim Zahawi: Just picking up on that, and taking it in a direction back to the people we took evidence from—some of the bigger players—this question is really for the whole panel, but Martin is an entrepreneur and understands some of these business models. They claim that they do everything in their power to try to ensure people are not effectively borrowing from different sources, and be as rigorous as possible at the moment in the process, and the reason that they claim that is that it is not in their interest to have the 3% of people who are in pain, who end up failing to pay. Would you say that claim is legitimate? Can I put it to you that actually it is part of their business model and they do not really care that much about that 2% or 3%, and therefore that model still churns out lots of profit, lots of cash, even though they get a number—whatever it was we had them admit; 40,000, in Wonga's terms—of people who do get in real difficulty and real pain? Are they being serious about their intention, or is it just part of the business model anyway, that they take this on?

Martin Lewis: We have to differentiate between wanting to lend to people who will not repay you, and wanting to lend to people who cannot afford to repay you but will repay you. That is the subtle difference. Yes, I fundamentally believe they do not want to lend to people who will not pay them their money back. That would be a very stupid thing for them to do, and I believe that they do their best to ensure that that does not happen.

I am not convinced of the ethics of the model. You called me an entrepreneur; I might have to clean myself afterwards, having been put in an analogy with that type of entrepreneurship. It is not something I would ever dream of doing. I am not sure of the ethics

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of that model, and saying, “We do everything we can,” is a bit like me saying I will do everything I can in a fight against Mike Tyson to beat him. I know I will not. I know the information is not out there. I will say, “I will do what I can, in this nice easy marketplace where credit scoring is not being done and we do not have real-time data. We are not able to find out where you have borrowed through somebody else, and we do not have that much detail on you, but I will find out what I can.” I think it is a nice, easy answer to say, “We are doing what we can”, and I suspect they are within that bracket.

Gillian Guy: I would like to take some difference with that, in a sense, because I do not think that we can sustain an argument that these people are doing what they can. They are not in the art of the possible. They are doing what they feel they want to do in order to make their business model work. Our evidence comes from a tracker survey that we carried out of 3,000 people to date, and that was from when the voluntary code came into being. According to that—where, incidentally, we think 76% of those people had a case for a complaint with the Financial Services Ombudsman—over 60% of those people did not have adequate affordability checks for their first loan, and when they sought extensions and rollovers, or had them forced upon them, 94% of them did not then have affordability checks. To say, as we have heard on numerous occasions, that they have to fill in boxes online and therefore say whether they can afford it or not is not all that they can do. They can do a lot more.

Q120 Rebecca Harris: We had quite a bit of discussion about rollovers and whether they should be limited, and the industry were quite keen to tell us that sometimes a rollover could be a very sensible, rational decision by a borrower in terms of their temporary ongoing need. What sort of information do you think we could provide that would distinguish between what was a rational decision by a borrower to take a rollover, and what was a sign that someone is in really serious debt problems?

Richard Lloyd: That would be a more credible assertion for them to make if they were doing proper affordability checks at the outset. From our survey—we have all done a lot of surveys on this—half the people that we have surveyed who have taken out payday loans said that they have taken out credit that they could not afford to repay. Now, if they are not carrying out proper affordability checks, you have got to question whether, at the time at which someone requests a rollover, they are not simply compounding the problem. As Martin said, there is no realtime data sharing between high-cost credit lenders, and I think it just is not credible to suggest that they as lenders are somehow acting responsibly to allow people to roll over their loans. This is where the FCA are absolutely right to limit that number, because the lenders have just proved with their behaviour—both at the beginning of the term and at the time that people are requesting a rollover—that they are not properly checking whether people can afford to manage that ongoing loan.

Martin Lewis: The follow-up to what you are asking fits in with what you said before. If you ask me to run

a business and say, “How am I going to do this effectively to ensure that it is a rational consumer decision?” I am going to need to get on the phone with you or sit down and have a long conversation, like Citizens Advice or StepChange would do, about your affordability criteria and about the fact that you have £2,000 definitely coming in, and you have a letter to prove it, so you are going to be able to repay it. That does not fit the business model of payday loans. They are never going to do that. That is just never going to work. It would not make financial sense with the amounts that we are talking about, so there is a real problem there. Yes, there is a point where you could decide whether it is reasonable to do a rollover, but how you do that within the business models that they have got—I am not sure I could see a way around it without increasing the cost drastically.

Gillian Guy: While we are talking about business models, bear in mind that a large amount of the revenue comes from rollover. It would be counter-intuitive to stop rollovers. Again, from the same survey of those 3,000 people, 70% of them said they were under pressure to take an extension or a rollover, as opposed to trying to find a way to perhaps go and get some advice and manage that debt out of being. We do not think, from our evidence, that the incentive is there at all. Indeed, there is pressure to take on more debt, and no consideration as to whether the person can afford that. We have an example of someone who took out £100 last Christmas, for example, and every month took a rollover until such time as £700 was taken out of their account on a continuous payment authority. They cannot pay their rent, they cannot pay their council tax, and they have just come to see us.

Peter Tutton: We have heard about affordability checks, but we see a gap between that and the reality. We heard that the average payday loan debt in the market was about £250, but for our clients—who, on average, have about £10,000 of other debts as well—the average they owe on an individual payday loan is over £500. What we are seeing is that the people in the most financial difficulty are being lent more to, rather than being checked. That is because those loans are getting bigger because of rollovers, fees and charges, and multiple loans. Of the people we see with payday loans, nearly half have three or more payday loans. How, therefore, is there affordable checking going on consistently?

Chair: May I interrupt? We are moving into areas that other questions are on. I would like the questioners to take the answers they have already received into account, but equally, when answering, could you not repeat it subsequently, because we are very short of time?

Q121 Rebecca Harris: We were talking about the industry model and what is in their interest. In your experience—you have seen people with debt problems, and we get them as MPs as well—do you think this is across the board in the industry, or are some companies or groups of companies better than others? I do not want you to mention any names, but are some doing a better job than others?

Peter Tutton: Both things are going on. What you see—and this is typical in this and other credit

industries, which often focus on people in financial difficulty—is problems right across the market, problems like multiple loans, lack of affordability checking, and people having money taken from their account through a CPA, leaving them not enough to live on. These are right across the sector. It is true that there is a tail in the industry where there are really egregious practices, where we see default charges massively inflate debts and debt collection practices that we thought we had got rid of 10 years ago. This is something that we see across credit markets, and it is one of the problems with regulation not working well. It is a systematic problem, but also, particularly in the tail of the market, there are some really roguish practices that have been allowed to go on for too long.

Martin Lewis: The answer to your question is yes: there are some lenders who are better than others. I have a guide on my site to payday loans. It basically details all the things you should do rather than getting a payday loan, and at the end, we have a section that I refuse to call “best buys.” We call it “least worst lenders”; it is the “least worst” section, and there are six lenders in there. We judge them on a number of criteria. Again, this is “least worst”: I do not want anyone to get them, and the whole article is actually designed to try to put people off getting them. It is a decision tree, if you like. “Are they registered with the OFT?” We hope so. “Have they signed up to the good practice charter?” It is not perfect, it is not fully working, but it is better than nothing. “Do they do a credit check?” We have got six lenders in there that do that. Some of the bigger lenders, if you are going to do it, are not as bad as some of the nearly criminal lenders out there, but I still would not touch it. I will not swear, but in an industry of baskets, some baskets are a little worse than the other baskets.

Q122 Mr Walker: We have touched on affordability in a lot of the questions, but I would like to ask the panel: having seen what the FCA is proposing, having seen the various regulations and approaches from the OFT in the pipeline, are there other affordability criteria that you think are essential to be taken into account? I will come back to the question of multiple loans, because I think that is very important, but is there anything else in terms of the affordability of the loans that you would like to see as a check before people are allowed to take them out?

Richard Lloyd: It would not be impossible. There is no reason why the lenders cannot do real-time data sharing to check people’s credit backgrounds. Martin was talking about whether lenders do a credit check; there are lenders that today, on their websites, are promoting their service as not requiring a credit check. It is extraordinary. As a minimum, we need to know the behaviour that is going on. If the industry wants to demonstrate that it can behave responsibly, it needs to get itself in a position where in real-time, or at least in quick-time, it can do checks on whether people have got loans with other players within the industry. That would be a minimum. The FCA’s plan, more broadly, is welcomed, but we want the FCA to go further. What is the proof that is being got of affordability, and particularly on the income side? Now, of course, this will slow down the granting of a

loan, but surely that is the point. This needs to be done based on credible evidence that people can afford to repay it.

Peter Tutton: I agree. We are looking at the FCA rules, and there are many that copy over from what the OFT have done. Now, these are the responsible lending things that are very high-level, and repeatedly we see in credit markets that high-level lending rules have not worked. You give firms some guidance, and then come back and look later. As well as realtime data sharing, because these products have got such a short-term duration and the risk can build up so quickly, maybe the regulator also needs to be getting its data in real time so it can spot wrongdoing as it is happening and intervene, rather than coming back months or years later.

The other thing is looking at how these products work. If the average income of our clients with a payday loan is about £1,250, can they afford to repay £500? That is nearly 50% of your net household income a month. How is that affordable? If you have got people offering up to £1,000, there is a question of how the regulator will ensure that those products are not unsuitable from the start, because they are such an amount of people’s income that people will never comfortably be able to repay it.

Martin Lewis: I am not sure it quite counts within affordability, but one of my greatest concerns about payday lending is that people often think of this as a financial play. When the Archbishop came out and said we will have credit unions in churches, that is a wonderful thing, but it is not the same thing. This is a technology play, in many cases; this is instantaneous mobile phone technology. This allows you, while you are pissed and want to gamble at 11.30 at night, to get a loan in half an hour. For me, within affordability is actually the personal responsibility of affordability. It just needs to be slower. It needs to be slower to allow time to reconsider, and while there is a cooling-off period you pay interest if you decide to change your mind, so you are effectively still getting the loan. Within affordability, you have the controls that need to be put on the lender, but then, to allow the individual to take some more control of their own affordability, the instantaneous, high-technology nature of the way these operate is very dangerous. It is a feeding mechanism, very close and akin to gambling, and there are many people who use them for gambling. I do not know whether that counts within your question.

Q123 Mr Walker: I think it is a useful point. Did you want to add anything from the CAB?

Gillian Guy: I was just going to reinforce the point about proof. We have heard a lot about being able to tick boxes in technological ways of applying for loans, and they are never checked. People are almost encouraged to put the right answer in the box in order to get a loan. The business model itself, which preys on rollover and the unaffordability inherent in that, needs much more focus from the regulator on just how secure those checks are. The other point in the business model is that it is competition on speed. It is not competition on price or on any of the other points, and that really has to be taken out of that product.

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Q124 Mr Walker: I strongly agree with that. Coming back to this point about multiple loans, I think, StepChange, you said that a third of your people who are coming to you about payday loans have three or more, which is an extraordinarily high proportion. Surely, that can be relatively straightforwardly dealt with through a central database of loans. We had a little bit of theological debate in the previous session as to whether it needs to be a central database of payday loans or all loans. Surely, that is something that a relatively small charge on this sector could pay for, to be run by a regulator. Do you think that might be the way forward?

Peter Tutton: It seems a sensible way forward. I remember, about two years ago, representatives of payday lenders and consumer groups met with BIS across the road, and this was discussed. Now, there has been no movement since then, so I think that for a while, the argument has been, “How do you know what other loans and other payday loans people have got? Surely you should have real-time data.” The industry, as you heard earlier, is moving extremely slowly towards that. I guess what we need now is something to make them move much, much more quickly.

Q125 Mr Walker: We heard evidence in the last session that some in the industry are spending a lot of money on credit data. Surely, if they are spending that individually, it would perhaps be more efficient to spend it together as an industry and get that transparency across the board.

Gillian Guy: It depends on motivation, does it not? If the motivation is to take the problems out of the industry and not put people into spiralling debt and situations that they cannot afford, then how hard can it be?

Q126 Katy Clark: We shall come on to advertising later, but as you say, this is competition about speed. If you look at the advertising, it is very much how quickly you can get money that is the selling point for a lot of these operations. Obviously, a lot of people that are looking to get a payday loan feel desperate, and they are not necessarily looking properly at all the information about interest rates, which perhaps could be more prominent. However, even if we regulated to make it more prominent, it still will not necessarily be the main thing that people will look at. Do you think we need to regulate interest rates, and do you think we need to have a maximum interest rate, which is something they do in other countries?

Martin Lewis: I am not a fan of an interest-rate cap. I always use the example that if we were in a pub and I said, “I will lend you 20 quid, but you buy me a pint next week,” and the pint cost £3, that is 143,000% APR. That shows that, on short-term loans, APRs are not that relevant. The one thing I like about APRs on payday loans is that it is the one thing that puts people off. I quite like that it is there, even though it is irrelevant, if I am really honest, and I admit the logical inconsistency in that. I like it because it puts people off. I am in favour of a total-cost cap.

Q127 Chair: Just following up that point, if they were capped at a lower level, do you actually think there might be an increase in take-up of payday loans?

Martin Lewis: I do not think it is about interest rates, and that is why I think you have to protect people from the cost. I am in favour of a total-cost cap. In very simple terms—and I am not setting a number—if I borrow £100 in total, including rollovers, fees, charges, everything, I should not have to pay more than £150. That is an explanation of the structure, not the actual cost I am looking to be set. I have not got that far yet, to be honest. That is a market-condition thing.

Q128 Katy Clark: In effect, that is regulating interest rates. It may not be a maximum cap.

Martin Lewis: Technically, it is not. It is regulating cost. If you regulate interest rates and say, “100% interest rate”, what you are actually doing is regulating the term of the loan. Therefore, you cannot lend over one day and ask people to pay back the next day, but you can lend over a month, so you would actually elongate the loan terms if you did it that way. It is a subtle difference, but it is not quite the same thing.

Chair: I think we understand.

Richard Lloyd: Chair, I have got a slightly different point of view on this to Martin, and it is a nuance on what he has said. We think what gets people into difficulty the most is the fees and charges—that half of people that are borrowing, who I talked about earlier, that find that they cannot afford to repay the original loan, are then late with a payment and get charged £25, and that gets added on and on and on. We think that cycle is the biggest part of the problem in terms of affordability and the spiral into debt. Our view is to put a cap on the cost of the fees and charges that people are being hit with first. The evidence about what would happen to the market if there were a cap on the total cost of credit is inconclusive, and we were talking earlier about the linkages between payday lending and other forms of high-cost credit and illegal lending. I think we have got to be really careful here. In our view, the FCA—and it has the powers—should attack the thing that we have identified is most often getting people into the most difficulty. It is the fees and charges, not necessarily the total cost, although I would not rule that out.

Gillian Guy: May I add that there should be some charges that are looked at in terms of a ban? When we are looking at total cost, that means things like charging for failed continuous payment authorities on a continuous basis.

Chair: We are going to talk about those in a second.

Q129 Mr Binley: Mr Lewis, you mentioned the connection with gambling. Do you know what percentage of payday loans are related to that? That is an interesting point.

Martin Lewis: There is no way to know.

Q130 Mr Binley: Are there any checks on those people who have two, three, four, or even five payday loans and are doing treasury accounting by doing that? Every time they get a loan, they pay off the other loan,

so from the loan-giver's point of view, it is a self-fulfilling increase.

Peter Tutton: Yes, and that goes back to when we are thinking about default rates and things like that. We saw this before in the past, with credit cards, and the issue of only looking at people who have actually fallen over and not looking at people whose problems are getting bigger and bigger. What we see with credit cards and some of the mainstream credit is that they pay much more attention to looking at information suggesting that people may be in more financial difficulty. That is clearly not happening with payday lenders.

Richard Lloyd: Our research suggests that a quarter of payday-loan borrowers are using those loans to repay other credit.

Q131 Mr Walker: Is there any way of the debt-advice charities represented here alerting credit reference agencies when they are coming across these multiple payday loans? Do you have any process for contacting the appropriate reference agencies and making them aware of this, or would you welcome such a process, if it could be made available?

Gillian Guy: The difficulty there is that that is about personal information that is brought to us on a confidential basis to help people out of a situation, so it is quite difficult to do that. We have to have generic information that we then would pass on, and we are very open to passing on data to show where the problems arise.

Peter Tutton: More particularly, of course, by the time they come to us, people are coming for help with serious debt problems. What we need to do is prevent those serious debt problems. By the time they come to us, it is trying to remedy a bad situation. The lenders have to be doing this earlier to prevent people taking out unaffordable loans, rather than us being informed when people have a problem.

Gillian Guy: To be fair, given the amount of surveys that we have done and the amount of data and evidence that we have got, we have passed on a lot that would say this business model needs re-looking at and the practice needs to be changed.

Q132 Ann McKechin: We have spoken quite a bit about rollovers today, but I just wanted your views on the FCA proposals to limit the number of rollovers to two per loan. Do you agree with the limit, and if not, what would you like to see in its place?

Gillian Guy: It is good to have a limit, because we see people getting into that spiral, and it has no end. I have got cases here with 11 or 12, and they just keep going and going and then, as I say, finding the money taken; they just have not got it in their account, but it is not in isolation, really. Those people cannot be left to be told, "There is no solution for you," because they may go to other places that are even less salubrious, or get into worse and worse situations. So they must be signposted to get some help, advice and support to get them out of the situation.

Q133 Ann McKechin: Does anyone have any alternative views?

Richard Lloyd: We think a limit of two is a sensible place to start, but we think probably the FCA would need to move to one. In our view, one rollover is reasonable. You might need to take out a payday loan because of some unexpected expense one month, and the same may happen again. We should look very hard at whether two is effective and is tackling the problem properly, but two is a good place to start.

Martin Lewis: I am with one as well, but I do worry about the rollover loophole: "We will give you another loan to repay the first loan that you had with us," and—you were discussing it before—what I call the collective rollover, where you effectively roll over with another firm or another operator by doing the same thing, and there are no data checks. I am not sure how effective it really will be in practical terms for an individual.

Q134 Ann McKechin: Do you have quite a bit of experience of people taking existing loans and putting them into an alternative package?

Martin Lewis: That 25% figure is, effectively, that.

Richard Lloyd: That is what we have had.

Peter Tutton: That is what we are seeing with people, spinning round and round and round and round.

Q135 Ann McKechin: So it is repackaging that is going on?

Peter Tutton: Yes. A limit of one makes sense to us, but there is also this point about dealing with multiples. The FCA has to have a package that deals with the whole thing of people getting stuck in this spiral.

Q136 Mike Crockart: What restrictions on advertising do you think should be introduced to stop inappropriate lending?

Gillian Guy: I think we need to look at a whole raft of things on advertising, and an analysis of exactly what the market segment is that companies are targeting. We do hear that they are not targeting the people that we are talking about, and yet they are on daytime television; they use cartoons; they put it at times when people that we see with multiple debts might be at home, because they are unemployed. It is that kind of targeting. There is no clarity in them about what the consequence of taking it on is. It all looks like a good thing, a quick fix, and something that is attractive. To be honest, it reminds me of the old days of cigarette advertising, where it was all very sexy and a good thing to be doing, and we did not worry about health warnings. There are no health warnings on these adverts. There is nothing about the dangers that they could present, or, indeed, that they are not the solution to all things and there might be some other way out of a debt situation, rather than more debt.

Martin Lewis: We are in danger of grooming a new generation towards this type of borrowing. If you think we have got problems now, you wait until 10 years' time. Grooming is the right term. We are talking about a market that did not exist five years ago, and you have had people in arguing that this is how people like to use it. They have created the demand, they have created the operational structure,

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and now they are saying it is what people want. It is deliberately contrived and controlled.

Let me give you some stats that we are coming out with today. 14% of parents of under-10s, when they have said, "No, you cannot have your toy," or whatever they have asked for, have had a payday loan company quoted to borrow the money from. 30% of under-10s, in a poll of their parents that we have done on the website, are joking about these slogans, and laughing and repeating slogans of payday lenders. We have normalised this. This niche lending of last resort has become normalised to a mainstream form of credit by the use of advertising. I would have a blanket ban. These adverts go on children's television channels and children's television programmes.

Where would I start? A full ban on any children's TV and advertising. It is a disgrace, and I use the term "grooming" quite deliberately. Once we have done that, we need to look at the style and nature of the advert. There are cartoon puppets that make it seem fun, and deliberately fly in the face of the messages we know we want to get out there. They say, "It is easy;" they deliberately try and say, "The other messages you are hearing are wrong." It is inappropriate propaganda. We need, when these adverts come on, all the health warnings that we are saying today to be part of those adverts. I am close to saying that I would just ban the whole lot of them, but that is not a market economy, and we have to accept that we do not do that. They have to be far more responsible.

Q137 Chair: Have you any figures for the percentage of those who have payday loans, grouped by age?

Martin Lewis: No, I do not.

Peter Tutton: We can dig that out, with the people that we see who have come to us for help.

Chair: Could you provide us with that evidence?

Peter Tutton: Yes. Another thing is that I agree with what Martin said there. Particularly, from our point of view, there is a normalisation of using high-cost credit as a way of dealing with financial difficulties. As I said before, we see people using payday loans in a way that makes their financial difficulties worse. One part of advertising, which was talked about in the previous session, is unsolicited marketing. We did some polling a couple of weeks ago, and I think something like 1.2 million people said they had been tempted to take out a payday loan by unsolicited contact.

Our clients tell us they are being bombarded by texts and phone calls. These are people who are at their lowest ebb; they are massively financially vulnerable. They do not know how they are going to get through the end of the month; they are completely stumped, cash-stressed. Then people are contacting them saying, "We have got the solution to your problem; here is a high-cost loan." We know that, very often, those loans make the problem worse. So why is it that unsolicited marketing of what can be a very high-risk product is allowed? We do not argue for banning many things, but one of the things that maybe the FCA should consider is a ban on unsolicited marketing of payday lending.

Gillian Guy: One of the things that we have to bear in mind, as well, is that we are now increasing the market for these adverts. With the costs of living going up and people being unable to meet their priority debts, they are looking for solutions, and they are right in front of their eyes. In a way, there is a more vulnerable situation that we have to deal with here. We look at welfare reform, and we see monthly budgeting coming in and people being unable to manage on that basis. What is the answer to that? A quick fix, a quick loan, and there is your advert waiting for you.

Richard Lloyd: On the demographic question, Chair, our research suggests that across the board, 4% of households take out a payday loan each month. For 18 to 29-year-olds, that is nearly double, 7%. Martin is quite right: there is clearly a growing problem here in terms of younger people being engaged with this market at an increasing rate, relative to the others. The other thing I would do with advertising is make it really plain what the cost of a loan is, and I would express that in pounds per £100 borrowed, rather than in APR. People, we know, tend not to understand APR, tend not to be able to engage with that metric. I would force the lenders to explain much more clearly the costs, and as Gillian said, the consequences of default in terms of cost as well.

Q138 Mike Crockart: May I ask for a bit more detail? I am a big supporter of the "Got Their Number" campaign that was launched last week, and, of course, "Calling Time", that Which? have been running for nuisance calls. What is the evidence that you have on who is making these calls? I questioned the big players that were here just a minute ago, and they are adamant: "We are not doing any of this." If they are not doing it, who is? There seem to be so many of them.

Peter Tutton: It is a good question. One of the difficulties is that people are not often sure, because there are lead-generating firms. There is a shadow market of consumer data, so part of the thing about passing it to your friends is that if a consumer contacts a website, does that consumer know who their details are being passed to? People are being rung up, and they do not know who they are being called by. That opens people up not only to perhaps taking an inappropriate payday loan, but also to fraud. We see types of advance-fee fraud that are based on cold-calling. There is a problem, because people do not necessarily really know who their data is being passed to and who is ringing them up, and it is very hard for us to trace that back again. People tell us they are bombarded by calls and texts. We are getting people to send us those texts, and we can find out who is doing it, but it is very hard. That is part of the problem: there is little control, and there seems to be massive non-compliance with things like the data protection legislation. It is hard for consumers to know where their details are going and who is contacting them.

Chair: I think we get the point. If there is anybody who wishes to submit any further evidence on that, feel free to do so.

Q139 Paul Blomfield: We are all deeply aware of the problems with the use of continuous payment authorities. The FCA are proposing a limit of two unsuccessful applications of a CPA. Is that enough to tackle the problem that you have experienced, and if not, what would you do?

Gillian Guy: I do not think it is just about how CPAs are administered. People do not, in the first instance, understand either that they have signed up to a CPA, which is very often the case, or how it differs from a direct debit, or that it does differ. They do not get notice when a payment is about to be taken out, and the timing in people's accounts is extremely important when they are living hand-to-mouth and if they have priority debts coming in. None of that is taken into account. We have had some struggle, as well, to make it clear to people that they can stop those CPAs, and it is within their rights to do so. That has not been made clear enough.

Martin Lewis: To follow up from that, the real struggle is, since November 2009, you have had a right to go to your bank and cancel a CPA, but you call up the bank and the bank staff do not know that, and they tell you that you cannot. People are right to say, "I cannot cancel it," because they try to cancel, and they do not. We have a real problem—not just within payday loans; CPA is an issue right across the board—of being unable to cancel that type of payment. Sometimes the public are right: you cannot cancel it, even though you have a right to.

Q140 Nadhim Zahawi: Briefly, on that one, we heard from the panel previous to you—from Mr Lender—that CPAs can be a really good thing for the customer. It took me about 30 seconds to get something up here from the Consumer Action Group: "I currently have a loan with Mr Lender. Anyway, that aside, I was recently made redundant; rang, e-mailed NatWest to cancel CPA, cancel my bank card; told Mr Lender I had been made redundant. They of course asked for £75 to set up a repayment plan, which I refused. Mr Lender has still managed to take one payment, £75, and another payment, £145. May I add, my bank was already overdrawn before Mr Lender's payments. These show up on my statements. The bank account I have with NatWest has no overdraft on it, and is £252 overdrawn. Where do I go from here?" Is this typical of what is happening in the industry?

Martin Lewis: It is certainly not shocking or surprising. I think "typical" is perhaps too strong a term. Interestingly, if that money has come out, this person has a right to go to the Financial Ombudsman and ask the bank to pay it back, because they should not have allowed it to come out. This all flicks back to your earlier question to me, about the difference between trying to do everything to make sure people do not repay, and being willing to lend to people you are going to get to repay when they cannot afford it. If you have got the CPAs working in the right way, and people have £10 in their bank account and every day you are doing a CPA for £10 on a fishing expedition, people are going to repay. It does not mean they can afford to repay, but they are going to repay. That is the subtle difference in the language that we are hearing: "Will I get my money back?" If it is a "no", they do not want it, but if they will, regardless of the moral concerns of whether it is right to get it back, that is where they are pushing.

Richard Lloyd: This must be about giving people control over their finances, and the way to do that is to require the lenders to give you notice that they are going to use a CPA. If they do not do that, you are not in control.

Peter Tutton: It is also about not pushing people further into difficulty. Charging £75 to set up a repayment plan is not good, responsible lending. It is taking someone who is clearly in financial difficulty and taking another fee out of them. How can that be justifiable? The thing with CPA is that we would expect lenders to start thinking, if CPA fails once, "Okay, why has that failed? What should we do as a lender to try to make sure, if this person is in financial difficulty, we are not making it worse?" rather than, "If we have not heard from them, we will just take the money anyway and maybe we will add some more charges."

Chair: I have got to finish here. We have got the Minister here, and other bodies; we need to question them. If you feel that you have not had the opportunity to answer a question as fully as you like, please submit it in written form as supplementary evidence, and it will be fully considered in our report. Equally, we may well have further questions that we would like to ask you, and we would be grateful for your responses. Thank you very much.

Examination of Witnesses

Witnesses: **Jo Swinson MP**, Minister for Employment Relations and Consumer Affairs, Department for Business, Innovation and Skills, **Lesley Titcomb**, Chief Operating Officer and Programme Sponsor of Consumer Credit, Financial Conduct Authority, **Nadege Genetay**, Head of Banking, Lending and Protection Policy, Financial Conduct Authority, and **David Fisher**, Anti Money Laundering and Consumer Credit and Consumer Direct, Office of Fair Trading, gave evidence.

Q141 Chair: Thank you for agreeing to answer our questions, and in particular, Minister, can I thank you? I think this is the first time I have ever known a Minister actually ask to attend a Select Committee inquiry, and I do apologise for having you in rather later. I hate doing that, but as you can understand, the scale of the issues there provoked such a lot of

questions that it was very difficult to manage within the time scale available. However, we have you now. Could I just ask you to introduce yourselves for voice transcription purposes, starting with you, Minister?

Jo Swinson: I am Jo Swinson. I am the Minister for consumer affairs, and am very pleased that the Select Committee is returning to this important issue.

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Lesley Titcomb: I am Lesley Titcomb. I am the Chief Operating Officer of the Financial Conduct Authority, and the executive responsible for the transition of consumer credit regulation to us.

Nadege Genetay: I am Nadege Genetay. I am the Head of Banking, Lending and Protection Policy at the Financial Conduct Authority.

David Fisher: I am David Fisher. I am the senior director responsible for consumer credit and anti-money laundering at the Office of Fair Trading.

Q142 Chair: I will open with a fairly general question. The industry has produced its own customer service charter. How do you think the undertakings there match up with the compliance review that you published earlier this year? I gather, Minister, you wish to respond.

Jo Swinson: Absolutely. It was helpful that the industry indicated that they wanted to clean up their act and have their own charter, which they created last summer, and that came into force last November. Unfortunately, we did not find that the compliance with the industry's own charter was what we would have expected. Initially, the industry had committed that they would review their own compliance on that, but when it came to the crunch, unfortunately, not all of the industry was prepared to undertake that review. As the Department, we initiated our own surveys to try to test the extent to which there was compliance with the industry's voluntary codes, and what we found was pretty disappointing in terms of compliance. One in five customers reported that the lender did not ask about their finances when they were taking out a loan, and this rose to 60% when they were actually rolling over that loan.

In terms of CPA, which I know you heard about in previous sessions, again, one in three customers reported it was not clearly explained, and nearly 60% of people were not told how to cancel a CPA. So our surveys were a snapshot in time, but certainly gave us significant cause for concern about the levels of compliance, which is why I was so delighted to see really tough rules proposed by the FCA, given that I think the industry has had a significant chance to get its own house in order and has failed in that challenge. That is why the regulators will be able to make sure that that is indeed what happens.

Q143 Chair: Minister, could I just extract one element of your answer there? You implied that there was actually resistance from sectors of the industry. My next question was, "Is this a result of a quickly expanding market, or are there deep-seated problems?" Would you agree that that seems to point to the latter?

Jo Swinson: I think so. There are four main trade bodies within the industry, one of whom had basically said that they would undertake the compliance review as they had all signed up to do. So at least in one part of the industry, they had indicated that willingness, but it was very disappointing that the rest of the industry did not do likewise or indicate that they would do, despite having previously agreed that that is what would happen.

Q144 Chair: Would it be fair to say that there were at least some elements within the industry that looked at its own charter as, if you like, a smokescreen?

Jo Swinson: I certainly think that it was not taken as seriously as it should have been, because the customer experience backed up that it was not properly being delivered. At the end of the day, it is the customer experience that is most important. Actually, the issue about whether or not the industry wanted to review their compliance might not have mattered had we found, when we tested it, that the customers were saying that there was compliance. But the combination of a lack of interest in charting whether that code had been complied with and the fact that customers were then reporting significant problems certainly suggests, very strongly, that the industry was not taking it anything like as seriously as it should have been, in general terms.

Q145 Ann McKechnin: I have a couple of questions for Mr Fisher. You have the power to revoke licences in extreme cases. How many licences have you revoked following your compliance review?

David Fisher: Since the compliance review, we have revoked the licences of three consumer-credit companies, and we have a further two investigations that are at quite an advanced stage at the moment, so I would expect more would follow.

Q146 Ann McKechnin: Thank you for that. Given the number of failings that have been highlighted in your review—very extensive failings, right across all sectors of the industry—what other sanctions are available to you, and have you used any of them since the publication of that report?

David Fisher: "Sanction" is perhaps not quite the right word. The work that we have done putting pressure on the 50 leading lenders that have been referred to earlier, accounting for 90% of the market, is not formal enforcement action, but we gave each of those lenders a very, very detailed dossier of their failings. Let us be frank: that is exactly what they were—failings. We gave each of them a 12-week period in which to satisfy us that, in short, they had put their house right. We have been following up on that since. That has had a direct effect on the market, in that, as has already been mentioned, 19 of the payday lenders chose to exit the market. So you can say that it is not formal enforcement action or a sanction, but the pressure we have put on the payday lenders has resulted in some of the more undesirable ones leaving immediately.

Q147 Ann McKechnin: Yes, but 19 out of 50 is actually removing competition. There is less competition in the market as a consequence of that particular endeavour. I am sure we do not criticise you for it, but that is an inevitable consequence.

David Fisher: Indeed. Obviously, we are the UK's leading competition authority as well, but you must remember that it is not competition for its own sake. Our motto is about making markets work well for consumers. We have had real concerns about how competition operates in this market, very fundamental

concerns, which led us to make a reference to the Competition Commission in the summer.

Q148 Ann McKechin: Can I ask you one point? You stated that if a borrower has to roll over a loan because of a missed payment, it is prima facie evidence that it is financially unsustainable. Today, when we took evidence from the industry, they appeared to find great difficulty in defining what was financially unsustainable. Do you consider that still remains a problem with the industry?

David Fisher: Yes, it does. Absolutely, it remains a problem. May I just make a point that we do not have the power to make rules, but we do issue guidance, and we were very clear about this in our debt-collection guidance. It is not the use of continuous payment authority that has bothered us; it is the misuse of it. It seemed to us that if you have made one or two attempts to recover a loan, and the person just simply does not have the money in their account to repay it, then you should stop and ask, "What is going on?" You should assume that there is a problem there.

Q149 Ann McKechin: I am just going to very quickly ask the rest of the panel whether they agree with the OFT's analysis.

Lesley Titcomb: Yes, and that is why we have made the rules we have, or are proposing to make the rules we have around rollovers, CPAs and so on. However, it is also important to understand that as the FCA, we will have available to us tools that the OFT has not had—authorisation supervision and so on.

Ann McKechin: We will come to that later on.

Q150 Mr Binley: May I ask the panel what the reasons are for your referral of the industry to the Competition Commission? What were the most specific reasons that you really wanted to get down to?

David Fisher: The compliance review that we conducted—and you have referred to it, and you have obviously been drawing on our report when preparing for this—showed noncompliance across all parts of the industry. We did not find that there was a long tail of people who were failing to comply with the law and the OFT's guidance; we found noncompliance across all payday lenders. That is not what you would expect to see in a properly working market. You would, in a properly working market, naturally expect to find some people who were not complying with the law; that is just the way the world works, but you would expect to find the majority broadly compliant. We did not find that. That was the big trigger that said to us that there was something wrong with this market.

We were concerned that, actually, non-compliance is a competitive tool in this market. It gives a competitive edge. We were concerned about the lack of transparency that has been discussed in earlier sessions: do consumers actually understand what they are getting into with a payday loan? Does the consumer understand the implications of a rollover? Does the consumer understand what a continuous payment authority is? We were concerned about low price sensitivity. As one of the previous witnesses said

quite clearly, and I agree, these people compete on speed and convenience; they do not compete on price, so there is low price sensitivity on the consumers. We were concerned about barriers to switching from one lender to another, and high concentration: we estimate that the three leading payday lenders account for about 70% of the market. Those were the core reasons for referring to the Competition Commission.

Q151 Mr Binley: We heard earlier from the professional body organisers that they did not seem too concerned about the interface between the legal and credible part of the business and the illegal, and often incredible, black area of the business. Do you see that as a real concern—that blurred dividing line between what we consider to be not only indecent, but often illegal, and what the companies consider to be legal? It seems that there is an interplay there that we are not getting hold of.

David Fisher: There is a clear distinction between that which is legal and that which is illegal. There is the law on illegal moneylending; for example, you do have to be regulated in order to provide a loan. There is a clear distinction between what is illegal and legal. What we were concerned about was not so much what is legal, as how the law is being interpreted and applied. There you have a broad range of business practices, some of which are not illegal but are highly undesirable.

Q152 Mr Binley: What about references to "friends"?

David Fisher: Yes, I was struck by the reference to a "friend". The friend in question, of course, would be another provider of short-term, high-cost credit. If I am such a lender, and I decide that you are not a good credit risk but I refer you to a friend, what do you think they are going to charge you? To call them a "friend" is a clear misnomer. It would be another payday lender.

Q153 Paul Blomfield: We are all concerned to get both regulation and enforcement right. It was clear from our exchange with the industry earlier that both were not right at the moment. Self-regulation had failed and there was no effective enforcement. Now, within the proposals that the FCA has published—or alongside those proposals—what are your views on enforcement, and in particular, on the sanctions that can be taken? You talked about the new tools at your disposal.

Lesley Titcomb: I will kick off on that. We all tend to think of the enforcement and the sanctions that tend to grab the headlines, but it is important to understand the whole regulatory process and the range of tools available to us. First of all, there is the authorisation gateway. Firms that want to continue in this sector will have to go through the full FCA authorisation process. There is then ongoing supervision and monitoring, which will be tailored to the level of risk posed by the particular type of firm that we are talking about, and payday lenders are high-risk and therefore can expect an increased supervisory focus. They will have to submit data to us, etc. Then, of course, where we do have the offenders, there is a much wider range

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of enforcement sanctions available to us than there has been to the OFT. We, for example, could instruct a firm to stop doing certain types of business or to not take on new business. We can fine them. We can, in certain cases, tackle the individuals who are responsible for the firms. We can ban certain adverts—that type of thing—and also, of course, we can ultimately take away a firm’s authorisation.

Jo Swinson: I would echo some of what Lesley said, but say that I think it is really important to recognise that the OFT has taken enforcement action that has led to the exodus of 25 firms from the market, through a combination of voluntary leaving and licences being revoked. However, they did not have the strength of powers that it has become clear are needed within this industry to tackle some of the very significant non-compliance. That is why the Government have made sure we have given the FCA, as the new regulator from next April, very significant and robust powers. Lesley has outlined the whole process, and whether it is fines, which of course can be unlimited, or whether it is banning products or getting redress for consumers, these really are much, much more significant powers. This means that the FCA will be a regulator with—dare I say it?—perhaps more teeth than the OFT was equipped with, to be able to clamp down on payday lenders and any unscrupulous lending behaviour.

Q154 Mr Walker: Just following on from Paul’s question, it is very reassuring to hear about the extra powers and the extra enforcement that we can expect to see from the FCA. I have heard some worrying suggestions that the EU consumer finance directive and the creation of a common market in consumer credit could mean, though, that companies operating outside the UK regulatory system would be able to sell products into the UK. Do you have powers to address that, and make sure that UK consumers are protected from that type of approach?

Lesley Titcomb: We have faced this situation already in a number of areas. We do have a certain number of powers, but they are limited, obviously. We are left with host country powers, effectively, so inevitably it is more difficult. In any case where this type of business is mobile, it can move offshore, either to other parts of the EU or even outside the EU as well. That is an issue, it is more difficult for us, and we are more limited in what we can do.

Jo Swinson: On the consumer credit directive specifically, while it can be helpful in some cases to have EU-wide regulation, which can mean uniformity of protection across the EU, one of the issues that my officials are exploring with the Commission at the moment is that of how information can be provided. For very sensible reasons, the consumer credit directive says that credit has to be expressed in APR, but I know that this Committee in its previous Report has highlighted some of the failings of APR in helping consumers to understand the costs of taking out a short-term loan. Obviously, when a borrower gets to the stage of taking out a loan, we can also require the total cost of credit to be provided, in pounds.

The maximum harmonisation nature of the directive means that there is perhaps more of a grey area about

whether that can be required in advertising, or whether it can be as prominent as the APR. That is an issue that we recognise is probably an unintended consequence of the consumer credit directive. I have written to the Commission, and that is something that we are currently very engaged with the Commission on, to try to get some clarity on that so that the regulators know exactly what they are able to demand of lenders without falling foul of the European law. If that ultimately does need to be changed, then I would hope the Commission would look positively at that, for this new type of credit that perhaps was not envisaged when the initial rules on APR were put together.

Q155 Mr Walker: I do think it is an important area to engage, and to try to make sure that we have as much control as possible to protect UK consumers. Just moving on from that, we have talked a lot today about affordability, and obviously the sector’s charter itself talks a good game on affordability but it is not something that appears, particularly from the OFT investigation, to actually be checked as often as it should be. The figures were disappointingly low for initial loans, and even lower for rollovers. What difference will the new regulations make, in terms of making sure that affordability really is put front and centre?

Lesley Titcomb: You have come, really, to the crux of the proposals in our consultation paper, which are to ensure proper affordability checking and that loans are only made to those who can afford to repay them. What we are looking at here is a package of measures to drive that. There is obviously the proper assessment of affordability—what are people’s incomings, outgoings, etc.—but there are measures on top of that, such as limiting the number of CPA attempts that can be made. The CPA is, in our view, one of the incentives that drives firms not to carry out proper affordability assessments: they have no need to, because they know they can dip into a bank account to recover their money. That is why you have to think of it as a proposal. The key thing, from our point of view, is that we can make rules on this, whereas the OFT has only been able to make guidance underneath the principles that we have that people should be treating their customers fairly, anyway. We are also able to devote more resources to monitoring against those rules, and taking enforcement action where appropriate.

Q156 Mr Walker: In terms of the monitoring, real-time data collection and shared information around credit would obviously make a huge difference here. This is something that we have heard from the debt charities that they would like to see. Do you think that is something that is achievable, either on the basis of the industry working together or something that you as a regulator should be looking into bringing about?

Nadege Genetay: Clearly, this is an area where we have said we have an interest. We will be looking to the industry; that would be a good reason for the industry to develop realtime data sharing amongst them. We will also be looking at the results of the Competition Commission investigation into the

structure of the market. If we find that we are the people who would be best placed to mandate in this area, that is something we would be prepared to look at.

Jo Swinson: May I add to that? Obviously, this is an area that works quite well already within the rest of the credit market. We are all familiar with the likes of Experian, Equifax and Callcredit, and the fact that when you apply for a credit product, normally you will go through a credit checking procedure. It is set up by an industry committee, called the Steering Committee on Reciprocity, or SCOR. Now, it would be great if they were able to embrace the need for much more dynamic data and information under this very different type of lending, and, as I say, they have got a good track record in other parts of the industry. Last autumn, BIS officials convened a round table on that matter with different people from industry, but it is probably fair to say that there has not been the kind of progress and speed that we might have wanted from the industry on this issue. It is definitely something I am pleased that the FCA is going to look very seriously at, and if it transpired that the FCA was in need of any further powers in order to mandate that, then obviously, Government would be very sympathetic to any powers that the independent regulator needed that they feel that they do not have currently.

Q157 Mr Walker: I am glad to hear you say that, Minister. We did hear from StepChange earlier that they had lobbied your predecessor in your role about this, and felt that there had not been enough progress, so it is certainly something we would like to see more rapid action on. There is a debate, I understand, as to whether the existing credit reference agencies can actually achieve this, and whether the industry can achieve this without regulatory intervention, but I am reassured to hear the regulator say that they will consider stepping in if necessary. It would be useful—and perhaps this is something that could be followed up in written evidence—to hear about what sort of timeline you see for when that would be needed. Have we looked at other jurisdictions that are looking at using real-time data? Canada, I think, is one example; Florida is another one where this has been achieved. Have you made any analysis of what that does to the market, and how it helps to improve?

Nadege Genetay: We are certainly looking at the experience in other countries. Indeed, we are making contact with the regulators in those other jurisdictions. There is a variety of mechanisms, including enforcement databases as opposed to real-time data sharing between lenders, and we are interested in understanding those where they exist.

Q158 Mr Walker: Just one final question: we heard a lot of evidence from the debt-advice charities about the problems of people with multiple payday loans, and the fact that that puts people in a completely unsustainable position. If this information were available—if we had real-time data sharing, and you could see whether people already had a loan—would you support actually banning payday loans being made to someone who already had a payday loan out?

Lesley Titcomb: Again, what we say is it has to be a proper affordability assessment. We hear that people's individual circumstances can vary hugely. Certainly, multiple loans are a problem. It is difficult to see how the second or third loan to somebody who is already having trouble repaying the first is really being lent to someone who can afford to repay. It is certainly a very, very strong indicator that the person is in trouble. So, should they be going there? I would very strongly doubt it.

Q159 Mr Binley: Good morning, Minister. The OFT found that 28 of the 40 lenders using continuous payment authority failed to explain how it operated, or that borrowers have the right to cancel. Given this evidence, should the continuous payment authority mechanism be stopped?

Jo Swinson: It obviously very much backs up, or is backed up by, the BIS research that we undertook as well in our consumer surveys; what was supposed to be happening, in terms of information for consumers about CPA, was not happening. As an initial step, I was very pleased to see the FCA getting the banks around the table to make it very clear, so that they understand that if a consumer rings the bank to cancel, then that is one way of doing it. I think the continuous payment authority is at the crux of many of the problems within this market. Lesley has already outlined the link to the issues of affordability, which has basically given many payday lenders much less of an incentive to be thorough in their affordability checks, because they have had that ability to dip into customers' bank accounts and get paid first, almost like a preferred creditor.

I think that the proposal that the FCA have put forward is a very welcome one, because by limiting it to two CPA attempts over the course of the whole loan and it having to be the full amount of the loan that is requested, that rather removes the word "continuous" from "continuous payment authority". It is still a payment authority but it is suddenly much more like a direct debit or a one-off payment, because the lender is then incentivised to make sure that they know that there will be enough to repay that when they take that payment. When you couple that with the limits on rollovers, so that they cannot have a loan that is going on ad infinitum and building up interest charges, suddenly the business model that some payday lenders have been working on is very much changed indeed. Obviously, the Competition Commission might have more to say on that business-model point. I think the CPA restrictions, as proposed, are incredibly welcome.

Q160 Mr Binley: The real concern, of course, is that this industry has proved very difficult to control, has it not? One of the problems is that we are always behind the curve. Will you do more with regard to regulation, to ensure that we get closer to the curve?

Jo Swinson: It is a really important point that you are making. It is a very fastmoving industry. It has grown hugely in the last few years, and one of the difficulties around the sometimes cumbersome nature of putting legislation in place is the time that it takes from the consultation point to actually getting legislation in

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place. That is why, by having giving very strong, robust powers to the FCA, they are much better placed to respond quickly to any changes within the marketplace. They can introduce new rules, if necessary, much more quickly than we could introduce legislation. That gives us a much more flexible way of dealing with the industry.

Q161 Mr Binley: I take the point about regulation, but it also needs policing. Are you sure that the policing powers or resources are in place to ensure that we are closer to that curve, as I said?

Jo Swinson: I am very confident that, in the FCA, we have a robust regulator with the resources and the tools and the powers that it needs in order to make sure they are on top of this industry. Further to that, obviously, Government wants the independent regulator to be very successful, so if the FCA were to come and say, "We feel that we would need an extra power in this area or that area," then clearly that is something that Government would be very positive about.

Mr Binley: So we have really got a regulator that regulates. That is a novel and welcome thought.

Q162 Paul Blomfield: I wonder if I could briefly follow up on that question of CPAs. The proposals that the FCA are making are very welcome. When we had a debate back in July, the Minister also made the point that it would be helpful if there was a requirement for three days' notice of CPAs, and if, at that time, an awareness of the right to cancel was drawn to the attention of borrowers. It would be helpful if that ended up in the FCA rules. Are you planning to do that?

Lesley Titcomb: We have not made a specific proposal to that effect at the moment. Obviously, it is out for consultation, and that is one of the things that I know a number of bodies have different tweaks on, that they would like to see. That is one that we have heard, for example. We will have to weigh those up. We absolutely understand that there is a need to make it clearer to people that they have a right to cancel these, and the point that was picked up earlier about the bank's staff then acting on that. Also, there are various triggers we have put in our rules where the lenders have to refer people for debt advice as well, and also we are very clear that they have to be up-front with people about how the CPA is likely to work and when it is likely to be withdrawn, but we have not put the three-day specific point in yet. Do you want to elaborate on that?

Nadege Genetay: We have certainly carried forward the idea that there needs to be transparency around when the firm is going to take a payment from the consumer. The specific right to cancel is not a prominent tool, apart from the broader transparency point.

Q163 Paul Blomfield: The one point I will make on rollovers—there were a number that I could have made—is that we heard concern from the consumer and debt organisations about the way in which the industry repackages debt into new loans. The representatives of the industry that we spoke to denied

that that happened at all. What measures will you take from the FCA to ensure that that does not happen in the future? Clearly, there is widespread concern. It is all very well to limit rollovers to two, but if that debt is then simply repackaged, you have solved nothing.

Lesley Titcomb: We are very clear as a regulator that there are always people who can and will game the rules that we make, and seek to get around them in precisely that sort of way. That is why we recognise that ongoing monitoring and supervision is so important. We will be making aspects of what we have heard about today a supervisory priority when we take on regulation next April; for example, concern has been expressed around fees and charges as well. We recognise that the rule itself is not the answer here. It has to be accompanied by strong supervision, monitoring and enforcement where that is necessary. What I can offer you is increased resources and focus on the supervision and monitoring of those rules to prevent precisely that sort of thing.

Q164 Mr Binley: The FCA proposes that all advertisements and other promotions must be clear, fair and not misleading. How will this be monitored, policed, evaluated and enforced?

Lesley Titcomb: I will hand over to Nadege on part of this, but may I also say that we are also proposing that there has to be a risk warning on adverts, as well.

Q165 Mr Binley: So a sort of cigarette warning notice?

Lesley Titcomb: Absolutely, which starts, "Think: Is this loan right for you?" That is specifically because the research has shown us that when people are watching these ads, thinking of taking a loan, they are not thinking about their ability to repay in the longer term. They are just thinking about the here and now. That is why we really want to focus them at that particular point.

Mr Binley: Particularly as we have heard that some of these loans are offered to people in casinos, with the money received in quarter of an hour.

Lesley Titcomb: Yes, that was a new one.

Q166 Mr Binley: That seems frightening to me, quite frankly. Can I go on to ask a supplementary? Martin Lewis suggested restrictions on advertising, such as banning adverts on children's TV. What is the rationale for advertising on children's TV? I do not understand that one. I understand the casino one, but not the children's television one.

Lesley Titcomb: I am speculating here—

Mr Binley: You are the expert. I am looking for advice.

Lesley Titcomb: I am speculating here that there are two reasons. One is that mothers will be watching with their children, and the other is the one that Martin quoted, which is pressure from the children on the parents.

Mr Binley: Thank you for that. That is interesting.

Q167 Chair: I need to finish now. I was going to ask the question, "The OFT highlighted a number of phrases that it considered misleading; how will the use of such phrases be monitored?" and also include

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in that the context of text messages. I think this could be answered in a written form. Obviously, that is directed at the OFT, but if others have opinions on that, that would be welcome.

On that note, I am conscious of the fact that there are a lot of frustrated questioners, and you may well feel frustrated that you have not been able to have full

opportunity to answer everything. Of course, please feel free to submit further written evidence. Equally, if we realise that there are questions that we should have asked but did not, we will write to you and ask for a response. Can I thank you very much? That is very helpful, and we will report as soon as we can on this. Thank you.

Written evidence

Written evidence submitted by 118118 Money

REAL-TIME DATA SHARING

ABOUT 118 118 MONEY

- 118 118 Money has recently entered into the consumer credit market providing unsecured personal loans.
- We offer loans of between £1,000 and £5,000, with fixed repayments over 12 to 24 months and with fixed APR of 35.9% for majority of successful applicants.
- We aim to be an affordable and responsible alternative for consumers who were unable to obtain loans from their banks and who do not wish to pay the very high APRs of payday lenders.
- Although we sit outside the FCA's proposed definition of high-cost short-term credit, we nevertheless have a strong interest in the FCA's proposals in that regard.
- This is principally because some of our potential customers may have recently taken out high-cost short-term loans and we need to be able to conduct adequate affordability assessments of those customers.
- In order to do so we need access to the most accurate and up to date credit information possible.

THE CURRENT CREDIT DATA-SHARING PROCESS

- Currently, lenders report credit information to the credit reference agencies, "CRAs" (Experian, Equifax and Call Credit) on a monthly basis.
- The information is reported on the same date each month—the date varies for each lender but it does not alter regardless of when any transaction or default may have occurred.
- Therefore, this process involves two time delays, as the following example illustrates:
 - (i) the information is provided by the lender on 1 January and the date the lender pulls the data off its system to provide it to the CRAs is the 30th each month;
 - (ii) the lender sends the file to the CRA on 14 February; and
 - (iii) the CRA loads the data on 28 February for others to access.
- CRAs are unlikely to refresh the data provided from a single lender on a more frequent basis than once a month.

THE IMPACT OF OUT OF DATE CREDIT INFORMATION

- As lenders only have access to out of date credit information it means that it is impossible for them to conduct adequate affordability assessments, which has several adverse effects:
 - (i) loans are made to consumers who cannot afford to pay them back, thereby worsening still further their financial situation;
 - (ii) these defaults increase bad debt for the lenders who have to raise their interest rates in order to compensate for their losses;
 - (iii) these higher interest rates in turn make it even harder for consumers to pay back their loans, thereby creating an escalating spiral of high interest rates, default and bad debt; and
 - (iv) at the same time, more responsible lenders may not make loans to consumers who can in fact afford to pay them back, thereby reducing access to credit.
- For 118 118 Money the issue is particularly acute because we provide loans at interest rates which are tiny fractions of those offered by payday lenders.
- Although we do not compete with payday lenders, we may wish to consider applicants who have recently taken out (or defaulted on) payday loans and it is therefore vital that we know whether that is the case.
- 118 118 Money therefore needs to conduct rigorous affordability checks because we do not wish to lend to consumers who will not be able to pay back—*without the ability to assess affordability*, we will not be able to offer loans to the full spectrum of deserving applicants.
- Payday lenders and their customers would similarly benefit from a reduction in default and bad debt and thereby a reduction in interest rates.
- The banks currently take a very cautious approach by refusing to lend to anyone without a demonstrably good credit record—access to up to date and reliable credit information may give them the confidence and ability to make more loans.

THE SOLUTION

- The solution to this problem is that credit information *must be reported to and available from the CRAs on a “real-time” basis.*
- This will require separate obligations:
 - (i) *the CRAs must be required to upgrade their systems such that they are able to receive credit information from lenders on a real-time basis and make it available for other lenders to access on a real-time basis;*
 - (ii) *all lenders must be required to report credit information to the CRAs on a real-time basis; and*
 - (iii) *as an interim step towards moving to real-time, all lenders should be required to report credit information on a daily/24 hour basis.*
- This interim step would require lenders to report credit information at the end of each business day and for the CRAs to make it available to lenders during the course of (or at least by the end of) the following day.
- Although all lenders should be required to report real-time data, the highest priority should be to ensure that high-cost credit/payday lenders do so.
- This is because the short-term basis of the loans they provide (as well as the much higher incidence of default) means that it is far more important that information on those loans is available to other lenders (and the lenders themselves conduct adequate affordability checks).

OTHER BENEFITS

- In addition to the primary benefit of allowing more robust affordability assessments to be conducted, real-time data-sharing would create further benefits as highlighted by the FCA.
- In particular, it would be necessary in order to enforce limits on the number of times loans can be rolled-over.
- Specifically, lenders will be able to avoid the FCA’s limit of two rollovers by allowing customers to pay-off one loan (which can no longer be rolled over) simply by taking out a new loan.
- Real-time data-sharing would highlight this abuse and therefore prevent it from occurring, if the FCA rules specifically addressed this risk.
- Similarly, real-time data-sharing would help enforce limits on the use of continuous payment authorities (where payday lenders make repeated attempts to obtain funds from bank accounts) by allowing for all failed payments to be recorded, if there was a requirement that they must be so recorded.
- Finally, real-time data-sharing is arguably necessary to ensure proper compliance with s55B of the Consumer Credit Act (as amended by s5 of the Consumer Credit (EU Directive) Regulations 2010).
- This requires that “*the creditor must undertake an assessment of the creditworthiness of the debtor*” and “*A creditworthiness assessment must be based on **sufficient** information obtained from ... a credit reference agency*” (*emphasis added*).
- It is difficult to see how this can be achieved if the credit reference agency is not providing real-time access to credit information.

November 2013

Written evidence submitted by the Financial Conduct Authority

We welcome the Committee’s inquiry into payday lending, which comes as we are consulting on the detailed proposals for regulating consumer credit. As the Committee is aware, regulation of consumer credit transfers to the FCA from the Office of Fair Trading (OFT) on 1 April 2014.

The consultation closes on 3 December, after which we will consider all the evidence we have received. We will publish our response next year.

Below we give a brief overview of our proposed rules for high-cost short-term credit, and then respond to the questions the Committee set out in its email of 12 November 2013.

PROPOSED RULES FOR HIGH-COST, SHORT-TERM CREDIT INCLUDING PAYDAY LENDING

We are proposing specific new rules for high-cost, short-term credit to help those consumers most at risk of harm from poor business practices. The specific interventions are set out below:

- *Affordability checks:*

We are proposing to take across the OFT’s affordability guidance and implement it in our rules. The rules state that a lender should, depending on the type, amount and cost of credit, consider a number of factors which include: the financial position of the customer; their credit history; the customer’s

financial commitments including other debts, rent, utilities and other major outgoings; any future financial commitments; any future change in circumstances; and the vulnerability of the customer.

Although we will allow firms to adopt an affordability test suitable to their business, we will check higher-risk firms at point of authorisation to see if they have the right systems in place to satisfy us that they can and do adequately assess affordability. We will continue to monitor this through supervisory visits and our requirements that firms report data to us.

We will generally assess firms' affordability procedures in terms of outcomes. For example, if we see a firm with a relatively high number of defaults, forbearance or rollovers, we will review the firm's procedures and take appropriate action to correct it.

— *Rollovers:*

We propose to cap the number of times a loan can be rolled over to two. Lenders will also have to be able to prove that rolling a loan over even once is in their customer's best interest. The customer will have to agree to the rollover, and they will be given information on where to get free debt advice.

We are consulting on making payday lenders report the number of loans they rollover to us, so we can monitor compliance. Lenders must keep files on each customer and how they justified each rollover. If we see evidence of high number of rollovers, we have the ability to review files or test the firm's procedures. We can then take appropriate action.

— *Continuous Payment Authorities (CPA):*

At present, firms can repeatedly access customers' bank accounts through a CPA. We propose restricting the use of this kind of payment so the lender can only make two attempts to withdraw money, and only to allow them to take full payment. This should force lenders to make better lending decisions because they won't be able to easily take money from customers who can't afford the loan. Lenders will also have to provide adequate explanations including how to cancel the CPA, how they will use the CPA and whether further attempts may be made to collect payment.

As part of the consultation we have received feedback that we should be more prescriptive in making lenders give, for example, three days' notice before accessing a borrower's account. We will consider this as part of the consultation.

— *Advertising:*

Adverts often make borrowing look easy, when paying a loan back is going to be tough for some. We propose making payday loan adverts include a warning reminding potential customers that many people don't pay back loans on time and that this can lead to serious money problems. Adverts will also include a line directing customers to free, independent debt advice. What's more, where adverts are misleading and breach our rules, we have the power to ban them.

— *Cap on the cost of credit:*

In addition, the Government has recently announced it will legislate to give us a duty to cap the cost of credit by January 2015. As we set out in our consultation paper, we need to carry out more work before we can consult on an appropriate type and level of cap.

As part of our cost benefit analysis on the proposals in our consultation paper, we commissioned an independent analysis, which suggests that these measures are likely to be good for consumers overall. It notes that the current payday loan market is worth £2.0 to £2.2 billion and our proposals could lead to an initial reduction in payday lending of between £625 million and £750 million, as firms no longer lend to customers who were only profitable to them through rollovers and repeated use of CPAs. The initial shock to lending volumes may partially recover in time as surviving lenders re-orientate their business models away from multiple rollovers and CPA use and begin to serve new customers. There is evidence that this has happened in the USA when rollover limits for payday lending have been imposed, with new lenders eventually emerging focused on higher quality loan books.

HOW CAN THE FCA STOP PAYDAY LENDERS FROM MAKING LOANS THAT CANNOT BE PAID OFF ON TIME BUT CAN BE PAID OFF AFTER TWO ROLLOVERS?

One of the aims of our proposals is to ensure that firms only lend in the first place to borrowers who can afford it.

Affordability assessments themselves must be based on consumers paying back their loan in the agreed timeframe, not including rollovers. Where we find that firms are rolling over a high proportion of loans, we will take that as an indication that their affordability assessments may be inadequate. Where, through our supervisory activity or our authorisation process, we find firms are not lending affordably or rolling over a high proportion of loans, we will not hesitate to take action. For example, we may require the firm to make changes, reject its application for authorisation, stop it from lending, fine it, or in the most serious cases take action against individuals within the firm.

We are consulting on our proposal for a maximum of two rollovers, but this must be seen in the context of our broader approach to affordability on re-financing. Our proposed rules on rollovers (which go beyond current requirements and so will come into effect on 1 July 2014) will mean that loans can only be extended where

the customer has agreed to the extension and only after the lender is satisfied that it is in the customer's best interest to do so.

There may be some instances where rolling over is best for consumers, for example to avoid default charges where there are unexpected short term cash flow issues. However, there are also clear downsides of rolling over—namely large increases in the overall debt burden. A firm should engage with a customer who cannot repay on time and consider whether forbearance is the more appropriate solution.

It is difficult to conceive of any circumstances where more than two rollovers could be in the customer's interests, bearing in mind the large increase in costs from the interest. Consequently, this measure supports our wider supervisory approach on affordability.

The OFT Review found many firms relied on successive rollovers as part of their business model. We will be looking at how firms lend and how they rollover and any possible breaches of the proposed rules through our supervisory work. The caps on rollovers (and CPAs) should also help by making it difficult for businesses to base their models on unaffordable borrowing and incentivise firms to lend affordably in the first place.

We have said that we would be interested to hear further evidence from firms, consumer groups and consumers about whether one rollover may be a more appropriate cap to prevent escalating costs.

HOW WILL THE FCA STOP EXCESSIVE USE OF CONTINUOUS PAYMENT AUTHORITIES?

We know that some lenders will access a customer's bank account repeatedly in one day. The lender will often begin by trying to take the full amount they are owed, but if this fails they try again, perhaps only taking £10. If that attempt is successful, they keep on requesting payments, until the customer's account is empty. We do not believe this practice could ever be in the customer's interests since it takes control of their account away from them.

But CPAs offer an automated, hassle free way for the majority of customers to pay off their loans with minimal effort, with low collection costs for firms that, if increased, will ultimately be passed on to customers.

There may be occasions, due to short term cash flow issues, where a full payment cannot be made on the first attempt. For example, a customer may be paid later than they were expecting. A second attempt at full payment allows another opportunity once those temporary issues have passed, avoiding unnecessary default.

If after two attempts the CPA cannot be met, then the benefits of automated collection are outweighed by the likelihood that a customer faces problems in repaying. We have added to our draft rules the OFT's provisions concerning continuous payment authorities, including a draft rule that a firm must not use a CPA where the customer has provided reasonable evidence of being in financial difficulties. At that point or where the firm has been unable to recover the whole amount owing at the end of day following the due date, the firm should contact the customer to discuss the situation, repayment and, if there are problems with repayment, consider forbearance.

In summary, a CPA can be a helpful tool if there are no repayment problems, but is a poor one if there are. Our proposal seeks to tackle the problems without undermining the benefits.

As with rollovers, abuse of CPAs also means some firms have been able to make a profit without checking whether their customers can afford the loan as they know they can continually scrape the account for repayments before other bills are paid off. Limiting the use of CPAs should make them consider more closely their original lending decision.

DOES THE FCA HAVE PLANS TO MANDATE REAL-TIME DATA SHARING?

There has been some debate about whether we should create a real-time regulatory database, as is the case in Florida and a number of other places. The Florida regulator has capped the number of payday loans a customer can enter into at any one time. Online lenders (but not high-street lenders) must use the database to ascertain whether a potential customer already has a loan.

At the moment in the UK, many lenders use one or more credit reference agencies. Most credit reference agencies collate information relevant to the financial standing of customers from a variety of sources which may form the basis, or part of the basis, of the lender's assessment of whether a customer is able to afford a loan. This information is generally updated every month. Short-term lenders have indicated that they require a more regularly refreshed service, possibly with data updated daily. Such a service could help facilitate firms' assessment of affordability. In their evidence to you the members of the industry noted that some of them are engaged in discussions with credit reference agencies.

Lenders currently only have access to the data that has been made available to the particular credit reference agency or agencies that they have sought information from. The Steering Committee on Reciprocity (SCOR) sets rules on how member agencies share information. We have said that we would like SCOR to identify and remove any blockages faced by lenders and credit reference agencies in sharing real-time data with the rest of the credit market as a matter of urgency.

We are aware that progress in this area has been slow in the past. If the market can't deliver on data sharing, and we conclude that we are best placed to ensure that real-time data-sharing takes place, we will not hesitate to take action.

HOW WILL THE FCA MONITOR COMPLIANCE?

Historically, monitoring of consumer credit firms by OFT has primarily involved responding to external stakeholder intelligence and customer complaints. Whilst there has been proactive issues-based work in the past, it has been difficult for the previous regulator to spot problems posed by individual firms as the firms have no obligation to regularly report data for analysis.

The intelligence the OFT holds will transfer to us and from 1 April 2014 we will be dedicating resources to take forward enforcement action if we have evidence that the OFT's (pre April 2014) or FCA's (post April 2014) requirements have been breached.

We are also considering the areas that will be the focus of our first "thematic reviews" from 1 April 2014. These involve visiting and collecting data from a number of firms. We have used evidence from previous thematic reviews to take both supervisory and enforcement action against firms. We will do so again in consumer credit if that is appropriate. The work will also inform how we supervise individual firms, what we look for in our authorisations process, and our future policy work.

We will be requiring all consumer credit firms to apply for authorisation. In addition to the areas that the OFT would consider as part of its licensing regime, our authorisations teams will look at firms' business plans, financial and other resources, management systems and controls, and business models. We will also scrutinise key individuals within a firm. This process will begin in late 2014, and will screen out poor practice, reducing the potential for future consumer detriment.

Once authorised, all consumer credit firms will for the first time have to regularly submit data to us on their activities. We are consulting on making payday lenders submit data to us every six months, including product sales and the number of loans they rollover.

This data will give us insight into the types of customer using this product, and will help us assess which firms are posing the greatest risk to our objective to protect consumers, or to our other statutory objectives. We can then take a proportionate approach, with our supervision teams focusing their resources on the highest risk areas. Over an appropriate period of time we will revisit firms, and examine whether their systems and controls are having the desired outcomes for consumers.

Where we have concerns about a firm, our supervisors have powers to direct the firm to make changes. In the most serious cases, we also have strong enforcement powers. Our enforcement teams can seek to impose tougher penalties to demonstrate to other firms the cost of non-compliance.

SHOULD THERE BE ANY ADDITIONAL CAPS ON HIGH-COST SHORT-TERM CREDIT?

The Government has announced that it intends to legislate to give us a duty to implement a cap on the cost of credit. Where previously our work would have had to start by demonstrating that a cap would be a proportionate measure in the market, we will now focus on what kind and level of cap is appropriate for the UK market.

3 December 2013

Written evidence submitted by the Financial Ombudsman Service

Having watched your recent evidence session on payday lending we were really pleased to see the committee's emphasis on using complaints as a means of learning about problems in the market. Our Service—which has a mandate to resolve disputes across the financial services sector—has received several hundred complaints about payday lending in the past twelve months, and we thought it might be helpful to tell you what we've seen.

hidden rights?

More than any other feature of the market, we've been very surprised by the comparatively low number of complaints that come to our service. Last year, consumers referred over half a million new complaints to us—most of which were about PPI. But out of more than 130,000 non-PPI complaints only 542 were about payday lending. Although that was an 83% increase from the previous year (and it is still rising), it led us to worry that consumers who have a problem might not know that we can help.

We know that those who use short-term loans are often vulnerable or reluctant to disclose to others their use of these products. We have therefore invested a great deal in making sure that we offer an accessible (and visible) service that caters for those who are most in need or most vulnerable. As part of that outreach work we recently partnered with CAB to raise awareness as part of their payday lending campaign.

Lenders also have an obligation to tell dissatisfied consumers that they can come to the ombudsman if they're not happy with the response to their initial complaint. In reality, most consumers will only think of approaching us at this point, so it is essential that businesses include these "referral rights" in their initial complaints handling. But we see increasing evidence that the right of consumers to pursue their complaint with the ombudsman is being obscured by some lenders (intentionally or otherwise).

Earlier this year we undertook some internal research on whether the customers who *did* come to us were given their referral rights. The numbers (as above) were of course quite small, but of the sample of cases we looked at a significant number either failed to tell the consumer about our service or didn't issue a final response to the consumer at all. So we were reassured—if disappointed—to see that a wider piece of research from BIS seemed to confirm a number of our suspicions (<https://www.gov.uk/government/publications/payday-lending-research-reports>). While some of the industry clearly acts responsibly when faced with a complaint, this wider failure of parts of the market to deal with complaints correctly is not just bad news for the consumer, but bad news for the industry. It is robbing regulators (and others) of intelligence about individual cases and trends.

We are very glad to see that both the OFT and the FCA seem to be taking this deficiency seriously and want to do something about it as they think about the transfer of jurisdiction.

Complaint Trends

The complaints that do come to us—although they represent only a fraction of the total—also suggest that too many lenders are failing to handle problems in the right way. Over the past year we have upheld the consumer's complaint in almost three quarters of cases and most of these complaints were about a few common themes.

Some of these have already been well documented by others—such as examples of providers offering plainly unaffordable lending, an unwillingness from some lenders to accept a suitable repayment plan, or mismanagement of hardship generally.

Others have perhaps had less coverage. Many were about how the lender had used the continuous payment authority given in an inappropriate way. Typical problems involved the lender taking payments unexpectedly or repeatedly attempting to take payments when it was clear that the consumer did not have any available funds to make the payment. We've also seen cases where some degree of fraud has been alleged by one of the parties (for example, that someone has taken out a loan in someone else's name)—these can be especially difficult cases to resolve. As you would expect, some providers clearly manage complaints better than others, but the average performance is not encouraging on the basis of what currently reaches us.

Overall, the volumes of complaints we see are—at the moment—too small for us to be able to draw reliable conclusions about the market as a whole. And so we cannot say how far our experience is repeated across the sector more generally, but we thought it might be helpful to share our early intelligence (which we have also shared with the relevant regulators).

Please let us know if there's anything more we can offer.

Tony Boorman
Deputy Chief Executive and Deputy Chief Ombudsman

22 November 2013

Written evidence submitted by Ingacity Limited

PAYDAY LOANS, ROLLOVERS AND AFFORDABILITY: THE FCA MUST APPOINT SKILLED PERSONS

SUMMARY

1. Ignacity Limited provides consultancy services to City firms. In the course of our work, we have looked at a payday lender's proposition to a Private Equity Stockbroker. Some of what we found may be relevant to evidence given to the BIS Committee on 5 November 2013.

2. The central proposition is that once the payday lenders become interim authorised on 1 April 2014, the FCA should use its powers under S166 of the Financial Services & Markets Act to appoint Skilled Persons (paid for by the interim authorised firm, not the FCA) to investigate and report on the economics of each payday lender, its risk assessment processes and its reward and remuneration structure.

3. This is the only way in which the FCA can achieve reasonable certainty as to whether a payday lender can make money out of "affordable" lending and as to whether its employees, agents and others it pays are not being rewarded for blithely disregarding the FCA requirements to achieve higher pay through reckless lending.

THE ECONOMIC SIGNIFICANCE OF ROLLOVERS

4. The payday lender that we looked at candidly admitted that it was unable to make a profit on loans repaid promptly. This is entirely consistent with our experience over the economics of providers of mezzanine and bridging finance for construction and similar products—these lenders cover their operating, legal and related costs (including cost of capital) on loans that are repaid on time or earlier but make substantial profits out of extra charges and higher interest rates when loans have to be extended.

5. “Profit” on a loan is the difference between the revenue received and the costs incurred. The revenues are of course fixed and fairly easy to determine. But the cost is far from determinant. There are numerous definitions of cost and this enables a lender to generate a wide range of numbers for the cost of lending, say, £100:

- (a) A lender will typically have a number of fixed costs—for instance, the cost of premises (with further scope for variation if the premises are owned rather than rented). One would exclude these from the marginal cost of making extra loans—as one would IT and other overhead costs. But these costs do have to be met and a calculation of average costs should include them.
- (b) There is considerable scope to massage the figures for costs by, for instance, allocating legal and other costs largely towards the rolled over loans—thus excluding them from the cost of the initial loan.
- (c) A particular issue arises over the cost of capital. It is again fairly easy to ascertain the cost of loan capital and to make a calculation to apportion that cost. But if a lender largely relies heavily on equity finance, unless dividends (and retained profits) are attributed to loans the cost of capital will be reduced and the profitability of loans inflated.

6. There are accounting standards that apply to Financial Accounts. These have come to replace professional judgment—so that “true and fair” has come to mean “calculated in according to the rules”. This one may contrast with the earlier approach adopted in particular by the Scottish profession—that a professional was an individual who formed his (we would today add) her judgment on the basis of integrity and experience. For a Scottish accountant, “true” was defined as Aquinas defined it: an *adaequatio mentis ad rem*, a notion captured by the expression “get one’s mind round an issue”.

7. Even rules are of course bent on occasion. Accounting standards are no exception. Auditors are human and do not wish to lose audit work that pays the mortgage. They are vulnerable to pressure from their clients. Accounting Standards do not provide a complete defence against the fallibility of human nature. As Hobbes (Leviathan, Chapter XI) observed:

For I doubt not but, if it had been a thing contrary to any man’s right of dominion, or to the interest of men that have dominion, “that the three angles of a triangle should be equal to two angles of a square,” that doctrine should have been, if not disputed, yet by the burning of all books of geometry suppressed, as far as he whom it concerned was able.

8. In areas where there are no rules, diligent and supervised inquiry is necessary. An effective method is scenario planning—working out the profit a lender would make if every loan were repaid on time, and then a succession of scenarios to ascertain how many loans need to be rolled over to achieve levels of profit. As noted, some care is required to ensure that all costs are included. It is as we shall see below crucial that the people who do this work are appointed by the FCA and answer to the FCA.

USE OF FCA S166 POWERS

9. The FCA cannot have provided in its budget for the authorisation process for an investigation of the business models of the payday lenders—it is charging only £10,000 for each application. It cannot safely rely on the payday lenders to provide a trustworthy assessment on such a crucial area. The FCA must arrange for investigations to be made.

10. So this is an area in which the FCA could usefully use the powers it has under Section 166 of the Financial Services & Markets Act (“FSMA”) to appoint a *Skilled Person*. The *Skilled Person* is usually a Firm (a legal person) rather than an individual (a natural person). The FCA has an approved list of firms that have the requisite skills to write a report. Authorised firms can be required to appoint and—importantly—pay for a Skilled Person. The FCA can and does require firms to pay Skilled Persons up front. All the payday lenders will be authorised firms (under the interim authorisation arrangements) from 1 April 2014. The FCA can require each of them to appoint its nominated Skilled Person to prepare and deliver to the FCA an analysis of the economics of the payday lender. This will not impact significantly on its own budget as the payday lenders will be meeting the costs directly.

11. Such an analysis can be used to determine whether the payday lender is operating an acceptable business model. If it is not operating an acceptable business model, it will not meet the FCA’s *Threshold Conditions*—the minimum standards for authorisation. Under such circumstances, the FCA is obliged by FSMA to decline its authorisation.

LENDING WHEN A BORROWER CANNOT AFFORD TO REPAY

12. The BIS Committee was blithely told that nobody would lend if they did not believe that they would be repaid. This misrepresented the true position.

13. Lenders are in fact taking a calculated risk on the number of borrowers that will default. The interest rate charged is set at a level that cannot be justified save on an expectation of a level of default. So it is integral to the strategy of the payday lenders that they do lend to some borrowers who will be unable to repay their loans. They may not be able to identify them individually but they are lending to some people who cannot pay back.

14. It is probable—I would say certain—that some, probably most and maybe all payday lenders will systematically underestimate or ignore the risk of moneys not being paid back. One consequence will be a laxity in checking affordability. The following factors encourage reckless lending:

- (a) Any split between the interests of funders and lenders. I use the term “funders” rather than owners because there is a greater likelihood of risks of default being disregarded if the payday lender has significant debt funding. Servicing those debts requires the lender to lend. If it is committed to paying, say, 12% on debentures issued to raise £1 Million, it has to find £10,000 a month. It can only do that by lending. So one all too easily gets into a situation in which the lender will definitely be forced into a loss if it does not lend but might escape this if it does lend. There is thus an incentive to take an optimistic view on defaults.
- (b) Any risk of the firm making an overall loss, which would call into question its ability to pay dividends or profit share. Everyone not on fixed salaries but dependent on profit share or dividends again has a strong incentive to disregard risks of default.
- (c) This is of course particularly the case when there is a bonus or other payment system that rewards volume of lending not volume of repayments. Even if the persons responsible for compliance and risk assessments are not themselves given inappropriate financial incentives, it is impossible to overstate the personal and psychological pressures brought on compliance and risk officers who say “no” too often. If we have learned nothing else from the collapse of HBOS and the Coop disaster we should have learned that.
- (d) If a payday lender is so structured that the cost of default falls on outside funders but the rewards of lending go to those involved in lending, then the incentives for reckless lending are immense.

15. There is a real possibility that by making reckless loans a payday lender will be able to massage its balance sheet. Each extra loan (or charge levied but not collected) will add to the lender’s assets as well as its profits. If a payday lender advances £160 with a requirement to repay (say) £200, that transaction immediately generates a nominal profit of £40 which flows through to the net assets of the lender. But it is only a nominal profit, and the impact on cash is to reduce the cash held by the lender by £160. The Lender will only actually have £40 extra when (if) the loan is repaid. The FCA should require regular publication of cash flow on a website so that all interested parties can see what is going on.

THE FCA NEEDS TO USE ITS S166 POWERS HERE AS WELL

16. The remedy for this situation is to require each payday lender applying for full authorisation to appoint (and pay for) a Skilled Person to assess its processes for managing risk, the organisational structure of the lender and the financial incentives.

17. The FCA should further use its powers to make rules governing remuneration to outlaw any reward system that incentivises volume of lending rather than volume of repayment. However that will not be sufficient. First, the rules governing remuneration notoriously do not capture the payments made to partners in hedge funds. Neither will they capture anyone with a partnership arrangement with a payday lender. Second, they do not cover dividends and owing to the favourable tax treatment of dividends one may expect a number of interesting arrangements in the payday lending sector. It follows that the FCA must appoint Skilled Persons to investigate what is going on in each lender and to identify any perverse incentives, that is to say any incentives that encourage reckless lending.

18. It may well be that the consequence of this is that a number of payday lenders will be unable to satisfy the Skilled Person that they can eliminate perverse incentives. It may well be that the business model of some lenders is such that they simply cannot afford not to achieve a volume of lending that is incompatible with any realistic affordability criteria. In that case the FCA must refuse those lenders authorisation and require them to wind down their operations in a short time period.

A PERVERSE INCENTIVE TO THE FCA

19. I should draw attention to a danger of a perverse incentive to the FCA in all of this. The FCA is proposing that each payday lender pays a fee of £10K when it applies for authorisation. The larger lenders will, if authorised, become liable for annual fees that will be much more substantial. This creates a perverse incentive to the FCA to authorise applicants. While I have a high opinion of Lesley Titmuss (whom I first met when she was an undergraduate at Oxford and I was a NATO research Fellow and Junior Dean of another

Oxford college). However I do not think it sensible to have perverse incentives in the FCA's fee structure, not least because it makes it harder for the FCA to reduce such incentives in regulated firms. I also do not see why the FCA should be made the target of criticism—and it certainly will be—if it is forced to use the fees paid by the rest of the financial community to subsidise payday lenders.

CONCLUSION

20. The FCA is proposing to charge each payday lender a fee of £10,000 to process its application for authorisation. That is simply not enough to finance the essential investigations into the business model and structure of an applicant to determine whether it will be economically viable if it complies with proposed FCA rules (eg on affordability and rollover) and to determine whether its financial structure and its reward systems are compatible with responsible lending.

21. It may be that the FCA is willing to cross-subsidise the processing of applications. If so this should be made explicit and the FCA be required to publish (at least to the BIS Committee) a budget that demonstrates that the cost of thorough investigation of applicants will not be an impediment to the utmost rigour and diligence. If the FCA is not willing to do so, it should give an undertaking to the BIS Committee and hence to the House of Commons and people of this country that it will impose Skilled Persons on each and every payday lender that holds an interim authorisation on 1 April 2014 so that it can rapidly obtain a detailed and thorough report on the business models and reward systems of each applicant.

22. If there is no investigation before authorisation, firms will be authorised that will simply be unable to comply with FCA rules to protect vulnerable lenders. It is very much harder for the FCA to remove an authorisation than to refuse an application.

6 November 2013

Written evidence submitted by the Office of Fair Trading

On 5 November 2013, the Business, Innovation and Skills Committee held a one-off evidence session on the regulation of pay-day loan companies, following up on some of the issues raised in the Committee's 2012 Report on Debt Management. At that meeting, you asked how the use of misleading and/or inappropriate phrases outlined in our Payday Lending Compliance Review Final Report would be monitored, including in the context of text messages.

In the Payday Lending Compliance Review final report published on 6 March 2013, we provided examples of statements that were found in advertising (particularly online) which, in our view, might be misleading or indicative of irresponsible lending:

- No credit checks
- No credit? No problem!
- Loan guaranteed
- No questions asked
- Applications processed 24/7
- Instant cash
- Borrow up to £750 instantly.

These findings were based on an online advertising sweep using a sample of 50 payday lenders undertaken in November 2012. In addition, during our review we also carried out inspections of 50 payday lenders accounting for 90% of the market. 37 of these lenders were included in our earlier advertising sweep.

Following the completion of our compliance review in March 2013, we set out our action plan for tackling the non-compliance identified, which included requiring each of the 50 payday lenders inspected to take immediate steps to address areas of concern, including their advertising and marketing, and prove to us within 12 weeks of our letter that they have done so. Nineteen of the 50 lenders subsequently informed the OFT that they are leaving the payday market. Four of these have surrendered their licences while the remaining 15 continue to trade in other areas of business that require a credit licence and have been required to provide an audit report to the OFT. We also sent a further letter to every payday lender, the purpose of which was to draw their attention to our findings, including those on advertising, and to warn them that lenders who fail to comply with relevant law and guidance risked enforcement action being taken against them.

We are currently analysing the evidence of compliance sent to us by lenders and, if we still have concerns that they are not compliant, we have a range of enforcement options open to us. These include taking steps to remove their licence, imposing legal requirements on them to change certain aspects of their behaviour or, if we have evidence of imminent harm to consumers, suspending their licence immediately.

Focusing on the 46 lenders of the 50 lenders subject to our review and which still hold a credit licence, we recently undertook checks of websites operated by these lenders for expressions prohibited by The Consumer Credit (Advertisements) Regulations 2010 ("Advertising Regulations").

Under the Advertising Regulations an advertisement must not indicate that a loan is “guaranteed” or “pre-approved” (or use similar expressions) where the loan is subject to any conditions regarding the credit status of the borrower, for example with phrases such as “no credit checks”, “no credit checks needed, no questions asked”, “loan guaranteed” and “loan extension guaranteed”. We found that none of the websites we checked included expressions restricted by the Advertising Regulations.

While we have not specifically considered these issues in relation to telephone text messaging, payday lending remains a top enforcement priority for the OFT. We will update on our progress on the OFT’s website, which can be accessed using the following dedicated webpage: www.of.gov.uk/OFTwork/credit/payday-lenders-compliance-review/.

David Fisher
Senior Director, Anti Money Laundering and Consumer Credit
Office of Fair Trading
26 November 2013

Written evidence submitted by Mike Crockart MP

After the last evidence session with payday lenders in the BIS Select Committee where I questioned them on their use of cold-calling and texting I went back through the texts in my phone. I found 9 texts directing me to a website offering payday loans: www.txt4payday.com.

On that website I filled in details asking for a £200 loan over a month period and pressed the button to “GET YOUR CASH” expecting to be quoted a £50 charge as advertised on various payday lenders sites as the example loan.

I then found myself directed to the QuickQuid website where I was being offered £400 over three months with a total cost of £754 to pay back. I left it at that and didn’t fill in any further details on QuickQuid’s website or even press any buttons.

I immediately received emails and texts and calls as follows:

- Tuesday 5th November 13.16: email saying there was one more step.
 - Tuesday 5th November 13.16: email giving pre-contract info.
 - Tuesday 5th November 13.40: text urging me to sign the contract.
 - Tuesday 5th November 13.55: call from a USA number to sign me up—I declined giving the dishonesty around upping the amount to be borrowed without authority as a reason.
 - Tuesday 5th November 14.13: email again giving me pre-contract info.
 - Wednesday 6th November 6.32: email saying Hurry—Application expiring soon.
 - Wednesday 6th November 7.59: email again giving pre-contract info.
 - Wednesday 6th November 12.09: email giving Account Login Information.
- I then emailed them asking to be removed from their records at 12.13 but:
- Wednesday 6th November 12.58: they emailed back where they refused to remove my details from their records citing various regulations including money-laundering and the Data Protection Act...

I’d like to get them to take responsibility for where their leads come from and whether they’ve been generated by indiscriminate illegal mass texting or cold-calling.

Mike Crockart MP
Member
Business, Innovation and Skills Committee
26 November 2013

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