HOUSE OF COMMONS
LIBRARY

High Cost Credit Bill

Bill No 12 of 2013/14

RESEARCH PAPER 13/44 10 July 2013

This is a Private Members Bill introduced by Paul Blomfield. Its purpose is to enable further controls to be introduced on 'high cost credit' companies – particularly payday loans companies. It would, amongst other things, restrict the amount of high-cost credit that can be advanced; limit the level of default charges; end charges connected with the use of 'continuous payment authority'; and restrict 'rollover' and repeat lending. The extent of the controls would be left to the regulator, the Financial Conduct Authority, which is due to assume responsibility for the sector from April 2014.

Payday lenders have faced criticism for encouraging irresponsible lending. They are criticised for exacerbating debt problems as borrowers face high rates of interest if they do not pay back the money borrowed in the required period. However, others have argued that it is misleading to compare the APR of payday loans to those of traditional loans, due to the very short period of time the customer borrows for.

Financial regulation measures apply to the whole of the UK.

Timothy Edmonds

Recent Research Papers

00/00	Title	01.01.07
13/32	Children and Families Bill: Committee Stage Report	31.05.13
13/33	Members' pay and expenses – current rates from 1 April 2013	31.05.13
13/34	Anti-social Behaviour, Crime and Policing Bill	04.06.13
13/35	Economic Indicators, June 2013	04.06.13
13/36	Unemployment by Constituency, June 2013	12.06.13
13/37	Pensions Bill [Bill 6 of 2013-14]	12.06.13
13/38	Northern Ireland (Miscellaneous Provisions) Bill	17.06.13
13/39	Comparison of the planning systems in the four UK countries	19.06.13
13/40	Financial Services (Banking Reform) Bill: Committee Stage Report	25.06.13
13/41	European Union (Referendum) Bill [Bill 11 of 2013-14]	28.06.13
13/42	Leaving the EU	01.07.13
13/43	Economic Indicators, July 2013	02.07.13

Research Paper 13/44

Contributing Authors: Timothy Edmonds, Business & Transport Section

We welcome comments on our papers; these should be e-mailed to papers@parliament.uk.

ISSN 1368-8456

Contents

Summary

This is a Private Members Bill introduced by Paul Blomfield. Its purpose is to enable further controls to be introduced on 'high cost credit' companies – particularly payday loans companies. It would, amongst other things, restrict the amount of high-cost credit that can be advanced; limit the level of default charges; end charges connected with the use of 'continuous payment authority'; and restrict 'rollover' and repeat lending. The extent of the controls would be left to the regulator, the Financial Conduct Authority (FCA), which is due to assume responsibility for the sector from April 2014.

The short-term loans market has flourished in recent years, in particular, the demand for payday loans. Payday lenders offer short-term, high-interest loans to consumers, with the suggestion that the money is paid back within a month, when they receive their next pay cheque. Unlike standard secured or unsecured loans, payday loans are short-term borrowing solutions aimed at those facing immediate financial difficulty. Loans are generally available for amounts of between £100 and £1,000 and are usually used to bridge the gap until the next pay cheque. Usually borrowers take a short-term loan for a few weeks or months. Under the provisions of the *Consumer Credit Act 1974*, as amended, all payday lenders must have a valid licence from the Office of Fair Trading (OFT) in order to operate.

Payday lenders have faced criticism for encouraging irresponsible lending. They are criticised for exacerbating debt problems as borrowers face high rates of interest if they do not pay back the money borrowed in the required period. However, others have argued that it is misleading to compare the APR of payday loans to those of traditional loans, due to the very short period of time the customer borrows for.

The heart of the Bill lies in two Schedules that would give the FCA the power to prohibit what it calls "specific features of high cost credit" and to impose a list of 'required behaviours' on firms. The 'special features' over which the FCA would have powers include:

- Restrictions on the amount of high-cost credit that can be advanced;
- Limits on the level of default charges;
- Ending charges connected with the use of 'continuous payment authority';
- Restricting 'rollover' and repeat lending; and
- Restricting obligations on guarantors of loans

The 'behaviours' include a set of requirements on things such as: the way loans are advertised; the availability of debt advice; and limitations on debt recovery.

1 Introduction

In simple terms, a payday loan is an advance on wages or salary by a commercial lender at an agreed interest rate. Under the provisions of the *Consumer Credit Act 1974* (CCA 1974), all payday lenders must have a valid licence from the Office of Fair Trading (OFT) in order to operate.

Payday loans are designed to be a vehicle for short term borrowing when people need money quickly and cannot wait until payday. Payday loans are usually easy to apply for. It is a much quicker process than more traditional bank loans; the application is usually made online or by visiting a payday shop. Competition for loans is primarily focussed on the speed of the transaction rather than its cost.

In general, as long as the applicant has a permanent job and a bank account that handles electronic money transfers, then the process for obtaining a loan is fast and straightforward. Once an application is processed, it is approved at the same time and money is deposited directly into the borrower's bank account, usually on the same day. Direct debit facilities are used by some payday lenders to give them greater control over the repayment of the short-term loan. Alternatively, the borrower will offer a post-dated cheque to the lender to cover the eventual repayment of the money borrowed, plus interest.

Payday lenders have been criticised by some bodies (such as Citizens Advice and Which?) for making it too easy for a vulnerable person to 'over borrow' at high interest rates, thereby creating long term financial hardship. These companies are accused of encouraging irresponsible lending and exacerbating debt problems, as borrowers face high rates of interest if they do not pay back the money borrowed in the required period. Their debt recovery operations have also been widely criticised.[1]

1.1 Market statistics

There are few reliable or consistent sets of statistics on the size or nature of the market. Most of what is available comes from survey evidence and market estimates. A 2013 Report from the OFT provides the most recent data to date. It found:

> We estimate that the market was worth £2.0 to £2.2 billion in 2011/12, which corresponds to between 7.4 and 8.2 million new loans; this is up from an estimated £900 million in 2008/09.
>
> - The average loan is between £265 and £270 and is borrowed over 30 days.
> - Firms reported that the average cost of borrowing £100 was around £25, but ranged from £14 to £51.
> - The three largest lenders account for 55 per cent of the market by turnover and 57 per cent by loan value.
> - 28 per cent of loans issued in 2011/12 were rolled over at least once, accounting for almost 50 per cent of revenue. Five per cent of loans were rolled over four times or more, accounting for 19 per cent of revenue.
> - Responses suggested that around a third of loans are either repaid late (18 per cent) or not repaid at all (14 per cent). [2]

[1] For more information on bailiffs, see HC Library note SN4103

[2] OFT, *Payday Lending Compliance Review Report*

The Government gave the following data in February 2011 in response to a PQ on the payday loans market:

> [BIS] collects information from the YouGov Debt Track survey on the number and proportion of people both using payday loans and those that have applied for payday loans in the last six months. In October 2010, the most recent survey, it was estimated that less than 1% of the population currently had a payday loan and that approximately 0.5% had applied for a payday loan in the previous six months. [...] Consumer Focus reviewed the payday loan market in 2010. They estimated that around 1.2 million adults took out a payday loan in 2009. They estimated the size of the market at £1.2 billion with each payday loan being worth on average £292.[3]

The growth in the number of loans has been rapid. The Consumer Focus report, *Keeping the Plates Spinning*, estimated that the number of payday loan borrowers in 2006 was only 300,000, which rose to 1.2 million in 2009.

In terms of typical APRs for payday loans, much will depend on individual circumstances, the amount borrowed and the term of the loan. However, it is not hard to find very high "representative APR" figures online from mainstream payday loan providers.[4]

1.2 Current regulation

Payday lenders have to comply with certain legal requirements - many of which are set out in the *Consumer Credit Act 1974* (CCA 1974) and regulations made under it.[5] Under this Act, all payday lenders (like all other providers of consumer credit) have to hold a credit licence granted by the OFT. The OFT sets out in guidance (including the *Irresponsible Lending Guidance*) the standards of conduct it expects from all lenders that it licences.

There are no direct restrictions on the interest rates payday loan companies can charge. However, advertising of payday lending is subject to the *Consumer Credit (Advertisements) Regulations 2004* (SI 2004/1484), as amended;http://en.wikipedia.org/wiki/Payday_loans_in_the_United_Kingdom - cite_note-7 this means that the 'typical APR' must be stated in all advertisements.

The OFT can impose a range of penalties for breaches of a consumer credit licence. According to the OFT, the type of action taken will be guided by the level of actual or potential harm to debtors and by the scale or frequency of identified misconduct:

> We can impose 'requirements' on a business where we are dissatisfied with any matter in connection with the operation of the business. Failure to comply with such a requirement can lead to a financial penalty of up to £50,000. We may also compulsorily vary a licence, for instance to limit the activities for which a trader is licensed, or limit the life of the licence.
>
> In serious cases, where there is evidence tending to show that a person is unfit to hold a consumer credit licence, the OFT can refuse or revoke a credit licence. Engaging in unfair or improper business practices would constitute grounds for the OFT to consider fitness to hold a licence.

---

3 HC Deb 3 February 2011, c892W

4 Moneysupermarket.com has some short term loan APR comparisons. See also Library standard note SN5849, 8 February 2011

5 See a summary of the Consumer Credit Act

2 Current reforms and reviews of the payday market

2.1 OFT review

On 24 February 2012, the Office of Fair Trading (OFT) announced that it was going to investigate payday lenders amid concerns about:

- misleading advertising;
- lack of affordability checks;
- irresponsible rollover of loans;
- targeting vulnerable consumers; and
- unfair treatment of consumers in arrears and default

In particular, the OFT was concerned that some lenders were aggressively pushing loans to people who clearly could not afford to repay them. The OFT is also worried that lenders may allow customers' debts to spiral by rolling them over. In light of concerns about the market, and the potential for consumer harm, the OFT has stated that it is appropriate that it should review both compliance with relevant legal requirements and the extent to which businesses operating in the market are meeting the standards set out in OFT guidance.[6]

In preparing for the review, the OFT conducted an online advertising web sweep, which highlighted certain poor advertising practices in the sector. The OFT said that evidence gained during the review would be used by the OFT to boost standards across the sector:

> Whilst we have not prejudged the findings of the review, should we discover evidence of businesses failing to meet the standards that we expect of them as set out in our guidance and/or engaging in unlawful conduct, we will not hesitate to take enforcement action that could see those not complying losing their consumer credit licences.[7]

Other potential outcomes of the review included:

- working with trade associations and individual businesses to improve compliance and drive up standards; and
- possible updates to the *Irresponsible Lending Guidance* or other OFT guidance to take account of, for example, any new or emerging practices that may be identified during the course of the review.

Action taken

In March 2013, the OFT produced its final report: The Review found 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

6 OFT Website
7 Ibid

> 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.[8]

Specifically:

> 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 we looked at emphasised speed and simplicity over cost – in some cases making claims that, if true, would amount to irresponsible lending.
> - 38 of the 50 lenders we inspected failed to comply with at least one of the complaint handling rules of the Financial Ombudsman Service.[9]

The OFT declared that it had made the payday loans market a top priority for action and had written to the top 50 lenders asking them to respond to the specific criticisms and findings in the report. The OFT does not believe that the problem is due to a few 'rogues lenders' instead it points out features of the market that encourage poor practice. In particular, it noted that companies tend to compete on the speed and 'efficiency' with which they can lend money rather than the cost. This means that the process of credit evaluation and affordability testing hinders their business model rather than supports it. With this in mind the OFT began a process of consulting on a full market investigation by the Competition Commission.

The publication of the review was followed by a consultation period which ended in May 2013. However, the OFT continued to act against some of the worst payday lenders. In March 2013 a company called MCO Capital Ltd. had its consumer credit licence removed on a number of grounds:

> In August 2012, the OFT found that MCO had failed to put in place adequate identity checks for loan applicants. It is thought that this failure led to MCO being targeted by fraudsters who used the personal details of over 7,000 individuals to apply successfully for loans totalling millions of pounds.
>
> The OFT also found that MCO had engaged in unfair business practices by writing to people who it was aware may not have taken out loans, asking unequivocally for repayment. MCO ignored OFT requests to stop this practice.
>
> Additionally, the OFT found that MCO lacked the necessary skills, knowledge and experience to run a consumer credit business.[10]

---

8 OFT, *Payday lending compliance review*, March 2013
9 Ibid.
10 OFT press release, 19 March 2013

On 27 June 2013 the OFT announced that it would refer payday lenders to the Competition Commission. Announcing its decision, it said:

> Features of the market of concern include:
>
> - Practices that make it difficult for consumers to identify or compare the full cost of payday loans, undermining competition over price for loans.
> - Barriers to switching between lenders when loans are rolled over that prevent other lenders competing for this business.
> - Variable levels of compliance with relevant laws and guidance leading to firms that do invest time and effort complying being at a competitive disadvantage to firms that do not.
> - A significant proportion of borrowers have poor credit histories, limited access to other forms of credit and/or a pressing need to borrow. The cost of the loan may therefore be a less significant factor for borrowers, which may weaken competition on price between lenders.
>
> In addition, the OFT is concerned that lenders are competing primarily on the availability and speed of loan approval, rather than price. The competitive pressure to approve loans quickly may give firms an incentive to skimp on the affordability assessment which is designed to prevent irresponsible lending and protect consumers. The OFT is also concerned about business models that appear predicated on making loans which are unaffordable, leading to borrowers paying far more than expected through rollovers, additional interest and other charges. Lenders appear to derive up to 50% of their revenue from such practices.[11]

The Bristol study

A study by Bristol University on behalf of the Department for Business, Innovation and Skills was published in March 2013. It focused particularly on the effectiveness of interest rate caps.

The study identified three main reasons why people used high cost lenders. Findings for the payday sector are highlighted:

> **Convenience and the ability to access credit quickly.** For online payday loan customers, satisfaction with the service also reflected the convenience of borrowing this way (35 per cent) and the speed of the loan decision (36 per cent).
>
> **Having no or limited access to other sources of credit.** The Consumer Survey showed that mainstream credit (potentially a cheaper option than short-term credit) was only a feasible alternative for a minority of customers at the time of the survey, ranging from 10 per cent of home credit customers to 24 per cent of online payday loan customers.
>
> **Customer service and lender reputation.** Customer service was the main reason that customers in the Consumer Survey were satisfied with the lender they had used, cited by over a half of pawnbroking and payday loan customers and seven in ten home credit customers.[12]

---

[11] OFT press release, 27 June 2013

[12] Bristol University, *The impact on business and consumers of a cap on the total cost of credit,* March 2013, p108

With respect to the impact of an interest rate cap the study found that the impact on lenders would be:

> The available evidence suggests that the headline prices charged by short-term lenders may tend to migrate over time towards the level of the cap. This depends on whether or not the cap is set at a level above the price that lenders typically charge. If a price cap is set low, arguably price convergence is not necessarily problematic. It does mean, however, that some borrowers who might have benefitted from even lower prices are not able to do so.
>
> Evidence from more than one country and also from the Business Survey indicates that some lenders may exit the market. This is more likely to be the case for smaller lenders (even though they tend to have lower charges) than larger ones. This is because smaller lenders' business models would no longer be viable if a price restriction was set below their current charges. Any costs to business associated with the introduction of a price restriction would also be likely to have a disproportionate effect on small businesses. The supply of credit by regulated lenders could reduce and competition within the sectors could be weakened, particularly at the local level.
>
> Both the international evidence and the Business Survey indicate that lenders who do not exit the market may tighten their lending criteria and improve their risk assessment practices. This has been shown to restrict credit access for some types of consumers, particularly people on low-incomes. On the other hand, a potential positive impact of tightened lending practices would be a reduction in the proportion of customers who are unable to repay their loan as they should. Restrictions on default charges could result in short-term lenders exercising less forbearance than they currently do.[13]

And on borrowers:

> The available evidence about the impact of price restrictions on the cost that consumers pay for credit relates to interest rate restrictions, however, not the total charge for credit. The evidence reviewed for this research does not show unequivocally that price restrictions (in the form of interest rate restrictions) reduce the cost of borrowing to consumers, particularly those on low incomes. There is no evidence about the proportion of customers who actually pay less for short-term credit after interest rate restrictions are introduced than they did before.
>
> International evidence indicates that interest rate restrictions lower the level of debt per head of population. As a result of improved lender risk assessment practices, detriment experienced by customers (especially of payday loans) who are able to take out loans they cannot afford or take out multiple loans from different lenders at the same time may reduce. However, customers (particularly those using home credit) may incur default charges where they did not do so previously; non-payers in other markets may also be shown less forbearance by lenders.
>
> The diversity of short-term credit products that are available may reduce, resulting in less choice for consumers. In particular, the availability of short-term home credit loans and very small sum pawnbroker loans is likely to reduce because these products would no longer be profitable for lenders to offer. Pricing structures may also become less transparent for consumers, making it more difficult for consumers to compare products and lenders based on prices.
>
> Access to credit may reduce, particularly for low income or other vulnerable consumers. The Consumer Survey for this research showed that if customers could

[13] Ibid

> not access short-term loans, most would either go without or turn to a friend or relative for help. A small number would try and borrow from somewhere else, including from another short-term lender. Using an illegal lender was not an option that the vast majority of customers in the Consumer Survey would currently consider. For many pawnbroking and payday loan customers, going without the money they borrowed from a short-term lender would potentially mean defaulting on other financial commitments (especially household bills) or defaulting sooner.[14]

The Government published its response the same month. It said that its main concern was with the payday lenders, not other forms of high cost credit. Its concerns were:

- The relative speed and ease of access to payday loans:
- The high cost of borrowing:
- The way in which lenders assess the affordability of payday loans:
- The frequency with which loans are rolled over and the way in which this happens; and
- The levels of multiple and repeat borrowing.[15]

With these in mind, the Government said that it thought that a cap on the cost of credit was not the answer. However, it announced a lengthy programme of measures it hoped to take in the short and medium term:

> The Government will ***start immediate work to clamp down on the advertising of payday lending***. The Government will work closely with the Office of Fair Trading, the Advertising Standards Authority, Committees of Advertising Practice and industry to make sure consumers are not encouraged into taking out a payday loan when it is not right for them.
>
> Today the OFT published the findings of its review of compliance by payday lenders and announced the action it intends to take to address key concerns about the way in which the payday market operates. Specifically, the OFT has set out its concerns and what it expects of lenders in terms of compliance with the law and its guidance. ***The OFT has announced that enforcement action is underway*** against a number of lenders, with more cases in the pipeline.
>
> The Government also welcomes the OFT's announcement that it is consulting on a ***provisional decision to refer the payday market to the Competition Commission.***
>
> The Government notes that trade bodies have provided assurances that payday lenders continue to take seriously their voluntary commitments agreed under the ***payday lenders' codes of practice*** which were due to be implemented in November last year. Many of these voluntary commitments specifically address some of the Governments key concerns, notably around affordability assessments, CPA, rollovers and default charges. Trade associations report that they remain on track to review the effectiveness of their codes and publish their findings in summer 2013. We will work with them and with Citizens Advice, who have undertaken to monitor compliance through their bureaux, to ensure early results on the effectiveness of the industry's voluntary commitments. The Government has made clear its expectation that industry responds positively and effectively to the OFT's compliance report and its revised

[14] Ibid
[15] BIS, *Government response to the Bristol University report on high cost credit*, 6 March 2013

> guidance on the misuse of CPA. We will press for further commitments to be set out in industry codes.[16]

3 The Bill

3.1 Introduction

This is a Private Members Bill introduced by Paul Blomfield. Its purpose is to enable further controls to be introduced on 'high cost credit' companies – particularly payday loans companies. It would, amongst other things, restrict the amount of high-cost credit that can be advanced; limit the level of default charges; end charges connected with the use of 'continuous payment authority'; and restrict 'rollover' and repeat lending. The extent of the controls would be left to the regulator, the Financial Conduct Authority (FCA), which is due to assume responsibility for the sector from April 2014.

The heart of the Bill lies in two Schedules that would give the FCA the power to prohibit what it calls "specific features of high cost credit" and to impose a list of 'required behaviours' on firms. The 'special features' over which the FCA would have powers include:

- Restrictions on the amount of high-cost credit that can be advanced;
- Limits on the level of default charges;
- Ending charges connected with the use of 'continuous payment authority';
- Restricting 'rollover' and repeat lending; and
- Restrictions on obligations on guarantors of loans.

The 'behaviours' include a set of requirements on things such as: the way loans are advertised; the availability of debt advice; and limitations on debt recovery.

The text of the Bill can be found on the Parliament website, here.

Describing his Bill in a press release Paul Blomfield said:

> Payday money lenders are making millions from extortionate loans to some of the most vulnerable in Sheffield and across the country. In hard times, it's no wonder that people who are struggling will turn to them for help. But the massive interest rates, rip-off charges and misleading advertising of payday lenders are often just pushing people further into debt. So in Parliament I'm putting forward a Bill to properly regulate these lenders and put a stop to their worst rip-off practices which badly exploit those who can afford it least."
>
> Getting a chance to put forward a Private Members Bill is something most MPs are never able to do. It's a massive opportunity to shine a spotlight on the unacceptable practices of this sector, and to do something to stop it. I'll also be campaigning in Sheffield to raise awareness about the dangers of payday money lenders and promote sources of more responsible credit like Sheffield Credit Union.
>
> I'm pleased that the Bill has attracted cross-party support and I'll be building on the work of my colleague Stella Creasy who has done so much to highlight the damage that payday lenders are doing in our communities.[17]

---

16 Ibid., page 8

17 Paul Blomfield website

3.2 The Bill: detail

The Bill is very much an enabling piece of legislation with the main body of new requirements set out in the Bill's two Schedules. Key controls such as limits on borrowing costs are left to the FCA and not set out in the Bill.

A significant feature of the Bill is that it would give new powers and duties to the Financial Conduct Authority (FCA) and not to the current regulator, the OFT. The transfer of responsibility was one of the measures in the *Financial Services Act 2012* (Sections 107 & 108) and will take effect from April 2014.[18] A full consultation document, outlining the proposed direction of the new regulator is available: *A new approach to financial regulation: transferring consumer credit regulation to the Financial Conduct Authority*.

Clause 1 would give the FCA responsibility for defining what 'high cost credit' means. The criteria set out in the Bill are either charges of a certain type or a rate of interest above a certain level. The FCA in both cases would determine:

> the payment by the borrower of charges of a description from time to time specified by the FCA; or
>
> the payment by the borrower over the duration of the agreement of charges that, taken with the charges paid under one or more other agreements which are treated by the FCA's rules as being connected with it, exceed, or are capable of exceeding, an amount specified by the FCA;

It would also give the FCA the power to prohibit what it calls "specific features of high cost credit" which are set out in detail in **Schedule 1**. The features which the FCA would ban (above set limits determined by the FCA and not on the face of the Bill) include:

- the amount of high-cost credit that can be advanced;
- the level of default charges;
- charges connected with the use of 'continuous payment authority';
- 'rollover' and repeat lending; and
- obligations on guarantors of loans.

These issues reflect some of the commonest causes for complaint by debt charities about high cost lenders. It is irresponsible lending and the repeated rolling–over of unpaid loans which, it is argued, contribute most to social harm for borrowers.

Mirroring this Schedule, **Schedule 2** sets out a list of 'required behaviours by authorised persons (firms). These behaviours include:

- Controls on advertising, adverts to include the typical cash cost of agreements; fees and charges clearly set out; information available on debt advice; must comply with advertising standards generally; adverts should not be made by 'phone, or by text to mobile 'phones and their timing and association with sporting or cultural activities could be restricted by the FCA.

---

[18] A full consultation document is available: HM Treasury/BIS, *A new approach to financial regulation: transferring consumer credit regulation to the Financial Conduct Authority*, March 2013

These requirements do not include a requirement to show the APR, which might gain support from the industry as it thinks these are misleading. The current quoted APR on the WONGA website is 5,835%.

- Lenders required to disclose their marketing strategy and 'method of generating loans' to the FCA

All firms that carry out regulated activities need to be authorised. The condition in this Schedule would supplement this as the firm would have had to go through the assessment process to become an authorised person. Details of this process can be found on the FCA website.

- Credit brokers to disclose the true identity of the lender

- Establishment of a high cost loans database

The main point of this database is such that lenders can refer to it so that they can ensure that they comply with FCA restrictions on, for example, the total lent to an individual or how many times the individual has defaulted. In fact much of the data specified in the Schedule would be, except for the Home Credit Sector, available on the credit reference agencies' (CRAs) databases. There was a drive in the early 2000s, following a Government-convened taskforce on over-indebtedness, to encourage greater credit data sharing. Since then, banks, pay day lenders and others have moved to share all the data they legally can through the CRAs on all credit products. The Schedule goes further in the sense that it would require the lender to consult this database, whereas at present there is no equivalent requirement about CRA databases, though many lenders routinely do so.

- Controls on the use of continuous payment authorities by lenders, including notice of intended call on the account and borrower's rights to cancel the authority.

- Where a payment has been missed the lender is required to inform the borrower of the availability of free debt advice.

- When a default has taken place the debt advice service can stop the lender from pursuing any debt recovery actions or levying further charges.

- Lenders would be required to accept settlement of debts by third parties under circumstances set by the FCA.

Clause 2 of the Bill would establish penalties for contravention of Schedule 1 restrictions – in many cases the loan would become unenforceable. **Clause 3** would allow the FCA to make additional rules to cover the sector beyond those in the Schedules. **Clause 5** is specific to the power of the FCA to impose a cap on credit costs (given it under the *Financial Services Act 2010*).[19] The clause would require the FCA to consider imposing such a cap each year.

Clause 4 would impose a levy on lenders to fund the Money Advice Service (MAS).

MAS was set up by the *Financial Services Act 2010* (which amended the *Financial Services and Markets Act 2000*). Formally, it is the Consumer Financial Education Body (CFEB), with MAS being the brand name. It is an independent body designed to enhance public

19 For a discussion, and further references, about the new role of the FCA with respect to consumer credit and about the problems caused by payday lenders, readers are referred to Library Research Paper 12/18 – the committee stage of the *Financial Services Reform Bill*, p18 & 19.

understanding of financial matters. Details of its operations can be found in a Memorandum of understanding signed by the CFEB, Treasury and FCA, available here.

The MAS is already mainly funded by industry levies (of authorised persons and consumer credit licence holders). The clause refers to the levy funding *additional* services. It does not state what this additionality might be, how much it might be, or whether it will replace funding from other sources.