



Citizens Advice response to the Department for Business, Innovation and Skills consultation on proposal to ban the use of bills of sale for consumer lending

March 2010

Introduction

Citizens Advice welcomes the opportunity to respond to this Department for Business, Innovation and Skills consultation on a proposal to ban the use of bills of sale for consumer lending. The CAB service is a network of over 400 independent advice centres delivering free and confidential advice, information and advocacy from over 3,000 locations in England, Wales and Northern Ireland. In 2008/09 the CAB service helped around two million people with nearly six million enquiries. This included over 550,000 people seeking advice on nearly two million problem debts, over 900,000 of which were consumer credit debts. Therefore the CAB service has extensive experience of dealing with consumer debt problems.

In the same year bureaux recorded 355 enquiries about problems with credit agreements secured by bills of sale. We believe that it is likely that the number of enquiries about bills of sale is somewhat under recorded as advisers can also record these enquiries as unsecured personal loans. However the low number of enquiries about bill of sale lending reflects the relatively small scale of this type of lending compared to other forms of credit product. The impact assessment for this consultation estimates that in 2009/10 the number of credit agreements secured by bill of sale will be less than 50,000 with a total predicted value of £31 million. In contrast, a sample of 23,596 new CAB debt clients whose details were entered on our CASE money advice database in the first quarter of 2009/10 had over 100,000 non-priority debts with a value in excess of £300 million. .

So lending secured by bill of sale makes up a very small proportion of both the consumer credit market and the consumer credit and debt problems seen by the CAB service. However the experience of CAB clients suggests that consumers can suffer very severe detriment after entering into a credit agreement secured by bill of sale. CAB evidence previously sent to BIS has highlighted our concerns about the lending and arrears management practices of bill of sale lenders. We believe that the nature of the bill of sale lending and in particular the almost total lack of consumer protection is wholly unsuitable in a modern consumer credit market. Therefore we support the government's intention to ban this particular form of secured lending and introduce effective consumer protection in respect lending secured against chattels more generally.

Our responses to the consultation questions are set out below.

Q1. The current nature of bill of sale lending.

The incidence of Bills of Sale used for consumer lending, particularly among vulnerable customers with no access to mainstream credit:

Citizens Advice has previously provided BIS with examples of the problems faced by consumers entering into credit agreements secured by bills of sale and a sample of these published in our *Evidence journal* in Autumn 2009 is also reproduced in the annex to the impact assessment. Since then we have continued to see examples of problems experienced by consumers including consumers that were particularly vulnerable to bad practice as a result of their financial difficulties or another aspect of their circumstances. This is illustrated in the following examples.

A CAB in County Durham saw a 50 year old woman who was a carer for her disabled husband. She was in receipt of carer's allowance and he received incapacity benefit, industrial injuries benefit and disability living allowance. They had taken out a loan secured against their

car by a bill of sale for £1,500. They had to pay a first instalment of £215, followed by four further instalments of £215, followed by a final payment of £1,330. They were never able to sustain these repayments from their benefit income and were likely to lose their car. The lender made no credit checks and knew that the couple were in receipt of benefits.

A CAB in Yorkshire saw a 20 year old woman who had taken out a bill of sale loan for £900 at 430% APR. After one missed payment, the agents of the lender repossessed the vehicle in question from the client's driveway. The woman said that the agent arrived at her property asking for the keys to the vehicle to 'check the mileage'. When she handed over the keys, the agent simply drove the car away.

A CAB in Wiltshire saw a 36-year-old woman who had taken out a loan for £5,000 secured against her car by a bill of sale. The terms of the loan obliged her to repay £35,000 over 36 months. The woman fell into financial difficulties and could not keep up with the repayments. She suffered ill health due to the pressure of the loan and recently had a heart attack. She came to the bureau with her father who was concerned about the amount of interest his daughter had to pay back. The lender had repossessed the woman's car on the previous weekend as they said they had not received payment, but the woman had sent two cheques over the Christmas period. The woman had to pay £3,000 to get the car released. She was in an extremely difficult financial situation and her indebtedness was increasing at an alarming rate as interest charges and charges for letters and phone calls were being added to the balance. She was worried that she might end up losing her mortgaged home

We are also able to gather some information about the circumstances of people seeking advice from the CAB service about bill of sale debts. For instance, we were able to identify 67 borrowers with bill of sale debts from a sample of around 23,000 debt clients recorded on our CASE money advice recording system in the first quarter of 2009/10. On average these bill of sale borrowers were recorded as having nine different debts, including seven 'non-priority' debts on average¹. This compares to an average of 5.5 debts including 4.5 non-priority debts for all the clients recorded on this database in the first quarter 2009/10. The total debt held by bill of sale borrowers averaged at £17,700. Although we only have a small sample of bill of sale borrowers to draw on, we believe that this data, coupled with the cases above, suggests that people facing bill of sale debt problems can be heavily over indebted and therefore financially very vulnerable.

Around two thirds of these borrowers had credit debts with both mainstream lenders and high cost lenders including a bill of sale lender. In some of these cases the number of debts, or the number of debts being pursued by collection agents suggests that the borrower had fallen into using increasingly expensive credit to manage existing debt problems.

Around ten per cent of these borrowers only used mainstream credit in addition to their bill of sale loan – suggesting that they may not have shopped around for alternative 'higher cost' credit.

In around ten per cent of cases borrowers had other credit debts from higher cost credit only, perhaps suggesting an element of difficulty accessing mainstream credit at any stage. About one in five of these borrowers had a bill of sale loan as their only credit debt, suggesting limited shopping around for alternative credit products.

¹ Non-priority debts are those where the ultimate sanction for non payment is a county court judgment. Priority debts are those where the ultimate sanction is loss of home, liberty, utility supply or essential goods on hire purchase.

So while our evidence suggests that bill of sale lending might be prevalent amongst more vulnerable consumers (particularly those vulnerable to financial difficulties) it is by no means clear that people taking credit secured by a bill of sale are doing so because they have never had any other credit choices. Although these figures are based on a very small sample we believe this gives a further snapshot of bill of sale credit use by CAB clients.

The use of bills of sale loans for the business purposes for the self-employed and owners of small firms:

We have relatively little information about the use of bills of sale for business purposes by the self-employed. Only one of the 67 bill of sale borrowers in the Q1 2009/10 sample had self-employment recorded as their occupation status. However another three borrowers had business debts. This suggests that bill of sale loans are taken out by the self-employed but not necessarily for business purposes.

CAB evidence has highlighted cases where people have secured a vehicle used for business purposes against a bill of sale and one example is given below.

A CAB in Hampshire saw a woman who had secured a bill of sale agreement against a van that she lent for private hire as a means of employment. After falling behind on the repayments, the van was removed from outside of her home without her consent and driven to a pound. The client had to pay for the rent incurred by the vehicle whilst in the pound, which was charged at £12 a day. She was able to pay for the first week of rent, but by the time she had sought advice, the combination of towing costs and outstanding payments meant that her debt had accumulated to £800-£900, which she could not afford. She had contacted the lender to get her belongings out of the vehicle, but she was told that she could not access the van until the loan had been paid off.

However more commonly we see cases where people, particularly self-employed people, need the vehicle secured by a bill of sale for work. In these cases the loss of the vehicle would mean a loss of livelihood.. This places the borrower in a position where they may have no choice but to make payments they cannot afford. In some cases they face significant additional default charges.

A CAB in Lancashire saw a 49-year-old man who had taken out a logbook loan for £600 at an APR of 466.94%. The total amount to be repaid was £880 over 3 months by two payments of £93.34 and final payment of £693.34, The security for the loan was the van that the man needed for work as he was self employed. He couldn't keep up with the payments as per the agreement and accrued interest. As a result he had paid in excess of £2,000 with a balance still outstanding of approximately £1,700 with interest accruing monthly on the balance. The man was finding it hard to comply with the payments as his earnings had reduced considerably due to the financial climate. However to keep working he had to keep the van. He was married with two dependant children in a mortgaged property, with mortgage payments of £1,000 per month.

A CAB in Derbyshire saw a 37-year-old single man with a dependant child. He said that he had taken out a loan secured against his car by a bill of sale for £1,200 at 437% APR. He missed the first payment and the company added £800 to the outstanding debt. Later on he called them and was told he owed in excess £3,000. He said that the lender had taken his car that morning while it had all his work tools in it.

A CAB in County Durham saw a 47-year-old woman in full time employment and living in a mortgaged property with three children. She had had problems with a secured loan for several years following a relationship breakdown. She took out a bill of sale loan against her car. During the time of the loan the woman was subjected to regular fees for being in arrears; overdue letters (£12 a time), telephone calls (£12 also) repossession due letters (£12) as well as charges for repossession and return (£382.25). The woman, for whom the car was essential for work, had not realised the reality of such a loan - that under such agreements the credit provider can usually repossess the car at anytime if you default on any instalment.

In addition we found that around 17 per cent of the bill of sale borrowers in the above sample were recorded as having a disability or long-term health problem. For these borrowers the loss of their car could be equally catastrophic for access to everyday services where their car was needed for continued mobility.

The consumer experience of accessing bill of sale loans and dealing with their lenders

CAB evidence presented both in this consultation response and previously shown to BIS highlights a number of significant problems that consumers face with bill of sale lending. In summary we believe these to be as follows:

- Consumers have no protection against lenders' repossession of their property if they fall into arrears. This lack of protection drives aggressive arrears management practices that can drive consumers to make payments that they cannot afford and have to find money from elsewhere to meet the demands of bill of sale lenders.
- The lack of consumer protection also appears to pave the way for bill of sale lenders to make default related charges that can significantly inflate loan balances and increase financial difficulties. For instance:

A CAB in Warwickshire saw a 29 year old woman who fell into difficulties with a bill of sale loan priced at 437 per cent APR. Additional default charges included three letters sent on the same date charged at £12 each and £300 for a debt collection visit. Such clients have little opportunity to challenge these charges while their car is under constant threat of repossession.

- In some of the cases we have seen, it is not clear that the repayments on the loan secured by bill of sale was ever affordable by borrowers who were already in financial difficulty at the time they took the loan out. We are therefore concerned that bill of sale lenders are not making sufficient checks on the affordability of the loans they are granting, instead relying on the value of the car.
- In other cases, it appeared that borrowers were subjected to high-pressure selling techniques and the lender or agent of the lender selling the loan did not explain the nature of the loan and security.
- Bill of sale agreements can be extremely expensive with APRs in excess of 400 and even 600 per cent in some of the cases reported by bureaux. In many of these cases the borrowers would present a higher objective risk as argued above, however the price is still significantly higher than other higher-cost credit of similar term (such as home credit) and appears to give borrowers no discount for the security they have provided.

- Consumers do not necessarily understand the terms and nature of bill of sale agreements as highlighted in some cases in this response. Consumers may think that a bill of sale agreement has the same or similar protections to hire purchase/conditional sale agreements particularly where they are buying a car financed by credit secured by a bill of sale.
- The way that bill of sale agreements are structured can also set consumers up to fail. Several of the examples cited above included agreements with several smaller monthly payments followed by a large and likely unaffordable final lump sum payment. This loan structure can lead to consumers having to continue making payments for much longer than the original agreement massively increasing the overall cost of borrowing.
- Some borrowers have reported been pursued for shortfall debts even after their cars have been repossessed.

Profitability of bill of sale lending

Citizens Advice has no evidence about the profitability of bill of sale lending. However CAB evidence suggests that credit agreements secured by bills of sale are often priced at high APRs with significant additional charges levied on borrowers in default.

Q2. Evidence about the extent of the consumers' understanding of the terms of the Bills of Sale and their options in the event of default should they wish to prevent the seizure of the secured asset.

CAB evidence suggests that consumers can have a limited understanding of the terms of the bill of sale and of their options to prevent repossession in the event of a default. The following cases highlight how borrowers may enter a bill of sale agreement without really understanding the terms or the nature of agreement, or thinking that it is a different kind of agreement like hire purchase or conditional sale. This can be compounded where consumers are in financial difficulty.

A CAB in the West Midlands saw a 25 year old woman who had searched the internet to find a source of credit after her income had dropped following an extended period of sickness and then the birth of a child. She found a bill of sale lender and arranged to borrow £500 using her car as security. The car was worth around £1,300. The terms of borrowing showed the percentage rate as 380%. She did not have the terms and conditions that she stated were on the website but she said she had just clicked thorough and did not print off as there were many pages and ink was expensive. She subsequently had to renew the loan and now and then faced a further renewal although she could not afford to do so. She now faced loss of the car. She said that the lender did not provide her with a written copy when she went to sign.

A Northamptonshire CAB saw a 26-year-old man who had purchased car using money from an inheritance with a book value of £7,000. He subsequently took out a bill of sale loan secured on the car for £2,400. He fell behind with payments and the car was repossessed without car without prior written notice in a short time after he had defaulted on the loan. He

said that he did not understand the terms and conditions of the loan and that his car could be re-possessed and sold to cover the outstanding debt.

A CAB in Yorkshire saw a 43-year-old man who, along with his partner, had multiple priority and non-priority debts following a reduction in income and increased mortgage payments. They both had cars that were essential for them in their jobs. His partner had a car on what she thought was a hire purchase agreement but was actually secured by a bill of sale. The monthly installments were set at £200 that the borrower could not afford to maintain. His partner had hoped to terminate the agreement as she would have been able to do if it had been a hire purchase agreement to limit any debt liability following default. Instead they said they would face excessive charges on top of the car being seized by the lender.

In other cases borrowers said they had been pressured into signing up for a loan secured by bill of sale without having time to properly read the agreement or consider what the terms of the loan and security entailed.

A CAB in Hampshire saw a 27-year-old woman who had taken out a bill of sale loan that was arranged in her own home. The woman was very distressed because she now realised that she might lose her car that was essential to her and her family. This had caused her relationship problems and lowered her self-esteem because she did not read the contract properly. She said that there was no explanation of her financial situation and the interest rates were not fully explained. The bureau commented that a vulnerable client had been given a distorted picture of how the loan worked in the comfort of their own homes making them less inclined to query problems.

A CAB in Essex saw a 34-year-old man who was married and had dependent children. He took out a bill of sale loan in February 2009 for £1,300 to pay for a deposit on a private rented house. He said he felt forced to use this lender, even though the interest rate was very high, because he had a poor credit history. He subsequently had a default notice from the lender and found it very hard to keep up with repayments. He said that he did not understand the implications of loan and was not given time to read the contract and was not informed of the extra charges he was signing himself up for which had left him struggling financially. At the time of seeking advice he still owed £2,600.

A Hampshire CAB saw a 27-year-old woman who had borrowed £3,000 to buy a car in November 2007. The loan was given by a bill of sale lender. On the face of the agreement the interest rate was shown as 84% a year. However, the total amount repayable was £12,000, which on the schedule was shown as equivalent to an APR of 203%. It was for a term variously described as '8 (42 months, 182 weeks)'. The weekly repayment was £66.13 and the agreement provided that any payments made would be first appropriated towards the cost of credit (£9,035.66) and only after that towards paying off the loan capital. The woman fell into arrears after paying nearly £2,000 but the lender had added a lot of default charges to her account, including £12 for every telephone call or letter sent to her - anything up to eight times a month. The car was repossessed to be sold at auction and would never fetch enough to pay off the loan. The woman said that she was pushed into signing the agreement without reading it in a pawnshop and it was witnessed by someone describing himself as an underwriter acting on behalf of the lender.

It is perhaps not surprising that consumers can have little understanding of the agreements they are signing given the limited financial capability of some of these borrowers, the degree of financial

pressure some faced, the indifferent or bad selling practices of some lenders and agents and the obscure and archaic nature of bill of sale lending.

In these circumstances it is highly unrealistic to expect consumers to be able to seek redress or relief against threatened or actually repossession of their cars or to challenge excessive fees and charges connected to the loan.

The Bill of Sale Act provides a safeguard whereby borrowers can petition the court within five days of goods being seized for return of goods subject to the payment of money. However we believe it highly unlikely that any consumer will know of this right or understand it, let alone manage to seek advice or make a successful application within the necessary time period. Equally it seems that the court will only order the return of goods where the borrower is able to pay money so that the cause of the seizure no longer exists². This is likely to be a very high hurdle to the protection of the court for many if not all borrowers even if they were able to make an application.

Borrowers in financial difficulties could also make a pro-active application to the court for a time order under section 129 of the Consumer Credit Act. But again we believe that is very unlikely that borrowers would be able or confident to make such an application pro-actively and without advice. By the time a borrower had taken advice the lender could have already taken possession of their car. It is also unclear how the court's discretion under section 129 would apply to bill of sale secured agreements.

As a result we believe that consumers have no realistic effective means to prevent a bill of sale lender from taking possession of goods in the event of default.

Q3. Is it fair and reasonable to have fewer protections for consumers borrowing money under a bill of sale than under other forms of consumer credit agreement including hire purchase agreement?

Citizens Advice believes that it is neither fair or reasonable that bill of sale agreements provides significantly lower standards of consumer protection than other agreements taken out for the same purpose.

Credit secured by bill of sale used to purchase cars

In some of the cases set out above consumers have used credit secured by a bill of sale to purchase a car. Clearly this is an alternative to the more usual and expected means of motor vehicle finance such as hire purchase or conditional sale. Indeed we have highlighted above instances where consumers have believed that they were taking out a hire purchase agreement rather than an agreement secured by a bill of sale.

But the consumer rights and protections attached to the these agreement types are clearly very different. Perhaps most importantly section 90 of the Consumer Credit Act 1974 provides that where the borrower who has paid more than one third of the price of the goods under a hire purchase or conditional sale agreement defaults on that agreement, the creditor cannot take possession without a

² Section 7 Bills of Sale (1878) Amendment Act 1882

court order. Clearly no such protection attaches to a credit agreement secured by a bill of sale used to purchase the case subject to the security.

Likewise, sections 99 and 100 of the 1974 Act give consumers a right to terminate a hire purchase or conditional sale agreement and limit their liability to further payments. This is a crucial right that has helped many borrowers in serious financial difficulties to contain their indebtedness, albeit by losing their car. No such right applies to bill of sale agreements where consumers can find that they lose their car and still face a very significant shortfall debt where the auction price does not meet the accrued balance including default and repossession related charges

Citizens Advice believes that this situation is completely unacceptable. Therefore we urge the Government to ensure that if bill of sale lending is not banned, or if any similar form of chattel mortgage develops in consequence of a ban, that loans for the purchase of goods attract at least the same consumer protection rights as currently exist for hire purchase and conditional sale agreements. Indeed the current lack of consumer rights in respect of bill of sale agreements could, if left unchecked, distort the credit market towards a lower standard of consumer protection if more lenders are encouraged to replace hire purchase and conditional sale agreements with bill of sale lending. We believe that this would be a disaster for consumers.

Alternatively we would argue that legislation should be amended to make clear that a credit agreement cannot be secured against a chattel where the credit was taken out to purchase that chattel other than through a hire purchase or conditional sale agreement.

Loans secured against existing assets

Many of the problems that CAB clients face with bill of sale lending relate to loans that are secured against cars that they already own. In these cases the value of the loan may be small compared to the security or small in absolute terms. Yet the creditor has an almost unlimited right to take possession of the goods following even a small default on the terms of the agreement by the borrower. In addition this form of lending has no restrictions on the borrower's potential liability. So unlike pawnbroking agreements the lender can continue to add fees, charges and interest in a way that can consume the value in the security and even leave the borrower facing a significant and growing shortfall debt after possession and sale of the vehicle.

We believe that this situation is completely unacceptable. On the one hand these agreements do not seem to be that different to other forms of unsecured high-cost credit in terms of the characteristics of borrowers or average amounts (other than that bill of sale credit users are perhaps somewhat less financially excluded than many home credit users for instance). So we do not accept that there is anything inherent about this sector that justifies such a heavy imbalance between the untrammelled rights of creditors and unprotected consumers.

Indeed it is hard to think of another type of secured credit not connected to the purchase of the property secured that has such an unfettered right on possession. Loans secured on houses require a court order before the lender can take possession and we note that the Government is currently planning to bring second charge loans into the same regulatory structure as main mortgages. Unsecured creditors can seek possession of a debtor's home through a judicial process of judgment, charging order and order for sale. Again we note that both the Ministry of Justice and the Office of Fair trading have reviewed the use of charging orders and orders for sale with a view to improving protection of consumer assets against aggressive and unreasonable creditors.

Pawnbroking agreements allow the creditor to take ownership of or sell the debtors goods if the pawn is not redeemed without recourse to the court. But this process is strictly controlled by the Consumer Credit Act. It is notable that Citizens Advice received almost no evidence of consumers facing problems with pawnbroking agreements, which is in stark contrast to our experience of bill of sale lending.

This is possibly because the Consumer Credit Act controls both the process whereby a creditor can take control of goods and the possible liabilities that debtors may face on default. It might also be the case that because pawnbroking has been around for some time, consumers understand the nature of the agreement and the risks to their goods. However it is perhaps more likely that consumers do not seek advice about problems with pawn agreements because the goods are on the whole smaller ticket items that are not essential goods for either employment or daily life in quite the same way that cars are.

Therefore we do not believe that the consumer protections associated with pawnbroking are a good model for agreements secured against motor vehicles. Instead we believe that the law should be reformed to require creditors to get a court order before taking possession of goods. Furthermore, where credit is secured against existing assets we see no reason why this protection should only apply after the borrower has paid off a certain proportion of the agreement price (as for hire purchase and conditional sale). We believe that allowing possession without a court order for any period at the start of the loan is likely to encourage poor or irresponsible lending practices and encourage unscrupulous lenders to move for possession quickly in response to any payment difficulties by borrowers in the early part of the loan.

Finally we would point out that making provision that creditors must seek a court order before taking possession is not likely to be a sufficient consumer safeguard unless the Government sets out the grounds on which the court can exercise discretion to suspend possession, adjourn or strike out an application. For instance the current case law on the use of orders for sale in respect of real property contains a presumption that the creditor's interests should succeed subject to some limited safeguards. We believe that such a presumption would be inappropriate for a chattel mortgage that might be for a relatively small amount. Alternatively section 129 of the Consumer Credit Act gives the court a power to suspend enforcement of a regulated agreement to give a debtor time to pay. Again, it is unclear how the current case law interpreting the section 129 provisions would apply to a credit agreement secured by a bill of sale. This question could be made more difficult by the practice of some bill of sale lenders (seen in cases reported above) of requiring a large single payment to pay off capital at the end of loans.

Therefore we believe that the law needs to ensure that the courts are given sufficient direction to use discretion to properly protect consumers against repossession of their goods.

Q4. Will the implementation of the Consumer Credit Directive, combined with the OFT guidance, provide sufficient additional consumer protection in this area? If not, what other measures (not covered in this consultation) would you suggest to improve consumer protection?

Citizens Advice does not believe that either the Consumer Credit Directive, as implemented in UK law, or OFT guidance will provide consumers with sufficient additional protection.

Firstly we believe that the most relevant sections of the consumer Credit Directive would be the Article 5 pre-contractual information provisions, including the Article 5.6 adequate explanations provisions, and the Article 8 provisions on credit worthiness.

The current draft implementing regulations suggests that Article 8 will be transposed into UK law in a non-prescriptive and fairly light touch way. Lenders will be required to check 'creditworthiness' but are not told how this should be done. The law will effectively advise them to use database information and information from the borrower where necessary and applicable. We understand that the Government's intention is to interpret creditworthiness in the narrow sense of 'likely to pay back' rather than in terms of a responsible lending duty. It is therefore more akin to a prudential requirement on lenders than an effective consumer protection measure against irresponsible lending. As a result, it is not at all clear that the Article 8 provisions will necessarily make that much difference to the lending decisions of bill of sale lenders who might interpret creditworthiness in terms of the security offered rather than the borrower's ability to sustain payments over the life of the agreement.

The Article 5 pre – contractual information provisions will ensure that consumers are given printed material explaining the main terms of the agreement in the prescribed form of the Standard European Consumer Credit Information (SECCI) sheet. However, given the evidence above of some consumers' limited understanding of credit agreements, financial vulnerability and sharp sales practices by lenders, reliance on the SECCI as a consumer protection measure is likely to be a case of 'caveat emptor' with knobs on in too many cases.

The Directive anticipates this through the adequate explanations provisions that will require lenders to point out significant features of the agreement and the consequences of default. Thought the current drafting would not require lenders to speak up when they believe that loan is not suitable for the borrowers needs and circumstances. However lenders will not be required to evidence explanations and so the safeguard may be easily circumvented. Of course where consumers can show that explanations were not adequate this could form the basis of a complaint to FOS. However this would not prevent the lender from taking their car or adding additional fees and charges in the meantime.

Citizens Advice strongly supports the OFT's work on irresponsible lending and we believe that the Irresponsible lending guidance, as published in draft in the OFT consultation, could have a significant effect on lending practices in the credit market. However, it is also the case that existing OFT guidance and the provisions of section 25 of the Consumer Credit Act 1974 should in theory be capable of dealing with many of the problems CAB clients face with bill of sale lenders. Indeed the OFT consumer credit register shows that licensing action has been taken against one major bill of

sale lender, where the OFT has issued a determined to revoke notice. This action may deal with that lender, but only after the consumer detriment has occurred and this licensing action may not deter other lenders from engaging in practices that the OFT deems to be unfair and detrimental to consumers. In short, if licensing action alone could prevent problems with bill of sale lending, then it would already have done so.

Instead we believe that reform of the law is needed to specifically address the problems of bill of sale lending, with the lack of protection against repossession central to this.

Q5. Would a voluntary code of practice if adopted by bill of sale lenders, coupled with ongoing enforcement action, provide sufficient additional protections for consumers?

The evidence presented above suggests that bill of sale lenders are not complying with statutory rules and guidance aimed at protecting consumers. Again, we note that one of the larger bill of sale lenders is currently facing action from the OFT to revoke its credit licence. Given the evidence above and the fact that regulators believe that at least one significant firm in this market has not been following statutory rules and guidance, we have absolutely no faith that a voluntary code of practice will make any difference to the problems that consumers are currently facing.

Q6. Would a code of practice requirement to register a bill of sale loan agreement with online electronic asset finance registers provide sufficient protection for third party consumers?

Citizens Advice believes that requiring bill of sale agreements to be registered with online electronic asset finance registers should provide some additional protection for third party purchasers. However, we do not believe that this alone will provide sufficient and necessary protection for third party purchasers of cars subject to bill of sale loans.

Firstly, we have a small amount of evidence to suggest that some consumers will try to check the provenance of a car that they are interested in buying. However the current ways of checking for outstanding agreements are unlikely to pick up bill of sale agreements.

A CAB in London saw a 44 year old man who had bought a second car from a private individual who had taken out a loan against it secured by a bill of sale and had not repaid it. This individual then sold this car to the man. Shortly after the sale, the bill of sale lender repossessed the car from the client. He stated that he had conducted checks with the DVLA before buying the car but he did not know that DVLA searches did not reveal finance against a car. He would have to take legal proceedings against the previous keeper to recover the money he paid for it. This caused him stress and the lack of a car reduced his mobility, affected his ability to get to work and pursue recreational activities.

An online register of bill of sale agreements secured against cars may have helped this particular purchaser, but only if they had known where to look, had the facility to look and the nature of the sale allowed them the time to make enquiries. More commonly CAB evidence suggests that consumers

are perhaps unlikely to consult an online database and as a result suffer detriment when purchasing a car without realising that it is secured by a bill of sale.

A CAB in Somerset saw a 25-year-old man, who lived with his partner and two small children. They were buying their home. The client bought a car privately from ad on the internet. The seller's address was in Manchester. Shortly after, the car was repossessed without any warning. The seller had taken out a bill of sale loan and the car was subject to this loan agreement. It appeared that the only chance of redress was for the client to claim against the seller, as bill of sale loans are not covered by HP legislation.

A CAB in Hampshire saw a 44-year-old man who had bought a van that was subject to a bill of sale loan. It was repossessed by the loan company, leaving him facing loss of transport, loss of £2,500 he paid for the van and further money spent doing the van up.

A CAB in Derbyshire saw a 27-year-old male had brought a second hand car from a private seller for £3,500. The client was then approached by a representative of the loan company who showed him a copy of the bill of sale that had been used by the previous owner to purchase the car. The document showed that there was still £1,600 still outstanding on the car. The client handed over the car as he was unsure of his rights. The client felt deceived and disappointed about the loss of a vehicle and £3,500.

Therefore we believe that a requirement to register bills of sale on an online register is unlikely to be a sufficient safeguard for third party purchasers. Instead, we understand that the law currently protects thirds parties who buy cars subject to hire purchase agreements without knowledge of the agreements as one of the cases above suggests. We understand that the law provides that such purchasers, buying in good faith without knowledge of the finance agreement, gain good title to the car. Citizens Advice believes that similar protection should be extended to bill of sale agreements. We cannot see another way to adequately protect third party buyers.

Q7. To what extent would reform of the legislation rectify the problems identified in relation to the Bills of Sale?

Citizens Advice believes that reform of the legislation is absolutely necessary to rectify the problems that CAB clients have faced with bill of sale agreements. We do not believe that voluntary options will be sufficient or effective given the nature and severity of the problems we have seen.

We would broadly agree with the list of possible reforms set out in paragraph 82 of the consultation as follows:

- Removing the lender's power of entry, seizure and sale without a court order. This should be enforced with regulatory guidance and/or a pre court protocol to stop lenders taking unnecessary court action. The law should also prevent bill of sale lenders from adding court costs on an 'indemnity basis'.
- The law should give the court sufficient discretion to suspend possession to help borrowers work through financial difficulties. This should include some acknowledgment that borrowers are likely to suffer further financial hardship (possibly to the detriment of their other creditors and at a wider social cost) if they need the car for employment or have no other means to get to work or access essential services and activities necessary to daily living (for example people living in rural areas with poor public transport).

- The law should prevent repossession where arrears are very small.
- The law should protect consumers against the inappropriate use of security of very small or large sums as the consultation suggests.
- The law should also directly control the liability of borrowers under a bill of sale agreement so that fees, charges and additional interest do not consumer the value of the security leaving the borrower exposed to a possible shortfall.
- The law should also directly control the amount, nature and frequency of the default related fees and charges bill of sale lenders can levy rather than leaving this to the Unfair Terms Regulations.
- The law should introduce adequate protection for third party purchasers as described above by providing that people purchasing in good faith get good title. We would also support the establishment of an online register.
- We believe that the regulations implementing Articles 5.6 and 8 of the Consumer Credit Directive should be amended to make special reference to bill of sale lending – which may be the main form of ‘secured’ lending covered by the Directive. This should provide that lenders must specifically check that any agreement secured by a bill of sale/chattel mortgage is suitable for the borrower’s needs and circumstances and that the borrower is likely to be able to maintain repayments over the life of the agreement. Given the severity of the problems we have seen with bill of sale agreements, we believe that lenders should be required to record result of these checks and the reasons for their decisions.

Q.8 If you consider that a Bill of Sale type instrument for consumer lending should be preserved, what would make a credible package of reform measures to ensure sufficient consumer protection?

Notwithstanding our response to question seven, we do not believe that bills of sale are a suitable instrument for consumer lending. They are an archaic form of security designed more for business use than for a mass consumer credit market. CAB evidence previously submitted to BIS also shows how lenders have not always drafted or registered bill of sale instruments in accordance with the legislation.

Citizens Advice does not oppose the principle that consumers should be able to borrow against their chattel goods. But we do not believe that the bill of sale is the right instrument to achieve this in a fair, transparent or efficient way that consumers can understand and which protects their interests. As a result, we believe that the government needs to consider encouraging and overseeing the development of an alternative modern form of security.

Q9. What might be the unintended consequences of this option, including implications for access to affordable credit for vulnerable customers?

We are not sure that there would be any unintended consequences of this option. Firstly the bill of sale market is very small, so if it were to completely disappear it seems unlikely that access to credit would be severely restricted for vulnerable consumers. Our evidence suggests that most consumers should have access to alternative forms of (on the whole cheaper) credit. It may be the case that some borrowers will have exhausted all other lines of credit – some of the CAB clients with bill of sale

loans also had other forms of high cost credit and many debts with third party debt collectors suggesting severe financial difficulty. But we doubt that granting further credit is likely to be in the best interests of such consumers that are already in severe payment difficulties with other agreements, particularly where that new credit is charged at a relatively high rate and secured against their car.

On the other hand the consumer protection measures set out above will not have any major impact on lenders that behave properly and fairly towards their customers. Indeed proper regulation and consumer protection of chattel mortgage lending could even increase access to credit as the reputation problems associated with bill of sale agreements would lessen and more lenders might be attracted into the market. Perhaps a parallel example of this is provided by the equity release sector, where a previously tainted protect has had a 'new start' as a result of statutory regulation.

Q10. What might be the costs to lenders of this reform and adopting a new secured instrument?

Citizens Advice has no information to comment in response to this question.

Q11. Should bills of sale for consumer lending be banned?

Citizens Advice believes that bill of sale security for consumer lending should be banned for the reasons stated earlier. However we do not believe that this can be achieved simply by repealing the Bill of Sale Acts. For all their limitations (from a modern perspective) the Bill of Sale Acts are actually a form of consumer protection legislation. The main purpose of the Acts is to regulate contractual provisions allowing lenders to take control of goods following default on a loan agreement by the borrower. Simply repealing the Acts would remove this protection and allow possibly allow lenders to fix security in any way they like. The effect of the repeal could therefore be to leave consumers in a worse position than they are now.

So while we believe that bill of sale consumer lending should be banned, we do not believe that this can be achieved simply by repealing the Bill of Sale Acts. Instead we believe that the Government will need to bring forward new legislation governing security for consumer credit agreements against chattels in a modern way that properly protects consumers and vulnerable consumers in particular.

Q12. If bills of sale for consumer lending were banned, are there real alternative forms of borrowing available to consumers?

We have answered this question in response to previous questions.

Q13. What might be the benefits and risks of a ban on the use of bills of sale to consumers?

We have answered this question in our responses to previous questions. But in summary we believe the benefits of the reforms we have suggested would be increased consumer protection and confidence, lower consumer detriment and cost and possibly an increased availability of credit if more lenders are attracted to this form of secured lending by removing the reputation problems associated with poor consumer protection.

We believe that the risks of reduced access to credit will be small given the current size of the market and other suitable credit options available.

However the Government must be careful not to simply repeal the existing legislation without replacing it with something more effective for the reasons set out above.

Q14. What might be the costs to lenders of using alternative methods of lending?

Citizens Advice has no comment in response to this question.

Q15. What might be the unintended impacts on consumers and lenders of a ban on the use of bills of sale?

We believe we have answered this question in our previous responses.

Q16. Of the 4 options proposed, which do you prefer?

Our favoured option would be a combination of options three and four. We believe that bills of sale are not appropriate for consumer lending and their use should be banned. However simple repeal of the bill of sale legislation would not necessarily control lenders' use of contractual provisions to create and enforce security and this could even make matters worse. Therefore we believe repeal of bill of sale legislation needs to be accompanied by further new legislation to provide modern and effective consumer protection such as we outlined in our responses to option three.