

Response to OFT review of payday lenders' compliance with the irresponsible lending guidance

Comments from Consumer Credit Counselling Service

May 2012

Introduction

The Consumer Credit Counselling Service (CCCS) is the UK's leading debt charity. We are the largest specialist provider of independent debt advice and the country's only major charitable provider of non-statutory debt management plans (DMPs), which we introduced to the UK in 1993.

The advice and support we provide is always free, independent and impartial. In 2011, we helped around 370,000 people with free advice and support services, including specialist insolvency support, welfare benefit checks and mortgage counselling.

We have seen a dramatic increase in the number of debtors contacting us for help with payday loans, and we have serious concerns over the conduct of some lenders in this industry. We therefore welcome this opportunity to contribute to the OFT's review of compliance with the Irresponsible Lending Guidance, drawing on the experiences of our clients with this category of borrowing.

Evidence base

CCCS collects detailed information on the debts, income and expenditure of around 180,000 people seeking advice each year, including those who hold payday loan debts. CCCS also gathers reports on the products, practices and policies that cause detriment to CCCS clients. These two sources of data form the evidence base for this response.

CCCS clients with payday loans

The number of people contacting CCCS for help with payday loans has increased dramatically in recent years, with a more than six-fold increase between January 2009 and December 2011. By the end of last year, CCCS was counselling close to 1,500 clients a month (13 percent) who had at least one payday loan debt.

Overall in 2011, CCCS helped 17,414 clients with 40,053 separate payday loan debts (nine percent of the total), totalling more than £22 million outstanding to payday lenders. The average total owed on payday loans was £1,267. The average amount owed on an individual loan was £551 at the time of counselling. By way of comparison, this represents around 36 percent of the median household income after housing costs, as reported in the 2009/10 Households Below Average Incomes

Report. Given that payday loans have a short repayment period this suggests that many of these payday borrowers would struggle to afford the repayment.

The average number of payday loans held by CCCS clients with this kind of borrowing has also increased significantly, to 2.3 in 2011, up from 1.6 in 2009.

Clients with payday loans are more likely to be male, single, and much younger than clients in general. Three quarters are aged under 40 and a quarter aged under 25, compared to 45 percent and 9 percent of all clients counselled. Payday loan clients are also more likely to be on low incomes, with three quarters on net household incomes of less than £20,000 per year, and over one in five reporting incomes less than £10,000 per year.

Significantly, the average client with payday loan debts had a higher number of debts in total (eight) than clients in general (five) - suggesting that borrowers may be turning to payday loans in an attempt to cope with existing debt.

Multiple payday loans

An analysis of the 17,414 CCCS clients with payday loan debts in 2011 shows that nearly three-fifths (58 percent) held more than one payday loan. Around a third (34 percent) held more than two payday loans, while one in ten (9.8 percent) held five or more.

# PDL debts	# Clients 2011	% of PDL clients
1	7359	42%
2	4110	24%
3	2652	15%
4	1578	9%
5	840	5%
6	455	3%
7	237	1%
8	100	1%
9	46	
10	20	
11	8	
12	5	
13	2	
14	1	
15	1	
Total	17,414	

It is our view that the significant proportion of clients who have been able to secure more than two payday loans is prima facie evidence of irresponsible lending by some players in the payday loan industry.

An analysis of the wider personal debt circumstances of clients with multiple payday loans shows that a significant number of consumers have been able to secure loans despite holding large amounts of other unsecured debt. Clients with five or more payday loans held an average of £12,146 in total unsecured debt, of which £9,281 was non-payday loan debt.

# PDL debts	# Clients 2011	Avg total unsecured debt
1	7359	£10,959
2	4110	£9,887
3	2652	£9,639
4	1578	£10,141
5+	1715	£12,146
Total	17414	£10,548

Treatment of borrowers in financial difficulty

CCCS collects *social policy* reports where our clients tell us about issues that caused them concern, hardship or detriment. In 2011, payday lenders jumped from the sixth-highest to the third-highest cause of issues raised with the Social Policy Team – overtaking debt collection, overdrafts and credit cards for the first time.

2010

Product type	2010 cases	%
Debt solutions	145	18%
Debt collection	120	15%
Loans	92	12%
Overdrafts	81	10%
Credit cards	44	6%
Payday loans	36	5%
Claims management	32	4%
Catalogue	18	2%
Other / misc	219	28%
Total	789	

2011

Product type	2011 cases	%
Debt solutions	313	23%
Loans	201	15%
Payday loans	190	14%
Debt collection	149	11%
Credit cards	101	8%
Overdrafts	92	7%
Catalogue	39	3%
Claims management	36	3%
Other / misc	224	17%
Total	1345	

CCCS evidence highlights numerous cases of non-compliance with the Irresponsible Lending Guidance by payday lenders.

Unsurprisingly, the majority of payday loan-related cases raised in CCCS social policy evidence relate to how our clients are treated when they are in arrears or default.

We have seen evidence of the following business practices in this sector that constitute unfair treatment of consumers in financial difficulty:

1. Refusing to deal with third parties such as CCCS
2. Misrepresentation of legal powers during debt collection
3. Excessive charges
4. Communication that constitutes harassment
5. Misleading communication
6. The enactment of unfair contract terms
7. Mis-use of continuous payment authority

A summary of examples of each business practice is included below. Illustrative, anonymous examples of CCCS client cases are included in the attached spreadsheet. CCCS has further similar cases that we would be happy to share with the Office of Fair Trading.

1. Refusal to deal with third parties

CCCS regularly encounters payday lenders who refuse to deal with CCCS when acting on behalf of debtors who are in difficulty. This practice brings these lenders into non-compliance with para 3.9.c. of the OFT's *Debt Collection Guidance* (OFT664Rev).

Refusing to deal with third parties has been observed in the following ways:

- Informing the debtor that the lender has a policy of not dealing with CCCS
- Advising the debtor not to involve CCCS or any other debt management agency
- Refusing to provide contact details to the debtor, including address and telephone numbers, so that CCCS can act on their behalf
- Refusing to provide account information to the client after being informed that they are needed to set up a DMP with CCCS
- Using ambiguous language to side-step requests that the lender deals with CCCS, such as informing the debtor that they "are not required by law" to accept payment proposals from debt management agencies
- Misleadingly informing the debtor that they will face legal proceedings if they enter into a DMP with a third party such as CCCS
- Refusing to cash cheques sent by CCCS during disbursement of a debt management plan

See example cases attached.

2. Misrepresentation of legal powers during debt collection

CCCS clients have reported instances where payday lenders have misrepresented their legal power or authority during the debt collection process, in non-compliance with para 3.4. of the OFT's *Debt Collection Guidance* (OFT664Rev). Examples of this business practice include:

- Implying that the lender has the power to initiate criminal prosecution
- Issuing letters designed to imitate official court paperwork
- Threatening to initiate bailiff action where no CCJ is in place
- Creating the impression that the lender can obtain an Attachment of Earnings Order at will

See example cases attached.

3. Excessive charges

CCCS collects data on debtors' outstanding balances at the time of their counselling appointment only, and so statistical information on the scale of charges applied to payday loan debts is not available. However, CCCS clients report experiencing excessive charges being imposed by payday lenders.

See example cases attached.

4. Communication that constitutes harassment

Communications that may constitute harassment are a regular feature of the complaints CCCS receives about the treatment of our clients by payday lenders. The following examples illustrate the range of practices that fall into this category:

- Contacting the debtor by telephone or by text messages at unreasonable intervals
- Contacting the debtor via telephone numbers that the debtor has requested no longer be used
- Using intimidating language

In addition, the experiences of CCCS clients suggest that some payday lenders regularly contact debtors at work, or threaten to contact the debtor at work, during the debt collection process, and in some cases disclose their identity or details of the debtor's circumstances in contravention of the Data Protection Act and the OFT's *Debt Collection Guidance*. Examples include:

- Threatening to contact the debtor's employer to inform them of the debtor's outstanding debt
- Contacting the debtor in the workplace, despite requests to remove work telephone numbers
- Contacting the debtor's workplace and disclosing their identity to other employees
- Contacting the debtor's workplace and disclosing details of the debtor's circumstances to other employees
- Threats to visit the debtor in person at their place of work

See example cases attached.

5. Misleading information

CCCS clients have reported examples of misleading information given by payday lenders, in relation to their account, the debt collection process or CCCS. Examples include:

- Lenders misleading the borrower by saying they had spoken to CCCS, who had agreed for separate payments to be made outside of an arranged DMP
- Accusing the debtor of committing "fraud" through not repaying a loan

- Implying that CCCS does not act in the client's best interest

See example cases attached.

6. Enactment of unfair contract terms

CCCS has encountered cases in which a payday lender has enacted unfair contract terms, including:

- Clauses stating that the lender will not accept payments from third parties
- Misleading references to 'Website Terms and Conditions', implying that these in some way govern the consumer credit agreement
- Clauses stating that the lender is not subject to any UK ombudsman scheme

See examples of unfair contract terms attached.

7. Misuse of continuous payment authority

Examples of payday lenders' misuse of Continuous Payment Authority that have been encountered by CCCS have previously been submitted to the OFT in our response to the OFT's supplementary consultation on continuous payment authority in January 2012, and in an additional submission in March 2012. These include:

- Taking money from borrowers or third party accounts without any authority, often due to the illegitimate use of card details previously provided by the borrower (usually for one-off payments)
- Refusing to 'cancel' CPAs
- Harassment of borrowers who had sought (and failed) to cancel a CPA
- Demonstrating a clear lack of forbearance in exercising a CPA
- Attempting to take repayment amounts earlier or later than agreed, often justified in correspondence by reference to loan agreement terms

See examples in previous submission.

This submission and the attached cases provide a summary of CCCS evidence on detrimental practices by payday lenders. CCCS would be very happy for the Office of Fair Trading to look at the further cases we hold. A larger list of the issues raised in all the evidence reports we collected in 2011 is set out below.

Issue	Number
Conduct - lying or misleading client	52
Budget/offer - creditor stating they will not deal with CCCS	35
Interest/charges - excessive charges	31
Communication - implying official or government backing	29
Correspondence - misleading, threatening or inaccurate	28
Payment - taking payment without permission	22
Payment - debit card or continuous authority issues	19
Phone calls - excessive or at inappropriate times	16
Lending - irresponsible lending	15

Communication - data protection breach	13
Budget/offer - refusing to accept CCCS/CFS budget	12
Budget/offer - refusing to consider reasonable offer	12
Communication - refusing to give balances or other info when requested	12
Lending - multiple pay day loans	12
Payment - refusing to accept payment	10
Phone calls - intimidating, abusive or inappropriate language	10
Budget/offer - pressuring client to pay extra outside of DMP	8
Interest/charges - excessive interest	7
Phone calls - not stopping when requested	7
Communication - criticising or lying about CCCS	6
Conduct - advising client not to deal with CCCS	6
Conduct - substandard or unacceptable service	6
Correspondence - fake court forms	5
Court/legal - possible fraud	4

**Consumer Credit Counselling Service
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