

Consultation Response



Law Commission

Bills of Sale: A consultation paper

Response from StepChange Debt Charity

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We are an independent charity dedicated to overcoming problem debt. Our advice and solutions are effective, tailored and importantly, free. Foundation for Credit Counselling. Wade House, Merrion Centre, Leeds LS2 8NG. Company No 2757055. Charity No 1016630. www.stepchange.org

Background

StepChange Debt Charity is the UK's largest specialist provider of free, independent debt advice. In 2014 nearly 600,000 people contacted our free helpline or used our on-line debt remedy tool for advice and support about problem debt. Our charitable objectives are to:

- provide free debt advice and create greater awareness of debt advice solutions
- champion the cause of people who are in, or at risk of, problem debt
- enhance people's financial understanding to better manage their money and debts

Our response is focused on questions relating to logbook loans and we have only answered selected questions from the consultation as they are most relevant to our clients

Summary

We welcome and are supportive of the Law Commissions proposals to reform Bills of Sale legislation in order to create effective modern legislative framework to govern logbook lending. Our clients have first-hand experience of the detriment caused by the antiquated and inadequate consumer protection governing logbook loans. We broadly support the Law Commission's proposals to reform the legislation but not outright ban bills of sale for consumer lending as long as consumer detriment levels are monitored and reduce significantly.

This is a summary of our main issues with regards to this consultation:

- We support the proposals to extend the requirement for a court order before repossession for vehicle mortgages. We would suggest that in order to strength this safeguard, the court should be given the power and discretion to allow borrowers more time to pay.
- We disagree with the proposal for the hire purchase 'one third threshold' rule to be transferred to vehicle mortgages as borrowers of logbook loans are more likely to be financially vulnerable so need additional consumer protections.
- We believe lenders should only be allowed to pursue borrowers for a shortfall following repossession and sale of a vehicle in certain circumstances such as where the security does not cover the original debt (less any early settlement discount) or where the borrower has acted in bad faith. Lenders should be constrained from having a second go at recovery where default interest and charges take the outstanding balance above the value of the security.
- We support proposals for new protections for innocent purchasers where they will acquire ownership of the goods if they have acted in good faith. However, we do not see the need for there to be a regulation-making power to repeal this protection if vehicle provenance checks become free and routine. If this were to happen then the protection would most likely be invoked only rarely, but the need for protection would be an important backstop in those rare cases.
- We support proposals to introduce the right of voluntary termination on vehicle mortgages.

- We accept the reasons for not introducing a minimum amount for vehicle mortgages. However, we believe the Law Commission should consider protections for borrowers of small loan amounts.
- We are supportive of the recommendations to simplify the document requirements for logbook loans and to include prominent statements in these documents. We believe that these prominent statements should also appear on websites and advertising to enhance borrowers understanding at each stage of the process.
- We agree that where there is a failure to comply with vehicle mortgage document requirements then the lender should lose any right to the secured goods. However, we also think that the court should be given discretion to decide whether the lender retains or loses the right to sue the borrower for repayment of the loan.

Responses to questions:

Question 1:

We agree that bills of sale should not be banned or abolished. We accept that in principle there is nothing inherently wrong with borrowers raising money on personal property as long as there are adequate protections in place for these borrowers. As the Law Commission has found loans secured by Bill of Sale (logbook loans when secured against vehicles) have not been governed by modern consumer protections resulting in considerable consumer detriment.

We support the Law Commission's recommendations to create an effective modern legislative framework that will govern logbook loans and other bills of sale. We consider that this new framework should go a long way to addressing the consumer detriment experienced by logbook loan borrowers. However, we believe that the effectiveness of this new framework in protecting consumers should be reviewed one to two years after implementation. If there is evidence of continued significant consumer detriment, we believe the case for banning bills of sale should be reconsidered.

Question 2:

As outlined in the previous answer, we agree that the law on bills of sale needs wholesale reform to bring logbook loans in line with modern standards of consumer protection. We agree that the current law is antiquated, difficult to understand and fails consumers. The law is not providing appropriate consumer protections when a borrower falls into payment difficulties. Nor does it protect innocent private purchasers. We agree that the only way to tackle this is to repeal the current Bills of Sale legislation and replaced it with new legislation.

Question 3: See the answer to question 2.

Question 4:

We agree there is a need to simplify the language as the phrases like "bill of sale" and "personal chattels" are little known or understood among our clients and borrowers in

general. We believe the terms “goods mortgage” and “vehicle mortgage” are adequate and simple terms for describing this type of borrowing.

Question 9:

Many people on low incomes often need to seek relatively small sums of credit in order to pay for everyday essentials or to spread the cost of larger purchases. Loans secured by bills of sale for smaller amounts of between £100-500 may be meeting this type of need. We have broader concerns about the use of high cost credit as a safety net when budgets are tight as this significantly increases the risk of falling into serious financial difficulties.

We agree that there are difficulties with introducing a minimum amount for goods mortgages because it could encourage borrowers to borrow more than is necessary and that a minimum amount would only be effective if it was kept up-to-date. However, we believe there needs to be adequate consumer protections for borrowers who have taken out small loans as the consultation paper outlines for small loans the costs of repossession could be out of proportion to the amount of the loan. For example, a borrower who defaulted on a small loan of £200 would be at risk of losing their vehicle and facing charges double the amount of the loan (the consultation paper estimates the cost of repossession and sale to be at least £400). We believe the Law Commission should further give further consideration for consumer protections for borrowers who take out small loans.

Question 11:

We agree that it is important to simplify the document requirements in relation to logbook loans as they are currently often incomprehensible to borrowers. We agree that keeping the security document as a separate document from the credit agreement is important. We do not have a strong view on the need for a witness to the signature. However, we believe that allowing the witness to be a lender’s employee or agent undermines the value of this as a consumer protection.

Question 12:

We agree that the goods mortgage document should include all these items and information. We agree that it would be useful for lenders to ask the Plain English Campaign to approve their goods mortgage and ensuring this is as easy and uncomplicated for borrowers to understand is essential. We would recommend that goods mortgage document also be as clear and concise as possible so that borrowers are able to read them and take in the information fully in a short space of time.

Question 14:

We strongly support proposals for vehicle mortgage documents to include prominent statements to provide clear information on the change of ownership and warnings of the consequences of taking out a logbook loan. The awareness of what logbook loans are is low even among some borrowers who use them as currently there can be confusion between taking out a hire purchase agreement and a logbook loan. We believe the proposed prominent statements included in the consultation document are clear and easy to understand and support the proposal for the FCA to draft and test the effectiveness of these statements further.

We think that the prominent statements should also appear on websites and advertising. These statement and warnings are useful in alerting customers of the risks and consequences of using high-cost credit. The risk warnings that the Financial Conduct Authority require with payday loan adverts also signpost to sources of free debt advice. We would suggest that the goods mortgage document also include signposting to free debt advice as borrowers of logbook loans may be financially vulnerable and more credit (particularly high cost credit) may not always be the best solution for them.

Question 16

We agree that the sanction for failure to comply with the document requirements should be that the lender loses any right to repossess the goods, both as against the borrower and against a third party.

We would suggest that in the case where there is a failure to comply with vehicle mortgage document requirements, the lender should also lose the automatic right to enforce recovery of the loan through court action. Instead the court should have discretion over whether an enforcement order for recovery of the loan should be granted depending on the circumstances of the case.

Question 23:

We welcome and are very supportive of the Law Commissions proposals to extend the requirement for a court order before repossession to all regulated credit agreements secured by a goods mortgage. We agree with the Law Commission's view that just relying on Consumer Protections such as Time Orders under Section 129 Consumer Credit Act 1974 has not provided people in financial difficulty with sufficient protection. However we would also point out that by itself, the requirement to seek a court order may also provide a limited safeguard.

It will be important to ensure that the court has the power and discretion to allow borrowers more time to pay. For instance, legislation creating a goods/ vehicle mortgage could explicitly incorporate provisions similar to section 129 Consumer Credit Act into the matters the court may take into account of when considering a lender's application for return of goods.

We disagree with the proposal for the hire purchase 'one third threshold' rule to be transferred to logbook loans. The consultation outlines that logbook loans will no longer be allowed to be used for the purchase of new vehicles and therefore vehicle mortgages will be different from hire purchase. When a borrower is looking to purchase a new vehicle using hire purchase they are in a very different position to borrowers who use their goods/vehicle as security for a loan. In hire purchase the lender is risking the value of the goods whereas in logbook loans the borrower is risking their own goods in exchange for a loan so are more likely to be financially vulnerable. Therefore we do not think the same 'one third threshold' should be applied.

The consultation states that the court order requirement aims to protect a borrower who can pay but who has encountered temporary financial difficulties and needs more time and rescheduled repayment plan. We believe this situation can occur when a borrower has paid

off less than one third of their loan and therefore these borrowers should also be protected by the requirement of a court order for repossession.

We understand the reasons why the Law Commission believes the £155 court fee should be passed on to the borrower if the court rules that the vehicle should be repossessed. We agree that it is essential that the further costs associated with the court process should not be passed onto the borrower.

We have concerns about some situations where lenders can pursue borrowers for any shortfall following the sale of the repossessed goods. One reason why there might be a shortfall after sale of repossessed goods is where the lender has imposed additional interest, default fees and charges that take the outstanding balance over the value of the vehicle. We would suggest that there would be some limitations to the amount that can be pursued as a shortfall in certain circumstances.

We would recommend that lenders should only be able to pursue borrowers for a shortfall in circumstances such as where the security does not cover the original debt (less any early settlement discount) or where the borrower has acted in bad faith.

We have reservations about allowing lenders to seek charging orders against borrowers' homes to secure shortfalls as logbook loans are already taken out against the security of the vehicle. Nonetheless we agree that lenders should be permitted to seek charging orders against borrowers' homes only in very limited circumstances as set out by the Law Commission in the consultation document. Although, we would suggest that the charging orders should only be available where the outstanding loan amount is no less than £1,000 rather than no less than £500. This is because we believe that the lender should look to other court powers to force repossession rather than a charging order on a home for smaller outstanding loan amounts of under £1,000.

Question 24:

We agree that borrowers should have the right of voluntary termination where they have no realistic prospect of paying off the loan without any further liability. We believe voluntary termination does give borrowers some control over their borrowing and that this important safeguard should be given a statutory basis as it has under consumer protections for hire purchase.

Although our only concern with voluntary termination is in the case of smaller value loans where voluntary termination of the vehicle may not be in the best interest of the borrower if the vehicle is worth more than the outstanding loan amount. There could be an incentive in this case for lenders to pressure borrowers into voluntary termination rather than having to seek a court order for repossession. We would suggest the Law Commission consider how to tackle this issue or whether this is an issue to flag with the FCA with regards to lender conduct when the new goods mortgages legislation is implemented.

Question 25:

We agree that the CCTA code should be adopted in full so that there is no requirement for a percentage of the loan amount to be repaid before voluntary termination and that it should provide full and final settlement for all outstanding amounts. We understand the provisions

needed to make exceptions when the vehicle has sustained malicious damage. However, we believe where borrowers should keep the right of voluntary termination if they can should that the malicious damage was not caused by them or anyone associated with them. Accidental damage can easily happen to a vehicle when the owner is not responsible and they should not be punished for this otherwise they would lose their vehicle or have a damaged vehicle and still owe money to the logbook lender.

Question 26:

We agree and believe it is important for vehicle mortgages not to be used to secure purchases of new vehicles on credit. This type of lending should be the reserve of hire purchase and the consumer legal framework that governs this.

Question 28:

We agree that where a private purchaser acts in good faith and without notice of the goods mortgage they should acquire ownership of the goods. This is an important protection for innocent purchasers of second hand vehicles who find that they either have to pay off a logbook loan they did not take out or have to give up their recently purchased vehicle. We also agree that a logbook lender should have to go to court to show that the private purchaser did not act in good faith. We do not have views on whether this should be extended to goods that are not vehicles as we are unaware of any of clients experiencing this.

We believe a regulation-making power to repeal the protection granted to private purchasers if vehicle provenance checks become free (or almost free) and routine is not necessary. If vehicle provenance checks become free and routine then this protection would rarely be needed and in the rare cases of innocent purchasers would still need this protection therefore we do not see the case to repeal.

We do agree that the industry should work with the logbook loan industry to bring about these changes. We are concerned that an advertising campaign would be unlikely to sufficiently ensure that the public are generally informed of the need for proper vehicle provenance checks and this campaign would also need to be sustained so that awareness of vehicle provenance checks continued to be high over longer periods of time.

Q30 Do consultees agree that the FCA should be given jurisdiction to curb abuses in the way that logbook lenders treat private purchasers?

We agree that the FCA should be given jurisdiction to curb abuses in the way that logbook lender treat private purchasers. It is not fair that there is no obligation enforceable by the FCA on logbook lenders to treat private purchasers fairly or provide them with any information or explanations. Private purchasers are placed in the position of consumers of logbook loans and should be given the protections and forbearance afford to consumers by FCA rules.

Q31 Do consultees agree that FOS should have jurisdiction to hear complaints against logbook lenders made by private purchasers of vehicles subject to logbook loans?

Similarly, we agree that FOS should have jurisdiction to hear complaints against logbook lenders made by private purchasers of vehicles subject to logbook loans. These private purchasers are also unfortunately placed in the position of customers of logbook lenders and should be given the same rights to complain to FOS if they are not treated appropriately.