

Consultation Response



Goods Mortgages Bill: Consultation

StepChange Debt Charity consultation response to HM Treasury

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We are an independent charity dedicated to overcoming problem debt. Our advice and solutions services are effective, tailored and importantly, free. Foundation for Credit Counselling Wade House, Merrion Centre, Leeds, LS2 8NG trading as StepChange Debt Charity and StepChange Debt Charity Scotland.

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Introduction

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StepChange Debt Charity is the largest specialist debt advice charity helping people across the UK. In 2016 we were contacted by almost 600,000 people seeking debt advice.

We welcome the opportunity to respond to this consultation as our clients have first-hand experience of the detriment caused by the antiquated and inadequate consumer protection governing logbook loans. We were also part of the advisory group for the Law Commission's project on reforming the law on Bills of Sale.

Question 1: Do you agree that reform of the law in this area is required?

We agree that the law on bills of sale needs wholesale reform to bring logbook loans in line with modern standards of consumer protection. The current law is antiquated, difficult to understand and does not provide appropriate consumer protections for borrowers who falls into payment difficulties and for innocent private purchasers. Reforming the law in this area is essential to addressing these issues.

Question 2: Do you support the approach as set out in the draft Goods Mortgages Bill published today?

Overall we support the approach as set out in the draft Goods Mortgages Bill. We consider that this new legislation should go a considerable way to addressing the consumer detriment experienced by logbook loan borrowers. However, we have three main and significant concerns with the bill as it is currently drafted:

The opt-in procedure:

We are concerned that the opt-in procedure will weaken consumer protection. From our experience, borrowers will often be disengaged with and lack an understanding of court procedures. Under an opt-in procedure, this lack of engagement will be seen automatically as the borrower accepting the lenders claim even when they feel they dispute the amount owed. The opt-in procedure will ensure that opting out of consumer protection is the default.

There are examples of where relying on consumers to make an active decision does not result in the best outcomes. For example, the FCA's Credit card market study found that credit card firms currently predominately offer unsolicited credit limit increases on an 'opt out' basis. This means firms can propose to increase the customers limit without the customer having requested it and if the customer does not actively decline the offer the increase will be implemented. The FCA states that their understanding of consumers' behavioural biases' means that having an opt-out system means customers are likely to passively accept the offer without considering it and this can lead to worsening financial difficulties. They are changing their rules so that all new customers will all be given the choice of how credit limit increases are applied to their account.

This example suggests that people will not necessarily opt-in or opt-out of something if it is in their best interest due to a lack of understanding, confusion or inertia. We would suggest this behavioural economics understanding is relevant to borrowers of goods mortgages as they may either ignore or not understand the opt-in option. Therefore we do not think there

should be an opt-in procedure. Goods mortgage borrowers should be entitled to at least the same, if not greater, level of consumer protection as hire purchase borrowers where there is not an opt in procedure.

Another issue is that the opt in procedure is also unnecessary as there is a debt pre-action protocol that applies to any business claiming payment of a debt from an individual. This protocol describes the conduct the court expects of both lender and individual before the start of proceedings and includes a template information sheet and a reply form to be provided to debtors. The aim of the protocol is to encourage early engagement between the debtor and the lender and to try and resolve the matter without having to start court proceedings by agreeing a reasonable repayment plan. If the intention of the opt-in is intended to stop lenders from taking court action where unnecessary and stopping extra court costs for consumers, then the pre-action protocol already exists to do this. Therefore the opt-in procedure is unnecessary and adds a significant barrier to consumer protection.

Strengthening consumer protection built into the court process:

We also think there should be stronger protection built into the legislation that specifies what the court can do to protect logbook loan borrowers. The bill as currently drafted outlines the additional powers of the court to allow suspension of possession of the goods on repayment within a reasonable period (section 24) but that these powers will not apply in logbook loan cases.

As currently drafted, this section of the bill won't apply where the goods mortgage is a regulated agreement under the Consumer Credit Act 1974 (CCA). This is because with these CCA regulated agreements the court has powers to allow more time to pay the loan agreement under the time order provisions in section 129 of the CCA 1974 [as outlined in s.24 (1) (b) of the draft bill]. Therefore logbook loan borrowers who are facing their goods being possessed will firstly have to opt-in to the court process and then know how to apply for a time order. Our concern is that most logbook loan borrowers, particularly if they are vulnerable, even if they opt in to the court process will not have the knowledge or capacity to apply for a time order. Therefore logbook loan borrowers are likely to not benefit from additional powers of the court to suspend possession of the goods and allow more time for the borrower to repay. The part of section 24 [s.24 (1)(b)] that excludes credit agreements under the CCA 1974 (including logbook loans) should be removed and replaced with clarification in the legislation that the court should consider making a time order of its own volition where appropriate.

One third rule:

We are also concerned that the bill as currently drafted allows lenders to repossess the goods without a court order or consent if the borrower has repaid less than a third of the secured sum. We believe borrowers who have paid of less than a third should also be protected by the requirement of a court order for repossession. This is because there is a significant difference between hire purchase and logbook loans. 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 goods mortgages the borrower is risking their own goods in exchange for a loan so are more likely to be financially vulnerable. Moreover, in the early stages (before first third of the loan is paid) of a hire purchase agreement the equity in the goods will be with the lender. However with goods mortgages, the borrower is likely to have equity in the goods in the early stages of the loan agreement which should be protected against aggressive action from the creditor. Therefore we do not think the same

'one third threshold' should be applied and all goods mortgages borrowers should have right to the protection of a court order before repossession.

Question 3: Do you have views on risks and benefits of also implementing the proposed provisions of the Goods Mortgage Bill in Northern Ireland?

Logbook loans borrowers in Northern Ireland should be entitled to the same level of consumer protection as those in England and Wales. The proposed provisions of the Goods Mortgage Bill should therefore also be implemented in Northern Ireland.

Question 4: Do you agree with the proposal to establish a single electronic register of all goods mortgages which is searchable by asset or borrower?

We agree that a single electronic register of all goods mortgages would be simpler and more effective than requiring lenders to register with one of a number of asset finance registries. Having all goods mortgages register in one place will make it easier for lenders to use and theoretically be more easily searchable. One note of caution would be to not overstate the extent that having one single register will make it easier for third party purchasers to search the register and find out if their vehicle they want to purchase has a goods mortgage attached. There are currently very low levels of awareness of logbook loans among the general public and it is unlikely that most third party purchasers will know to search a register when buying a vehicle. However, as long as this does not affect third party purchasers consumer protections as outlined in the draft Bill we are supportive of having a single electronic register for goods mortgages.

Question 5: Do you agree that these are the main costs and benefits that firms and consumers will face? Are there any further costs or benefits to the proposed reforms, beyond those costs and benefits outlined by the Law Commission and the government?

In general, we agree that those outlined are the main costs consumers will face. However, there is not considerable detail on the benefits consumers will experience from introducing a court order provision. We consider that the court order provision will ensure that some borrowers will be more protected from having their vehicle repossessed, for example, where they have made considerable repayments towards the loan or have only missed one repayment on their loan. There are wider financial and other benefits of borrowers being able to keep their vehicle in these cases as they may use their vehicle to get to work or it may be used to transport their children to school. However, we remain concerned as earlier that the protection, and therefore benefits, offered by a court order provision will be weakened by the opt-in procedure.

Question 6: What impact would the government's proposals for registration have on the costs and benefits estimated by the Law Commission in its September 2016 report?

No comment

Question 7: What would be the cost to firms of engaging enforcement agents to repossess goods, where a court order has been granted?

No comment

Question 8: Do you consider the Bill suitable for a Parliamentary procedure designed for uncontroversial Law Commission Bills?

We do agree that the Bill is suitable for the special parliamentary procedure. As outlined above we have a number of issues with the Bill as currently drafted that we think should be reformed. However, the Bill is an improvement on the current situation, while in several respects not amounting to a modern consumer protection for logbook loan borrowers. Therefore we would support the Bill going through the parliamentary procedure for uncontroversial Law Commission Bills.

Question 9: Are people with protected characteristics under the Equalities Act 2010, or any consumers in vulnerable circumstances, impacted by the policy proposed?

Consumers in vulnerable circumstances are likely to be impacted by the policy proposed. FCA research on logbook loan borrowers found they are likely to be financially vulnerable, may be unemployed or in insecure employment, have high levels of other debts and have limited credit options.¹ We are concerned that potentially vulnerable logbook loan borrowers will not be afforded modern consumer protection from this Bill as it is currently drafted with the opt-in procedure and exemption from the court powers to suspend possession of goods.

¹ ESRO (2014) Financial Conduct Authority Consumer Credit Research: Payday Loans, Logbook Loans and Debt Management Services