Northern Ireland Assembly

Research and Information Service
Briefing Note

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ETI Committee – Payday loans stakeholder event

1 Background

On 5 February 2013 the Committee for Enterprise, Trade and Investment hosted an event which explored the regulation of payday lending. A range of stakeholders were invited to the event to discuss the transfer of consumer credit regulation from the Office of Fair Training to the Financial Conduct Authority (FCA). The FCA is one of two bodies, along with the Prudential Regulation Authority, that will replace the Financial Services Authority on 1 April 2013. The FCA is expected to take responsibility from 2014. An interim regulatory regime will be introduced initially, with the FCA's full regulatory regime expected in 2016.

The ETI Committee event provided an opportunity for Northern Ireland stakeholders to discuss the future of payday lending regulation under the new regime with other stake holders, MLAs and the FCA. In attendance at the event were[1]:

[1] Apologies were received from Maeve McLaughlin MLA, Dennis Cunningham from the Trading Standards Service and Brian McCrory from the Irish League of Credit Unions.

Patsy McGlone MLA	Chairperson for ETI Committee
Steven Agnew MLA	ETI Committee
Paul Frew MLA	ETI Committee
Robin Newton MLA	ETI Committee
Gordon Dunne MLA	ETI Committee
Neil Dhot	FSA/FCA
Sinéad Campbell	Advice NI
Phil McGarry	Advice NI
Rachael Cray	Citizen Advice Centre
Eddie Smith	Citizen Advice Centre
Julie McCurley	Consumer Council
Aodhan O'Donnell	Consumer Council
Carmel Morris	Irish League of Credit Unions
Jimmy Hughes	Trading Standards Service
Tommy Jeffers	Ulster Federation of Credit Unions

Attendees were divided into two groups and asked to address two questions:

1) What have the key issues been with the current regulatory regime, which have led to problems among consumers who avail of payday loans?

2) What needs to be put in place in future regulation to ensure the similar problems do not arise for consumers in the future?

This paper provides an overview of the points raised during the discussion of these questions. Key points arising from the event are summarised in the boxes below (these points are expanded upon in the text that follows).

Q1: What have the key issues been with the current regulatory regime, which have led to problems among consumers who avail of payday loans?

Advertising and marketing	Pre-loan credit & suitability checks are inadequate
Information provision when taking out loan	Roll-over loans and associated costs
Offering "roll-overs" even when client may be able to make full repayment	No criminal or civil penalties in existing legislation to penalise breaches
Some (about 20%) slow to deal with representatives while debt grows	Interest rates
Need for alternatives (pilot scheme ran by the Consumer Council)	Ease of access (high street & Internet)
Debt collection methods – misuse of continuous payment authorities	Marketing further loans by email or text after consumer takes out initial loan
Irresponsible marketing	Identifying target market of payday loans
Need to improve education financial capability in Northern Ireland	Insufficient evidence base

Q2: What needs to be put in place in future regulation to ensure the similar problems do not arise for consumers in the future?	
Improved transparency and better information provision, both online and in store	A Legal obligation to companies to report loan issue to Credit Reference Agency to improve checks
Cap on number of loans that individual can receive	Early termination and Payment Plan option should be included
Some argued a rollover/loan cap an intervention too far	Payday loan companies were thought work well within existing advertising rules
Debated whether interest rate cap was appropriate intervention	Tougher controls on direct marketing
Ban on improper use of continuous payment authorities	Most powers to regulate are reserved matters, NI can influence but not set law
Set of rules on dealing with customers in difficulty	NI has opportunity to directly impact financial capability and education
Tougher and quicker action when leaders refuse to deal with debt advisers	Payday loan companies should be oblige to work with debt advisors
Access to remedies should be improved e.g. An Independent redress system – promotion of Financial Ombudsman Service	Debated whether regulation or market solutions were most appropriate

2 What have the key issues been with the current regulatory regime, which have led to problems among consumers who avail of payday loans?

Discussions on this topic touched upon a number of themes. This section collates points raised by both groups into thematic headings.

Enforcement: It was pointed out that provisions exist within Consumer Credit Act forbid certain practices, but there was limited or no civil and criminal penalty for breaching these provisions.

Advertising and marketing: Delegates expressed concerns with pay-day loan advertising. Issues of content and frequency were raised. With the latter, delegates argued that the prevalence of advertising, across multiple locations and through various media, combined with high profile sponsorship deals, had led to the normalisation of payday loans amongst consumers.

Specific examples of inappropriate advertising were provided. Delegates pointed out that some pay-day loans were promoted as a cheap and easily obtained alternative to a bank overdraft. The focus, they argued, is on quick attainment with little attention paid to the repercussions of missing payment deadlines.

Other delegates cited cases were consumers had mistaken pay-day loans for other forms of credit. Interest free Crisis Loans are issued by HM Government to help with essential costs after an emergency disaster. It was highlighted that when an individual conducts an online search for “Crisis Loans” sponsored ads from private credit providers are ranked higher in the search results than the Government’s interest free option, with the result that some consumers may avail of a Crisis Loan from a pay-day type lender although initially seeking a Government loan.

With regard to marketing, delegates highlighted after sales promotional activity that some payday loans companies engaged in. Participants gave examples of customer who were contacted via text and email after taking out loans with offers of further loans. It was felt that the culture of being constantly ‘topped up’ on payday loans was being encouraged by some companies.

Furthermore, it was pointed out that some pay day lenders are part of larger groups which include other pay-day lender brands. Often consumers who sign up with one company receive promotional material from other companies from within the same group. A delegate from the Citizens Advice Bureau recounted how a combination of irresponsible marketing and questionable debt collection methods had coalesced in the case of one individual. This was more fully outlined in the CAB’s written submission:

> *“A Citizens Advice Bureau money adviser reported the case of a client who had taken out a payday loan previously, was unable to pay it and tried to cancel the continuous payment authority. He was advised by his bank that they could not cancel the CPA, however they could cancel his debit card. He did this and was issued with a new debit card. The client heard nothing more about it, and 4 months later was contacted by another payday loan company with an invitation to take out another loan with a guaranteed acceptance. He had to enter his new debit card details and was subsequently turned down for the loan, however the new debit card details were passed to the original payday loan company (they were clearly under the same group of lenders), who then took 18 payments for £49 using the debit card, and it was only on the 19th payment of £574 that his bank declined it. The client could not pay his mortgage and fell into mortgage arrears.”*

The loan application procedure: Participants expressed concern at the loan application procedures. There was agreement that the system of checking whether applicants could afford to repay the loans they were applying for was inadequate. It was concluded that checks, as they currently operate, are not fit for purpose with many consumers receiving loans who cannot afford them, or whose credit rating should disbar them from receiving loans. There is also an issue of payday loans not appearing in an applicant’s credit history, which is therefore preventing previous payday loans from being considered when they apply for further loans.

Furthermore, it was highlighted that often consumers in financial stress will lie to lenders, regarding issues such as their employment status or their current financial situation, in order to obtain credit.

Some delegates pointed out it is easier to obtain a pay-day loan online as potential borrowers do not have to deal with a person face-to-face and may find it easier to obtain a loan without disclosing all relevant information.

Roll-over loans: The practice of lenders offering consumers the option of ‘rolling-over’ on a loan concerned participants. That consumers could access multiple loans concurrently was also thought to be problematic. A number of issues were highlighted: the fees associated with rolling over loans are significant; debt problems may escalate, an individual may end up in a situation where they have multiple loans from different lenders and are using loans to pay off previous loans, or they might end up in a situation where they are merely servicing interest loans rather than paying off debt.

Are loans fit for purposes? Delegates questioned whether payday loans were fir for purpose. It was suggested that this depended on how consumers used the loan. Delegates noted that approximately 80% to 90% of borrowers pay their loans back on time. Some delegates suggested that payday loans were often last resort of people in desperation. Others argued that the evidence was mixed with other customers using payday loans for specific purchases and paying them back in a timely manner. It was concluded that a least some customers do use pay day loans successfully and usefully. Questions remained over whether payday loans are correctly marketed towards the customers who do use them successfully. It was also felt that more could be done to identify the types of people who use such loans and for what purposes in order to enhance they evidence base and to learn more about the issue. Additionally, delegates felt that financial capability education could help consumers to make more informed choices.

Information provision when taking out loan: Delegates agreed that in many cases there is an issue surrounding the information provided to consumers at the time of taking out a pay-day loan both online and in store.

In the experience of some delegates, consumers are often not provided with adequate information in store on interest rates and potential charges unless they explicitly ask. In some cases, it was pointed out, that even consumers who do ask are not provided with adequate information.

The same issues were highlighted when consumers avail of a pay-day loan online. The delegates suggested that full details of interest rates and potential charges and penalties in should be made available in an uncomplicated format and take a prominent position on webpages that make up the application process.

Interest rates: Some delegates argued that the high-levels of interest associated with payday loans were a problem. Others argued that the interest rates were not in themselves problematic; rather it was the sudden end of the loan period and the requirement for immediate repayment (as opposed to payment spread out over a number of months) that resulted in consumers finding it difficult to repay loans.

Debt Collection Methods: It was pointed out that many consumers do not understand how Continuous Payment Authorities (CPAs) operate. It was the experience of some delegates that some consumers did not know they had signed up to CPAs on taking out the loan.

Working with Appointed Debt Advisers: Delegates said that the lack of cooperation from some pay-day loan companies they experienced, as appointed debt advisers, was an issue. It was acknowledged that the majority of pay-day loan companies cooperate with advisers who make representations to them on behalf of clients. However they estimated about 20% of companies were too slow to cooperate and a smaller percentage of these fail to even acknowledge representations made.

It was observed that as debt can accrue rapidly when a client is having difficulty making payments it is essential that pay-day lenders engage with appointed debt advisers promptly.

3 What needs to be put in place in future regulation to ensure the similar problems do not arise for consumers in the future?

As with the previous section, the text below combines the discussions from the two tables under thematic headings.

Transparency and information: Delegates agreed that there is a need for improved transparency and that key elements of loan agreements must be made clear to borrowers at the time of taking out a loan. It was suggested that pay-day lenders should explain clearly how continuous payment authorities work, interest levels, and what additional costs may be incurred if the borrower falls behind on repayments.

Interest rates cap: Some of the delegates indicated that a cap on interest rates would be beneficial, there was, however, some debate about its usefulness as a tool for minimising the negative impact on consumers.

The FCA will have the power to introduce a cap but it does not yet know if it will be used, or if it is the correct route. Furthermore, if it was to be used, it is not yet clear what a socially acceptable level of cap would be.

The FCA considers an interest cap rate to be a ‘massive intervention in the market’ and it was suggested that if done incorrectly it could have considerable negative impact on how the market functions. Delegates also suggested that the payday loan companies may set up differently to circumvent a cap should one be introduced.

Loans cap & roll-over cap: Delegates discussed the idea of placing a cap on the number of loans a consumer can take out. It was concluded, however, that since credit providers do not immediately report loans to the Credit Rating Agency, such a solution would be impractical. A revised suggestion of placing a cap on the number of loans an individual can receive from one company was put forward.

The idea of introducing a rollover cap was also considered. This was on the whole, considered an intervention too far. There were a number of opinions on this. On the one hand, it was thought that it could negatively affect other lenders (e.g. credit unions) who offer consumers top-up loans, but do so responsibly and in a manner customers can afford and manage. Another opinion was that customers should be free to manage their finances in the manner they saw fit, even if this meant they were free to make mistakes. Providing consumers with the tools to make informed choices was thought to be a more suitable means of assisting consumers.

Credit Checks: A suggestion to regularly spot check pay day lenders to ensure they had carried out thorough credit checks on all their clients was made. The delegates pointed out that as some of those who turn to pay day loans as a form of credit may be in particularly challenging situations financially, credit checks should be even more thorough.

A related suggestion concerned the issue of payday loans not appearing in an individual's credit history, and therefore preventing previous payday loans appearing when individuals apply for further loans. It was argued that this could be rectified by placing a legal obligation to register loans with the Credit Rating Agency. Such an obligation would serve to improve the efficiency and suitability of payday loan company checking procedures.

The Community Financial Services Association of America model: One suggested way of assisting consumers was the model operated by the Community Financial Service Association of America (CFSA). The CFSA represent approximately half of payday lenders in the USA and has a stated aim of promoting responsible payday industry practice. Firm's operating under CFSA guidelines are required to afford customers experiencing repayment difficulties the opportunity to enter into an extended payment plan (EEP). A customer must request an EPP by the close of business on the last business day before the loan due date. Under an EPP, a customer may pay the transaction balance in four equal payments coinciding with periodic pay dates. The lender will not begin collection activities while a customer is enrolled in the EPP as long as all obligations under the EPP are met. A customer is allowed to utilize an EPP at least once in a 12-month period. It was suggested that a similar options should be introduced within the UK.

Rules for dealing with customers in difficulty: More generally, delegates suggested that a set of rules on dealing with customers in financial difficulty would be beneficial. It was pointed out the current Office of Fair Trading (OFT) guidelines provide a good basis for this, however they are still being ignored in many cases.

These rules should also include rules on dealing with appointed debt advisers. Delegates suggested there should be a mechanism whereby pay-day lenders who are slow to respond to correspondences from appointed debt advisers could be reported to the regulator and it dealt with promptly. In a related point, some delegates wished to see an obligation to respond to debt advisers placed upon payday lenders.

Others noted that interaction and communication between payday lenders and debt advisers had improved.

Delegates also suggested an independent redress system through promotion of the Financial Ombudsman Service.

Advertising and marketing: On the issue of advertising, it was noted that this was already a highly regulated area already exist and that payday loan companies have become practiced at working within these limitations. However, some delegates believed that that greater restrictions be implemented on direct marketing, such as emails and text messages that are sent to consumers after they take out their first pay-day loan.

Financial Capability: It was noted that the regulation on consumer credit is a reserved matter and therefore Northern Ireland Executive's role is limited attempting to influence Westminster. Delegates argued that Northern Ireland could make greater gains in the area of financial capability and financial education. It was noted that a Financial Capability strategy is set to be consulted on in March 2013.

It was also noted that education, whilst important, should not be expected to provide an overnight fix.

Access to alternative forms of credit: Delegates pointed out that many consumers have no other alternative to pay-day loan companies as they are unable to obtain short-term credit from banks or other financial institutions.

It was noted that the Consumer Council of Northern Ireland are expected to report on a pilot scheme providing short term credit in 2013.

The evidence base: There were concerns about the evidence base in Northern Ireland. For example, there was thought to be little clarity on how many people used payday loans, how use was changing etc. There is however, some work in the area underway. For example, the ILCU payday loan tracker had identified a 6% increase in use of the last year. However, it was argued that a more robust understanding of the payday loan landscape would assist policy makers, consumer groups and debt advice agencies.

It was noted that an Ofmdfm paper on the subject was imminent.

It was also noted that the stigma attached to payday loans might dissuade individuals from discussing their use of the credit type openly. This could impact a study of payday loan use and prevent a full picture of the marketplace from emerging.

Regulation vs. Market solutions: There was some discussion over the interaction of regulation and the market place. Delegates discussed what level of market intervention was desirable. There was also some debate over whether self-regulation was more appropriate than top-down regulation.

These discussions were not resolved.

4 How does the FCA intend to regulate

Neil Dhot form the FCA provided an indication of what the new regulatory regime might include.

- Analysis of business models to ensure fair deals are being offered to customers;
- Product intervention – although it is not expected that products will be banned outright, rather changes will be made to product features to ensure they are better suited consumer need;
- Power on financial promotion to ensure it is clear and not misleading. Power to take promotional material out of circulation and to ‘name and shame’ offenders; and
- Increased monitoring and data collection in comparison to OFT.