

PROPOSAL TO BAN THE USE OF BILLS OF SALE FOR CONSUMER LENDING CONSULTATION PAPER

Response by The Money Advice Trust (March 2010)



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INTRODUCTION

About the Money Advice Trust

The Money Advice Trust (MAT) is a charity formed in 1991 to increase the quality and availability of money advice in the UK. We work with the UK's leading money advice agencies, government and the private sector to increase the availability of money advice, improve its quality, and enhance the efficiency and effectiveness of its delivery.

MAT's vision is to reduce levels of unmanageable debt by:

- Ensuring high-quality money advice through training and support for advisers
- Collecting and disseminating information on debt, credit and the money advice sector
- Improving efficiency and effectiveness within the money advice sector via research and policy work
- Providing advice via National Debtline and Business Debtline
- Raising funds for the sector.

How we have drawn up this response

In preparing this response, we have consulted our partner agencies in the free-to-client money advice sector in order to achieve a consensus view. These partners include:

- Advice NI
- Advice UK
- Citizens Advice
- Citizens Advice Northern Ireland
- Citizens Advice Scotland
- Institute of Money Advisers
- Money Advice Scotland
- National Debtline and Business Debtline (where relevant)
- Payplan.

Some of these partner agencies will also submit their own separate responses to this consultation paper. These submissions may include issues not covered below. Please note, our partner agencies may not have provided views on this response where this consultation paper does not cover their specific jurisdiction. Please note that we consent to public disclosure of this response.

Responses to individual questions

What is the problem?

Question 1 The Government would welcome further evidence about the current nature of the bills of sale consumer lending market, including in particular:

- **The incidence of bills of sale used for consumer lending, particularly among vulnerable consumers with no access to mainstream credit;**

We are unable to provide you with statistical information regarding how widespread bills of sale are within consumer lending.

At National Debtline, callers seeking advice on issues to do with bills of sale rose by 15.1% between 2008 and 2009. Calls continued to rise over the course of 2009 with a 19.3% increase in calls regarding bills of sale between quarter 1 and quarter 4.

- **The use of bill of sale loans for business purposes for the self-employed and owners of small firms;**

Business Debtline reported a low instance of calls relating to bill of sale loans for business purposes. They stated that bills of sale they do come across are more likely to have been obtained as personal finance rather than for business purposes.

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

The not-for-profit money advice and consumer sector have already provided substantial evidence of the consumer detriment caused by their experiences of bills of sale. This includes substantial numbers of complaints to the OFT. Citizens Advice produced an evidence report in Autumn 2009¹ This paper highlights many bill of sale cases and states:

“Essentially, the bill of sale is a 19th century commercial instrument that should have no place in a 21st century mass consumer credit market which is based on principles of fair trading...”

¹ Evidence Journal “Victorian values-Peter Tutton highlights the detriment caused by loans secured by bills of sale”
<http://www.citizensadvice.org.uk/index/campaigns/evidence-journal.htm>

We have reproduced some case studies from National Debtline below which also serve to illustrate some of the problems with bills of sale.

National Debtline case studies

*Client is single parent, also dealing with mortgage and council tax arrears, was out of work for a period, now taken back on by same employer, borrowed £1,000 from Log Book Loans to pay mortgage in May 2009, lender demanding £150 a week and has client's spare car key. **December 2009***

*Client had log book loan for car. She missed payments last year and car was taken back but she rang us for advice. It turned out that the log book loan was invalid so she got car back and they also reimbursed £1,000 charge for collecting the car. She has finished paying loan but creditor says she owes £700 for "late payment advice letters" at £12 a time. **June 2008***

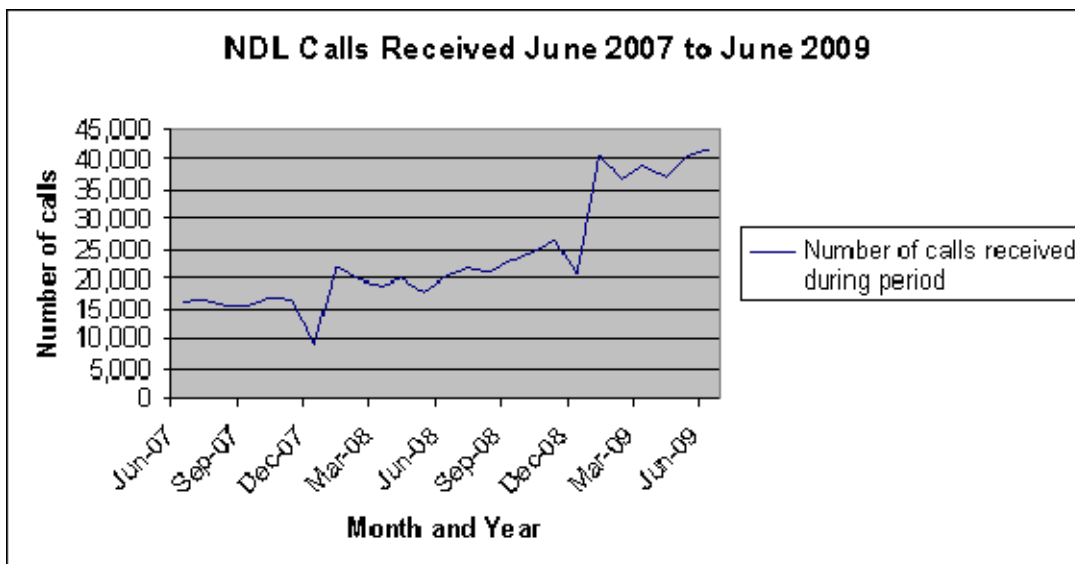
*Client had log book loan for car for £2,000 at 326% APR. He believes bill of sale is unenforceable as it wasn't signed in front of a 3rd party witness and was not registered with the Royal Courts of Justice. He told creditor verbally that the agreement is unenforceable, but the car was taken this morning. Police were called for breach of the peace. As bill of sale was produced, police allowed them to take the car. Client also sent a county court claim form for the same debt, £4126. **August 2007***

- **The profitability of bill of sale lending and the impact of the economic downturn on both consumers and lenders.**

We are unable to comment on the impact of the economic downturn on lenders in relation to bills of sale lending. We are also unable to comment on the profitability of bill of sale lending in the current climate.

In relation to consumers the economic downturn has affected the number of people turning to advice agencies for help with their debts which has increased across the board. As an example we have reproduced the following chart which outlines the increase in National Debtline calls.

The economic downturn and subsequent recession have had a clear impact on the demand for debt advice. National Debtline (NDL) has seen a 150 per cent increase in calls to the service received, from 16,214 received in June 2007 to 41,683 in June 2009.



We are unable to provide statistical evidence regarding any potential increase in consumers turning to bills of sale lending as a result of the recession. However, given the high-interest, high-risk nature of the lending involved, it is likely that increasingly desperate consumers will turn to this type of lending as a temporary “solution” to their financial problems. The paper states at section 23:

“Recent data shows that 40,000 bills of sale were registered at the High Court in the year 2008/9 and that bills of sale to secure consumer loans have become much more widespread, particularly during the recent economic downturn. As not all bills of sale are registered by lenders, the number of bills of sale actually used for the purposes of securing consumer loans may be much higher than the registration figures indicate.”

As a word of caution, lenders are probably now more likely to make sure bills of sale are properly registered due to the impact of recent cases where companies have found their security to be invalid as a result of investigation by consumers and their representatives.

The proposals

Option 1: Do nothing beyond current legislation and regulatory activity

Question 2 We would welcome evidence on the extent of consumers' understanding of the terms of bills of sale, and their options in the event of default should they wish to prevent the seizure of the secured asset.

We would suggest that the increase in the number of queries to not-for-profit advice agencies regarding bills of sale is indicative of the problems being caused. Bills of sale are not easily understood by consumers and are a cause of stress and upset when they discover how few rights they have to combat repossession or to seek redress. Some of this must be down to poor lending, sales and marketing by the companies involved.

Bills of sale are also not easily understood by advisers, and less experienced advisers may mistake a bill of sale on a car for a hire-purchase agreement.

Question 3 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 agreements?

We would suggest that it is neither fair nor reasonable to have fewer protections for consumers under a bill of sale than under other forms of consumer credit agreement. This is particularly the case where the market for bills of sale appears to be amongst the more vulnerable, financially excluded consumer who is faced with fewer options for taking out credit.

We currently have the situation where higher-income, less vulnerable borrowers are afforded greater protection for typical credit-card borrowing, than those vulnerable borrowers who, you could argue, need the greater protection in law.

Question 4 Will the implementation of the Consumer Credit Directive, combined with 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?

We are not confident that the implementation of the Consumer Credit Directive, even where combined with OFT guidance, will provide sufficient additional consumer protection in this area. The group of consumers who are likely to be using bills of sale are unlikely to be aware of measures such as the OFT guidance on irresponsible lending practices. Guidance does not provide the necessary level of protection in bills of sale cases as it does not have the same legal status as regulation. It is also unable to deal with the issues established as problematic within the consultation paper which are to do with the inherent unfairness contained within the bills of sale legislation. We refer particularly to the power the lender has to seize possession without a court order on default.

Substantial resources would need to be found within the OFT and Trading Standards in order for Guidance to be effectively monitored, and enforcement action taken. Even where enforcement action can be taken, of course, this does not prevent the detriment to consumers from occurring in the first place.

We are unable to identify any other measures that could be implemented that would provide sufficient additional consumer protection to avoid the necessity of a ban on bills of sale.

Option 2: Introduce a voluntary code of practice or other non statutory requirements

Question 5 Would a voluntary code of practice, if adopted by bill of sale lenders, coupled with ongoing enforcement action, provide sufficient additional protections for consumers?

We do not support the development of a voluntary code of practice. This is very unlikely to provide sufficient additional protection for consumers in our opinion. As the consultation paper states in section 80:

“It is difficult to see how non-compliance by lenders with a code of practice would be dealt with and what sanctions could be applied. As an alternative to intervention by enforcement agencies, a code of practice may therefore have limited effect. Furthermore, the underlying law on bills of sale would remain, allowing lenders who breach any code of practice to continue to operate in ways that have caused concern.”

Again, it is difficult to enforce a voluntary code of practice. It is also difficult to see how a voluntary code could be agreed that would satisfy consumer bodies' concerns with bills of sale legislation. For example, a voluntary code would not be able to build in a requirement for a lender to go to court before repossessing the goods secured by the bill of sale. It is also difficult to envisage how a voluntary code could deal with issues of innocent third party ownership for goods subject to a bill of sale.

Question 6 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?

We do not think the requirement to register a bill of sale loan agreement with online electronic asset finance registers would provide sufficient protection for third-party consumers. However, such a requirement on bill of sale lenders would certainly be a step forward as the current register inaccessibility is archaic and causes considerable disadvantage.

Again, it is difficult to see how this requirement on bill of sale lenders could be enforced. It would also need substantial publicity to ensure that potential vehicle purchasers would check such a register for bills of sale. It would also require a programme of consumer education and information to ensure understanding of the implications of how a vehicle sale is invalidated by an existing bill of sale.

Option 3: Reform bills of sale legislation to make it more appropriate for consumer lending

Question 7 To what extent would reform of the legislation rectify the problems identified in relation to bills of sale?

We are not convinced that the degree of reform needed to ensure bills of sale become a more consumer-friendly product would be worthwhile. It appears that the eventual product would look similar to a hire-purchase or conditional sale agreement under the Consumer Credit Act 1974. As such financial products are available already; reform does not seem a viable way forward given the resources that would be required to implement the changes.

As the paper states in section 84:

“There could be a case for reform if the evidence shows that bills of sale are an appropriate form of instrument by which to secure consumer loans. However, the likely scope of reforms to guarantee the necessary consumer protections would be so widespread as to require extraordinary resources to implement, which may not be justified. “

Given the complexity of the archaic bills of sale legislation, an attempt to “unpick” this for the purposes of amendment, could lead to further unintended complexity for both borrowers and lenders in interpreting the amended legislation. Again, we are not convinced this is worthwhile.

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

We do not feel that reform of bills of sale would be viable. See our response to question 7.

Question 9 What might be the unintended consequences of this option, including the implications for access to affordable credit for vulnerable consumers?

We appreciate that there may be unintended consequences regarding access to credit for vulnerable consumers. However, with an average APR as being reported at 400%, log book loan type credit agreements do not fall into the category of “affordable credit” and should not be thought of as such.

We cannot support an argument that says that the loss of access to log book loan type credit agreements will constitute consumer detriment. These products are causing consumer detriment, and the interest rates, default charges and harsh enforcement combine to form a “toxic” product.

Every effort should be made by Government and consumer education bodies, etc to encourage potentially vulnerable or financially excluded borrowers to shop around for credit, explore credit unions and other social-lending provisions as an alternative to log book loans and to avoid loan sharks.

Question 10 What might be the costs to lenders of this reform and adopting a new secured lending instrument?

We are unable to comment on the potential costs of reform to lenders.

Option 4: Ban the use of bills of sale for the purpose of consumer lending

Question 11 Should bills of sale for consumer lending be banned?

Yes. We feel that bills of sale are an archaic lending product with obscure and complex rules that has no place in a modern society. The lending products offered using bills of sale are both oppressive and enforced unfairly. Consumer protection is inherently untenable given the nature of the legislation. We fully support a ban on bills of sale.

Question 12 If bills of sale for consumer lending were banned, are there real alternative forms of borrowing available to consumers?

Every effort should be made to alert consumers to alternative forms of borrowing such as credit unions. Clearly, whilst not recommending them as alternative sources of credit, there are alternatives in the market such as payday loans, hire purchase and home credit. Whilst there are immense drawbacks with these types of lending, they are still preferable to bills of sale. It is not clear whether those who take out log book loans are doing so because there is literally no alternative available to them, or whether they are attracted by the advertising, the speed with which the loan can be agreed and the lack of credit checking. They may well not realise the full implications of the agreement and what they have signed up to.

Question 13 What would be the benefits and risks of a ban on the use of bills of sale to consumers?

The benefits would include the following.

- Remove future risk of severe detriment to vulnerable consumers by ending access to toxic product.
- Alleviate stress and anxiety suffered by consumers who may well not be aware of the implications of their bill of sale agreement or their lack of rights of redress until the goods, typically their vehicle is repossessed.
- Avoid risk of impact of unfair debt collections policies and processes on vulnerable consumers.
- End problems related to archaic legislation and complexity of interpretation of the regulations and rules for lenders, consumers and their advisers.
- End anomaly where third party buyers have little recourse if unknowingly purchase item with a bill of sale attached.

- Permit scarce resources in OFT, Trading Standards and consumer advice bodies to be concentrated on other equally pressing consumer issues.

We can identify risks to consumers such as those identified in the paper regarding cutting off access to a particularly toxic form of credit. However, we are not convinced that this risk forms real consumer detriment and does not justify allowing bills of sale to continue.

We are also concerned that there is the potential for unscrupulous lenders to develop new and unregulated products for securing loans on goods if they felt there was a market for such a product. This could cause consumer detriment and needs to be addressed alongside repeal of the bills of sale legislation. See Question 16 below.

Question 14 What might be the costs to lenders of using alternative methods of lending?

We are unable to comment on the potential costs to lenders of using alternative methods of lending.

Question 15 What might be the unintended impacts on consumers and lenders of a ban on the use of bills of sale?

We are unable to comment on what the unintended impacts of a ban would be on lenders. We assume there would be some effect upon accessibility of credit for consumers who would previously have accessed credit through a bill of sale agreement. However, given the toxicity of the product, we cannot see how banning bills of sale as a line of credit can make even a vulnerable consumer's position substantially worse than it is now.

Overall

Question 16 Of the 4 options proposed, which do you prefer?

We continue to favour an outright repeal of the bills of sale legislation. However, we are aware that reform of bills of sale cannot be carried out in isolation without examining the general issues relating to chattel mortgages. Any reform of bills of sale must be accompanied by an evaluation of the potential risks of lenders developing new unregulated products that secure loans on goods. If there is such a risk, then reform of bills of sale should go hand in hand with developing a properly regulated consumer-friendly product to address this. If this is not feasible, then consideration should be given to enacting legislation to remove chattel mortgages as a legal entity.

In the interim, the requirement to provide an online register of bills of sale should be implemented immediately.



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