

**COMPETITION & MARKET AUTHORITY PAYDAY LENDING MARKET
INVESTIGATION**

**SUBMISSION ON BEHALF OF MEM CONSUMER FINANCE LIMITED, INSTANT
CASH LOANS LTD AND EXPRESS FINANCE (BROMLEY) LTD IN RESPONSE TO
PROVISIONAL DECISION ON REMEDIES**

1. Introduction

1.1 This submission is made by DFC Global Corp (“DFC”) on behalf of MEM Consumer Finance Limited (“MEM” trading as PaydayUK), Express Finance (Bromley) Limited (“Express Finance” trading as Payday Express) and Instant Cash Loans Limited (“ICL” trading as The Money Shop¹) in response to the CMA’s Provisional Decision on Remedies published on 9 October 2014 (the Provisional Decision).

1.2 References to DFC in this document should be taken to refer to MEM, Express Finance and ICL collectively as well as to DFC Global Corp.

2. DFC has already provided its views on the CMA’s possible remedies by way of a submission dated 8 July 2014 in response to the CMA’s provisional findings, notice of possible remedies and notice of a request for a variation of the terms of reference (all dated 11 June 2014) and at the hearing with the CMA on 5 August 2014. This submission supplements those submissions in that it addresses specific issues which have arisen as a result of variations to the remedies proposed which have taken place since the CMA’s Notice of Possible Remedies dated 11 June 2014 and since the hearing on 5 August 2014. DFC continues to rely upon the matters set out in the 8 July submission and the 5 August hearing.

3. The CMA’s remedy package sets out six possible remedies:²

- (i) promotion of the use of an effective price comparison website (Remedy a);
- (ii) a recommendation to the FCA to take steps to improve the disclosure of late fees and other additional charges (Remedy b);
- (iii) a recommendation to the FCA to work with lenders and other market participants to help customers shop around without unduly affecting access to credit (Remedy c);

¹ In Scotland only, ICL also trades as Duncanson & Edwards and Robert Biggar

² Para 9, page 5 of the Provisional decision on remedies – 9 October 2014.

- (iv) a recommendation to the FCA to take further steps to promote real-time data sharing between lenders (Remedy d);
 - (v) a requirement for lenders to provide existing customers with a summary of the cost of borrowing (Remedy e);
 - (vi) a recommendation to the FCA to take steps to increase transparency relating to lead generators (Remedy f).
4. In accordance with its previous submissions, DFC confirms that it remains largely supportive of the remedies proposed by the CMA and the objectives pursued by those remedies. Throughout the investigation, DFC has made it clear that it is supportive of proportionate and appropriate remedies which achieve the objectives of fostering greater customer choice and ensuring high levels of compliance with regulatory requirements by all participants in the market. DFC looks forward to being actively involved in the development of these remedies to ensure that they are implemented in a way which is effective, workable and proportionate.
5. Insofar as the remedies proposed by the CMA require DFC to work closely with the FCA to implement the remedies (remedies b, c, d and f), DFC will work closely with the FCA as it has done over the last year or so throughout the FCA's continuing regulatory and supervisory scrutiny of the industry.
6. The two remaining remedies (remedy a and e) will be the subject of CMA action. In relation to remedy a, DFC repeats its support of measures which will facilitate the use of an accredited price comparison website by all lenders.
7. In relation to remedy e, however, DFC has real concerns about a number of details arising out of the way in which it is now proposed that this remedy will be implemented. DFC refers to its submission of 8 July 2014 in which it provided initial comments on this possible remedy.³ DFC submitted that such a remedy would not be effective, proportionate and/or meet the requirement of not being more onerous than necessary bearing in mind existing regulatory obligations to provide information to customers. Further there is a real risk that customers would consider the statement to be unwelcome and unhelpful contact and that the costs of payday lenders complying with this remedy would far outweigh any perceived benefit.

³ See paras 3.8.1-3.8.7 of DFC's Submission dated 8 July 2014

- 7.1 In addition, DFC's concerns should be understood in the context of the constantly changing regulatory and commercial landscape in which DFC (and other payday lenders) have been and are currently operating. The industry is going through a period of almost constant upheaval and transition. [CONFIDENTIAL] As noted in the information provided by DFC in response to the request for the estimated costs of implementing the proposed remedies, the minimum costs of implementation will be significant. Moreover, those costs are calculated on the basis of a number of assumptions including that substantial investment into IT operating systems in order to ensure compatibility with other systems will not be required. In the event that substantial IT investment is required, those cost estimates will need to be increased significantly.
- 7.2 For that reason, it is important to ensure that the detailed implementation of remedy e is not such as to impose disproportionate cost on payday lenders by imposing an obligation to provide detailed information in relation to historic loans (which are no longer offered), [CONFIDENTIAL]. DFC would welcome the opportunity to discuss appropriate transitional arrangements with the CMA and in particular the commencement date and application of the order bearing in mind the challenges outlined above.
- 7.3 The draft order consists of the following elements:⁴
- (i) lenders will be prohibited from providing payday loans unless they provide a summary of the cost of borrowing in accordance with the provisions of the order;
 - (ii) the summary will provide details of the borrower's most recent loan including initial amount, all payments and total value of all fees and charges;
 - (iii) information must also be provided in relation to all loans taken out during the 12 months preceding the final repayment of the most recent loan;
 - (iv) lenders should take all reasonable steps to bring the summary to borrowers' attention;
 - (v) lenders should obtain confirmation that the borrower has reviewed the summary issued.
- 7.4 It should be noted that the detailed elements of the proposed remedy have been changed since the notice of possible remedies and the response hearing. In particular, the focus of the discussion of this possible remedy was initially on the provision of an annual / or other periodic statement to be provided to customers.

⁴ See Paras 3.184 – 3.224 of the Provisional decision on remedies dated 9 October 2014

In contrast, the form of the order proposed is for a summary to be made available within 24 hours of account closure or settlement – comments on which are set out at 7.4 (ii) below.

7.5 DFC's concerns are set out below:

- (i) Since the failure to provide a summary in accordance with the terms of the order means that a payday lender will be prohibited from providing a loan to a customer, it is vital to ensue that the obligations imposed by the order are clearly stated and understood, are achievable in practice and are proportionate.
- (ii) The order appears to provide that the summary provided should be for the 12 months preceding the date of '*final repayment of the most recent loan*', regardless of when the summary is accessed or requested. However, the information held on DFC's personal account management sites is constantly updated in order to reflect the most recent position for that customer. In order to comply with the requirement that the summary relates to the 12 month period prior to the date of final repayment, it will be necessary to create and electronically store a summary statement on the day following the repayment of the loan so that it can be provided to the customer on request. This will involve substantial expense, including investment in data warehousing facilities, and, in DFC's view is of doubtful benefit. DFC proposes that it would therefore be more effective, achievable and of greater value to the customer to impose a requirement that a summary statement is provided for the 12 month period which precedes the date of access to or request for the summary statement. The benefit to the customer of such a statement would be greater than that of providing a statement for the 12 month period preceding the repayment of the loan in that it would provide an up to date snapshot of the customer's position at the time of the request. From a DFC IT systems perspective, it would be significantly easier and less expensive to produce such a summary.
- (iii) [CONFIDENTIAL] DFC would welcome confirmation from the CMA that the obligation to issue a summary statement requires the information to be provided in relation to one product only and that therefore separate statements can be provided in relation to individual products.
- (iv) [CONFIDENTIAL] DFC would welcome confirmation from the CMA that the obligation to provide a summary statement is imposed on the individual DFC businesses and that the obligation is to provide a

summary of loans taken out in the previous 12 months with that business only. [CONFIDENTIAL] DFC would welcome confirmation that the summary could be provided on a company specific basis in relation to such historic loans, [CONFIDENTIAL].

- (v) The requirement that the borrower confirms that they have reviewed the summary provided raises a number of issues. It is clearly not possible for DFC to force a customer to read a statement if that customer does not wish to do so. It is however possible for DFC to make customers aware of the existence of the statements and to provide appropriate signposting to where the statement can be found. It is also possible for DFC to ensure that checks are undertaken with customers to ensure that they are aware of the existence of and how to access those statements. However, to impose any additional obligation would mean that DFC staff are required to attempt to test whether or not a customer is being truthful in stating that they have reviewed the summary statement (particularly in the retail context). Such an obligation is fraught with difficulties and is ultimately unlikely to achieve the stated objective of facilitating consumers shopping around since those customers likely to shop around will in any event avail themselves of the opportunity to access statements made available to them. DFC suggests that section 3 of the order should be amended to read *"To achieve this, before an existing borrower commences a further loan application process with a lender, the lender should obtain confirmation that the borrower is aware of the summary of their recent history with that lender and the way in which to access the summary"*.
- (vi) Lastly, the order provides that borrowers should be notified of the availability of a summary statement within 24 hours of settlement or closure of the account. DFC proposes that this requirement should be amended so that the obligation is to notify a borrower within 24 hours provided that the 24 hour period expires on a business day (namely, Monday to Friday, since these are the working days for back-office staff required to initiate the notification). If that is not the case, the requirement should be to notify on the next business day following the expiry of the 24 hour period.

Timing

- 8. As noted above, the payday lending industry has been under significant ongoing regulatory scrutiny over the last three years or so. As a result of that scrutiny and the consequential changes to the regulatory regime, [CONFIDENTIAL] The implementation of the package of remedies needs to be considered in the light of DFC's other significant FCA obligations and general business requirements,

[CONFIDENTIAL]. As such, DFC requests that a reasonable period of time, bearing in mind all other obligations, is given to implement this package of remedies. Longer lead times than at first sight may seem necessary for implementation for any of these remedies will be required, to ensure they can be completed alongside DFC's 'business as usual' activities.

9. **Conclusion**

- 9.1 DFC would be prepared to discuss the implementation of remedy (e) in greater detail with the CMA in order to ensure that the proposed Order is drafted in a way which means that the remedy is capable of being implemented such that it achieves its objective of providing helpful information to customers but without, at the same time, imposing disproportionate expense on lenders.

30 October 2014