

The logo for Which?, featuring the word "Which?" in white text on a red square background.

Which?, 2 Marylebone Road, London, NW1 4DF

Date: 13 January 2015

Response by: James Crump

## Consultation Response

Mr Matthew Weighill  
Project Manager, Payday Lending Market Investigation  
Competition and Markets Authority  
Victoria House  
Southampton Row  
London  
WC1B 4AD

### Which? response to CMA consultation on amendments to the price comparison website and the statement of borrowing remedies

#### About Which?

Which? exists to make individuals as powerful as the organisations they deal with in their daily lives. We are now the largest consumer body in the UK with more than 800,000 members: we understand consumers and what makes them tick. We operate as an independent, a-political, group social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. We plough the money from our commercial ventures back into our campaigns and free advice for all.

Which? Financial Services, a subsidiary of Which?, operates Which? Money Compare, a price comparison website offering comparison on a number of financial services products, including some personal credit products, and which may be impacted by the CMA's remedies package. We do not offer comparison services on payday loan products and currently have no plans to do so.

#### Summary of our response

Which? welcomes the aims of the CMA's package of remedies to improve competition in the market for payday loans. According to our Consumer Insight tracker, 88,000 households took out a payday loan each month on average in 2014. We support any move which will make the cost of credit clearer to consumers and enable them to make better decisions about which credit package to choose from lenders. The CMA's remedies package represents a step in the right direction towards providing consumers with better quality and more useful information.

However, better provision of information will address just one part of the problems consumers face in choosing the right payday loan. The market for payday loans is only one part of the consumer credit industry, and it is essential that the CMA's remedies are combined with the FCA's new supervisory regime, sourcebook rules and price cap to stand the best chance of clearing up consumer credit.

#### **Which? is a consumer champion**

We work to make things better for consumers. Our advice helps them make informed decisions. **Our campaigns make people's lives fairer, simpler and safer.** Our services and products put consumers' needs first to bring them better value.

[www.which.co.uk](http://www.which.co.uk)

Which?  
2 Marylebone Road, London, NW1 4DF  
t 020 7770 7000 f 0207 7770 7600  
[www.which.co.uk](http://www.which.co.uk)



In 2013 and 2014 we published Credit Britain and Credit Britain 2, our research on how the credit market works for consumers. We called for the new regulator to ban excessive charges and default fees, to crack down on irresponsible lending, to end unsolicited credit limit increases, for consumers to be given clear and transparent information, and for swift and early intervention for consumers in difficulty. We are pleased that the FCA has responded by setting tough new rules for the consumer credit industry and introducing a price cap for payday loans.

### Proposed amendments to the Price Comparison Website (PCW) remedy

We welcome the aims of the CMA's revised remedy on price comparison websites (PCWs), and agree that a PCW which is well-designed, easy to use and comprehensive will improve consumers' ability to choose the best value credit products, and could thereby have a positive impact on consumer outcomes. Our survey of payday loan consumers in Credit Britain 2 found that 51% used money borrowed through the loan to fund essential purchases, 36% regular household bills and 21% rent or mortgage payments. For these consumers in particular, failing to get the best deal on a payday loan could mean real hardship.

However, whilst the revised remedy as drafted may benefit some consumers, there are reasons why its efficacy in improving outcomes for consumers may be limited. We consider that the revised remedy still presents an opportunity for lenders to game the current rules, and that there remains a clear incentive for lenders to do so. In particular, there remains the potential for lenders to restrict the supply of information about their products that they supply to some or most PCWs and therefore limit their usefulness to consumers.

### Ensuring consumers have a full and effective comparison

The proposed PCW remedy requires lenders to publish price data for payday loan products on at least one PCW, and for payday lenders to link to this PCW from their own website. The revised proposal would require that this PCW is an FCA authorised credit broker, removing the proposed separate accreditation process.

The CMA's own Provisional Decision on Remedies acknowledges that consumers may spend relatively little time searching the market for the best credit deal.<sup>1</sup> This will benefit larger players who are better able to capture the consumer's attention. If a lender feels that it is able to increase or maintain its market share through a means other than offering a competitive price (perhaps through physical proximity to consumers on the high street, or through sponsorship and advertising spend), it will have an incentive to avoid comparison with the whole-of-market. The CMA's own consumer research indicates that most customers will only consider the first five results in an internet search, that brand identity is an influential driver of choice,<sup>2</sup> and that speed of response is a key driver of choice amongst consumers.<sup>3</sup> This indicates that a lender may be able to use brand identity and search engine optimisation to capture the consumer before they would normally consider the use of a PCW.

<sup>1</sup> CMA, "Payday Lending Market Investigation: Provisional Decision on Remedies", at [https://assets.digital.cabinet-office.gov.uk/media/5435a640ed915d1336000005/Payday\\_lending\\_PDR\\_and\\_appendices.pdf](https://assets.digital.cabinet-office.gov.uk/media/5435a640ed915d1336000005/Payday_lending_PDR_and_appendices.pdf), p32

<sup>2</sup> CMA, "Consultation on amendments to PCW and statement of borrowing remedies", at [https://assets.digital.cabinet-office.gov.uk/media/54941248ed915d4c100002f1/Consultation\\_on\\_amendments\\_to\\_PCW\\_and\\_statement\\_of\\_borrowing\\_remedie\\_s.pdf](https://assets.digital.cabinet-office.gov.uk/media/54941248ed915d4c100002f1/Consultation_on_amendments_to_PCW_and_statement_of_borrowing_remedie_s.pdf), p11

<sup>3</sup> CMA, "Research with Payday Lending Customers", at [https://assets.digital.cabinet-office.gov.uk/media/543560e440f0b6135800000b/TNS\\_BMRB\\_Survey\\_Report.pdf](https://assets.digital.cabinet-office.gov.uk/media/543560e440f0b6135800000b/TNS_BMRB_Survey_Report.pdf), p11



The wording of the revised proposal requires lenders to “publish details of their payday loan products on at least one payday loan PCW”. For the revised proposal to be effective in meeting the CMA’s aims, details must be collected in a place which enables search between enough providers to represent a full or close-to-full search of the market. The positive impact of a requirement to link to a separate PCW will be lessened if the consumer is not presented with a sufficiently wide choice of lenders upon following the link. However, the revised wording would ostensibly allow a large payday lender to publish details on a single obscure PCW or even establish a subsidiary broker to publish the information, provided that PCW was an authorised credit broker. It is quite possible that in this instance the chosen PCW might display products from a range of participating lenders which is so limited that the comparison is largely useless. Similarly, a PCW might elect not to hold information from a lender which is unwilling to meet its terms or for some other commercial reason. This might result in information being available on some PCWs but not others.

A partial solution to this issue could be to redraft the terms of the remedy to include a requirement that lenders provide details of their offering to any PCW on request, and that an FCA-authorized PCW must display the details of any lender’s product on request, provided that they have no reason to suspect that the data is inaccurate. Neither lender nor PCW would be compelled to make the product purchasable directly from the PCW, but would be required to display the lender’s data to highlight the availability of alternative, cheaper lending for those who wish to purchase elsewhere. Consumers could opt only to see a listing of products which were available to purchase via the PCW, or with those not available directly from the PCW included in the ranking of available products by cost.<sup>4</sup>

#### *Positioning a link to the PCW from the lender’s website*

The remedy requires a lender to display a hyperlink to a PCW “prominently” on their website, although what is meant by this is not clearly specified. For the remedy to be effective it is essential that the link to the PCW is clearly signposted at the start of the consumer’s purchase decision rather than being buried deeply within the consumer journey. It is also important that the possibility of obtaining cheaper credit as a result of following the link is clearly explained to the consumer. To this end, the hyperlink from a lender’s website to a PCW should be surrounded by prescribed text reminding consumers to search the market and that alternative forms of borrowing may be available. Whilst this would still depend on the willingness of the consumer to click away from a lender’s website to explore alternative lending options, it might have the effect of improving awareness of these alternatives and also of assisting vulnerable consumers.

#### *Using the FCA’s broker authorisation process for accreditation of suitable PCWs*

If the FCA’s authorisation process for credit brokers is to be used to assess the suitability of PCWs for this remedy rather than a separate accreditation process, it is imperative that the FCA’s supervision of credit brokers has enough scope to ensure that PCWs provide information in a way which facilitates effective price competition, that this is monitored regularly, and that the authorisation process gives full consideration to the PCW’s ability and willingness to discharge their responsibilities as part of this remedy. This would be in addition to ensuring

---

<sup>4</sup> This is a feature of Ofgem’s code of practice for online domestic price comparison services (see <https://www.ofgem.gov.uk/ofgem-publications/74615/confidence-code.pdf>, p8)



PCWs, as credit brokers, do not have business models that encourage irresponsible lending or consumers defaulting.

Even if the consumer is prepared to aggregate information across a number of PCWs or standalone websites, it is important that this information is presented in such a way as to enable effective comparison, and to this end the revised remedy proposes that this information be ranked by total price over the loan period. Credit Britain 2 recommends that the FCA ensures that lenders provide “clear, transparent and easily comparable information”.<sup>5</sup> We would note that this represents a different standard to the requirement to provide clear, fair and not misleading information contained within the FCA’s Consumer Credit (CONC) rules. For information to be easily comparable to consumers, this would imply a certain degree of uniformity amongst price comparison websites, that price information should be inclusive of all predictable fees and charges, and that it should be apparent to the individual consumer whether the credit product is available to them and on what terms. The consumer should be alerted to the effect of default and additional costs which would be incurred by the consumer if they were to default.<sup>6</sup> We would be interested to see how the FCA intends to use its regulatory powers to ensure that information published by lenders allows effective comparison across PCWs.

#### Proposed amendments to the Cost of Borrowing remedy

Which? believes that borrowers should be in control of their credit: for this to happen it is as important that consumers retrospectively understand how much they have paid for past credit products as the prospective cost of credit at the point of sale. We agree with the CMA’s assessment that a retrospective summary of borrowing costs would have the effect of drawing borrowers’ attention to the actual costs that they have incurred over a period of time or a number of loans, and welcome that a borrower will be required to confirm that they have seen the summary before proceeding with another loan from the same user as a way of increasing engagement with the summary.

The proposed changes relate to the time-span over which borrowers should be required to aggregate information and make this information available to borrowers. We consider that there is a benefit for consumers to be able to access a wide range of information about their historic borrowing and make judgements about cost, and that the remedy as initially drafted will better achieve this. Given that only one lender has raised the cost of providing this information, we would question whether this is a widespread concern. Prior to any implementation, we would recommend testing to see which returns the best outcomes for consumers.

**Which?**

**13 January 2015**

---

<sup>5</sup> Which?, “Credit Britain 2”, at <http://www.which.co.uk/documents/pdf/credit-britain-2---september-2014-378871.pdf>, p5

<sup>6</sup> Our Credit Britain 2 investigation found 10 of 17 leading payday lenders with default fees of £20 or more. See <http://www.which.co.uk/documents/pdf/credit-britain-2---september-2014-378871.pdf>, p28.