

Bills of Sale: a consultation paper

Response by Citizens Advice to the Law
Commission

December 2015



About the Citizens Advice service

The Citizens Advice service provides free, independent, confidential and impartial advice to everyone about their rights and responsibilities. It values diversity, promotes equality and challenges discrimination.

The service aims:

- to provide the advice people need for the problems they face
- to improve the policies and practices that affect people's lives.

Citizens Advice is the membership body for Citizens Advice Bureaux in England and Wales. There are over 300 member bureaux in England and Wales giving advice from about 3,500 locations including high street bureaux, libraries, courts, prisons, GP's surgeries and hospitals.

Citizens Advice and Citizens Advice Scotland jointly run the Citizens Advice Consumer Service (formerly Consumer Direct), which provides consumers and small businesses with advice about problems with goods and services. The Consumer Service database also provides a source of intelligence for Trading Standards Services across Great Britain and national regulators.

Overall comments

Citizens Advice warmly welcomes the opportunity to respond to the Law Commission's consultation on bills of sale. Whilst lending secured by bill of sale makes up a very small proportion of both the consumer credit market and the consumer credit and debt problems seen by the Citizens Advice service, the experience of our clients suggests that consumers can suffer very severe detriment after entering into a credit agreement secured by bill of sale. We believe that the nature of the bill of sale lending and in particular the almost total lack of consumer protection is wholly unsuitable in a modern consumer credit market. We therefore welcome the Law Commission's proposals to overhaul bill of sale legislation and introduce effective consumer protection in respect of lending secured against chattels.

CHAPTER 7: THE CASE FOR REFORM

Q1 Do consultees agree that bills of sale should not be "banned" or "abolished"?

Q2 Do consultees agree that the law of bills of sale should be reformed?

Whilst Citizens Advice does not oppose the principle that consumers should be able to borrow against their chattel goods, we believe that the archaic bill of sale lending legislation is in urgent need of reform. The present regulatory and legislative framework governing logbook lending is untenable as it creates a significant imbalance between the consumer and the lender, due to the lender having unrestricted rights to the property used as security for the loan. If bills of sale are to stay, we strongly believe that new regulatory and legislative measures are needed to ensure that lenders' conduct improves and to provide stronger consumer protection measures for both borrowers and third-party purchasers.

CHAPTER 8: PROPOSALS FOR REFORM: A NEW LEGISLATIVE FRAMEWORK

Q3 Do consultees agree that the Bills of Sale Acts should be repealed and replaced with new legislation regulating how individuals may use their existing goods as security while retaining possession of them?

Yes. We agree that new legislation is needed for the reasons set out in the consultation paper.

Q4 Do consultees agree that: (1) the phrases "bill of sale", "security bill" and "personal chattels" should be replaced? (2) the new legislation should use the term "goods mortgage" to refer to secured loans over goods generally? (3) the new legislation should use the term "vehicle mortgage" to refer to secured loans over vehicles?

Yes. These terms are archaic and need to be replaced with more easily understood terms. We agree that the use of "goods mortgage" and "vehicle mortgage" would give consumers a better idea about the nature of the credit they have taken out.

Q5 Do consultees agree that the new legislation should regulate transactions where individuals use goods they already own as security for a loan or other nonmonetary obligation and retain possession of the goods? In particular, should the new legislation: (1) apply only to security granted by individuals? (2) cover transactions where the obligation secured is non-monetary? (3) provide that goods are considered to be in the possession of the borrower if they remain under the borrower's control?

Yes, we agree with all of these proposals. In particular we agree that the new legislation should apply to goods the consumer already owns. In the past we have seen cases where consumers have bought cars with a loan secured by a bill of sale under the mis-understanding that they had a hire purchase/conditional sale agreement.

Q6 Do consultees agree that the new legislation should not apply to: (1) dealings with intangible goods? (2) dealings with ships and aircraft? (3) any security interest which could be registered as an agricultural charge (with the exception of loans secured on vehicles)?

Yes, we agree in relation to intangible goods. We do not have a view on whether the legislation should apply to ships, aircraft and agricultural charges.

Q7 Do consultees agree that a goods mortgage should take effect by transferring ownership to the lender unless the parties agree that it should take effect as a charge instead?

Yes, we agree for the reasons set out in the consultation.

Q8 For all goods mortgages (whether or not securing a regulated credit agreement, and whether taking effect as a transfer of ownership or a charge), do consultees agree that the new legislation should: (1) prevent lenders from repossessing goods except for one of three specified reasons: (a) default on payment; (b) default on maintenance or insurance of the goods; or (c) the bankruptcy of the borrower? (2) no longer provide that fraudulently removing the goods is a specified reason that allows lenders to repossess goods? (3) where there is a transfer of ownership, specify that ownership is automatically transferred to the borrower once the loan is repaid?

Yes, we agree with all these proposals.

Q9 Do consultees agree that a goods mortgage should be available to secure loans of any amount with no minimum?

No, we do not agree. We often see clients who face loss of their vehicle for a relatively small loans. Loss of a car has an impact on our clients' ability to carry on with day to day life - particularly where they have jobs where a car is essential or if they live in rural areas where public transport is poor or non-existent.

Whilst we understand the risks involved with including a minimum amount in the legislation, we think one is necessary. Changing the minimum amount could be made relatively easy by including it in secondary legislation.

Q10 Do consultees agree that borrowers should not be permitted to use future goods as security for a loan, unless the loan is to be used to acquire those goods?

We agree that borrowers should not be permitted to use future goods as security for a loan in any circumstances.

CHAPTER 9: PROPOSALS FOR REFORM: SIMPLIFYING THE DOCUMENT REQUIREMENTS

Q11 Do consultees agree that: (1) a goods mortgage should only be valid if it is set out in a written document signed by both parties? (2) the borrower's signature should be a physical signature made in the presence of a witness? (3) the goods mortgage should be in a separate document from the credit agreement?

Yes, we agree with these proposals.

Q12 Do consultees agree that a goods mortgage document should contain: (1) the date of the goods mortgage? (2) the names and addresses of the borrower and lender? (3) the obligation which is secured by the goods mortgage? (4) a statement that ownership of the goods is being transferred to the lender, or that the goods are being charged in favour of the lender, in order to secure

the obligation? (5) the name, address and occupation of the witness? (6) a specific description of the goods?

Yes, we agree - particularly the need to provide a clear statement that ownership is being transferred or goods are being charged in favour of the lender.

Q13 Do consultees agree that it is not necessary to require that the goods mortgage document contain: (1) a fixed sum where the secured obligation is monetary? (2) specific description of the goods in a separate schedule?

Yes, we agree inclusion of these is unnecessary.

Q14 Do consultees agree that where a regulated credit agreement is secured on a vehicle the vehicle mortgage document should include prominent statements that: (1) the lender owns the vehicle until the loan is repaid? (2) in the event of default, the borrower risks losing possession of the vehicle? Do consultees have views on: (3) the suggested formulations for the prominent statements? (4) whether the prominent statements should also appear on websites and advertising?

Yes, we agree prominent statements should be included and they should also be mandatory for website and advertising use. Our evidence suggests consumers commonly fail to understand the terms and conditions of logbook loans - particularly not always realising they no longer own the property on which their loan is secured, and that missing repayments could result in repossession.

We are content with the suggested text and would welcome the inclusion of a clear graphic alongside the text - for example the suggested tow truck - if this was tested with consumers to ensure it correctly reinforces the message given in the accompanying text.

Q15 Do consultees agree that: (1) adapted versions of the prominent statements should be required for regulated credit agreements secured on goods other than vehicles? (2) it is not necessary to include the prominent statements for goods mortgages which do not secure regulated credit agreements?

Yes, we agree.

Q16 Do consultees agree that the sanction for failure to comply with the document requirements should be that the lender loses any right to the secured goods, both as against the borrower and as against third parties?

We have seen cases in the past where bill of sale lenders have not properly registered the loan with the High Court. In some of these cases, lenders have resisted our advisers' attempts to call into question the enforceability of the debt.

We believe that there should continue to be some effective sanction for not complying with the document requirements, but we are concerned that allowing lenders to continue to collect the debt is an insufficient deterrent for this, particularly as they should be able to afford legal advice to ensure that they are complying with the law. If the Law Commission are not minded to continue with the status quo, we suggest that lenders are limited to collection/enforcement of the principal sum of the loan.

CHAPTER 10: PROPOSALS FOR REFORM: MODERNISING THE REGISTRATION REGIME

Q17 Do consultees agree that: (1) there should be no requirement to register vehicle mortgages at the High Court? (2) instead, a logbook lender should not be entitled to enforce a vehicle mortgage against a third party or trustee in bankruptcy unless the vehicle mortgage has been registered with a designated asset finance registry? (3) priority should be determined by the date and time that the details of the vehicle mortgage become publicly available?

We agree for the reasons set out in the consultation that logbook lenders should not be required to register vehicle mortgages at the High Court and that they should not be able to enforce a vehicle mortgage against a third party or trustee in bankruptcy unless the vehicle mortgage has been registered with a designated asset finance registry.

Q18 Do consultees agree that: (1) a government entity should designate asset finance registries as suitable to register vehicle mortgages? (2) to provide an asset finance register which meets the needs of lenders and traders, asset finance registries seeking designation should meet four criteria: (a) adequate data-sharing; (b) a suitable cost structure; (c) robust technology (coupled with indemnities); and (d) a complaints system? We welcome other comments on the registration of vehicle mortgages.

Yes, we agree with all these proposals. This will help third party purchasers of vehicles subject to a loan secured by bill of sale. In some cases we have seen, clients have checked HPI before purchasing a car which had not turned up any outstanding finance on it, only to find out later about the logbook loan.

Q19 We expect that the designated asset finance registries will initially be HPI, Experian and CDL. We welcome comments on whether there are likely to be new entrants to this market.

We have no comments on this.

Q20 Do consultees agree that mortgages on goods other than vehicles: (1) should be enforceable against the borrower whether or not they have been registered? (2) should not be enforceable against a third party or trustee in bankruptcy unless they have been registered with the High Court?

Q21 Do consultees agree that for registration of mortgages over goods other than vehicles at the High Court: (1) registration should be by email? (2) priority should be determined by time of submission? (3) original documents should no longer be required? (4) an affidavit should no longer be required? (5) lenders should email a registration form and a copy of the goods mortgage document? We welcome views on whether the registration form should include the location of the goods. (6) there should not be a statutory time limit? (7) the High Court should not be obliged to send goods mortgage documents to county courts? We welcome other comments on the registration of mortgages over goods other than vehicles.

We have no comments on this as we rarely give advice on loans secured by bills of sale on items other than vehicles.

Q22 Do consultees agree that to maintain the accuracy of the registers: (1) lenders should be required to enter notices of satisfaction in respect of satisfied vehicle mortgages and goods mortgages? (2) there should be a procedure for the borrower (at the lender's cost if successful) to enter a notice of satisfaction where the lender refuses to do so? (3) re-registration of vehicle mortgages and goods mortgages should be required every ten years?

Yes, we welcome these proposals, particularly as they would eliminate the £480 fee payable by borrowers where the issue of a notice of satisfaction is contested. Clients we see with logbook loan issues often have challenging financial situations and we also support the proposal to keep costs as low as possible.

CHAPTER 11: PROPOSALS FOR REFORM: PROTECTING BORROWERS

Q23 Do consultees agree that: (1) the requirement for a court order before repossession should be extended to all regulated credit agreements secured by a goods mortgage? (2) the point at which the lender should be required to seek a court order is when one third of the total loan amount has been repaid? (3) lenders should be permitted to pass on the court fee to the specific borrower in question if a return of goods order is granted, or if a suspended return of goods order eventually results in repossession? (4) lenders should be permitted to have recourse to borrowers for any shortfall following sale of the repossessed goods? (5) lenders should be permitted to seek a charging order against borrowers' homes only in the limited circumstances set out in the CCTA Code? (6) in accordance with the CCTA Code on charging orders, lenders should not be able to apply for an order seeking sale even where they have obtained a charging order against borrowers' homes? (7) lenders should be permitted to use the return of goods order, and so their own employees or debt collectors, to repossess the goods?

We agree with all these proposals. It is unfair that consumers with loans secured by bills of sale do not have the same protections as those who have hire purchase or conditional sale agreements. Logbook lenders' unfettered rights to repossess the goods drives bad lending and harsh debt collection practices - these reforms should go some way to encouraging better practices by firms.

Given that hire purchase lenders already use their own debt collectors to repossess goods rather than use county court enforcement agents, we have no objection to logbook lenders having similar rights.

Q24 Do consultees agree that for regulated credit agreements secured by a goods mortgage: (1) borrowers should have the right of voluntary termination by handing over the vehicle or other goods? (2) the right for borrowers to terminate voluntarily should be available until the lender has incurred costs to repossess the vehicle or other goods?

Yes, we strongly support these proposed new rights which will afford borrowers the same protections enjoyed by hire purchase borrowers. As many logbook loan

lenders already offer the right of early termination under the CCTA Code of Practice, this change will bring other lenders into line with this standard. Citizens Advice has advised on and seen the benefits of early termination and handing the vehicle back in settlement in many cases.

Q25 Do consultees agree that the approach of the CCTA Code should be adopted so that voluntary termination: (1) is available immediately, without requiring any percentage of the loan amount to have been repaid? (2) acts as full and final settlement of all outstanding amounts? (3) is available except where: (a) it is established that the vehicle or other goods have sustained malicious damage of whatever nature; or (b) it is evident that the borrower has contravened the obligation to take reasonable care of the vehicle or other goods to the extent that the contravention adversely and significantly affects the resale value? Where vehicles are maliciously damaged, we welcome views on whether borrowers should retain the right of voluntary termination if they can show that the malicious damage was not caused by them or anyone associated with them.

Yes, we agree with these proposals.

Q26 Do consultees agree that if the borrower protection measures we propose are enacted: (1) vehicle mortgages would not be used to secure the purchase of new vehicles on credit? (2) no further intervention is necessary?

Yes, we agree. We still see people who have purchased vehicles with a loan secured by a bill of sale who think they have a hire purchase agreement until they seek advice.

Q27 Do consultees agree that where a goods mortgage secures a loan which is not a regulated credit agreement: (1) goods may be repossessed without a court order? (2) there should be no statutory right of voluntary termination?

We have no comments on this proposal.

CHAPTER 12: PROPOSALS FOR REFORM: PROTECTING PRIVATE PURCHASERS

Q28 Do consultees agree that: (1) a private purchaser who acts in good faith and without actual notice of the goods mortgage should acquire ownership of the goods? (2) the protection should apply to all goods subject to a goods mortgage, not just vehicles? (3) if the private purchaser did not act in good faith and/or had actual notice of the goods mortgage, lenders should only be entitled to repossess from them with a court order? (4) the proposed new legislation should contain a regulation-making power to amend its provisions, including the repeal of the protection granted to private purchasers of vehicles, if vehicle provenance checks were to become free (or almost free) and a routine part of buying a second-hand vehicle?

Yes, we agree with proposals (1) to (3). We often see people who have unwittingly bought vehicles which are subject to loans secured by bill of sale. They face having to pay off the outstanding logbook loan if they wish to keep the car. If they cannot afford to do this they face loss of the vehicle they have purchased.

We have some concerns about proposal (4). Whilst we would welcome free vehicle provenance checks for consumers, we are not sure that it would necessarily mean that consumers would readily undertake such checks. Most of the clients who are third party purchasers have bought vehicles by way of private sale, often after having seen an advert on eBay, Autotrader or Gumtree. Therefore if an advertising campaign is to be effective it should also cover the main ways in which consumers purchase cars by way of private sale.

Q29 We welcome views on whether the protection should be confined to “disposition” as defined by the Hire Purchase Act 1964, or whether it should extend more widely, to include (for example) exchange and barter?

It is difficult for us to comment on whether the protection should be extended to exchange and barter. All of the third party purchaser clients we have seen have all bought their vehicles.

Q30 Do consultees agree that the FCA should be given jurisdiction to curb abuses in the way that logbook lenders treat private purchasers?

Yes, we strongly agree. We have seen cases where logbook lenders have used overly harsh debt collection practices against third party purchasers, so we believe that the FCA should be able to take regulatory action in these cases.

Q31 Do consultees agree that FOS should have jurisdiction to hear complaints against logbook lenders made by private purchasers of vehicles subject to logbook loans?

Yes, if the FCA is given jurisdiction to curb abuses by logbook lenders against third party purchasers, it seems reasonable to allow third party purchasers to make complaints to FOS.

CHAPTER 13: GENERAL ASSIGNMENTS OF BOOK DEBTS

Q32 Do consultees agree that registration of general assignments of book debts serves, in principle, a valuable purpose?

Q33 Do consultees agree that a general assignment of book debts should be evidenced in a document which contains: (1) the names and addresses of the parties? (2) a statement that the book debts are assigned? (3) the date of the general assignment? (4) sufficient information to identify the class of book debts in question? (5) if the general assignment is time-limited, the duration? (6) the borrower’s signature in the presence of a witness? (7) the name, address and occupation of the witness?

Q34 Do consultees agree that the following changes should be made to the regime for registering a general assignment of book debts at the High Court: (1) the need for an affidavit should be abolished? (2) documents should be submitted by email? (3) the general assignment should be validly registered from the date and time of the automatic reply to the email? (4) the seven clear day time limit for registration should be abolished? (5) registration should be renewed every 10 years? We welcome other comments on the way that general assignments of book debts are registered at the High Court.

Citizens Advice does not have views on these proposals.

CHAPTER 14: ABSOLUTE BILLS OF SALE

Q35 Do consultees agree that: (1) the requirement to register absolute bills should be abolished? (2) there is no need to continue to regulate the use of absolute bills?

Citizens Advice does not have views on these proposals.

CHAPTER 15: ASSESSING THE IMPACT OF REFORM

Q36 We welcome evidence on the current cost of registering a logbook loan at the High Court. We seek views on our estimate that the cost of registering a logbook loan at the High Court is between £35 and £51.

Q37 We welcome evidence on the savings to the logbook loan industry if the requirement to register logbook loans at the High Court is abolished. Do consultees agree that abolishing the requirement to register logbook loans at the High Court will save the logbook loan industry between £1.67 million and £2.43 million a year?

Q38 We welcome evidence from logbook lenders as to the percentage of cases in which they repossess from borrowers and how many repossessions currently take place after the one third point at which a court order would become necessary under our proposals.

Q39 We seek views on whether the figures would change if our proposals are implemented. We welcome views on our initial estimate that, if our proposals are implemented, between 0.7% to 1.1% of logbook loans will involve a court order before repossession.

Citizens Advice does not have any relevant evidence to answer these questions.

Q40 What are the likely costs of a court order? We seek views on the estimate that the combined cost of the court fee and legal costs would be in the region of £600.

We do not have any evidence to confirm or contradict this figure. It seems a reasonable estimate.

Q41 We welcome evidence from logbook lenders about the costs they would incur in borrowing money from banks and other lenders to finance a period of delay in repayment from borrowers.

Q42 We seek evidence from logbook lenders about: (1) the amount of money received in settlements from innocent private purchasers; and (2) the value obtained from vehicles repossessed from innocent private purchasers.

Q43 We welcome views on the costs of achieving readily available vehicle provenance checks for consumers.

Q44 We welcome evidence on the transitional costs to the logbook loan industry of adapting to the new legislation. We seek views on an initial estimate that these costs would be less than £50,000 for each logbook lender.

Q45 We welcome evidence on the number of bills of sale registered at the High Court each year that are secured on goods other than vehicles. We welcome comments on the estimate that 260 of the bills of sale registered at the High Court in 2014 were secured on goods other than vehicles.

Q46 How far might such use of goods mortgages expand if our proposals are implemented? In particular, is there a demand from unincorporated

businesses and high net worth individuals to use goods mortgages to secure guarantees, revolving facilities or overdrafts?

Q47 Are we right to think that most loans secured on goods other than vehicles are loans made to unincorporated businesses and high net worth individuals – and that relatively few are regulated credit agreements?

Q48 We welcome evidence on the savings to lenders if our proposals to streamline the High Court registration regime for goods mortgages are implemented. Do consultees agree that the proposals to streamline the High Court registration regime would save between £23.10 and £50 per goods mortgage?

Citizens Advice does not have any relevant evidence to answer these questions.

Q49 Do consultees have any evidence of disputes with private purchasers who have bought goods (other than vehicles) subject to a security bill of sale?

We do not have any evidence of this.

Q50 We welcome evidence on the current cost of registering general assignments of book debts at the High Court. We seek views on our estimate that the cost of registering a general assignment at the High Court is between £480 and £1,735 (excluding VAT).

Q51 We seek views on our estimate that our proposals would reduce these costs by between £350 and £575 for each registration. How far would this reduction in costs lead to an increase in registrations of general assignments of book debts?

Q52 Do consultees agree that the only costs to the invoice financing industry of our proposals to simplify the High Court registration regime would be the transitional costs?

Q53 We welcome views on the transitional costs to the invoice financing industry of adapting to the new legislation.

Citizens Advice does not have any relevant evidence to answer these questions.