



The Advertising Association

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RESPONSE TO THE DEPARTMENT FOR BUSINESS, INNOVATION & SKILLS CONSULTATION ON ITS PROPOSAL TO BAN THE USE OF BILLS OF SALE FOR CONSUMER LENDING

The Advertising Association is the only body representing all sides of the advertising and promotional marketing industries, worth £18.6 billion in 2008. Its membership represents advertisers, agencies, media and support services in the UK. Further information about the organisation is available at: <http://www.adassoc.org.uk/>

1. Introduction & Summary

1.1. The Advertising Association responds here to the consultation being conducted by the Department for Business, Innovation & Skills (DBIS) on its proposal to ban the use of bills of sale for consumer lending (URN 09/1595).

1.2. In this submission, the Advertising Association:

- (a) makes the observation that whilst there appears to be little to commend the product, bills of sale are at least subject to some form of regulation presently, with the risk that if the product is banned outright, sub-prime borrowers may migrate to even less palatable and entirely unregulated sources of finance, such as those offered by 'loan sharks';
- (b) notes that the Consumer Protection from Unfair Trading Regulations 2008¹ (CPRs) should serve to protect sub-prime borrowers from marketing activities by businesses that attempt to take advantage of any particular vulnerability;
- (c) points out that the legal standards set by the CPRs that are of relevance to advertising, are reflected in the Advertising Codes adjudicated upon by the Advertising Standards Authority (ASA);
- (d) proposes that, going forwards, and whatever the eventual outcome of this consultative exercise, if there is evidence of advertising that falls below the standards set by the CPRs, such advertisements should be referred by DBIS officials (or indeed other interested parties) to the ASA; and,
- (e) provides expenditure statistics on advertising by those companies identified by DBIS as offering bills of sale-based loan products to consumers with the objective of helping inform the final version of the Department's Impact Assessment (IA).

1.3. The Advertising Association looks forward to publication by DBIS of the Government response to its consultative exercise by the end of June 2010. No part of this submission should be treated as if it were confidential in nature.

¹ Statutory Instrument No. 2008/1277

2. Observations on DBIS's policy proposals

2.1. This DBIS consultation is primarily concerned with product regulation, rather than advertising and therefore largely falls outside the scope of Advertising Association expertise. It does appear appropriate, however, to make one general observation on bills of sale in their capacity as financial products: this being that these secured loans are at least subject to some form of regulation, even if their structure, based on statute dating from the nineteenth century, is no longer regarded as fit for purpose in 2010. There must be a degree of risk that if bills of sale for consumer lending are banned outright, then sub-prime borrowers may seek alternative sources of credit that are completely unregulated, which could result in them resorting to seeking finance from 'loan sharks'.

2.2. Both the consultation document and the accompanying IA² cite claims that those companies marketing bills of sale-based loan products to consumers are doing so irresponsibly, not least by targeting vulnerable consumers. (That said, in the interests of balance, DBIS does add in its IA that the claims cited are often anecdotal in nature and far from conclusive³.)

2.3. With regards to the marketing activities conducted by such businesses, it is notable that those companies, just like any other, are already subject to the provisions of the non-broadcast and broadcast Advertising Codes, which are drawn up by the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP), upon which the ASA adjudicates. The CAP and BCAP Codes reflect those provisions of the CPRs of relevance to advertising, and have done since 2008 when those Regulations entered into force. The CPRs (and thus the CAP and BCAP Codes) are drafted in such a way as to protect all consumers from aggressive or misleading advertising (including where they may be misled by the omission of pertinent information), but also accord particular protection to the vulnerable, where their vulnerability could reasonably have been expected to be foreseen by the trader.

2.4. Paragraph 29 of the IA states that DBIS has identified at least nine companies providing consumer finance via bills of sale. (These nine companies are listed in Annex E of URN 09/1595.) Having consulted the ASA website, which contains a database of all adjudications published over the past five years⁴ (i.e. since March 2005), none appear to have been upheld against any of those nine companies⁵.

2.5. Whatever the eventual policy decisions taken on the basis of this consultative exercise, going forwards, if DBIS becomes aware of marketing communications by such companies that would breach the CPRs, then, in the interests of consumer protection, Departmental officials should be encouraged to lodge complaints about them with the ASA.

3. Comments on DBIS's Impact Assessment

3.1. To assist DBIS in drafting the final version of its IA, the Advertising Association has consulted the Nielsen Media Research (NMR) database to which it has access. NMR identifies six of the nine companies named in Annex E of URN 09/1595 as having advertised in paid-for space in one or more media amongst those it monitors and measures during

² URN 09/1601

³ See Paragraphs 2 and 3 of URN 09/1601.

⁴ <http://www.asa.org.uk/Complaints-and-ASA-action/Adjudications.aspx>

⁵ The nine companies listed in Annex E of URN 09/1595 are: ACF Car Finance; Callcredit Ltd; Cash Converters; Cattles plc; Central Trust; Loans4Logbooks; Logbook Loans; V5 Loans; and, Mobile Money.

2009. The relevant data collected from the NMR database is reproduced in Table 1 of this submission.

3.2. The advertising expenditure data presented in Table 1 do, however, require some prior qualification. The data may over-estimate the amount spent by these six companies on advertising bills of sale-based loan products, as they may not be the only type of financial product that some of the companies concerned advertised in the course of 2009. Equally, however, NMR does not currently record expenditure on search advertising⁶ - yet it is clear that some of the companies listed in Annex E of URN 09/1595 are using this channel, as typing a selection of relevant key words into a search engine immediately reveals - resulting as this action does in the appearance of connected sponsored links on-screen.

Table 1

Expenditure on advertising by Annex E companies offering bills of sale-based loans (2009)

Advertising media channel used	Advertising expenditure (£)
Cinema	0
Direct mail	0
Door drops	0
Internet	55,911
Outdoor	0
Press	132,120
Radio	74,994
Television	126,747
Total advertising expenditure	389,772

Source: Nielsen Media Research

3.3. Whilst overall expenditure on advertising on this product category may not appear to be particularly large, the NMR data do suggest that the effect on local media owners may be significant in respect of certain regional press titles and commercial radio stations were legislation to be passed that banned outright the use of bills of sale for consumer lending. Some of the losses that may be incurred by these media owners may be off-set were the companies currently offering bills of sale-related loan products to alter their business model to provide alternative forms of security-based consumer finance, which appears to be a reasonable proposition.

23 March 2010

⁶ Paid-for search listings are, however, covered by and subject to CAP's *The British Code of Advertising, Sales Promotion and Direct Marketing*.