Law Commission
Reforming the law

Bills of sale

Summary of responses to consultation paper

This document summarises the responses to the Law Commission's consultation paper no 225 on bills of sale

February 2016

THE LAW COMMISSION

BILLS OF SALE

SUMMARY OF RESPONSES TO CONSULTATION PAPER NO 225

CONTENTS

Approach taken in this paper

Describing responses

This paper describes the responses we have received to the questions and proposals set out in the consultation paper on bills of sale published in September 2015. This paper aims to report the arguments raised by consultees. It does not give the views of the Law Commission.

Comments and freedom of information

We are not inviting comments. However, if having read this paper you do wish to put additional points to the Law Commission, we would be pleased to receive them.

Please contact us:

- by email at: bills_of_sale@lawcommission.gsi.gov.uk; or
- by post at: Fan Yang, Law Commission, 1st Floor, Tower, Post Point 1.52, 52 Queen Anne's Gate, London SW1H 9AG.

We will treat all responses as public documents. We may attribute comments and publish a list of consultees' names.

Information provided, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (such as the Freedom of Information Act 2000, the Freedom of Information (Scotland) Act 2002 and the Data Protection Act 1998). If you wish your information to be confidential please explain to us why and whilst we will take a full account of your explanation, we cannot give assurance that your confidentiality will be maintained in all circumstances.

1. INTRODUCTION

1.1 Bills of sale are a way in which individuals can use goods they already own as security for loans, while retaining possession of those goods. The use of bills of sale has grown dramatically this century, from 2,840 registered in 2001 to 52,483 in 2014.

1.2 This reflects the increasing use of logbook loans. Logbook loans are a form of sub-prime lending in which a borrower uses their current vehicle as security, by transferring ownership to the logbook lender. So long as they make repayments, borrowers may continue to use their vehicles. However, on default the logbook lender may repossess the vehicle relatively easily, without a court order.

1.3 Bills of sale are regulated by two pieces of Victorian legislation: the Bills of Sale Act 1878 and the Bills of Sale Amendment Act 1882.[1] We refer to these together as the Bills of Sale Acts.

1.4 The Bills of Sale Acts are still in force and are seriously out-of-date. They are written in impenetrable language. They impose detailed document requirements and require all bills of sale to be registered with the High Court. They provide only minimal protection for borrowers, and no protection at all for those who buy goods subject to a bill of sale.

1.5 In September 2014, Her Majesty's Treasury asked the Law Commission to examine the Bills of Sale Acts and consider how they can be reformed. In particular, the Law Commission was asked:

(1) to consider the use which is currently made of the legislation and how far it meets the needs of users and third parties; and

(2) to make recommendations for reform, to ensure that the law in this area is up-to-date, fair and effective.

1.6 We published a consultation paper on 9 September 2015, setting out the current law, considering the problems the current law poses and suggesting possible options for reform. The consultation period closed on 9 December 2015.

RESPONSES

1.7 We received 38 responses to the consultation paper, which can be broken down into the following categories:

Logbook lenders	5
Industry representatives	4
Consumer interests/protection	7

[1] Its full title is the Bills of Sale Act (1878) Amendment Act 1882.

Academics	4
Registries	2
Lawyers/law firms	10
Other	6

1.8 A full list of consultees is included at the end of this paper. None of the responses were confidential.

1.9 This paper provides a summary of the responses. Quotes are included to illustrate the views expressed by consultees.

NEXT STEPS

1.10 We aim to publish a report, with recommendations, in summer 2016. The report will not include draft legislation.

THANKS

1.11 We would like to thank all the consultees who responded to the consultation paper, or who met with us or otherwise contacted us to express their views. Whilst we are unable to directly quote all consultees' responses in this paper, those views are important to us as we put together our recommendations for the report.

2. THE CASE FOR REFORM

2.1 In Chapter 7 of the consultation paper, we discussed the problems with the Bills of Sale Acts, setting out the case for reform of the law rather than "banning" bills of sale.

Q1: BILLS OF SALE SHOULD NOT BE "BANNED" OR "ABOLISHED"

2.2 In the consultation paper, we said that there is nothing inherently wrong with an individual raising money on personal property while retaining possession of it. We asked consultees whether they agreed. We received 33 responses to this question. Of those responses, 29 (88%) agreed that bills of sale should not be "banned" or "abolished".

Arguments in favour

2.3 There was widespread agreement that bills of sale serve a useful purpose, particularly in the car finance market. HPI commented that:

> Security interests over a vehicle that can be enforced following default by the debtor can, when properly regulated, promote lending in the sub-prime market of car finance and make a contribution to social mobility.

2.4 The need for appropriate regulation was echoed by other consultees, who emphasised that retention of bills of sale ought to be conditional on introducing more robust consumer protection measures. For example, Citizens Advice said:

> 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.

2.5 Similarly, StepChange wrote:

> We accept that in principle there is nothing inherently wrong with borrowers raising money on personal property as long as there are adequate protections in place for these borrowers.

2.6 The Federation of Small Businesses indicated that there is an opportunity to improve access to credit for small businesses if there are stronger borrower protections:

> It is important to have strong protections for borrowers such as smaller businesses as losing their vehicle could have a significant impact on the viability of the business. There is a real opportunity to develop the market for loans secured on goods for unincorporated businesses if the right protections are in place.

2.7 Cheshire Datasystems Limited emphasised the need for an effective register as a condition for retention of bills of sale:

> We welcome this proposal but it needs to come with the caveat that lenders need to ensure they are registering with all three MARS agencies and that the CCTA Code of Conduct be changed to reflect that the responsibility is on the lender to ensure data is available via all three MARS members.

2.8 Personal freedom was also raised as an argument in favour of retaining bills of sale. Graham McBain said:

> People should be free to secure their goods in a democratic society.

He pointed out that people have been securing loans against their personal property for hundreds of years by various mechanisms, including pledge and mortgage.

Arguments against

2.9 Only three consultees thought that bills of sale should be "banned". The arguments focused on the detriment caused to consumers by bills of sale.

2.10 Money Advice Trust argued that bills of sale are archaic and have no place in modern society. It further wrote that:

> 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.

2.11 The City of London Law Society (CLLS) also thought bills of sale should be "banned". It stated:

> We can see no value in creating a system which would encourage low and rapidly depreciating items, such as essential household goods (whose value in use to the consumer far exceeds their resale value), to be given in security by individuals.

Q2: REFORM OF THE LAW OF BILLS OF SALE

2.12 We asked consultees whether they agreed that the law of bills of sale needs wholesale reform in order to create an effective modern legislative framework. This question received 34 responses. Of those, 29 (85%) consultees agreed, two disagreed and three answered "other".

Arguments in favour

2.13 Of the arguments in favour of reform, many referred to, and criticised, the archaic nature of the Bills of Sale Acts. One logbook lender, AutoMoney, wrote that it is an:

> undeniable fact that the Bills of Sale Act is out of date and should be replaced with a new body of law that more effectively facilitates the use of personal property as collateral.

2.14 Guy Skipwith, a consumer adviser, wrote:

> I believe that the current law (the Bills of Sale Acts) is outdated, extremely complex, written in archaic language and impenetrable.

2.15 Among consumer groups, there was agreement that the law needs reform in order to give consumers more protection. The Financial Services Consumer Panel wrote:

> The current law, based on Victorian legislation, is out of date and no longer fit for purpose, especially taking into account the increase in recent years in the use of bills of sale. Borrowers need greater protection, as do innocent private purchasers who may be unaware the vehicle they are buying is subject to a logbook loan.

2.16 StepChange commented that:

> The current law is antiquated, difficult to understand and fails consumers. The law is not providing appropriate consumer protections when a borrower falls into payment difficulties. Nor does it protect innocent private purchasers.

2.17 One logbook lender, Mobile Money, referred to the potential of reform of the law to enhance consumer protection:

> There are many potential consumer benefits in reforming the law, not least in reducing cost, improving clarity and encouraging new entrants and innovation.

Arguments against

2.18 Two consultees, Money Advice Trust and the CLLS, did not think that a case for reform had been made out, and thought that bills of sale should be abolished. Money Advice Trust stated that it would prefer abolition of bills of sale but, in the alternative, it would support reform of the existing law.

Other

2.19 The Society of Chief Officers of Trading Standards in Scotland pointed out that bills of sale do not exist in Scottish law. It gave evidence, though, of how a logbook lender had attempted to replicate logbook loans in Scotland through the use of hire purchase.

3. PROPOSALS FOR REFORM: A NEW LEGISLATIVE FRAMEWORK

3.1 In Chapter 8 of the consultation paper, we explained why we think the Bills of Sale Acts should be repealed and replaced with new legislation. We considered the terminology that should replace terms such as "bill of sale" and "personal chattels" and the scope of the proposed new legislation.

Q3: REPEAL AND REPLACEMENT OF THE BILLS OF SALE ACTS

3.2 We asked consultees whether they agreed 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. 32 consultees answered this question. Of those, 24 (75%) agreed, four disagreed and four answered "other".

Arguments in favour

3.3 Many consultees referred to the problems with the current law. Gregory Hill noted that "the existing legislation is bad beyond the possibility of tinkering". Guy Skipwith said "because the Bills of Sale Acts are clearly not fit for purpose, they should be repealed and replaced with new legislation".

3.4 Clarity was one reason given in favour of new legislation. Money Advice Trust wrote that the current law is not fit for purpose and that it would support a clear and straightforward piece of legislation that is easy to understand.

3.5 Other consultees mentioned the value in being able to grant security over goods. Mobile Money said of the proposal:

> We fully support this view. Being able to temporarily liquidate capital value in assets without being forced to sell or pawn such assets creates a valuable proposition.

3.6 Dr Akseli and Dr Thomas of Durham Law School supported the proposal, but cautioned that the term "individuals" needs further clarification:

> There remains the difficulty of distinguishing between consumers and non-consumer commercial entities that are not incorporated (e.g. sole traders). The distinction between the two is sufficiently substantial in order to justify further legislative distinction and clarification.

Arguments against

3.7 The City of London Law Society (CLLS) argued that it did not see any need for a general regime under which individuals may use their existing goods as security while retaining possession of them.

3.8 Cheshire Datasystems Limited (CDL) and V5 Loans both answered "no" but, unlike the CLLS, supported the retention of bills of sale. CDL did not expand on its reasons for disagreeing; V5 Loans did not feel that new legislation is necessary.

Other

3.9 The Campaign for Fair Finance (CFF) felt that the current legislation could be amended as opposed to being repealed. Iyare Otabor-Olubor, an academic, said that the Bills of Sale Acts should not be repealed because it would be unwise to create new legislation from scratch.

3.10 The Secured Transactions Law Reform Project (STR) emphasised the need to be aware of developments in the law relating to corporate borrowers:

> While we understand that reform of the law relating to companies is not within the Law Commission's terms of reference, any reform in relation to non-corporate debtors should be consistent with any future reform of the law relating to corporate debtors. Any mechanism for registration should be one that is suitable for expansion to cover company charges and possibly other interests.

The STR also felt that reform should extend to intangible goods.

Q4(1): REPLACEMENT OF THE TERMS "BILL OF SALE", "SECURITY BILL" AND "PERSONAL CHATTELS"

3.11 In the consultation paper, we said these terms convey little meaning to the modern reader and asked whether they should be replaced. There were 27 responses to this question, 22 (81%) of which agreed.

Arguments in favour

3.12 There was widespread consensus that the current terminology is little understood. HPI said that "it is wholly appropriate to eschew redundant terminology poorly understood by the general public". Likewise, CDL wrote that "these terms are outdated and not understood by many consumers". Citizens Advice said that "these terms are archaic and need to be replaced with more easily understood terms".

3.13 The Finance & Leasing Association supported the proposal but cautioned that:

> Any changes to the names of the products must be clearly communicated to finance providers and consumers. This may require a campaign and ongoing engagement with trade bodies and direct contact with bills of sale providers.

3.14 The CFF suggested that the term "logbook loan" should also be replaced:

> due to the stigma surrounding Logbook Loans due to years of bad practice within the industry. A more suitable name for Logbook Loans could be a "Motor Equity Release" loan. With regards to replacing those names within the question a more accurate description should be "Ownership Transfer Agreement."

Arguments against

3.15 Two consultees supported retention of the terms "bill of sale" or "security bill of sale".

Other

3.16 DTW Associates Limited, a logbook lender, felt that "the terminology has no major bearing, positive or negative, to the consumer".

3.17 The CLLS thought that the term "personal chattels" is used in other contexts and is well understood at common law.

Q4(2): THE "GOODS MORTGAGE"

3.18 We discussed the various options that could be used to refer to secured loans over goods. Of these, we favoured the term "goods mortgage" and asked consultees whether they agreed. We received 14 responses to this question, nine (64%) of which were in agreement. Two consultees did not agree and three consultees answered "other".

Arguments in favour

3.19 Citizens Advice commented that the proposed terminology "would give consumers a better idea about the nature of the credit they have taken out". StepChange wrote that "we believe the terms 'goods mortgage' and 'vehicle mortgage' are adequate and simple terms for describing this type of borrowing".

3.20 Guy Skipwith agreed in general with the proposed terminology but thought that it might be confusing if a "goods mortgage" includes a "vehicle mortgage". It was suggested that the distinction should be between a "vehicle mortgage" and "other goods mortgage".

Arguments against

3.21 Some consultees expressed concern that the term "mortgage" could be confusing. As Money Advice Trust put it:

> We do not believe that the proposed terms of "goods mortgage" or "vehicle mortgage" will mean much to most consumers. Most people do not think of their house as belonging to the mortgage lender when they have a mortgage. This term is more likely to mislead a borrower into thinking that they still own their car but that the lender has a charge or security in relation to the car.

Other

3.22 The General Council of the Bar of England and Wales (the Bar Council) felt that the proposed terminology is clearer than the current terminology. Like Money Advice Trust, it warned that:

> Most borrowers will associate the term "mortgage" with the charge over their home, as the consultation paper recognises, but the typical "goods mortgage" will involve a transfer of ownership rather than a charge. Since one of the current problems is a lack of understanding by borrowers that the lender acquires ownership of the goods when the bill is executed, we wonder whether this risks adding to the confusion.

It suggested, though, that any potential confusion might be addressed with warning statements.

Q4(3): THE "VEHICLE MORTGAGE"

3.23 Where the borrower proposes to use a vehicle as security, we suggested that this should be known as a "vehicle mortgage". We received 25 responses to this question. 16 (64%) consultees agreed, six disagreed and three answered "other".

Arguments in favour

3.24 The Retail Motor Industry Federation said that it "strongly encourages the use of the term 'vehicle mortgage' when referring to secured loans over vehicles".

3.25 HPI stated that "vehicle mortgage" is "an elegant description of the reality of the bills of sale transaction".

3.26 The Chartered Trading Standards Institute (CTSI) agreed with the proposal and also suggested that the term "logbook loan" should cease to be used on the basis that "the phrase is misleading since the log book is not an indication of title".

Arguments against

3.27 As with "goods mortgage", there was concern that "vehicle mortgage" creates the potential for confusion with mortgages over land. The CFF wrote:

> The use of "Mortgage" should only be used when referring to bricks and mortar. Using "Mortgage" for any other financial product may cause confusion.

3.28 Logbook lenders were concerned that "vehicle mortgage" did not accurately describe the nature of a logbook loan. DTW Associates Limited said:

> The term 'mortgage' is typically associated with a far longer term of 15 years+ and this could result in a consumer's misconception of a loan associated with this term.

3.29 The STR expressed a preference for the term "security interest" instead of both "goods mortgage" and "vehicle mortgage".

Q5: SCOPE OF THE NEW LEGISLATION

3.30 We discussed what the scope of the new legislation should be. We asked whether it should regulate transactions where individuals use goods they already own as security for a loan or other non-monetary obligation and retain possession of the goods. This question received 23 responses. 19 (83%) consultees agreed with the proposal. Only one consultee disagreed and three answered "other".

Arguments in favour

3.31 Consumer groups supported the proposal on the basis that it may help to reduce confusion with hire purchase. As Money Advice Trust put it:

> It is sensible to exclude transactions that provide for the purchase of new goods on credit, and that this legislation should apply where the loan is secured on goods the borrower already owns. This should help to avoid the use of bills of sale to avoid taking out hire-purchase agreements to buy items on credit.

3.32 Similarly, Citizens Advice noted that:

> In the past we have seen cases where consumers have bought cars with a loan secured by a bill of sale under the misunderstanding that they had a hire purchase/conditional sale agreement.

3.33 The law firm Constantine Cannon LLP agreed with the proposal but suggested clarification of the concept of "possession":

> It is imperative for the legislation to define possession in broad terms. Specifically, "possession" should not be limited to "actual physical possession" of the goods, but should also cover situations where the goods are in the borrower's control. For examples, art collectors often store their art in storage facilities and freeports, or they lend their works to museums and galleries for exhibition purposes. Similarly, fine wine collectors often store their wine in specialist storage facilities.

Arguments against

3.34 Only the CLLS disagreed with the proposal. It argued that there should not be a general ability for individuals to use goods they already own as security. Instead, there should be limited goods over which individuals can secure loans, as dictated by demand. It suggested that hire purchase and conditional sale could be used to satisfy the demand for logbook loans.

Other

3.35 The STR sought clarification that the new legislation would cover transactions where individuals grant security for monetary obligations other than loans.

Q5(1): SHOULD THE NEW LEGISLATION APPLY ONLY TO SECURITY GRANTED BY INDIVIDUALS?

3.36 There were 24 responses to this question, of which 13 (54%) agreed. Seven consultees disagreed and four answered "other". Many consultees, regardless of whether they answered "yes", "no" or "other", made the same point: unincorporated businesses should be included within the scope of the new legislation.

3.37 The Bar Council wrote:

> We wonder whether the definition of "individual" should mirror that which applies in the Consumer Credit Act 1974, i.e. so as to cover small partnerships as well as individuals. Since there are close links between the two regimes it may make sense to align the definitions.

3.38 Mobile Money stated:

> We would welcome the opportunity to help lessen the shortage of commercial finance by lending to businesses against business assets.

3.39 HPI made the same point:

> There is no reason to confine the vehicle mortgage to individuals as very often SMEs turn to their physical assets including unencumbered vehicles as security for a loan.

3.40 Academics, such as Dr Akseli and Dr Thomas, also argued that unincorporated businesses should be covered by the new legislation.

3.41 On a different note, Constantine Cannon LLP wrote that the new legislation should apply to foreign companies:

> If the owner is a non-UK company, and the goods are in the UK, it may not be possible to register a charge on goods in the country where the company is incorporated. Moreover, there are merits in registering a charge against goods in the country where they are located. It used to be possible to register a charge against the goods of a non-UK company located in the UK (the Slavenburg register) but that register no longer exists. For these reasons it would be advantageous if one could register a goods mortgage against the UK-sited goods of a non-UK company.

Q5(2): SHOULD THE NEW LEGISLATION COVER TRANSACTIONS WHERE THE OBLIGATION SECURED IS NON-MONETARY?

3.42 There were 13 responses to this question, of which six (46%) were in favour. Four consultees disagreed and three answered "other".

Arguments in favour

3.43 Among the consultees who supported the proposal were Citizens Advice, Boodle Hatfield LLP and Constantine Cannon LLP.

3.44 The Community Investment Coalition pointed out that as the consultation paper proposes that absolute bills should no longer be regulated, transactions involving non-monetary obligations would otherwise be left completely unregulated.

Arguments against

3.45 The CLLS thought that the ability to secure non-monetary obligations could lead to consumers being "unable to escape from the constant threat of repossession of essential goods".

3.46 Iyare Otabor-Olubor thought that the proposal could complicate the legislation and is best left to be incorporated at a later date.

Other

3.47 The Bar Council questioned whether there is a need to regulate such transactions, which appear to be rare, but agreed that:

> subject to there being a market for such transactions, we can see that there is merit in extending the new regime to cover it.

3.48 Dr Akseli and Dr Thomas remarked that the concept of "non-monetary obligation" needs further clarification. They provided the following example:

> We think a much more realistic instance of a non-monetary obligation in this area would be a negative pledge. It would operate thus: A transfers ownership of goods to B, whilst retaining possession, in order that B does not take advantage of his rights under a negative pledge over A's other property.

Q5(3): SHOULD "POSSESSION" INCLUDE GOODS THAT REMAIN UNDER THE BORROWER'S CONTROL?

3.49 There were 21 responses to this question, of which 15 (71%) agreed. One consultee disagreed and five answered "other".

Arguments in favour

3.50 Guy Skipwith suggested that goods should be considered in the borrower's possession unless the borrower "unlawfully disposes of the goods or abandons the goods".

Arguments against

3.51 The Chancery Bar Association (ChBA) considered it unnecessary to define "possession" in this way:

> We would point out that there are different types of possession in English law, and that the borrower does not therefore need to be in actual possession. You give the example (para 8.28) of security bills over wine held in a specialist store. In such circumstances the owner may be in possession of the wine – albeit constructive possession – having attorned to the storeholder. On the basis of current understandings of possession this would be covered and we see no reason for special provision to make this clear.

3.52 The STR thought that "it would be unwise to attempt to define in legislation such a nebulous term as possession".

Other

3.53 Dr Akseli and Dr Thomas raised the issue of intangible goods:

> The increased integration of goods and IPRs, and the inability of the system governing security interests over IPRs to actually effectively provide that function (and indeed the generally flawed nature of the current regime for security over IPRs), would create a vacuum in doctrine in protection for all concerned parties where IPRs are used (or intended or wished to be used) as security.

Q6(1): EXCLUSION OF INTANGIBLE GOODS

3.54 Under our proposals, the new legislation would not apply to dealings with intangible goods. We asked consultees whether they agreed. This question received 14 responses, of which 10 (71%) were in agreement. Two consultees disagreed and two answered "other".

Arguments in favour

3.55 Iyare Otabor-Olubor pointed to the problems that might arise if intangible goods were included in the regime. It would be difficult to determine possession and there would be a risk of registration with numerous registries.

Arguments against

3.56 It was noted that inclusion of intangible goods might prove useful to high net worth individuals. The ChBA said:

> It is possible that an individual – probably one of high net worth – may wish to secure a loan on the shares or other intangibles he owns, as much as (if not more so than) over his car. In the interests of simplification we would consider including such security in a new regime.

Other

3.57 The CLLS felt that there would be a case for creating security over portfolios of securities such as stocks and shares.

Q6(2): EXCLUSION OF SHIPS AND AIRCRAFT

3.58 We asked consultees if they agreed that the new legislation should not apply to dealings with ships and aircraft. There were 14 responses to this question, of which 13 (93%) agreed. One consultee answered "other".

Arguments in favour

3.59 Many consultees noted that there are already well-established regimes for security granted over ships and aircraft. As Dr Akseli and Dr Thomas put it:

> there are specific, rational, coherent, and well-used and well-understood regimes for security over ships and aircraft, both domestically and internationally.

Other

3.60 The Bar Council was the only consultee to answer "other". It noted that consideration needs to be given to the treatment of certain marine vessels:

> Mortgages of ships are subject to a statutory regime, but this does not apply where the vessel in question is not within Part 1 or 2 of the Register. Pleasure craft (such as canal boats or cruisers) do not fall within the scheme for statutory mortgages, although they can be registered in Part 3. There is therefore a class of marine mortgage which currently falls outside the Bills of Sale Acts and is not governed by statute.

Q6(3): EXCLUSION OF AGRICULTURAL CHARGES

3.61 We asked consultees whether they agreed that the new legislation should not apply to any security interest which could be registered as an agricultural charge (with the exception of loans secured on vehicles). There were 19 responses to this question. 12 (63%) agreed, four disagreed and three answered "other".

Arguments in favour

3.62 Consultees noted that the proposal would avoid duplication with the agricultural charges register.

Arguments against

3.63 Gregory Hill thought that tractors and other vehicles should continue to be within the scope of the agricultural charges regime.

Other

3.64 The Bar Council questioned whether some types of security would fall outside both regimes:

> We have in mind, for example, a bill of sale over non-vehicular farm machinery in favour of a lender which is not a bank. If that would no longer be registrable, such a lender would have to take a chance on the risk that the farmer may later enter into a floating charge under the 1928 Act over all of the farm machinery. If the intention is that this form of security will fall within the registration regime for mortgages of goods other than vehicles then this will of course provide an answer.

3.65 The STR noted that "the key issue is not to ask those registering security and those searching the register to have to do the same thing twice".

Q7: HOW WOULD A GOODS MORTGAGE TAKE EFFECT?

3.66 We proposed that a goods mortgage would take effect by way of transfer of ownership, unless the parties agreed that it should take effect as a charge. We asked consultees whether they agreed. We received 24 responses to this question, of which 14 (58%) were in agreement. Five consultees disagreed and five answered "other".

Arguments in favour

3.67 Guy Skipwith noted that, while it may cause consumers confusion, "it would provide more flexible borrowing options for businesses" if they could make use of a charge.

3.68 Two consultees indicated that the option of using a charge would be particularly useful in the art market. Boodle Hatfield LLP said:

> we consider that in the context of valuable artwork it may well be useful to be able to charge the same goods more than once.

3.69 Constantine Cannon LLP agreed and also suggested that the new legislation should deal with priority when goods are charged more than once:

> The new legislation should consider introducing a regime similar to the UCC (US) which contemplates priority of registration and gives certain creditors priority over others. For example, under the UCC a registered security interest takes priority over a non-registered security interest, while a "first registered interest" always takes priority over a "second registered interest" and so on.

Arguments against

3.70 HPI thought that a goods mortgage should take effect by way of charge only, and should not involve transfer of title. The CLLS also expressed a preference for charges, saying that "in other contexts (land, corporate security) the use of charges is almost universal and any new form of security should also take effect as a charge".

3.71 The CTSI, on the other hand, thought that charges should not be permissible:

> The consultation refers to multiple charges. The original Bills of Sale Acts were designed to stop this practice. The law should be as transparent and consistent as possible.

Other

3.72 Money Advice Trust was concerned that transferring ownership could have a detrimental impact on consumers:

> We are not convinced that a legal agreement transferring the entire ownership of a vehicle or other goods to a lender on the basis of a loan that may be substantially less than the asset transferred, is a good or fair principle.

3.73 The ChBA argued that the terminology would cause confusion if a goods mortgage actually took effect as a charge. It further questioned the rationale for introducing a charge:

> If the justification of a charge is to allow the borrower to grant security a second time it is unnecessary.

It pointed out that a second mortgage could be granted over the equity of redemption.

3.74 The STR agreed with the ChBA. It also noted that:

> It is not clear why it should matter that the parties create a mortgage rather than a charge. While the conceptual difference continues to exist, it is not worthwhile to perpetuate the difference between a charge and a mortgage as the two are very similar in effect.

Q8(1): THE GROUNDS FOR REPOSSESSION

3.75 We proposed that lenders should only be permitted to repossess goods for three reasons: default on payment, default on maintenance or insurance of the goods, and bankruptcy of the borrower. 18 (78%) of the 23 responses agreed, two disagreed and three answered "other".

Arguments in favour

3.76 Most consultees did not give any particular reason for agreeing with the proposal.

3.77 One consultee suggested an amendment to the wording. Gregory Hill thought "default on maintenance or insurance of the goods" should instead read "default in compliance with any provision of the security for maintenance or insurance".

Arguments against

3.78 Constantine Cannon LLP thought that there should be additional grounds for repossession where:

> the borrower transfers ownership or grants a charge over the goods without the lender's prior consent, the borrower has maliciously damaged the goods or procured or caused malicious damage, or there is evidence of fraud on the part of the borrower (eg the loan is against an artwork and the lender is alerted to the fact that the borrower is proposing to swap, or has swapped, the original artwork for a copy).

Q8(2): FRAUDULENT REMOVAL OF GOODS

3.79 We thought that fraudulently removing goods should no longer be a ground for repossession. We asked consultees if they agreed. This question received 23 responses, of which 13 (57%) were in agreement. Five consultees answered "no" and five answered "other".

Arguments in favour

3.80 Consumer groups supported the proposal. Money Advice Trust called it "sensible", while the CTSI said:

> "Fraudulently" is difficult to prove. Just making the car difficult to find whilst seeking further funds is not fraudulently removing the goods. The term is best excluded as fraud is covered by other legislation.

Arguments against

3.81 Consultees suggested that fraudulent removal would be a useful ground for repossession in the art market. Boodle Hatfield LLP commented:

> it is possible that a borrower could fraudulently remove the artwork and place it for sale, say, in an art fair, in a gallery, at an agency or another location not approved by the lender. The unique nature of many artworks means that a lender could easily become aware of such a fraudulent removal but, without this protection, would not be entitled to repossess the goods.

3.82 Constantine Cannon LLP referred to a similar protection in the United States.

3.83 Mobile Money felt that where fraud is proven there should be a right of repossession. It gave the example of goods known to be scheduled for imminent export.

Other

3.84 The Bar Council thought that fraudulent removal may prove useful in relation to certain goods, such as the fixtures and fittings of a business.

3.85 In contrast to Mobile Money, another logbook lender, DTW Associates Limited, thought that the provision had no relevance to logbook loans.

Q8(3): TRANSFER OF OWNERSHIP WHEN THE LOAN IS REPAID

3.86 We asked whether the new legislation should provide that, where there is a transfer of ownership, ownership is automatically transferred to the borrower once the loan is repaid. This question received 22 responses, all of which were in favour of the proposal.

Q9: SHOULD THERE BE A MINIMUM LOAN AMOUNT?

3.87 We did not think that there should be a minimum loan amount. We asked consultees if they agreed. This question received 22 responses, 14 (64%) of which were in agreement. Seven consultees disagreed and one answered "other".

Arguments in favour

3.88 Guy Skipwith thought that a minimum loan amount could encourage people to borrow more than they required or drive them to payday loans or illegal lending.

3.89 Gregory Hill argued that parties should have autonomy to decide the basis on which they contract.

Arguments against

3.90 Consumer groups particularly were opposed to the proposal. Money Advice Trust thought that there should be more borrower protection to prevent people from securing loans over goods that far exceed the loan amount. StepChange was worried that the costs of repossession would be out of proportion to the amount of the loan. Citizens Advice wrote:

> We often see clients who face loss of their vehicle for 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.

3.91 Simmons & Simmons LLP suggested that the new legislation should give the Secretary of State the power to provide for a minimum loan amount. This amount could then be kept under review and updated by statutory instrument.

Other

3.92 The CLLS was concerned about the potential for oppressive security over essential household goods:

> The scheme envisages very low value or rapidly depreciating goods may be charged where the condition of the goods would be of little relevance to the substance of the transaction: an ability to repossess could be used as an instrument of oppression, where the goods are of utility to the borrower and this gives rise to much unnecessary litigation.

Q10: SHOULD BORROWERS BE ABLE TO GRANT SECURITY OVER FUTURE GOODS?

3.93 We proposed 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 received 24 responses to this question. 14 (58%) consultees agreed, one disagreed and nine answered "other".

Arguments in favour

3.94 Consumer groups supported the proposal. Money Advice Trust wrote that it "would be an extremely retrograde step to allow future goods as security".

3.95 A number of consultees favoured the proposal insofar as it concerns consumers. For example, Gregory Hill said:

> There is something to be said for outlawing future property security in relation to consumer lending, but not in relation to business lending.

3.96 The CTSI suggested that it should not be permissible to grant security over future goods even where the loan is being used to acquire those goods. Guy Skipwith agreed, adding that "allowing borrowers to give security over future goods would be likely to encourage irresponsible borrowing and lending".

Arguments against

3.97 The CFF answered "no" but did not provide any further explanation.

Other

3.98 A number of consultees thought that the use of future goods as security should be considered for unincorporated businesses. Dr Akseli and Dr Thomas were of this view as was the STR.

3.99 Similarly, the Federation of Small Businesses was in favour of allowing unincorporated businesses to grant floating charges. It suggested that we should consider this as part of our next programme for law reform.

3.100 The Bar Council did not believe that a prohibition is necessary because of existing regulation:

> Within the FCA-regulated sphere the provisions relating to responsible lending, treating customers fairly and the unfair relationship provisions of the CCA might well provide sufficient protection against the potential detriment identified.

4. PROPOSALS FOR REFORM: SIMPLIFYING THE DOCUMENT REQUIREMENTS

4.1 In Chapter 9 of the consultation paper, we made proposals to simplify the document requirements for a goods mortgage. Our aims were to make it easier for lenders to comply with the legislation; give unincorporated businesses more borrowing options; and give consumers more clarity.

Q11(1): THE NEED FOR A WRITTEN AGREEMENT

4.2 We asked consultees if they agreed that a goods mortgage should only be valid if it is set out in a written document signed by both parties. We received 24 responses to this question, of which 21 (88%) were in favour. Three consultees disagreed.

Arguments in favour

4.3 Both logbook lenders and consumer groups supported the proposal. Guy Skipwith wrote:

> A goods mortgage is an important security document, should be in writing, signed by the parties and witnessed. If it does not comply with these (or any other) documentary requirements, it should be unenforceable.

Arguments against

4.4 The Secured Transactions Law Reform Project (STR) and Dennis Rosenthal argued that only the signature of the borrower should be required.

Q11(2): THE NEED FOR A PHYSICAL SIGNATURE IN THE PRESENCE OF A WITNESS

4.5 We proposed that the borrower should have to apply a physical signature in the presence of a witness. We received 24 responses to this question. 14 (58%) consultees agreed, six disagreed and four answered “other”.

Arguments in favour

4.6 A number of consumer groups – Citizens Advice, the Chartered Trading Standards Institute (CTSI) and Money Advice Trust – supported the proposal.

4.7 The Campaign for Fair Finance (CFF) noted that without a physical signature in the presence of a witness:

> we run the risk of logbook loans becoming too automated and moving solely to autoscored applications and acceptances, whereby customers will not fully understand the T&Cs of their new loan. Also, we do not want to run the risk of creating the next “payday” crisis.

Arguments against

4.8 Two logbook lenders argued that electronic signatures could improve customer service. Mobile Money wrote:

> E-signing of credit agreements is common practice and we would hope to extend this to the vehicle mortgage document.

4.9 DTW Associates Limited noted that:

> Whilst many lenders will choose to continue with physically signing documents, it should not be mandatory as this would be restrictive to future use.

4.10 The City of London Law Society (CLLS) thought European Union legislation would in any event supersede the proposal.

Other

4.11 The Chancery Bar Association (ChBA) questioned whether the proposal would give effective consumer protection. It suggested that consideration might be given to relaxing the document requirements.

4.12 StepChange thought the value of a witness would be undermined if the witness could be an employee of the logbook lender.

Q11(3): THE NEED FOR A SEPARATE DOCUMENT

4.13 We asked consultees if they agreed that the goods mortgage should be in a separate document from the credit agreement. We received 24 responses to this question, of which 17 (71%) were in favour. Five consultees disagreed and two answered "other".

Arguments in favour

4.14 Consumer groups were generally in favour of the proposal. Money Advice Trust wrote:

> It is very important that the goods mortgage should be in a separate document from the credit agreement as this will help to reinforce the significance of the document.

4.15 The CFF agreed that separate documents would help the borrower to understand the consequences of a goods mortgage.

4.16 Others, such as Gregory Hill, said that separate documents would have the advantage of confidentiality. Registration would be possible without giving publicity to detailed commercial terms. This was echoed by the STR which noted that "the credit agreement may contain sensitive information and their redaction would involve unnecessary cost at little benefit". It suggested, though, that parties should have more flexibility outside the consumer context.

Arguments against

4.17 Constantine Cannon LLP thought that the requirement is overly prescriptive and that the parties should have autonomy. It acknowledged that the situation might be different for vulnerable borrowers.

4.18 The General Council of the Bar of England and Wales (the Bar Council) and the CLLS thought that separate documents should be an optional requirement.

Other

4.19 DTW Associates Limited did not feel that one or two documents is a major factor either way.

Q12: CONTENTS OF A GOODS MORTGAGE DOCUMENT

4.20 We proposed that the goods mortgage document should contain only six pieces of information. We received 26 responses. 20 (77%) consultees agreed, one disagreed and five answered "other".

Arguments in favour

4.21 A number of consultees broadly supported the proposal while suggesting some amendments to it.

4.22 Money Advice Trust did not believe that logbook lenders should be able to prepare their own documents. It proposed a standard form to be used by all logbook lenders so that important information could not be obscured.

4.23 StepChange emphasised that the goods mortgage document should be as clear and as concise as possible so that borrowers can read and fully digest the information in a short space of time.

4.24 HPI thought that the focus should be on what information would be available to an interested third party:

> thus the description of the vehicle should include clear signposting to the lender so that the third party enquirer has direct source exposure, thereby being fully informed of what is covered by the loan and its amount.

4.25 Constantine Cannon LLP commented that specific description of the goods is essential for artworks. It also suggested that location should be included in the goods mortgage document and that, if the lender so requests, the borrower should affix a notice to the goods standing as security.

Arguments against

4.26 Mobile Money thought that the name, address and occupation of the witness were not necessary.

Other

4.27 A number of consultees did not feel that a witness is necessary. For example, the ChBA did not believe that a witness would add any significant further protection than that which is available under the Consumer Credit Act 1974.

4.28 The Bar Council agreed that all of the information suggested should be provided but thought that as much of it will be in the credit agreement, duplication should be avoided.

4.29 The STR commented that the addresses of the parties are unnecessary as they may change. It also thought that the witness's occupation should not be required and that specific description of goods is only necessary for consumers. Where the borrower is not a consumer, only a description sufficient to enable identification should be required.

Q13(1): SHOULD IT BE NECESSARY TO STATE A FIXED SUM?

4.30 Where the goods mortgage secures a monetary obligation, we did not feel that it would be necessary to state a fixed sum. We asked consultees if they agreed. We received 21 responses to this question, of which 14 (67%) agreed. Five consultees answered "no" and two answered "other".

Arguments in favour

4.31 Guy Skipwith responded:

> It is important for goods mortgages to be as straightforward, simple and clear as possible so that they can be readily understood by borrowers. Therefore, I agree that it is not necessary for them to state a fixed-sum where the obligation secured is monetary, especially because, as stated at table 9.1, this would allow goods mortgages to secure running-account credit agreements, overdrafts and guarantees where the sum secured is not a fixed amount.

4.32 Dr Akseli and Dr Thomas agreed that a fixed sum is not necessary but cautioned that a specified maximum sum might be considered in order to avoid all-monies debts.

4.33 Gregory Hill made reference to a specified maximum sum in order to determine priority as against subsequent grants of security.

Arguments against

4.34 There was some concern about the proposal in the context of consumer lending. Money Advice Trust wrote:

> It appears vital that a specific description of the goods, including the fixed sum, is contained in the mortgage document so that there is no future dispute about the goods which are subject to the agreement.

4.35 The CTSI noted that the proposal might be suitable for business lending but not for consumer lending.

Q13(2): SPECIFIC DESCRIPTION OF GOODS IN A SEPARATE SCHEDULE

4.36 We asked consultees if they agreed that it is not necessary to require that the specific description of goods be in a separate schedule. We received 22 responses to this question, of which 17 (77%) were in agreement. Three consultees answered "no" and another two answered "other".

Arguments in favour

4.37 Consultees believed that the goods mortgage document should contain a specific description of the goods, but did not see the need for this to be in a separate schedule. As Guy Skipwith put it:

> As details of the goods secured by a goods mortgage will be included in the mortgage documentation, I do not see any necessity to include it in a schedule. As long as the goods are adequately described in the goods mortgage documentation, this is sufficient.

4.38 The Bar Council pointed to the requirements of existing consumer credit legislation:

> If the credit agreement is regulated by the CCA the lender will already be required to provide information about the security in the body of the credit agreement.

Arguments against

4.39 Cheshire Datasystems Limited and HPI did not agree with the proposal but did not elaborate on their reasons.

Other

4.40 Money Advice Trust agreed that the specific description did not need to be in a separate schedule but cautioned that it should be visible:

> We believe that any description of the goods should be in a prescribed format so that it is clear and transparent for the consumer as to what goods are subject to the agreement… It should not be possible for the details to be included in an obscure hidden part of the agreement, where it is not easy for the consumer to check what has been secured under the agreement.

Q14(1): PROMINENT STATEMENTS IN LOGBOOK LOANS: OWNERSHIP

4.41 We proposed that vehicle mortgage documentation should contain a prominent statement that ownership transfers to the logbook lender until the loan is repaid. We asked consultees if they agreed. There were 24 responses to this question, of which 21 (88%) were in agreement. Two consultees did not agree and one answered "other".

Arguments in favour

4.42 The proposal received broad support from both logbook lenders and consumer groups.

4.43 Mobile Money pointed to the important message in the prominent statement:

> We feel this is an important feature which could easily be missed without it being given sufficient prominence.

4.44 Citizens Advice noted current consumer confusion about the consequences of a logbook loan:

> 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.

4.45 Similarly StepChange wrote:

> The awareness of what logbook loans are is low even among some borrowers who use them as currently there can be confusion between taking out a hire purchase agreement and logbook loan.

Arguments against

4.46 Iyare Otabor-Olubor argued that a goods mortgage should not take effect as a transfer of ownership and so the prominent statement should be adapted accordingly.

Q14(2): PROMINENT STATEMENTS IN LOGBOOK LOANS: REPOSSESSION

4.47 We further proposed that vehicle mortgage documentation should contain a prominent statement that the borrower's vehicle may be repossessed on default. All 24 consultees who responded to this question agreed.

4.48 The CTSI noted in its response to this question that any excess following sale of a repossessed vehicle should be returned to the borrower.

Q14(3): PROMINENT STATEMENTS IN LOGBOOK LOANS: FORMULATION

4.49 We suggested initial wording for the two prominent statements and asked consultees if they had any views on the formulations. Ten consultees responded.

4.50 Some consultees pointed out the need for clarity and simplicity. Dr Akseli and Dr Thomas thought that there should be a measurable standard of clarity. The Bar Council thought that the prominent statement in relation to ownership could be simplified. It suggested "we will own the vehicle until you have repaid your loan".

4.51 Other consultees felt that more information should be included. StepChange suggested that the prominent statements should include signposts to free debt advice. Mobile Money suggested:

> You may incur extra charges, impair your credit rating and have your car repossessed if you do not keep up repayments on a loan secured on it.

4.52 The CFF thought that there should be a prominent statement to dissuade the borrower from selling the vehicle.

4.53 Citizens Advice felt that graphics could help to reinforce the messages:

> 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.

4.54 Consultees further pointed to existing consumer credit legislation and expressed a desire for consistency. Gregory Hill thought that the prominent statements should be in terms as close as possible to equivalent warnings under consumer protection legislation. DTW Associates Limited thought that the prominent statements should mirror those in the Financial Conduct Authority's (FCA) consumer credit rules.

Q14(4): PROMINENT STATEMENTS IN LOGBOOK LOANS: ADVERTISING

4.55 We asked if consultees thought the prominent statements should appear on websites and advertising. This question received 21 responses.

Arguments in favour

4.56 Most consultees supported the inclusion of the prominent statements on websites and advertising. Mobile Money described this as "an absolute requirement". Money Advice Trust thought that it should be a mandatory requirement with sanctions for failure to comply.

4.57 Guy Skipwith noted that consumers often use the internet to access information about potential lenders and loans and so it is important that the prominent statements appear on websites.

Other

4.58 Two consultees pointed to existing regimes. The Bar Council noted the FCA's financial promotions rules. It wrote that the prominent statements should dovetail with these and other existing regimes. The CLLS thought that the position when advertising the purchase of new vehicles on hire purchase or conditional sale should be adopted.

Q15(1): PROMINENT STATEMENTS FOR OTHER LOANS

4.59 Where the borrower grants security over goods other than vehicles, we proposed that the prominent statements should appear in adapted form. We received 14 responses to this question, of which 13 (93%) were in agreement. One consultee disagreed.

Arguments in favour

4.60 Two consultees gave detailed responses to this question. Money Advice Trust reiterated its desire to see prescribed goods mortgage documentation. Guy Skipwith supported the proposal on the basis that consumers may use goods other than vehicles as security.

Arguments against

4.61 Iyare Otabor-Olubor answered "no" but did not give any reasoning.

Q15(2): PROMINENT STATEMENTS WHERE THE CREDIT AGREEMENT IS NOT REGULATED

4.62 Where the goods mortgage does not secure a regulated credit agreement, we did not feel it necessary to include the prominent statements. 11 (58%) out of 19 consultees agreed. Seven consultees answered "no" and one answered "other". The consultees who agreed did not expand on their reasons for doing so.

4.63 Consultees who disagreed felt that it would do no harm to include the prominent statements and that it would improve general practice. Money Advice Trust wrote:

> We cannot see how it will cause harm to include the statements on all goods mortgages even if these are for high net worth individuals or for business purposes of more than £25,000. They are warnings relating to consumer rights and we do not understand why these should be considered "paternalistic" as suggested in the paper.

4.64 Mobile Money noted that inclusion "would aid clarity and improve general practice".

4.65 Guy Skipwith suggested that where the credit agreement is not regulated, the borrower may nevertheless be in need of protection and the prominent statements would be helpful.

Q16: SANCTION FOR FAILURE TO COMPLY

4.66 We proposed that where the lender does not comply with the document requirements, it should lose any right to the secured goods both as against the borrower and as against third parties. There were 22 responses to this question, of which 14 (64%) were in agreement. Five consultees disagreed and three answered "other".

Arguments in favour

4.67 Consumer groups were generally in favour of the proposal. Money Advice Trust wrote that "lack of compliance is very likely to cause detriment to borrowers".

4.68 StepChange also suggested sanctions against the lender's ability to pursue repayment of the loan:

> In the case where there is a failure to comply with vehicle mortgage document requirements, the lender should also lose the automatic right to enforce recovery on the loan through court action. Instead the court should have discretion over whether an enforcement order for recovery of the loan should be granted depending on the circumstances of the case.

Arguments against

4.69 A number of consultees felt that the sanction would be too harsh and inflexible. Constantine Cannon LLP wrote that the sanction is "excessively formalistic" and that:

> As between lender and borrower, the position ought to be that evidence of the principal terms of the goods mortgage can be adduced under general principles… As against third parties, registration under the Goods Mortgages Act should be the test.

4.70 The Bar Council cautioned against an inflexible sanction:

> For example, if information relating to the witness was incorrect it might cause no detriment to the borrower yet it would render the security unenforceable. Experience with the CCA suggests that it may be better to align the sanctions which would apply to those which apply there – ie that any defect will render the agreement unenforceable without a court order.

4.71 Citizens Advice, on the other hand, thought that the proposed sanction would not be a sufficient deterrent and that lenders should be limited to recovering only the principal loan amount.

Other

4.72 Dr Akseli and Dr Thomas made reference to proposed reforms to second mortgages arising from European Union legislation. They suggested that there might be cross-over.

5. PROPOSALS FOR REFORM: MODERNISING THE REGISTRATION REGIME

5.1 In Chapter 10 of the consultation paper, we set out proposals to modernise the registration regime. We proposed that vehicle mortgages should not be registered at the High Court, for which there was very strong support. Instead, we proposed that they should be registered with designated asset finance registries, while other goods mortgages should continue to be registered at the High Court by way of a streamlined regime.

5.2 A common theme in many consultees' answers was the desire for much more radical reform with the aim of putting in place a single comprehensive electronic register.

Q17(1): VEHICLE MORTGAGES: NO REQUIREMENT TO REGISTER AT THE HIGH COURT

5.3 We asked consultees if they agreed that there should not be any requirement to register vehicle mortgages at the High Court. This question received 23 responses, of which 21 (91%) were in agreement. Two consultees answered "other".

Arguments in favour

5.4 There was widespread support for the proposal from asset finance registries, logbook lenders and consumer groups. Many consultees noted that the High Court is entirely unfit for purpose. As Guy Skipwith put it:

> High Court registration is expensive and cumbersome for lenders, and adds to the cost of loans secured by the bills/mortgages. Also, because the register does not provide for checks against the vehicles concerned, I see no benefit in requiring vehicle mortgages to be registered at the High Court.

5.5 Money Advice Trust echoed this view:

> It is very difficult to search and the process is obscure, expensive and so complex that no one can properly comply.

Other

5.6 The Campaign for Fair Finance emphasised the need for an electronic register while the City of London Law Society (CLLS) said that it did not support the proposed new vehicle mortgage.

Q17(2): VEHICLE MORTGAGES: REGISTRATION WITH DESIGNATED ASSET FINANCE REGISTRIES

5.7 We proposed that logbook lenders 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. There were 23 responses to this question, of which 21 (91%) were in agreement. One consultee disagreed and one responded "other".

Arguments in favour

5.8 Both the asset finance registries that responded to this question agreed with the proposal. HPI wrote:

> In terms of the priorities regime we consider that registration is the key to establishing perfection against third parties and that priority should be determined at the date of registration and not the date of creation of the document. This would then introduce a notice filing mechanism and would entail the lenders abiding by registration protocols supported by appropriate technological capabilities, potentially set out by reference to industry standards.

5.9 Cheshire Datasystems Limited (CDL) noted that:

> Lenders should be ensuring their assets are registered with all 3 asset finance registries, MARS members, otherwise this limits consumer options as to which company they should be conducting a provenance check with.

5.10 Some consultees agreed with the proposal but worried about the cost to consumers of searching asset finance registries. The General Council of the Bar of England and Wales (the Bar Council) expressed reservations about private commercial entities undertaking a statutory function.

Arguments against

5.11 The Secured Transactions Law Reform Project (STR) thought the proposal is a short-term solution. In the long-term, there should be a single comprehensive electronic register:

> We disagree that the process of establishing a central electronic asset finance register would unduly delay the reform of the Bills of Sale Acts. The proposal to designate asset finance registries is a short-term response without taking due consideration of what needs to be done to improve access to secured credit by individuals in the longer term.

Q17(3): VEHICLE MORTGAGES: PRIORITY

5.12 We asked whether priority should be determined by the date and time that the details of the vehicle mortgage become publicly available. We received 23 responses to this question, 20 (87%) of which were in agreement. One consultee answered "no" and two consultees answered "other".

Arguments in favour

5.13 CDL pointed out that the proposal would benefit both the industry and consumers:

> If the vehicle mortgage is registered in a timely manner with MARS members, within 24 hours, then this will help to protect the lender and consumers.

5.14 The Finance & Leasing Association (FLA) agreed with the proposal but thought that the meaning of "publicly available" should be clarified.

Arguments against

5.15 The consultees who answered "no" or "other" thought that priority should be determined by other means, though both recognised that this could happen simultaneously with the details of the vehicle mortgage becoming publicly available. The CLLS said that priority should be determined from the time the documents are filed for registration. The STR thought that the time the vehicle mortgage is entered on the register should determine priority.

Q18(1): WHO SHOULD DESIGNATE ASSET FINANCE REGISTRIES?

5.16 We asked consultees if they agreed that a government entity should designate asset finance registries as suitable to register vehicle mortgages. There were 22 responses to this question, of which 15 (68%) agreed. Two consultees disagreed and five answered "other".

Arguments in favour

5.17 A number of logbook lenders and consumer groups supported the proposal. Guy Skipwith suggested that the Financial Conduct Authority should be responsible for designation.

Preference for a state-run register

5.18 Some consultees thought that the state should have responsibility for registration of vehicle mortgages. The Bar Council and DTW Associates Limited thought that the Driver and Vehicle Licensing Agency should be responsible for registration. Simmons & Simmons LLP said:

> Designation should be carried out by the State and it would be preferable for there to be one single, purpose-built register to register vehicle mortgages.

5.19 Simmons & Simmons LLP's preference for a single register was also a common theme among consultees who did not agree with the proposal. Money Advice Trust, for example, was concerned that asset finance registries would not have sufficient data sharing arrangements.

The views of asset finance registries

5.20 Both asset finance registries answered "other". HPI said:

> Whilst the means to share registration data with other qualifying asset registration agencies (ARAs) already exists, it does not always result in complete and accurate data being held by each. In addition, data exchange between ARAs does not take place in real time but in a daily batch process, resulting in a delay in registration of one business day for recipient ARAs and consequent inconsistencies between the records held by each agency.

HPI recommended a single "master register" which would share data with other asset finance registries.

5.21 CDL on the other hand said that its support for the proposal is conditional on the recognition of all existing asset finance registries.

Q18(2): THE CRITERIA FOR DESIGNATION

5.22 We proposed that asset finance registries seeking designation should satisfy four criteria: adequate data sharing; suitable cost structure; robust technology coupled with indemnities; and a complaints system. We received 22 responses to this question, of which 18 (82%) were in agreement. Four consultees answered "other".

Arguments in favour

5.23 The Retail Motor Industry Federation (RMI) thought that HPI, Experian and CDL could satisfy the proposed criteria:

> There are a number of existing vehicle finance registries that are already fully established and operating effectively, notably HPI, Experian and CDL. These organisations offer a robust and reliable data source for checking outstanding finance on a particular vehicle. The RMI suggests that HPI, Experian and CDL are included as designated registers.

5.24 As to the asset finance registries themselves, HPI commented that the current industry standard, the ISAE3000 audit, represents a reasonable minimum standard. CDL reiterated that all registrations should be shared between asset finance registries within 24 hours.

5.25 The FLA provided detailed comments on each of the proposed criteria. It felt that data sharing is not compulsory or integral:

> Of more importance will be communicating to vehicle mortgage providers the value of registering interests through any new asset registration process.

Other

5.26 The Bar Council expressed concerns as to the practicability of the proposed registration regime. It also thought that there should be a guarantee as to the financial status of asset finance registries.

5.27 The STR thought that data sharing would need to be immediate in order to be "adequate".

5.28 Both Mobile Money and DTW Associates Limited raised the issue of pre-emptive registration and wanted the practice banned. As DTW Associates Limited put it:

> To illustrate: a customer may obtain a quote from various companies whilst exploring the market. A few lenders will register their security on the vehicle at this point, claiming that the customer has an appointment to sign an agreement with them. At the point when another lender does a HPI check, the customer is made aware of this but given the complications in requesting its removal, they often feel trapped into completing the loan with the company that wrongfully registered their interest.

Q19: NEW ENTRANTS TO THE ASSET FINANCE REGISTRY MARKET

5.29 We expect HPI, Experian and CDL to be the initial designated asset finance registries. We asked if there were likely to be new entrants. Six consultees responded.

5.30 The RMI said that it is very difficult to predict if there would be new entrants. On the other hand, DTW Associates Limited thought new entrants likely, given the proposed remit of designated asset finance registries.

5.31 Other consultees referred to the criteria that new entrants must satisfy. CDL wrote that:

> To operate such services is a lengthy and costly exercise. Any new entrants should have to undergo the strict due diligence applied to the three MARS members currently in place.

5.32 The FLA suggested that any asset finance registry which passed the ISAE3000 audit and which had been subject to independent scrutiny should be designated. It referred in particular to TotalCarCheck. The Chartered Trading Standards Institute (CTSI) wrote that new entrants must make information readily available to consumers.

5.33 Mobile Money asked us to consider other products offered by the existing asset finance registries, including low priced checks which do not reveal logbook loans.

Q20(1): OTHER GOODS MORTGAGES: ENFORCEABILITY AGAINST THE BORROWER

5.34 We asked consultees if they agreed that mortgages on goods other than vehicles should be enforceable against the borrower whether or not they have been registered. We received 14 responses, of which 12 (86%) were in agreement. Two consultees disagreed.

Arguments in favour

5.35 Guy Skipwith commented that enforceability should be the same for vehicle mortgages and other goods mortgages.

Arguments against

5.36 Money Advice Trust thought that the proposal would not incentivise lenders to register.

5.37 The CLLS wrote:

> we would prefer validity to depend on registration, as with security created by companies that requires registration at Companies House.

Q20(2): OTHER GOODS MORTGAGES: ENFORCEABILITY AGAINST THIRD PARTIES

5.38 We asked consultees if they agreed that mortgages on goods other than vehicles should not be enforceable against a third party or trustee in bankruptcy unless they have been registered with the High Court. This question received 13 responses, of which 10 (77%) were in agreement. One consultee disagreed while two answered "other".

Arguments in favour

5.39 Guy Skipwith wrote:

> Registration is an important safeguard for third parties and provides trustees in bankruptcy with necessary information about a bankrupt's estate (assets).

Arguments against

5.40 Only the CTSI disagreed on the basis that:

> The asset might be a saleable asset and third party liability should therefore be limited.

Other

5.41 Constantine Cannon LLP agreed with the proposal insofar as it relates to the effect of registration. It thought though that the High Court is unlikely to be able to run an efficient goods mortgage register:

> The fact that few bills of sale have been registered in relation to loans other than logbook loans should not be an argument not to invest in a register that is fit for purpose. The fact that few bills of sale are registered in relation to loans other than logbook loans is a reflection of the fact that the Bills of Sale Acts are unsuitable to modern lending. There is, however, a large market for loans against personal goods, especially fine art, antiques and collectible items.

5.42 It felt that the United Kingdom is at a competitive disadvantage compared with the United States and recommended that something akin to the regime of personal property security in the United States should be implemented here.

Q21: SIMPLIFYING THE HIGH COURT REGISTRY

5.43 We made proposals to simplify the registration regime at the High Court for other goods mortgages. We asked consultees if they agreed with these proposals. There were 18 responses to this question, of which 10 (56%) were in agreement. Four consultees disagreed and four answered "other".

Arguments in favour

5.44 A number of consultees agreed with the proposals and also made further suggestions. Dr Akseli and Dr Thomas, Boodle Hatfield LLP and Constantine Cannon LLP all wanted registration to also record the location of the goods.

5.45 Gregory Hill thought that manual registration should still be possible in case of technological failure.

Arguments against

5.46 Graham McBain advocated a single "Charges Register" covering both goods mortgages and assignments of book debts. He argued that this would result in cost savings and reduce uncertainty and fraud. The STR made similar arguments.

5.47 Money Advice Trust argued for a 28 day statutory time limit for registration.

Calls for an electronic register

5.48 A number of consultees, regardless of whether they agreed, disagreed or answered "other", called for an electronic register. The CLLS said:

> the High Court is wholly unsuitable as a registration body and any registration body should use modern electronic means of communication in the same way as envisaged for vehicle mortgages.

5.49 Guy Skipwith suggested that asset finance registries could also register other goods mortgages. If the High Court register is to be retained, he expressed a preference for an electronic register that could be searched online.

5.50 In relation to the art market, Boodle Hatfield LLP wrote:

> Due to the legal requirements the market currently relies on pledges so the artwork cannot remain in the possession of the borrower… We have spoken to several major lenders in this field who have expressed interest in this consultation and the possibilities that it might open up. Given its share of the global art market, it is surprising that the UK does not have a stronger art lending market. This is in contrast to the USA which has the register under the Uniform Commercial Code (UCC). The UCC lien register is electronic and free to search by borrower personal name, business or file number.

5.51 Constantine Cannon LLP suggested that reform may lead to greater use of goods mortgages if the register is fit of purpose:

> We expect that as soon as new legislation is introduced, there will be a significant rise in the registration of security interests in goods other than vehicles, provided that a register that is fit for purpose is in place. Such a register was introduced more recently in France and in Belgium. The Government should not base its decision to implement an electronic public-facing registry on the current registration figures.

Q22(1): ACCURACY OF THE REGISTERS: NOTICES OF SATISFACTION

5.52 In order to maintain the accuracy of the registers, we proposed that lenders should be required to enter notices of satisfaction in respect of satisfied vehicle mortgages and goods mortgages. There were 23 responses to this question, of which 19 (83%) were in agreement. One consultee disagreed and three answered "other".

Arguments in favour

5.53 A number of consultees agreed that this is an important requirement. CDL said:

> The removal of a vehicle mortgage, once the loan has been repaid, is as important as registering the loan.

5.54 Guy Skipwith noted:

> The failure to keep the register up to date in this way (whether it is the High Court register or asset finance registries) could be detrimental to borrowers who have repaid their goods and vehicle mortgages and wish to enter a further mortgage secured on the same asset. If a legal requirement to enter notices of satisfaction is introduced, consideration should be given to what, if any, sanctions there should be against lenders that do not comply.

5.55 The FLA agreed with the proposal and remarked that it already takes place with regard to asset finance registries:

> Lenders already delete finance interests. Asset registration agencies are also directed by lenders to auto-delete on the date the agreement is due to expire.

Arguments against

5.56 Money Advice Trust felt that the requirement should be more robust, especially where the lender does not comply:

> Instead, the responsibility is being transferred to the borrower to enter the notice instead. This does not seem fair or reasonable… At the very least the asset finance registry should be required to be proactive in this process.

Other

5.57 Mobile Money agreed that satisfied vehicle mortgages should be removed from the register but argued that deletion from the register, rather than entry of a notice of satisfaction, is all that is needed.

Q22(2): ACCURACY OF THE REGISTERS: BORROWER'S ABILITY TO ENTER NOTICE OF SATISFACTION

5.58 Where a lender refuses to enter a notice of satisfaction, we proposed that the borrower should be able to do so (at the lender's cost if successful). There were 22 responses to this question, of which 16 (73%) were in agreement. Four consultees disagreed and two answered "other". Those consultees who agreed did not expand on their reasons.

5.59 Two logbook lenders, Mobile Money and DTW Associates Limited, opposed the proposal. Mobile Money argued that there is no need for this measure since deletion of the registration removes the vehicle mortgage from the register entirely.

5.60 The FLA also disagreed, expressing concern that the proposal could facilitate fraudulent behaviour by borrowers and that there are already sufficient regulatory incentives in place to encourage lenders to enter notices of satisfaction.

5.61 Where consultees answered "other", they sought further clarification. Money Advice Trust said it is unclear if the borrower would have to pay costs upfront and claim them back from the lender where successful. It felt that this would be unfair.

Q22(3): ACCURACY OF THE REGISTERS: RE-REGISTRATION

5.62 We proposed that vehicle mortgages and goods mortgages should be re-registered every 10 years. There were 21 responses to this question, 10 (48%) of which were in agreement. Seven consultees disagreed while four answered "other". Those consultees who agreed did not expand on their reasons for doing so.

5.63 A number of consultees who disagreed argued for a shorter re-registration period. Such consultees generally considered the proposal as it applies to logbook loans. For example, Guy Skipwith said:

> Many vehicle mortgages are for terms of less than 10 years. Therefore, the requirement to re-register every five years should be retained whether the registration is with the High Court or an asset finance register.

5.64 The STR, on the other hand, could not see the need for re-registration at all:

> Where the lender is required to register a notice of satisfaction, the risk that registrations against vehicles would be 'empty' (ie visible on the register but not in fact securing any debt) is significantly reduced.

5.65 Where consultees answered "other", they similarly questioned the need for re-registration. CDL said:

> We are not sure that this would be a requirement if the lender is registering and removing the loan from asset registration agencies, MARS members.

5.66 The Bar Council said:

We think it would make sense, at least for vehicle mortgages, for the registration to lapse at the end of the term of the agreement. Lenders would then only have to re-register if the agreement was extended beyond the original term. A ten year requirement would be unlikely to have any impact on the vast majority of vehicle mortgages in any event.

6. PROPOSALS FOR REFORM: PROTECTING BORROWERS

6.1 In Chapter 11 of the consultation paper, we made proposals to give borrowers who grant vehicle mortgages and goods mortgages more protection. We made two key proposals, both drawn from hire purchase legislation.

Q23(1): THE NEED FOR A COURT ORDER

6.2 Where a goods mortgage secures a "regulated credit agreement" as defined by the Consumer Credit Act 1974 (CCA 1974), we proposed that the lender should be required to seek a court order before repossession. This question received 26 responses, of which 15 (58%) were in agreement. Seven consultees disagreed while four answered "other".

Arguments in favour

6.3 Many consumer groups agreed with the proposal. Citizens Advice wrote:

> 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 practice by firms.

6.4 StepChange agreed:

> We welcome and are very supportive of the Law Commission's proposals to extend the requirement for a court order before repossession to all regulated credit agreements secured by a goods mortgage. We agree with the Law Commission's view that just relying on consumer protections such as time orders under section 129 Consumer Credit Act 1974 has not provided people in financial difficulty with sufficient protection.

6.5 Some industry representatives were also supportive. The Retail Motor Industry Federation said:

> The RMI is in full agreement that the requirement for a court order before repossession should be extended to all regulated credit agreements… RMI members have consistently struggled with this situation and their customers.

6.6 In respect of small businesses, the Federation of Small Businesses said:

> FSB believes borrowers need stronger protection. For some smaller businesses, a vehicle could be integral to their livelihood and the prospect of repossession could be disastrous… FSB supports there being a court order before repossession on the basis that it is desirable to have impartial oversight of the repossession process.

Arguments against

6.7 V5 Loans was concerned that the cost of repossession could be disproportionate when compared with the loan amount:

> Log book loans and the cars on which they are secured are low value. The most common loan value is £500 and the most common car value is £1000. A court order will cost £1000, the cost for which will be passed on to the borrower… Court orders might be appropriate for HP agreements, but an average HP agreement could be £15k or more. A £1000 court order is far less significant to a typical HP agreement than a logbook loan.

6.8 Three consultees, including Mobile Money, answered "no" to this question on the basis that the court order should not be available where one third of the total loan amount has not been repaid. This is addressed by question 23(2) in the consultation paper.

Other

6.9 AutoMoney was not opposed to the principle of the court order, but suggested that there should be a procedure to address borrowers who do not engage with the court process:

> Logbook loans involve small loans on older vehicles. The cost of a court order is more damaging than in hire purchase. Costs associated with court actions will lead to lenders writing off small balances rather than pursuing them. That will lead to borrowers refusing to pay final payments. The LC's own research shows that borrowers don't engage with court. The LC should propose a process that affords borrowers the right to request the involvement of the court if they want the court's assistance.

6.10 AutoMoney proposed that there should be an "opt-in" procedure. If the borrower has paid one third of the total loan amount when they default, the lender should send a notice informing the borrower that they have the right to request that the lender seek a court order. Only if the borrower responds to this notice indicating that they would like to avail themselves of the court order would the lender be required to go through the court process.

Q23(2): COURT ORDER: THE ONE THIRD RULE

6.11 As in hire purchase law, we proposed that 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. We asked consultees if they agreed. There were 22 responses, of which 13 (59%) were in agreement. Seven consultees answered "no" while two answered "other".

Arguments in favour

6.12 Some consultees indicated that consistency with hire purchase law would improve clarity and fairness. Gregory Hill said:

> As far as possible, borrower protection (and third-party protection) provisions relating to goods mortgages should be the same as those relating to hire-purchase – even if the hire-purchase rules were thought to be less than ideal, there would still be considerable benefit in not creating further distinctions between different classes of what are all in substance consumer credit transactions.

Arguments against

6.13 There was opposition to the proposal from two consumer groups. Money Advice Trust wanted the requirement for a court order to apply in all cases. StepChange agreed, arguing that it is inappropriate to draw upon hire purchase legislation:

> When a borrower is looking to purchase a new vehicle using hire purchase they are in a very different position to borrowers who use their goods/vehicle as security for a loan. In hire purchase the lender is risking the value of the goods whereas in logbook loans the borrower is risking their own goods in exchange for a loan so are likely to be more financial vulnerable.

6.14 V5 Loans argued that the one third rule would have a detrimental effect on forbearance practices:

> The introduction of court orders will inhibit the lenders' forbearance, as they will be put at risk, if the borrower defaults later during the loan term. Introducing court orders will increase repossessions as a result, benefiting neither lender nor borrower.

Other

6.15 Guy Skipwith noted that under the CCA 1974, the hirer in a hire purchase agreement can give informed consent to repossession, obviating the need for a court order. He remarked that this provision should not apply to goods mortgages to avoid the risk of lenders obtaining "informed consent" under duress or by fraudulent means.

Q23(3): COURT ORDER: PASSING ON THE COURT FEE

6.16 We asked consultees if they agreed that lenders should be permitted to pass on the court fee to the specific borrower in question if a court order is granted or if a suspended court order eventually results in repossession. There were 19 responses to this question, of which 13 (68%) were in agreement. One consultee disagreed and five answered "other".

Arguments in favour

6.17 StepChange commented that it understood the reasons for the proposal but thought it essential that further costs associated with the court process should not be passed on to the borrower.

Arguments against

6.18 The Chartered Trading Standards Institute (CTSI) disagreed with the proposal but provided no further comment.

Other

6.19 Two logbook lenders, V5 Loans and DTW Associates Limited, commented that if the borrower could not afford the loan repayments then they would be unlikely to be able to afford the court fee.

6.20 The General Council of the Bar of England and Wales (the Bar Council) argued that costs should be a matter of court discretion:

> We do not see a particular justification for confining the Court's discretion as to costs in this manner. There are many other areas where borrowers who are in debt could legitimately argue that it would be harsh to award costs but this is in our view best left to the discretion of the Court.

Q23(4): COURT ORDER: LIABILITY FOR SHORTFALL

6.21 We asked consultees if they agreed that lenders should be permitted to have recourse to borrowers for any shortfall following sale of the repossessed goods. There were 22 responses to this question, of which 19 (86%) were in agreement. Two consultees disagreed and one answered "other".

Arguments in favour

6.22 Dr Akseli and Dr Thomas noted that the proposal would mirror the position in mortgages of real property.

6.23 Gregory Hill and the Secured Transactions Law Reform Project agreed with the proposal but thought that the parties should be free to limit personal liability up to the value of the goods.

Arguments against

6.24 Money Advice Trust expressed confusion as to how the proposal would work:

> With hire purchase judgments for delivery of goods, we understand that the lender would need to issue a county court money claim for the shortfall and cannot rely on the judgment for delivery of goods to serve that purpose.

Other

6.25 StepChange suggested that there should be limitations on the amount of shortfall that could be pursued:

> One reason why there might be a shortfall after sale of repossessed goods is where the lender has imposed additional interest, default fees and charges that take the outstanding balance over the value of the vehicle… We would recommend that lenders should only be able to pursue borrowers for a shortfall in circumstances such as where the security does not cover the original debt (less any early settlement discount) or where the borrower has acted in bad faith.

Q23(5): COURT ORDER: CHARGING ORDER AGAINST BORROWERS' HOMES

6.26 We asked consultees if they agreed that lenders should be permitted to seek a charging order against borrowers' homes only in the limited circumstances set out in the code of practice for logbook lenders drafted by the Consumer Credit Trade Association (CCTA Code). There were 19 responses to this question, of which 13 (68%) were in agreement. Four consultees disagreed and two answered "other".

Arguments in favour

6.27 StepChange supported the proposal but thought that there should be an outstanding loan amount of £1,000, rather than £500, before the lender could seek a charging order:

> This is because we believe that the lender should look to other court powers to force repossession rather than a charging order on a home for smaller outstanding loan amounts of under £1000.

Arguments against

6.28 Guy Skipwith answered "no" but made the same point as StepChange: that £500 is too low a threshold and that it should be £1,000 instead.

6.29 Mobile Money and the Bar Council did not see the need for any special provision on the point.

Other

6.30 Gregory Hill said that the remedies that apply to recovery of ordinary liabilities should apply to vehicle mortgages, subject to consumer credit legislation.

Q23(6): COURT ORDER: PROHIBITION ON ORDERS FOR SALE

6.31 We asked consultees if they agreed that, in accordance with the CCTA Code, lenders should not be able to apply for an order seeking sale even where they have obtained a charging order against borrowers' homes. There were 19 responses to this question, of which 13 (68%) were in agreement. Four consultees disagreed and two answered "other".

Arguments in favour

6.32 Money Advice Trust supported the proposal, but asked for clarification on how the provisions in the CCTA Code would be given legal effect:

> Is it intended for the CCTA Code provisions to form part of the legislation to prevent applications in these circumstances? This is the only way we can see that such provisions would be binding.

6.33 Dr Akseli and Dr Thomas agreed with the thrust of the proposal but questioned whether it should take effect as an absolute prohibition or rather whether sale should be prohibited only where it is a disproportionate step.

Arguments against

6.34 Mobile Money argued against the proposal on the basis of how the goods mortgage market may expand:

> It is probable that the proposals to modernise this law will lead to a wider market with larger advance values. Should a large debt remain unpaid, it may be appropriate to seek both a charging order and order for sale.

6.35 The Bar Council argued that the proposal is unnecessary because the Financial Conduct Authority's consumer credit rules could be applied to the same effect.

Q23(7): COURT ORDER: REPOSSESSION BY EMPLOYEES AND DEBT COLLECTORS

6.36 We asked consultees if they agreed that lenders should be permitted to use their own employees or debt collectors to repossess goods. There were 18 responses to this question, of which 16 (89%) were in agreement. One consultee disagreed and one answered "other".

Arguments in favour

6.37 Most logbook lenders and consumer groups supported the proposal. Citizens Advice wrote:

> 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.

Arguments against

6.38 Money Advice Trust expressed doubts about the proposal:

> We would suggest that enforcing a return of goods order without first having obtained a warrant is not permitted as it is arguable that the goods are "protected goods" under s90 of the Consumer Credit Act 1974. The creditor has effectively prevented the debtor from exercising the right to seek a suspension of the warrant of delivery or a time order and has therefore repossessed the goods without exercising due process.

Q24(1): A LEGAL RIGHT OF VOLUNTARY TERMINATION

6.39 Where a goods mortgage secures a regulated credit agreement, we proposed that borrowers should have a right of voluntary termination. There were 23 responses to this question, of which 21 (91%) were in agreement. One consultee answered "no" and one consultee answered "other".

Arguments in favour

6.40 The proposal was uncontroversial for logbook lenders, many of whom already permit voluntary termination under the CCTA Code. As the Campaign for Fair Finance put it:

> I cannot see an issue with this as it would only really affect non CCTA members.

6.41 Consumer groups also supported the proposal. Citizens Advice wrote:

> 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.

6.42 StepChange emphasised the importance of giving borrowers control:

> We believe voluntary termination does give borrowers some control over their borrowing and that this important safeguard should be given a statutory basis as it has under consumer protections for hire purchase.

It suggested though that consideration should be given as to how to prevent borrowers from being pressured into giving up their vehicle.

Arguments against

6.43 Only Money Advice Trust opposed the proposal. It was concerned that voluntary termination would make it easy for consumers to give up a vehicle that is worth much more than the amount of the loan.

Other

6.44 Guy Skipwith wanted to clarify that voluntary termination would be effected by written notice from the borrower to the lender, as opposed to physical delivery of the goods.

Q24(2): AT WHAT POINT DOES THE BORROWER LOSE THE RIGHT OF VOLUNTARY TERMINATION?

6.45 We proposed that the right of voluntary termination should be available up until the point at which the lender incurs costs to repossess the vehicle or other goods. There were 18 responses to this question, of which 13 (72%) were in agreement. One consultee disagreed and four answered “other”.

Arguments in favour

6.46 Only one consultee expanded on their answer. Dr Akseli and Dr Thomas thought that the proposal should be considered in conjunction with the lender’s ability to pursue the borrower for shortfall.

Arguments against

6.47 Guy Skipwith suggested that the right should be available until the goods mortgage has been terminated by the lender following a default notice. It would otherwise be too easy for a lender to incur costs early in the process.

Other

6.48 The Bar Council noted that there is controversy over whether the 50% threshold in hire purchase legislation acts as a cap to the damages that may be awarded to the lender if it terminates a hire purchase agreement. It cautioned that similar arguments could be applied in this context with an even more marked effect given that the proposal is that voluntary termination acts as full and final settlement.

6.49 The City of London Law Society (CLLS) thought that voluntary termination should apply as it does in hire purchase and conditional sale legislation.

Q25(1): VOLUNTARY TERMINATION: IMMEDIATE AVAILABILITY

6.50 We asked consultees whether they agreed that the approach of the CCTA Code should be adopted such that voluntary termination is available immediately, without requiring any percentage of the loan to have been repaid. There were 20 responses to this question, of which 15 (75%) were in agreement. Two consultees disagreed and three answered "other". Those consultees who agreed did not expand on their reasoning.

6.51 HPI disagreed on the basis that the proposal would inhibit the use of goods mortgages in relation to higher value goods:

> If the proposals suggested by the Law Commission are implemented then it is self-evident that the vehicle mortgages will be confined to lower value used vehicles. This is potentially unfortunate in that it will inhibit innovation in financial services.

6.52 Money Advice Trust answered "other", agreeing that voluntary termination should be available immediately, but suggesting that there should be reimbursement of sums to the borrower that are over and above the outstanding loan amount.

Q25(2): VOLUNTARY TERMINATION: FULL AND FINAL SETTLEMENT

6.53 We asked consultees if they agreed that the right of voluntary termination should act as full and final settlement of all outstanding amounts. There were 20 responses to this question, of which 14 (70%) were in agreement. Three consultees disagreed and three answered "other". Those consultees who agreed did not expand on their reasoning.

6.54 DTW Associates Limited disagreed, noting that the lender should have the ability to chase significant shortfall or to refuse voluntary termination if the vehicle has suffered damage. The Chancery Bar Association made the same point.

Q25(3): LOSS OF THE RIGHT OF VOLUNTARY TERMINATION

6.55 We asked consultees if they agreed that voluntary termination should be available except where the goods have sustained malicious damage or if the borrower has contravened the obligation to take reasonable care of the goods and the resale value is significantly affected as a result. We received 20 responses to this question, of which 15 (75%) were in agreement. One consultee disagreed and four answered "other".

Arguments in favour

6.56 Most logbook lenders and consumer groups agreed with the proposal. Two logbook lenders – Mobile Money and DTW Associates Limited – as well as the Bar Council and HPI remarked that adequate insurance cover is generally required as a condition of lending.

6.57 Money Advice Trust agreed with the proposal but suggested that:

> there need to be protections built in to allow for disputes about whether vehicles have been maliciously damaged and a mechanism in place to determine whether the borrower has taken reasonable care of the vehicle".

Arguments against

6.58 Guy Skipwith argued that the position in the CCA 1974 should be replicated such that borrowers could exercise the right of voluntary termination regardless of the condition of the goods although they would be liable in damages for any failure to take care of the goods.

Other

6.59 In respect of vehicle mortgages, the Bar Council thought it is probably unnecessary to single out malicious damage since the cost of repair would be covered by a comprehensive motor insurance policy in most cases.

WHO CAUSED THE MALICIOUS DAMAGE?

6.60 We asked for 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.

6.61 Mobile Money wrote that proving who caused the malicious damage would be difficult and that, in any case, insurance would cover the cost of repair. Iyare Otabor-Olubor thought that malicious damage to the vehicle should be repaired by the borrower before they could exercise the right of voluntary termination. Gregory Hill and the CLLS both thought that the position should be the same as that in hire purchase.

6.62 Three consumer groups – Citizens Advice, Money Advice Trust and StepChange – supported such a provision. Dr Akseli and Dr Thomas thought that borrowers should be presumed to be honest and that it should be for the lender to prove that the damage was not caused by a third party. They thought that the borrower should only lose the right of voluntary termination if they caused the malicious damage.

Q26(1): SECURED LOANS TO BUY VEHICLES: DISCONTINUATION

6.63 In the consultation paper, we noted that bills of sale are sometimes used to buy vehicles on credit to evade the protections in hire purchase legislation. We thought that if the borrower protections we propose are introduced, vehicle mortgages would not be used in this way. We asked consultees if they agreed. We received 11 responses to this question, of which eight (73%) were in agreement. One consultee disagreed and two answered "other".

Arguments in favour

6.64 Money Advice Trust wrote:

> It would appear unlikely that lenders would want to use vehicle mortgages to secure the purchase of new vehicles on credit as the perceived advantages of a bill of sale over a hire purchase agreement would have disappeared.

6.65 The Bar Council agreed that such a practice would be "highly unlikely".

Arguments against

6.66 Guy Skipwith thought that vehicle mortgages for the purchase of vehicles on credit should be banned.

Other

6.67 The CTSI argued that vehicle mortgages for the purchase of vehicles on credit served a useful purpose:

> Chattel mortgages are confined to non-prime second hand vehicle purchases. It is in this market that retention of title clauses are so important. CTSI argues for their retention as we suspect that without them many less well-off families will be denied vehicle access.

Q26(2): SECURED LOANS TO BUY VEHICLES: FURTHER INTERVENTION

6.68 We did not feel that any further intervention would be needed to prevent vehicle mortgages being used to buy vehicles on credit. Six (75%) of the eight consultees who answered this question agreed. Money Advice Trust and Guy Skipwith disagreed. Those who agreed did not expand.

6.69 Money Advice Trust disagreed on the basis that it "could not predict how unscrupulous lenders would break the rules". Guy Skipwith wanted to see a ban on vehicle mortgages being used in this way.

Q27(1): NON-REGULATED CREDIT AGREEMENTS: COURT ORDER

6.70 Where a goods mortgage secures a non-regulated credit agreement, we did not feel that the court order would be necessary. There were 17 responses to this question, of which 11 (65%) were in agreement. Four consultees disagreed and two answered "other". Those consultees who agreed did not expand on their reasons for doing so.

6.71 Some consultees thought that the court order should still apply to goods mortgages securing non-regulated credit agreements on the basis that small unincorporated businesses may be vulnerable.

Q27(2): NON-REGULATED CREDIT AGREEMENTS: VOLUNTARY TERMINATION

6.72 Where a goods mortgage secures a non-regulated credit agreement, we did not feel that the right of voluntary termination would be necessary. There were 16 responses to this question, of which eight (50%) were in agreement. Six consultees disagreed and two answered “other”. Those consultees who agreed did not expand on their reasons for doing so.

6.73 Where consultees thought voluntary termination should still be available, this seemed to be on the basis that small unincorporated businesses could be as vulnerable as consumers.

7. PROPOSALS FOR REFORM: PROTECTING PRIVATE PURCHASERS

7.1 In Chapter 12 of the consultation paper, we highlighted the detriment suffered by purchasers who buy vehicles subject to logbook loans. We proposed that where a private purchaser buys goods subject to a goods mortgage in good faith and without actual knowledge, they should receive legislative protection.

Q28(1): SHOULD PRIVATE PURCHASERS ACQUIRE OWNERSHIP WHERE THEY ACT IN GOOD FAITH AND WITHOUT ACTUAL KNOWLEDGE?

7.2 We asked consultees if they agreed that a private purchaser who acts in good faith and without actual notice of the goods mortgage should acquire ownership of the goods. This question received 30 responses, of which 20 (67%) were in agreement. Two consultees disagreed and eight answered "other".

Arguments in favour

7.3 Two logbook lenders – Mobile Money and DTW Associates Limited – agreed with the proposal. It was thought that lenders' unfettered ability to repossess and the unfair options presented to private purchasers are inappropriate. Mobile Money said:

> We recognise the impact acting under the current legislation can bring about on innocent third parties. Such powers are inappropriate in a modern marketplace and the ability for a consumer to cheaply obtain a vehicle provenance check, with the requisite publicity of this service, should markedly reduce the number of genuinely innocent third parties caught in such a situation.

7.4 Consumer groups supported the proposal, noting the hardship the current law causes. StepChange wrote:

> This is an important protection for innocent purchasers of second hand vehicles who find that they either have to pay off a logbook loan they did not take out or have to give up their recently purchased vehicle.

7.5 There was also academic support. Dr Akseli and Dr Thomas wrote of the need for broad protection:

> This exception must be drawn broadly, and strongly, in order to prevent future judicial constriction of any legislative exception to the nemo dat rule (which has been the consistent history in this area of law). Furthermore, it is important to clarify what exactly is meant by "private purchaser"; specifically it is important to define "purchaser" in a broad sense, so as to prevent the possibility of future judicial constriction in instances where the disponee of goods acquires them by means of something other than an outright sale.

Arguments against

7.6 One logbook lender, V5 Loans, expressed concern that the proposal would encourage fraud:

> unscrupulous borrowers will 'sell' the vehicle to a friend, knowing their debt could not be pursued.

Other

7.7 AutoMoney agreed that private purchasers who act in good faith and without actual knowledge should receive protection, but thought that a deterrent should be put in place in order to dissuade borrowers from engaging in fraud:

> The company is very concerned that publicity surrounding the new right will lead to a wave of abuse if more is not done to also penalise the wrongful sale of mortgaged goods by borrowers. The company believes that the only thing presently stopping some borrowers from selling their vehicles after taking out a logbook loan is the assumption that the third party will pursue them to rescind the purchase. The LC should propose that the [Goods Mortgage] Act provide very clear penalties. It should consider having the [Goods Mortgage Act] provide for additional lender rights, including the right to seek penalties or fees against borrowers.

7.8 AutoMoney also suggested that private purchasers who claim to have innocently bought the goods should have some responsibility to cooperate with the lender.

7.9 Similarly, Loans2Go did not oppose the proposal but thought that:

> The approach to this would need to be robust and thorough – how do we establish that a private party has acted in 'good faith'?

7.10 A number of consultees pointed to registration as a means of putting purchasers on notice. The Campaign for Fair Finance (CFF) thought that searching an asset finance register should be a compulsory part of purchasing a vehicle. Dennis Rosenthal argued that registration with a designated asset finance registry should constitute constructive notice.

Q28(2): VEHICLES OR ALL GOODS?

7.11 We proposed that protection for private purchasers should apply to all goods subject to a goods mortgage and not just vehicles. We received 16 responses to this question, of which 14 (88%) were in agreement. One consultee disagreed and one answered "other".

7.12 Consultees noted that all goods mortgages are the same type of transaction and so should be treated the same, regardless of whether the borrower has granted security over a vehicle or other goods.

Q28(3): COURT ORDER BEFORE REPOSSESSION

7.13 We asked consultees if they agreed that if the private purchaser did not act in good faith and/or had actual notice of the goods mortgage then lenders should only be entitled to repossess from them with a court order. There were 22 responses to this question, of which 15 (68%) were in agreement. Five consultees disagreed and two answered "other".

Arguments in favour

7.14 Money Advice Trust, Citizens Advice and StepChange all supported the proposal. It was felt that private purchasers should be given a chance to put their side of the story.

7.15 Similarly, the General Council of the Bar of England and Wales (the Bar Council) supported the proposal as such issues usually require adjudication.

Arguments against

7.16 A number of logbook lenders opposed the proposal. Mobile Money did so on the basis that if a bad faith private purchaser is put on notice of court proceedings then they may seek to pass the goods on to a further third party. V5 Loans opposed the proposal because the value of the vehicle will often be less than the cost of a court order.

7.17 The Chancery Bar Association (ChBA) could not see the rationale for the proposal. It said that such issues will normally end up in court in any event because the private purchaser will allege good faith.

Q28(4): READILY AVAILABLE VEHICLE PROVENANCE CHECKS?

7.18 We asked consultees if they agreed that the 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. There were 20 responses to this question, of which 11 (55%) were in agreement. Four consultees disagreed and five answered "other".

Arguments in favour

7.19 HPI argued that vehicle provenance checks are a vital part of buying a vehicle:

> It is vital that checking an asset register should be a routine part of acquiring a motor vehicle. This is especially the case in respect of logbook loans in the subprime context where lending by reference to a security interest on a motor vehicle is a key part of the lending decision.

7.20 Money Advice Trust supported the proposal but only if consumers had access to free vehicle provenance checks from a single comprehensive electronic register.

Arguments against

7.21 Cheshire Datasystems Limited expressed concern that free vehicle provenance checks may harm the business models of asset finance registries:

> If there is no return on investment then the quality of services will suffer which will have an effect on all users of these services.

7.22 StepChange believed that the regulation-making power is unnecessary. It said that even if vehicle provenance checks were free, private purchasers should be protected where they do not check. It was concerned that an advertising campaign would be unlikely to generate the publicity required.

7.23 The ChBA thought that if the new legislation provides private purchasers with protection, then consumers will not be sufficiently motivated to conduct vehicle provenance checks.

Other

7.24 Some consultees wondered whether consumers would ever carry out enough vehicle provenance checks. Citizens Advice said:

> 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: SHOULD PROTECTION APPLY ONLY TO "DISPOSITIONS"?

7.25 We asked for views on whether the protection for private purchasers 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. Consultees generally preferred to limit the protection to "dispositions", or suggested only small extensions.

7.26 HPI noted that it did not see a compelling case for extending the protection. It was not aware of any significant difficulties in this context and it is important that adequate value could be demonstrated as this goes to good faith. Citizens Advice agreed that purchase appears to be the main problem, noting that all the cases it had dealt with had involved purchasers. Gregory Hill argued for uniformity in the law.

7.27 Of those arguing for an extension, Money Advice Trust thought that the protection should extend as far as possible. The Bar Council commented that it could see the rationale for extending the protection to exchanges.

Q30: FCA JURISDICTION OVER TREATMENT OF PRIVATE PURCHASERS

7.28 We proposed that the Financial Conduct Authority (FCA) should be given jurisdiction to curb abuses in the way that logbook lenders treat private purchasers. There were 21 responses to this question, of which 16 (76%) were in agreement. One consultee disagreed and four consultees answered "other".

Arguments in favour

7.29 Mobile Money and DTW Associates Limited – both logbook lenders – supported the proposal. Consumer groups were also in favour, with StepChange noting:

> Private purchasers are placed in the position of consumers of logbook loans and should be given the protection and forbearance afforded to consumers by FCA rules.

Arguments against

7.30 Only Loans2Go disagreed with the proposal:

> This would give the FCA far too wide a range and take away any responsibility from private purchasers, especially if a new asset registry were to be created.

Other

7.31 Some consultees thought that FCA jurisdiction should be conditional. Gregory Hill thought that it should only be introduced if there were significant abuses remaining after five years. The CFF suggested that FCA jurisdiction should only be introduced once there is a single comprehensive electronic register for consumers.

Q31: FOS JURISDICTION OVER TREATMENT OF PRIVATE PURCHASERS

7.32 We asked consultees if they agreed that the Financial Ombudsman Service (FOS) should have jurisdiction to hear complaints against logbook lenders made by private purchasers of vehicles subject to logbook loans. There were 20 responses to this question, of which 17 (85%) were in agreement. One consultee disagreed and two consultees answered "other".

Arguments in favour

7.33 One logbook lender, Mobile Money, said that:

> without this recourse the private purchaser is left with little alternative than to pay for legal advice or let the matter drop.

7.34 Money Advice Trust noted that:

> It is vital that FOS is given the jurisdiction to hear complaints against logbook lenders made by private purchasers of vehicles subject to logbook loans. The current situation for private purchasers is both unfair and unsustainable. They should be able to seek redress.

Arguments against

7.35 Only Loans2Go disagreed with the proposal:

> This should remain with the CCTA/Trading Standards as there is no direct relationship between private purchasers and consumer credit firms, and would overburden FOS and said firms with inappropriate complaints.

Other

7.36 The Bar Council thought that if lenders were required to obtain a court order before repossessing from private purchasers, then that should be protection enough.

7.37 FOS itself said that in certain limited circumstances it already has jurisdiction to consider complaints from private purchasers. Specifically, it has jurisdiction where a logbook lender has tried to recover payment from the private purchaser, though this would not extend to cover a situation where a logbook lender has tried to repossess a vehicle without trying to recover any payment. FOS noted that any change to its jurisdiction would fall to the FCA.

8. GENERAL ASSIGNMENTS OF BOOK DEBTS

8.1 In Chapter 13 of the consultation paper, we made proposals to reform the way that general assignments of book debts made by unincorporated businesses are registered. We proposed that such transactions would continue to be registered at the High Court by way of a streamlined process.

Q32: THE CASE FOR REGISTRATION

8.2 We thought that registration of general assignments of book debts serves, in principle, a valuable purpose. We asked consultees if they agreed. All 15 consultees who responded to this question agreed.

8.3 The Asset Based Finance Association (ABFA) agreed but only if:

> notice filing is easy; the index of such assignments is clear and easy to access either in person or electronically; the index is updated in real time; an easy system is introduced to enable notices to be withdrawn upon termination of financing.

8.4 Other consultees similarly felt that registration serves a useful purpose, but only if the register is efficient and easy to use. Dr Akseli and Dr Thomas noted that a transparent registration regime could assist unincorporated businesses to release financial information. The Secured Transactions Law Reform Project (STR) argued for an electronic register.

Q33: THE ASSIGNMENT DOCUMENT

8.5 We suggested that a short assignment document should be registered and proposed that it contain seven pieces of information. We asked consultees if they agreed. There were 14 responses to this question, of which 12 (86%) were in agreement. One consultee disagreed and one answered “other”.

Arguments in favour

8.6 ABFA supported the suggestion that only a notice of assignment would be registered, rather than the full factoring or invoice discounting agreement. It proposed some amendments to the information that the notice of assignment would contain.

8.7 The Insolvency Lawyers’ Association (ILA) wrote:

> We can also see merit in having a short form document for the purposes of registration (and notice to third parties). We would note however that any legislation to implement the proposals would need to be clear that the registration of that short form document alone satisfies the requirement of s 344 Insolvency Act 1986.

Arguments against

8.8 The STR questioned the need to include the addresses of the business and invoice financier given that these may change. It also felt that a witness is unnecessary:

> the requirements of the presence and details of the witness seem entirely unnecessary and only add to administrative burden without a clear benefit.

Other

8.9 The Chancery Bar Association (ChBA) thought that an assignment document may be unnecessary. The information could be included in the registration form instead.

Q34: SIMPLIFYING THE REGISTRATION REGIME

8.10 We made a number of proposals to simplify the way that general assignments of book debts made by unincorporated businesses are registered at the High Court. We asked consultees if they agreed with our proposals. This question received 13 responses, of which seven (54%) were in agreement.

Arguments in favour

8.11 The ILA wrote:

> we can see advantages in simplifying the associated formalities, and of permitting registration (and the submission of searches) by email.

Arguments against

8.12 ABFA objected to the need for re-registration, saying instead:

> A simple form of filing a notice of reassignment upon satisfaction of the facility should keep the register of filings within manageable bounds.

8.13 The STR expressed concern about the automatic reply where incomplete documents are filed.

Other

8.14 The City of London Law Society argued that the High Court is not an appropriate registry.

OTHER COMMENTS

8.15 We asked for overall comments on the way that general assignments of book debts made by unincorporated businesses are registered at the High Court.

8.16 ABFA remarked that it would look favourably upon a notice filing regime. It expressed dissatisfaction with our proposals because they represented “both a notice filing system combined with registration of a duplicate assignment”.

8.17 A number of consultees, including ABFA, the ChBA and the STR, favoured a unified register for unincorporated and incorporated businesses.

9. ABSOLUTE BILLS OF SALE

9.1 In Chapter 14 of the consultation paper, we discussed absolute bills of sale. We proposed that such transactions should no longer be regulated.

Q35(1): ABOLITION OF THE REQUIREMENT TO REGISTER

9.2 We asked consultees if they agreed that the requirement to register absolute bills should be abolished. This question received 14 responses, of which nine (64%) were in agreement. Three consultees disagreed and two answered "other".

Arguments in favour

9.3 Graham McBain noted that regulation of absolute bills was introduced to prevent people avoiding the effect of the Bills of Sale Act 1854. With an increased focus on substance over form, such intervention is no longer necessary.

Arguments against

9.4 Constantine Cannon LLP thought that where a purchaser leaves goods in the seller's possession there should be a mechanism for registration to protect creditors.

9.5 Some consultees were concerned that absolute bills may be used to circumvent legislation relating to goods mortgages and that regulation should remain for that reason.

Other

9.6 The City of London Law Society thought absolute bills should be denied legal effect.

Q35(2): ABOLITION OF REGULATION OF ABSOLUTE BILLS

9.7 We proposed that absolute bills would no longer be regulated. There were 10 responses to this question, of which six (60%) were in agreement. Two consultees disagreed and two answered "other". Those consultees who agreed did not expand on their reasons for doing so.

9.8 Constantine Cannon LLP was not persuaded that other legislative provisions give sufficient protection:

> because whilst they afford a degree of post-ex-facto protection to creditors, they require creditors to take action to claw back or invalidate a transfer at an undervalue after the debtor has gone insolvent. The advantage of registering sales or gifts with the seller or donor remaining in possession is to help creditors make informed decisions on whether to extend further credit in the first place.

10. ASSESSING THE IMPACT OF REFORM

10.1 In Chapter 15 of the consultation paper, we discussed the benefits and costs of our proposals. We asked consultees for information that would help us to assess the impact of reform.

VEHICLE MORTGAGES: BENEFITS AND COSTS TO THE INDUSTRY

Cost of registration at the High Court

10.2 We estimated that registering a logbook loan at the High Court costs between £35 and £51. Mobile Money and DTW Associates Limited agreed. AutoMoney estimated the cost to be £35 for each logbook loan.

Savings if registration at the High Court is abolished

10.3 We estimated savings to the industry of between £1.67 million and £2.43 million a year if High Court registration of logbook loans were abolished.

10.1 Mobile Money agreed with our estimate. AutoMoney estimated £1.6 million in savings each year on the basis of 50,000 logbook loans. DTW Associates Limited said that even greater savings of between £80 and £150 for each logbook loan could be achieved by removing the requirement for a wet signature. On the basis of 47,723 logbook loans registered at the High Court in 2014, this would equate to savings to the industry of between £3.82 million and £7.16 million a year.

Current repossession statistics

10.2 We asked logbook lenders for information about how often they repossessed vehicles from borrowers and how many of these repossessions took place after one third of the total loan amount had been repaid.

10.3 Mobile Money's repossession rate from January to September 2015 was 0.28%. It said that 24% took place after one third of the total loan amount had been repaid.

10.4 V5 Loans gave a much higher repossession rate of around 10%. Loans2Go said that its repossession rates were less than 10% in England and Wales.

Repossession statistics if the court order is implemented

10.5 We estimated that between 0.7% and 1.1% of logbook loans would involve a court order before repossession. Mobile Money suggested that the figure would be a maximum of 0.07% of logbook loans.

Cost of the court order

10.6 We estimated that a court order would cost around £600, including both the court fee and legal costs.

10.7 Mobile Money said that it would expect in most cases to incur only the court fee. V5 Loans estimated £1,000 while DTW Associates Limited suggested £600 to £800.

Cost of delay

10.8 We asked for 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.

10.9 Mobile Money did not think that this would be a serious issue. Other logbook lenders agreed, with DTW Associates Limited noting that these costs are factored into its business model.

Private purchasers

10.10 We asked for evidence from logbook lenders about the amount of money received in settlements from innocent private purchasers and the value obtained from vehicles repossessed from innocent private purchasers.

10.11 Mobile Money was unable to provide data relating specifically to innocent private purchasers but wrote that in 2014 it received £25,757 in third party payments and £31,166 from recoveries.

Transitional costs

10.12 We estimated that the transitional costs to the industry of adapting to the new legislation would be less than £50,000. Mobile Money and DTW Associates Limited agreed.

MORTGAGES OVER OTHER GOODS: BENEFITS AND COSTS TO THE INDUSTRY

Scale of use of bills of sale over goods other than vehicles

10.13 We asked for evidence about the number of bills of sale registered at the High Court secured on goods other than vehicles. We estimated that around 260 such bills were registered in 2014.

10.14 Boodle Hatfield LLP and Constantine Cannon LLP both commented that modernisation of the registration regime would result in increased use of goods other than vehicles as security.

Few regulated credit agreements

10.15 We suggested 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.

10.16 Constantine Cannon LLP commented that there are lenders that take security over art, antiques and collectible items in order to secure regulated credit agreements. It estimated that more credit agreements would be regulated than not.

Private purchasers

10.17 We asked whether consultees had any evidence of disputes with private purchasers who have bought goods (other than vehicles) subject to a security bill of sale.

10.18 Dr Akseli and Dr Thomas noted that it is possible that disputes of this nature occur on a regular basis but are either resolved before legal action is taken or are being mischaracterised. Expanding on the latter possibility, they argued:

> The Victorian development of the law on fixtures and fittings was a response to a commercial need to avoid the formality requirements of the developing bills of sale regime. By classifying disputes over the ownership over personal property as characterisation issues (of whether goods were fixtures or fittings), courts enabled such disputes to be resolved as mortgage disputes rather than bills of sale disputes.

GENERAL ASSIGNMENTS OF BOOK DEBTS: BENEFITS AND COSTS TO THE INDUSTRY

Cost of registration at the High Court

10.19 We estimated that the cost of registering each general assignment of book debts at the High Court is between £480 and £1,735.

10.20 The Asset Based Finance Association (ABFA) put legal costs for invoice financiers' solicitors at between £150 and £1,200 plus a registration fee of £25 and VAT. Its members estimated that businesses' solicitors' fees would be between £300 and £500.

Savings if registration at the High Court is simplified

10.21 We estimated that our proposals would reduce the cost of registering each general assignment of book debts by between £350 and £575. We also asked whether this reduction in costs would lead to an increase in registration.

10.22 ABFA estimated that the cost of compliance would be around £100 plus the £25 registration fee. It did not consider that our proposals would lead to an increase in registration as funding rarely does not proceed because of the cost of registration.

Transitional and other costs

10.23 ABFA estimated that transitional costs would be around £1 million across its members. It said that there would also be ongoing costs, including registry fees, staff costs and overheads in preparing forms and confirming completion of procedures. It estimated that these costs would be around £250 per business.

APPENDIX
PEOPLE AND ORGANISATIONS WHO RESPONDED TO THE CONSULTATION PAPER

A.1 The following people and organisations responded to the consultation paper. We are extremely grateful for their responses and the information they provided.

	Name	Category
1	AutoMoney	Logbook lender
2	DTW Associates Limited	Logbook lender
3	Loans2Go	Logbook lender
4	Mobile Money	Logbook lender
5	V5 Loans	Logbook lender
6	Asset Based Financing Association	Industry representative
7	Federation of Small Businesses	Industry representative
8	Finance & Leasing Association	Industry representative
9	Retail Motor Industry Federation	Industry representative
10	Chartered Trading Standards Institute	Consumer interests/protection
11	Citizens Advice	Consumer interests/protection
12	Community Investment Coalition	Consumer interests/protection
13	Financial Services Consumer Panel	Consumer interests/protection
14	Money Advice Trust	Consumer interests/protection
15	Society of Chief Officers of Trading Standards in Scotland	Consumer interests/protection
16	StepChange Debt Charity	Consumer interests/protection
17	Dr Orkun Akseli and Dr Sean Thomas	Academic
18	Professor Sir Roy Goode QC	Academic
19	Dr Graham McBain	Academic

	Name	Category
20	Iyare Otabor-Olubor	Academic
21	Cheshire Datasystems Limited	Registry
22	HPI	Registry
23	Boodle Hatfield LLP	Lawyer/law firm
24	Chancery Bar Association	Lawyer/law firm
25	City of London Law Society	Lawyer/law firm
26	Constantine Cannon LLP	Lawyer/law firm
27	General Council of the Bar of England and Wales	Lawyer/law firm
28	Roger Hawkins	Lawyer/law firm
29	Gregory Hill	Lawyer/law firm
30	Insolvency Lawyers' Association	Lawyer/law firm
31	Dennis Rosenthal	Lawyer/law firm
32	Simmons & Simmons LLP	Lawyer/law firm
33	Campaign for Fair Finance	Other
34	Financial Ombudsman Service	Other
35	Mark Holland	Other
36	Queen's Bench Division	Other
37	Secured Transactions Law Reform Project	Other
38	Guy Skipwith	Other