

# **Bills of Sale**

## **The Law Commission**

January 2016

The Financial Ombudsman Service welcomes the opportunity to respond to the current consultation.

### **about the Financial Ombudsman Service**

The Financial Ombudsman Service was set up by Parliament to sort out individual complaints that consumers and financial businesses aren't able to resolve themselves. It is an independent service for settling complaints fairly, reasonably, quickly and informally, which is free to consumers. The business must be given the chance to look into a problem first – and they have eight weeks to consider it. If the business does not respond within eight weeks, or does not respond to the consumer's satisfaction, the consumer can come to us. Following changes introduced in July 2015, we can now consider a complaint before 8 weeks or before the business has issued its final response, but only if both the consumer and the business agree.

### **our response**

Since the financial crisis, we've seen an increase across all areas in complaints involving financial difficulties – either as the main cause of the problem or an additional but important factor. Given that many people who use short-term credit do so to meet everyday expenses – and sometimes to pay off other debts – financial hardship features in a high proportion of these cases.

We can normally consider complaints from borrowers about their logbook loans provided they fall under our rules (see below). We do not receive a large volume of complaints about logbook loans – typically fewer than ten cases each month. An analysis of the cases we have resolved in the last three months suggests that our uphold rate – where we resolved the complaint in favour of the consumer – is approximately 40%. By comparison, in 2014/15 our uphold rate across all complaints was 55%.

When we're asked to consider a complaint, we'll assess whether – and how – the lender decided the loan was affordable in the first place.

We'll also consider whether the terms and conditions were clearly explained to the consumer, in particular what the interest rate was and how much would need to be repaid in total, as well as the consequences of the borrower not meeting their repayments.

We'll also assess whether the lender met their obligation to treat customers in hardship positively and sympathetically. In practice, this means recognising the stress that the customer could be under – and talking openly and constructively about how the money can be repaid. If we find a lender hasn't done this, we may tell them to refund any interest and charges that have been applied to the debt.

In general, we find that consumers who get in touch with us are aware of the high rate of interest – perhaps reflecting the fact that many customers of short-term lenders have found it difficult to get credit elsewhere. In fact, cost is the main factor in very few complaints that reach us. But charges are something we hear a lot about – in particular, from consumers (or

sometimes their relatives) who feel they haven't been treated fairly when they've fallen into financial difficulties.

We also see complaints arising from lenders' attempts to reclaim money they're owed. This can cause problems if the lender takes money the consumer needs to meet essential expenses – potentially making their financial difficulties worse.

Other consumers who come to us are worried and frustrated that they've ended up in such a position – and question whether they should have been lent the money in the first place. We appreciate that people are responsible for thinking about what they can afford. But circumstances can change unexpectedly. And the regulators have recognised lenders' responsibility to make sure customers are lent only what they can pay back – setting out what's expected with guidance on irresponsible lending.

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

There may be a possibility that the ombudsman service could already consider complaints from people who have bought vehicles subject to logbook loans provided they meet some criteria that are set out in the relevant rules.

The rules that determine the ombudsman service's jurisdiction are made by the Financial Conduct Authority (FCA) and are published as part of the Financial Conduct Authority's Handbook – in the section Dispute Resolution: complaints (or DISP). Any change to the ombudsman's jurisdiction would fall to the FCA to make by way of consultation.

The ombudsman service can consider complaints from eligible complainants about acts or omissions by a financial business in carrying on certain activities that we cover. These include 'regulated activities' which are set by the FCA and largely mirror the activities as set out in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) and also include complaints about lending money (see DISP 2.3.1(4)).

Providing credit by means of a logbook loan is generally an activity that we can consider a complaint about, provided it is brought by an eligible complainant.

Individuals acting outside of their business, trade, craft or profession are 'consumers'; one of the categories of complainants that can bring complaints to the ombudsman service. The other categories are listed in DISP 2.7.3R and include micro-enterprises (small businesses falling within certain thresholds).

To be eligible to bring a complaint, the complaint must also be about matters arising from a relationship with the financial business that falls into one of the categories in DISP 2.7.6R. One of the relationships is being a customer or potential customer. But, a person who has bought a vehicle subject to a logbook loan inadvertently – without knowing it is subject to a logbook loan – (or "private purchaser") would not be a customer or potential customer of the lender.

However, another eligible relationship under our rules is if the complainant is a person (this includes a natural and a legal person) from whom the financial business has tried to recover payment under a credit agreement or a consumer hire agreement (DISP 2.7.6R(12)). This rule was introduced to cover a situation where a person who had been the victim of identity theft was being pursued for a debt that was not theirs. Such a person would not be the customer of the lender, so this rule was brought in to remedy that gap.

However, our view is that this same rule could possibly cover a situation where a person who has bought a vehicle subject to a logbook loan inadvertently is complaining about the lender trying to recover a payment from them. But, we currently do not consider this would extend to cover a situation where the lender is trying to repossess or did repossess a vehicle without having tried to recover a payment.

So, we currently consider that, provided the activity is one that we cover, an inadvertent buyer of a vehicle subject to a logbook loan could possibly bring a complaint to the ombudsman about a lender if that lender is trying to seek to recover a payment under the credit agreement. If the lender is only seeking to repossess the vehicle without having tried to recover a payment, we believe that we may not be able to consider that complaint. But, the exact meaning of the rule is uncertain, and ultimately, it is for the FCA to clarify or amend it.