



Citizens Advice evidence on bill of sale consumer lending

April 2014

Introduction

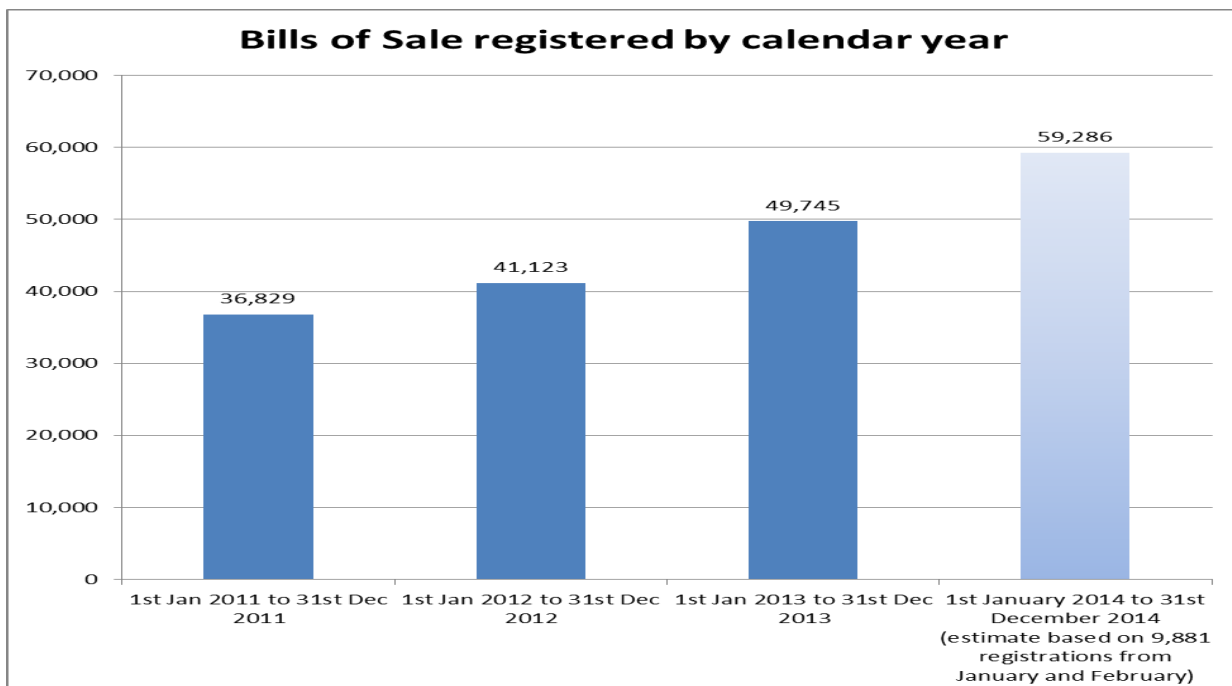
The use of bills of sale in consumer lending has long been associated with lender malpractice and consumer detriment. Bill of sale lending, known as logbook loans, involves a consumer offering an item of their personal property (usually a car) as security for a loan.

In 2010, under the previous government, the Department of Business, Innovation and Skills (BIS), proposed to ban the use of bills of sale for consumer lending. The current government's response was to call for greater industry self-regulation with a voluntary code of practice, although they committed to looking again at reforming logbook lending if problems continued.

The trade body which covers most logbook lenders, the Consumer Credit Trade Association (CCTA), implemented a code of practice for their members from 1st February 2011¹. Citizens Advice has examined our client data to explore whether lenders are meeting the requirements of the code of practice.

The logbook loan market

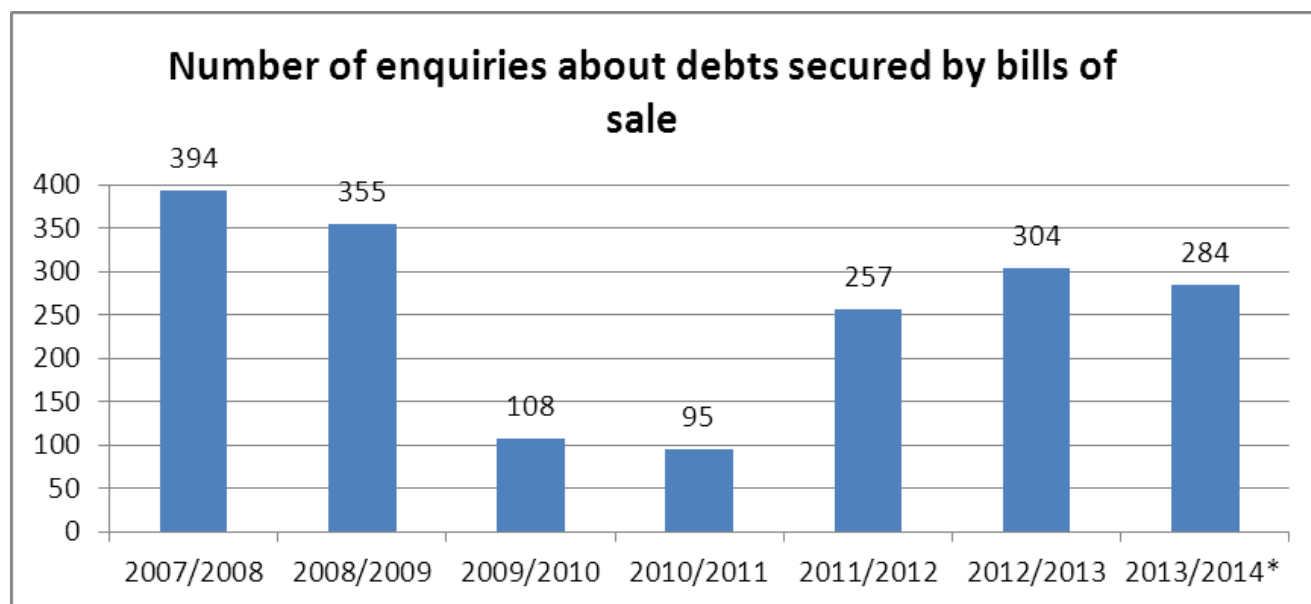
There has been a significant rise in the number of bills of sale registered in recent years suggesting an increase in the size of the logbook loan market. For a bill of sale to be valid and enforceable, the lender must be registered it with the High Court. Citizens Advice sent a Freedom of Information request (FOI) to the High Court on the numbers of bills of sale registered from 2010 onwards. From this, we found there had been a 35% increase in bills of sale registered from 2011 to 2013 and on current trends there will be a 61% increase from 2011 to 2014.



¹ Consumer Credit Trade Association (2011) 'Bills of sale for consumer lending regulated under the Consumer Credit Act 1974 – updated October 2012' http://www.ccta.co.uk/admindocs/codes_of_practice/bills_of_sale_code.pdf

Evidence on logbook loans

Citizens Advice statistics on the number of issues reported to bureaux about debts secured by bills of sale has fluctuated since 2007 but has been increasing significantly in the past few years:



* 2013/2014 estimate based on Q1 and Q2 numbers²

We also found 261 individual detailed cases from our bureau evidence database and consumer helpline where consumers had an issue with a bill of sale³. These cases were all recorded since the Consumer Credit Trade Association (CCTA) implemented the code in 2011.

The majority of cases did not state the amount of the loan taken out. Of those that did, the loan amounts ranged from £200 to £19,000 and the average (median) loan was £1,286.

The key issues emerging from the detailed cases we collected are:

- The lack of consumer protection associated with logbook loans.
- The severe consumer detriment that can be caused by these loans.
- Difficulties with understanding logbook loans
- The lack of comprehensive affordability assessments.
- The lack of protection for third party purchasers.

A lack of consumer protection

Our evidence illustrates that there is a particular lack of consumer protection in logbook lending. Under logbook loans, ownership of the item of property (usually a car) put up as security for the loan moves from the consumer to the lender and therefore no court order is needed before a lender can repossess the car.

This encourages irresponsible lending and debt collection practices as there is no onus on the lender to negotiate when the consumer gets into payment difficulties because they can just seize the asset.

² 2013/2014 numbers in this table are an estimate based on doubling the numbers from quarter 1 (59) and quarter 2 (83) as the figures are not yet available for quarters 3 and 4.

³ 117 recorded on our bureau evidence database from 1st February 2011 to 7th January 2014 and 145 from calls to our consumer helpline recorded from 1st April 2012 when we took over the operation of the consumer helpline to 6th January 2014

It also means consumers feel forced to put logbook lenders at the top of their list of creditors (above priority debts) as they are concerned about the possibility of losing their car.

We found 82 cases of lenders not dealing with customers in financial difficulties in a fair and appropriate manner, despite the code of practice stating that when a customer's account falls into arrears they should be treated 'sympathetically and positively' (para 4.7.3)

These cases mainly involved lenders being unwilling to negotiate, and threatening repossession when customers were unable to keep up their payments and fell into arrears. The code states that lenders should 'allow for alternative, affordable payments amounts when the consumer or his appointed debt advisor... makes a reasonable proposal' (para 4.8.6) and lenders should suspend the active pursuit of the debt for a 'no less than 30 days if a customer is in payment difficulties and being assisted by a debt adviser' (para 4.7.3).

A bureau in Wales saw a 27 year old woman who had taken out of a logbook loan for £500. She had agreed with the lender to pay it back at a rate of £69 per month. The debt was subsequently assigned to a different lender who demanded £200 per month. This rate of repayment was unaffordable for her as she had no savings and was supporting herself and her unemployed partner on her full-time wage and working tax credit. This lender gave the client 16 working days to pay the first £200 instalment or they would repossess her car. This caused particular concern as the client needed her car for work.

Causing severe consumer detriment

Our evidence shows that logbook lending can lead to instances of severe consumer detriment. The imbalance of power between the lender and consumer as no court order is needed for repossessions can drive harsh debt collection and repossession practices causing both financial and psychological harm.

There were 46 cases where consumers experienced aggressive debt collection and repossession practices. In a couple of cases people were prevented from taking their personal possessions out of their repossessed car and in one case a woman experienced sexual harassment and threatening behaviour when her car was repossessed.

The code of practice states that lenders should review their debt collection procedures annually and those of any third parties they employ to ensure they conform to 'high ethical standards'.

A CAB in West Sussex saw a 34 year old woman whose car had been repossessed by a bill of sale lender on her way to work at Gatwick airport. The tow truck driver blocked her car, reached through the car window to take the keys and took the car without allowing her to remove her possessions. She was left on the roadside in the rain. She had to go through considerable negotiations and make an initial £500 payment to collect her car. Once it was returned to her, she found that the car had been damaged and the amount of petrol left in the car suggested it had made a significant unexplained journey. Due to not having access to a car for a week, she lost £200 in earnings and faced difficulties in taking her disabled son out of the house.

Logbook loans can also lead to consumer detriment as they are a very expensive form of credit with very high interest rates (average APR of over 400%) and can involve punitive fees and charges. This means missing one payment can spiral quickly into significant debt. The interest rates seem high for secured lending and in our view are a reflection that logbook loan consumers have few other options rather than a reflection of the risk they represent.

The interest rates of logbook loans were raised by CAB advisers and consumers in 20 cases, for example:

A CAB in Wales saw a single mother of three children whose property had recently been repossessed. She had a logbook loan for £965 and the total amount to repay was £2839.20 with an interest rate of 503.60% per annum. She had been unable to maintain the payments for this loan.

There were also 24 cases that involved consumers facing high charges for defaulting on their loan. This could be charging for missing a payment to charging for a phone call to the consumer. The fees often do not appear to bear any relation to the reasonable costs of the lender. In one case a man was twice charged £300 for repossession costs even though his car was not repossessed.

There were various different types of charges recorded, for example:

Type of charge	Cost of charge
Releasing van after it had been repossessed	£800
Releasing a car after it had been repossessed	£1000
Repossessed car storage charge	£2.00 per day plus VAT plus £20 admin charge.
Late payment charge	£12
Agent fees for early settlement	£480
Charged for making a payment	£12
Charge for monthly payments	£12 per week
Late payment charge	£54
Charge for sending letter to consumer	£12
Charge for phone call to consumer	£12

The code of practice states that 'members shall not impose charges, of whatever nature, on customers who are in arrears unless the nature of and likely amount of those charges are disclosed at the pre-contract stage and are limited to doing no more than covering the member's reasonable costs' (para 4.8.5).

A CAB in London saw a 37 year old woman who had fallen behind on her payments for her logbook loan and was £282 in arrears. The lender had sent her 8 letters which each had a £12 charge and had been called four times by the lender at a charge of £12 each. She was also charged £6 for an 'E-consumer trace' and £6 for a 'security alert request' although both of these charges were not explained to the client. In total she was charged £156, adding substantial to what she owed the lender.

Difficulties with understanding logbook loans

As the Bill of Sale Acts originate from the Victorian period, the language used in the credit documentation is often outdated and unclear. This can lead to consumers not understanding the terms and conditions of the loan, for example, not always realising that they no longer own the property on which the loan is secured.

It can also result in consumers not understanding that they could lose their car if they do not keep up repayments. Understanding the risk is essential in order to make an informed choice about taking out

the loan. The loss of a car can be catastrophic for disabled people, those with long-term health problems and for those who need their car for work.

There were 50 cases where the terms and conditions of the loan were not clearly explained by the lender or understood by the consumer. This ranged from not knowing that they had signed up to a logbook loan to not understanding the interest rates or amount that would have to be repaid. The code of practice states that credit documentation should be in 'plain and intelligible language' (para 3.8) and that the lenders should 'provide adequate explanations of the credit on offer to the customer' (para 4.3).

A CAB in Kent saw a 45 year old woman who had taken out a loan for £1000 with a logbook loan company. She believed that the terms of the loan meant it could be paid off in three months. She understood that there was a bill of sale on her car but believed this would end when she paid the loan off. When she tried to pay the loan off after three months she was told that she was tied into it for two years. She did not believe she would have taken out the loan if she had been told that she would have to pay the whole credit amount.

The issue of not understanding the terms of a loan is particularly an issue for vulnerable consumers:

A CAB in the South East saw a 29 year old woman who lived with her parents and received Employment Support Allowance of £110 fortnightly. She had learning difficulties, ADHD and was undergoing tests for further mental health problems. She took out a logbook loan for £800 and the contract shows that her payment plan was £30 per week with a total repayment of approximately £2,900 if she did not miss a payment. Due to her learning difficulties she was not aware of the full implications of taking out this loan and did not understand the consequences for default on repayment. She was very stressed and confused by her situation and due to her mental health state she was not able to concentrate long enough to go complete her debt advice appointment.

Exploiting the vulnerable and the lack of proper credit checks

Our evidence indicates that the people taking out logbook loans are often financial vulnerable and can already be heavily over-indebted. The example below shows where the lack of alternatives for people with poor credit ratings means they turn to logbook loans.

A CAB in the West Midlands saw a woman who lived in a rural area and had just started working as a cleaner for six hours per week. Her job started early in the morning meaning she needed her own transportation to get there. She had a poor credit rating due to previous debt issues and took out a logbook loan to afford a moped to take her to work. She knew that taking out the loan for £200 meant she had to pay back £500 and that this was a bad decision but felt that she had no other options.

Our evidence also shows that in many cases limited credit checks are carried out by lenders. There were 24 cases where a reasonable assessment of affordability did not appear to have been undertaken and vulnerable consumers were often offered logbook loans which they clearly would not be able to pay back on time.

A CAB in Berkshire saw a 26 year old man on jobseekers allowance who lived with his parents and had taken out a logbook loan of £1500. This man already had debt issues including magistrate court fines of over £300. The logbook loan was taken out in order to cover these other debts. However, he had no means to repay the loan and was very worried that he would lose his car.

The industry code of practice states that lenders should ‘undertake an assessment of the creditworthiness of the customer and his ability to undertake the proposed commitment... without incurring financial difficulties and/or experiencing adverse consequences’ (para 4.4). This reflects the OFT guidance on irresponsible lending (which has been incorporated into the FCA rules) but does not appear to be adhered to by many bill of sale lenders.

Third party purchasers

Another feature of logbook lending is that there is also no protection for third-party purchasers, where a person buys a second hand car without knowing it is subject to an outstanding logbook loan. This leaves the person with few options other than paying back someone else’s debt, losing their car or going to court.

The code of practice says the lender must register the loan with a relevant asset finance register company, so the bill of sale should show up when carrying out a history check on the car (para 3.14). It also states if the loan is not registered, lenders should give third party purchasers the protections afforded to hire purchase agreements. These mean that if a car is bought in ‘good faith’ the purchaser can put forward the case that they have a legal right to own the vehicle (para 5.1).

Our evidence found 50 cases of third party purchasers.

A CAB in the South East a 22 year old man bought a car on the internet for £1300 and spent an additional £600-£700 on improvements to it. He was given a logbook with the car but there was no indication that the car was subject to a logbook loan. He contacted the police when his car was apparently stolen one night and was informed that the car had been legally repossessed by a logbook loan company. It emerged that the original owner had bought the car legally but taken a logbook loan out on it and then sold it to a second owner who then quickly sold it on to the man. This resulted in him losing his car and £2000. He faced having to recover his losses through a court process but had no guarantee of success and was unclear which of the former owners he should take to court.

Recommendations

Overall we believe the present regulatory and legislative framework governing logbook lending is untenable as it creates a significant imbalance between the consumer and lender. This is mainly due to lenders having unrestricted access to the property used as security for the loan. Consumers also have considerably fewer rights and protections under logbook loans than under other secured lending agreements (e.g. pawn-broking and hire purchase agreements).

Additionally we have evidence that logbook loans can cause severe consumer detriment and consumers often struggle to make informed choices about these loans. Our evidence also indicates that self-regulation through the code of practice is not working as it should with cases where lenders have not followed the provisions in the CCTA code.

Previous government policy was a proposal to ban bills of sale, although this was never implemented. Citizens Advice was at the time supportive of this ban. However, we recognise that it may be more palatable to avoid a ban and to attempt to improve conduct in the market through better regulation or legislative changes (as outlined below) to provide greater consumer protection. Nonetheless, if these measures are tried and not successful a ban may be considered necessary.

We believe that these options should be the highest priority:

- Applying the rights and protections that apply to hire purchase and conditional sale agreements to logbook lending, including requiring lenders to obtain a court order before seizure of assets.
- Providing protection for third-party purchasers: granting innocent third party purchasers ownership if they buy a vehicle in good faith and without knowledge of the vehicle being subject to a logbook loan.

Other options to consider:

- Extending the parts of the code of practice that are not already covered into the FCA rules.
- Including logbook loans in the cap on high-cost short-term credit to ensure interest rates and charges associated with logbook loans are reduced.

Policy options:

The following provides more detail on these policy options.

1. Require lenders to obtain a court order before seizure of assets

Currently if a consumer misses just one payment the lender, following the service of a Consumer Credit Act 1974 (CCA) default notice, can take possession of the asset and sell it. This feature appears to be unique to logbook lending.

There is much stronger consumer protection in hire purchase (HP) and conditional sale agreements (from CCA):

- Where there is an HP or conditional sale agreement, lenders cannot take possession of the goods subject to the agreement without a court order or the consumer's informed consent where the consumer has paid one-third or more of the HP price (CCA section 90).
- If 'protected goods' are recovered without a court order or consent, the consumer is not liable under the credit agreement and the lender must return everything the consumer has paid (CCA section 91).
- The lender or debt collector is not entitled to enter any premises to take possession of the goods without a court order or consent (CCA section 92).
- Consumers under HP and conditional sale agreements have the right to terminate their agreements and return the goods subject to the agreements (section 99) and to limit their liability under the 50% rule (CCA section 100)

To ensure greater consumer protection, logbook lenders' power to seize and sell an asset without a court order should be removed. Logbook lending should be brought in line with the protection for HP and conditional sale agreement.

2. Protections for third-party purchasers

A person who buys a car which (unknown to them) is subject to a bill of sale may find the car repossessed by the lender. If they want to keep the car, they will have to pay the debt, and have no options other than taking the seller of the car to court.

The code of practice states lenders should register the vehicle subject to a bill of sale with an asset finance register so that consumers should be able to check if second hand cars have outstanding loans attached to them. This could be made a requirement in FCA rules rather a part of the voluntary code. However, even enforcing this may not prevent this problem.

A more comprehensive solution is extending similar protections that exist for hire purchase agreements to bills of sale loans. Currently in cases involving hire purchase agreements, innocent third party purchasers are granted 'good title' (ownership) if they buy a vehicle in good faith and without knowledge of the agreement (section 27(2) Hire Purchase Act 1964 as amended and Schedule 4 to CCA 74).

3. The cap on the cost of payday loans

The FCA new rules for high-cost short-term credit (payday loans) included a cap on the total cost of a payday loans. The new FCA rules currently explicitly exclude logbook lending from their definition of high-cost short-term lending. This means that the cap will not apply to logbook lending, despite these loans charging similarly high interest rates, fees and charges. The FCA could extend the cap on cost for high-cost short-term credit so that it applies to logbook lending. Although we acknowledge there may be a difficulty as logbook loans can be for longer than the short-term definition of 12 months.

4. The FCA could develop specific rules on bills of sale consumer lending based on the code of practice.

The FCA could use their powers to turn the code of practice into rules and/or guidance making it no longer voluntary but mandatory. This should mean more severe penalties for not meeting the rules, including the revocation of authorisation, and better protection for consumers.

The main significant elements of the code of practice are already incorporated into the FCA rules, for example having to provide adequate explanations of the credit on offer (CONC 4.3.2G (1)) and having to undertake an assessment of affordability (CONC 5.2).

However, there are elements of the CCTA code that do not appear in the FCA rules or guidance, for example: registering a vehicle subject to a bill of sale with an Asset Finance Register; banning balloon payments; and allowing consumers to surrender vehicles subject to bills of sale in full settlement of their debts.

A list of where the provisions in the CCTA code are included or not included in the FCA rules is outlined below.

CCTA code of practice	Present in FCA rules
Adhere to the OFT Irresponsible Lending guidance (3.2)	OFT Irresponsible Lending guidance incorporated into FCA rules
Ensuring credit documentation contain plain and intelligible language (3.8)	CONC 3.3.2 R (1) A firm must ensure that a communication or a financial promotion uses plain and intelligible language
Ensure member's interest in vehicle is registered with an Asset Finance Register (within 24 hours) (3.14)	Not in rules
Provide consumer information sheet – explanation of loan in plain English (3.15)	Not in rules
Advertising and Marketing: Lenders should not use direct mail indiscriminately or inappropriately	Not in rules

(4.1.4)	
Lenders should not engage in high-pressure selling (4.1.4)	CONC 2.2.2 G (2) Examples of behaviour by or on behalf of a firm which is likely to contravene Principle 6 include - subjecting customers to high pressure selling
Ensure all advertising and promotional literature is fair – disclosure of representative APR (4.1.2)	CONC 3.3.1R (clear, fair and not misleading) CONC 3.5.4R, 3.5.6R, 3.6.6R (requirement for representative example or typical APR etc);
Balloon payments banned for consumer lending only for business loans (4.2.2)	Not in rules
Providing adequate explanations of the credit on offer (4.3)	CONC 4.3.2G (1) Firms should consider the extent to which they can provide adequate explanations in relation to the regulated credit agreements. Also in Consumer Credit Act (CCA) 1974 s55A
Assessments of affordability must be undertaken (4.4)	CONC 5.2/5.3: Before making a regulated credit agreement the firm must undertake an assessment of the creditworthiness of the customer Also in CCA 1974 s55B
Lenders must observe the customers right to withdraw from the credit agreement without giving any reason, within 14 days (4.57)	In CCA 1974 s66A. CONC 11.1.1R: a customer has a right to cancel a consumer credit agreement without penalty and without giving any reason, within 14 calendar days.
Treating customers who fall into arrears fairly (4.7.1/4.7.2)	CONC 7.3.4R A firm must treat customers in default or in arrears difficulties with forbearance and due consideration.
Lenders should where appropriate refer customers to debt counselling organisation (4.7.4)	CONC 7.3.7G Where appropriate, a firm should direct a customer in default or in arrears to sources of free and independent debt advice.
Lenders shall suspend the pursuit of a recovery of a debt from a customer in default or payment difficulties – for a no less than 30 days (4.7.5)	CONC 7.3.11 R A firm must suspend the active pursuit of recovery of a debt from a customer for a reasonable period where the firm is aware that the customer is developing a repayment plan (<i>no specified time limit</i>)
Lenders should not impose charges on customers who are in arrears (4.8.5)	CONC 7.7.5 R A firm must not levy charges on customers in default or in arrears difficulties unless the charges are no higher than necessary to cover the reasonable costs of the firm.

<p>Lenders should allow for alternative, affordable payment amounts when the consumer or their debt advisor makes a reasonable proposal (4.8.6)</p>	<p>CONC 7.3.8G An example of where a firm is likely to contravene Principle 6 ... is where the firm does not allow for alternative, affordable payment amounts to repay the debt due in full</p>
<p>Lenders should regard the seizure of a secured asset as a serious enforcement option – only taken when attempts have failed with the customer to agree an arrangement to clear arrears (4.8.7)</p>	<p>Not in rules</p>
<p>Lenders should afford innocent purchasers of vehicles subject to a bill of sale with the same protections as in hire purchase cases – e.g. give purchasers ownership of the vehicle if purchased in ‘good faith’</p>	<p>Not in rules</p> <p>In Hire-Purchase Act 1964 Part III but not in relation to logbook lending only hire purchase.</p>

Summary of current legislation, policy and regulation related to logbook loans:

Bills of Sale Act 1878: sets out the scheme for the formal validity and the registration of bills of sale, and the consequences for failure to comply with the statutory requirements.

- *Consumer Credit Act 1974*: all bills of sale lenders must be licensed by the OFT (and from April 2014 the FCA) to carry out a consumer credit business.
- *Consumer Credit Act 2006*: provides a consumer with the ability to challenge any credit relationship which they believe is unfair through the courts. It also provides a right to free and independent dispute resolution via the Financial Ombudsman Service

FCA: various powers to use against lenders including:

- Authorisation – logbook lenders will have to be authorised by the FCA to operate legally (equivalent of OFT licensing)
- Supervision – monitoring the lenders to ensure they are adhering to the FCA rules
- Enforcement – power to stop firms providing regulated financial services - can levy fines for breaches of FCA rules and other legal requirements, including the Consumer Credit Act.

The OFT Irresponsible Lending Guidance (2010) has been incorporated into FCA rules and also applies to logbook lending.

Consumer Credit Directive regulations came into force February 2011 – new requirements (in FCA rules):

- Lenders will be required to explain their products to consumers adequately before they enter into a contract, including the consequences of any failure to repay.
- Require lenders to check the credit worthiness of consumers before lending to them.

Consumer Credit Trade Association Code of Practice (2011) includes provisions around:

- Providing adequate explanations of the credit on offer and ensuring credit documentation contain plain and intelligible language
- Advertising and market – high pressure selling and indiscriminate direct mail is not meant to be used
- Assessments of affordability must be undertaken
- Dealing fairly and sympathetically with customers experiencing financial difficulties
- Enforcement and debt collection – not imposing charges on customers in arrears and allowing for affordable, alternative payment amounts.
- Innocent purchasers of vehicles should be afforded the same protections apply to hire purchase agreements.
- Complaints procedure