Financial Conduct Authority

Consumer credit: proposals in response to the CMA's recommendations on high-cost short-term credit

October 2015

Consultation Paper

CP15/33

Contents

We are asking for comments on this Consultation Paper by 28 January 2016.

You can send them to us using the form on our website at: www.fca.org.uk/your-fca/documents/consultation-papers/cp15-33-response-form.

Or in writing to:

Anna Solar-Bassett
Consumer Credit Policy Team
Strategy & Competition Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 6600
Email: cp15-33@fca.org.uk

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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Abbreviations used in this document

APR	Annual percentage rate of charge
CBA	Cost-benefit analysis
CCA	Consumer Credit Act 1974
CCD	Consumer Credit Directive
CC	Competition Commission
CMA	Competition and Markets Authority
CONC	Consumer Credit sourcebook
CP	Consultation paper
CPA	Continuous payment authority
CRA	Credit reference agency
EIA	Equality impact assessment
FAQ	Frequently asked question
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
HCSTC	High-cost short-term credit
ICO	Information Commissioner's Office
OFT	Office of Fair Trading
LRRA	Legislative & Regulatory Reform Act 2006
MoU	Memorandum of understanding
P2P	Peer-to-Peer Lending
PCW	Price comparison website
PS	Policy statement
SECCI	Standard pre-contract credit information form
TAP	Total amount payable

1. Overview

Introduction

1.1 The Competition and Markets Authority (CMA) published the final report of its Market Investigation into payday lending on 24 February 2015[1], which contained a number of recommendations to the Financial Conduct Authority (FCA). We have reviewed the recommendations, and this consultation paper sets out our response.

1.2 The Consultation Paper contains proposals for additional standards for price comparison websites (PCWs) which compare high-cost short-term credit (HCSTC) products and invites views on them. It also sets out our proposed approach to issues relating to shopping around, real-time data sharing, disclosure of fees and charges and lead generation/credit broking.

Who should read this paper?

1.3 This consultation paper should be of interest to:

- authorised firms with permissions relating to high-cost short-term credit and credit broking, including firms with interim permission
- firms that are applying for, or considering applying for, authorisation to carry out these activities
- trade bodies representing consumer credit firms, and
- consumer organisations

The CMA's findings and recommendations

1.4 The Office of Fair Trading (OFT) referred the supply of payday lending in the UK to the Competition Commission (CC) for investigation on 27 June 2013. The functions of the CC in relation to the market investigation were transferred to the CMA on 1 April 2014. Based on their findings, they concluded that there are features of the UK payday lending market which prevent, restrict or distort competition, leading to an adverse effect on competition.

1 Available at: https://www.gov.uk/cma-cases/payday-lending-market-investigation#final-report

1.5 To address the adverse effect on competition the CMA published a package of remedies, some of which were to be implemented by the CMA and others which were recommendations to us. The remedies included:

- measures to promote the effective use of price comparison websites (PCWs)
- a recommendation to the FCA to take steps to improve the disclosure of late fees and other additional charges
- a recommendation to the FCA to work with lenders and other market participants to help customers shop around without unduly affecting their ability to access credit
- a recommendation to the FCA to take further steps to promote real-time data sharing between lenders
- a requirement for lenders to provide existing customers with a summary of the cost of borrowing, and
- a recommendation to the FCA to take steps to increase transparency around the role of lead generators

1.6 The CMA published their final report including recommendations to us on 24 February 2015 and its Payday Lending Market Investigation Order 2015[2] on 13 August 2015. The Order gives effect to certain aspects of the CMA remedies, namely the prohibition on the supply of payday loans unless the lender has published information on a PCW which has been authorised by the FCA, and the prohibition on the supply of payday loans unless customers are provided with a summary of the cost of borrowing. It contains the dates when these aspects come into effect, although the date relating to the PCW remedy is linked to the additional standards on which we are now consulting.

Our response

1.7 We have worked closely with the CMA in the course of their market investigation and we have reviewed their recommendations. This paper sets out our response.

1.8 As the CMA acknowledged in its final report, the market investigation took place whilst substantial changes to the regulation of the HCSTC sector were taking place.

1.9 We took over the regulation of consumer credit from the OFT on 1 April 2014. We consulted on detailed proposals in October 2013[3] and published those detailed consumer credit rules in February 2014.[4] In most cases, the rules replicated repealed provisions of the Consumer Credit Act (CCA) and various OFT guidance documents, including the Irresponsible Lending Guidance.

1.10 We have made a number of other significant regulatory interventions in relation to HCSTC. We introduced new rules including a risk warning, a cap on the number of times a HCSTC loan

2 Final Order: https://assets.digital.cabinet-office.gov.uk/media/55cc691e40f0b6137400001f/Payday_Lending_Market_Investigation_Order_2015.pdf

3 CP13/10: www.fca.org.uk/static/documents/consultation-papers/cp13-10.pdf

4 PS14/3: www.fca.org.uk/static/documents/policy-statements/ps14-03.pdf

can be rolled over, and a limit on the use of continuous payment authorities (CPAs) by HCSTC providers.[5]

1.11 We also published proposals for a price cap on HCSTC in July 2014,[6] and final rules in November 2014.[7] The price cap for HCSTC came into force on 2 January 2015.

1.12 We published new rules on credit broking on 1 December 2014, mainly to address detriment in the HCSTC sector - these came into force on 2 January 2015.[8]

1.13 We support the CMA's findings and in particular the features which they identified that contribute to the failure by many payday lenders to compete on price, which the CMA found gives rise to an adverse effect on competition.

1.14 We share the CMA's concern that, even with a price cap in place, some customers may pay more for their loans than they would with more effective price competition, and that there may be less innovation in pricing than they would expect to see in a market in which price competition were more effective.

1.15 We set out in the following chapters where we have worked to address the risks that the CMA identified and how we propose to take the remaining recommendations forward.

1.16 Our proposals in this consultation paper for new rules relate to PCWs which compare HCSTC. They are:

- **Rankings:** to require credit brokers acting as PCWs to rank HCSTC products in ascending order of price according to the Total Amount Payable and to ensure that the rankings are competitively neutral and do not give products greater prominence as a result of commercial relationships.
- **Advertising:** to require any additional advertising on PCWs for HCSTC to be outside of the ranking tables and not interspersed within them.
- **Input functionality:** to require PCWs comparing HCSTC to enable consumers to search according to the amount and duration of loan that they require.
- **Market coverage:** to require PCWs to disclose on their website the extent of their market coverage by listing the number and names of the firms whose products they compare, and to introduce guidance reminding firms that financial promotions must be clear, fair and not misleading and that they should not make misleading claims regarding market coverage.

1.17 As we are proposing to create new rules we carried out a cost-benefit analysis. Details of this can be found in Annex 2. Overall we found that our proposals are likely to produce positive outcomes for consumers and lead to better welfare outcomes.

5 CP13/10: www.fca.org.uk/static/documents/consultation-papers/cp13-10.pdf
6 P14/10: www.fca.org.uk/static/documents/consultation-papers/cp14-10.pdf
7 PS14/16 www.fca.org.uk/static/documents/policy-statements/ps14-16.pdf
8 PS14/18: https://www.fca.org.uk/static/documents/policy-statements/ps14-18.pdf

Structure of the paper

1.18 The following chapters discuss our proposals in detail:

- Chapter 2: Price comparison websites
- Chapter 3: Lead generators and credit brokers
- Chapter 4: Shopping around
- Chapter 5: Real-time data sharing
- Chapter 6: Disclosure of the costs of borrowing

1.19 Chapter 7 sets out next steps and highlights some of the other consumer credit policy issues that we are currently working on.

1.20 Annex 2 is a detailed cost-benefit analysis of the proposals relating to PCWs comparing HCSTC.

1.21 Annex 3 explains our reasons for concluding that our proposals are compatible with certain requirements under the Financial Services and Markets Act (FSMA). When consulting on new rules, we are required by section 138I(2)(d) to include an explanation of why we believe that making the proposed rules is consistent with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B FSMA.

1.22 Annex 4 is an equality impact assessment. We have assessed the likely equality and diversity impacts of the proposals and do not consider that they have a potentially discriminatory impact on groups with protected characteristics.

Next steps

1.23 We want to know what you think about our proposals in this paper. Please respond to the questions in Annex 1 by 28 January 2016.

1.24 You can respond to this consultation by using the online form on our website, or by writing to us at the address on page 2.

1.25 Once we have considered your feedback, we will publish a policy statement with final rules and guidance.

2. Price comparison websites

Introduction

2.1 This chapter sets out our proposed approach to price comparison websites (PCWs) for high-cost short-term credit (HCSTC). We are consulting in Appendix 1 on new standards in response to our concerns and the CMA's recommendations.

CMA's findings and recommendations

2.2 The CMA market investigation concluded that features of the HCSTC market give rise to an adverse effect on competition. Consequently, it concluded that some customers were paying more for their loans, and there was potentially less pricing innovation (for example in relation to the introduction of risk-based or flexible pricing models), than in a market with more effective price competition.

2.3 The CMA acknowledged that the price cap which came into force on 2 January 2015 would mitigate some of the harm to customers that had arisen from high prices. However, they argued that there continued to be scope for price competition between payday lenders at a level below the price cap, and that further competition to improve customer outcomes would be achievable.

2.4 The aim of the CMA's PCW remedy is therefore to allow borrowers to use PCWs for easy and quick comparison of multiple loan products, to establish the best-value loan product for their needs and to identify loan costs.[9] This is intended to stimulate competition by encouraging lenders to compete on price rather than rely on inertia caused by the perceived sense of urgency, reinforced by industry marketing.

2.5 The CMA considered various options regarding the effectiveness of the remedy. One option was an official website that all lenders would be obliged to be featured on. Another was a market-led solution where lenders choose which PCW they want to be listed on and those PCWs adhere to a minimum set of standards. The CMA concluded that a market-led solution with a minimum set of standards was the most effective way forward.

2.6 On 13 August 2015, the CMA published an Order stating that online payday lenders will be prohibited from lending unless they put their product details on at least one commercial PCW that is authorised by the FCA and compares HCSTC products. Lenders will also be required to

9 Para. 15, Payday lending market Investigation Order 2015, Explanatory Note: https://assets.digital.cabinet-office.gov.uk/media/55cc61aeed915d5346000022/Payday_lending_explanatory_note.pdf

include a prominent link on their websites to at least one PCW comparing HCSTC on which its own loans appear.[10]

2.7 The CMA recommended that we review our requirements for PCWs comparing HCSTC, and use our regulatory tools to raise those standards. They set out a number of consumer outcomes which we should seek to achieve. The CMA's recommendations are summarised below.

Our Summary of the CMA's recommendations to the FCA for standards to apply to PCWs comparing HCSTC products

Competitive neutrality
The FCA should seek to ensure that PCWs comparing HCSTC enable customers to view loans on the basis of objective criteria and that the default ranking should be the price of the loan. To achieve this, the CMA recommended that PCWs should:

- Present product information in ascending order of price unless the borrower requests a different presentation. The CMA recommended Total Amount Payable (TAP) for this.
- Present product information on a competitively neutral basis, so that the presentation of product information, or its ranking, is not affected by any commercial relationship the operator may have with lenders included on the PCW's panel. This should also apply to any secondary rankings, i.e. where different products have the same price.
- Clearly differentiate any additional advertising on the rankings page so that consumers are not drawn away by banner adverts.

Customer relevance
The FCA should seek to ensure that PCWs comparing HCSTC should enable customers to identify loans that best meet their search criteria. To this end, the recommendation was that websites should:

- Provide a search function and return results that reflect the key features of the loan the customer is seeking. The recommendation was that this search functionality could include loan amount, loan term, and repayment structure.
- Be as transparent as possible about all features of the loan, including the consequences of late or non-payment. Of particular benefit would be information on late payment fees and charges as well as the effect of early repayment on the price of the loan.

Scope
The FCA should seek to ensure that PCWs comparing HCSTC only include loan products in comparison tables and do not include credit brokers or other intermediaries.

There was no specific recommendation on market coverage; instead the CMA highlighted that disclosing the extent of market coverage may be something that the FCA would want to require PCWs to do.

Compliance
The final recommendation was that the FCA should consider how to ensure that PCWs comparing HCSTC which are authorised by the FCA comply with all relevant laws and regulations.

10 Article 7 of the Payday Lending Market Investigation Order 2015: https://assets.digital.cabinet-office.gov.uk/media/55cc691e40f0b6137400001f/Payday_Lending_Market_Investigation_Order_2015.pdf

Our response

2.8 We support the objective of the CMA to encourage more effective price competition in the HCSTC market. As we stated in the policy statement on the price cap for HCSTC,[11] there is scope for lenders to compete under the price cap. In practice, we have observed the clustering of prices around the price cap since it came into force on 2 January 2015. Despite this we have seen some firms pricing below the cap; however it is more likely that competition will intensify once the authorisation process for HCSTC is complete and there is more certainty in the market.

2.9 We considered each of the CMA's recommendations in detail and used a number of approaches to evaluate them, considering first whether implementation is necessary and then the impact of our options for implementing them. These approaches included:

- reviewing the practices of PCWs that currently offer a comparison of HCSTC to help establish a baseline
- designing and carrying out an online experiment working with London Economics and YouGov, and
- carrying out surveys of three different types of firms: PCWs which currently compare HCSTC; PCWs active in financial services which do not currently provide HCSTC; and HCSTC lenders

2.10 Our review identified concerns about the conduct of PCWs that compare HCSTC, in particular that certain practices were leading consumers to make poor decisions and not choose the cheapest loan to meet their needs. These poor choices prevent competition from working effectively in the market and driving down price. For the CMA's Order to be effective in addressing the competition issues in the market, addressing these conduct concerns is important, especially if, as a result of the Order, consumers are going to be directed to these websites. We therefore concluded that taking forward the CMA's recommendations would be in line with our objectives to secure an appropriate degree of protection for consumers and promoting effective competition in the interests of consumers.

2.11 The additional standards we are now consulting on address both the CMA recommendations and examples of poor conduct that we have identified through our work.

Application

2.12 PCWs that currently compare regulated credit agreements such as HCSTC are likely to require authorisation by the FCA as credit brokers. This is because they are carrying on one or more of the specified activities in the credit broking regulated activity,[12] by, in summary, effecting an introduction of a potential borrower to a regulated lender.

2.13 To ensure that the proposals in this consultation apply to the relevant firms, we are proposing to apply the additional standards to authorised firms[13] which own or operate a website which displays any terms on which high-cost short-term credit products are available from different lenders and in relation to which it holds itself out as a price comparison service or a price service, or in any way describes itself as, or gives the impression that it is, a price comparison

11 PS14/16

12 For more detail on credit broking as a regulated activity see Article 36A of the Regulated Activities Order 2001

13 Firms with interim permission are treated as authorised firms.

website or a price website. Although our application rule does not use precisely the same terms as the CMA, we expect it to have broadly the same application. These PCWs will then be subject to our existing rules and guidance concerning credit brokers as well as the additional standards we propose in this consultation paper, and will qualify as 'FCA-authorised PCWs' for the purposes of the CMA Order once the PCW has been fully authorised by the FCA[14].

2.14 We are proposing to apply the additional standards broadly as we are concerned about avoidance. We have found a variety of firms claiming to be PCWs in this market, and we want to ensure that these firms comply with the additional standards. We did consider excluding a firm that operates a website offering HCSTC products but does not permit consumers to search for, re-order or rank products or personalise the results. However, we have not included this in our draft rules because we are concerned that this would enable firms to avoid our rules and may lead to poor outcomes for consumers.

2.15 We would be interested to hear views on the proposed application and in particular whether there are firms that are providing a useful service to consumers, distinct from a PCW, and should not be caught.

> **Q1: Do you have any comments on the proposed application of our rules for PCWs comparing HCSTC products?**

Commercial relationships

2.16 The CMA recommended that PCWs comparing HCSTC should present product information on a competitively neutral basis, such that its presentation, or its ranking on price comparison tables, is not affected by any commercial relationship the operator may have with lenders included on the PCW's panel. In addition, this should apply to any secondary rankings, i.e. where different products have the same price.

2.17 We tested the effect that different rankings have on consumer choices and found that, where results are ranked in ascending order of price by the Total Amount Payable (TAP), consumers make significantly better choices than when products are ranked randomly or by representative APR[15].

2.18 We are concerned that these websites might rank in ascending order of price, but filter results so that the default view only displays a sub-set of products from firms whom they receive a commission. This is a practice which has previously been highlighted in the energy market[16]. We tested the impact that this practice would have. We found that where consumers were only shown a sub-set of products (that did not include the cheapest loan) and had to click through to see all loan products, only 3.1% chose the cheapest loan.

14 The CMA Order requirement to publish on a FCA-authorised payday loan PCW requires FCA authorisation and not interim permission.

15 We tested the decisions consumers make when loans are ranked semi-randomly rather than in ascending order of price. By 'semi-randomly' we mean that loans were ranked in a random order, but in a way that ensured that the cheapest loan never appeared at the top. Please see the Technical Report for further detail on the design of the consumer testing. We found that 26.7% of consumers chose the cheapest loan when products were ranked semi-randomly, compared to 63% when loans were ranked in ascending order of price by TAP. In a separate test we looked at consumers' decisions when loans were ranked by representative APR rather than by TAP. In this test only 13.5% of consumers chose the cheapest loan (compared to 63% of consumers when loans were ranked by TAP).

16 Energy and climate change Select Committee, 7th Report 2014-15 - Protecting consumers: Making energy price comparison websites transparent http://www.publications.parliament.uk/pa/cm201415/cmselect/cmenergy/899/899.pdf.

2.19 Consequently, we propose to make a rule that where a firm lists information concerning HCSTC products on its website the listing and the results of the customer's search must not be affected by the existence of commercial relationships that the PCW may have with HCSTC lenders or credit intermediaries.

Q2: Do you agree with our proposal to prevent PCWs from displaying information about HCSTC products or including search results on the basis of commercial relationships?

Search functionality

2.20 The CMA recommended that PCWs for HCSTC should provide a search function and return results that reflect the key features of the loan that the customer is seeking. Such search functionality could include loan amount, loan term and repayment structure.

2.21 We found that some PCWs comparing HCSTC products do not allow the customer to search for the loan amount or duration that they are looking for. Instead, the website will often state the maximum and minimum loan amount and duration that each lender on their panel provides. We tested the effect of this on consumers and found that, where they could not search for their specific preferences regarding loan amounts and durations, this did not lead to significantly worse outcomes in terms of respondents choosing the cheapest loan. However, we found that the number of respondents choosing the best deal in this test can be explained by a larger proportion of respondents just choosing the first loan in the ranking table[17]. When respondents were able to input their loan preferences they were more likely to choose the loan which was both cheapest and more closely met their preferences.

2.22 We therefore propose to make a rule that a PCW for HCSTC must enable a customer to search on the basis of the value and duration of a loan. We are proposing that firms may meet this obligation by providing a reasonable choice of options of loan size and duration to potential borrowers but we do not propose to prescribe the format. We do not propose to require firms to include repayment structure (for example the number of instalments), as the value and duration combined with ranking in ascending order of price should be sufficient for consumers to find the best value loan for their needs. However, we recognise that PCWs may choose to introduce this option on a voluntary basis.

Q3: Do you have any comments on our proposed rule that a PCW for HCSTC should enable customers to search for a specified loan amount and duration?

Rankings

2.23 The CMA recommended that we consider how to ensure that PCWs for HCSTC present product information in ascending order of price unless the borrower requests a different presentation. They recommended the TAP for this.

17 In this test the first loan in the table was always the cheapest loan. Loans were ranked in ascending order of price, and the first loan in the ranking table was the cheapest loan offered for the lowest amount/ shortest duration (£100 for 30 days).

2.24 Our review of HCSTC PCWs showed that a significant number of PCWs comparing HCSTC do not rank in order of price, and that where they do, most do not use the TAP as the primary measure of price. In response to our survey, firms said they tended to use representative APR because it is difficult to get the necessary information required to rank loans by the TAP.

2.25 As explained above, the choices that consumers made when results were presented semi-randomly to imply ranking by commercial relationships rather than in ascending order of price, demonstrated that ordering results other than on the basis of TAP can have an impact on consumer choice. We therefore propose to make a rule requiring PCWs comparing HCSTC to display all HCSTC products (either direct from lenders or from credit intermediaries) as a result of the customer's search ranked in ascending order of price according to the TAP. The CMA Order[18] requires lenders to provide PCWs with the necessary information to enable them to rank loans by the TAP, so they will have the necessary information.

> **Q4: Do you agree with our proposal to require HCSTC PCWs to rank the results of a consumer's search in ascending order of price according to the Total Amount Payable?**

Additional advertising

2.26 The CMA recommended that firms clearly differentiate advertising on their website from the ranking of loan products so that customers are not drawn away from the objective ranking of products by banner adverts.

2.27 The results of our review of HCSTC PCWs and survey showed that some PCWs do have banner adverts on their websites but more commonly sites will have 'featured products'. These differ from 'banner' advertising as they feature within the rankings tables or are given more prominence in other ways. Our consumer testing demonstrated that the existence of banner advertising on a PCW outside the rankings tables did not have an adverse impact on consumers' ability to make optimal choices. However, the results of the consumer testing (when results were presented semi-randomly rather than in ascending order of price) show that, where PCWs may feature adverts in the ranking of search results or may give more prominence to some results due to commercial relationships, this has a clear impact on consumer decision-making.

2.28 As a result, we propose to make a rule that financial promotions such as sponsored links or featured products should not appear in or among the rankings of PCWs comparing HCSTC, so as not to distract customers from the results.

2.29 The results themselves, which are also financial promotions, must not be ranked according to any commercial interests and must not be given greater or lesser prominence as a result of those interests.

2.30 With regards to the ranked results, firms must comply with our existing rules on financial promotions. We are including guidance that reminds firms that these financial promotions must comply with the rules in the Consumer Credit Sourcebook (CONC), including the requirement to be clear, fair and not misleading, and the rules requiring a representative example.[19]

18 CMA payday lending market investigation Order 2015

19 CONC 3

Q5: Do you agree with our proposals on additional advertising on a PCW that compares HCSTC?

Transparency of product information

2.31 The CMA recommended that PCWs are as transparent as possible about all features of a loan, including the consequences of late or non-payment. The CMA noted that mainstream PCWs typically allow a consumer to review additional details and suggested that information on late fees and charges, as well as the effect of early repayment on the price of the loan, would be of particular benefit.

2.32 We are limited in our ability to impose more detailed advertising requirements as a result of the Consumer Credit Directive (CCD). The price cap has limited firms' ability to impose excessive late fees and other charges on consumers, reducing the impact that this information will have on consumer decision-making (as explained in Chapter 6).

2.33 The CMA Order will also prohibit lenders from providing loans unless they make available to borrowers a summary of their borrowing history, which highlights the total amount of fees and charges paid by the borrower to the lender. Requiring too much information may actually lead to a worse outcome for consumers as it could limit their ability to locate the relevant price information and make a choice on that basis.

2.34 In our view, PCWs are well placed to identify additional information which consumers value when choosing HCSTC and they should consider whether to include information around late fees and other charges. While we recognise that it may be desirable for consumers to take a wider range of factors into account when choosing a loan, we do not propose to require PCWs to include detailed information about fees and charges or late payment. It is worth noting that, as we highlight in Chapter 6, consumers will receive the information about default charges and other fees and charges to consumers in the standard pre-contractual information before they enter into the credit agreement.

Credit brokers

2.35 The CMA identified competition concerns relating to the transparency of the role of lead generators and we address our wider response to their recommendations in Chapter 3. The CMA also recommended that PCWs only include loan products in their loan comparison tables and do not include credit brokers or other intermediaries, due to the concern that consumers are not making an active choice to use intermediaries, and this can have an impact on their ability to make accurate comparisons between loans.

2.36 Our review of existing PCWs comparing HCSTC found that very few include brokers. In response to our survey, PCWs said that they were not likely to bring credit brokers into their panels mainly due to the complexity of establishing accurate information to include in the rankings.

2.37 It is likely that more credit brokers may want to be included on PCWs if they are more widely used by consumers shopping around as a result of the CMA Order. However, the rules that we are consulting on in this chapter would apply to the comparison of both lenders and intermediaries, and will help to ensure the quality of comparisons. PCWs must comply with the relevant requirements for financial promotions and will have to provide an accurate representative APR and TAP. PCWs which include credit brokers or other intermediaries will need to ensure that they have the necessary information to enable them to provide accurate comparisons.

2.38 We have already done considerable work to address the risks posed to consumers by poor practices by credit brokers in the HCSTC market. As we explain in Chapter 4, we addressed these concerns by making new rules[20] ensuring that key features of brokers' relationships with consumers are transparent, and requiring all credit brokers to ensure that any financial promotion states prominently that the firm is a broker and not a lender. We do not propose to exclude credit brokers and other intermediaries from PCWs, but do propose to clarify how our requirement to state that they are a broker and not a lender applies to PCWs, and to make clear that we expect PCWs to state prominently when information concerning a HCSTC product or the results of a customer's search relate to a credit broker and not a lender.

Q6: Do you agree with our proposed approach to clarify that PCWs must ensure that information concerning HCSTC products complies with the requirement to state prominently that they are a broker and not a lender?

Market coverage

2.39 The CMA did not make a specific recommendation relating to market coverage but it concluded that it would be beneficial to borrowers to be able to identify whether PCWs had broad coverage of the market. This would encourage PCWs to develop a broad panel of lenders.[21] They suggested that we might choose to require PCWs to provide this information.

2.40 The majority of PCWs comparing HCSTC in our desk based research did not disclose the extent of their market coverage. In response to our survey, firms raised concerns this may impact customers' behaviour in a negative way as it may deter them from using PCWs to shop around, although they did not think that this requirement would create any significant compliance costs.

2.41 Our consumer testing included a statement disclosing the extent of market coverage of the PCW, but the outcome of the testing is inconclusive. We asked consumers what effect reading the disclosure on market coverage would have on them, and found that the most common action (34% of respondents) was for a consumer to continue and search other PCWs.

2.42 There is a risk that PCWs make misleading claims about the extent of the market covered. For example, in the HCSTC market we found that some PCWs make misleading claims; one firm said it covers the whole of the market when it only covers 10 lenders, and two claimed to have the greatest coverage despite having no evidence to support this and only having a limited panel. Whilst this is addressed to some extent by our rules on being clear, fair and not misleading, it can be difficult and time consuming for consumers or their advocates to verify these claims.

2.43 For these reasons, we consider that there would be a benefit in requiring PCWs to disclose the extent of their market coverage on their website as a market transparency measure. This would enable consumer groups and other market participants to assess the coverage of PCWs in this market, and encourage consumers to use PCWs with greater coverage, or multiple PCWs. We

20 PS 14/18
21 Para 9.161, CMA Final report

are therefore proposing to require PCWs to display a list of the HCSTC lenders that they cover. As this is intended to be a market transparency measure rather than consumer disclosure, we do not propose to prescribe the format of the disclosure, or the prominence.

2.44 We propose to include guidance on the requirement that financial promotions are clear, fair and not misleading, highlighting that making misleading claims regarding market coverage is likely to be in breach of this rule.

Q7: Do you agree with our proposed approach to require PCWs to disclose the names of lenders they have on their website?

Portal linking to PCWs

2.45 The CMA considered that the creation of a web portal containing hyperlinks to all PCWs comparing HCSTC would enhance the effectiveness of the price comparison website remedy. The recommendation was that the FCA consider how best such a web portal could be implemented and which body would be most appropriate to host the portal. While the Financial Services Register provides information about firms that are regulated by the FCA, we do not think that the FCA is best placed to provide a web portal as described by the CMA. Instead, we propose to increase transparency around market coverage to assist those consumer advocates which rate and recommend PCWs for consumers.

Unreasonable exclusion from PCWs

2.46 The CMA was concerned about the possibility that PCWs might unreasonably exclude payday loan providers or their products, and the impact that this would have on those lenders. They recommended that the FCA considered how to ensure that this does not happen.

2.47 It is for each PCW to decide its own business strategy and there may be circumstances in which it is reasonable to exclude certain providers, if for example they are focussed on a particular segment of the market.

2.48 The CMA has made provision in its Order for a situation where an online lender is unreasonably excluded from all PCWs comparing HCSTC which are authorised by the FCA. In this case the duty to appear on a PCW (and the subsequent prohibition by the Order) will not apply during the period in which the lender remains unreasonably excluded. The CMA will take the decision whether a firm has been unreasonably excluded in line with its monitoring of the Order.

2.49 Where a PCW was unreasonably excluding HCSTC lenders as a result of its dominant market position, we also have concurrent competition powers[22] which would enable us to enforce against breaches of competition law.

22 Finalised Guidance 15/08: www.fca.org.uk/static/documents/finalised-guidance/fg15-08.pdf

Compliance

2.50 The CMA recommended that we consider how to ensure that authorised payday loan PCWs comply with all relevant laws and regulations. We require authorised firms to comply with our requirements – this includes our principles, rules and guidance. We supervise in line with our risk prioritisation framework and use a variety of tools to ensure that firms comply with our standards. We do not propose to change our approach.

Commencement date

2.51 We expect to make our final rules and publish a policy statement next year. We propose that the rules and guidance containing the additional standards should come into effect six months after we make our final rules. In the firm survey, firms estimated the length of time needed to implement any changes. The most significant change was thought to be the proposals to rank by TAP, which at most amounted to under 10 working weeks for one firm. For the other changes the time required was immaterial. Six months from the date we make our final rules should therefore allow firms sufficient time to make any changes to their systems necessary to comply with the requirements. This would mean that PCWs would need to comply with our additional requirements before the CMA Order requires lenders to supply the detailed information included in the Order[23]. Given that PCWs active in this market already require firms to provide detailed product information, we do not anticipate that this would impose a particular burden on firms or PCWs, but we would welcome your views.

Q8: Do you have any comments on the proposed start date?

PCWs in the wider market

2.52 While we recognise that these standards will be of interest to PCWs which operate in the consumer credit market more widely, the focus of our work has been on the CMA recommendations and HCSTC. The results of the consumer testing will, however, inform our wider understanding of the impact that PCWs can have on the ability of consumers to make effective decisions, and we will consider their role in relation to other markets in upcoming work.

2.53 In light of our findings, we would expect PCWs to consider whether their practices are in line with our requirements and in particular Principle 6 (Customers' interests) and Principle 7 (Communicating with clients).

23 The provisions of the CMA Order relating to PCWs will come into force on the later of the date when the FCA's additional standards become effective or the date 12 months after the date that the FCA makes its rules concerning PCWs for HCSTC.

3. Lead generators and credit brokers

Introduction

3.1 Lead generation is a form of credit broking which acts as a customer acquisition channel for lenders or other credit brokers. Lead generators typically offer their services online, where consumers are asked to enter basic information about the type of loan they are looking for, sometimes alongside a request for payment details. This information is then auctioned off to lenders or other credit brokers who seek the details of the consumer as a business 'lead', generally to the firm who bids the highest price[24].

3.2 The CMA had significant concerns about the conduct and competition impact of lead generators within the HCSTC market. A lack of transparency in how lead generators were describing their services led to two-thirds of consumers believing they were applying directly to a lender.[25] The CMA were also concerned that many consumers believed they were being matched with the best value loan, but instead were being shown products ranked based on commercial incentives (such as commission). Most details entered by a consumer around what features of a loan he might want (for example, loan term, loan duration and/or price) did not generally enter the auction process. Instead, most lead generators identified by the CMA would display to consumers the lender who had paid them most, providing little incentive for lenders to compete on price.

3.3 As a result of these factors, the CMA concluded that the price competition that lead generators placed on existing firms was limited.

CMA recommendations

3.4 To address these issues, the CMA recommended that the FCA take the necessary steps to ensure that all lead generators passing customer details to lenders and/or other lead generators in return for payment:

- disclose clearly, prominently and concisely (using a means that ensures customer interaction) that they are not a lender, and
- state explicitly (using a means that ensures customer interaction) that the sale of customer details they collect is on the best commercial terms for the lead generator rather than the customer, and may not result in an offer of the cheapest loan that is available to meet the customer's needs

24 Paragraph 6.102, CMA Final Report.

25 Paragraph 6.102-6.108, CMA Final Report.

3.5 The CMA also considered that we should continue to focus on the operation of lead generators and their compliance with CONC, and to prioritise consideration of the activities of lead generators in future credit consultations.

Our response

3.6 We have had similar significant concerns about the practices of some credit brokers, particularly in HCSTC and other sub-prime credit markets where upfront fees are being charged. There was evidence in 2014 that such practices were causing substantial harm to consumers, including vulnerable consumers and those in financial difficulty. To address our concerns we introduced new rules that banned firms from charging fees, and from requesting payment details from customers for that purpose, unless the firm has provided an explicit notice to the customer in a durable medium (an 'information notice'), setting out, amongst other requirements, a prominent statement that the firm is a credit broker (not a lender).[26]

3.7 The new rules also state that consumers must acknowledge receipt of the information notice and have awareness of its contents in a durable medium (the 'customer confirmation') to ensure some form of interactivity between the consumer and the firm. We also placed requirements on credit brokers with respect to transparency, including that *all* brokers (irrespective of whether they charge a fee) must state prominently in any financial promotion or consumer communication that they are a credit broker and not a lender[27].

3.8 We believe that these rules address the first limb of the CMA's proposed disclosure remedy. They have equipped us with stronger tools with which to challenge poor practice in firms. We have taken robust supervisory and enforcement action against lead generation/credit broking firms in the HCSTC market who were breaching our rules, guidance and/or principles.

3.9 We formally consulted in February 2015 on these rules.[28] We have published the results in PS15/23 with our final rules on credit brokers, concluding that the new rules appear to have made a difference[29]. This conclusion is supported by data which mostly shows a downward trend in consumer detriment from December 2014.

3.10 However, we did find evidence to suggest that some firms are attempting to avoid the rules by moving to alternative business models or changing practices in ways that could themselves cause detriment.

3.11 Before proposing any other significant policy action, we consider it important to do some further work to understand the range and impact of different remuneration models. We are therefore commissioning some work to help analyse the wider credit broking market. This will help us to consider whether there are any gaps in the current rules that need filling, and whether additional rules are required, and if so, in what areas (including what action to take, if any, on the second bullet of the CMA's recommended additional disclosure that a consumer's details are collected on a commercial basis and may not lead to the cheapest loan for that consumer).

26 Or if it is both, a statement that it is acting as a broker not a lender.

27 CONC 3.7. This is unless the financial promotion or communication indicates clearly that it is made solely in relation to the broking of credit agreements secured on land, or that is it solely promoting credit agreements for the purposes of a customer's business. See also CONC 3.1.6R.

28 CP15/6: https://www.fca.org.uk/news/cp15-06-consumer-credit-consultation-paper

29 PS15/23: https://www.fca.org.uk/your-fca/documents/policy-statements/ps15-23

3.12 In the meantime, supervisory and enforcement action will continue where firms breach our rules or in relation to unauthorised broking activity. We supervise regulated firms in line with our supervisory risk prioritisation framework and we will continue to do so, taking action where we feel this is merited.

Q9: Do you have any comments on our proposed approach to lead generators?

4. Shopping around

Introduction

4.1 The CMA found limited evidence of shopping around and switching in the HCSTC market, with the attempts of those who did try being 'very cursory'.[30] The CMA were keen to promote measures which would complement the PCW remedy and improve the extent to which consumers shop around. They recommended two measures - better credit check disclosure and the use of quotation searches – to improve the confidence of HCSTC consumers that they can shop around and switch without having an adverse impact on their credit files.

CMA findings

4.2 The CMA found that, instead of shopping around on price, HCSTC consumers most often choose loans based on access, convenience and speed. The CMA also considered that borrowers may be discouraged from shopping around, and from switching providers, if they perceive that this may have an impact on their credit file.[31]

CMA recommendations

4.3 The CMA concluded that consumers would be more likely to shop around if they can understand their potential eligibility for a loan, and/or the price at which they might be offered credit (where the product is risk-priced or variably-priced) without having to make a full application for credit which may impact their credit score. They also found there to be benefit in additional disclosure on the nature and potential impact of credit checks.

4.4 To address this, the CMA recommended that we continue to work closely with lenders, credit reference agencies (CRAs) and operators of PCWs to encourage initiatives to enable consumers to search the market without adversely affecting their access to credit. Based on their analysis, they suggested that the following specific issues merited further exploration:

- whether disclosures made to borrowers by both lenders and intermediaries are sufficient, in respect of the point at which credit checks will be done, their nature, and whether a 'footprint' of the credit search will be left on the consumer's credit file

30 Paragraph 6.25, CMA Final Report.

31 Where a consumer applies for credit, a credit check is generally undertaken, leaving an 'application search' (or 'hard footprint') of that application for credit recorded on the consumer's credit file. The CMA found some evidence (in both submissions from industry, and analysis of their own data) that the presence of multiple application searches in a short period of time affects how firms view the credit and/or the fraud risk posed by that particular consumer, impacting whether their subsequent applications for credit are approved or declined. CMA Final Report paragraphs 6.62, 9.237-9.239, 9.251.

- whether consumers should be informed immediately prior to a credit check being undertaken that one would be performed
- whether our guidance on quotation searches should become a rule where lenders use variable or risk-based pricing structures, and
- whether there is consistency in the availability, format and visibility of quotation searches, and whether guidance to CRAs and lenders could be developed

Credit checks

4.5 Lenders are required by us to assess creditworthiness on the basis of sufficient information, obtained from the customer where appropriate and from a CRA 'where necessary'. Whilst we have not issued guidance on what constitutes 'where necessary', we understand that most firms see a CRA check as a necessary part of their lending decision.[32]

4.6 The Information Commissioner's Office (ICO) is the regulator of the Data Protection Act 1998, which firms must comply with when collecting and using personal data to conduct credit checks. The Act does not require a lender to seek consent from consumers before they conduct a credit check. Instead, some of the Act's requirements include that firms process personal data fairly and lawfully, and that firms ensure that there is a condition for processing that they can rely on. Firms can satisfy these requirements where they have a legitimate reason for processing the data and they inform a potential borrower what is going to happen in relation to his or her personal data.[33] This may be done through the option of giving individuals Privacy Notices[34] for the purposes of transparency.[35]

4.7 We have examined the Privacy Notices of firms which represent 97 per cent of the HCSTC market (by revenue) to better understand how these inform customers.[36] We found that:

- The majority of firms included a Privacy Notice as part of the terms and conditions for applying for credit. Most firms require consumers to click a check-box that they have read the terms and conditions (provided on a separate 'click-through' page) before their application for credit will be processed, with the terms and conditions page providing a further 'click-through' to a separate Privacy Notice page. These generally outline how the information collected may be used in conducting a credit check, and further information on contacting CRAs
- Some firms also have stand-alone alerts to the existence of Privacy Policies, most frequently in 'FAQ' pages or other pages explaining how lending decisions are made
- A small number of firms also have a second check-box on the final page of an application for credit which must be ticked to explicitly accept the Privacy Notice

32 As we discussed when consulting on the price cap. Paragraph 7.10, FCA CP14/10.

33 ICO Guidance on Credit, available at https://ico.org.uk/for-the-public/credit/. When a credit application is declined on the basis of the check, a firm must notify the consumer of the particulars of the CRAs used. s157, CCA
Consumers also have a right to see their CRA file and rectify any errors. Principle 6, Data Protection Act.

34 Also known as 'Fair Processing Notices' or 'How We Use Your Data Notices'.

35 ICO Guide to Data Protection, available at https://ico.org.uk/for-organisations/guide-to-data-protection/principle-1-fair-and-lawful/

36 Desktop research undertaken mid-2015 after the publication of the CMA's Final Report.

- A small number of firms use their Privacy Notice to explicitly flag that conducting a credit check will leave a footprint on the consumer's credit file; and/or that having a large number of footprints in a short period of time may affect a consumer's credit score, but this is not the norm, and

- Only one HCSTC firm provided a check-box on the final page of an application for credit which explicitly stated that a credit check would be undertaken as a result of applying for credit without needing the consumer to click-through further to other pages, but this did not include information about any potential impact of multiple footprints on a credit file

4.8 We also included in the PCW consumer testing a question on the extent to which consumers are aware of the existence and potential impact of credit checks.[37] Results showed that:

- 90.5 percent of respondents were aware that, in applying for an HCSTC loan, a credit check would be done, which would be recorded on their credit file, and

- nearly 80 per cent of all respondents reported that they were aware that multiple footprints on a credit file could have a negative impact on whether a lender would consider that consumer reliable to lend to

The effectiveness of additional disclosure

4.9 Given that awareness of the existence and potential impact of credit checks was already very high amongst HCSTC consumers, we also wanted to explore what effect the CMA's recommendation to us to introduce additional disclosure requirements on firms (in addition to the ICO's requirements) would have.

4.10 We asked consumers what action they would take if in applying for a loan they were informed that 'applying for more than one loan (or other credit product) within a short period of time could make it harder for you to access credit'. Respondents were able to select more than one answer. The results showed:

- approximately two thirds (almost 63 per cent) responded that additional disclosure would not change their behaviour, and/or that the statement would make little difference given their credit score was already low, and

- around one third (37 per cent) of respondents stated that they would apply for fewer loans as a result of the disclosure

4.11 The results suggest that additional disclosure may make some difference in changing consumer behaviour. However, we also consider that disclosure which results in consumers applying for fewer loans – rather than encouraging them to shop around amongst other lenders for better deals - may in fact reduce price competition between lenders by concentrating market share amongst lenders who are perceived to have low eligibility thresholds for accepting new consumers.

4.12 We also recognise the importance of transparency for consumers in understanding how credit applications may impact their score. It may be that promoting *more informed* applications for credit by consumers, for example, by indicating to consumers their likely eligibility for a product

37 YouGov/LE Technical Report - http://www.fca.org.uk/your-fca/documents/consultation-papers/cp15-33-behavioural-study

and/or its potential price (such as via a quotation search) would be a more effective way of promoting shopping around and switching.

4.13 We have engaged with the ICO on these issues and continue to liaise with them regarding their regulation of the use of consumer data by CRAs and lenders, including how firms inform consumers when gathering data to conduct credit checks.

4.14 In light of our findings and analysis, we are not proposing to introduce any new disclosure requirements at this time. Instead, we are seeking stakeholder views on the potential merits or drawbacks of disclosure in this area.

Q10: In light of our findings, do you have any views on the effectiveness of disclosure about credit checks?

Quotation searches

4.15 A quotation search allows a consumer to see an *indication* of their eligibility and/or the potential price of a product (where it is risk-priced or variably-priced) before undertaking a full application for credit. Whilst there are not currently many instances of risk-based or variable pricing in the HCSTC market, we recognise that this might change in the future. Rather than leaving an application search (or 'hard footprint') on a credit file, a quotation search only leaves a 'soft footprint' which cannot be seen by firms. Hence, quotation searches should not affect a credit score, nor the decision to lend.

4.16 We currently have guidance in CONC that firms should 'not leave evidence of an application on a credit file where a customer is not yet ready to apply, [and that] where practicable, firms should facilitate customers shopping around for credit by offering a 'quotation search' facility'.[38] We have previously committed to monitoring developments after the introduction of our guidance,[39] and to promoting and facilitating the use of quotation searches across all credit sectors.[40]

4.17 There has been considerable progress towards a market-based approach to quotation searches in the past few years across the wider consumer credit market. Quotation searches were originally intended to be used to indicate the price, or the likely price, of credit; but are increasingly being used to indicate eligibility. In particular, PCWs have begun to offer quotation searches giving consumers an indication of their likely eligibility for some types of products.[41] When combined with the price functionality of a PCW, a consumer is therefore shown both a price and an eligibility indicator for each specific product (although it is not clear that the prices shown are risk-based). Further, a small number of retail banks and P2P lenders offer quotation searches which indicate eligibility only.

4.18 We see these market-based solutions as positive, but note that their prevalence in HCSTC markets is currently limited. This may change with the introduction of the CMA's Order on HCSTC PCWs. We believe there is real benefit in consumers being able to get an accurate indication of their eligibility for specific products and the potential price at which they may access credit, reflecting our commitment in CP15/6 to look at how to promote and facilitate the use of quotation searches across all credit markets.

38 CONC 2.4.3G for firms, with equivalent provisions at CONC 2.5.7G for credit brokers.
39 Table A5.1, FCA PS14/3
40 Paragraph 7.5, CP15/6
41 For example, MoneySuperMarket for credit cards and GoCompare for loans.

4.19 We are seeking to engage with stakeholders on how these market-based solutions can be further promoted (for example, whether to consult on elevating our guidance on the use of quotation searches to a rule, and/or through developing guidance on when we would expect quotation searches to be offered and what we would expect them to cover).

Q11: Do you wish to comment on the value of quotation searches in addressing the issues raised by the CMA? Are there specific issues or risks with the use of quotation searches across consumer credit markets?

5. Real-time data sharing

Introduction

5.1 The CMA had concerns about the availability of accurate and up-to-date data on the payment performance of HCSTC consumers.[42] It found that, compared to market incumbents, new entrants to the HCSTC market faced barriers to entry and expansion resulting from their lack of access to comprehensive CRA data allowing informed lending decisions regarding credit risk, reducing the ability for them to compete on price.

5.2 It also saw increased real-time data sharing between lenders and CRAs as a way to increase shopping around by consumers (by reducing the risk that, in the absence of other data, lenders see multiple footprints from shopping around as a sign of credit desperation).

CMA recommendations

5.3 The CMA recommended that the FCA continue to work closely with lenders and CRAs to encourage the development and use of real-time data sharing systems that are open to all HCSTC lenders and other credit providers. In particular, the CMA suggested that the following issues are likely to merit further exploration as part of any further work in this area:

- developments in the supply and use of real-time credit information to ensure that customers are not penalised for shopping around, including the frequency that data is refreshed
- the sharing of credit information by HCSTC lenders with more than one CRA, and
- the terms of access to real-time data sharing schemes, to ensure these do not act as a barrier to entry or expansion

5.4 The CMA considered but did not impose a requirement on lenders regarding real-time data sharing. It was concerned that a requirement to share data in real time (specifically, requiring that lenders share data with all CRAs) could reduce the competitive dynamic of CRAs, who currently compete on the extent of their market coverage. It also found that, as real-time systems are still evolving, seeking to achieve change by imposing a requirement through an Order risked further distorting competition. It also said it did not have the power to require CRAs to offer a real-time product.

5.5 It highlighted the progress the FCA has already made in this area, including our commitment to challenging lenders that are not sharing data in real-time as part of our ongoing authorisations

42 Paragraph 9.273 - 9.29, CMA Final Report.

process, and concluded that the most proportionate and effective remedy would be for us to continue to monitor further developments.[43]

Our response

5.6 We agree with the CMA on the importance of real-time data sharing to enable firms to adequately assess creditworthiness, and enable challenger firms to compete more easily with incumbents (thereby providing incentives to improve price competition). Since taking over the regulation of consumer credit, we have strongly encouraged the industry to improve real-time data sharing in the HCSTC market, resulting in 90% of lenders by market share meeting our expectation to share data in real time by November 2014.[44]

5.7 However, as demonstrated by the CMA's analysis, challenges remain. As we said in CP14/16, not all lenders report data to more than one CRA in real time. Further, there is no standard industry definition of what constitutes real-time data sharing, and trigger events for reporting differ across some firms.

5.8 Although we see clear benefits to real-time data sharing, we do not propose to consult on introducing real-time data sharing requirements at this time. We have seen significant progress and we expect restructuring in this market as a result of ongoing HCSTC regulatory interventions and the authorisation process to lead to further improvements. The proportion of firms participating in real-time data sharing (including participating across more than one CRA) should increase by the time the authorisation process is complete for most HCSTC firms. As we said in PS14/16, we will monitor progress closely to ensure there continue to be improvements in this area and come forward with rules if we detect any loss of momentum.

Q12: Do you have any comments on our approach to real-time data sharing?

43 Paragraph 9.280-9.291, CMA Final Report.

44 Paragraph 5.12, PS14/16: www.fca.org.uk/static/documents/policy-statements/ps14-16.pdf.

6. Improving disclosure of the costs of borrowing

Introduction

6.1 The CMA had concerns that consumers were not sufficiently aware of the potential costs of using HCSTC products. To address this, it made two recommendations to improve the disclosure of the costs associated with borrowing, covering:

- improving the disclosure of late fees and other additional charges, and
- mandatory statements summarising the total cost of borrowing

Improving the disclosure of late fees and other additional charges

6.2 The CMA found that consumers were particularly insensitive to the fees and charges incurred if they did not repay their loans in full and on time, due to three factors:[45]

- information asymmetries between providers and lenders on late fees, where there was limited information provided by lenders on these costs
- the difficulty consumers were facing in making comparisons between different lenders given different charging structures, and
- some consumers being overconfident about their ability to repay loans

6.3 To address this, the CMA proposed that the FCA:

- take the necessary steps to ensure lenders and intermediaries are fully aware of their obligations to disclose to customers prominently and on a timely basis details of fees and other charges payable if a loan is not repaid in full and on time
- review proposals by HCSTC PCWs for complying with these obligations as part of the authorisations process, and
- monitor actively the presentation by HCSTC lenders and relevant intermediaries of information about fees and other charges payable if a loan is not repaid in full on time and the accessibility of this information to customers, and take enforcement action where necessary

45 Paragraph 9.214 CMA Final Report.

Current disclosure obligations

6.4 There are rules in place which require firms to disclose charges, including default fees, in good time before a credit agreement is entered into. Firms should be aware of their obligations in this area, in particular, the disclosure rules which are set out in the Consumer Credit (Disclosure of Information) Regulations.[46] These obligations apply to lenders, unless an intermediary (such as a credit broker) has already complied and we expect firms to comply with them. Failure to comply also gives rise to unenforceability under the CCA 1974. The Regulations prescribe the information to be included in the standard pre-contract credit information form (the 'SECCI'). This must include the total amount payable, any default charges and any other fees and charges. Firms may show cost scenarios of fees and default charges on a voluntary basis.

6.5 Firms are also required to comply with our financial promotions rules, which are set out in Part 3 of CONC. Again, this applies to both lenders and intermediaries. Although we do not oblige firms to include late fees and charges in their financial promotions, we would like to remind them of their obligation to ensure that all financial promotions are clear, fair and not misleading.[47] This includes any information relating to fees or charges that they choose to include. Furthermore, firms advertising HCSTC products specifically are also required to include a risk warning on all financial promotions. The risk warning highlights the potentially serious problems which can be caused by late payment,[48] and must be sufficiently prominent.[49]

6.6 In addition, there are specific rules that apply to credit brokers. Intermediaries with credit broking permissions are required to comply with the additional credit broking rules that came into force on 2 January 2015. This includes HCSTC PCWs. We discuss in greater detail our framework for credit brokers in Chapter 3 of this paper.

Our response

6.7 We agree with the CMA that disclosure needs to be targeted and effective. Disclosure can be an important tool enabling consumers to make more informed decisions. We are not, however, planning to mandate further disclosure at this stage. Rules governing the SECCI derive from the CCD which is maximum harmonised in this area, and therefore firms cannot add to the SECCI itself, nor be required to do so by us. Moreover, we expect the price cap, alongside effective disclosure and our other HCSTC interventions, to alleviate consumer detriment resulting from the impact of late fees and charges.

6.8 All HCSTC firms will have to demonstrate that they meet our minimum standards to become fully authorised, known as the threshold conditions. These include (amongst other requirements) that firms are capable of being effectively supervised by us, have appropriate resources in place, and that the firm's affairs are conducted in an appropriate manner; for example, having regard to the interests of consumers.

6.9 We supervise regulated firms in line with our supervisory risk prioritisation framework. We will continue to do so, taking action where we feel this is merited.

46 Available at: http://www.legislation.gov.uk/uksi/2010/1013/pdfs/uksi_20101013_en.pdf

47 CONC 3.3.

48 CONC 3.4.1 also requires cross-referral to the Money Advice Service, which provides impartial and independent advice to consumers.

49 CONC 3.4.1(3)

Improving disclosure through mandatory statements summarising the cost of borrowing

6.10 The CMA considered that HCSTC consumers, particularly repeat borrowers, were having difficulty understanding the potential full cost of products which they were choosing to borrow. It also found evidence that consumers were overconfident in their ability to afford to service their debts to repay loans. It also observed that many borrowers tend not to switch due to perceived risk of non-acceptance and lose of convenience. Where borrowers do switch it is only when they become less able to access credit from that lender, rather than as a result of shopping around.[50]

CMA Order

6.11 The CMA has therefore decided to introduce a summary of the cost of borrowing to improve disclosure, providing consumers with the information they need to compare firms based on the price of a loan. It has issued an Order[51] to the effect that HCSTC lenders will be prohibited from providing loans to UK customers unless they make available to borrowers a statement summarising their borrowing history with that lender, and they inform borrowers of how to obtain this summary. This Order is intended to complement the recommendation to us on disclosure of late fees and charges.

6.12 The summary must state (amongst other disclosures):[52]

- the principal, fees, charges and payments made for the borrower's most recent loan
- the fees, charges and additional costs incurred as a result of partial payment incurred over the past 12 months preceding the date of accessing the summary
- information on how borrowers can access more detailed information on their loans, and
- the web address of one or more HCSTC PCWs authorised by the FCA (or a portal listing all HCSTC PCWs authorised by the FCA)

6.13 The CMA's Order requires firms to regularly provide the CMA with compliance reports. The CMA has also recommended that the FCA support it in monitoring compliance as part of our routine supervision of FCA authorised firms, to the extent that our powers allow.

Our response

6.14 We consider that the scope for consumer detriment in this area has been reduced by our regulatory interventions, in particular the price cap. Notwithstanding this, like the CMA, we are keen to facilitate price competition under the cap and welcome the Order as part of their remedies package to further improve alerting consumers to the costs of borrowing.

50 Paragraph 9.214, 9.923-9.294, CMA Final Report.
51 Final Order published following consultation on 13 August 2015.
The Explanatory Note: https://assets.digital.cabinet-office.gov.uk/media/55cc61aeed915d5346000022/Payday_lending_explanatory_note.pdf
52 The full list of content for what must be included in summary is available on page 13 of the CMA's Order.

6.15 It is primarily for the CMA to monitor and enforce its Order, but it has recommended that we support this work. We will decide what priority to give to this in line with our normal supervisory prioritisation processes.[53] We have the necessary gateways and an MoU with the CMA, plus general supervisory powers under FSMA, to request these reports from firms should our authorisation, supervisory and/or enforcement action require this.

Q13: Do you have any comments on our proposed approach to disclosure of the cost of borrowing?

53 Our standard supervisory approach is explained in the following document: www.fca.org.uk/static/documents/consumer-credit-being-regulated-guide.pdf

7. Next steps

Consultation period

7.1 The consultation closes on 28 January 2016. We will then review responses and publish our feedback, policy decisions and final rules and guidance.

7.2 The rules and guidance we are consulting on are set out in the draft instrument in Appendix 1.

Policy statement on consumer credit issues

7.3 We published a policy statement (PS15/23)[54] on 28 September 2015 in response to our CP15/6 consultation (February 2015) on regulatory changes, covering in particular:

- credit brokers
- guarantor lending, and
- debt issues

Future consumer credit policy work

7.4 We said in the PS that we plan to take forward further work on credit broking and guarantor lending with a view to potentially consulting on new rules and guidance in 2016.

7.5 We have also previously announced:[55]

- a review of how our consumer credit rules apply to cold calling and unsolicited marketing of credit products and services
- a review of repeat and multiple borrowing in the HCSTC market
- work on how firms assess creditworthiness (including affordability), with a view to consulting on changes to our rules and guidance, and
- a review of the HCSTC price cap in early 2017 – we will announce nearer the time how we propose to involve consumers, industry and other stakeholders

54 https://www.fca.org.uk/your-fca/documents/policy-statements/ps15-23
55 Chapter 7 of CP15/6.

7.6 In addition, we are required to review the remaining provisions of the CCA and report to the Treasury by 1 April 2019. Before that we must publish and consult on an interim report. We are starting preparatory work for this major review, including considering how to involve industry and consumer stakeholders.

Consumer credit thematic reviews

7.7 We announced two thematic reviews in our Business Plan[56] for 2015-16:

- **Staff remuneration**: The review will cover a broad range of sub-sectors including firms where consumer credit is secondary to their main business. The first stage will review firms' incentives policies, remuneration arrangements and controls. The second stage will involve on-site visits and more detailed testing on a selection of firms. The review work will take place throughout the year with the findings at each stage shaping our approach going forward.

- **Early arrears management in unsecured lending:** The project will look at early arrears – from the identification of customers in probable difficulties at a pre-arrears stage to the point at which the lender formally defaults the customer and/or 'charges off' the debt. The project aims to test whether firms have due regard to the interests of their customers and appropriately exercise forbearance. It will also assess firms to see whether they are compliant with our existing rules and principles, and consider whether good and poor practices are employed.

7.8 More information on both thematic reviews is available on our website.[57]

Consumer credit market studies

7.9 We are undertaking a market study to build up a detailed picture of the credit card market and identify what, if any, action we might take.[58] We plan to publish our interim report outlining our initial findings in Autumn 2015.

Authorisation

7.10 We continue to assess the applications of firms with interim permission who apply for full permission and new applications. Firms started applying for full permission from October 2014 with each interim permission firm allocated to an application period.[59]

56 www.fca.org.uk/static/channel-page/business-plan/business-plan-2015-16.html
57 http://fca.org.uk/news/tr-early-arrears-management-in-unsecured-lending; http://fca.org.uk/news/tr-staff-remuneration-and-incentives
58 www.fca.org.uk/news/credit-card-market-study
59 https://small-firms.fca.org.uk/authorisation-consumer-credit

Annex 1: List of questions

Q1: Do you have any comments on the proposed application of our rules for PCWs comparing HCSTC products?

Q2: Do you agree with our proposal to prevent PCWs from displaying information about HCSTC products or including search results on the basis of commercial relationships?

Q3: Do you have any comments on our proposed rule that a PCW for HCSTC should enable customers to search for a specified loan amount and duration?

Q4: Do you agree with our proposal to require HCSTC PCWs to rank the results of a consumer's search in ascending order of price according to the Total Amount Payable?

Q5: Do you agree with our proposals on additional advertising on a PCW that compares HCSTC?

Q6: Do you agree with our proposed approach to clarify that PCWs must ensure that information concerning HCSTC products complies with the requirement to state prominently that they are a broker and not a lender?

Q7: Do you agree with our proposed approach to require PCWs to disclose the names of lenders they have on their website?

Q8: Do you have any comments on the proposed start date?

Q9: Do you have any comments on our proposed approach to lead generators?

Q10: In light of our findings, do you have any views on the effectiveness of disclosure about credit checks?

Q11: Do you wish to comment on the value of quotation searches in addressing the issues raised by the CMA? Are there specific issues or risks with the use of quotation searches across consumer credit markets?

Q12: Do you have any comments on our approach to real-time data sharing?

Q13: Do you have any comments on our proposed approach to disclosure of the cost of borrowing?

Q14: Do you have any comments on our cost benefit analysis?

Q15: Do you agree with our assessment of the impacts of our proposals on the protected groups? Are there any other groups we should consider?

Annex 2: Cost benefit analysis

1. FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish 'an analysis of the costs, together with an analysis of the benefits' that will arise if the proposed rules are made. It also requires us to include estimates of those costs and benefits, unless they cannot reasonably be estimated or it is not reasonably practicable to produce an estimate.

2. This chapter provides:

    - a summary of the findings from our CBA and our conclusion
    - background on the market failure analysis and resulting remedies recommended by the Competition and Markets Authority (CMA) with respect to the high cost short term credit (HCSTC) market and price comparison websites (PCWs)
    - an overview of the analytical approach that we took towards the CBA, and
    - details of the impacts that we expect to observe for consumers, HCSTC firms and PCWs

Summary

3. Following its review of the Payday Lending market, the CMA proposed a series of remedies for HCSTC. The CMA's analysis cites potential scope for price competition between payday lenders at a level below the HCSTC price cap which could be stimulated by the use of PCWs and improve customer outcomes. The CMA therefore published an Order requiring payday lenders to publish details of their loans on a PCW that is authorised by the FCA. The CMA also recommended that we review our requirements for PCWs comparing HCSTC (HCSTC PCWs) and use our regulatory tools to raise those standards. The interventions we are proposing, in setting additional standards for these PCWs, are aimed at addressing market failures associated with consumers' inability to make informed loan choices when shopping around which give rise to consumer detriment.

4. This CBA assesses the incremental impact that proposed additional standards for HCSTC PCWs could have over and above the CMA's Order. As a result, the baseline to measure the incremental impacts of our proposed interventions is a hypothetical one, where the CMA's Order which obliges HCSTC lenders to publish on authorised PCWs is in force, but these PCWs operate without additional regulatory standards (or with minimal additional regulatory standards).

5. The analysis completed for this CBA comprised three separate elements to enable us to assess the impacts on consumers, HCSTC firms and HCSTC PCWs. This included:

- an online behavioural experiment with customers to understand the effect that different potential regulatory interventions would have
- a survey of HCSTC PCWs and mainstream PCWs to assess the additional costs that they would face where they were required to comply with the proposed interventions and the impact on their business model, and
- a survey of HCSTC lenders to assess current use of PCWs as an acquisition channel and associated costs

6. The consumer testing clearly showed that customers were likely to make significantly poorer decisions in their choice of loans in the absence of some of our proposed standards. The main benefit of the standards is therefore expected to be a cost saving for individuals continuing to use HCSTC loans due to greater transparency around the merits of competing HCSTC offers which will help them choose lower price loans. Potential savings range between £4m and £19m per year; with the variation in benefits attributable to differences in assumptions around the extent to which the CMA requirement and our standards lead to greater use of PCWs.

7. This cost saving is in part a transfer, because it implies a parallel drop in the revenue of lenders. However, we believe that beyond the transfer this leads to welfare gains for consumers where lower HCSTC costs have positive benefits due to a reduced risk of financial distress. We note that many HCSTC customers may be in financial distress and would therefore further benefit from the reduced risk of suffering payment problems. In line with section 138I(8) of FSMA, we do not consider it to be reasonably practicable to produce an estimate of these benefits because they relate to welfare outcomes for consumers which are yet to occur and we base our analysis on an hypothetical scenario. To attempt a sophisticated quantification exercise would not be a proportionate use of FCA resources.

8. We expect the main impact for HCSTC lenders to be a reduction in revenue as a result of the reduced prices that customers pay. As outlined above, this is, in effect, a transfer from HCSTC firms to consumers of between £4m and £19m per year. However, the increased use of PCWs may also lower barriers for new entrants and smaller firms, allowing them to compete directly on price.

9. We expect the main impact for PCWs to be revenue related as ranking of HCSTC offers on the basis of commission paid to the PCW would no longer be allowed and this would likely reduce revenue around 15%. However, this will in part represent a transfer from PCWs to HCSTC lenders as it will lower listing costs on PCWs *on average*. In addition, there will be one-off compliance costs for the industry of around £150,000 and on-going incremental costs of around £40,000 per year to implement the standards. Some benefits for PCWs may also arise where the PCW standards deliver better outcomes for consumers, making it a more attractive acquisition channel and encouraging more HCSTC firms to list on multiple PCWs, thereby increasing revenues for the PCW.

10. We also considered whether our additional standards might influence PCWs' decisions to enter the HCSTC comparison space. However, our survey of PCW firms suggests that this would not be the case.

Market failure analysis

11. In CP14/10 (proposals for a price cap on high-cost short-term credit) the main market failures we identified in the HCSTC market were behavioural biases, information asymmetries and limited price competition. We argued that these market failures in combination led to borrowers taking out loans that were too expensive and which they were unable to afford. We attempted to address these problems through setting a price cap in the market.

12. In its Payday Lending Market Investigation the CMA found that, due to structural and conduct features in the HCSTC market giving rise to an adverse effect on competition:

- some customers were paying more for their loans than they would if price competition were more effective, and
- there was potentially less pricing innovation (for example in relation to the introduction of risk-based or flexible pricing models) than in a market in which price competition was more effective

13. The CMA acknowledged that by forcing down the prices of payday loans, the price cap would mitigate some of the harm to customers that had arisen from high prices. However, the CMA's analysis, in line with the FCA's in PS14/16, argued that there continues to be scope for price competition between payday lenders at a level below the price cap and that further competition to improve customer outcomes would be achievable. In particular, the CMA found:

- a risk that the price cap may become the benchmark for the pricing of payday loans (price ceiling)
- more effective competition is likely to increase the pressure on lenders to compete for lower-cost customer groups (i.e. lower risk customers), for example through increased innovation in pricing structures (for example, differential prices), and
- without effective price competition, longer term cost reductions from cost efficiencies and innovation will not be passed on to customers

14. The CMA's Order on payday lenders requiring them to appear on a PCW that is authorised by the FCA is designed to contribute to addressing these market failures. However, the efficacy of the Order depends on consumers' ability to choose more appropriate loan products. The CMA raised concerns about poor practices in the current PCW market for HCSTC comparison which might hinder good customer outcomes. Such practices include, for example, PCWs ranking results based on commercial relationships instead of price, or PCWs not allowing users to enter loan amount and/ or duration when searching for loans.

15. The CMA therefore recommended that the FCA review the current conduct of HCSTC PCWs and address any concerns using our rule making powers. Having reviewed the practices of PCWs providing HCSTC comparisons we share some of the CMA's concerns. There is a material risk that while more consumers would use PCWs as a result of the CMA's Order, significant detriment might still be experienced if standards are not introduced to address the current practices of PCWs in this market. The interventions we are proposing are aimed at addressing the market failures associated with consumers' inability to make informed loan choices when shopping around.

CMA recommended remedies on HCSTC and PCWs

16. The CMA recommended several different elements that the FCA might want to consider in setting standards for PCWs comparing HCSTC loans. After further refinement of these elements we initially considered the set of potential interventions listed in Table 1 below. After further thought and analysis, we have narrowed down the set of standards we propose for this market. These are the white rows in the table below. We denote in grey, in this table and throughout this chapter, potential interventions that we considered but which we are not proceeding with. The details of the proposed interventions which we are consulting on are set out in Chapter 2 alongside a discussion around the rationale for not proceeding further with the proposed remedies highlighted in grey in Table 1 below.

Table 1: Potential interventions for HCSTC PCWs

Area covered	Potential intervention number	Detail of potential intervention
How PCWs rank results	1	PCWs should not return results in a way that is influenced by the commercial relationship between the PCW and the HCSTC lender. This includes only showing 'featured products' or forcing the consumer to click through to view other products.
	2	Results should be, in the first instance, ranked by ascending order of price.
	3	The measure of price should be Total Amount Payable (TAP)
Additional advertising on a PCW	4	No additional advertising should be present on comparison pages
	5	There should be no additional advertisements inside comparison tables (this includes featured products)
Input functionality of the PCW	6	PCWs should allow users to search by specific loan amounts and terms
Allowing or identifying credit brokers on PCW comparison tables	7	Brokers or other intermediaries should not be included in comparison tables
Disclosures a PCW should include	8	Extent of market coverage of the PCW should be disclosed on the PCW site

Notes: We do not intend to take forward proposals 4 and 7 which are flagged by the rows in grey.

Our analytical approach

17. Our analytical approach was designed to evaluate the impact of our proposed interventions on:

- consumers' ability to make informed choices on PCWs when shopping around for HCSTC
- the PCW market for HCSTC, in terms of the costs to comply with any proposals, any impact on revenue, and possible impact on firms' decisions to remain in, or enter, the HCSTC comparison market, and

- HCSTC lenders primarily in terms of the impact of potential price changes on revenues

18. We used a mix of approaches to understand the impact of individual elements. The approach taken for each element analysed is summarised in Table 2. As illustrated in Table 1, the majority of the focus was directly aligned to the remedies that the CMA recommended but as part of the analysis, consideration was also given to the combined impact of all of these proposed interventions as well as the outcomes that would be seen in the absence of the implementation of these standards (the baseline). The role of these elements of the assessment can be seen at the top and bottom of Table 2.

Table 2: Approach to analysing potential interventions

No.	Potential intervention	Desk research	Consumer testing	Survey of PCWs	Survey of HCST lenders
	Combined impact of potential intervention	✓	✓	✓	✓
1	The ranking of returned results should not be influenced by commercial relationships	✓	✓	✓	
2	Results should be, in the first instance, ranked by ascending order of price	✓	✓	✓	
3	The measure of price should be Total Amount Payable	✓	✓	✓	
4	No additional advertising should be present on comparison pages	✓	✓	✓	
5	There should be no additional advertisements inside comparison tables (this includes featured products)	✓	✓	✓	
6	PCWs should allow users to search by specific loan amounts and terms	✓	✓	✓	
7	Brokers or other intermediaries should not be included in comparison tables	✓		✓	✓
8	Extent of market coverage should be disclosed on the PCW site	✓	✓	✓	
	Baseline (in the absence of standards)	✓	✓	✓	✓

19. As outlined in Table 2 above, when assessing the impact of the proposed standards, it was important to have a clear baseline against which to measure incremental effects. The CMA Order on payday lenders will prohibit them from lending online to customers in the UK unless they cause details of their loan products to be published on at least one PCW that is authorised by the FCA. The baseline to measure the incremental costs and benefits of our proposed interventions then is a hypothetical one: where the CMA's Order obliges HCSTC lenders to list on authorised PCWs but these comparison websites operate within the current regulatory standards and without any of the proposed additional standards.

20. In trying to establish this hypothetical baseline we need to understand how PCWs comparing HCSTC products might act if we did not introduce additional standards for their operation. We address this question below. It is important to realise the implication of setting this hypothetical baseline for the scope of our CBA. In this annex we are not attempting to measure the likely impact of the CMA's Order on HCSTC lenders, but rather the likely incremental impact of the additional standards we propose to introduce for PCWs comparing HCSTC products, since our duty under section 138I of FSMA concerns rules that we propose to make. We acknowledge there is a significant degree of uncertainty around what the market might look like in the absence of our additional regulation (the baseline). This makes assessing the incremental impact of additional regulation a difficult exercise.

21. In assessing the incremental impact of the proposals against the baseline, our analytical approach was designed to evaluate the impact that the proposed CMA interventions would have on consumers, on HCSTC lenders and on PCWs. Our analysis therefore focused on consumer testing, HCSTC firm surveys and a survey of PCWs to enable us to assess and fully understand the impact that the proposals would have on each of these groups respectively. In addition, we completed a survey of the major PCW operators that do not currently operate in the HCSTC market to assess the impact the proposals may have on their willingness to enter the market. Each of these elements of the assessment is discussed in the following sections.

Consumer testing

22. To assess the impact on consumers we designed and carried out an online experiment working with London Economics and YouGov. Respondents were shown a number of hypothetical PCWs (reflecting potential outcomes under different standards) and were asked to choose their preferred loan in each setting. Respondents also completed a questionnaire.

23. 791 respondents took part in the experiment.[60] YouGov's online panel was used to provide the sample. Screening questions were used to recruit respondents who had either taken out a payday loan in the past 12 months, or had not taken out a payday loan but expected to do so in the next 12 months. Table 3 summarises the sample groups achieved below.

Table 3: Sample groups in consumer testing

Sample group	Respondents (n)	Proportion (%)
Taken out a payday loan in past 12 months	690	87
Not taken out a payday loan in past 12 months but expect to take out a payday loan in the next 12 months	101	13
Total	**791**	**100**

Note: Of the 690 respondents in the first sample sub-group, 184 respondents expected to also take out another payday loan in the next 12 months

24. Each respondent was shown three different hypothetical PCWs. For each of the three cases they were asked to choose the loan that best suited their needs. We tested seven different PCW 'treatments', designed to isolate the effect of different potential regulatory interventions.

60 The sample size of ~800 individuals was chosen to allow sufficient coverage to be reasonably confident in extrapolating impacts to the relevant population, without the exercise becoming disproportionally costly.

Table 4 below summarises how these treatments map to the potential interventions we were examining and the features of these treatments. More details of the experiment design and treatments can be found in the supporting technical report.[61]

Table 4: Mapping of potential interventions to experiment treatments, and features of treatments[62]

Interven-tion nr.	Potential intervention	Treatment	All loans displayed on one page	TAP or RAPR in loan table header	Loans ordered by TAP ascending	Loans sorted by RAPR ascending	Banner ads included	Searchable by loan amount and term
Combined	Combined impact of potential intervention	A	✓	TAP	✓		×	✓
1	The ranking of returned results should not be influenced by commercial relationships	B	×	TAP	✓		×	✓
2,5	• Results should be, in the first instance, ranked by ascending order of price • There should be no additional advertisements inside comparison tables (this includes featured products)	C	✓	TAP	×		×	✓
3	The measure of price should be Total Amount Payable	D	✓	RAPR		×	×	✓
4	No additional advertising should be present on comparison pages	E	✓	TAP	✓		✓	✓
6	PCWs should allow users to search by specific loan amounts and terms	F	✓	TAP	✓		×	×
Baseline	Baseline (in the absence of standards)	G	×	RAPR	×	×	ü	×

Notes: TAP refers to Total Amount Payable, RAPR refers to representative annual percentage rate of charge.

61 www.fca.org.uk/your-fca/documents/consultation-papers/cp15-33-behavioural-study

62 In addition intervention number 8 (Extent of market coverage should be disclosed on the PCW site) is tested across treatments in the experiment

Firm surveys

25. To assess compliance costs, impact on profits, and likely impact that the proposals could have on entry or exit of HCSTC firms from the market, we conducted surveys of three different types of firms: PCWs which currently compare HCSTC, PCWs active in financial services which do not currently provide HCSTC, and HCSTC lenders.

26. Responding firms are responsible for significant volumes of business in their sectors (see Table 5), which gives us confidence that our assessment of supply side impacts is based on information provided by an appropriate set of market participants. However, because the baseline (a world where we have not introduced standards but the CMA order for HCSTC lenders to list products on PCWs is in force) is a hypothetical one, there is a material degree of uncertainty in firms' responses and our consequent extrapolation of impacts to the wider market.

Table 5: Overview of firm surveys

Sample group	Number of firms that received the survey (n)	Number of firms that responded to the survey (n)	Responding firms as an estimated proportion of population (by volume of business)
PCWs that compare HCSTC loans	15	5	50% of HCSTC comparisons
PCWs that do not currently compare HCSTC loans	16	9	
HCSTC lenders	14	10	85% of all online HCSTC lending

27. In addition to the firm surveys we reviewed practices of PCWs that currently offer a comparison of HCSTC to help establish the baseline. In total we reviewed the practices of 10 HCSTC PCWs.

Practices of HCSTC PCWs

28. The larger, better known PCWs that provide comparisons for financial services (for example insurance, credit and banking products) do not currently compare HCSTC products. It could be that changes in the HCSTC market, reputational concerns about HCSTC products and limited opportunities in what is presently a small market are the main factors influencing the decision not to enter the market and may make entry by larger PCWs unlikely in the future. The current PCW market for HCSTC comparison is small. PCWs that compare HCSTC carry out the regulated activity of credit broking. We reviewed the websites of 10 firms providing comparisons of HCSTC products over the period June to July 2015 to understand current practices in this sector. We further obtained survey responses from five of these firms which are active in HCSTC comparison, which helped us understand their practices in greater depth. This provides an indication of the scale of practices that could lead to potential detriment for customers that might occur in the absence of our regulation. The practices of the ten firms reviewed are summarised in Table 6 below.

Table 6: Summary of practices at 10 PCWs that compare HCSTC products

Current practice	Relatively larger HCSTC PCWs			Relatively smaller HCSTC PCWs							Scale of potentially detrimental practices
	1	2	3	4	5	6	7	8	9	10	
Ranking of returned results influenced by commercial relationships	✓	✓	✗	✗	✗	✗	✓	✗	✓	✓	◑
Total Amount Payable not used as the measure of price to make comparisons	✓	✓	✓	✓	✗	✗	✓	✗	✓	✓	◕
Additional advertising present on comparison pages	✗	✗	✗	✓	✗	✗	✓	✗	✗	✗	◔
Additional advertisements inside comparison tables (including featured products)	✓	✓	✗	✗	✗	✗	✗	✗	✗	✗	◔
Does not allow users to search by specific loan amounts and terms	✓	✓	✗	✗	✗	✗	✓	✗	✓	✓	◑
Credit brokers or other intermediaries included in comparison tables	✗	✗	✗	✗	✗	✗	✓	✗	✗	✗	◔
Extent of market coverage not disclosed on the PCW site.	✓	✓	✓	✗	✗	✓	✓	✓	✓	✓	◕

Notes: ✓ = Evidence of potentially detrimental practices

✗ = No evidence of potentially detrimental practices

29. From the current practices of PCWs providing HCSTC comparisons it is clear that rankings in a significant portion of the market are influenced by commercial relationships, and that the lack of input functionality provided combined with inadequate price information makes shopping around for better deals a difficult task for consumers.

30. The information summarised in Table 6 provides an indication of the likely behaviour of PCWs in the hypothetical baseline. Of course current behaviour is not equivalent to how this sector might look in the presence of the CMA Order (and in the absence of further intervention to introduce additional standards from our end).

Impacts of the proposed approach

31. In the preceding section we presented the analytical approach that we took towards the assessment of costs and benefits associated with the implementation of the HCSTC PCW standards proposed by the CMA. In the following sections, we provide an overview of how our research shows how the market may be impacted in terms of:

- benefits that customers will attain
- impacts on HCSTC firms, and
- impacts on HCSTC PCWs

Impacts on consumers

32. To understand impacts on consumers we relied mainly on the consumer experiment carried out. The primary performance measure used in the study was the proportion of respondents in each treatment who selected the cheapest deal for each loan amount and term. These results are summarised in Table 7.

Table 7: Proportion of respondents choosing cheapest loan

Intervention nr.	Potential intervention	Treatment	Proportion choosing loan with lowest TAP (%)	Percentage point difference relative to Treatment A	Median rank of loan for respondents who did not choose the cheapest loan
Combined	Combined impact of potential intervention	A	63.0	–	3
1	The ranking of returned results should not be influenced by commercial relationships	B	**3.1**	**-59.9*** **	4
2,5	Results should be, in the first instance, ranked by ascending order of price There should be no additional advertisements inside comparison tables (this includes featured products)	C	**26.7**	**-36.2*** **	5
3	The measure of price should be Total Amount Payable	D	**13.5**	**-49.5*** **	4
4	No additional advertising should be present on comparison pages	E	66.3	3.4	3

Intervention nr.	Potential intervention	Treatment	Proportion choosing loan with lowest TAP (%)	Percentage point diffence relative to Treatment A	Median rank of loan for respondents who did not choose the cheapest loan
6	PCWs should allow users to search by specific loan amounts and terms	F	60.3	-2.6	3
Baseline	Baseline (in the absence of standards)	G	**0.8**	**-62.2*** **	7

*Note: N=791. Items in bold are statistically significant at least at the 90% confidence level (i.e. *** = significant at 99%; ** = significant at 95%; * = significant at 90%). Results use a two-sample difference in proportion test.*

33. We find:

- Even with all standards in place, individuals do not make perfect decisions. To the extent that the experiment is reflective of the real world, this suggests that if all our standards were in place, 63% of individuals would choose the best priced loans.

- The individual standard that has the most significant impact in isolation is treatment B, where rankings are not influenced by commercial relationships. Where PCWs present only featured products that represent preferential commercial relationships on initial comparison pages, only showing wider coverage of products when individuals click through to reveal these, we find only 3% of individuals manage to choose the best priced loan.

- Similarly to the preceding finding, where loans were not ordered by TAP and hence the cheapest loans never appeared at the top of the comparison table (treatment C) there was also a significant decline in the proportion of respondents selecting the cheapest loan (27%). This situation mirrors current practices where PCWs rank results according to commercial relationships and additional advertisements interspersed within the comparison table (such as 'featured products').

- When loans are ranked by Representative Annual Percentage Rate of Charge (RAPR) as opposed to TAP (treatment D), the proportion of respondents that chose the cheapest loans was only 13.5%. This suggests that TAP is a more useful measure of price for consumers to select the cheapest loan.

- Banner advertisements (treatment E) outside of comparison tables do not appear to make significant differences to customer outcomes. The experiment allowed respondents to choose advertised loans instead of loans inside comparison tables, but take-up of this option was close to zero, and did not impact outcomes within the table.

- The headline figures initially suggest that treatment F, providing users the functionality to search by loan terms and amounts, does not lead to significantly improved outcomes. However, drilling down into the choices made by individuals who do choose the best deal we find the results are explained by respondents predominantly choosing the topmost loan in the comparison table rather than actively choosing the cheapest loan that is also consistent with their preferences around loan term and amount. We think this strongly indicates the benefit of such input functionality for individuals.[63] We tested treatment G where none of the standards proposed were applied, to reflect the baseline. In this treatment less than 1% of respondents managed to choose the best priced option. Further examining outcomes for respondents who did not manage to choose the best priced loan (the rightmost column in Table 7), we find the absence of any standards (treatment G) leads to significantly poorer outcomes than when standards are applied. On average such respondents chose the 7th cheapest loan available compared to treatment A (with all standards applied) where the median was the 3rd cheapest.

34. With regards to our proposals on market coverage disclosure, on the hypothetical website, we included a statement disclosing the number of lenders compared on the PCW[64]. Whilst 69% of respondents reported that they had seen this statement, these respondents also tended to answer that they had seen other statements which were in fact not on the website. However, in the consumer questionnaire, when consumers were asked how they would respond if they knew the extent of the market covered by the PCW, more respondents indicated that they would search other PCWs than taking any other action. While these results do not provide us with confidence that consumers would notice disclosure around market coverage, the provision of this information will make PCWs more transparent and accountable to other market participants (such as consumer groups and the Money Advice Service), leading to increased competition amongst PCWs and ultimately benefits for consumers.

35. Because of the experiment design, outcomes can be translated into potential price difference for consumers. In the experiment 9 loans (duplicated to make 18) for each combination of loan amount and term range were available, from a cost of 20% per month to 24% per month in 0.5% increments. The range in cost was consistent regardless of the loan amount or term that customers chose and this allowed us to estimate how much consumers could save when choosing the cheapest loan. Moving from the baseline of treatment G (where no standards are applied) to treatment A (where all proposed standards are applied) we estimate an 11% decrease in prices for customers, arising from the improved ability to compare loans and hence choose better priced options. Two points about interpretation and a caveat to note about this number:

- This is an estimated *percentage* difference in price, and should not be read as a *percentage point* difference from current (or baseline) equilibrium price.
- This is the estimate of the percentage difference in price between a world where no PCW applies our standards, and where all PCWs apply our standards. However, we know that several PCWs already act in ways that are consistent with our standards. Therefore the incremental impact in prices we would actually expect would be materially smaller than this. To derive an estimate of the actual impact we build two scenarios described below.
- Our estimate is based on a hypothetical level of price dispersion modelled in the experiment, which has a degree of uncertainty around it (as any such hypothetical scenario would).[65] A discussion of how we reached this hypothetical level of price dispersion is presented below in Box 1.

63 In treatment A, of those who choose the best priced loan (within any loan term or amount category) 52% do so by choosing the top most loan in the comparison table. In treatment F, this number rises to 85%. In both treatments because the products in the comparison table are ranked by TAP by default, the topmost loan is the best priced one among the category with the lowest amount (£100) and the shortest term (30 days) tested in the experiment.

64 'We cover N lenders. We aim to provide a reasonable coverage of relevant products, but we do not cover the whole of the market. Other products may be available that you will not find on this Price Comparison Website'. N was randomised across participants such that 50% saw N=5 and 50% saw N=25.

65 For details of the hypothetical price dispersion used in the experiment see LE/ YouGov report.

Box 1: Price dispersion

The CMA Order and our standards in combination are likely to lead to some price dispersion below the price cap level. It is difficult to be certain about the level of dispersion. Before the price cap there was significant price dispersion. After the price cap prices are mostly clustered around 24%. In our hypothetical scenario we used a uniform distribution of loans between 20 and 24%. The mid-point, 22%, is not too different from the competitive monthly interest benchmark of 22.5% the CMA indicates prices in a more competitive scenario might reduce to.

There are in any case reasonable arguments for prices being lower than the current clustering (and possibly the CMA's 22.5% benchmark): regulatory intervention (for example mandating listing on PCWs) reducing marketing costs (particularly important for potential entrants), increased competition, and a reduction in the ceiling (clustering) effect around the cap.

Because of the reasons above and the CMA remedies, there is likely to be some price dispersion in the intermediate period, with the market eventually mostly clustering around a lower (than £24) competitive equilibrium. This exercise would go towards quantifying benefits during the intermediate period of expected price dispersion

But in the longer term the standards that we set should help maintain prices closer to a lower priced competitive equilibrium (i.e. in the absence of our rules this is not a state that would be permanently achieved). Consequently our estimation of benefits should provide a scale for continuing benefits in the longer term (though this is not a precise method of measuring these longer term benefits)

Translating impacts on consumers into benefits

36. To calculate the scale of the cost saving for individuals we built two scenarios summarised in Table 8 below. As outlined above, the main difference between the low and high scenario is based on assumptions around the extent to which the CMA order increases the use of PCWs by HCSTC firms.

- Under the lower impact scenario the CMA Order and our standards have a relatively small impact in terms of increased use of PCWs as a distribution channel by HCSTC lenders. Consequently decreases in price (and therefore cost savings for individuals) are largely limited to individuals actually using PCWs to access HCSTC loans.
- Under the higher impact scenario there is a significant increase in the use of PCWs as a distribution channel for HCSTC loans. Drivers for this include: individuals becoming increasingly aware of PCWs for HCSTC as a result of the CMA's requirement for lenders to put a link to the PCW where they are listed prominently on their websites and the greater salience of price on a distribution channel with relatively low marketing costs attracting new entrants to the lending market. In this scenario, reductions in price (and therefore cost savings) are not largely restricted to those using PCWs to access loans as in the lower impact scenario, but filter across to the wider market in a significant way.

Table 8: Scenarios to calculate impacts for consumers

<table>
<tr><th colspan="3">Common assumptions</th></tr>
<tr><td colspan="3">Annual value and price of online HCSTC Loans</td></tr>
<tr><td>Annual £ value of HCSTC loans made</td><td colspan="2">£1.3 billion (Source: data collected at the time of CP 14/10)</td></tr>
<tr><td>Price of loans</td><td colspan="2">£315 million (Calculated based on observed clustering of prices around cap limit of 24% per month)</td></tr>
<tr><td colspan="3">Use of PCW as a distribution channel</td></tr>
<tr><td>Current proportion of loans sold through PCW distribution channel by HCSTC lenders</td><td colspan="2">4.7% (Source: survey of HCSTC lenders for this analysis)</td></tr>
<tr><td>Percentage of HCTSC lenders currently using at least one PCW as a distribution channel</td><td colspan="2">90% (Source: survey of HCSTC lenders for this analysis)</td></tr>
<tr><td>Consequent minimal increase of PCWs as a distribution channel after CMA Order</td><td colspan="2">5.2% (Calculated by multiplying the two numbers above)</td></tr>
<tr><td colspan="3">PCW practices in the absence of proposed standards</td></tr>
<tr><td>Degree of potentially detrimental practice across main elements of detriment that would otherwise occur in PCWs (therefore degree of possible improvement)</td><td colspan="2">66% (Based on systematic assessment of current practices at PCWs - see Table 6 for a summary)</td></tr>
<tr><td colspan="3">Price difference as a consequence of standards</td></tr>
<tr><td>Mean degree of price improvement from the baseline to applying the set of standards</td><td colspan="2">11.3% (Source: consumer experiment conducted for this analysis)</td></tr>
<tr><td colspan="3">Differing assumptions</td></tr>
<tr><td></td><td>Low scenario</td><td>High scenario</td></tr>
<tr><td>Increase in PCW use as a distribution channel after the CMA Order and our standards</td><td>Limited increase: 1.5 times minimal baseline (to 7.8% of all online HCSTC loans)</td><td>Material increase: 4 times minimal baseline (to 20.9% of all online HCSTC loans)</td></tr>
<tr><td>Degree to which price benefits gained by those accessing loans through PCWs filter through to the wider group of borrowers, i.e. those who access online HCSTC loans through other distribution channels</td><td>Limited effect (price change for borrowers not using PCWs equal to 10% of the pricing benefit gained by PCW users)</td><td>Material effect (price change for borrowers not using PCWs equal to 75% of the pricing benefit gained by PCW users)</td></tr>
</table>

37. On the first of the two differing assumptions we note that increases in PCW use might come about because:[66]

- individuals might realise the availability of comparisons because of the CMA's requirement for lenders to disclose that loans are being listed on PCWs on their sites
- individuals might start using such sites more when they realise (as a consequence of the standards) that clear and quick comparisons can be made
- new entrants and smaller lenders in the HCSTC market might be attracted to PCWs as a distribution channel because (after the Order and the standards) these allow competition focusing on price rather than brand, and
- there are fewer lead generators as a consequence of the standards

38. Given current levels of online lending in the HCSTC market we estimate a total annual cost saving of around £4 million for individuals under the lower impact scenario, and around £19 million under the higher impact scenario. It is difficult to judge which scenario is likely to be closer to the actual situation, in part because the baseline, with the CMA Order not yet having come into effect, remains unclear.

39. This cost saving is in part a transfer, because it implies a parallel drop in the revenue of lenders. However, it is likely that beyond the transfer this leads to welfare gains. In standard economic theory the aggregate of producer surplus (what firms receive over their marginal costs) and consumer surplus (the difference between consumers' willingness to pay and what they end up paying) measures gross welfare. Market failures, in this case competition related, result in a deadweight loss, i.e. benefits foregone of not attaining economic efficiency. We note as demonstrated in CP14/10 and PS14/6 many HCSTC customers may be in financial distress. They would consequently further benefit from the reduced risk of suffering payment problems, which have financial, stress-related, mental-health and welfare consequences.

40. In the FCA's opinion, in accordance with section 138I(8) of FSMA, it is not reasonably practicable to produce an estimate of these benefits because they relate to welfare outcomes for consumers which are yet to occur and we have based our analysis on an hypothetical scenario. To attempt a sophisticated quantification exercise would not be a proportionate use of FCA resources. However there is extensive evidence of negative non-financial consequences of being in payment problems.[67] One dimension of this is the effect on psychological health associated with being unable to repay debt on which widespread evidence exists. For example, Gathergood (2012) finds that the inability to make debt repayments causes an individual's psychological health score to deteriorate by 20%.[68] The Centre for Social Justice's 'Maxed Out' report further cites evidence that those struggling with unmanageable debts have a 33% increase in risk of developing mental health problems.[69]

41. We further considered whether it was likely that at a lower price equilibrium, some individuals who would otherwise get loans might now not be accepted by HCSTC lenders. While it is possible that supply on the margin might be impacted, in our lower impact scenario any such impact would be small, and in our higher impact scenario it is likely this would be mitigated

66 We are unable to distinguish between how much of the increase in PCW use by individuals might be because of the CMA Order, and how much because of our subsequent standards.

67 A detailed discussion of wellbeing and psychological impacts associated with consumer debt difficulties is in in the Technical Annex of PS14/16

68 Gathergood, J (2012), Debt and depression: causal links and social norm effects, Economic Journal, 122(563), 10941114

69 Centre for Social Justice (2013), Maxed Out: Serious Personal Debt in Britain

materially by lower marginal costs[70] for firms, including for new entrants, driven by the CMA's Order and our standards.

42. We further considered whether it was likely that the greater use of the PCW distribution channel might lead to a reduction in the quality of the product, leading to consumer detriment in other ways. As an example, we observe that for insurance products the higher prominence to price given by PCWs exacerbates the practice by providers of stripping out features from the core product to be price competitive[71]. While this remains a theoretical possibility, HCSTC loans are simpler products where price is the main focal point. Other elements like late fees and charges are now capped. It is not clear therefore what form any significant reductions in the quality of the product that might be obfuscated by the focus on price might take.

Impacts on HCSTC lenders

43. We expect the main impact for HCSTC lenders to be a reduction in revenue arising from reduced prices. In our lower impact scenario we calculate this reduction in annual revenue to be £4 million and in our higher impact scenario £19 million. As explained above, while customers would benefit from cost savings of an equal amount, this is not a pure transfer since we would expect a further material efficiency gain.

44. There are likely to be some firms who benefit and some who lose out as a consequence of our proposed standards and the CMA Order. As an example one possible impact might be the increased salience of price on PCWs (a distribution channel which does not require significant investment in building up brands/marketing), lowering barriers for new entrants now able to compete directly on price.

45. To the extent that regulation induces increased amounts of listing on PCWs there would be costs associated with listing that lenders would face. However, there would also be a consequent decrease in the cost of the channel firms might otherwise use to distribute their products. Currently 27% of HCSTC loans are distributed through lead generators and credit brokers, while around 5% are sold through PCWs. In their survey responses to us firms did not suggest that direct costs of distributing products through the two channels were materially different.

46. One related beneficial impact for lenders might be lower listing costs on PCWs *on average*. Some PCWs which currently compare HCSTC loans run an auction process, leading to the products of higher bidders being placed higher up in comparison tables. Our proposal to not allow commission influenced rankings would ban such practices. PCWs that currently run on such models suggest this might have an impact equivalent to reducing average listing costs for lenders by anywhere between zero and 30%.

Impacts for PCWs providing HCSTC comparisons

47. We expect the main impact for PCWs to be revenue related. On the one hand as explained above since commission influenced rankings would no longer be allowed, this would likely reduce revenue (keeping all else constant). Based on a limited number of responses we estimate this reduction might be around 15%. On the other hand to the extent our regulatory intervention

70 Principally lower marketing/ brand building costs
71 www.fca.org.uk/news/tr14-11-price-comparison-websites-in-the-general-insurance-sector

induces increased amounts of listings on PCWs (as PCWs become a more profitable acquisition channel so firms may decide to be listed on more than one) there would be an increase in revenue for such firms. While in the low scenario the two impacts combined would leave a small increase in revenues for PCWs, in the high scenario revenues across the sector might increase by around 3.5 times. We note, as before, there would also be a consequent decrease in the cost of the channel lenders might otherwise have used to distribute their products.

48. Additionally, extrapolating out from firm responses we estimate there may be one-off compliance costs for the industry of around £150,000 and on-going incremental costs of around £40,000 per year as a consequence of the proposed standards. These are largely expected to be system change and web change related costs, driven primarily by the requirements around rankings and input functionality.

49. Finally, we considered whether our additional standards might act as a barrier for larger PCWs engaged in financial services (primarily insurance, credit and banking products) against entering the HCSTC comparison space, perhaps because some of these might require firms to run parallel processes (and hence unduly raise compliance costs). We also considered whether the standards, through improving reputational concerns associated with the sector, might influence PCWs' decisions to enter the market. However, our survey of PCW firms suggests that this would not be the case.

Conclusion

50. The analysis above presents estimates of the impacts that our proposal would have. We provide monetary values for the impacts where we believe it is reasonably practicable to do so and estimates of outcomes in other dimensions. In these cases it is not always possible to convert this reliably into a comparable scale, such as one based on monetary value.

51. We summarise the impacts of our proposal below:

- **Consumers:** The main benefit of the standards is expected to be a cost saving for individuals continuing to use HCSTC loans due to greater transparency. Potential savings range between £4m and £19m per year. Moreover, in addition to these monetary gains, these savings will lead to additional welfare gains for consumers, as they would benefit from the reduced risk of suffering payment problems, which have financial, stress-related, mental-health and welfare consequences.

- **HCSTC lenders:** The main cost for HCSTC lenders is expected to be reduction in revenue as a result of the reduced prices that customers pay. This is, in effect, a transfer from HCSTC firms to consumers of between £4m and £19m per year. The potential increase in PCW use may lead to benefits to HCSTC firms, such as lower barriers for new entrants and smaller firms, allowing them to compete directly on price.

- **HCSTC PCWs:** We expect the main impact for PCWs to be revenue related. On the one hand since commission influenced rankings would no longer be allowed, this would likely reduce revenue by around 15%. On the other hand, to the extent that our regulatory intervention makes PCWs a more attractive acquisition channel, there would be an increase in revenue for such firms. While in our lower impact scenario the two impacts combined would lead to only a small increase in revenue, in the high impact scenario revenues across the sector might increase by around 3.5 times. In addition, there will be one-off compliance costs for the industry of around £150,000 and on-going incremental costs of around £40,000 per year to implement the standards.

52. As with all forecasts, there are uncertainties associated with our estimates as they depend on the extent to which the CMA order and our additional standards increase the use of PCWs by both consumers and HCSTC lenders. However, on balance we believe that the benefits to consumers and the industry of our proposals outweigh the costs.

Q14: Do you have any comments on our cost benefit analysis?

Annex 3: Compatibility statement

1.1 This Annex explains our reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA) as amended by the Financial Services Act 2012.

1.2 When consulting on new rules, we are required by section 138I(2)(d) FSMA to include an explanation of why we believe making the proposed rules is consistent with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B FSMA.

1.3 This Annex also sets out our view of how the rules proposed in this consultation are compatible with the duty on us to discharge our general functions (which include rule-making) in a way that promotes effective competition in the interests of consumers (section 1B(4)). This duty applies in so far as promoting competition is compatible with advancing our consumer protection and/or integrity objectives.

1.4 We are also required by section 138K(2) FSMA to prepare a statement setting out our opinion on whether the proposed rules will have an impact on mutual societies which is significantly different from the impact on other authorised persons. This Annex includes that opinion.

1.5 It also comments on our duties under the Legislative and Regulatory Reform Act 2006 (LRRA).

Compatibility with our objectives

1.6 The proposals set out in this consultation primarily advance our operational objective of securing an appropriate degree of protection for consumers.

1.7 We consider these proposals are compatible with our strategic objective of ensuring that the relevant markets, in this case for HCSTC, function well.[72] We propose to require PCWs displaying HCSTC comparisons to comply with new rules and guidance on rankings, commercial relationships, additional advertising, search functionality, and market coverage. These proposals will help ensure that PCWs act in a fair and transparent way, enabling consumers to compare loans and shop around more effectively.

72 'Relevant markets' are defined in section 1F FSMA.

The consumer protection objective

1.8 We also consider that these proposals are compatible with our consumer protection objective, and in formulating these proposals we have considered what is the appropriate degree of protection for consumers in the light of the matters set out in section 1C of FSMA.

Differing degrees of risk involved in different kinds of investment or other transaction

1.9 HCSTC products involve a significant degree of risk to consumers given the amount of interest and other charges involved and the financial position of many consumers who take out such loans. We have had regard to the level of risk in this case by ensuring consumers are given improved specific information about loans so that they can make better decisions. We believe that the CMA's Order is likely to increase the number of HCSTC consumers using PCWs to access HCSTC products, which is why we consider the proposed rules and guidance necessary to mitigate risk in this field.

Differing degrees of experience and expertise that different consumers may have

1.10 The research suggests that currently consumers in the absence of the proposed rules would not choose the best loans for them. The rules are designed to assist consumers to make better choices and do so more easily. We also used our research to test how consumers may respond in different ways to PCWs, and have designed our standards with the necessary flexibility to take account of this.

The needs that consumers may have for the timely provision of information and advice that is accurate and fit for purpose

1.11 The provision of information is central to enable consumers to make good choices when comparing HCSTC. The work we have done in this field shows that at present information provided is not displayed in the way best designed to assist consumers.

The general principle that consumers should take responsibility for their decisions

1.12 The draft rules have been designed to enable consumers to make better informed decisions for themselves.

The general principle that those providing regulated financial services should be expected to provide consumers with a level of care that is appropriate having regard to the degree of risk involved in relation to the investment or other transaction and the capabilities of the consumers in question

1.13 Raising the standards we expect PCWs displaying HCSTC loans to meet will ensure that firms take the appropriate level of care in dealing with consumers.

The differing expectations that consumers may have in relation to different kinds of investment or other transaction

1.14 Key drivers in decision-making for HCSTC consumers are speed and convenience (including how easily they perceive they can access a loan from a particular lender). Therefore, our rules are designed not to increase the amount of time taken to have a loan approved, but instead to improve the opportunity for consumers to make an informed decision about their borrowing choices.

Our duty to promote effective competition in the interests of consumers

1.15 In preparing the proposals set out in this consultation, we consider we have met our duty under section 1B(4) FSMA. This provides that we must, so far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective, carry out our general functions in a way which promotes effective competition in the interests of consumers.

1.16 Our proposed rules are designed to address the concerns raised by the CMA in its final report. In particular they should contribute to reducing the difficulties that HCSTC customers face in identifying the best-value offer and therefore increase shopping around and encourage firms to compete on price. We have undertaken a CBA to ensure that our new rules are proportionate and promote competition, which found that lenders may see reduced prices on average for listing products on HCSTC PCWs, and also found that consumers would benefit from price reductions. We also found in our CBA that we expect our rules may, in fact, benefit new and expanding firms who offer price comparison services, as well as lowering barriers to entry and expansion for HCSTC firms.

The FCA's regulatory principles

1.17 In preparing the proposals set out in this consultation, we have had regard to the regulatory principles set out in section 3B FSMA. We set out below how our proposals demonstrate such regard for each of the regulatory principles.

The need to use our resources in the most efficient and economic way

1.18 We have had regard to this principle and do not believe that our proposals will have a significant impact on our resources or the way in which we use them. We supervise in line with our risk tolerance and use a variety of tools to ensure that firms comply with our standards, and we are not proposing any change to this approach.

The principle that a burden or restriction should be proportionate to the expected benefits

1.19 We have carried out a CBA, concluding that the main benefit of the standards is expected to be a cost saving for individuals continuing to use HCSTC loans due to greater transparency. Potential savings range between £4m and £19m per year. Moreover, in addition to these monetary gains, these savings will lead to additional welfare gains for consumers, as they would benefit from the reduced risk of suffering payment problems.

1.20 The main cost for HCSTC lenders is expected to be a corresponding reduction in revenue, but new firms may also benefit from use of PCWs (for example, lower barriers for new entrants and smaller firms).

1.21 We expect the main impact for PCWs to be revenue related, with our rule on not allowing commission to influence rankings being likely to reduce revenue by around 15%. However, to the extent that our regulatory intervention makes PCWs a more attractive acquisition channel, there could be revenue increases for PCWs (an increase of up to 3.5 times current revenue under our highest impact scenario). In addition, there will be one-off compliance costs for the industry of around £150,000 and on-going incremental costs of around £40,000 per year to implement the standards.

1.22 We therefore believe that the burden imposed on firms by the proposed rules and guidance are proportionate to the benefits anticipated.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

1.23 Our proposals have regard to the desirability of sustainable growth in the medium and long term. We do not expect the proposals to have a material impact on growth in the UK as the HCSTC market is relatively small.

The general principle that consumers should take responsibility for their decisions

1.24 Our proposals support this general principle by requiring PCWs displaying HCSTC loans to provide information to consumers in a fair and transparent way, enabling consumers to make more informed decisions about the cost and features of HCSTC products.

The responsibility of senior management of persons subject to requirements imposed by or under FSMA, including those affecting consumers, in relation to compliance with those requirements

1.25 We have had regard to this principle and do not believe our proposals undermine it.

The desirability of the FCA exercising its functions in a way which recognises differences in the nature and objectives of businesses carried on by different persons

1.26 We have designed our new rules for HCSTC PCWs to provide flexibility for firms to develop different PCW models, including how PCWs choose to charge lenders to display HCSTC loans and in how they display results aside from our new rules.

The desirability of publishing information relating to persons

1.27 Our proposals will require firms to publish information about the extent of their market coverage for transparency purposes in order to enable market participants to make better informed judgements about which PCWs to use or recommend.

The principle that we should exercise our functions as transparently as possible

1.28 We are an open and transparent regulator. As we have developed these proposals, we have met stakeholders and with the CMA to ensure we have acted as transparently as possible.

Expected effect on mutual societies

1.29 Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, in comparison with other authorised persons.

1.30 We have considered the potential impact of our proposals for HCSTC PCWs in relation to building societies, credit unions, industrial and provident societies, friendly societies and EEA mutual societies.

1.31 We are not aware of any mutuals which are involved in the provision of HCSTC.

1.32 Credit unions are outside the HCSTC definition, as they are precluded by law from offering loans at rates of 100% APR.

1.33 We would welcome any comments or information respondents may have on any issues relating to mutual societies that they believe would arise from our proposals.

Legislative and Regulatory Reform Act 2006

1.34 We are required under the LRRA to have regard to the principles in the LRRA and to the Regulators' Compliance Code when determining general policies and principles and giving general guidance (but this duty does not apply to regulatory functions exercisable through our rules).

1.35 We have had regard to the principles in the LRRA and the Regulators' Compliance Code for our approach to the proposals that consist of general policies, or guidance, in particular the remedies on lead generators, shopping around, costs disclosure and real-time data sharing. We have engaged with stakeholders throughout this process, and consider that the proposals are proportionate and result in an appropriate level of consumer protection, when balanced with impacts on firms and on competition.

Annex 4:
Equality impact assessment

Introduction

1. We are required under the *Equality Act 2010* to consider whether our proposals could have a potentially discriminatory impact on groups with protected characteristics (age, gender, disability, race or ethnicity, pregnancy and maternity, religion, sexual orientation and transgender). We are also required to have due regard to the need to eliminate discrimination and advance equality of opportunity when carrying out our activities.

2. We have conducted an initial equality impact assessment (EIA) of our proposals to ensure that the equality and diversity implications are considered. This annex sets out the results, explaining the potential impact of our proposals on protected groups where we have identified them and, where relevant, the steps we have taken or will take to minimise them.

3. The main outcome of our initial assessment is that the proposals in this paper do not result in direct discrimination. Where we have found the potential for indirect discrimination, we will continue to ensure we consider these within our assessment of equality impacts.

Next steps

4. The EIA process is ongoing, and will not be completed until we develop and publish our final policy. As a result, at the end of this annex, we are seeking additional input from stakeholders to help us further investigate and establish the extent of any potential impacts of the proposals in this paper. We would also welcome any comments or information that respondents may have on any equality and diversity issues they believe might arise from these proposals.

Assessments

Positive impacts

5. The key policy goals of these proposals are to enable consumers to shop around, to facilitate price competition under our price cap and promote informed consumer choice when using PCWs displaying HCSTC loans.

6. We expect that, overall, consumers would benefit from the introduction of our HCSTC PCW standards. We consider that the following proposals would lead to positive outcomes for all protected groups:

   - Protected groups are disproportionately vulnerable to the risks in the consumer credit market, for example, being more likely to buy products based on urgency than price.

- Our proposals for HCSTC PCWs would make it easier for consumers to shop around and compare the true cost of loans, enabling them to make better decisions on price and incentivising firms to compete on price underneath our price cap.
- Additional price competition under our cap should continue, alongside our other interventions, to make credit more affordable for consumers – including those in the protected groups.

Age

7. Our proposals address consumers that use online facilities to buy HCSTC products and are in the context of the CMA's prohibition of lending by online payday lenders unless they publish information on an FCA authorised payday loan PCW. However, older consumers are more likely to be digitally excluded with regards to awareness of PCWs than young people, with significantly fewer consumers aged 75 or above aware of PCWs than those in the age groups below. Less than one in three people aged 75+ (29 per cent) are aware of PCWs, compared with just over half in the 60-74 age group (54 per cent), and almost two-thirds in the 45-59 age group (63 per cent).[73]

8. However, we note that the CMA's Order requires all firms – including those on the high-street to provide statements summarising the cost of borrowing which also refer consumers to the availability of online payday PCWs. This may direct some high-street consumers online to shop around for better deals. Further, where the loan is from a high-street lender, the borrower will get to choose how their summary statement is provided to them. The CMA Order does not require high-street lenders to publish the details of their payday loans on PCWs, but we note that the CMA believes that high-street payday lenders would nevertheless face competitive constraints as a result of online payday lenders having to publish on PCWs[74]. We do not propose at this time to go beyond what the CMA required of high-street lenders.

9. We will continue to be mindful of age-related issues when considering the impact of our proposals.

Gender

10. Our proposals with regards to PCWs address consumers that use online facilities to buy HCSTC products. As we noted when consulting on the price cap, a larger proportion of women than men use high-street stores to borrow HCSTC products. Further, of people who do not use the internet, women are less likely to be aware of PCWs (39 per cent) than men (53 per cent).[75]

11. However, we note that the CMA's Order on statements summarising the cost of borrowing requires all firms – including those on the high-street – to refer consumers to the availability of online HCSTC PCWs. This may direct some high-street consumers online to shop around for better deals. Further, where the loan is from a high-street lender, the borrower will get to choose how their summary statement is provided to them. Also, the digital exclusion of women from PCWs is somewhat reduced by the fact that - of consumers who don't use the internet but are aware of PCWs - women are more likely to ask others to use PCWs on their behalf (25 per cent) compared to men (16 per cent).[76] For the same reason as noted in paragraph 8 we do not propose at this time to go beyond what the CMA required of high-street lenders.

73 Figure 4.13 and related discussion, A report by RBS Consulting for Consumer Futures, Price comparison websites: consumer perceptions and experiences: www.consumerfutures.org.uk/files/2013/07/Price-Comparison-Websites-Consumer-perceptions-and-experiences.pdf

74 Paragraph 9.97 of the CMA Final Report.

75 Ibid.

76 Ibid.

12. We will continue to be mindful of gender-related issues when considering the impact of our proposals.

Race

13. Our proposals with regards to PCWs address consumers that use online facilities to buy HCSTC products. As we noted during our consultation on the price cap, a significant proportion of high-street borrowers are from black and minority ethnic backgrounds.

14. However, we note that the CMA's Order on statements summarising the cost of borrowing requires all firms – including those on the high-street – to refer consumers to the availability of online HCSTC PCWs. This may direct some high-street consumers online to shop around for better deals. Further, where the loan is from a high-street lender, the borrower will get to choose how their summary statement is provided to them. For the same reason as noted in paragraph 8 we do not propose at this time to go beyond what the CMA required of high-street lenders.

15. We will continue to be mindful of race-related issues when considering the impact of our proposals.

Disability

16. We have not identified any concerns that specifically relate to disability but, as our proposals develop, we will continue to ensure we consider disability-related issues within our assessment.

Pregnancy and maternity

17. We have not identified any concerns that specifically relate to pregnancy and maternity-related issues but, as our proposals develop, we will continue to ensure we consider pregnancy and maternity-related issues within our assessment.

Religion

18. We have not identified any concerns that specifically relate to religion but, as our proposals develop, we will continue to ensure we consider religion within our assessment.

Sexual orientation

19. We have not identified any concerns that specifically relate to sexual orientation but, as our proposals develop, we will continue to ensure we consider sexual orientation issues within our assessment.

Transgender

20. We have not identified any concerns that specifically relate to transgender but, as our proposals develop, we will continue to ensure we consider transgender issues within our assessment.

Marital status

21. While marital status is not specified as a protected characteristic, we are required to have due regard to the need to eliminate discrimination on the grounds of marital status or civil partnership.

22. We have not identified any concerns that specifically relate to marital status but, as our proposals develop, we will continue to consider marital status issues in our assessment.

Further information

23. We would welcome any information that respondents could share with us that could help us to continue to explore the impact of our proposals on protected groups.

Q15: Do you agree with our assessment of the impacts of our proposals on the protected groups? Are there any other groups we should consider?

Appendix 1
Draft Handbook text

Appendix

CONSUMER CREDIT (HIGH-COST SHORT-TERM CREDIT PRICE COMPARISON WEBSITE) INSTRUMENT 2016

Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

(1) section 137A (The FCA’s general rules);
(2) section 137R (Financial promotion rules);
(3) section 137T (General supplementary powers); and
(4) section 139A (The FCA’s power to give guidance).

B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act).

Commencement

C. This instrument comes into force on [date 6 months after the making of the instrument].

Amendments to the Handbook

D. The Consumer Credit sourcebook (CONC) is amended in accordance with the Annex to this instrument.

Citation

E. This instrument may be cited as the Consumer Credit (High-Cost Short-Term Credit Price Comparison Website) Instrument 2016.

By order of the Board
[*date*]

Annex

Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, all the text is new and is not underlined.

After CONC 2.5 insert the following new section.

2.5A Conduct of business: high-cost short-term credit (HCSTC) products on price comparison websites

Application

2.5A.1 R This section applies to a *firm* which owns or operates a website that displays any terms on which *high-cost short-term credit* products are available from different *lenders* (referred to in this section as a "price comparison website") and in relation to which it:

(1) holds itself out as providing a price comparison service or a price service; or

(2) describes itself in any way as a price comparison website or a price website; or

(3) gives the impression in any way that the website is a price comparison website or a price website.

Listing details of high-cost short-term loans not based on commercial interests etc.

2.5A.2 R Where a *firm* displays information on the website it owns or operates concerning *high-cost short-term credit* products in order to enable a *customer* to compare any terms of those products, it must display the information in a way that is not based (wholly or partly) on the *firm's* commercial interests or the *firm's* commercial relationship with any *person*.

HCSTC price comparison website functionality etc.

2.5A.3 R A *firm* must ensure that the price comparison website enables:

(1) a *customer* to enter the value and duration of the *customer's* desired loan when specifying the criteria for a search; and

(2) a search to be made of the *high-cost short-term credit* products covered by the website and the results of the search to be displayed on the basis of only that information.

2.5A.4 G (1) A *firm's* obligations under *CONC* 2.5A.3R(1) and (2) may be satisfied by enabling a *customer* to select from a reasonable range of options of values of loan or of durations of loan, when specifying the criteria for a search.

(2) What is a reasonable range of options for a search will depend, for example, on the breadth of value of loans or on the duration of loans that appear on the price comparison website. For example, it may be reasonable depending on the circumstances to allow a choice of bands of values or durations.

2.5A.5 R In response to a request to perform a search for a *high-cost-short-term credit* product, the *firm* must ensure that the price comparison website:

(1) displays specific information relating to each loan covered by the website which corresponds to the search criteria entered by the *customer* as a separate result;

(2) ranks those results in order of *total amount payable* in accordance with *CONC* 3.5.5R(2), with the loan with the lowest *total amount payable* first and the highest last; and

(3) where two or more search results have the same *total amount payable* in accordance with (2), ranks the results according to another criterion permissible under this section.

2.5A.6 R A *firm* must ensure that the ranking of the results, or the prominence of the display of the results, or whether a loan is displayed in the results, of a search for a *high-cost-short-term credit* product is not based (wholly or partly) on the *firm's* commercial interests or the *firm's* commercial relationship with any *person*.

2.5A.7 G (1) The information displayed on the price comparison website (for example, information concerning a loan or the results of a search or claims about the market coverage of the website) will need to comply with the financial promotion *rules* in *CONC* 3. In particular, it will need to comply with the requirement for a communication or a *financial promotion* to be clear, fair and not misleading. The results of a search also need to comply with the detailed *rules* in *CONC* 3.5 and, in particular, will require a representative example, the relevant items of which must be representative of what the *firm* reasonably expects at the date on which the *financial promotion* is made, to be representative of *credit agreements* to which the *representative APR* applies and which are expected to be entered into as a result of the promotion.

(2) The fact that a *lender* pays a commission to the *firm* or pays for advertising or other marketing on the price comparison website should not affect the ranking or prominence of information concerning a loan or the results of a search or whether information about a loan appears in the results of a search.

(3) The *firm* should ensure that any information concerning a loan or any result of a search which relates to another *firm's credit broking*

service states prominently that:

(a) the *firm* referred to is a *credit broker* and is not a *lender*; or

(b) if the *firm* referred to is both a *lender* and a *credit broker*, the *firm* referred to is promoting its services as a *credit broker* and not its services a *lender*.

(4) *CONC* 2.5A.6R does not prevent the *firm*, once the initial results have been displayed in order of *total amount payable*, permitting a *customer* to re-sort the results of a search into a different order.

HCSTC price comparison website financial promotion

2.5A.8 R A *firm* must not display a *financial promotion*, other than the result of a search, in or between the results of a search.

2.5A.9 R A *firm* must ensure that the results of a search are clearly distinguishable from any other *financial promotion*.

HCSTC price comparison website market coverage

2.5A.10 R A *firm* must list in one place on the price comparison website the brand names of *lenders* whose *high-cost short-term credit* products are displayed on the website.

Financial Conduct Authority

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25 The North Colonnade Canary Wharf
London E14 5HS
Telephone: +44 (0)20 7066 1000
Website: www.fca.org.uk