ANNEXE E – ADVERTISING SWEEP

Introduction

E.1 In November 2011, in preparation for the public launch of our compliance review, we conducted an online advertising ‘sweep’.

E.2 The web sweep was conducted using a sample of 50 payday lenders. This comprised all known large and medium-sized lenders including members of the four main trade bodies, new entrants to the industry and licensees that had been the subject of consumer complaints or enforcement action. We also included a random sample of websites identified as a result of using search-engine terms such as ‘quick cash loans’ or ‘adverse credit payday’.

E.3 Most of the lenders offered online loans, but the sample also included some high-street lenders that had websites advertising their business but did not offer loans online.

E.4 We also examined website content and other forms of advertising used by the 50 lenders we inspected in the course of the review itself (Annexe D). In addition, we conducted a short review of television advertising in February 2013.

Key findings

E.5 Thirty of the 50 websites we looked at in the sweep emphasised the easy availability of credit and the speed of arrangement. Such claims suggest that lenders may not be carrying out sufficient affordability checks in each case. Furthermore, if the application process is concluded quickly, borrowers are likely to be discouraged from reading and reflecting on the pre-contractual information provided, and from shopping around.

1 Thirty-seven of the lenders whose websites were included in the initial web sweep were among the 50 lenders who received compliance inspection visits.
E.6 Twenty websites included restricted expressions such as ‘no credit checks’ and ‘loan guaranteed’. These are specifically prohibited under the Advertising Regulations unless they can be proved to be true. If true, we consider that they evidence irresponsible lending.

E.7 Twenty websites omitted or downplayed important information about the costs and risks to the borrower – for example, in relation to the use of continuous payment authority (CPA). This does not accord with the Irresponsible Lending Guidance (ILG). It may also be misleading, by inclusion or omission, contrary to the Consumer Protection from Unfair Trading Regulations (CPRs).

E.8 Twelve websites failed to show a representative example where triggered, contrary to the Advertising Regulations. In a further 12 cases the representative example was not sufficiently prominent.

E.9 Two websites failed to show a representative APR where triggered, and in a further 12 cases the representative APR was not displayed with sufficient prominence.

E.10 Twenty websites promoted the availability of rollovers as a ‘feature’ of the loan without also explaining the associated costs and risks.

E.11 Twelve websites did not include the trader’s name and address and other relevant details, contrary to the E-Commerce Regulations.²

E.12 Whilst the subsequent compliance inspections did identify that some improvements had been made to the content of websites, overall there were still significant levels of non-compliance. We also identified problems with advertising by high-street lenders and on television.³

² See glossary of terms at Annexe I.

³ See paragraphs E.44 to E.49 below.
Detailed findings: Web sweep

Representative example

E.13 Twelve of the 50 websites failed to show a representative example where triggered by a rate of interest or an amount relating to the cost of the credit.

E.14 The representative example is designed to illustrate the likely costs of taking out a loan. Its omission makes it more difficult for consumers to shop around and compare costs across different payday lenders.

E.15 Examples of specific breaches found included:

- not providing a representative example when triggered by the inclusion of cost information such as ‘interest £10’
- failing to include the annual rate of interest in the representative example.

E.16 In 12 cases where a representative example was included, it was not displayed with greater prominence than the trigger information as required by the Advertising Regulations.

E.17 Websites commonly provided a hyperlink to the representative example which could be viewed only if the prospective borrower clicked through. In other cases the consumer had to hold the cursor over the words ‘representative example’ to be able to view the content. This made it difficult for consumers to access the information and meant that it was not sufficiently prominent.

E.18 In a number of cases the representative example was included in a separate FAQs section of the website, and so was not at all prominent and could easily be overlooked.

Representative APR

E.19 A representative APR must be included if an advertisement indicates in any way that credit is available to persons who might
consider their access to credit restricted, or that any of the terms on which credit is available is more favourable than corresponding terms applied in any other case or by any other creditor, or if the advertisement includes an incentive to apply for credit or to enter into an agreement under which credit is provided.

E.20 The representative APR is a key cost comparator, enabling borrowers to assess the relative costs of different loans and different types of credit product.

E.21 Two websites failed to show a representative APR where triggered. Statements seen in advertising that, in the OFT’s view,\(^4\) trigger the requirement to include a representative APR included:

- ‘borrow up to £750 instantly’
- ‘instant cash’
- ‘it takes less than 5 minutes’
- ‘no credit checks’.

E.22 In some cases such statements may also not accurately reflect actual practice, and so may be false or misleading, by inclusion or omission, contrary to the CPRs. One website claimed to process applications ‘24/7’ but we found that the lender only did so between 9am and 5pm Monday to Friday.

E.23 In 12 cases where a representative APR was included, it was not displayed with greater prominence than the trigger information. In some cases it was presented in a smaller font size, or a less visible colour, or was included only in an FAQs section.

E.24 In two cases a representative APR was included but did not appear to have been calculated correctly, factoring in all relevant

\(^4\) But see also paragraph E.53 below.
charges such as optional fees for ‘faster payment’ (in cases where these may be paid by at least 51 per cent of borrowers).

**Other legislative breaches**

E.25 Twenty websites included restricted expressions which, unless true, are prohibited by the Advertising Regulations. If true, we consider that they constitute irresponsible lending. For example:

- ‘no credit checks’
- ‘no credit checks needed, no questions asked’
- ‘No credit? No problem!’
- ‘loan guaranteed’
- ‘loan extension guaranteed’.

E.26 Twelve websites did not include clear details of the trader’s name and geographical address, company registration number, consumer credit licence number and the ultimate owner of the business, contrary to the requirements of the E-Commerce Regulations.

E.27 As some payday lenders operate websites under numerous brand names, such non-compliance is likely to limit a consumer’s ability to shop around and compare costs, and may be confusing.

**Irresponsible Lending Guidance**

E.28 Twenty websites appeared to understate, mask or omit material information regarding key risks to the borrower, for example in relation to CPA and rollovers.

E.29 Such practices are expressly cited in the ILG as unsatisfactory business practices. They may also breach the CPRs.

E.30 In particular, websites clearly promoted the benefits of payday loans but downplayed disadvantages such as the significant costs and risks involved for the borrower, and/or made it difficult for
consumers to access relevant information. Where information was provided, it was often not presented in a balanced way.

E.31 Less commonplace, but potentially very harmful to consumers, were statements which were simply untrue. For example, claims that payday loan repayments should take priority over other debts:

- ‘if you were thinking of entering a Debt Management Programme... you will still have to pay our loan back before you enter the scheme’
- ‘any monies owed... falls outside of the Debt Management programme or IVA’.

E.32 Thirty websites emphasised the easy availability of credit and speed of arrangement. Such claims will be misleading where they imply that the process can always be concluded more quickly than is practically possible – for example, because documentary evidence may be required post-application or checks made of third parties such as an employer.

E.33 If true, such statements may evidence irresponsible lending. They may also discourage borrowers from spending time reading the information provided and reflecting and shopping around.

E.34 Twenty websites promoted the availability of rollovers as a ‘feature’ of the loan but without explaining the associated costs and risks to the borrower. For example:

- ‘loan extension guaranteed’
- ‘we may agree to an extension or a new repayment plan over the weeks that follow’
- ‘extend 100% of loan longer than 5 times’
- ‘extend loans up to 4 or 5 times’
- ‘repay loan over 1-4 months’.
E.35 Thirty-nine websites did not include information about the terms and conditions of the credit, 49 sites did not explain how CPA works, or the consumer’s right to cancel CPAs, and 45 sites did not explain what happens if the consumer fails to repay.

E.36 Eighteen websites did not include information on how to complain, or the role of the Financial Ombudsman Service, and 31 sites did not indicate sources of free advice or help if things go wrong. We consider that it would be good practice to include such information on lenders’ websites, particularly where the lender offers the facility to enter into loans online.

Detailed findings: Compliance inspections

E.37 During our subsequent compliance inspections of 50 lenders (37 of which had been included in the web sweep sample), we checked to see if website content had improved. We also inspected other forms of advertising used by the lenders visited including print, television and radio.

Websites

E.38 Visiting officers identified some improvements in the content of lenders’ websites, but these tended to be isolated alterations (such as inserting statements from the ILG) rather than fundamental changes.

E.39 We identified similar areas of concern in the advertising of the 50 lenders we inspected to those found in the web sweep.

E.40 Nineteen websites contained breaches of the Advertising Regulations. For example:

- two sites failed to show a representative example where triggered by cost of credit information
- in 12 cases where a representative example was included, it was not displayed with greater prominence than the trigger information, and in some instances could be viewed only if a link was clicked on or hovered over
in 11 cases the representative example did not include all of the required information

two sites failed to show a representative APR where triggered

two sites referred to a ‘typical APR’ rather than the ‘representative APR’ as required by the regulations.

E.41 Five websites failed to include the trader’s name and address, contrary to the E-Commerce Regulations.

E.42 Overall, there was little evidence that the general clarity and compliance of websites had improved, and some were still potentially misleading. For example:

19 sites emphasised ‘speed’ but it was unclear whether this was referring to the application process, the time taken to approve an application or the time taken to transfer funds if a loan was granted

nine sites were misleading as to the amount that could be borrowed – for example, by making statements such as ‘guaranteed loans of up to £1,000’ when the maximum the lender would lend to any new customer was £400

five sites made claims that taking out a payday loan would be a way of improving a consumer’s credit rating, without also explaining that not repaying on time could adversely affect the consumer’s credit rating

10 sites failed to state that payday loans are a relatively expensive form of credit and are unsuitable for borrowing over a longer period

10 sites actively promoted the availability of rollovers but without explaining the associated costs and risks.

E.43 One website suggested that if the loan was repaid by the due date, subsequent loans would be ‘automatically’ authorised, which implies that no affordability assessment would be undertaken.
Other advertising

E.44 The 18 high-street lenders inspected used a range of advertising and marketing material including window displays, in-store posters and leaflets, billboards, street furniture and advertisements in local newspapers. Four large chains also used branch staff to hand out leaflets outside the store, promoting their products.

E.45 Advertising by nine high-street lenders was found to be in breach of the Advertising Regulations. For example:

- two lenders did not provide a representative example where triggered by cost of credit information

- in three cases where a representative example was included it was not given greater prominence than the cost of credit information, and in fact was significantly less prominent

- one lender did not include a representative APR where triggered, and two used the term ‘typical APR’

- the APR in at least one case was incorrect.

E.46 In addition, three lenders advertised that consumers could borrow up to £1,000 when the lender’s policies did not permit any new customer to borrow as much as this.

E.47 More generally, we had concerns about the way some larger high-street lenders were marketing payday loans. For example:

- placing advertisements directly outside job centres

- targeting potentially vulnerable groups of consumers with signs such as ‘new to the UK’ or ‘in receipt of benefits’

- promotions aimed at children and featuring cuddly mascots or offering balloons and face painting.
Detailed findings: Television advertising

E.48 We carried out a short review of 15 television advertisements in February 2013, of which four had been obtained during the compliance inspections.

E.49 Of the 15 advertisements reviewed, we considered that nine were not compliant with the Advertising Regulations. For example:

- eight did not display the representative APR with greater prominence than the trigger information
- one displayed the representative example using white lettering that was unreadable against a pale background.

E.50 An adjudication published by the Advertising Standards Authority (ASA) in January 2013 concluded that a television advertisement breached the British Code of Advertising Practice (BCAP). This was because:

- the representative APR was not given greater prominence than incentives triggering the APR – ‘you could get up to £2000 sent to your bank account in 10 minutes’, ‘20% off your first scheduled payment’ and ‘Save 20%’
- in particular, the first claim was not accompanied by the representative APR, and for the second and third claims the representative APR was shown on screen in a smaller font size and in a white colour which was difficult to read against the white background
- the representative APR was also not given greater prominence than the statement ‘I was turned down by the mainstream lenders’
- the claim ‘I wish I’d gone to Pounds to Pocket first’ was socially irresponsible as it implied that the company could be a first point of call for a prospective borrower
• the advertisement could therefore mislead vulnerable borrowers who were in financial difficulty.

E.51 In a separate adjudication in January 2013, the ASA concluded that an advertisement breached the BCAP Code because:

• the customer’s reference to the ‘banks getting harder and harder’ was likely to be interpreted by viewers to mean he thought he may not be able to borrow money from a bank

• this therefore triggered the requirement to include a representative APR, yet none was included.

E.52 In one of the television advertisements we reviewed, the lender used the word ‘quick’ 10 times in a 30-second advertisement. In our view, this could constitute an ‘incentive’ triggering the representative APR. It should be noted, however, that a 2012 ASA adjudication concluded that reference to speed in a television advertisement constituted (in the circumstances of that case) a description of the inherent features of the service on offer rather than an incentive to apply for credit.

E.53 This ASA decision applied the earlier decision of the First-Tier Tribunal on the preliminary issues arising in Log Book Loans Limited and Nine Regions Ltd (t/a Log Book Loans) v the OFT.5 The Tribunal decided that the references made to the availability of ‘fast loans’ in that case were merely a description of the basic product offered and did not amount to an incentive.

Detailed findings: Lead generation

E.54 During the preparatory stages of the advertising web sweep, the OFT identified some websites that appeared to be payday lending sites but which subsequently transpired to be lead generator sites.

E.55 Lead generation firms source details of, and information from, people looking for credit or debt management services and then sell this data on to other credit businesses.

E.56 Many of the lead generator sites were unlicensed, operating in breach of the Consumer Credit Act. The OFT has taken action to remove those sites by contacting the website hosts or domain name registers and/or the police, requesting that the sites be taken down.

E.57 Lead generation firms are likely, within the meaning of section 25(3) of the CCA, to be ‘business associates’ of the payday lenders that use them. This means that we will take into account the behaviour of associated lead generators in determining the payday lenders’ fitness to hold a consumer credit licence.

E.58 As set out in the ILG, lenders should exercise due diligence in order to satisfy themselves that firms with which they do business are appropriately licensed and do not engage in unfair business practices or act unlawfully.