Stuart McMillan MSP
Convener, Delegated Powers & Law Reform Committee
Scottish Parliament
Email Only

28 October 2022

Dear Convener

Moveable Transactions (Scotland) Bill

I write to provide further supplementary evidence to the Committee following my witness evidence earlier this month by providing, for completeness, a list of the reasons why consumers should be removed from this Bill.

They centre on consumer harm (including supporting evidence from practice elsewhere in the UK), the different needs of consumers and businesses, the lack of demand for consumers to be included, the depth of support for removing consumers from the Bill.

These reasons are endorsed and supported by Money Advice Scotland, StepChange Debt Charity and Christians Against Poverty. We are all strongly opposed to the inclusion of consumers in this Bill and urge the Committee to support this.

1. HARM TO CONSUMERS

- There is a very big risk of an unintended consequence of creating a high cost lending market which preys on vulnerable consumers putting them at risk of financial harm and debt, a risk that is even more damaging if the cost of living crisis is still with us. **This is because high-cost lenders will develop a consumer product that is beyond the protections contained within the Bill and beyond the regulatory reach of the Financial Conduct Authority** at least for a few years until the regulator catches up. By then, significant financial damage to consumers will have occurred.

- Evidence from elsewhere in UK proves that only high-cost lenders operate in lending markets for moveable assets e.g. Bills of Sale & Log Book Loans.

- The type of consumers who would most likely use this new security, are more likely to be financially vulnerable and would benefit more from debt advice rather than access to more credit. High-cost lenders will spot and approach these consumers.

- Specific groups of consumers are at risk of real financial harm such as single parents or households where someone has a disability, groups that the Scottish Government has strong commitments to lift out of poverty. More generally the risk of including consumers go against the direction of Scottish Government wider commitments and support in helping people out of poverty/financial hardship.

- There are more people with high value assets, mainly vehicles, who would be able to use these assets believing it will help them through financial difficulty, whether exacerbated by cost of living crisis or not. In reality, it will cause the opposite and especially where high-cost lenders are involved.

2. CONSUMERS AND BUSINESSES ARE DIFFERENT

- Consumer need and behaviour is different from business need and behaviour. As such lending/borrowing need behaviour is different.

- The ability to borrow on and keep using items that consumers need is a potent consumer behaviour cocktail for hasty and unnecessary borrowing decisions - even if there were no risk of high-cost lenders and no cost of living pressures.

- By opening this new route of borrowing, those in the most desperate of need will borrow against assets that they require and may lose which would lead to debt, or further debt, they are unable to pay.

- The Bill also allows people to borrow to buy an asset which in turn becomes the security for the borrowing. This will create a temptation for consumers to borrow unwisely to buy items they don't really need, can't really afford and all the while running a risk of getting into debt if problems arise with making repayments.

3. THERE IS NO NEED OR DEMAND FROM CONSUMERS TO BE INCLUDED

- There is no clear or urgent policy gap that will be filled by including consumers.

- Through various stakeholder opportunities seeking views on this issue prior to the introduction of this Bill, the voice of consumers was heard only once out of 67 stakeholder contributions. The rest were legal, business and finance voices.

- There have been no calls or demands from consumers or consumer groups to have the ability to borrow based on a moveable asset. We do not believe lenders have been making noises about policy reform in relation to consumers. Rather, the inclusion of consumers has sprung from legal experts correctly and insightfully advocating a policy change for businesses but who have little expertise or insight into the impact of involving consumers.

4. STRONG SUPPORT FOR REMOVING CONSUMERS FROM THE BILL

- Removing consumers from the bill has strong support from across the money and debt advice sector in Scotland including Citizens Advice Scotland, Advice Trust and from money advisers across Scotland. The collective experience of those who work in this sector have the insight and expertise to state authoritatively that including consumers is the wrong thing to do due to the high risk of consequential financial harm to consumers.

- Notably, there are some Scottish Law Commission members who helped produce the policy basis for this Bill who are on record as being agnostic about needing to include consumers and stating that the priority for the Bill is to meet a business need.

- Removing consumers is the fastest, easiest and cleanest way of ensuring consumer harm is not allowed to happen as an unintended consequence of this Bill.

I hope you find this is helpful.

Yours sincerely,

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