Responsible borrowing and lending in U.K.

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RESPONSIBLE BORROWING AND LENDING

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Abstract

The UK has generally had a relatively 'light touch' regulatory framework for consumer credit, with the onus on the individual to behave responsibly when taking out unsecured loans. Concerns have however recently grown regarding the provision of short-term, high-cost credit,[4] with the actions of the lending institutions frequently labelled as irresponsible, exploitative and predatory. As a result, the legal and social obligations on lenders have been subject to significant analysis and reform. While the responsibility of lenders is an important issue for discussion, this paper focuses on the responsibilities of *borrowers* looking at the issues from a legal and social policy perspectives. It begins with a discussion of individual responsibility and what might constitute 'responsible borrowing' before applying this concept to the use of high cost credit. The paper draws on a range of literature on the topic from both a legal and social policy perspective, as well as analysing interviews with forty-four borrowers to examine the nature of responsible borrowing from a consumer perspective.

Key Words: Responsible borrowing, responsible lending, financialisation, payday lending, high-cost credit

INTRODUCTION

This paper has three parts. The first section considers the focus in the UK towards personal responsibility, particularly in relation to welfare and benefits. It discusses the government's attempts to move citizens towards self-regulation of financial issues and away from government assistance. Until recently this approach was followed in the provision of credit, where the regulation focused on lender disclosure and borrower responsibility. The second part follows on from this discussion and examines the modern movement towards responsible lending, including enhanced obligations on firms to provide credit in an appropriate manner. Whilst there have been increasing legal obligations, significant research shows some firms continue to lend in an

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4 Frequently referred to as 'payday loans'.

inappropriate and predatory manner. The third part then considers whether the movement away from individual responsibility has gone too far and an increased emphasis on responsible borrowing is necessary. This includes an analysis on what responsible borrowing entails, the limited responsible borrowing obligations currently in place and the extent of irresponsible borrowing. The paper concludes by holding that there is limited evidence of irresponsible borrowing, especially in light of the social and economic pressures on low-income families, and a continued focus on responsible lending is both desirable and appropriate.

'RESPONSIBILISATION' AND FINANCIALISATION

Since 1979, the UK has witnessed a process of 'responsibilisation' whereby individuals have been expected to become more responsible for their financial wellbeing and welfare. For example, Conservative governments have promoted the idea of an 'active' welfare state to replace the supposedly 'passive' system. Such ideas were accepted by New Labour's Third Way approach which supported the idea of 'a modern, active welfare state' based on welfare-to-work, skills and flexibility (to support those in work or those actively seeking work).[5] The 1997 New Labour (and more recent Coalition governments) have extended this notion of obligations alongside rights through the personalisation of welfare and the strengthening of responsibility agendas, viewing the root causes of poverty as individual problems rather than structural issues.[6]

Under New Labour, the Gregg Review and the Department for Work and Pensions proposals for welfare reform aimed to reward responsibility whereby the welfare system adopts an active, personalised role to widen the obligations on people to both work and save. In this sense, Labour continued the reforms begun by the Thatcher and Major Conservative governments by further implementing pension reforms which were marketed as providing the public with greater information and choice in order to encourage individual responsibility in terms of savings behaviour.[7] This focus was also evident in Tony Blair's modernising agenda, which aimed to create a market-oriented 'third way' of delivering welfare 'as a process in which the state tries to absolve itself of social responsibilities - transferring them to other agencies'.[8]

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5 Fran Bennett and Jane Millar, 'Social Security: reforms and challenges' in Jane Millar (ed), *Understanding Social Security: Issue for Policy and Practice* (Policy Press 2003) 20.

6 See for example discussion in Tony Blair, 'My vision for Britain: by Tony Blair', 10 November 2002, *The Observer*, <http://www.guardian.co.uk/politics/2002/nov/10/queensspeech2002.tonyblair?CMP=email>.

7 Neil Gilbert, *Transformation of the welfare state: The silent surrender of public responsibility* (Oxford University Press 2002).

8 John Clarke, Mary Langan and Fiona Williams, 'Remaking welfare: the British welfare regime in the 1980s and 1990s' in Allan Cochrane, John Clarke and Sharon Gewirtz (eds), *Comparing Welfare States* (2nd edn, Sage 2001) 101.

Gilbert defines this as ‘the enabling state’ which is ‘the emerging paradigm for social protection’.[9] These changes have reconfigured the relationship between individuals and the state so that citizens actively participate in their own and their families’ social and economic wellbeing, mitigating ‘poverty traps’ or ‘enforced dependency on welfare’.[10] Yet this has fragmented society further and those on low incomes have become disproportionately affected by these changes and further ‘socially and politically marginalised as the state withdraws support’.[11] The political rhetoric (and associated policies) to mitigate the impact of welfare reform is around social and financial inclusion, but again this stresses the individual onus of responsibility for poverty (and its multiple deprivations) rather than the institutional support structures which therefore are likely to ‘promote exclusion rather than inclusion’.[12]

Walker states that government policy promoted self-regulation to ‘reproduce the financially responsible neoliberal subject’ in order to blame individuals for ‘feckless irresponsible financial behaviours...that require education’, such as debt advice, as opposed to ensuring ‘sustainable employment and a fit-for-purpose welfare system’.[13] In sum, there has been a marked shift in welfare to create

> a personalised welfare state, where a simpler benefits system underpins the expectation that nearly everyone on benefits is preparing or looking for work. We are determined to continue our radical approach to reforming the welfare state to help people now and in the future – based on opportunity for all and responsibility from all.[14]

The responsibility discourse has emerged alongside the financialisation of everyday life which is ‘intimately related to the reconfiguration of welfare states, their retrenchment and the transfer of risk and responsibility from the collective to the individual’.[15] British governments successively encouraged and expanded the financial services sector from the mid-1980s onwards through de-regulation and the introduction of light tough regulation (eg the ‘Big Bang’ in 1986). As far as personal lending went, this approach to regulation allowed an expansion of credit from the 1970s onwards. In the 2000s, however, concern about the banking crisis led to debates about the responsibility of the financial services sector for the crisis and the treatment of low income borrowers (particularly in relation to ‘irresponsible’ sub-prime mortgage lending). At the same

9 Gilbert (n 7) 24.
10 ibid, 40.
11 Clarke, Langan and Williams (n 8) 101.
12 Peter Dwyer, ‘Making sense of social citizenship: some user views on welfare rights and responsibilities’ (2002) 22 Critical Social Policy 273, 293.
13 Carl Walker, ‘’Responsibilizing’ a healthy Britain: personal debt, employment and welfare’ (2011) 41 Neoliberalism and Health 525, 531-533.
14 Department of Workplace and Pensions, *Raising expectations and increasing support: reforming welfare for the future* (2008) 17.
15 Alan Finlayson, ‘Financialisation, Financial Literacy and Asset-Based Welfare’ (2009) 11 The British Journal of Politics and International Relations 400, 403.

time, some commentators have held on to the idea that 'British households that borrowed too much money must "accept responsibility" for their role in the current economic troubles'.[16]

While mortgage lending has declined since 2008, there has been a corresponding increase in other types of borrowing, particularly payday lending and other forms of high-cost credit. Concerns about the irresponsible nature of lending in this field has led to the introduction of a cap on the cost of such credit and tighter regulation (discussed below). But what is the current balance between responsible lending and responsible borrowing and, given the more recent focus on irresponsible lending, what evidence is available on the levels of irresponsible borrowing?

RESPONSIBLE (AND IRRESPONSIBLE) LENDING

Legal Obligations for Responsible Lending

Whilst the government has generally been reluctant to interfere with what they perceived as private agreements between individuals,[17] legislation protecting borrowers from exploitation has long been a part of the legal scene.[18] This regulation was however largely focused on registration of lenders and increasing disclosure to borrowers, continuing to put responsibility on borrowers to ensure they read and understood the agreement. It became clear in the 1960s that this approach provided inadequate legal protection for the increasing number of people accessing consumer credit products. After significant research, the 1971 *Consumer Credit: Report of the Committee* ('Crowther Report') made a number of recommendations, including limits on advertising of consumer credit products, provision of pre-contractual information, mandated disclosure of the cost of credit, rights of cancellation, and a uniform licensing system for consumer credit.[19] On the basis of these recommendations, the Consumer Credit Act 1974 was introduced with the stated rationale as 'the failure of private law to protect individual rights or deter unscrupulous practices and the limited scope of existing licensing regimes'.[20]

By the late-2000s it was clear that even this legislation was insufficient protection for borrowers. In 2010, the Office of Fair Trading (OFT) created the 'Irresponsible Lending Guidelines' (ILG). Responsible lending obligations are arguably the most important aspect of the current legislative regime for the regulation of high-cost lenders, especially as there were no explicit responsible

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16 James Kirkup, ''Families must accept share of blame for Britain's woes' The Telegraph <http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/9244414/Families-must-accept-share-of-blame-for-Britains-woes.html>.

17 Karen Rowlingson, *Moneylenders and their Customers* (Policy Studies Institute 1994).

18 See for example, the 1898 House of Commons Select Committee on Money-Lending and the Moneylenders Act 1927 (UK).

19 Sir Geoffrey Crowther, *Consumer Credit: Report of the Committee* (Department of Trade and Industry, 1971) 257, 266, 271, 289 and 329-334.

20 Iain Ramsay, *Consumer Law and Policy* (3rd edn, Hart Publishing 2012) 386.

lending duties in the 1974 Act. There are however certain implied obligations; for example, under section 25(2B), creditors are required to lend 'responsibly' as a licence condition. This means that responsible lending obligations are part of the fitness test for licensees; creditors must engage in responsible lending in order to obtain and continue a consumer credit licence.[21] There are also indications of responsible lending obligations in the duty to explain the nature and consequences of credit,[22] and the duty to make a creditworthiness assessment.[23]

With the movement of the consumer credit jurisdiction to the Financial Conduct Authority (FCA), the ILG has been supplemented by the FCA's Consumer Credit Source Book (CONC 5) *Responsible Lending*. Lenders are expected to conform to general principles of fair business practice and must make 'reasonable creditworthiness assessment' to ensure that borrowers can meet their credit repayments in a sustainable manner (ie credit can be repaid without undue difficulty, over the life of the specific credit agreement and without the borrower having to release any assets).[24] The specific requirements of the assessment are proportionate to, and dependent upon, a number of different factors including the type of credit product, the amount of credit provided, the borrower's financial situation, existing and future financial commitments, and the borrower's credit history.[25] The FCA does not lay down any guidance on the type of steps that may be required in this regard, indicating that it is left to the discretion of the lender to determine what is reasonable in the specific circumstances of the loan.[26]

Examples of Irresponsible Lending

Despite the legal obligations in place for lenders, there have been ongoing evidence of irresponsible lending in the high-cost credit market. For example, in 2010 Consumer Focus published a report on payday lending based on desk research and in-depth interviews with 20 customers. The study highlighted the problems that some customers, particularly those on the lowest incomes, had with payday loans.[27] These issues were not addressed and, in fact, continued to worsen.

In 2012, the OFT conducted a detailed compliance review of the sector. It held that payday lenders were not meeting the standards set out in ILG and highlighted the disturbing and

21 See references to the requirement to lend responsibly in The Office of Fair Trading, *Consumer Credit Licensing: General guidance for licensees and applicants on fitness and requirements*, 4, 6, 8, 9 and 30.
22 Consumer Credit Act 1974 (UK), s 55A.
23 Consumer Credit Act 1974 (UK), s 55B.
24 Financial Conduct Authority, *Consumer Credit Sourcebook (CONC), Responsible Lending*, 5.2.2.
25 ibid, 5.2.3.
26 ibid, 5.2.4.
27 Marie Burton, *Keeping the plates spinning: perceptions of payday loans in Great Britain* (Consumer Focus 2010).

widespread lack of compliance with the current regulatory regime.[28] There was significant evidence of irresponsible lending; too many people are given loans they could not afford, and when they could not repay, were encouraged to extend them, further exacerbating their financial difficulties.[29] One of the most alarming findings of the review was that lenders made approximately 50% of their revenue from loans that were rolled over or refinanced.[30] This means that firms may have been 'incentivised' to lend to people who could not afford to repay on time. The perverse effect is that lenders who undertook proper affordability assessments and lent responsibly may have actually lost out to less scrupulous parties.[31]

The OFT findings were strongly supported by further research from different organisations. Firstly, the Citizens Advice Bureau (CAB) highlighted that three out of four payday borrowers had some ground for an official complaint to the Financial Ombudsman Service about their treatment. The organisation undertook an in-depth analysis of 665 payday loan cases between 1 January and 30 June 2013. Of these cases, 76% of borrowers had at least one ground for complaint, including fraud (20%), problems with Continuous Payment Authorities (CPAs) (more than 33%), harassment of borrowers (12%), and unfair treatment of people in financial difficulties (10%).[32] Secondly, Europe Economics conducted detailed research on compliance costs and firm behaviour in the payday lending market. The October 2013 report outlined a number of ingrained problems, including lenders not carrying out affordability assessment, overuse of loan rollovers, exploitative and inappropriate use of CPAs, provision of unsuitable advice, unfair dealings with borrowers experiencing financial difficulties, and aggressive debt collection practices.[33]

Thirdly, the Department of Business Innovation and Skills undertook in-depth consumer and business surveys which confirmed that payday lenders were not complying with the Good Practice Charter or the relevant Codes of Practice.[34] Whilst the report highlighted a number of disturbing practices, it was particularly concerned with the unfair treatment of borrowers in financial difficulty.[35] Finally, a 2014 report commissioned by the Association of Chartered Certified Accountants also highlighted continued irresponsible lending practices by lenders. It outlined that payday lending is harmful because the business model employed by most lenders is

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28 The Office of Fair Trading, *Payday Lending Compliance Review - Interim Report* (2012), results of which were confirmed in The Office of Fair Trading, *Payday Lending: Final Compliance Review* (2013).

29 ibid 2.

30 ibid.

31 ibid 3.

32 Citizens Advice Bureau, 'Citizens Advice urges payday loan customers to fight back against unscrupulous lenders' Citizens Advice Bureau <http://www.citizensadvice.org.uk/index/pressoffice/press_index/press_office-20130805.htm>.

33 Europe Economics, *A New Consumer Credit Regime: Benefits, Compliance Costs and Firm Behaviour* (2013).

34 Department of Business Innovation and Skills, *Making Consumer Credit Fairer: BIS report on surveys of the payday lending good practice charter and codes of practice* (2013).

35 ibid 13-14.

based specifically on lending to borrowers who often cannot afford to repay their loans. In their detailed review of business models, Beddows and McAteer concluded that ‘consumer detriment, in the forms of default, repeat borrowing and the taking of multiple loans from different lenders, appears to play a highly profitable role in existing business models ... many payday loans serve only to increase the likelihood of future indebtedness’.[36]

These reports outlining firms’ irresponsible lending practices are supported by many real life instances. For example, one of the UK’s major payday lending companies, Wonga, was found in October 2014 to have behaved particularly irresponsibly by inadequately assessing customers’ ability to meet repayments in a sustainable manner. The FCA came to this view based on analysis of the volume of Wonga’s relending rates (ie lending to the same people more than once). On the basis of this finding, Wonga entered into an agreement with the regulator to compensate over 375,000 customers, at a cost of over £220 million, and has significantly impacted on their reputation.[37]

RESPONSIBLE (AND IRRESPONSIBLE) BORROWING

What is ‘Responsible Borrowing’?

There is no agreed definition of ‘responsible borrowing’. At one extreme, some people might believe that all borrowing is irresponsible as it signifies that people are ‘living beyond their means’ and there are strong cultural taboos around the use of credit/debt. However, some forms of credit, such as mortgages, are seen more positively as they enable home ownership, something viewed positively in British society. Others might accept that the use of unsecured credit can be responsible under certain conditions, for example, if people are only borrowing as much as they need and know that they have the capacity to repay the money.

Borrowing for things people do not necessarily ‘need’ and borrowing more than they can afford to repay may also be seen as irresponsible. However, ideas of ‘need’ are not clear-cut, and this is discussed further in the case studies.[38] Members of the public differ in what they see as a need, and people make mistakes when predicting what they can afford to repay. Should we, for example, expect people to foresee potential drops in income which would make it difficult to repay a loan? At another extreme, it may seem clear that lying on an application for credit is irresponsible, if not fraudulent. But if someone lies to take out credit because they are in

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[36] Sarah Beddows and Mick McAteer, *Payday lending: fixing a broken market* (Association of Chartered Certified Accountants 2014) 65.

[37] Financial Conduct Authority, *Wonga to make major changes to affordability criteria following discussions with the FCA* (2014).

[38] See David Gordon and others, *The Impoverishment of the UK; PSE UK first summary report* (Economic & Social Research Council, 2013).

desperate need, this may be a more responsible act than depriving their child (or themselves) of food and heat. The definition of 'responsible borrowing' is clearly open to debate. This section will therefore analyse the relevant legal obligations as well as real-life case studies to further explore the boundaries and complexities surrounding the notion of responsible borrowing.

Current Legal Obligations for Responsible Borrowing

Despite the movement away from individual responsibility in the context of high-cost credit, the UK regime continues some focus on responsible *borrowing*, as the law places an onus on *consumers* to ensure the loan is suitable for their needs. The lender has an obligation to provide the borrower with a sufficient explanation of the credit contract so that the *borrower* can determine whether the agreement is suitable for their needs and financial situation.[39] Effectively, this puts the obligation on the consumer to *borrow* responsibly. There are no references in the ILG to the lender enquiring about the borrower's intended use, requirements or objectives of the credit sought.[40] It is however a breach of the guidance to promote the sale of a credit product which is 'clearly unsuitable' for the specific borrower and their financial situation and/or intended use (if this information is known by the lender).[41] This focus was continued by the FCA, as the CONC 5 rules require a creditworthiness assessment 'taking into account the information of which the firm is aware at the time',[42] but no obligation to seek further information. This highlights that the legal regime has continued a partial focus on responsible borrowing, including an attempt to promote borrowers making appropriate financial decisions and determining what type of credit is suitable for their needs.

In addition to the (limited) responsible borrowing obligations under the Consumer Credit Act, consumers can also be penalised for certain types of irresponsible borrowing (namely providing false or misleading information to lenders) under the Fraud Act 2006 (UK). Under section 2, it is an offence to dishonestly make a false representation knowing or believing it to be untrue or misleading in an attempt to obtain a benefit for yourself. If convicted of fraud, a borrower is liable for up to 12 months imprisonment on summary conviction and up to 10 years imprisonment for conviction on indictment.

Whilst lenders could technically pursue an action against borrowers who lied in their credit application, or in any of their general dealings, there have been no reported cases of fraud actions being taken against high-cost credit borrowers. Lenders need to be careful about making

39 Consumer Credit Act 1974 (UK), s 55A(1).
40 This was discussed in Karen Fairweather, 'Apples and Oranges: Responsible Lending in the UK and Australia' (Consumers, Credit and the Law Symposium, Brisbane, 7 July 2012).
41 The Office of Fair Trading, *Irresponsible Lending - OFT Guidance for Creditors* (2010) 15.
42 Financial Conduct Authority (n 24) 5.2.2.

accusations or threats against borrowers on the basis that they have potentially acted fraudulently. In 2010 Wonga sent letters to borrowers who were unable to repay their loans suggesting that the borrower may be guilty of fraud and stating that, if the borrower fails to repay their loan, the firm may refer the issue to the police. The OFT held that Wonga did not have sufficient evidence to make any claims about potential fraud and therefore held that lenders could not send letters of this type.[43]

Examples of Irresponsible Borrowing

Obtaining credit on a fraudulent basis is generally considered irresponsible borrowing. Experian reports annually on levels of mortgage, credit card and insurance fraud in the UK. The most recent report highlights that over the last six years there have been successive increases in consumer fraud. Experian believes that this is due, in large part, to the fact that 'as challenging economic circumstances have continued, attempts by some cash-strapped borrowers to get their hands on funds have become more diverse and more inventive'.[44] There appears to be no research on high-cost credit fraud, so it is difficult to determine whether this is a problem, and if so, to what extent. Extrapolating the results of the Experian research would seem to provide a strong basis for assuming that fraud is also an increasing problem for high-cost credit.

To obtain understanding of responsible borrowing from the consumer's perspective, we conducted forty-four semi-structured interviews to explore people's experiences in a grounded way. The interviewees were borrowers who had obtained short-term credit from a range of alternative lenders in the previous year – including payday lending both online and in shops, doorstep lending, pawn broking and credit union lending. The study focused on low and moderate-income borrowers who had accessed alternative forms of credit in the last twelve months and therefore those with no access to any of these forms of credit were excluded. Fieldwork took place in the West Midlands and Oxfordshire regions of the UK. We recruited interviewees using a specialist recruitment company who identified people in shopping centres and high streets using a screening questionnaire the authors had designed.

There was a broad a mix of participants in terms of age, gender, employment, family type and so on. Each interview lasted between 45 minutes and 2 hours at a place of the respondent's choice. The majority of interviews occurred in the respondent's home, but a small number took place in a public venue, such as a café. Where possible, the authors of the article conducted the interviews in pairs to ensure research quality and safety. The research received full ethical approval by the University of Birmingham and we took ethical concerns seriously. We gained

43 Hilary Osborne, 'OFT criticises Wonga debt collection practices' *The Guardian* (22 May 2012) <http://www.theguardian.com/money/2012/may/22/oft-criticises-wonga-debt-collection>.

44 Experian, *The Fraud Report 2013* (2013) 6.

informed consent by explaining, at the beginning of each interview the nature of our research, how the data would be used and this was also explained in an research information sheet given to all participants. To thank the interviewees for their time (and encourage participation), we gave them £30 cash. This payment was queried initially by the university ethics reviewers and we appreciate the debate about paying respondents.[45] We also gave an information sheet out to all participants with details of organisations providing free, confidential and independent advice on money issues, should this be of use. And we have used pseudonyms and other measures to ensure participant confidentiality. Each interview was digitally recorded and transcribed in full. We scrutinised our data using thematic analysis[46] aided by Nvivo computer software.

We asked all participants about the circumstances of their loan. On analysis, there were limited examples of activities that could be described as irresponsible borrowing. For example, Georgina – an unemployed young borrower – stated on her application form that she had a job when she was actually unemployed. She did this because she honestly believed that she would be able to find employment easily and have a job by the time her loans needed to be repaid. This was not the case and many months after taking out the loans, Georgina was struggling to repay the amount owed from her unemployment benefits. Another young borrower with two children, Sarah, obtained a loan from an online payday lender that she was unable to repay. As she did not have access to the internet, her friend applied for the loan on her behalf and falsely stated that she was employed. The funds were then transferred into her bank account within a number of minutes. Sarah knew she would not be able to repay the loan, however, she accepted the money because 'it was just getting offered to me and I needed it'.

Whilst we do not condone their actions, both of these cases involved young women who were financially struggling and the money was used for basic expenses, such as electricity, gas, food and rent. The funds were not used for luxury items by any means. In addition, in both cases, the 'fraud' was conducted on a very basic level and merely involved citing incorrect or fictitious employment information. If the lender had undertaken any formal checks on either of the borrowers' applications, such as asking for evidence of payslips, checking the borrowers' bank accounts for receipt of income and affordability, or contacting the employer for verification of employment, they would have picked up the incorrect information very quickly and could have denied the loan. The failure to take these, exceptionally basic, verification steps, appears to be a breach of the responsible lending requirements to undertake a reasonable creditworthiness assessment and ensure that the borrowers can meet their credit repayments in a sustainable manner.

[45] See discussion in S Thompson (1999) 'Paying respondents and informants', *University of Surrey Social Research Update* 14.
[46] J Ritchie, J Lewis, C Nicholls and R Ormston (eds) (2013) *Qualitative Research Practice*, 2nd edition, Sage.

In addition to the minimal levels of fraudulent activities, the interview process also highlighted a reasonably low level of potentially irresponsible *spending* from borrowers. Most people interviewed used the funds obtained for necessary, general living expenses, such as electricity bills, rent, emergency home improvements etc. This finding is in line with the results from the consumer surveys undertaken by the Competition & Markets Authority (CMA), which reported that approximately 70% of all payday loan funds were used for general, everyday expenses.[47] For example, during the interview process, a young father who reluctantly obtained a payday loan for a new dryer before getting caught in a two-year long debt spiral, stated,

> it was a case of it's middle of winter, winter in England not being funny but you can't hang clothes out on the line. We're in a property that has a severe damp problems so we couldn't stick clothing on airers or stuff like that without escalating damp so it's a case of we needed a tumble dryer [I thought] I could pay it off the next time I got paid, the problem was the next time I got paid I had other bills that had to go out and I couldn't turn round and not pay the electric bill because then we'd have been cut off and I couldn't not pay the gas bill. And it's like, what will I do now, I'll have to get out another [loan].

This is unlikely to be considered irresponsible borrowing, despite the fact that the interviewee was unable to repay the loan on time.

Notwithstanding the finding that a majority of people borrowed for 'responsible' purchases, there were limited examples of people borrowing for 'luxury' items or to socialise, including one borrower who purchased a professional photograph session and another who used the funds for regular Saturday nights out with friends. The former was an unemployed mother of three, including a child with disabilities, who became stuck in a home-collected credit cycle due to the ease in which she was able to obtain a loan, stating

> once I'd paid [the first loan], then do you want another loan, and it's like well, I could buy this for the kids, I could buy that. It's like easy money, you have to pay it back but it's easy money when they're offering it you and you've got like two kids and single parent and then I was made redundant in 2007, so I had a newborn baby and my son and, you know, she offered me money which kind of helped out buying beds and, you know, things like that. So it's kind of easy money.

The woman was quite vulnerable and appeared to have close relationship with her credit provider, which left her open to potential exploitation. Each time she paid off a loan, she was offered further credit even if it was not necessary and therefore she became a constant stream of

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[47] Competition & Markets Authority, *Research into the Payday Lending Market* (2014).

profit for the collector. The latter was by a young single man, who considered the interest paid on the money as merely one part of the cost of a ‘night out’. He commented,

> I think the thing was, the way I see life it’s about memories, it’s about going out having fun, I knew I’d have the money to pay them back and I knew that the interest, fair enough I don’t want to pay it but I knew that I had that money accessible in my account. So I, yeah like I knew I could pay it off, I knew it weren’t going to be a big deal.

These examples highlight the complexities of responsible borrowing and even though they both obtained the credit for ‘wants’ rather than ‘needs’, it is difficult to define their borrowing as completely irresponsible.

One large category of potentially questionable expenses relates to children. A significant number of interviewees had borrowed money to make purchases for their children, including Christmas and birthday presents, birthday parties, new bicycles and even a weekend trip to a theme park. Whilst it would be easy to label these types of expenses as unnecessary and irresponsible, this overlooks the complex societal pressures related to raising children. For example, the lady obtained a loan to take her young son to a theme park. She justified her actions on the basis she was feeling guilty about being a single mum and the impact this was having on her son, so wanted to make sure she gave him a birthday he would enjoy and remember.

The interview process also included a range of hypothetical scenarios where interviewees were asked whether the borrower was acting ‘responsibly’. These scenarios included a mother obtaining a doorstop loan to buy school shoes for her children, a young man obtaining a payday loan to buy a new pair of designer jeans and a woman lying about her family’s income level on an application for a Credit Union loan. The majority of interviewees talked about the importance of borrowing responsibly, with a strong distinction drawn between ‘needs’ (ie school shoes for children) and ‘wants’ (ie designer jeans). For example, one borrower in his sixties with a Credit Union loan to repair damage to his home caused by flooding, commented on the need for not only responsible lending, but responsible *living*, stating,

> before we talk about responsible lending, it’s responsible living. Living and lending have gotta be hand in glove; they’ve gotta be together, because … if it’s responsible living first, everything else should come into line.

The consumer interviews confirmed that most people borrowing from short-term lenders are doing so in a responsible and appropriate manner. There are many social and economic pressures on people today that can result in them obtaining credit in a questionable manner or for questionable purposes, and we should be hesitant to label these actions as ‘irresponsible’ without fully understanding the context in which the borrowing occurs.

CONCLUSION

Despite industry claims to the contrary, our empirical research recorded minimal evidence of irresponsible borrowing or inappropriate consumer behaviour. Regardless, questions on responsible borrowing are important to the broader issues about the free market, paternalistic nature of the state and role of the law in society, and are therefore highly deserving of further consideration. Whilst the state has tended towards a focus on individual responsibility, particularly in relation to welfare provision, consumer credit has gone the opposite direction and the government has moved away from the 'light touch' approach, increasing obligations on firms and away from individuals. The current legal regime for high-cost credit has a strong emphasis on responsible lending, with minimal responsible borrowing obligations. Whilst the Consumer Credit Act does emphasise, to a certain extent, borrowers making appropriate credit decisions and the Fraud Act potentially criminalises borrowers lying on applications for credit, the focus remains strongly on the obligation of firms to act responsibly in their lending decisions. And, for a variety of reasons, this is very appropriate approach. Borrowers, particularly people from lower socio-economic backgrounds, have a variety of pressures on them impacting their ability to act reasonably and rationally when determining their credit needs. The law should continue to acknowledge this and protect borrowers from lenders who recognise this vulnerability and may exploit it for their own profits.