28 March 2017

Australian Securities and Investments Commission
By email: FlexCommissions@asic.gov.au

Dear Sir/Madam,

Comment on ASIC CP 279: Flex commission arrangements in the car finance industry

Consumer Action supports ASIC's proposal to prohibit flex-commissions in the sale of car loans through a legislative instrument.

There are clearly significant variations in the interest rates charged on loans sold in car yards. For example, in recent years Consumer Action has seen interest rates on loans in one car yard vary from 12.89% to 16.5%. Interest rates have been as high as 28% in others. Our experience reflects ASIC's observation that people who take out loans with an interest rate well above the base rate are likely to be financially vulnerable.[1]

We note support ASIC's proposal on the basis that:

- The shift of control of interest rates and fees back to lenders is a welcome change. The responsibility logically sits with issuers of financial products to design, price and distribute their products appropriately.
- The broad drafting of the instrument not only addresses the immediate risk of avoidance in the car finance market, but will better protect consumers who take out other credit

[1] Consultation Paper, para 10.

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products in the future, including consumer leases.[2] We support the position in the Consultation Paper that no discounting be allowed on consumer lease rental charges (though we note, despite the position in the Consultation Paper, section 53(3)(a)(ii) of the Draft Instrument appears to allow a 4% discount to be applied to rental charges).[3]

- Requiring lenders to set the maximum rate and fees may better protect customers through reducing misleading advertising and encouraging genuine competition on price.[4]

However, the 200-basis point ‘reverse-flex’ arrangement in the prohibition will most likely mean that vulnerable people who lack the knowledge or ability to negotiate interest rates continue to pay more. This is mitigated somewhat by the fact that the extent of the variation will be smaller than in present arrangements, and that the maximum price of loans should be clearer in advertising.

We note that the prohibition will not commence until September 2018,[5] and that ASIC will monitor the interest rates set by lenders and consider taking action where needed.

In light of the harm already caused by flex-commissions and the lengthy transitional period, we believe that enforcement action is a viable option, in addition to the prohibition under the legislative instrument. ASIC has identified possible contraventions of consumer credit laws.[7] Many people have been ripped off by these possible contraventions and many more will continue to be until the prohibition commences.

Please contact Susan Quinn on 03 9670 5088 or at susan@consumeraction.org.au if you wish to discuss this letter.

Yours sincerely,
CONSUMER ACTION LAW CENTRE

Gerard Brody
Chief Executive Officer

[2] Consultation Paper, paras 17-18.
[3] Consultation Paper, para 18.
[4] Regulatory Impact Statement, para 12.
[5] Draft Instrument, s 2.
[7] Regulatory Impact Statement, para 11.