The Regulation and Development of the British Moneylending and Pawnbroking Markets, 1870-2016

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February 2018

This dissertation is submitted for the degree of Doctor of Philosophy.

Declaration

This dissertation is the result of my own work and includes nothing which is the outcome of work done in collaboration except as declared in the Preface and specified in the text.

It is not substantially the same as any that I have submitted, or, is being concurrently submitted for a degree or diploma or other qualification at the University of Cambridge or any other University or similar institution except as declared in the Preface and specified in the text. I further state that no substantial part of my dissertation has already been submitted, or, is being concurrently submitted for any such degree, diploma or other qualification at the University of Cambridge or any other University or similar institution except as declared in the Preface and specified in the text.

It does not exceed the prescribed word limit for the relevant Degree Committee.

Abstract

This thesis examines the regulation and development of the moneylending and pawnbroking markets in Britain since the 1870s. The six regulatory episodes examined illustrate how the role of state intervention in these markets has been debated, and how it has evolved. The thesis asks: what were the motivations for reform, which market features were regulators most concerned with, and what were their proposed solutions? It demonstrates how majority and minority viewpoints have informed regulation and documents the often-conflicting expectations of how regulation was meant to influence lending decisions, borrower outcomes and poverty. By identifying the primary motivating factors behind regulation, the study answers why and how some policymakers sought to restrict low-income borrowers from gaining access to credit. It finds that policymakers have shifted their focus from market competition and freedom of consumer choice towards financial inclusion and poverty reduction. The result is a better understanding of the regulation and development of two credit products that were, and remain, vital to the working class.

This research shows that the motivations for reform have varied over time. In 1872, 1900, 1927, 2006 and after the Great Recession, policymakers sought to restrict 'illegitimate, evil and predatory' small loan lenders, who were accused of exacerbating the conditions of the poor. In 1974, policymakers sought enhanced regulation such as information disclosure to increase market competition and decrease the cost of borrowing. In 2014, the FCA believed that the payday loan market still lacked price competition and implemented price controls as a corrective measure. Less varied were the issues of concern and proposed solutions. This research identifies five main areas of regulatory concern: the high cost of loans, advertising, the use of an annual percentage rate (APR), the legitimacy of moneylenders and pawnbrokers in the financial system and regulatory enforcement. It identifies three main policy responses: price controls, information disclosure and licensing.

By analysing the motivations, debated issues and proposed solutions, this research examines wider questions concerning freedom of contract, borrower rationality, bargaining inequity, market segmentation and credit rationing. It contributes to the scholarly and policy dialogue on price controls, information disclosure and the development of non-bank lending. This research also provides new perspectives on the Victorian poverty debate and the modern financial inclusion agenda as they relate to the interaction between regulation, high-cost credit and poverty.

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Abbreviations

ACCA	Association of Chartered Certified Accountants
ADR	Alternative dispute resolution
APR	Annual percentage rate
CCA 1974	The Consumer Credit Act 1974, c. 39
CCA 2006	The Consumer Credit Act 2006, c.14
CMA	Competition and Markets Authority
Crowther	The Crowther Report on Consumer Credit 1968-1971
DTI	The Department of Trade and Industry
EBITDA	Earnings before interest, tax, depreciation and amortisation
FCA	Financial Conduct Authority
FOS	Financial Ombudsman Service
FSA	Financial Services Authority
HC	House of Commons
HC deb.	House of Commons debate
HCSTC	High-cost short-term credit
HL	House of Lords
HL deb.	House of Lords debate
HM	Her (His) Majesty
MLA 1900	The Moneylenders Act 1900: 63 & 64 Vic. c. 51
MLA 1927	The Moneylenders Act 1927: 8 Geo. 5 c. 21
MLSC 1897	The Moneylenders Select Committee 1897
MLSC 1898	The Moneylenders Select Committee 1898
MLSC 1925	The Moneylenders Select Committee 1925
MPPS	Metropolitan Pawnbroker Protection Society
NPA	National Pawnbrokers Association
OFT	Office of Fair Trading
PBA 1872	The Pawnbrokers Act 1872: 35 & 36 Vic. c. 93
PBG	*Pawnbrokers' Gazette*
PBSC 1870	The Pawnbrokers Select Committee 1870

PBSC 1872	The Pawnbrokers Select Committee 1872
pcpa	per cent per annum
pcpm	per cent per month
PPRA	Pawnbroking Parliamentary Reform Association
ROE	Return on equity
ROCE	Return on capital employed

Principal persons

George Attenborough, Alfred Hardaker and John Telfer
Pawnbrokers
Reform advocates, 1860-1870s

Acton Smee Ayrton
Member of Parliament, Liberal
Chairman, PBSC 1870

Edward Carson
Peer, Member of Parliament, Irish Unionist
Lead sponsor, MLA 1927

Stella Creasy
Member of Parliament, Labour
Reform advocate, 2006-present

Geoffrey Crowther
Economist, journalist
Chairman of the Committee on Consumer Credit 1968-1971

Thomas Farrow
Reform advocate, MLSC 1897

George Gillman
London City Missionary, Charity worker
Witness, PBSC 1870

Royston Goode
Emeritus Professor of Law, *St John's College, Oxford*
Member, Committee on Consumer Credit 1968-1971

Issac Gordon, John Kirkwood and Isaac Samuel
Moneylenders
Witnesses, MLSC 1897

Archibald Orr-Ewing
Member of Parliament, Conservative
Member, PBSC 1870

Thomas Russell
Member of Parliament, Liberal
Chairman, MLSC 1897

Richard Wells
Member of Parliament, Conservative
Lead sponsor, MLA 1927

Glossary

Duffed/Duffing

Mass-produced counterfeit goods, often of inferior quality.

Note shaving

A loan agreement that matures at par value above the purchase price, with the price appreciation representing the interest rate charged.

Paid-in capital

The amount of capital contributed by investors through purchase of stock from the issuing entity.

Pawn

A transaction in which moveable personal property is pledged as collateral for a loan.

Payday loan

A high-cost, short-term credit product repaid in a single sum or over multiple instalments. In 2015, the average payday loan was outstanding for approximately three weeks. These loans are issued on an unsecured basis.

Posted bond/capital requirements

An amount of capital placed with a government entity to ensure payment of fines and as an incentive to moneylenders to follow regulatory procedures. Similarly, capital requirements indicate that a moneylender had sufficient funding to operate as an on-going concern.

Promissory note issued by a moneylender

A contract in which one party agrees in writing to pay a specific sum of money to another party. Typically, the note discloses the amount advanced, the interest rate, instalment dates and terms of default. These loans are issued on an unsecured basis.

Reversion

A contract that transfers assets on the death of the possessor to an heir. 'High-end' moneylenders offered heirs the opportunity to borrow against their future inheritance.

1 Introduction

A. Introduction

In 2013 Ed Miliband MP (Labour, Leader of the Labour Party 2010-2015) declared that payday lenders were 'one of the worst symbols of the cost of living crises' and accused them of 'predatory behaviour'.[1] Since the onset of the Great Recession concerns over economic fairness, poverty and financial exclusion have resulted in policymakers showing considerable interest in high-cost short-term credit (HCSTC). In 2015, the Financial Conduct Authority (FCA) implemented price controls on payday loans. In choosing an interest rate cap of 0.8 per cent per day, a £15 default fee ceiling and a maximum total cost of 100 per cent, the FCA sought to 'strike the right balance' between consumer protection and a viable market.[2] The implementation of price controls is the first instance of its kind since usury was repealed in 1854.[3] Since 1900 politicians had rejected price controls on at least eight occasions. Lord Glasman, a Labour peer and academic, referred to the 2015 price controls as 'an absolutely exceptional moment'.[4]

Price controls were the culmination of public inquiries beginning in 2012.[5] In that year the Office of Fair Trading (OFT) found that some payday lenders were 'taking advantage of people in financial difficulty' and that, owing to the growth of the industry, vulnerable people were suffering at the hands of

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[1] Elizabeth Rigby, 'Miliband attacks Britain's "Wonga economy"', *Financial Times*, 5 November 2013.

[2] 'Detailed rules for the price cap on high-cost short-term credit', Financial Conduct Authority PS14/16 (2014); 'FCA confirms price cap for payday lenders', Financial Conduct Authority press release, 11 November 2014.

[3] The Usury Act was repealed by section 1 of the Usury Laws Repeal Act 1854.

[4] House of Lords (HL) debate, 28 November 2012, vol. 741.

[5] In 2013, the FCA released payday loan guidelines in the Consumer Credit Sourcebook (CONC 4-7) and Parliament authorised the FCA to investigate price controls that same year. See also 'The impact on business and customers of a cap on the total cost of credit', A report for the Department for Business, Innovation and Skills prepared by The Personal Finance Research Centre, University of Bristol (2013) (hereafter Bristol Report (2013)).

'irresponsible lenders'.[6] Stella Creasy MP (Labour) said that government intervention was necessary to combat the 'devastating impact of 1,700 per cent interest rates'.[7] The Citizens Advice Bureau believed that these 'legal loan sharks' needed to be regulated and had to stop issuing 'irresponsible' advertisements.[8] Entering the fray, the Church of England believed that payday lenders 'purposely' put customers in debt to 'farm their assets and milk them dry'.[9] Economists and trade groups argued against increased regulation and declared that intervention would drive legal participants out of the market and encourage credit rationing and illegal lending.[10] After new regulations were enacted in 2014, four of the eleven major UK payday lenders ceased operations.[11] Data indicate that credit rationing has occurred. Shortly after the price cap was introduced Wonga ceased issuing loans of less than £50.[12] Similarly, during the regulatory investigation (2012-2015), the average high street loan increased from £107 to £180.[13] For better or worse, the market has responded to potential and enacted regulation according to the industry's predictions.

Alongside payday lending and following the Great Recession, pawnbrokers experienced a boom in business. In October 2016, Steve Boggan, a reporter for the *Guardian*, wrote, '£75.06 interest on £180 over six months. That is 41.7 per cent. Extortionate, you might think, and surely one of the reasons why pawnbrokers, a ubiquitous feature of every working-class district

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[6] 'OFT launches review into payday lending', Office of Fair Trading, 24 February 2012.
[7] Nicolas Watt, 'Payday loan firms face cap after government U-turn', *Guardian*, 28 November 2012.
[8] 'Payday loans', Citizens Advice Bureau, campaign 2014.
[9] Jamie Merrill, 'Church of England to open credit union in its "war" on Wonga', *Independent*, 20 June 2014.
[10] Sharlene Goff, 'Tougher UK rules drive payday lenders away', *Financial Times*, 20 May 2014; Hillary Osborne, 'Payday lenders may vanish within year as result of price cap, says economist', *Guardian*, 10 November 2014.
[11] 'Payday lending market investigation', Competitions and Markets Authority, 24 February 2015 (hereafter CMA (2015)).
[12] Marion Dakers, 'Payday loans past their peak as price cap comes into force', *Telegraph*, 3 January 2015.
[13] CMA (2015), 3, 418.

50-odd years go, died out. Except they didn't.'[14] The pawn industry grew from approximately 800 outlets in 2003 to over 2,000 in 2014, with a market value of £930 million.[15] Average pawn loans range from £100 to £400 and carry an interest rate average of 80-130 pcpa.[16] Phil Murphy, the founder of Albemarle & Bond, a major UK pawnbroker, argued that 'in a funny way we don't create indebtedness; we pick up the pieces when people have got into debt. In fact, we're absolutely lovely.'[17] Over a century earlier, John McKay, a pawnbroker in Glasgow, expressed a similar belief, asserting that during times of great need pawnbrokers 'help people on in the world'.[18] While twenty-first-century pawnbroking has generated less regulatory interest than payday loans, this was not always the case. In the early twentieth century pawnbrokers operated under price controls and moneylenders were free to lend, but by 2014 that restriction had been reversed. This development has not been fully examined in the literature.[19]

Recent areas of regulatory concern include: the high cost of loans, advertising, APR disclosure and the growth of the market. Records reveal that over a century ago policymakers had similar, if not identical, concerns. In 1870 Alexander McCall, Chief Constable of Glasgow, sought regulation to rid Britain of small loan lenders.[20] Supporters of regulation considered the small loan lending system to be 'evil' and believed that it took advantage of the vulnerable poor suffering at the hands of moneylending 'bloodsuckers … [who were]

[14] Steve Boggan, 'Pawn again', *Guardian*, 20 October 2016.
[15] As of 12 December 2015, www.thenpa.com; 'Pawnbroking customers in 2010', A report for the National Pawnbrokers Association prepared by the Personal Finance Research Centre, University of Bristol (2010), 7.
[16] Ibid.
[17] Rachel Warren, 'Uncle breaks loose: Pawnbrokers; Family money', *The Times*, 24 September 1988.
[18] PBSC 1870, 2165-2168, 2177.
[19] Until the 1990s, businesses issuing small value, unsecured HCSTC, were known as moneylenders. During and after the 1990s, 'payday lenders' issued the same credit product. Although the payment mechanism has evolved, that is the use of a current account rather than a pay packet, the borrower profile, loan structure and fund usage are similar. This argument is developed further in Chapter 5.
[20] PBSC 1870, 1417; MLSC 1898, 1903; HL deb. 20 February 1899, vol. 66.

canker-worms of ruin'.[21] John Hollingshead, a social-religious commentator, derided the charging of special fees as 'very common and [a] shameful fraud on the poor'.[22] From 1897 to 1900, Parliament debated whether judges should rewrite moneylending contracts with high interest rates.

Other policymakers strongly opposed regulation and the interference of the government in the market. In 1872, Lord Salisbury (Conservative, Prime Minister 1885-1886,1886-1892, 1895-1902) believed that 'no other course but that of establishing perfectly free trade between the pawnbroker and his customers' would protect the borrower.[23] This view argued that competition encouraged fairness and lower interest rates. In 1899, Lord Elcho, a member of the Liberty and Property Defence League, a group that advocated an extreme form of laissez-faire trade, claimed that proponents of regulation did so in a 'grandmotherly spirit' and that regulation was not going 'to save the fool from his folly'.[24] These 'free traders' argued that financial regulation went against the fundamental tenets of British liberty and would encourage harmful credit rationing.

While historians have written volumes about consumer credit, few have analysed the regulatory response.[25] Fewer still have paid attention to why and how the British government has controlled the working poor's access to credit.[26] This is not surprising given that the everyday financial transactions of small loan lenders and the borrowing patterns of the working poor are neglected areas of financial history. To fill the lacuna in the literature, this thesis examines the regulation and development of the moneylending and pawnbroking markets in

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[21] PBSC, 1547-1551; House of Commons (HC) debate 4 August 1898, vol. 64.
[22] John Hollingshead, 'The poor man's banker', *Good Words* 5 (1864), 181.
[23] HL deb. 6 August 1872, vol. 213.
[24] HC deb. 1 May 1899, vol. 70. See Edward Bristow, 'The Liberty and Property Defence League and individualism', *The Historical Journal* 18:4 (1975), 761-789.
[25] Christopher Peterson made a similar observation in 'Truth, understanding, and high-cost consumer credit: The historical context of the Truth in Lending Act', *Florida Law Review* 55 (2003), 816.
[26] Edward Glaeser and Jose Scheinkman made a similar point in 'Neither a borrower nor a lender be: An economic analysis of interest restrictions and usury laws', National Bureau of Economic Research Working Paper Series No. 4954 (1994), 2-3.

Britain since the 1870s. This thesis understands financial regulation as the establishment, monitoring and enforcement of rules.[27] This research defines policymakers in a general way without recourse to political or regulatory theory to include politicians, the judiciary, government agencies, law enforcement, business interests, think-tanks, academics and charitable entities that have influenced the regulatory process.[28] Table 1 shows the regulatory episodes analysed by this research. Each period under consideration is examined so that comparisons can be made across time.

Table 1 Regulatory episodes*[29]*

Regulation	Key feature(s)
The Pawnbrokers Act 1872	Raised the price ceiling on PB loans
The Moneylenders Act 1900	No price controls; guidance rate rejected; ML registry
The Moneylenders Act 1927	No price controls; guidance rate implemented; advertising restricted; ML licensing system
The Consumer Credit Act 1974	No price controls; advertising restrictions lifted; guidance rate removed; ML & PB legitimised
The Consumer Credit Act 2006	Licensing segmented by risk category, payday lenders targeted
FCA price controls 2015	Three-part price control on payday lenders

The objective is not to analyse regulatory theory or the legislative procedures by which the laws were enacted, but to use the episodes as

[27] See Rosa Maria Lastra, *Legal Foundations of International Monetary Stability* (Oxford: Oxford University Press, 2006).
[28] For current treatment of regulatory theory and financial markets see Edward Balleisen and David A. Moss, *Government and Markets: Toward a New Theory of Regulation* (New York: Cambridge University Press, 2010). For an accessible treatment of why and how trade groups influence regulation see Luca Lanzalaco, 'Business interest associations', in *Oxford Handbook of Business History*, 293-315, eds. Geoffrey Jones and Jonathan Zeitlin (Oxford: Oxford University Press, 2009) and Peter Hall and David Soskice, 'Introduction', in *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*, 1-68, eds. Peter Hall and David Soskice (Oxford: Oxford University Press, 2001). Specific to how ideas influenced social policy relating to the small loan market in the United States see Elisabeth Anderson, 'Experts, ideas and policy change: The Russell Sage Foundation and small loan reform, 1909-1941', *Theory and Society* 37:3 (2008), 271-310.
[29] ML (moneylenders) and PB (pawnbrokers).

inflection points to examine the evolution of two credit products that were, and remain, vital to the working class. Similarly, this research analyses the demand and supply features of the market and how those features influenced regulatory frameworks. In other words, what were the motivations for reform, which market features were regulators most concerned with, and what were their proposed solutions?

This research shows that the motivations for reform have varied over time. In 1872, 1900, 1927, 2006 and after the Great Recession, policymakers sought to restrict 'illegitimate, evil and predatory' small loan lenders who were accused of exacerbating the conditions of the poor. In 1974, policymakers sought enhanced regulation such as information disclosure to increase market competition and the cost of borrowing. In 2014, the FCA believed that the payday loan market lacked price competition and implemented price controls as a corrective measure. Less varied were the issues of concern and proposed solutions. This research identifies five main areas of regulatory concern: the high cost of loans, advertising, the use of an annual percentage rate (APR), the legitimacy of moneylenders and pawnbrokers in the financial system and regulatory enforcement. It identifies three main policy responses: price controls, information disclosure and licensing.

By analysing the motivations, debated issues and proposed solutions, this research examines wider questions concerning freedom of contract, borrower rationality, bargaining inequity, market segmentation and credit rationing. For example, did policymakers consider it rational and responsible to contract small sums at high interest rates? Were these cash loans considered helpful or harmful to the borrower? What constrained policymakers, until 2015, from implementing price controls? By answering these and related questions this research provides new insights into the regulation and business of moneylending and pawnbroking since 1870. It contributes to the scholarly and policy dialogue on price controls, information disclosure and the development and legitimacy of non-bank lending. This research also provides new perspectives on the Victorian poverty debate and the modern financial inclusion agenda as they relate to the interaction between regulation, high-cost credit and poverty. While it leaves policy solutions to those empowered by the electorate to do so, it illustrates that the regulation and development of the moneylending and pawnbroking markets have long been debated.

While the market value of government and industry debts far exceeds the moneylending and pawnbroking markets, the ability to access small loans enabled needy families to 'fill their bellies and cover their nakedness'.[30] The sheer volume of transactions speaks to its pivotal role within the working class. In 1911, British pawnbrokers issued approximately 253 million loans or approximately six pawns per capita of the entire United Kingdom. More appropriately, that is approximately 14 pawns per person gainfully employed and 140 pawns per person gainfully employed in the unskilled labour market.[31] Persons employed in those occupational classifications made up the majority of borrowers. The regulation and lending institutions that serviced the everyday needs of most people have been neglected by economic historians.

This research avoids the term 'alternative finance'. Instead, it argues that small loans were and are an everyday aspect of working-class life. In the 1870s, there was approximately one pawnbroker for every 2,000 urban residents.[32] During that decade 15 pawnbroking shops were visible on the same street in Liverpool.[33] In 1910-1914, many pawnshops took in 8,000-10,000 pawns monthly. As late as 1920, 47 pawnbrokers competed within a six-mile stretch

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[30] Paul Johnson, 'Credit and thrift and the British working class, 1870–1939', in *The Working Class in Modern British History*, 147-170, ed. Jay Winter (Cambridge: Cambridge University Press, 1985), 153.

[31] Author's estimate based on licensing data from the Report of the Commissioners of HM Customs & Excise and Commissioners of HM Inland Revenue (1909-1914), Guy Routh (1980) occupational data, the application of a constant urban and provincial pawnbroking distribution and average pawn transactions per annum.

[32] Kenneth Hudson, *Pawnbroking: An Aspect of British Social History* (London: Bodley Head, 1982), 53.

[33] *The Pawnbrokers' Gazette*, 8 July 1867, The British Library, M78445-52 (1867-1894) (hereafter PBG).

of road between Manchester and Ashton.[34] In 2010, the Centre for Responsible Credit estimated that payday lenders issued £900 million annually, with average loans of between £200 and £330.[35] A 2013 survey conducted by the University of Birmingham suggested that approximately one in five of the poor working class said they would have to borrow if £200 was needed at short notice.[36] In 2014, The Money Shop, one of Britain's largest payday lending companies, operated 550 retail branches.[37] To refer to this segment as alternative fails to appreciate the importance of small loans to the working poor.

This research examines archival data to gain insight into the regulation and development of the moneylending and pawnbroking markets. It takes a novel approach by analysing regulatory episodes from the perspective of various actors, including politicians, the judiciary, lenders, borrowers and charities. While enacted legislation reflected the 'viewpoint of the victor', this research also considers those that 'lost the day'. Research conducted in this manner facilitates comparisons between periods, using sources that are often overlooked. This research contributes to important areas of economic history regarding the development of non-bank lending and offers new insights into the expansion and restriction of credit to the working poor. It will be of interest to regulators, academics and students of economics, politics and history, as it analyses the formation of regulation and the interaction of business, trade groups and government.

Specialists concerned with price controls, information disclosure, economic inequality and financial exclusion will benefit from the long view provided by this research. Lenders of small sums, trade groups and charitable organisations active in consumer credit markets will draw insight from how their

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[34] Melanie Tebbutt, *Making Ends Meet: Pawnbroking and Working-Class Credit* (Leicester: Leicester University Press, 1983), 142.
[35] Damon Gibbons and Nehra Malhotra, 'Payday lending in the UK: A review of the debate and policy options', Centre for Responsible Credit (2010).
[36] Karen Rowlingson, 'Short of cash, rent and food - Britons in dire financial straits', *The Conversation*, 25 July 2013.
[37] As of 1 January 2014.

historical counterparts contributed to the regulatory process. As Steven Finlay suggested in *Consumer Credit Fundamentals*, the UK consumer credit market is one of the largest and most developed in the world.[38] Many other countries follow its regulatory procedures and so have similar market structures. Accordingly, conclusions drawn in this thesis are applicable to audiences beyond the United Kingdom. Historians have yet to examine these debates from the perspective offered by this research. Given that the credit market is constantly evolving, analysing the dominant products of their time can assist policymakers and lenders in executing their respective strategies.

This chapter introduces the findings and analyses the historiography, credit supply channel and source material.[39] Chapter 2 begins by examining the pawn market and events leading up to the Pawnbrokers Act 1872 (PBA 1872). Unlike moneylenders, pawnbrokers had long been regulated. The most recent legislation was the Pawnbroker Act 1800 (PBA 1800) which required that pawnbrokers be licensed and capped interest rates.[40] Under price caps, pawnbrokers lost money on low-value pledges. Pawnbrokers were motivated to reform price controls and abolish burdensome bureaucratic requirements. Certain pawnbrokers and policymakers believed that price controls should be lifted. These 'free trade' advocates warned that interest rate capping resulted in market segmentation and credit rationing and encouraged illegal lending. It was argued that price controls limited the type of collateral a pawnbroker could take in profitably (e.g., bulky items), which, along with restricted trading hours, acted as an incentive to unlicensed lending. Other pawnbrokers found the PBA 1800's restrictions beneficial. They argued that licensing and price caps

[38] Steven Finlay, *Consumer Credit Fundamentals* (Basingstoke: Palgrave Macmillan, 2009), 1.
[39] Section C. clarifies why savings banks, friendly societies, buildings societies, co-operatives and other forms of working-class credit fall outside the scope of this research. For a detailed analysis of these credit providers see Paul Johnson, *Saving and Spending: The Working-Class Economy in Britain 1870-1939* (Oxford: Clarendon Press, 1985); Sean O'Connell, *Credit and Community: Working-Class Debt in the UK since 1880* (Oxford: Oxford University Press, 2009).
[40] Having been regulated since 1603, pawnbrokers were excluded from the repeal of the Usury Act in 1854.

excluded new entrants from the industry and feared that increased competition would depress pricing of the high-end 'London' business.

Archibald Orr-Ewing MP (Conservative) believed that the poor lacked the intellectual and moral capacity to protect themselves from lenders whom he viewed as predatory. Similar to Ross McKibbin's findings concerning the gambling market, certain policymakers sought to regulate small loans because sections of the working class were 'incompetent in the management of its own interests'.[41] Orr-Ewing believed pawnbrokers contributed to social ills and crime, and went so far as to call them 'evil'. This line of thinking argued that poverty was a result of moral failings. Pawn loans were considered no better than 'indiscriminate' charity, which led the 'irrational' and 'undeserving' poor into destitution. In his opinion, there was little doubt that pawn credit should be constrained.

An alternative position held that insufficient wages and labour market instability created situations where cash was desperately needed. Members of the Pawnbroker Select Committee 1870 (PBSC 1870) were surprised to learn that charity workers in London, people who were in close contact with the poor, were vehemently opposed to linking irrationality, immorality and poverty. They considered it rational and responsible to pawn an overcoat to pay the rent. Frederick Williamson, a police superintendent, believed that the hard life of the poor required a sharp wit and, while not of the bookish kind, a keen intellect, otherwise they 'won't have enough food to eat'.[42] Many of the charity workers suggested that freedom of contract to negotiate pricing would best protect the working poor. This classic laissez-faire view asserted that unfettered markets fulfilled the needs of the people better than government policy.

Historians interested in poverty in the nineteenth century have often overlooked the fact that the British contracted over 200 million pawn

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[41] Ross McKibbin, 'Working-class gambling in Britain 1880-1939', *Past and Present* 82:1 (1979), 158.
[42] PBSC 1870, 1604-1611.

transactions annually.[43] Using underutilised source material, and by focusing on a loan product that served the working poor, this research contributes to the Victorian poverty debate literature. Chapter 2 documents the conflicts, compromises and effectiveness of the pawnbroking lobby. This approach is also new to the literature. It demonstrates how pawnbrokers, Parliament, the police and charity workers, to name just a few, understood this vital business and how those groups shaped the PBA 1872, especially in relation to price controls. Although price controls offended the sensibilities of free traders, there was little political will to remove them and many considered limiting the interest rate and ticket fee as a legitimate form of borrower protection. The evidence indicates that business and political realities influenced the regulatory outcome more than laissez-faire rhetoric or contested ideas about poverty. Led by the Pawnbroker Parliamentary Reform Association, the industry presented financial evidence and a coherent argument that helped to raise the price ceiling and produced a generally favourable bill.

Chapter 3 analyses the formation of the Moneylenders Act 1900 (MLA 1900) and Moneylenders Act 1927 (MLA 1927). Before 1900, moneylenders operated without regulation. Royston Goode, a legal scholar, remarked that for centuries transactions were influenced by Lord Nottingham's 1676 statement that 'the Chancery mends no man's bargain'.[44] While the catalyst for pawnbroking reform was led by industry, the moneylending investigation was initiated by the government. Policymakers were motivated to reform moneylending owing to judicial conflicts concerning small debt claims, high rates of interest, prolific advertising and a growth in loan volume. Their intent was to restrict the 'evil' industry. Within the legal system liberal judges refused to interfere with contracts executed by competent adults and revisionist judges

[43] Author's estimate based on licensing figures from the annual Reports of Customs & Excise (1911), Guy Routh's (1980) occupational data, the application of a constant urban and provincial pawnbroking distribution and average pawn transactions per annum.
[44] Royston Goode, *The Consumer Credit Act: A Student's Guide* (London: Butterworths, 1979), 1.

pro-actively revised contracts in favour of poor borrowers. These judicial conflicts created uncertainty: how far should judges intervene in private contracts? At the same time, by the late 1890s a strong anti-moneylending sentiment prevailed. The government responded with the Moneylenders Select Committee 1897 (MLSC 1897) charged with investigating the 'alleged evils' within the moneylending industry.[45]

Theories concerning freedom of contract and the role of judicial intervention were fiercely debated. Proponents of freedom of contract supported moneylenders in the belief that unregulated market outcomes facilitated competitive loan rates and borrower protection. Notwithstanding, moneylenders failed to convince the majority of policymakers that small loans were expensive to administer and that the interest rate charged should not be confused with profit. The MLSC 1897 and Parliament disagreed with moneylenders proposing that the APR was an ineffective measure of the cost of short-term loans. Instead, spiralling 'debt traps' and high interest rates generated debate concerning the reinstatement of price controls.

Although it was recognised that the repeal of the Usury Act had contributed to the growth in moneylending and few condoned the high rates of interest, price controls found little support. There was a strong sense that regulating the cost of money went against a fundamental principle of British commerce. This research argues that a belief in freedom of contract outweighed concerns over borrower protection. There was also uncertainty about the implication of price controls on the wider financial system, that is, how to regulate 'illegitimate' moneylenders without restricting 'legitimate' banking. In 2010, similar concerns were voiced in the financial inclusion agenda which divided the consumer credit market into 'proper' and helpful credit and 'improper' and harmful payday loans. In 1900, MPs were so fearful of

[45] HC deb. 6 April 1897, vol. 48.

'legitimising' moneylending that they refused to implement a licensing system as this would indicate implicit government approval.

Unlike licensing, the MLA 1900 enacted a moneylending registry and enshrined the ability of judges to rewrite contracts that were deemed to be 'harsh and unconscionable'. Soon after its passage the law was considered ineffective and, by 1925, was deemed to have failed. Few borrowers or law enforcement agents sought its protective measures. In the 1920s, high rates, a growth in loan volume and prolific advertising once again prompted a parliamentary response. In 1925, a Moneylending Select Committee was formed (MLSC 1925). This committee did not focus on theoretical concerns over freedom of contract and the role of the state in regulating financial markets. The MLSC 1925 was a practical response to legislation that had failed to control 'evil' moneylenders. Instead of price controls, which were considered difficult to implement and easily evaded, the MLA 1927 enacted a 48 pcpa guidance rate of interest. Transactions appearing before a judge above that rate were considered 'harsh and unconscionable' unless the lender proved otherwise. With a solution in place, Parliament believed it had dealt with the issue of high rates on a transaction level without unduly interfering in the market's pricing mechanism. The MLA 1925 also introduced strict advertising restrictions and a two-step licensing regime. The goal was to restrict the supply of credit.

Chapter 4 analyses market developments from 1945 until the 1970s, the Report of the Committee on Consumer Credit (the Crowther Committee, 1968-1972) and the Consumer Credit Act 1974 (CCA 1974). The motivation for reform was to unify consumer credit regulation, enhance market efficiency and increase access to credit. By the 1960s, the legal status of finance houses, hire-purchase companies and instalment credit under the restrictive and poorly designed MLA 1927 was being questioned. Ineffective regulation was blamed for high pricing, misleading advertising and ineffective APR disclosure. In September 1968, Crowther was appointed to investigate the regulatory structure, explore possible alternatives and consider amending the MLA 1900-1927.

Like the PBA 1872, and in stark contrast to the MLA 1900-1927, Crowther worked collaboratively with trade groups and businesses. For the most part, policymakers understood that moneylender and pawn loans were not used to advance an individual's standard of living, but to pay for necessities, such as rent, food and utilities. Notwithstanding, there was tension in Crowther's findings. As before, the high cost of loans was debated. Statistical evidence suggested that borrowers valued non-price loan features such as speed and convenience over price. These results confirmed what Victorian pawnbrokers and moneylenders had argued. Crowther struggled to understand why borrowers valued non-price features so highly and had failed to encourage a market structure in which lenders competed on price. Crowther suggested that the lack of price competition was the result of borrowers' failure to shop around for the best deal. Similarly, evidence supported previous arguments that borrowers paid little attention to APR disclosure and instead assessed affordability in terms of the amount owed in monetary terms. These results challenged the value of standardised APR disclosure, which Crowther advocated as essential to improving competition.

However, Crowther understood that moneylending and pawnbroking carried with it high expenses and default rates. This, coupled with Crowther's goal to unify consumer credit regulation without targeting the form or type of lending entity, would make it extremely difficult to implement price controls. Crowther also believed that price controls would limit competition as market rates would gravitate towards the maximum. Concerns that price controls would ration credit away from the lowest market segment were raised. Ultimately, Crowther did not support price controls. Accordingly, for the first time in centuries, pawnbrokers would operate without interest rate or fee restrictions.

By including all consumer credit under a single Act of Parliament, moneylenders and pawnbrokers were legitimised and admitted into the financial system. Advertising restrictions were lifted and licensing requirements were standardised. Although the value of APR was questioned it was considered as the key to greater competition. Guiding this unified framework was the belief that the state should minimise its restrictions to permit consumers the maximum amount of choice and encourage a diverse and dynamic consumer credit market. It was argued that a competitive market would price credit appropriately and mitigate risky lending behaviour.

Chapter 5 examines market developments since the 1970s, the Consumer Credit Act 2006 (CCA 2006) and debates concerning price controls leading up to their implementation on payday loans in 2015. In response to the CCA 1974 single credit licence and a unified regulatory code, HCSTC providers expanded their offerings. The market structure shifted from a proprietor-issued single product line credit to corporations offering a range of secured and unsecured loans. What were once partnerships with limited capital became corporations such as AIM-traded pawnbroker Harvey & Thompson and DFC Global, formerly listed on the Nasdaq, but now backed by private equity. DFC Global operated approximately 1,300 retail locations worldwide, including 300 in the United Kingdom.[46]

In 1971, it was estimated that 402 pawnbrokers and 2,468 moneylenders had lent less than a combined £10 million, equivalent to £129.7 million in 2015.[47] By 2013-2015, pawnbrokers and payday lenders issued over £3.5 billion annually.[48] Certain policymakers, academics and charities linked the industry's growth to an increase in economic inequality and financial exclusion. The Debt on our Doorstep campaign found that low-income households were three times more likely to be in arrears on 'rent, council tax, utility bills and

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[46] As of 1 July 2017.
[47] 'Pawnbrokers and moneylenders', a report for the Department of Trade and Industry by NOP Market Research (1971); Adjusted for inflation (1971-2015) using the Bank of England inflation calculator. The author thanks Sir Royston Goode CBE, QC, DCL, FBA for providing access to the original report.
[48] Compiled from CMA (2015); 'Key facts', The National Pawnbrokers Association, 2 October 2015; Bristol Report (2013).

mortgage payments'.[49] In 2005, Sharon Collard and Elaine Kempson found that 6.2 million adults with incomes in the lowest quantile would find it 'difficult or impossible to raise £200-£300 in an emergency without borrowing'.[50] As before, HCSTC providers responded to the unique demand features of the working poor in urgent need of cash.

While Victorian- and Edwardian-era policymakers failed to interact with borrowers, and Crowther treated the process as akin to a research project, from 2006 to 2015 policymakers engaged with the issues in their MP surgeries, meetings with lenders and through academic study. With the onset of the Great Recession, policymakers sought to restrict these 'predatory lenders'. In 2006, attention again focused on the high cost of loans. Borrowers were considered vulnerable because of their HCSTC obligation. The CCA 2006 departed from the CCA 1974 and enhanced licensing screening and supervisory powers based on risk categories. The House of Commons Treasury Committee believed it 'vital' that the Office of Fair Trading be granted power to control 'excessive' charges.[51] High-risk lenders would be scrutinised for their 'fitness' to hold a licence and their activities monitored. This was a clear departure from lender equality under the CCA 1974.

This research argues that the segmentation of lenders into risk categories and the FCA's implementation of price controls were facilitated by the financial inclusion agenda. Beginning under the 1997 Labour government, a financial inclusion initiative sought access to basic banking facilities, affordable credit and financial literacy.[52] The financial inclusion agenda believed access to mainstream banking in an increasingly competitive

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[49] Jenny Rossiter and Niall Cooper, 'Scaling up for financial inclusion', Church Action On Poverty: Debt on Our Doorstep Campaign (2005), 7.
[50] Sharon Collard and Elaine Kempson, 'Affordable credit: The way forward', The Joseph Rowntree Foundation (2005).
[51] 'Financial inclusion: Credit, savings, advice and insurance', House of Commons Treasury Committee Twelfth Report of the Session 2005-2006 vol. 1, 17-18.
[52] According to the FSA, the financial inclusion agenda was stimulated by the 1997 Labour government's Social Exclusion Unit initiative. See 'In or out? Financial exclusion: A literature and research review', Financial Services Authority (July 2000).

environment was an effective poverty reduction strategy.[53] What was once a debate between free trade, judicial intervention and control of licensing had shifted to discussion of poverty reduction and financial exclusion.[54] New Labour believed that 'proper' credit or the 'right kind' of market would reduce poverty and welfare spending while increasing self-sufficiency.[55] It was believed that proper, self-driven market participation enhanced the ability to manage risk. This is similar to convictions held during the Victorian era concerning the Poor Laws, charity, morality and poverty.

Financial inclusion advocates argued that payday loans contributed to poverty, increased risk and decreased living standards; they were therefore the 'wrong kind*'* of credit. After studying the effects of price controls on the payday lending market the FCA determined that credit rationing and market segmentation would benefit marginal borrowers. Without conclusive supporting evidence, the FCA implemented price controls to force market contraction. The goal was to restrict access to the wrong kind of credit. While the lack of price competition was cited as justification for state intervention, this research suggests that the influence of the financial inclusion agenda and concern over economic 'fairness' were paramount.[56] This position was coupled with an expansive definition of poverty and vulnerability. These considerations provided an entry point for price controls, which were implemented to force a market

[53] 'Financial inclusion: Credit, savings, advice and insurance', House of Commons Treasury Committee, 2005-2006, vol. 1, 3.

[54] 'The consumer credit market in the 21st century: Fair, clear and competitive', Department of Trade and Industry CMD 6040 (2003), 3; HC deb. 9 June 2005, vol. 434.

[55] In 2003-2004, the majority of households lacking access to basic banking facilities were also supported by government, e.g., 64 per cent received council tax benefit, 62 per cent received housing benefit and 48 per cent received income support. See 'Promoting financial inclusion', HM Treasury (2004), 12.

[56] Stephen Timms MP (Labour, Financial Secretary to the Treasury) in 'Scaling up for financial inclusion', Church Action on Poverty: Debt on Our Doorstep (2005), 3; 'Financial inclusion: An action plan for 2008-11', HM Treasury (December 2007); and 'Promoting financial inclusion', HM Treasury (2004).

contraction that would correct the working poor's failure to mitigate financial risk.[57]

This research responds to Matthew Hilton's observation that the literature fails to address how lower-class consumers have influenced the economy and politics.[58] It illustrates how policymakers viewed moneylending and pawnbroking, and how those viewpoints influenced regulatory frameworks. It contributes to the contentious debates in response to high-cost credit, financial exclusion and poverty. It documents which groups and theories influenced the regulatory process and how the market responded to regulation. This research provides historical evidence on why regulation and the market developed in the way they did and not otherwise. The regulatory processes analysed by this research serve as inflection points to understand the development of the industry, and how businesses and trade groups have interacted with policymakers, neither of which have been covered sufficiently in the literature. It answers a question that has not yet been explored fully in the literature: Why has the British government controlled the working poor's access to credit? It finds that policymakers have shifted their focus from market competition and freedom of consumer choice to economic inequality and financial exclusion. This development reframed the focus of regulation and facilitated the implementation of price controls in 2015.

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[57] Donncha Marron, 'Governing poverty in a neoliberal age: New Labour and the case of financial exclusion', *New Political Economy* 18:6 (2013).
[58] Matthew Hilton, *Consumerism in Twentieth-Century Britain*: *The Search for a Historical Movement* (Cambridge: Cambridge University Press, 2003).

B. Historiography

As Luis Hyman put it, 'there exist shockingly few histories of the modern credit system'.[59] Similarly, Jan Logemann has suggested that there is a lack of early twentieth-century consumer credit research.[60] While historians of consumerism focus on the cultural aspects of consumer life, scant attention has been paid to how these goods were paid for. The same historians too often neglect the business, economic and political dynamics inherent in the subject. Hyman argued that in search of 'the human face of debt', historians have too often focused on cultural perspectives.[61] This approach has misinterpreted what drives the consumer debt economy. Economic historians have shown the importance of credit and industrial growth; this research focuses on the regulation and role of routine credit in the financial life of the working poor, a perspective that has not yet been fully examined.

Recent national studies have examined France, Singapore, Mexico and the United States. Gunnar Trumbull finds that consumer credit markets in France were 'simply' another aspect of capitalism in need of regulation.[62] The French government sought to protect its citizens from consumer credit at the expense of choice, innovation and access.[63] Ghee-Soon Lim found that pawnbrokers in Singapore, active there since 1875, occupied a niche within the financial sector.[64] Marie Eileen Francois's book *A Culture of Everyday Credit: Housekeeping, Pawnbroking, and Governance in Mexico City, 1750-1920* provided a detailed socio-cultural history of urban life for the working poor of

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[59] Louis Hyman, *Debtor Nation: The History of America in Red Ink* (Princeton, NJ: Princeton University Press, 2011), 6.
[60]Jan Logemann, 'Introduction', in *The Development of Consumer Credit in Global Perspective: Business, Regulation, and Culture*, 1-20, ed. Jan Logemann (New York: Palgrave Macmillan, 2012), 6.
[61] Hyman, *Debtor Nation,* 6-8.
[62] Gunnar Trumbull, *Consumer Lending in France and America: Credit and Welfare* (New York: Cambridge University Press, 2014), 14.
[63] Iain Ramsey, '"To heap distress upon distress?" Comparative reflections on interest-rate ceilings', *The University of Toronto Law Journal*, 60:2 (2010), 714.
[64] Lim, Ghee-Soon, 'Pawnbroking in Singapore', *Asian Case Research Journal* 5:2 (2001), 251-270.

Mexico City. Like this research, her interest is in the often ignored labour market segment of those living on an insufficient income and without adequate savings. Francois's insights confirm certain findings of this research (albeit on a different continent) regarding the importance of 'everyday' credit in the nineteenth century.

Together, the United States and the United Kingdom comprise over half of the global consumer credit market.[65] It is important then to sample the US literature in a more thorough way than that of other national markets. Lendol Calder, a historian, examined the moral legitimisation of American debt usage before the First World War.[66] While he introduced an innovative thesis regarding US-Victorian credit patterns, he neglected to account for the profit- and production-driven capitalism that gave rise to the modern debt system. In response, Hyman focused on the business side of debt in the United States. He acknowledged the complex interaction of politics, risk, reward and the high cost of lending small sums. In similar fashion and commenting on high-cost loans and usury rates, Charles Geisst wrote, 'Few economic and social issues have the distinction of appearing, in one guise or other, in the Old Testament, canon law, English common law, and the Dodd-Frank Act of 2010.'[67] While Geisst focused on the interaction between interest rates and social issues in the United States, this research focuses on the regulation and development of the British moneylending and pawnbroking markets since 1870.

Wendy Woloson documented the 'unglamorous economic lives of average, ordinary, and too often anonymous Americans'.[68] The focus of her book, *In Hock*, is to understand the pawn market, its misconceptions and why so many of those opinions remain. Like this research, Woloson finds that

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[65] Finlay, *Consumer Credit*, 1.
[66] Lendol Calder, *Financing the American Dream: A Cultural History of Consumer Credit* (Princeton, NJ: Princeton University Press, 2001).
[67] Charles Geisst, *Loan Sharks: The Birth of Predatory Lending* (Washington, DC: Brookings Institute Press, 2017), viii.
[68] Wendy Woloson, *In Hock: Pawning in America from Independence through the Great Depression* (Chicago: The University of Chicago Press, 2009), xi.

economic historians have overlooked the 'lives of ordinary individuals … The many thousands of people living in developing urban areas who daily struggled to get by relied on the services and products provided by pawnbrokers, junk dealers, and used good vendors'.[69] In *City of Debtors: Law, Loan Sharks, and the Shadow Economy of Urban Poverty, 1900-1970*, Anne Fleming examined the formation of moneylending in the United States. As this research demonstrates for the British market, Fleming found that American policymakers struggled to regulate small loans, a product that 'tested the limits' of public law, private contracts, welfare systems and poverty.[70]

Avram Taylor, Margot Finn and Kenneth Hudson suggested that too little is known about the British small loan market and working-class credit.[71] Hudson noted the 'almost total silence' concerning pawnbroking in research that focuses on the working class.[72] In 1982, Hudson wrote a social history of British pawnbroking in which he claimed that it was the first study of the subject since Alfred Hardaker's 1892 book *A Brief History of Pawnbroking*.[73] Like this research, he finds that small credit was vital to the British working class and suggests that, 'For generation after generation of poor families, life, before the coming of the welfare state, was difficult enough: without the local pawnbroker it would have been impossible.' Like Hudson, this research finds that there was a lacuna between policymakers' opinion of lenders and the working poor's credit use.[74] New to the literature, Chapter 2 documents how the Victorian poverty debate influenced the regulation of pawnbroking. This research

[69] Woloson, *In Hock*, 3.
[70] Anne Fleming, 'City of debtors: Law, loan sharks, and the shadow economy of urban poverty, 1900-1970', *Enterprise & Society* 17:4 (2016), 734-740. See also her dissertation abstract: *ProQuest* AAI3670898.
[71] Margot Finn, *The Character of Credit: Personal Debt in English Culture, 1740-1914* (Cambridge: Cambridge University Press, 2003), 17; Avram Taylor, *Working Class Credit and Community since 1918* (Basingstoke: Palgrave Macmillan, 2002), 2.
[72] Taylor, *Working Class Credit*, 16-17.
[73] Hudson, *Pawnbroking*, 9.
[74] Ibid., 10, 13.

analyses quantitative data in a way that Hudson did not, supporting its claims qualitatively and quantitatively.

One year after Hudson, Melanie Tebbutt published *Making Ends Meet: Pawnbroking and Working-Class Credit.* Tebbutt covered the development of the licensed pawnbroking industry in Britain from the 1850s until the mid-twentieth century and analysed the role of women and household credit in the urban economy. However, Harold Smith critiqued her view as 'too sympathetic' and questioned her 'heavy reliance' on the industry's trade magazine, *Pawnbrokers' Gazette* (PBG).[75] However, the industry's opinion is as valid as government officials testifying during the PBSC 1870. Smith's treatment of the industry as monolithic failed to appreciate differences within the industry. Chapter 2 demonstrates that divergent interests existed between wealthy London pawnbrokers and their provincial counterparts.

This research supports Tebbutt's argument that policymakers misunderstood the underlying rationale of the daily economic decisions of the working poor. In Chapter 2 this research demonstrates how policymakers projected *Homo economicus* onto working-class borrowers whose daily lives differed greatly from those of the middle and upper classes. As Tebbutt argued, 'Free choice is a myth to such borrowers'.[76] This research endorses her conclusion that the PBA 1872 reflected the divergent viewpoints of those concerned with the 'demoralisation' of the poor and free trade principles. However, the present research is comparative across time and focuses on the formation of regulation, the Select Committee and price controls in more detail than did Tebbutt. Similarly, in the final chapter, Tebbutt devoted a single paragraph to the CCA 1974. With the benefit of over 40 years since its passage, this research is in a better position to analyse the CCA 1974.

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[75] Harold Smith, book review 'Making Ends Meet' by Melanie Tebbutt, *Journal of Economic History* 44:3 (1984), 856-857.
[76] Tebbutt, *Making Ends Meet*, 203.

Like Tebbutt, Avram Taylor found that the poor borrowed to purchase necessities and not a consumer lifestyle.[77] Taylor's *Working-Class Credit and Community since 1918* analysed the development and postwar shift in working-class credit. Taylor's work is comparative and based on local history. He analysed pre- and postwar Britain through 60 interviews with borrowers and lenders based in Tyneside. The unifying problem 'is [that] the various forms of credit investigated can be explained in terms of the interpenetration of rationalities. It is argued that neighbourhood sharing was, as Abrams suggests, governed by the norm of reciprocity, and thus contained an instrumental element.'[78] In addition to Philip Abrams, he cited Ferdinand Tonnies and Anthony Giddens. His work is as much applied social theory as it is social history.

Taylor found that working-class credit was more exploitative than altruistic and cautioned against nostalgia for the days when the poor took care of their own.[79] Taylor's findings conflict with Carl Chinn's, who suggested that a neighbourly, duty-bound balance existed between benefice and instrumentally-driven credit transactions.[80] However, Paul Johnson and Sean O'Connell argued that Taylor's views underestimated borrower agency in turning down the tallyman.[81] Karen Rowlingson nuances this by suggesting that income level and alternative credit options affected the power imbalance between borrower and lender.[82] This research finds little evidence to support the 'nostalgia hypothesis'; nonetheless, Chinn's argument was echoed by turn-of-the-century lawmakers bent on eliminating moneylenders. These policymakers suggested that without access to moneylenders, the poor would

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[77] Taylor, *Working Class Credit*, 1.
[78] Taylor, *Working Class Credit*, 11-12.
[79] Ibid., 33, 44-45.
[80] Carl Chinn, *Poverty amidst Prosperity: The Urban Poor in England, 1834-1914* (Manchester: Manchester University Press, 1995), 7.
[81] O'Connell, *Credit and Community*, 27.
[82] Karen Rowlingson, *Moneylenders and Their Customers* (London: Policy Studies Institute, 1994), 8.

take care of one another.[83] As Theodore Hoppen argued, by the middle of the Victorian period, owing to urbanisation and the Poor Laws, most forms of 'working-class mutuality' had vanished.[84] Keith Laybourn critiqued Taylor for restricting the form of credit under analysis.[85] Laybourn argued that the working class had access to labour-sponsored entities, such as Miners' Welfare and co-operatives. This research avoids such criticism by focusing on a market segment falling below those served by labour and co-operative finance.[86] This position is developed in section C. of this chapter.

In *The Character of Credit: Personal Debt in English Culture, 1740-1914*, Margot Finn analysed economic decisions in the context of cultural norms, legal structures and the increased use of contracts by the working class. Finn argued that the development of 'contractual individualism' led to 'tensions between equity and common law and conflicts created by differences of class and gender', which demonstrated the 'malleability of legal systems'.[87] She questioned whether small loan borrowers contracted as free, rational agents or if there was an inherent power imbalance between lenders and borrowers. Finn documented the growing tension between liberal and revisionist judges leading up to the MLSC 1897. She stated rightly that the law was shaped as much by interactions with moneylenders and creditors as it was effective in handling small debt disputes.[88] Her analysis of 'useful credit', 'false credit' and the polarising exercise of judicial discretionary powers helps to frame the key debates of the MLA 1900. These are centred on two opposing judicial philosophies. Activist judges such as Matthew Parry favoured 'equitable interpretations' of the law to protect borrowers, whom he categorised as innocent victims.[89] Opposed to this were judges who supported classic

[83] MLSC 1898, 94.
[84] Theodore Hoppen, *The Mid Victorian Generation* (Oxford: Clarendon Press, 1998), 317.
[85] Keith Laybourn, book review 'Working Class Credit' by Avram Taylor, *The American Historical Review* 108:5 (2003), 1527-1528.
[86] Finn, *The Character of Credit*, 17.
[87] Ibid., 1-7, 309-313.
[88] Ibid., 251-259.
[89] Ibid., 261.

conceptions of laissez-faire economic exchange. While Finn traced the debate as part of Britain's social and economic transition from 'status based' to 'contract based', this research shows how the debate influenced the regulation and development of moneylending and pawnbrokers.

In some respects, this research builds on Sean O'Connell's work. Unlike previous scholarship, *Credit and Community: Working-Class Debt in the UK since 1880* analysed the social, cultural and business history perspectives of working-class consumer credit. O'Connell's use of business records and oral histories, especially those related to doorstep lending, contributed greatly to our understanding of working-class credit. His treatment included tallymen, cheque traders, mail order catalogues, co-operative unions and illegal moneylenders, none of which is covered by this research. O'Connell devoted very little analysis to the pawnbroking market. This thesis argues that pawnbroking readily compares to unsecured moneylending because the demand for both arises from the need to cover an immediate cash requirement. Moreover, the PBA 1872 and the MLA 1900-1927 were reviewed by the Crowther Committee and rescinded by the CCA 1974. In a departure from the literature, this research considers how policymakers understood the small loan market, which specific issues regulators were trying to solve and how those views have shifted.

At the time of writing, Chapters 4 and 5 of *Credit and Community* provide the most comprehensive scholarly treatment of twentieth-century British moneylending. Demonstrating the industry's controversial social standing, O'Connell invoked the long-held image of moneylenders as 'Shylocks, bloodsuckers, usurers and loan sharks'. These terms highlight the economic and social complexities inherent in working-class credit. Although O'Connell examined the construction of twentieth-century legislation, a subject matter shared by this work, his analysis of illegal lenders falls outside the scope of this research. This work shares O'Connell's findings that policymakers held incomplete knowledge of small loan demand factors and that strong 'animosity' to restrictive usury influenced the legislative landscape. It nuances O'Connell's assertion that, ‘in principle’, street lenders fell subject to ‘state surveillance’.[90] While the MLA 1900-1927 empowered the judiciary and law enforcement with certain powers over the industry, it fell short of state supervision. The MLA 1900-1927 registry scheme was not intended to provide supervision, as the FCA is charged with today, but acted as a non-discriminatory registry. The difference, though subtle, was crucial as policymakers denied legitimisation to moneylenders. Another point of distinction concerns the CCA 1974. Whereas this research focuses on its formation and impact on moneylending and pawnbroking, O’Connell analysed its impact from a broader perspective and in less detail than this work does.[91]

Finally, this work challenges Peter Fearon’s findings. Fearon analysed the impact of the MLA 1927 on Liverpool moneylenders. He asserted that if the MLA 1927 ‘is to be judged on its ability to bring this “evil” business to near extinction, it was a remarkable successful piece of legislation’.[92] As this research demonstrates, the MLA 1927 lacked the regulatory powers of supervision and enforcement. The Act was ineffective and failed to reform the market. Legal scholarship suggests that ‘No consumer legislation, however sophisticated, is likely to have more than a marginal impact if not underpinned by effective enforcement machinery.’[93] Fearon stated that ‘the Act sharply increased the cost of a moneylender’s licence, laid down clear rules regarding interest charges and, with the introduction of the certificate, attempted to cleanse the profession of undesirables … the process of certification was time consuming and costly and not to be undertaken lightly.’ His arguments are problematic.

Certification and licensing were not an effective screening mechanism. Like much of the MLA 1927, the law failed. Royston Goode wrote, ‘So far as

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[90] O’Connell, *Credit and Community*, 131.
[91] This is not a critique of his work, but an observable point of distinction.
[92] Peter Fearon, ‘A “social evil” Liverpool moneylenders 1920s-1940s’, *Urban History* 42:3 (2015), 461.
[93] Goode, *The Consumer Credit Act*, 103.

moneylending was concerned, the law was theoretically stronger because of a licensing system and a battery of criminal sanctions for different types of offence. But as a method of control this also was largely ineffective.'[94] The Crowther Committee found that the MLA 1927 certification was 'a rather inconvenient formality'.[95] Despite Fearon's claims to the contrary, the Act did not provide 'clear rules' regarding the interest rate. The Act's guidance rate of 48 pcpa was of little value to judges, and the harsh and unconscionable framework failed to assist the judiciary.[96]

While an increased licensing cost would, other things being equal, decrease financial returns to moneylenders, it is not clear that certification and higher licensing fees acted as a 'disincentive to remain in what had previously been a rewarding trade'.[97] Profit data presented during the MLSC 1900 and 1925 show that, when compared to other businesses, moneylenders generated lower than expected returns. Fearon asked why consumers would borrow from illegal lenders if licensed lenders offered better terms. Evidence from the PBA 1872, MLSC 1897 and contemporary research suggests that, alongside price, customers value convenience and ease of borrowing, on both of which illegal lenders could outcompete their legal counterparts. Fearon's insight into the working poor's dependence on emergency credit, the role of women in the credit system and his analysis of the Liverpool Personal Service Society contributed to our understanding of working-class credit. However, because moneylenders were not supervised and the MLA 1927 was not enforced, its impact on the industry is questionable. [98]

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[94] Ibid.
[95] Consumer Credit: Report of the Committee 1971 (4596), 4.1.12 (hereafter Crowther).
[96] Charles Collard, *The Money-Lenders Acts, 1900-1911* (London: Butterworth, 1912), 172. With regard to moneylenders, the legal terms 'harsh and unconscionable' are found in the MLA 1900 and remained in place until the CCA 1974.
[97] Fearon, 'A "social evil": Liverpool moneylenders', 457.
[98] Literature related to the Victorian poverty debate is covered in Chapter 2. Research relating to financial inclusion and economic payday loan literature is covered in Chapter 5.

C. The supply channel

This section examines selected working-class credit products. It clarifies why shop credit, cheque traders, tallymen, hire-purchase and friendly societies have been excluded. For the purposes of this research, shop credit, tallymen, cheque traders and hire-purchase are classified as purchase-money-credit, that is, credit issued as deferment of payment for the acquisition of goods. Shop credit was extended to regular customers and was limited to the goods of that shop. Similarly, credit advanced by cheque traders, although not confined to a single item, was limited to goods found in shops that accepted their cheques. Shop credit, tallymen, cheque traders and hire-purchase lenders limit and control the use of issued funds. Pawnbrokers and moneylenders issue non-purchase money credit, that is, a straight loan of money without restriction.

Victorian shopkeepers had to overcome supply-chain issues and delayed customer payments, the latter indicating that credit played a significant role in retail operations.[99] Though unquantifiable, shop credit, booking trade and on the tick book credit were the most important sources available to the working class.[100] Demand for shop credit was driven by employment conditions and wage levels.[101] The extension of shop credit and when to call it due were based on the relationship between the shopkeeper and the customer. Johnson found that traders and shopkeepers issued crisis credit to assist customers interrupted or insufficient income streams. This feature distinguished shop credit from cheque traders, tallymen and hire-purchase, which is pre-planned credit. In 1870, demonstrating how credit products interacted, a pawnbroker recounted how his loans were used to pay off the local baker, with the same coin returning to him later in the week covered in flour.[102] Benjamin Blackwood,

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[99] Crowther, 2.1.8.
[100] Johnson, *Savings and Spending*, 144-147.
[101] Paul Johnson, 'Small-debt and economic distress in England and Wales, 1857-1913', *The Economic History Review* 46:1 (1993), 69.
[102] PBSC 1870, 393-406.

a Bradford pawnbroker, recounted that, 'I have a neighbour, a grocer, who tells me that the principal part of the money which he takes on a Monday comes from my shop … he has opened another shop about a mile away, and wishes I would open a branch shop there …'[103]

O'Connell has written extensively on tallymen and cheque traders. Tallymen or drapers were travelling salesmen, who provided a range of inexpensive mass-market goods on credit, and cheque traders provided cheques that could be redeemed by participating local merchants. In stores the cheque was worth its face value. To obtain the cheque at face value the customer paid a fee to the cheque agent, and the retailer received payment from the cheque trader at a discount to face value. Often, customers preferred the opportunity to acquire goods in store, with marked prices and the ability to browse, as opposed to viewing a limited range of sample goods offered by the tallyman.[104] In 1909, *Woodhead's Directory of the Credit Drapers of Great Britain* estimated that 4,255 tallymen extended credit averaging £6-£7 per transaction.[105] According to Gerry Rubin's study of the East London Credit Drapers' Association, between 1907 and 1908 65 drapers employed by 28 firms issued £61,000 of credit to 47,705 accounts for the purpose of obtaining clothing and household textile goods.[106]

While the tally trade was decentralised, the cheque trading market was dominated by the Provident Clothing and Supply Company. Despite their high cost, their credit product was in much greater demand as customers found them convenient to use and enabled them to purchase a variety of goods. Borrowers found the predictability of weekly payments attractive and easy to understand. In 1910, 3,000 community-based agents operated out of 91 Provident branch offices in urban areas. By the 1930s Provident served over one million

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[103] PBSC 1870, 1807.
[104] O'Connell, *Credit and Community*, 65.
[105] Author estimate, data compiled from *Woodhead's Directory of the Credit Drapers of Great Britain* (Manchester: Geo. Woodhead & Co., 1909); O'Connell, *Credit and Community*, 29.
[106] Gerry Rubin, 'From packman, tallymen, and "preambulating Scotchmen" to Credit Drapers' Association, 1840-1914', *Business History Review* 28:9 (1986), 213.

customers annually. Cheque APRs with 20-week repayments offered approximate rates of 23.3 pcpa, with delayed payment rates ranging from 40 to 47 pcpa. Weekly visits from the agents kept industry bad debt to the low level of 0.75 per cent.[107] Like items obtained on hire-purchase, tally and cheque credit are distinguished from lenders of small sums by their relationship to the good for which the credit was issued. However, hire-purchase agreements feature a chain of ownership that differed from tally and cheque credit. The right of ownership for a hire-purchase good remained with the creditor until the debt was paid in full. Without going into the legal nuances, if a default occurred, the good was repossessed. Although popularised through Singer sewing machines, most lenders focused on wealthier customers seeking expensive durable goods.

This section turns now to friendly and benefit societies. These mutual societies provided insurance, pension, savings and banking services to those with secure and regular labour employment. In his book *A History of Savings Banks*, Oliver Horne summarised the hierarchy and characteristics of working-class savings institutions. He determined that 'the savings bank was still mainly the bank of the skilled worker, the domestic servant, widows and children, and the small middle-class man and woman.'[108] In terms of benefit societies, in *Savings and Spending*, Johnson clarified the cost of and rationale for working-class burial assurance. His findings concerning class judgement are revealing. He found that while the upper class paid life assurance premiums quarterly or annually, the poor paid weekly for substandard industrial assurance. The rich questioned why the working poor would spend on an unnecessary and inferior product. Why would they purchase burial insurance and yet borrow cash for food and life's necessities? Here again the rich and poor occupied different economic decision matrices. The purchasing habits of those with assets were assumed to be normative, while deviations were seen as irrational. With high

[107] O'Connell, *Credit and Community*, 55-72.
[108] Oliver Horne, *A History of Savings Banks* (London: Oxford University Press, 1947), 232.

child mortality rates and social stigma surrounding a pauper's funeral, and without sufficient savings to pay funeral expenses, the working poor paid weekly sums for burial insurance. In so far as burial insurance can be considered an asset, Johnson found that, of all savings vehicles used between 1870 and 1939, burial and death insurance were by far the most common.[109]

Along the lines of savings, companies falling under section 30 of the Friendly Societies Act 1875 played an important role in the working class's financial system. However, like other savings and credit products, studies revealed that friendly societies catered to 'respectable' tradesmen and clerks. Bentley Gilbert's study of national insurance found that 'friendly societies made no appeal whatever to the grey, faceless, lower third of the working-class … membership was the badge of the skilled worker'.[110] It was burial insurance companies and not friendly societies that provided comparatively expensive and less generous pay-outs to the lowest segment of the working class. While the upper classes were right to criticise the financial inefficiency of the burial insurance system, this product confirms the argument that the poor paid more for inferior products.

This section has demonstrated why certain working-class credit products fall outside the scope of this research. Under consideration are HCSTC issued by moneylenders and pawnbrokers. This borrowing population balanced weekly expenses on an unpredictable and limited income. Needs were met with credit products, including small loans, draper and tally credit, to name but a few. Some argued that economic inequality and labour market instability created conditions of unavoidable need, and to fulfil those needs the working poor had little choice but to borrow. Others believed immorality and irrationality created the demand for cash that was both unnecessary and expensive. Martin Daunton, an economic historian, argued that 'criminality, laziness, madness and pauperism were all seen as the result of loss of self-control and

[109] Johnson, *Saving and Spending*, 11.
[110] Ibid., 163-164.

abandonment of reason which could be rectified through surveillance, hard labour, and obedience to rules'.[111] In response, some policymakers sought regulation to rein in undesirable behaviour. In the chapters that follow, this research demonstrates that these arguments influenced the regulation and development of moneylending and pawnbroking.

D. Sources

This research analyses primary and secondary sources across a range of disciplines. The sources ground the regulation and development of the moneylending and pawnbroking markets in qualitative and quantitative evidence. By analysing the market since the 1870s, this research contributes to wider movements in economic history that compare developments across time.[112] This approach reveals the similarities and differences between the thought processes behind regulatory frameworks, poverty studies, the status of moneylenders and pawnbrokers in the financial system and demand features.

Primary sources analyse the perspective of business, borrowers, government, the judiciary and charities. Government sources include ministry-sponsored studies, parliamentary debates, parliamentary committees and testimony provided by outside parties, including trade groups and charities. Archives include the British Library, Guildhall and City Business Library, Hansard, the London Metropolitan Archives, the National Archives, and the Public Record Office of Northern Ireland. Archives and contemporary industry sources, including the National Pawnbrokers Association, the National Moneylenders Association and the Consumer Finance Association provided valuable insight. The Personal Finance Research Centre at Bristol University and the Policy Studies Institute offered academic and public policy perspectives. Publications issued by charities such as Which?, the Citizens

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[111] Martin Daunton, *Progress and Poverty: An Economic and Social History of Britain, 1700-1850* (Oxford: Oxford University Press, 1995), 492.
[112] Timothy Hatton, *The New Comparative Economic History: Essays in Honor of Jeffrey G. Williamson* (Cambridge, MA: MIT Press, 2007).

Advice Bureau and the Centre for Responsible Credit were consulted. The legal scholar and Crowther Committee member Sir Royston Goode CBE, QC, DCL, FBA was interviewed. Referenced periodicals and newspapers include the *Birmingham Daily Post, Chamber's Journal, Edinburgh Evening News, Evening Standard,* the *Fortnightly Review, Good Words, Guardian, Lancashire Evening Post, Leicester Chronicle and Mercury, Liverpool Daily Post, Liverpool Mercury, Lloyd's Weekly, Manchester Examiner and Times, Marlborough Express, Newsweek, The Times, Northern Echo*, the *Observer, Once a Week, Pall Mall Gazette, Sheffield and Rotherham Independent, Sheffield Evening Telegraph, St. James Gazette,* the *Standard, Telegraph* and *Western Daily Press*. Other than the single interview, the evidence is in documentary form.

The greatest limitation to the evidence is the lack of Victorian- and Edwardian-era borrower voices. This is not surprising considering that poor borrowers were unlikely to discuss their financial position with outsiders. Moreover, as the PBG wrote, 'Would the Old Lady of Threadneedle Street expect her clients to stand up at a Committee of the House of Commons … or would Coutt's and Company ever dream that City merchants would give a full detail of … their overdrawn accounts?'[113] Even so, the historical reality is that the opinion of the working poor was not a factor in the formation of financial regulation. With the exception of four borrowers who testified during the MLSC 1897, this research has relied on evidence presented by charitable associations and reformers acting on behalf of the working poor. These actors did influence regulation.

Beginning in the 1970s, borrower surveys are more readily available and have been analysed for this research. Notwithstanding, quantitative data are sparse. Few if any lenders were or are required to report their accounts. To overcome this, and unlike previous scholarship, this research systematically analyses quantitative data gathered from select committees and the public

[113] PBG, 15 February 1869.

record in order to confirm or challenge qualitative information presented in parliamentary sessions and popular accounts offered by newspapers and periodicals.

By including evidence from business, legal authorities and charity organisations, in conjunction with government reports, newspapers and periodicals, this research is representative of the available historical data. Distinct from prior scholarship, this research seeks to understand moneylending and pawnbroking through the lens of regulatory developments. Unique to the literature is the use of primary source material related to trade groups. As Luca Lanzalaco, Peter Hall and David Soskice have shown, trade groups can have an impact on the evolution of capitalist economies and influence wider economic and social policy.[114] While others have utilised certain trade materials, there are very few systematic analyses concerning the input of lenders in the formation of regulation.

Similarly, parliamentary documents are used to understand how policymakers understood the marketplace and what theories and values they incorporated into regulation - a viewpoint that the existing literature does not yet address adequately. Periodicals and newspapers are used to corroborate evidence and situate the type of information that was made available to the reading public. Using a diverse set of primary and secondary sources, and by comparing regulation across time, this research adds to our understanding of the development of moneylending and pawnbroking, a neglected area of financial history. This research adds to our knowledge of credit utilised by the working poor, the role of financial regulation to protect the vulnerable and the development of non-bank consumer lending in Britain since 1870. Its longer-

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[114] Luca Lanzalaco, 'Business interest associations', in *Oxford Handbook of Business History*, 293-315, eds. Geoffrey Jones and Jonathan Zeitlin (Oxford: Oxford University Press, 2009); Peter Hall and David Soskice, 'Introduction', in *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*, 1-68, eds. Peter Hall and David Soskice (Oxford: Oxford University Press, 2001).

term analyses of the price control, advertising and the APR debate contribute directly to current political and economic concerns.

2 The Pawnbrokers Act 1872

This chapter analyses the Victorian pawnbroking market and the reform movement leading up to the Pawnbrokers Act 1872 (PBA 1872). It addresses what motivated regulatory reform and identifies the factors that contributed to the outcome. It asks: How did laissez-faire beliefs interact with concerns over borrower protection and poverty? Was the debate structured as an economic policy question, that is, should the price of money be regulated? Or was regulation considered necessary to ameliorate the conditions of poverty? How did Victorian pawnbrokers understand 'free trade' and 'freedom of contract'? Did conflicts exist within the trade, and if they did, how were they resolved? Did the Select Committee believe that pawnbrokers provided a financial service to hard-working, rational and competent adults, or were pawn loans evil and morally corrupting?

This chapter provides insight into how Victorian pawnbrokers and policymakers understood the benefits and drawbacks of price controls, especially market segmentation and credit rationing. It demonstrates that the primary motivation for reform was that pawnbrokers were struggling to make a profit from low-value pledges. Pawnbrokers sought to reform the price ceiling and the burdensome bureaucratic terms of the Pawnbrokers Act 1800 (PBA 1800). It argues that the PBA 1872 was influenced by debates on the role of the state in markets (laissez-faire theory), business concerns (practical matters) and the origins and effects of poverty and social policy. The evidence indicates that business, political and moral realities influenced the process more than laissez-faire rhetoric. It finds that those who held that the conditions of poverty were the result of moral failings were unlikely to be swayed by financial evidence, however convincing, presented by pawnbrokers. Notwithstanding, through their trade association, pawnbrokers argued for raising the price ceiling and fewer administrative burdens, which were granted under the PBA 1872.

What follows analyses the market under the PBA 1800, and the motivations, conflicts and compromises of the industry as it sought reform and the economic and political debate during the Select Committee.

A. The market under the Pawnbrokers Act 1800

This section explains how the pawn market operated under the PBA 1800. It demonstrates the vital importance of pawn to the everyday lives of the Victorian working class and the industry's grievances with the PBA 1800, and introduces their motivation for reform. Pawnbrokers argued that, owing to price controls, certain low-value pawns were unprofitable and the price ceiling encouraged an illegal market and limited the type of collateral a licensed pawnbroker could accept. The PBA 1800 demanded strict penalties and, in some cases, invalidated contracts for even trivial clerical infractions. Although market conditions and expenses varied considerably over time, the interest rate and fee structure was fixed by law. Pawnbrokers found this situation unfair and unprofitable, and therefore sought to update the PBA 1800.

Pawning is a simple transaction, whereby moveable personal property is given as security for a loan.[1] Pawning does not require a credit application, nor does it question the borrower's intended use of funds. After appraisal, the pawnbroker offers a loan to be repaid in a single sum on redemption of the collateral. The transaction is for money lent and is not payment for the transfer of property. The pledger retains ownership of the collateral. Upon agreement, a pawn ticket is issued and the good is stored on the premises. The contract is an agreement to pay a ticket fee and repay the principal and interest. The

[1] See *Coggs v. Bernard*, Ld. Raymond, 909, 1 Smith's *Leading Cases*, 5th edition, 171, 182. It would be mistaken, however, to assume that the industry is without controversy. Even its origins are disputed, with founding credit given to such a diverse set of characters as to include St. Nicholas, the Medicis and fifth-century Chinese Buddhist monks. See Anonymous, 'Pawns, pawners and pawnbrokers', *Once a Week* 10:247 (1864); Jarret Oeltken 'Pawnbroking on parade', *Buffalo Law* Review 35 (1988), 758; Peter Schwed, *God Bless Pawnbrokers* (New York: Dodd Mead, 1975), 210; Michael Walsh, *Sacred Economics: Buddhist Monasticism and Territoriality in Medieval China* (New York: Columbia University Press, 2009), 62.

interest is calculated from the day of the pledge until the day of redemption. If the loan went unpaid, the good was forfeited.[2] In 1870, the PBG suggested that 'the object of the borrower is not to get what he wants in the cheapest market, but to get the largest loan with the least trouble. The lender's interest is also to get as much capital out as he can … so long as he is assured of its redemption.' [3] The Victorian business model contradicted claims that pawnbrokers sought possession of goods to resell them. First and foremost, pawnbrokers viewed themselves as lenders. Pawnbrokers considered ticket fees as compensation for appraisal, administrative and labour costs, while interest charges related to the loan itself. Not all policymakers shared this perspective and failed to consider a pawnbroker's cost of capital, operations expense and loan risk when deliberating price controls during the PBSC 1870.

Victorian pawnbrokers operated with impressive speed. In 1870, transaction times averaged two minutes to pledge and between 30 seconds and two minutes for redemption.[4] Though fast, the pawn market was highly regulated, included price controls, ticket disclosure requirements, forfeiture limitations, administrative procedures and stringent penalties. Notwithstanding, the market grew considerably during the nineteenth century. Estimates from the Royal Statistical Society indicated that, in 1851, the ratio of pawnbroking licences to 100,000 of population was 8.9. By 1871, the ratio had increased to 13.2, with approximately 3,450 pawnbroking establishments operating in England and Scotland. [5] Throughout the 1860s and 1870s, licensed pawnbrokers received more than 207 million pledges annually, or approximately eight pledges for every person in Britain. Pawnbrokers in provincial and metropolitan districts received, on average, 40,000 and 60,000

[2] Under the PBA 1800 the minimum holding time was 15 months.
[3] PBG, 13 June 1870. The importance of transaction speed to the borrower is a recurring theme throughout the period covered by this research.
[4] PBSC 1870, 2311-2313.
[5] *Journal of the Statistical Society of London* 35:4 (1872), 541-545. Each licence represented one location. It was possible for a person to hold more than one licence.

pledges annually, respectively.[6] Pawnbroking was primarily an urban phenomenon. Table 2 provides geographically segmented licensing data.

Table 2 Geographic dispersion of licenced pawnbroking, 1870

	Licence				
Country	**Cities and boroughs**	**Towns and rural**	**Total**	**% urban**	**% other**
England	2,476	478	2,954	84%	16%
Wales	79	14	93	85%	15%
Scotland	283	56	339	83%	17%
Total	2,838	548	3,386	84%	16%

Source: Data compiled from PBSC 1870, appendix 14.

The trade was divided into three segments: the low trade of 5s and less, the medium trade of 5s to 10s and the auction trade or high end 10s and more. The majority of pledges were in the low and medium trade. In 1870, John May, a Salford pawnbroker, estimated that 80-90 per cent of his 76,603 loans issued in 1867-1868 were for less than 10s, with an average pledge of 4s 3d.[7] In 1869, Liverpool pawnbrokers received an estimated 9,088,000 pledges, 49.5 per cent of which were less than or equal to 2s, and 99.4 per cent were for less than 42s.[8] The average pledge in Liverpool in 1869 was 4s 1.5d, placing that city's average in the low range of the trade.[9] William Hector, Procurator Fiscal for Renfrewshire, estimated that 50 per cent of the families in his district engaged in 100 pledge transactions annually.[10] George Gillman, a London City missionary, concurred with Hector, estimating that 50 per cent of his working-

[6] PBSC 1870, 1862.
[7] PBSC 1870, 1012-1013.
[8] PBSC 1870, 129.
[9] PBSC 1870, appendix 9.
[10] PBSC 1870, 1857-1858; In Scotland, a procurator fiscal was akin to a public prosecutor.

class constituency in Peckham frequented pawnbrokers with an average loan size of 5s.[11] Table 3 provides estimated annual pledges by location.

Table 3 Estimated annual pledges by location

Location	Est. annual pledges	Type of business
London	30,000,000	-
Liverpool	9,088,000	50% less than 2s
Glasgow	6,690,000	90% less than 10s; avg. 4s.
Edinburgh	1,426,800	-
Pollokshaws	96,000	85% less than 10s
Salford	76,603	24% less than 2s
Exeter	36,000	-

Source: PBSC 1870, 129, 934, 1215, 1252, 1851, 4863.

For loans of less than 42s, the PBA 1800 permitted rates of up to 20 pcpa. For loans of or more than 42s, the law allowed for a charge of up to 15 pcpa. A borrower had 15 months (12 months plus three months' grace) to redeem pledged collateral. Upon default, items with loan values of 10s or less became the immediate property of the pawnbroker. By law, forfeited items valued at 10s and more were sold at public auction. If the sale value exceeded the amount due plus auction expenses, the surplus was owed to the borrower. A borrower had a right to collect these funds for a period of up to three years post-auction. During the PBSC 1870, Robert Carter MP (Liberal) asked why George Attenborough lost £356 on twelve articles at auction. Demonstrating the complexity of the business, Attenborough replied, 'You must remember that a pawnbroker standing behind his counter has to advance money upon every description of article … between a flat iron and a diamond … and know its value

[11] PBSC 1872, 46, 66-68.

… and the consequence is that he only gets a smattering of judgement … so that he very frequently loses his money.'[12]

As a collateralised loan, the risk to the pawnbroker is in the loan-to-market value and assessing the probability of redemption. If a pawn is forfeited and sold for less than the principal lent, the pawnbroker loses money. Without collecting the interest owed, the pawnbroker also failed to earn a return on capital. Owing to seasonality and during periods of economic depression, pawnbrokers found it difficult to resell goods at a profit. In 1869, the Manchester and Salford Pawnbroker Protection Society wrote, 'The capital sunk during the winter is still lying in the warehouse; while there is great difficulty in realising sales at even the most ruinous prices.'[13] If a pawnbroker offered too low an advance, the pawner might take the item, and any future business, to a competitor. Three assessments are therefore of importance in determining the profitability of a pawn contract: the value of the good, the advance rate and the forfeiture risk. Victorian pawnbrokers earned revenue from ticket fees, interest on loans and, when applicable, the sale profit from low-value forfeitures. These funds had to provide for all expenses incurred, including valuation, wages, employee board, rent, rates, duties, salary for services and a return on invested capital.

The pawnbroker had no control over when an item would be redeemed. If the pawn was redeemed early, the compensation received failed to cover the fixed and variable transaction costs. This loan feature was known as prepayment risk. In the 1870s, owing to interest rate caps and limited ticket fees, pawnbrokers struggled to make a profit from low pledges held in pawn for less than one month. Because the loan had not yet accrued interest beyond a twelfth of 20 per cent (a simple interest monthly allocation of the PBA 1800 maximum), and the ticket charge did not provide coverage for the expense of handling a pledge, pawnbrokers were losing money. George Attenborough

[12] PBSC 1870, 769-770.
[13] PBG, 29 March 1869.

said, 'I lose by every pledge that goes out of my house, which is pledged for 5s and under, which does not remain with me more than a month.'[14] John Telfer, a pawnbroker from Whitechapel, suggested that if all his business was from the low end and retained pledges for less than a month, he would 'not realise three-quarters above the 2.5d it takes' in labour for a pledge.[15] William Scoular, a pawnbroker in Glasgow and owner of one house at the Cross at the Salt Market for 23 years, and a second in Bridgeton for 17 years, stated that, 'pledges cost the same if in for one week or one month'.[16] Showing the importance of time in pledge to a pawnbroker's profitability, Dicker found that if a pawn were to stay in 'for two or three months' it would be profitable.

Table 4 represents a typical weekly pawn cycle, with Saturday being the heaviest redemption day and Monday the highest volume of pledging. By the week's end Dicker had advanced £522, redeemed £582, collected £36 in interest and £6 in ticket fees.

Table 4 John Dicker, transactions for the week ending 7 May 1870

	Pledges out	Pledges in
Monday	249	725
Tuesday	163	482
Wednesday	134	437
Thursday	130	446
Friday	189	371
Saturday	1,899	225
Total	2,764	2,686

Source: PBSC 1870, appendix 14.

[14] PBSC 1870, 720-721.
[15] PBSC 1870, 867-873.
[16] PBSC 1870, 4532.

Dealing with the counterfeit market was one of the most difficult aspects of Victorian pawnbroking.[17] A complete financial loss occurred when a pawnbroker had been deceived into accepting a stolen, fraudulent or 'duffed' manufactured good. London and Manchester were known production centres for counterfeit goods. From there products were sent round the country for resale or pledging.[18] In the case of stolen goods, a pawnbroker could be convicted of knowingly receiving stolen goods and imprisoned with hard labour. During a Bouverie Society meeting, a Mr Bullworthy discussed a scheme whereby criminals pawned metal chains as platinum, and he demonstrated how certain chemicals when applied to metal made an object appear older.[19] Mr Chapman showed attendees a chain that was filled with white lead and not gold. Knowledge of these schemes, however, did not ensure that pawnbrokers could avoid fraudulent goods. Most pawnbrokers had several employees and processed hundreds of pledges daily. Thus it was impossible for pawnbrokers themselves to approve every loan.

The PBA 1800 limited pawnshop hours of operation and required each location to be licensed annually. Licences cost £10 in London and £7 10s in the provinces. Although the state did not require its citizens to carry identification, a pawnbroker was expected to verify a pawner's name, address and status as either a householder or lodger. It was assumed by legislators that high-value items pledged by lodgers were stolen goods. Pawnbrokers could not accept a pledge from children. Financial penalties and/or prison sentences were issued for even minor clerical infractions in violation of the law.[20] In certain jurisdictions, the police could enter and search a pawnshop without a warrant.

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[17] PBSC 1870, 952.
[18] PBSC 1870, 700-701, 2844-2845, 2866.
[19] The Bouverie Society, Minute book, 7 January 1870, London Metropolitan Archives CLC/034/MS22322. The Bouverie Society (hereafter Bouverie) was a social and business club for pawnbrokers.
[20] An unintended consequence of the regulation enacted under PBA 1800 was the formation of a secondary industry known as 'informants'. Informants were individuals or commissioned men who earned income by pledging goods and turning into the police pawn tickets that failed to conform to the exact formality of the law. The penalty was not less than 40s and could approach

The consequences of the PBA 1800 price controls included credit rationing and market segmentation.[21] Pawnbrokers argued that 'over-protection' had 'cut them off' and illegal lenders had filled the void.[22] These brokers were known as dolly-shops, leaving shops and, in Scotland, wee-pawns. In 1863, the Metropolitan Pawnbroker Protection Society (MPPS) reported that dolly-shops were 'fast becoming a great public scandal'.[23] While Alexander Beresford MP (Conservative) suggested that dolly-shops charged lower rates, pawnbrokers argued that illegal lenders charged more on goods that licensed lenders could not profitably transact.[24] William Scoular, a pawnbroker in Glasgow, added that wee-pawns also made large loans at high interest during hours when regulation forbade licensed lenders from trading.[25]

Charles Dickens was no friend of the trade either, writing in 1835 that 'of the numerous receptacles for misery and distress with which the streets of London unhappily abound, there are, perhaps, none which present such striking scenes as the pawnbrokers' shops'.[26] However, in a letter to John Dicker, he wrote that borrowing from unlicensed lenders and neighbours was 'infinitely worse' than borrowing from pawnshops.[27] George Gillman agreed, saying that dolly-shops charged higher fees and 'take pledges from anyone', whereas pawnbrokers 'in his neighbourhood turn away people who are disreputable, thieves and drunkards'.[28] Pawnbrokers believed that the only way to eradicate the black market was to remove, or at least raise, the artificial

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£10, with the informant receiving one-half the penalty. Eventually, the informant business became offensive to the judiciary and the public at large, and through an Act of Parliament, 22 and 23 Vict., cap. 71 sec. 34, it was made illegal so that no monies were paid to an informant not being the party aggrieved.

[21] These market conditions are examined further in section C.

[22] PBG, 24 August 1868.

[23] Metropolitan Pawnbrokers' Protection Society, Society minutes 1863, The London Metropolitan Archives CLC/093/MS22329 (hereafter MPPS).

[24] PBSC 1870, 413-416.

[25] PBSC 1870, 4445-4406.

[26] Published as Sketches of London No. 35 in *The Evening Standard*, June 1835.

[27] PBSC 1870, 625.

[28] PBSC 1872, 122-127.

market segmentation created by price controls. While recognising that their trade was imperfect, they believed it was better than the alternatives.[29]

Pawnbrokers argued that the PBA 1800 was unsuitable for the times. In addition to burdensome administrative procedures and stringent penalties, price controls failed to reflect market conditions. However, the reform process was not without complication. Section B analyses the political and economic motivations, conflicts, compromises and strategy that developed within the industry before Parliament was approached to revise the PBA 1800.

B. Conflict, compromise and the case for reform

Most pawnbrokers agreed that the economy had changed dramatically since the enactment of PBA 1800. However, there was disagreement about what needed to be done. Why was this considered the right time for reform? Which factions existed within the trade? How did these small businesses understand ‘free trade’ and ‘freedom of contract’? How far would pawnbrokers push for a laissez-faire agenda? Did any pawnbrokers benefit from regulation? Which compromises were reached and what was their approach to Parliament? Having established how the market functioned under PBA 1800, this section examines the motivations, conflicts and compromises made as pawnbrokers sought reform. While certain ideas are analysed in depth, many of the wider trends and motivations are examined in the context of the Select Committee and are engaged with in section C.

Pawnbrokers were an organised trade. Although a national trade association had not yet been founded, large regional groups had co-operated on legislative proposals.[30] There was one in the 1860s, when pawnbrokers sought to raise the PBA 1800 price ceiling. An executive committee representing pawnbrokers met the Home Secretary, George Lewis, and several

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[29] PBSC 1870, 677-680.
[30] The National Pawnbrokers Association was founded in 1892.

MPs.[31] Through their networks, lobbying efforts and with significant, though not unanimous, support within the trade, pawnbrokers crafted what became the 1860 Halfpenny Act. This Act increased ticket charges (though not interest rates) for loans of less than 5s by 0.5d. During the process pawnbrokers gained organisational and lobbying experience. Pawnbrokers kept informed of wider economic and business trends. As early as 1867, there was hope that Parliament would

> remove all trade restrictions which are proved to be hurtful or unnecessary … as usury laws have been repealed, and remuneration which was once thought excessive now scarcely draws attention and the rate of discount little more than twelve months ago was for a period of three months as high as ten to twelve per cent on the best paper at the Bank of England.[32]

Though pawnbrokers did not borrow from the Bank of England, as most were funded through owner capital, subscribers to the PBG were kept informed of the financial markets, including the price of silver, deposit and discount rates and bullion supplies held by the Bank of England and the Bank of France. In 1867, the PBG reprinted an article first published in the *Economist* concerning the Railway Mania of 1844-1866.[33] Pawnbrokers believed that their reform efforts fitted nicely into an economic narrative that supported the normalisation of free trade after the repeal of the Usury Act.

Pawnbrokers appreciated that business-friendly reform required outside support. They were quick to correct what they felt were misrepresentations of their industry and build a rapport with other trades. In 1870, a speaker at the Annual Congress for the Promotion of Social Science claimed that pawnbrokers ‘willingly received stolen goods’.[34] At the following year’s conference, in response and by invitation, the MPPS honorary secretary challenged this assertion. His findings were ‘exceedingly well received by the Congress’. Pawnbrokers received support from William Raynor, Superintendent of the

[31] Hardaker*, History of Pawnbroking*, 103-105.
[32] Ibid., 119-120.
[33] PBG*,* 28 January 1867, 3 June 1867 and 10 February 1868.
[34] MPPS, 1870-1871; PBG, 16 October 1871.

Police of Nottingham, and Lucas Stubbs, a magistrate in Liverpool, who were unaware of any pawnbroker having been convicted of knowingly receiving stolen goods.[35] Pawnbrokers kept informed of their reputation, protecting it when necessary and enhancing it where possible.

Pawnbrokers sought cooperation with other industries. In 1869, the MPPS informed the Goldsmith Company that large numbers of electroplated goods bearing imitation silver hallmarks were being produced. The Goldsmith Company agreed to prosecute the parties if they were arrested. Additionally, to combat forgeries, the instrument manufacturer Messrs. Chappell & Co. wrote to the MPPS offering to certify any musical instrument bearing its name.[36] To improve their chance of a successful reform measure, pawnbrokers used their contacts and networks to understand the socio-political climate and build outside support.

It was in this environment that pawnbrokers pursued price control and administrative regulatory reform. However, while most agreed that the PBA 1800 was fundamentally flawed, owing to personal interests and historical tension certain groups were opposed to reform. Historically, divergent interests between London and the provincial cities were difficult to overcome. In 1866, the MPPS annual report recalled a failed effort in 1842 to form a national association.[37] Fearing that London's interests would overtake the industry, provincial pawnbrokers withheld their support. Financial statements from that time reveal that more than 350 London pawnbrokers provided £227 of funding to establish a national association whereas provincial pawnbrokers contributed a mere £80 19s. Of the 1842 failure, Hardaker wrote:

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[35] PBSC 1870, 3053-3055, 4201.
[36] MPPS, 1869, 1870, 1906; For the importance of authenticity in the second-hand market see Heidi Egginton, 'Popular antique collecting and the second-hand trade in Britain', unpublished PhD thesis, University of Cambridge (2016).
[37] MPPS, 1866.

> a speaker in very sarcastic language characterised the conduct of the Country Trade as anything but creditable, for, he said, the London Trade had contributed something like 15s per head while the County pawnbrokers had only subscribed 1s each… the whole scheme sank… mostly due to the … country' trade.[38]

The fact that the 1842 failure was reported again in 1866 demonstrated the continuous tension between London and the provinces. In the 1868 MPPS annual report, John Russell commented on the 'anxiety' surrounding the regulatory reform movement. MPPS hosted a meeting of the London trade from which was formed the London Pawnbroking Reform Committee. This committee would represent London's interests in the reform movement. This was no easy task as disagreement existed even within London, especially between the wealthy West End pawnbrokers, low-end traders, the MPPS and the London reform committee.[39] As late as 1869 there was no consensus on the reform agenda in London, much less between London and the provinces.

Within the trade, many referred to the opposition mounted by wealthy West End pawnbrokers as the 'London trade'.[40] High-end pawnbrokers were little affected by the economics of low-value pawning. Although not necessarily supportive of regulation, high-end traders in London preferred to maintain the status quo and avoid parliamentary and media scrutiny. Across the spectrum, both low- and high-end London pawnbrokers feared that unfettered free trade would be an incentive to aspiring market entrants. High-end pawnbrokers feared that well-capitalised associated companies might disrupt their business, while low-end pawnbrokers were concerned that dolly-shops would seek to join the 'respectable' pawnbroking trade. The London trade issued 430 circulars asking its members to vote for or against free trade legislation. With a 21 per cent response rate, 91 pawnbrokers replied; 53 were against complete free trade and 22 in support, the others were undecided.[41] London's reluctance to

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[38] Hardaker, *History of Pawnbroking*, 61-63.
[39] MPPS, 1869.
[40] PBSC 1870, 689.
[41] Hardaker, *History of Pawnbroking*, 133.

support reform that might increase competition was present throughout the reform process.

This placed them at odds with pawnbrokers campaigning for 'complete free trade'.[42] Pawnbrokers had long operated under price controls and were the only form of credit exempted from the repeal of the Usury Act in 1854. The rationale behind the repeal was to facilitate commercial transactions that were demanding larger and more sophisticated loan products. The intellectual foundation of the repeal was the work of the philosopher and social reformer Jeremy Bentham. Bentham argued that the terms of credit should be left to the negotiating parties and competitive forces. However, he suggested that if an exception did exist to a laissez-faire market structure, it was pawnbroking. In *Discourse upon Usury* letter VIII.6, he wrote, 'If there be a case in which the allowing of extraordinary interest is attended with more danger than another, it must be this.' Bentham believed that because the collateral remained in their possession, pawnbrokers had no reason to charge more than the ordinary market rate. Notwithstanding, he did not think rate caps were necessary as competition would keep rates low. It was those very controls that extreme free trade pawnbrokers wanted removed. Mr Heys, a pawnbroker in Manchester, reflected this extreme:

> [I] am in favour of free trade and freedom of contract … there exists no other the profits of which were fixed by Act of Parliament, and if all other trades were free to follow the natural laws of Commerce, why should the pawnbrokers be prevented from doing so too? As for protecting the working classes, they [are] well qualified to protect them.

Citing the works of the philosopher and economist Adam Smith and Bentham, pawnbrokers supporting complete free trade saw no reason why they should be treated differently.[43] George Attenborough and like-minded supporters believed that competitive forces best regulated pawnbroker behaviour and

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[42] How pawnbrokers understood free trade is examined below. Often what was meant by free trade was the freedom to enter a pawn negotiation without government control over the interest rate, fees or forfeiture term. Notwithstanding, extreme positions of complete free trade and those advocating the status quo were present.

[43] PBG, 12 June 1871.

charges while protecting borrowers.[44] In this market, 'buyer and seller having opposite interests stand face-to-face … competition is considered to hold the balance between the two parties' and 'everything was up for negotiation'.[45] Their hope was the removal of all regulation, licensing and restrictions.[46] Under this ideal, any man with capital could compete without a licence and with no restrictions other than those imposed by criminal law. Extreme free traders assumed that lenders were trustworthy and would not 'abuse the position conceded to them'.[47] Proponents believed this framework would encourage 'a cheaper and a better market'. [48] Although they recognised that a sizeable minority would fail, the overall trade and its borrowers would benefit. Based on the reception of the 1866 Royal Commission report on the Irish pawnbroking market, free traders believed that the public and legislature would support their position.[49]

Many pawnbrokers believed regulatory reform required unity within the trade and a compromise between London, the provinces and the ideological extremes. Even Attenborough, though a 'champion of free trade', admitted that 'Parliament will require that the trade be united'.[50] The PBG agreed, advising that it would be better 'to give up' approaching Parliament if opposing factions existed. [51] Under that premise, 56 pawnbrokers delegated from 23 trade associations met in Nottingham on 23 April 1868. [52] Although there was sympathy for unfettered freedom, the practicality of its application was

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[44] George Attenborough opened his first pawnshop in 1835. As of this writing the third generation operates two shops in London. See PBSC 1870, 682 and www.attenboroughjewellers.co.uk; PBSC 1870, 2234-2249.
[45] PBG, 13 January 1868, 1 February 1869, 5 April 1869, 13 June 1870.
[46] PBG, 5 April 1869.
[47] PBG, 24 February 1868.
[48] PBG, 13 April 1868, 4 May 1868.
[49] Pawnbroking Parliamentary Reform Association, Minute book 23 April 1868, London Metropolitan Archives CLC/097/MS22331 (hereafter PPRA). The 'Irish report' was authored by Dr Neilson Hancock. He argued that price controls on pawn should be lifted as they did not provide a sufficient remuneration and encouraged a black market.
[50] MPPS, 1869.
[51] Ibid.
[52] PPRA, 23 April 1868.

questioned.[53] This position reflected an understanding that Parliament was unlikely to rescind the PBA 1800. At the extremes were free traders who were emboldened by the Irish pawnbroking report (issued one month before the Nottingham session) and others who wanted to avoid reform completely.

With London demonstrating a willingness to participate, the Nottingham debates were between supporters of complete free trade and those seeking less radical relief. Both sides were prepared to compromise.[54] Free traders argued that the merits of reform were proved in theory and practice and that fixed pricing had failed because it could not adjust to changing market conditions. Trade associations from Manchester and Liverpool presented compromise proposals. Manchester offered free trade in pricing and borrower protection in the form of a six-month forfeiture period. Instead of a bill, they suggested lobbying Parliament for a committee of inquiry. Their assumption was that an inquiry would lead the committee to support the trade's reform agenda. Liverpool offered a 'two-tiered' plan of fixed pricing and flexible pricing for loans above 40s. For loans of more than 40s, the proposal also offered the option of an 'implied contract' whereby the fixed pricing applied, unless a special contract was agreed. Many pawnbrokers welcomed an adequate fixed rate component and implied contract as these would facilitate quick transaction times for common items.[55] Otherwise, having to negotiate every loan would take a considerable amount of time. Mr Eaton, a pawnbroker from Sheffield, believed that Parliament would support a two-tiered system as they had with railways, which offered reduced pricing for labourers.[56] Essentially, arguments in support of freedom of trade had evolved towards freedom of contract limited to the ability to negotiate loan terms for principal amounts above a certain value.

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[53] Minutes reprinted in William Weir, *The First Hundred Years 1851-1951* (Glasgow: A. Duncan & Sons, 1952), 22.
[54] PPRA, 23 April 1868; Hardaker, *History of Pawnbroking*, 123-125.
[55] PPRA, 23 April 1868.
[56] PBG, 'The Nottingham sessions', 27 April 1868.

As the first day of deliberation closed, the Manchester proposal, with a vote of 31 to 25, received the most support.[57] The vote also authorised the formation of a lobbying entity with responsibility for the industry's agenda. In response, the Pawnbroker Parliamentary Reform Association (PPRA) was formed and charged with designing a comprehensive reform bill. The slim majority did not go unnoticed as opponents from Liverpool, London and Nottingham questioned whether a majority of six was to 'be the means of bringing disaster upon upwards of the three thousand pawnbrokers in Great Britain'.[58] If complete free trade in pricing was pursued, Liverpool and Sheffield would offer no support. In an open letter received by more than 3,000 pawnbrokers, the non-free-traders of London wrote that the Nottingham session would 'destroy the trade' and believed that the low rates at the Bank of England, together with a generally poor economic environment, made it unlikely that Parliament would increase the rates.[59] Fears of more competition, the entry of associated companies and the reputational risk of having dolly-shops evolve into legal pawnbrokers remained at the fore.

Having heard from regional trade associations, the PPRA was convinced that a two-tiered price schedule was the only way forward. Many believed that complete free trade in pricing was not a viable operational or political option. Seemingly, practical realities had prevailed over the 'perfection' of laissez-faire theory. In part, this can be explained by what the Nottingham delegates did. They had been instructed by their members to vote against complete free trade, but it seems that some delegates had ignored the wishes of their membership and voted for free trade in pricing. By this point, even passionate free traders admitted that without compromise they would be left operating under the problematic PBA 1800. Under a two-tiered system, their goal was to increase

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[57] PBG, 'The Nottingham sessions', 27 April 1868.
[58] Hardaker, *History of Pawnbroking,* 126-143.
[59] PBG, 1 February 1869 and 3 February 1869.

fixed rates at the low end and to simplify the low business by removing confusing fractional and split monthly charges.

Having settled their differences, 594 guarantors and 164 subscribers committed in excess of £2,200 in funding to the PPRA.[60] Table 5 demonstrates the distribution of funding. That Manchester provided almost one quarter of the group's funding comes as no surprise, as they were predominantly a low-value pledge city and had long held that profits needed to be increased.[61]

Table 5 Top ten PPRA funding support by city

	Place	Amount Guaranteed £	s	d	Amount Subscribed £	s	d	% of total
1.	Manchester	522	1	0	12	16	0	24%
2.	London	337	10	0	4	12	0	15%
3.	Liverpool	232	14	0	9	4	6	11%
4.	Sheffield	143	17	0	10	19	6	7%
5.	Glasgow	116	4	0	5	1	0	5%
6.	Nottingham	112	16	0	1	1	0	5%
7.	Leeds	103	5	0	0	0	0	5%
8.	Bradford	53	0	0	0	0	0	2%
9.	Bolton	50	8	0	0	0	0	2%
10.	Exeter	45	0	0	0	0	0	2%

Source: PPRA, 26 October 1870.

After reviewing the 36 sections of the PBA 1800, the PPRA decided that 14 sections should remain and 22 be repealed. They began working on a draft bill for approval at the next meeting of the trade. Upon completion of a draft, the PPRA enlisted the services of Messrs Coates and Reilly of Dyson and

[60] PPRA, 26 October 1870. Guaranteed funding was committed over time, whereas subscription constituted one-off donations. Hardaker, *History of Pawnbroking*, 144.
[61] PBG, 18 May 1868.

Company, a parliamentary drafting agent.[62] In Victorian Britain, as in the present, parliamentary agents help design and promote private member bills. The major objectives of the draft bill were to raise the interest rate, enable the negotiation of special contracts and shorten the forfeiture period to six months. Essentially, the draft reflected a combination of the Manchester and Liverpool proposals from the Nottingham session. Even a reluctant London did not carry enough weight to counter a compromise agreement between the two provincial cities, that, combined, provided more than double London's PPRA funding.

With the draft completed, on 11 February 1869 161 pawnbrokers from 43 towns and cities met at the Midland Hotel, Derby to discuss and debate the draft. The first four clauses were agreed without debate; the 'real business of the day began' with clause 5.[63] Clause 5 outlined fixed rates for loans of less than 42s. After considering six scales, scales A and B were submitted for debate.[64] Scale A was rejected as too complicated and for continuing the industry's reliance on farthings, a coinage whose importance had declined since 1800. In certain provincial areas farthings were difficult to obtain.[65] Furthermore, scale A too closely resembled the graduated fraction system of the PBA 1800 which pawnbrokers wanted to discard.

Instead, a point-to-point scale (e.g., 0.5d for every 2s lent) was sought. Scale B allowed for a 25 pcpa for loans of less than 42s (5 per cent over the 20 per cent PBA 1800 rate) and a 20 pcpa for loans of more than 42s (5 per cent over the 15 per cent PBA 1800 rate). Table 6 illustrates the agreed Derby scale.

[62] PBG, 18 May 1868. Today, Bircham Dyson Bell is the largest authorised Roll 'A' parliamentary agent and the only agent to offer legal and political consultancy.
[63] Hardaker, *History of Pawnbroking*, 152-156; PBG, 15 February 1869; PPRA, January and February 1869.
[64] PPRA, 2-3 July 1868.
[65] PBSC 1870, 1712.

Table 6 The Derby scale

Principal < 42s			Interest	Principal 42s < £10			Interest
(in shillings)			(in dimes)	(in s.d)			
-	-	2	0.5	42	<	42.6	8.5d
2	<	4	1	42.6	<	45	9d
4	<	6	1.5	45	<	47.6	9.5d
6	<	8	2	47.6	<	50	10d
...		...	...	...		...	...
36	<	38	9.5	90	<	92.6	1s 6.5d
38	<	40	10	92.6	<	95	1s 7d
40	<	42	10.5	95	<	97.6	1s 7.5d
42	-	-	11	0.5d monthly for every 2s 6d < £10			

Source: PPRA, 2-3 July 1868; PBG, March 15 1869.

The rate chargeable was monthly, or any part of a month, excluding a period of grace. One attendee, Mr Starling, believed this was one-sided. He suggested that the first seven days of a calendar month should not be chargeable for additional interest. After seven days, an entire month's interest would be incurred, thus eliminating fractional charges. Other areas of debate included ticket charges, bookkeeping procedures, disclosure norms, auction procedures and terms of forfeiture.[66] Even the London delegates agreed with the proposal, saying, 'We are not unreasonable men and do not want to fight blindly against all change.'[67]

With the Derby bill agreed, the PPRA executive committee sought the support of government through the Home Secretary, Henry Bruce (Liberal). Bruce agreed to schedule a date to meet representatives to learn more. Several months went by without correspondence from the Home Office. If not for the persistence of the reform committee, there might have been no meeting as a clerk at the Home Office had failed to respond. Having admitted its mistake, on

[66] PPRA, 1869; Hardaker, *History of Pawnbroking*, 152-156.
[67] PBG, 15 February 1869.

18 February 1870 Bruce said he would reconsider the matter and did so two days later.[68] In the meantime, the PPRA invited 15 MPs from large constituencies to the Westminster Palace Hotel to review the bill. Ten MPs agreed to accompany the PPRA during their meeting at the Home Office.[69] Bruce offered to support the convening of a select committee to investigate the market impact of the PBA 1800. This was the original goal of the Manchester trade association. Manchester believed that the public and Parliament would trust the findings of a select committee. It assumed those findings would view the demands of pawnbrokers favourably. To help the process pawnbrokers rallied the support of peers and MPs from Liverpool, Manchester and Derby. Samuel Plimsoll MP (Liberal) and James Sidebotham MP (Conservative), along with Bruce, initiated the process of forming a select committee. Charles Hambro MP (Conservative), who held extremely negative views of the industry, mounted opposition by moving that the bill be read a second time six months later. In response, pawnbrokers across the country travelled to London and lobbied their local MPs. Hambro was countered by, among others, Dudley Ryder MP (Conservative, Lord Sandon), Edward Baines MP (Conservative) and David Chadwick MP (Liberal), and on 9 May 1870 17 MPs were nominated to sit on the select committee.[70]

With the select committee appointed, the PBG urged its readers to refrain from criticising the bill.[71] The movement would not, however, escape outside criticism. The *Daily Telegraph* was sceptical of the pawnbrokers' intentions: 'Uncle and his Little Bill should be closely looked after.'[72] An editorial from the same issue claimed that the pawnbrokers' greed would lead them to

[68] At this stage the PPRA received assistance from Sheffield MP Anthony Mundella (Liberal), Leeds MP William Wheelhouse (Conservative) and Dudley MP Henry Sheridan (Liberal). See PPRA, 22 April 1869 and Hardaker, *History of Pawnbroking*, 168-171.
[69] Hardaker, *History of Pawnbroking*, 178; PPRA, 26 October 1870.
[70] PPRA, 22 April 1869; Hardaker, *History of Pawnbroking*, 179-189. Hambro was appointed to the select committee.
[71] PBG, 24 March 1870.
[72] *Daily Telegraph*, Saturday, 9 April 1870. At the time, pawnbrokers were often referred to as 'Uncle'.

the same 'evil example of Overend, Gurney and Company, who refused to let well alone'. The *Latest News* was more optimistic: 'Not long ago the public ignored prostitution … but now, however unpleasant the topic may be, recognises it', and that even though pawnbroking is the 'evil of the day', it did benefit the working poor.[73] Although the *Spectator* supported free trade, it criticised the pawnbrokers: 'In their distress … like everybody else, turn[ed] to the House of Commons for relief.'[74]

Emboldened by their success in having ticket charges raised in 1860, pawnbrokers felt that, by 1869, there was sufficient support within the industry and Parliament for an overhaul of the PBA 1800. To do so required a compromise between the divergent interests of London, the provincial cities and those supporting the two extremes. Although there was almost unanimous support for free trade theory, its practical application and effect on the industry were questioned.

While the extreme free trade element held that their beliefs were superior, compromises led to a two-tiered system of fixed and flexible pricing. The evidence demonstrates that these Victorian small business leaders understood the theoretical economic concerns of the day, yet determined that it was in their best interest to reach a compromise. This reflected the fact that Parliament was unlikely to abandon protective measures altogether and that there were disagreements within the trade. Pawnbrokers had long been regulated and were exempt from the repeal of the Usury Act, two realities that were unlikely to shift. However, the financial and administrative pressures under the PBA 1800 did require change. After debating the options, a two-tiered price schedule was agreed. The schedule was expected to increase profits, ease the administrative burden and avoid a complete overhaul of the competitive landscape. The trade sought outside expertise and lobbied Parliament to help advance their cause. Their approach was methodological

[73] 'Pawnbrokers', *The Latest News*, 25 April 1870.
[74] 'Mr Plimsoll's pawnbroking bill', *Spectator,* 2 May 1870.

and professional. They believed that their draft bill remedied the financial and operational needs of the industry while balancing Parliament's desire to protect poor borrowers. What follows analyses the political and economic motivations, conflicts and compromises that occurred during the period of the Select Committee.

C. The Select Committee and the Act

Beginning on 13 June, the PBSC 1870 sat over twelve days and interviewed 36 witnesses. The committee was appointed to investigate the law affecting the pawnbroking trade with a view to its reform. The committee members for the most part demonstrated knowledge of the existing legislation, having at their disposal over 300 years of English pawnbroking legislation, with the most recent enactment in 1800.[75] Witnesses included pawnbrokers, magistrates, barristers, newspaper editors, high-ranking police officers, independent experts, auctioneers and charity workers. At least one-third of the witnesses were from outside the industry. Committee members and the witnesses held diverse opinions concerning the trade.

Samuel Plimsoll understood the grievances of the industry and had published pamphlets in support of pawnbroking.[76] George Gillman knew the pawnbrokers in his district of Drury Lane and Peckham. Gillman believed the industry was helpful as it relieved pressure on those suffering from 'sickness or loss of work'.[77] Sympathisers, and pawnbrokers themselves, often referred to the trade as the banker to the poor. A Glasgow pawnbroker reversed the analogy and argued that 'bankers are but pawnbrokers on a larger scale ... I

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[75] In 1546 Henry VIII capped the pawn interest rate at 10 per cent, James I reduced the rate to 8 per cent, Charles II to 6 per cent and under Queen Anne the rate was reduced to 5 per cent. Beyond the interest rate, in 1603 the first comprehensive regulatory framework was enacted to cover stolen goods and redemption procedures.

[76] Hardaker, *History of Pawnbroking*, 183-185. Plimsoll was an active social reformer, perhaps best known for the 'Plimsoll line', a regulatory measure intended to improve safety standards in the shipping industry. As an MP for Derby, he represented a significant pawnbroking constituency.

[77] PBSC 1872, 374.

hold that the poor man in distress has as much right to borrow money on his watch, or coat, as the rich have to borrow on their lands, and very often a much better excuse for so doing.'[78] Few policymakers considered pawnbrokers as 'real' bankers, even if the chairman, Acton Smee Ayrton MP (Liberal), suggested that 'the pawnbroker is *a kind of* banker for people in a small sort of way'.[79]

Archibald Orr-Ewing, at the same time, sought to eradicate what he believed was an evil and immoral business.[80] During a House of Commons debate, Orr-Ewing declared that 'this system of pawnbroking for these small sums is a black spot upon our social system. It is degrading and demoralising to the people who deal in it; it does not limit any suffering; it only increases those gross passions which we all wish to see improved.'[81] The *Salford Weekly* wrote that pawnbrokers had 'infested' the large towns.[82] Alexander McCall, Chief Constable of Glasgow, believed it would not be 'a loss to the country' if pawnbroking was eliminated.[83] However, when pressed on his interactions with pawnbrokers, he deemed them a respectable class of men. He admitted that only three of the 109 pawnbrokers operating in Glasgow deserved to have their licences revoked.[84] Throughout the proceedings several of the industry's antagonists held views of the 'evil pawn system' and the respectable pawnbrokers with whom they were acquainted that contradicted each other.

Were pawnbrokers evil and their loans morally corrupting, or did these bankers to the poor provide a financial service to hard-working, rational and capable adults? How did the committee members understand the benefits and drawbacks of free trade in the pawnbroking context? During this era of supposed 'free trade', pawnbrokers were a private market solution to a demand

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[78] PBG, 18 February 1867.
[79] PBSC 1870, 1791, 1803. Emphasis added.
[80] PBSC 1870, 1537-1551, 3666-3671.
[81] HC deb. 15 July 1872, vol. 212; Hardaker, *History of Pawnbroking,* 264.
[82] Reprinted in PBG, 26 September 1870.
[83] PBSC 1870, 1417.
[84] PBSC 1870, 1256-1258, 1349.

for cash. Arguably, pawnbrokers kept people from seeking charity and, in the extreme, the Poor Law. Why did the provision of small cash loans cause such divergent viewpoints and how did these opinions affect regulation? Did the perspective of certain policymakers fail to understand the lived realities of the working poor?

There was little dispute that the demand for small loans was driven by poverty. Whether the conditions of poverty were created by structural economic features, such as unstable labour markets and low wages, or were the result of improvidence and irrational behaviour was debated. This research argues that these competing perceptions of poverty influenced the proposed regulatory response. The following paragraphs argue that those seeking to keep or enhance regulation understood the pawn market from a framework that viewed borrowers as 'the undeserving poor'. Their position argued that pawnbrokers, like indiscriminate charity, contributed to the demoralisation of the lower classes, which, in turn affected all British society.[85] Conversely, pawnbrokers and their supporters sought reform favourable to the industry based on their understanding of pro-business and free market principles. Concerning Victorian pawnbrokers and regulation, how did theoretical laissez-faire beliefs interact with the poverty debate? Was the debate structured as an economic policy question, that is, should the price of money be regulated? Or was regulation considered to be necessary to improve the conditions of poverty?

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[85] Melanie Tebbutt reached a similar conclusion in *Making Ends Meet: Pawnbroking and Working-Class Credit* (Leicester: Leicester University Press, 1983). See the literature review for the distinction between Tebbutt's work and this research.

Regulation or freedom of contract?

> I think it would be a most desirable thing to have a law even to prevent people from making themselves and their children so poor and miserable as they are at present.[86]
>
> William Miller, Magistrate of the City of Glasgow

> The poor are able to detect for themselves very well, they are very intelligent with regard to the amount which they have to pay.[87]
>
> Sir Thomas Henry, Chief Magistrate of the Metropolitan Police Courts

Two opposing viewpoints were debated. Either the working poor had the ability to negotiate freely in their best interest or they did not. The former position suggested that freely competitive markets generated optimal loan outcomes for both pawnbrokers and borrowers. Orr-Ewing and Hambro argued that the working poor needed regulatory protection. The motivations underlying the latter position varied and were not necessarily mutually exclusive. A minority suggested that pawnbrokers could take advantage of the 'necessities of the poor' and thus demanded regulation because the parties entered into contracts on unequal terms.[88] Others held that the working poor were intellectually inferior and morally improvident. From this perspective regulating the pawn market reined in prejudicial behaviour. It was believed that by providing cash to the working poor, pawnbrokers caused and encouraged morally deficient actions that reflected poorly 'on the whole state of the country'.[89] Hambro argued that pawning was 'injurious to the moral welfare of the lower classes'.[90]

Orr-Ewing, Hambro, McCall and Stubbs linked poverty to a lack of thrift, irrationality, drunkenness, crime and other types of vice. For them, the problem was not the structure of the industrial urban economy, but the decay of morality, including self-reliance, savings and sobriety. This type of poverty was associated with pauperism, 'the irregularly employed and semi-criminal elements', which were distinguished from the 'authentic' and self-supporting

[86] PBSC 1870, 1476-1551.
[87] PBSC 1870, 3588-3589.
[88] PBSC 1870, 3579.
[89] PBSC 1870, 394-406.
[90] PBSC 1870, 1357.

working class.[91] In this framework, conditions of pauperism were a choice, and while many of the working class had improved their standard of living, these borrowers 'chose' not to.[92] Samuel Smiles, whose book *Self-Help* was the 'bible of mid-Victorian liberalism', believed that 'any class of men that lives hand to mouth will ever be an inferior'.[93] Smiles related economic outcomes to the inherent value of a person. This view of the working poor can be understood as functional in so far as 'people were subsumed within' economic terminology.[94] Those who practised abstinence and self-control were rewarded, while moral deviance resulted in poverty. Policies that supported individual freedom and moral responsibility, along with a laissez-faire government, were the key components of 'Gladstonian liberalism'.[95] However, unlike Gladstonian policy, many on the PBSC 1870 sought to counter 'the destructive' pawn system through regulation.

If friendly societies were an indication of the working class striving for the higher moral values and economic stability of the middle class, pawnbrokers provided easy cash to the 'degenerate poor', allowing them to avoid honest and hard work.[96] Given that a loan occurred without inquiry into a borrower's intended use of the funds, pawn loans were considered no better than indiscriminate charity. Pawn allowed the able-bodied poor to perpetuate the conditions that Orr-Ewing and others wanted to eliminate. An example of this involved pawning bed sheets. This debate demonstrated a lack of understanding of the reality of the lives of the poor by those seeking strict

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[91] David Englander, *Poverty and Poor Law Reform In 19th Century Britain, 1834-1914*: *From Chadwick to Booth* (London: Routledge, 2013), 58-59.
[92] Gareth Stedman Jones, *Outcast London*: *A Study in the Relationship Between Classes in Victorian Society* (London: Verso, 2013), 6-12.
[93] Johnson, *Savings and Spending*, 25.
[94] Geoffrey Searle, *Morality and the Market in Victorian Britain* (Oxford: Oxford University Press, 1998), 31-34; Gordon Bigelow, *Fiction, Famine, and the Rise of Economics in Victorian Britain and Ireland* (Cambridge: Cambridge University Press, 2003), 2-4.
[95] Michael Winstanley, *Gladstone and the Liberal Party* (London: Routledge, 1992), 12-13; Patrick Atiyah, *The Rise and Fall of Freedom of Contract* (Oxford: Oxford University Press, 1979), 509.
[96] Derek Fraser, *The Evolution of the British Welfare State: A History of Social Policy since the Industrial Revolution* (London: Palgrave Macmillan, 2009), 130.

regulation. For Orr-Ewing, McCall and William Hughes MP (Liberal), to pawn a necessity of such low value was evidence enough of improvidence.[97] Johnston suggested that even the poorest person owned articles worth more than 3s.[98] This point failed to appreciate that the working poor pawned only what they could manage without. It does no good to pawn the family's only frying pan to purchase food that required cooking or the father's tools if he is to work.

McCall testified that a 'drunken wife' had pawned 'every article of furniture and every stitch of clothing' the family owned.[99] McCall believed that there were 'very few cases of provident well-behaved people' living in such destitution that they had to pledge low-value clothing and bedding.[100] Miller and McCall argued that the demand for small loans would disappear if it were not for improvidence.[101] These borrowers, argued Lucas Stubbs, a Liverpool magistrate, required the same protection as 'children who cannot take care of themselves'.[102] Hector, Henry and Robert Johnson, Procurator Fiscal for Edinburgh, and others linked the need for small sums with alcohol consumption.[103] Although no supporter of social regulation or commenting directly on pawn, William Gladstone, then Prime Minister, believed that alcohol abuse among the working class threatened financial stability and self-help.[104]

Thomas Arnold, a London magistrate, countered that the working poor were 'so often short' of money for 'ordinary purposes' that pawnbrokers provided a much-needed service to the community.[105] Scoular, a pawnbroker, suggested that the weekly pawn cycle was not linked to alcohol as most people redeemed on a Saturday evening, leaving less income available for the public

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[97] PBSC 1870, 1791-1807.
[98] PBSC 1870, 3087, 4022-4025.
[99] PBSC 1870, 1380-1388.
[100] PBSC 1870, 1320-1332.
[101] PBSC 1870, 1547-1551.
[102] PBSC 1870, 3133-3148.
[103] PBSC 1870, 1020-1026, 1320-1332, 1845, 1934-1928, 3663, 4002, 4153, 4156.
[104] Stephen Lee, *Aspects of British Political History, 1815-1914* (London: Routledge, 2004), 166-177.
[105] PBSC 1872, 526, 588.

houses, which were well attended during the weekend.[106] Moreover, Scoular clarified that pawnbrokers avoided bedding. He estimated that two-thirds of pledged blankets in Glasgow were from 'club purchases', which meant that they were purchased on credit then pawned to raise cash.[107] The oversupply of club bedding meant that it carried little value and was difficult to resell. The working poor were not without bedding, but used club purchases creatively to raise cash. This demonstrated that the working poor utilised credit and made economic decisions in a way that many policymakers failed to appreciate.

William Holford, a charity worker in London who interacted with the poor on a daily basis, denied the link between poverty, pawn and drinking.[108] James Parker, 16 years a London City missionary in Marylebone, Hanover Square, Chelsea and Paddington, said those taking small loans were not intemperate, but were irregularly employed or 'under pressure from sickness'.[109] The *North British Daily Mail* suggested that Hector too easily and inappropriately associated 'all the evils that afflict humanity' with pawnbroking.[110] These rebuttals challenged much of the immoral dimension of pawning, shed light on the operations of the market with detailed testimony and recognised that Hector and others held the pawn market in such a low regard that their opinion was unlikely to shift.

Many on the Select Committee demonstrated a Gladstonian link between economic success and moral 'rightness'.[111] However, Gladstone did not support social regulation or state interference in the market. He believed that people 'should not look … to the government for the radical removal of the evils which affect human life'.[112] Regardless, certain committee members demanded regulation to control 'evil pawnbrokers' and 'immoral borrowers'.

[106] PBSC 1870, 4471.
[107] PBSC 1870, 4547-4558.
[108] PBSC 1872, 283.
[109] PBSC 1870, 314-315; PBSC 1872, 370-374.
[110] PBG, 8 August 1870.
[111] Lee, *Aspects of British Political History*, 163.
[112] Michael Winstanley, *Gladstone and the Liberal Party* (London: Routledge, 1992), 8.

From this perspective regulation mirrored the 1834 Poor Law concept of 'less eligible' and efforts to eliminate 'indiscriminate charity' and replace it with a system of sanctions to encourage thrift and hard work.[113] Pawnbrokers enabled the able-bodied working poor to avoid those sanctions and incentives. Like indiscriminate charity, pawnbrokers created a type of spiralling dependency, which in part is why they were dubbed 'evil'. The need for such small sums, coupled with a high interest rate, was evidence of irrationality and immorality.

In a challenge to borrower rationality and intelligence, Orr-Ewing asked John May, a pawnbroker: 'Do you think that the poor people who come to you and pledge their articles for small sums … are in a … position to deal with the clever men in your profession?' May replied that all men possess common sense and that some of the 'sharpest bargains' were to be found among working people.[114] Orr-Ewing's position reflected a normative understanding of Victorian rationality.[115] From this perspective behaviour was determined by those 'in power' and any deviation was considered irrational and immoral. A moral person would have no need for such a loan and, moreover, should the need exist, engaging at such a high interest rate was an utter failure of reason. While other members of the working class had advanced owing to rational, thrifty and sobriety, these borrowers had failed.[116] Those seeking strict regulation saw borrowers as, if not paupers, at least borderline cases whose ignorance had led them into destitution. Regulation would limit, if not reverse, the moral and economic decay of the undeserving poor.

Arguing the opposite position, in 1867 the *Manchester Examiner and Times* suggested that 'commercial depression' affected even the 'best workers' and that pawnbroker loans enabled them to maintain their independence.[117]

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[113] Steadman Jones, *Outcast London*.
[114] PBSC 1870, 1034-1035.
[115] Steadman Jones, *Outcast London*, 268.
[116] Steadman Jones argued that Marshall, Toynbee and Green were optimistic in their hopes for the working class. This optimism departed from the pessimism of Malthusian thought. See *Outcast London,* 6-9; and Gareth Stedman Jones, *An End to Poverty: A Historical Debate* (London: Profile Books, 2004), 26-27.
[117] As reprinted in PBG, 2 February 1867.

Many on the committee agreed. Far from entrapment, pawning kept borrowers' independent of charity and government relief. Far from the immoral poor, these hard-working families needed cash to 'equalise their wages', which were irregular owing to casual employment and a fluctuating labour market.[118] Ayrton, the committee chairman, suggested that small loans met the 'reasonable requirements of the working-classes'.[119]

Pawnbrokers and their allies suggested that the working poor were intellectually and morally capable of transacting with fewer regulations. An exchange between Ayrton and William Hancock, an independent expert on pawnbroking, demonstrated this:

> Hancock: I think that the poorer people, on the whole would get fairer terms, and more money and more convenient arrangements, and that the contracts, if worked out under a perfectly free system, would be better suited to both parties.
>
> Chair: Then would you reply upon competition to enable the parties to get the most they could and at the lowest rate of interest?
>
> Hancock: Yes, certainly.[120]

Thomas Chambers MP (Liberal) and Gillman believed that freedom of trade protected the poor 'better than now given to him by the regular law'.[121] It was expected that competitive markets would drive inefficient, dishonest and low-end lenders out of the market. Regulations that limited profitability only pushed borrowers towards illegal lenders or forced them to sell.[122] It was argued that if a borrower had the intelligence to purchase personal goods without legal interference, that same intelligence was available for pawning.[123] A different picture of the borrower emerged; they were rational, clever and able to cope with unpredictable wages and expenses. These borrowers were

[118] PBSC 1870, 3042-3045.
[119] PBSC 1870, 2111-2112.
[120] PBSC 1870, 2238-2241.
[121] PBSC 1870, 261-262.
[122] PBSC 1870, 394-406, 677-682.
[123] PBSC 1870, 1336-1345, 3138-3148.

independent decision-makers who had the ability to maximise their welfare without state interference.

Accordingly, borrowers were not living beyond their means or spending wastefully, but were competent members of society who required a small loan to cover a short-term need. The pawnbroker, far from being evil, fulfilled a needed service. William Knight, an assistant judge of the Middlesex Court of Session, who on balance was antagonistic to the industry, said that certain people ‘would be dreadfully distressed if they could not raise even 1s on some article of dress to provide them food’.[124] Others agreed with William Shaw, an assistant pawnbroker: ‘plenty of poor people would starve’ without pawn loans.[125] Holford, a London City missionary, testified that a man in his district pledged his blanket for food. However, Robert Johnston refused to believe that one’s ‘necessities can be so great as they can possibly be relieved … by so paltry an advance as 2s 6d’.[126] For charity workers in daily contact with the poor and the supporters of pawn, knew that money was needed for necessities such as medical, food and household expenses. For them, while an extremely small minority might borrow to purchase alcohol, most borrowers were hard-working family men.

Similarly, although Orr-Ewing held that pawners were ‘as a rule’ the ‘very lowest’ members of society, pawnbrokers retorted that it was ‘no use dealing with those who have nothing’.[127] Lists of bankrupt persons appeared regularly in the PBG and supported the notion that pawnbrokers avoided contracting with people who had very little.[128] If borrowers were not ‘the lowest’, then they were unlikely to be paupers. Accordingly, any regulation to combat pauperism would be misguided. Diverging views existed, in part, by where in the class structure one placed the borrowing population. The lower the perceived status, the more

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[124] PBSC 1870, 4685-4689.
[125] PBSC 1870, 3505.
[126] PBSC 1870, 3087, 4022-4025.
[127] PBSC 1870, 1000-1001, 1380-1384.
[128] PBG, 14 January 1867.

likely it was for a committee member or witness to seek strict regulation. The rationale, however, was not simply to protect ‘vulnerable’ borrowers, but to control ‘immoral and irrational’ behaviour that affected the entire economy and well-being of society. The status of the pawnbroker was determined by the same logic. Pawnbrokers were evil because they ‘indiscriminately’ supported ‘pauperism’. Alternatively, pawnbrokers provided small cash loans for working families. These ‘bankers to the poor’ assisted hard-working family men by providing much needed cash to cover basic expenses. Proponents of this logic argued for regulation more favourable to business. The interaction between theoretical concerns over state interference in the economy, the practicalities of business operations and conflicting views of poverty were present during the debate over the benefits and drawbacks of price controls, which are explored in the following subsection.

Price controls

Raising the price ceiling was the primary motivating factor of the reform movement. Pawnbrokers held that price controls under the PBA 1800 provided insufficient compensation and a low return on invested capital, and were difficult to administer. Pawnbrokers’ call for increased profits was met with both ridicule and support. This subsection discusses whether low-value pledges were unprofitable. Proving this was vital if pawnbrokers were to have the price ceiling raised. How did the committee respond to the financial ‘proof’ presented by pawnbrokers? What were the perceived benefits and drawbacks of price controls? How did price controls influence the structure of the pawn market? Did price controls encourage credit rationing and sustain an illegal market?

Price controls influence a market in various ways. Price caps restrict the return on invested capital and, when set below the market clearing price, reduce the supply of credit. This leaves some of the demand unsatisfied and leads to credit rationing and market segmentation. Although credit risk was mitigated through collateral, pawnbrokers can and did experience payment risk.

Pawnbrokers argued that low-value pledges redeemed within a month were unprofitable. These loans were paid before accrued interest exceeded fixed expenses. While revenue was fixed through legislation at a point in time, pawnbrokers operated with fixed and variable costs, which changed over time. Without price restrictions, the market would price payment or time risk at a higher level. Payment risk, rising labour costs, credit rationing and market segmentation were present in the pawn market and are analysed below.

Pawnbrokers transacting in the low trade argued that price controls under the PBA 1800 were inadequate. John Dicker, owner of four houses in London (Poplar, Limehouse, Commercial Road East and Clerkenwell) said:

> seventy years ago the expenses connected with the pawnbroking business were entirely different… expenses with the staff are now very much increased. In addition to that, one's rent and every other thing is altered; and either the profit must have been excessive at the time when the law was adopted, or else the business having grown in one direction, whilst being tied in the other.[129]

Dicker had £11,182 of invested capital, generating a net profit of £629 or 5.6 per cent ROE and a 2.6 per cent return on a sum advanced of £23,594 collateralised by 69,656 pledges.[130] Many of the testifying pawnbrokers believed that a 5 per cent return on invested capital was widely available.[131] It was argued that considering the amount of work that went into running a pawn business, a fair return ought to exceed 5 per cent. In Dicker's case he earned 0.6 per cent above the 'market rate' of return, which he considered too low. A summary of Dicker's certified financial position is found in Table 7.

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[129] PBSC 1870, 435-436.
[130] PBSC 1870, 461, appendix 14 and author calculations.
[131] In 1870 the Bank rate was 2.5 per cent, in 1871 3 per cent and in 1872 5 per cent. See 'Three centuries of data', available for download from the Bank of England website.

Table 7 John Dicker business analysis, June 1870

Pledges taken in	69,656
Sum advanced	£23,594
Capital turnover (a)	2.6x
Average pledge	6s 11d

Capital investment	**£**	**s**	**d**	**% total**
Pledge stock	£8,919	0	7	62.7%
Premium on stock (b)	800	0	0	5.6%
Lease on premise	890	0	0	6.3%
Cash	573	11	0	4.0%
Pawnbroker capital	£11,182	11	7	78.7%
Sale stock	3,034	14	5	21.3%
Invested capital	£14,217	6	0	100.0%
	£	**s**	**d**	**% total**
Interest fee	£1,406	15	1	87.9%
Ticket fee	193	2	5	12.1%
Total	1,599	17	6	100.0%
Expenses	970	5	3	
Total	£629	12	3	
Return on capital	*5.6%*			
Return on sum advanced	*2.6%*			

Source: PBSC 1870, 426, appendix 14 and author calculations. Represents 12 months of business. (a) Sum advanced / capital investment in pledged stock. (b) Capitalised interest. It is unclear if the expense category included a salary for Dicker.

Dicker's results were not uncommon. As Table 8 demonstrates, pawnbrokers were operating at or near a 5 per cent return on invested capital. The limited data supported arguments that pawnbrokers with low loan averages earned less money than higher volume brokers with higher average loans. McKay's low pledge stock and high capital turnover ratio suggested that his business was based on low-value weekly transactions. Comparing McKay's low-end business with Russell and Telfer's (higher average loan size) and

Barnett's (high volume and loan average), the returns varied as expected, with McKay earning less than the other six pawnbrokers.

Table 8 Summary returns of six testifying pawnbrokers

	Barnett *(a)* *Lambeth*	**Russell** *Edinburgh*	**Dicker** *London 1*	**Dicker** *London 2*	**Telfer** *London*	**Blackwood** *Bradford*	**McKay** *(b)* *Glasgow*
Pledges in	134,505	72,000	69,656	65,824	69,784	58,601	53,884
Average loan	4s 3d	11s 3d	6s 11d	5s 9d	6s 3d	5s	3s 1d
Sum advanced	£28,608	-	£23,594	£18,840	£21,663	£16,821	£8,372
Pledge stock	£8,726		£8,919	£7,897	£8,201	-	£3,500
Total capital	£11,896	£27,000	£11,182	£10,560	-	-	£4,482
Capital turnover	3.3x	-	2.6x	2.4x	-	-	5.6x
Interest fee	£1,706	-	£1,406	£1,180	£1,146	£647	£477
Ticket fee	£320	-	£193	£164	£195	£138	£136
Capital return	6.4%	7.2%	5.6%	6.1%	7.1%	-	3.6%
Est. fair return	5.0%	5.0%	5.0%	5.0%	5.0%	-	5.0%
Adjusted return	1.4%	2.2%	0.6%	1.1%	2.1%	-	-1.4%

Source: Compiled by the author from PBSC 1870. Unless noted otherwise, it is unclear if the adjusted return included an owner-operator salary expense.
(a) Financial information submitted anonymously to Parliament. The pawnbroker was later identified as Mr Barnett.
(b) Expenses exclude deductions for McKay's salary and that of his two sons, both key managers, thus overstating profitability.

Pledges required the same amount of labour and administration regardless of the loan size. Labour was a considerable proportion of fixed costs. It was estimated that six or seven employees were needed for every 1,000 pledges received daily. One of the employees would be a manager or a 'First'. In busy pawnshops a First was charged with managing other employees, who could include a second, a third and boys performing menial tasks.[132] A First earned approximately £2 a week and in some cases a profit dividend. In 1867, a First working in South London at a shop taking in 96,000 pledges annually

[132] PBSC 1870 373, 461-483, 520, 4822.

earned £100 in annual salary and £26 in kind for room and board.[133] William Charley MP (Conservative), a former judge, suggested that high labour costs meant that managers needed accountancy skills. Dicker responded that bookkeeping was not so much a requirement as the need for appraisal skills and a trustworthy character as managers handled cash unsupervised.[134] Again, the evidence points to policymakers' failure to understand how the industry operated.

Demonstrating the labour exerted on a typical Saturday (7 May 1870), Dicker produced 1,899 strung together pawn tickets.[135] The exhibit measured approximately 58 feet and was dubbed 'the serpent'. The serpent revealed that only 346 (18 per cent) out of 1,889 loans were profitable. Gross remuneration was equal to 4.88 per cent on loans, totalling approximately £304. The business expense of 4.36 per cent or an approximate cost of 2.25d per pledge absorbed nearly the whole of the remuneration. The serpent was intended to demonstrate how much work went into so little profit. Table 9 demonstrates that low-value pledges held for less than one month were unprofitable. The average loan size on this day was 3s 11d.

[133] PBG, 18 November 1867.
[134] PBSC 1870, 520.
[135] PBSC 1870, 524; Hardaker, *History of Pawnbroking*, 199-200.

Table 9 Saturday, 7 May 1870 loan summary

		Principal			Interest			Ticket fees			Total			% of principal	
Time in Pledge	Pledges	£	s	d	£	s	d	£	s	d	£	s	d	Intake expense	Loan profit
1 month	1,553	304	17	4	5	18	8.5	3	8	0.5	9	6	9	4.36%	-3.05%
>1 month	346	72	8	2	8	6	2.5	0	14	11.5	9	1	2	4.36%	12.57%
	1,889	377	5	6	14	4	11	4	3	0	18	7	11	4.36%	4.88%
														Gain	0.52%

Sources: PBSC 1870, 524-526; Hardaker, *History of Pawnbroking*, 199-200.

Robert Carter understood the dynamics of the labour-intensive business, saying that the process required valuation, issued tickets, storage and collection upon redemption, all of which left little profit on low pledges. Others, such as Alexander Beresford, did not. Beresford said that while one transaction might yield little profit, 'when you have a great number of transactions the profits must be enormous'.[136] Hardaker replied that the small pledges provided no profit at all, higher-volume shops required more staff, and 'it is very well to speak of percentages; but if one transaction does not pay, multiplying it will not make it pay'.[137] This begs the question whether British pawnbrokers were operating efficiently. When compared to their charity counterparts in Ireland and France, with an average cost per pawn of 3s 7.5d, and no less than 9d, British providers had a lower expense structure.[138] It was estimated that if a weekly 6d pledge was to be profitable, a minimum of 1.5d was required in compensation per transaction.[139]

Pawnbrokers argued that on a weekly pledge it was matter of covering labour costs, and not a matter 'of percentages … but of labour bestowed upon' the pledge.[140] While the maximum chargeable rate for loans of less than 42s

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[136] PBSC 1870, 321-322.
[137] PBSC 1870, 437-439.
[138] PBG, 16 and 30 September 1867.
[139] PBSC 1870, 321-322, 437-439.
[140] PBSC 1870, 413-416.

was approximately 20 pcpa, and at or more than 42s was approximately 15 pcpa, analysing the interest rate in percentage terms was misleading. The PBA 1800 stated a monetary not a percentage limit. If an article were redeemed the day it was pledged it would pay a rate of approximately 600 pcpa, and if the loan was only 6d, the protective statute allowed 3,000 pcpa.[141]

Data from 30 Liverpool-based pawnbrokers supported the claim that low-pledge businesses earned a smaller ROE than the high-pledge businesses. This sample from 1869 represents 1.4 million pledges out of a total of approximately 9 million or 15.6 per cent of the total loan volume in Liverpool that year. Thirty pawnbrokers were surveyed and the results are presented in Table 10. Four pawnbrokers have been excluded, resulting in a sample set of 26 respondents and an adjusted average ROE of 4 per cent.[142] Fifteen of the 26 (57.7 per cent of the adjusted sample) had ROEs greater than the adjusted average ROE of 4 per cent. Thirteen of the 15 (86.7 per cent) experienced 3 per cent or more of loan volumes within the high-pledge category. Of the eleven pawnbrokers with below-average returns, six (55.4 per cent) experienced above-average loan volumes in the lowest category of pledge. These results indicate that even a small percentage of high-pledge business substantially improved financial returns.

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[141] PBG, 27 April 1868.

[142] Data compiled from PBSC 1870, appendix 9. Pawnbrokers 5, 14 and 21 were excluded owing to incomplete expense data. Pawnbroker 12 was excluded owing to low-pledge volume accompanied by an abnormally high percentage of over 10s pledges. Note: The total loss from the sale of forfeits was £859. Owing to missing data, the column summation of £835 is £24 lower. It is unclear whether the estimated ROE included an owner-operator salary expense.

Table 10 Financial return for 30 Liverpool pawnbrokers, 1869

		% pledged by size								
PB Num	Total pledges	< 2s 6d	2s 6d < 10s	10s < £10	Ticket Fee	Interest Charge	Sale of Forfeits	Total Expns	Invested Capital	Est. ROE
1	72,000	61.7%	38.3%	0.0%	£130	£485	-£96	£500	£4,000	0.5%
2	61,780	79.4%	16.5%	4.1%	126	410	-56	270	3,050	6.9%
3	58,000	69.0%	25.9%	5.2%	180	600	-200	400	4,000	4.5%
4	68,426	33.1%	64.3%	2.6%	156	419	-20	550	3,000	0.2%
5	38,500	37.4%	56.1%	6.5%	85	240	0	0	2,560	12.7%
6	50,000	20.0%	80.0%	0.0%	120	600	-50	500	3,000	5.7%
7	31,872	51.5%	40.2%	8.3%	84	360	0	323	3,000	4.0%
8	49,330	59.4%	39.4%	1.2%	124	664	-297	349	5,000	2.8%
9	37,640	47.6%	48.6%	3.8%	85	255	-15	257	1,350	5.0%
10	24,550	58.7%	39.1%	2.2%	64	220	-34	317	1,190	-5.6%
11	61,835	42.6%	46.9%	10.6%	160	1,087	-65	620	7,500	7.5%
12	23,012	21.7%	50.4%	27.9%	93	1,400	132	520	9,000	12.3%
13	28,500	38.6%	49.1%	12.3%	60	698	124	847	5,200	0.7%
14	54,712	54.9%	45.1%	0.0%	123	325	20	189	1,860	15.0%
15	31,056	40.8%	49.4%	9.8%	82	551	-17	401	3,268	6.6%
16	19,224	36.0%	56.8%	7.2%	43	320	120	400	2,400	3.5%
17	37,642	47.1%	48.6%	4.3%	90	318	0	320	2,000	4.4%
18	47,591	46.2%	48.7%	5.1%	96	495	-55	300	3,000	4.9%
19	47,801	52.5%	44.2%	3.3%	213	251	-65	300	1,701	5.8%
20	46,416	39.7%	50.2%	10.1%	130	969	-69	644	6,469	6.0%
21	20,617	50.1%	45.7%	4.3%	44	160	26	85	800	18.1%
22	26,100	18.4%	56.3%	25.3%	120	1,367	-26	743	8,500	8.4%
23	46,128	51.6%	42.4%	6.0%	106	447	-75	401	5,000	1.5%
24	58,250	62.4%	33.7%	3.9%	122	715	-4	725	4,000	2.7%
25	43,292	39.2%	51.6%	9.1%	102	300	-29	316	3,100	1.8%
26	72,782	44.0%	54.5%	1.5%	157	491	-130	462	5,000	1.1%
27	97,800	55.2%	40.5%	4.3%	228	852	0	750	5,400	6.1%
28	75,532	58.4%	38.6%	3.0%	163	416	-21	455	2,700	3.8%
29	48,220	43.7%	48.4%	7.9%	105	507	52	346	4,000	8.0%
30	37,056	68.5%	30.1%	1.4%	77	164	15	195	1,020	6.0%
Total	1,415,664	49.6%	45.1%	5.3%	£3,378	£16,091	-£859	£12,485	£112,068	5.5%

Source: Data compiled from PBSC 1870, appendix 9. It is unclear if the estimated ROE included an owner-operator salary expense.

Under price controls pawnbrokers struggled to make a profit from low-value pledges. Many believed that returns should be well above the often cited 5 per cent market rate. Pawnbrokers presented evidence to support the claim that theirs was a labour-intensive business and expenses had increased since the 1800s. Holt and Miller were not convinced. Miller could not understand why a pawnbroker who had 'good security for the money advanced' needed to charge even the 20 per cent authorised by the PBA 1800 and called for a reduction.[143] More measured than Orr-Ewing, Holt and Miller failed to appreciate the cost of running a pawn business.[144] They were not alone. Hector could not 'conceive that carrying on a business with forty thousand pledges a year should not yield a sufficient livelihood'.[145] Henry believed that it was a 'matter of common repute' that pawnbrokers have a 'very good trade' and 'some of them make a large fortune'.[146] An article in the *Dudley Herald and Wednesbury Borough News* affirmed the widespread belief that pawnbrokers experienced high levels of profitability. 'What we are certain of is … they either get it back with interest, or get more than double its value often, in the goods that are forfeited.'[147] Pawnbrokers believed that many understood the PBA 1800 rate of '20 per cent' as a profit margin.[148]

There is little indication that committee members and witnesses who were opposed to the industry were swayed by the evidence. An interaction between Raymond Storr and Orr-Ewing demonstrated this. Storr, an owner of a London auction house, said, 'I do not think it [pawnbroking] would be a very profitable trade; I should not like to embark in it myself if I were cut off from any other means of livelihood.' A sceptical Orr-Ewing challenged Storr's knowledge of the financial position of pawnbrokers, querying if he had ever examined their

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[143] PBSC 1870, 1503-1517, 1551.
[144] PBSC 1870, 1680, 3885-3886.
[145] PBSC 1870, 1958-1963.
[146] PBSC 1870, 3583-3585.
[147] Reprinted in PBG, 1 July 1872.
[148] PBG, 6 February and 13 February 1871.

books. Storr responded that he had examined the financial position of many pawnbrokers.[149]

At times, even the pro-business chairman, Ayrton, did not fully agree with the pawnbrokers:

> Mr May: Everybody has an idea that pawnbroking is exceedingly remunerative and they do it because in the Pawnbrokers' Act, a pawnbroker's profits are laid down. For instance, I, as a pawnbroker would lend a pound for a month or for five weeks, which is the legal time for 4d. If I were to lend a man 30s on a watch for a month or five weeks (for there are seven days' grace), I should get 6d for that transaction. The butcher says you are getting rare profits, you pawnbrokers, but I have said you bought a sheep for 30s would you like to have all the trouble with that sheep and to sell it at the end of a month for 30s 6d? Would you like to say on Saturday night when you had cut up that sheep and weighed it that you got 6d for your investment?
>
> Chairman: Do you know any butcher that kills 76,603 sheep in a year?

Pawnbrokers took issue with the increasing administrative burden that price controls were placing on their profitability. The PBA 1800 scale created fractions that were difficult to calculate and often resulted in fractions for which no coin existed. The scale included farthings (a quarter of a penny), a coinage with limited provincial circulation.[150] Lending £2 entitled a pawnbroker to charge 8d, whereas lending £2 3s could be charged 6.25d plus 4/5 of a farthing for the same period. Having to calculate the charge and coin issues in pawnshops processing 40,000-60,000 annually was time-consuming and required judgement on how to comply with price controls. Hambro asked Hardaker why he did not round down in the customer's favour to comply with the Act. Hardaker replied that even when rounding up he failed to make money.[151] This administrative burden further decreased low profit margins.

Pawnbrokers argued that the PBA 1800 compensation scheme artificially limited collateral options. One of the strongest arguments against price controls is that a single rate cannot be applied across an entire credit

[149] PBSC 1870, 3228-3236.
[150] PBSC 1870, 30-31.
[151] PBSC 1870, 50.

class. Often, having to apply a single rate led to credit rationing and market segmentation. Without adequate compensation pawnbrokers rejected extremely low-value goods and bulky items.[152] Despite their increased labour and warehouse requirements, large goods were charged at the same rate as a pocket watch or overcoat. In many instances a porter was paid more to carry the good to the house than a pawnbroker who would value, ticket, store and lend money on the item.[153] Dicker explained:

> I have two instances here which will show how inconveniently it works; I have here a ticket for £6 for a pianoforte, which was taken in by a pawnbroker, the interest and all that he would be allowed to charge for warehouse-room and other things, would be 1s 6d a month. Before that pianoforte was redeemed 15 months had expired, and the interest that he would be allowed to charge, and which he did charge was 22s 6d (£1 1s 6d). I have a bill here from Peachey of Bishopsgate street for warehousing a pianoforte for the same time and it is £3.[154]

Presumably, those who needed the smallest sums but who were rationed out of the market were financially vulnerable and still needed cash. This led to the creation of an illegal (i.e., unlicensed) market. These dolly-shops operated outside price controls and regulated trading hours. Pawnbrokers argued that, along with second-hand dealers, these shops 'plundered' the needy.[155] Price controls segmented the pawn market such that a select group of borrowers benefited through lower pricing at the expense of the others.

Given these negative effects, why were price controls considered necessary? For some, price controls were implemented to protect the 'irrational' working poor from 'sophisticated' pawnbrokers.[156] Often, this argument was based on the perceived existence of bargaining inequity. The presence of bargaining inequity directly challenged the notion that borrowers 'freely' engaged and negotiated with pawnbrokers. In response, price controls meant that 'some poor creature with an empty stomach, who has denuded herself of

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[152] PBG, 4 May 1868.
[153] PBSC 1870, 20, 596-599, 2208.
[154] PBSC 1870, 592-593.
[155] PBSC 1870, 53-54, 2707.
[156] 'Pawnbrokers', *Daily Telegraph*, 21 August 1871.

every rag of clothing that decency will permit … to raise a few pence to provide food. How can she bargain with any chance of equity?'[157] This research argues that there was another motivation. If price controls were necessary owing to borrower 'irrationality', then perhaps credit rationing was welcomed. Since certain policymakers believed that the pawn market served the 'undeserving' poor, any reduction in supply would have been viewed favourably. In effect, those borrowers rationed out of the market were better off without a loan.

Committee members queried why pawnbrokers were petitioning Parliament when they could refuse the unprofitable business and reduce their loan advancements.[158] The answer was owing to repeat business and uncertainty. McKay suggested that if you refuse him once, next time, perhaps with a larger more profitable item, the pledger 'passes your door'.[159] On more than one occasion a pawnbroker stated that if he were to refuse a pledge because 'it might' go out in a month, he would never have any pledges for longer.[160] Competitive factors were cited for high-loan advances. Dicker indicated that 'competition regulates' which house people frequent. People would visit the shop with the highest advancements.[161] Gillman agreed: 'It would be generally known among the people where the best bargain was to be had.'[162] While higher advanced sums benefited pawnbrokers by increasing their capital turnover, inflated collateral value also increased the loss-given-default.

In response, Ayrton believed that the public should have 'every convenience of having money advanced on every conceivable article'.[163] In a letter to the PBG editor, a pawnbroker argued that small loans should not be treated differently from other commerce because it was 'undeniable' that trade

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[157] 'Pawnbrokers', *The Sheffield and Rotherham Independent,* 28 August 1871.
[158] PBSC 1870, 596-597.
[159] PBSC 1870, 2078.
[160] PBSC 1870, 526, 720.
[161] PBSC 1870, 562-563.
[162] PBSC 1872, 174,177, 260.
[163] PBSC 1870, 2702.

without restriction benefited all parties.[164] From this perspective, negotiations between buyer and seller produced 'fair' results in a way that regulation could not.[165] Essentially, this Smithian framework permitted individuals to maximise their own interest without state interference. 'Freedom of choice' encouraged competition between providers and kept prices low.

However, not all pawnbrokers supported unfettered freedom. It was believed that price controls and licensing requirements had limited market entry. Certain pawnbrokers recognised that price controls, yielding low returns, discouraged associated companies from entering the market. In 1870, one pawnbroker believed that, should returns increase, savings banks would enter the pawn market.[166] These pawnbrokers sought a balanced increase in profit that, while relieving the low end, would not attract new players into the market.

In support of their efforts to have price controls modified, pawnbrokers presented a coherent narrative, backed by financial information. Based on the evidence it was difficult to refute that low-value pledges held in pawn for less than one month were unprofitable. However, those who linked poverty and pauperism believed that the pawn market should be limited, if not eliminated. From this perspective, limited returns on capital, credit rationing and market segmentation were tolerated because they limited the pawn market. The benefit of fewer transactions and limited pricing outweighed the negative effects of credit rationing and the black market. Certain pawnbrokers were not completely against price controls and sought to balance the need for increased profits with the quasi-monopolistic barrier supported by low returns. Pawnbrokers believed that their two-tiered pricing system balanced borrower protection against compromise between the various parties within the trade.

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[164] PBG, 24 February 1868.
[165] PBG, 13 June 1870; Searle, *Morality and Market*, 27-28.
[166] PBG, 2 May 1870.

Forfeiture

Forfeiture restrictions were considered a basic form of borrower protection. Many committee members were reluctant to reduce the 15-month minimum holding period. However, the time required had an impact on business operations such as working capital, resale values and profitability. If pawnbrokers struggled to profit from loans, they might benefit from retailing forfeitures. If sales were generally profitable, then pawnbrokers were more akin to retailers than lenders. If so, then accusations that pawnbrokers encouraged borrower default were credible. This debate highlighted the balance between borrower protection and financial performance.

Again, there was a disparity between policymakers and pawnbrokers, and scepticism concerning the evidence. Hector believed that 'the number of articles that are forfeited is very large and the loss to the poor through forfeiture is very great'. [167] Table 11, which includes PBSC 1870 testimony and information reported in the PBG, challenges this. Annual redemption rates for pawned goods ranged from 93 to 98 per cent. Two pawnbrokers testified that 80 per cent of items were redeemed within three months and 85 per cent redeemed within six months. Data from a low-end business revealed that 92 per cent were redeemed within six months and an additional 6 per cent were redeemed between months 6 and 12.[168] With regard to the lowest end of the trade, Gillman countered Hector's claim: 'A great number of pledges are redeemed within a week.'[169]

The data suggest a high redemption rate in the low-, medium- and high-end trade. Accusations that pawnbrokers aggressively sought borrower property for resale were unfounded.

[167] PBSC 1870, 1971-1974.
[168] PBG, 29 June 1868.
[169] PBSC 1872, 17-22.

Table 11 Estimated redemption rates

Location	Pawnbroker	Time	Redemption Rate
Liverpool	Hardaker	< 3 months	80%
Glasgow	A. McKay	< 6 months	85%
Bradford	Blackwood	Annually	98%
Edinburgh	Russell	Annually	90-95%
Glasgow	A. McKay	Annually	93%
Glasgow	Scoular	Annually	90-95%
Leeds	Scotson	Annually	93%
Liverpool	Hardaker	1870	90-95%
Liverpool	Hardaker	1856-1869	95.5%
London	G. Attenborough	Annually	95%
London	R. Attenborough	Annually	95%
Pollokshaws	G. McKay	Annually	93-95%
Salford	May	Annually	96%

Source: PBSC 1870, 191, 203, 696, 946, 1685, 2030, 2040-2048, 2731, 4278, 4527, 4738, 5027.

Given that most goods were redeemed, why did pawnbrokers want to adjust the redemption period?[170] Pawnbrokers argued that mass-produced clothing did not hold its value, thus depressing secondary market prices. George Scotson, a pawnbroker and member of Leeds town council, suggested that manufactured clothing made of 'shoddy wool' quickly lost its value.[171] When combined with low margin loans, even slight losses on the sale of forfeited goods put financial pressure on pawnbrokers.

Seasonality was also a concern. Pawners understandably raised cash on the most valuable good needed the least. A winter coat pawned in the summer was financially valuable and not otherwise in use. From the pawnbroker's perspective, the twelve-month holding cycle put their sale into the depressed portion of a seasonal market. Attenborough remarked, 'I have

[170] PBSC 1870, 223-230.
[171] PBSC 1870, 5017, 5105.

seventeen month goods in my house … unsold, because from December last I have been unable to sell any of the winter goods, and I cannot touch them until about September.'[172] Alternatively, a pawnbroker could hold on to the goods and sell in seasonally-driven demand cycles. This tactic, however, tied up working capital, decreased the supply of loanable funds and reduced capital turnover. From the borrower's perspective, a shorter holding period would lead to higher sums per article as forfeited goods could be resold at a higher price later.[173] Conversely, borrowers would have to pay their loan sooner, but having accrued less interest.

William Hughes was sceptical that the resale of acquired pledges on the secondary market was unprofitable.[174] In addition to Table 10, which shows that in 1869 the Liverpool sample lost £859 on auction resales, during that same year Hardaker (£117), Lambeth (£147) and Telfer (£167) incurred losses.[175] According to Dicker, 'it is a mistake altogether to imagine that the pawnbrokers look to unredeemed pledges for profit'.[176] Despite the evidence showing losses on the resale of forfeited items, John Simon MP (Liberal) questioned this: 'You [i.e., Dicker] generally make gains on your sales, do you not?'[177] MPs focused on a few book entries showing profitable resales such as a £7 pledged item sold for £17 and the sale of a telescope at £2 on which 15s had been lent.[178] It was suggested that pawnbrokers rigged auction sales in their favour only to acquire and later resell goods for a gain.[179] Orr-Ewing asked whether pawnbrokers 'send a stranger to purchase' auction goods on their behalf. Raynor Storr, a London auctioneer, made it clear that the majority of items were purchased by members of the general public.[180]

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[172] PBSC 1870, 725-726.
[173] PBSC 1870, 201.
[174] PBSC 1870, 560.
[175] PBSC 1870, 141, 834, 2901, appendix c.
[176] PBSC 1870, 560-563.
[177] PBSC 1870, 750-756.
[178] PBSC 1870, 653-655, 783.
[179] PBSC 1870, 1213-1225.
[180] PBSC 1870, 3196-3214.

While Stubbs thought a six-month period might induce the poor to take their winter clothes out of pawn before the cold set in, few others supported a reduction in the redemption period by half.[181] Much of the committee, even those generally well disposed to the trade, were reluctant to reduce the forfeiture period. Gillman, having surveyed pawners in his neighbourhood, suggested the 'longer the better'.[182] If cash were raised to cover an immediate emergency need, as was often argued, and goods were redeemed 'when work was plentiful and wages decent', Gillman's claim that the one-year period plus three months' grace better suited the working poor was difficult to refute. The forfeiture debate confirmed that some policymakers misunderstood the pawnbroking business model. The data and testimony of pawnbrokers indicate that they did not earn substantial profits from the resale of forfeitures. Whether reducing the forfeiture period to six months would benefit borrowers was a matter of opinion.

The Pawnbrokers Act 1872

The select committee report was published in August 1871. Although they concluded that regulation remained necessary, the Select Committee nonetheless believed it should 'be kept within the narrowest limits' and that lending money on items should be left to the individual actors as they saw fit.[183] Orr-Ewing and Hambro opposed the measure during the committee stage. Suggesting that all politics are local, Hambro dropped his opposition after a pawnbroker from his constituency convinced him of the bill's merits.[184] Lord Salisbury voiced certain objections to the bill. His overriding concern was that Parliament was moving 'in the wrong direction' and that complete free trade should be adopted.[185] 'At present, our legislation hampered the trade and

[181] PBSC 1870, 3133-3137.
[182] PBSC 1872, 6-11, 26-29.
[183] HC Report from the Select Committee on Pawnbrokers, vol. 419, 1871.
[184] Hardaker, *History of Pawnbroking*, 267.
[185] HL deb. 6 August 1872, vol. 213.

hampered the customers with a number of regulations; but it did not do what a thoroughly paternal Government would do - protect the poor man against the necessity of going to the pawnbroker.' This perspective understood that if Parliament wanted to protect the poor, a deeper examination of the structural issues driving demand for small loans was needed. His challenge went unanswered. The Earls of Harrowby and Morley countered that the bill had been examined thoroughly and that adequate protections were in place for loans of less than 40s.[186] Thanks to a parliamentary procedural manoeuvre initiated by Charles Forster MP (Liberal), Orr-Ewing's blockage of the third reading was overcome. Without much more concern, the bill received Royal Assent on 10 August 1872 and was enacted as the Pawnbrokers Act 1872, 35 & 36 Vict. c. 93.

The 1872 Act was applicable to any loan of less than £10, unless a special contract was executed. Special contracts were permitted for loans of more than 40s. which were to be signed by both parties and the borrower provided with a duplicate.[187] Every pledge of less than 10s was redeemable within twelve months with an additional seven days' grace, after which the pledged item became the absolute property of the pawnbroker. Pledges of more than 10s were redeemable at any time until they were sold at auction, to occur no sooner than twelve months and seven days after the contract date. Other than special contracts, items could not be forfeited before twelve months. Pawnbrokers had failed to secure a six-month forfeiture period. Even committee members and witnesses who were generally supportive pushed back on this measure. Adding to the mix, a small fraction of the wealthy London

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[186] HL deb. 1 August 1872, vol. 213.

[187] The record is unclear why the 40s rate and not the PPRA proposed 42s was selected. Recall that during the Nottingham sessions Liverpool proposed the 40s rate and their MP, Lord Sandon, was a member of the Select committee. Perhaps the Liverpool delegation had lobbied behind the scenes. Alternatively, a simple explanation is that 40s, or £2, was easy to work with. However, if the figure simplified the calculation of transactions, it is likely that PPRA would have proposed it.

trade had worked behind the scenes to ensure that the six-month proposal would fail.[188]

After the first calendar month, any time not exceeding 14 days was charged as a half-month. A table of rates was to be displayed. Permitted charges for loans of 10s and less included a 0.5d ticket charge and 0.5d for each 2s or part of 2s lent monthly. Permitted charges for loans of 10s and not more than 40s included a 0.5d ticket charge and 0.5d for each 2s or part of 2s lent monthly. For a loan of more than 40s charges included a 1d ticket charge and 0.5d for each 2s or part of 2s lent monthly. The rates were just over 2 per cent monthly or 25 pcpa on loans up to 40s and 1 2/3 per cent monthly or 20 pcpa on loans of more than 40s.

Clause 51 of the Act, which dealt with penalties, can be considered a victory for the pawnbrokers. The clause relieved pawnbrokers of a total financial loss owing to minor clerical infractions. Although it was not particularly controversial during the process, the law also contained a schedule detailing the information that a pawn ticket (which served as a contract) had to include. These were, among others, the name and address of the shop and borrower, the amount, the item pawned, the interest schedule and forfeiture procedures. Information disclosure such as this was debated in the reform of the moneylending market and pre-dates modern lending requirements.

While more detailed than the draft bill produced by the parliamentary agents Dyson and Company, in terms of the major goals, the PBA 1872 did not substantially differ.[189] The Derby scale of 0.5d for every 2s lent had become law. However, based on her reading of the evidence, Margot Finn suggested that the increased rate was insignificant for low-value pawnbrokers.[190] Although certain industry voices made clear at the time, it is worth recognising that the

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[188] Hardaker, *History of Pawnbroking*, 247.
[189] PPRA, 'Draft of a bill to amend the law relating to pawnbrokers of Great Britain' written by F. S. Reilly, 27 October 1868. The draft bill focused on the areas where reform was sought, but did not repeal any clauses that pawnbrokers believed should remain in effect.
[190] PBG, 14 November 1870; Tebbutt, *Making Ends Meet*, 129.

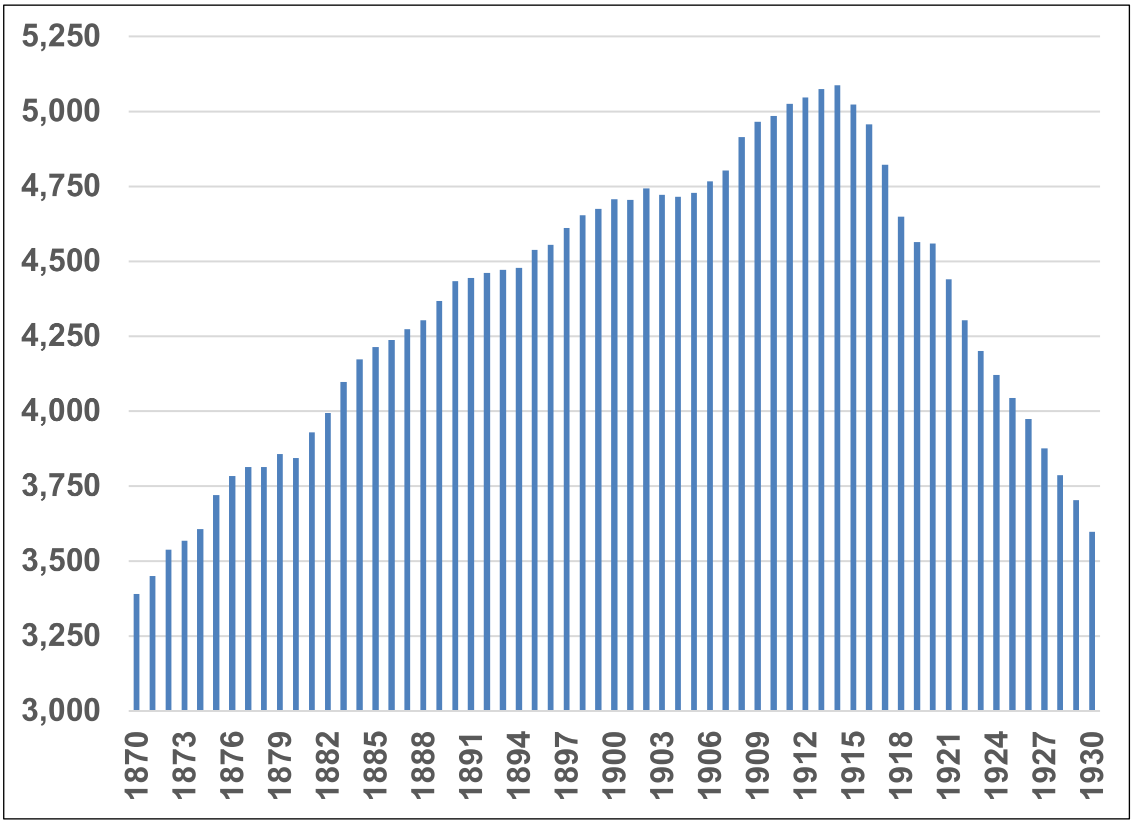
Act reflected the Derby scale, which was heavily influenced by Liverpool and Manchester, both low-value pawn cities. For Dicker, a 5 per cent increase on Saturday, 7 May 1870 (see Table 9) might have made his low-value business profitable. Moreover, while regulation alone did not determine the industry's development from 1872 to 1914, licensing grew year on year in 38 of the 40 years, with an overall CAGR of 70 per cent.[191] Such growth would have been hard to achieve if low-value businesses did not in some way gain from the increased rates.

Figure 1 shows the number of pawnbroking licences issued from 1870 to 1930. The series shows an upward trend until the First World War and a decline thereafter.[192]

[191] Annual report of the Commissioners of HM Inland Revenue, 1870-1909 and HM Customs & Excise thereafter. Further research is needed to understand the economic variables that influenced this expansion. A working paper examining this growth from a quantitative perspective is forthcoming from Craig McMahon and Walter Jansson of the University of Cambridge.

[192] The reasons for this decline are analysed in Chapter 4.

Figure 1 Pawnbroking licences, 1870-1930



Sources: Annual report of the Commissioners of HM Inland Revenue, 1870-1909; and HM Customer & Excise thereafter.

D. Conclusion

While pawnbroking reform did not generate as much interest as the Poor Law or Factory Acts, with 200 million loans made annually, their impact was substantial.[193] Pawnbrokers found that operating under the PBA 1800 was increasingly burdensome and eroding their profitability. Pawnbrokers claimed that the PBA 1800 price cap prohibited them from lending on bulky items and that low-value pledges were unprofitable. Regulation had limited the collateral options for borrowers without addressing the urgent need for cash, which

[193] PBSC 1870, 1862.

resulted in a supply shift to the illegal market. More technically, pawnbrokers argued that price controls had encouraged credit rationing and market segmentation. To improve their profitability and increase collateral options for borrowers, pawnbrokers wanted to reform the PBA 1800 price cap.

With usury having been repealed 18 years earlier, pawnbrokers believed their cause would gain widespread support. Before seeking that support they needed to overcome the long-time tensions between London and the provinces and bring together disparate interests within the trade. At one extreme were the complete free traders and at the other were pawnbrokers seeking to maintain the status quo. The former believed that regulation distorted the market and that commerce functioned best without state interference. Competitive markets would provide the optimal outcome for lenders and borrowers alike. They found it unfair that pawnbroking was exempted from the repeal of the Usury Act, while moneylenders operated freely. Within the London trade, however, many wanted to avoid attention, less their lucrative high-end trade be disrupted. Even so-called free traders feared that a substantial rise in profits would attract unwanted competition. In that respect, there were perceived benefits to regulation.

Negotiations within the trade took place at the local, regional and national levels. Even after a framework was in place, amid much protest further compromise was required. Ultimately, through the PPRA, a two-tiered price system, which included the option to negotiate a special contract, was agreed. After receiving expert advice, pawnbrokers approached Parliament. They believed their dual approach of fixed and flexible pricing would satisfy Parliament's need to protect borrowers and increase profits without attracting unwanted competition. At every point in the process, pawnbrokers readily and methodically lobbied MPs to ensure that their reform did not fall by the wayside.

How that reform would be received by policymakers depended in part on one's understanding of how the demand for small sums related to poverty. There was little debate that many urban working-class families struggled to obtain a reasonable standard of living. In an emergency, these families had few savings from which to draw or access to the banking system. The Victorian understanding of urban poverty was complicated and does not fit easily into well-defined categories. Speaking generally, poverty had evolved from what was once considered a natural condition into a social problem in need of a policy response. Whether poverty was a crime or a disease, a natural state or an institutional by-product, a class or a distinct culture, absolute or relative and whether social policy was part of the problem were all debated. Distinctions were being made between the 'undeserving' and the 'deserving' poor, with many considering that pawnbrokers served the former. Responses to sort out the 'problem of poverty' varied from limiting the immoral temptations of pauperism to restricting relief to the 'truly' vulnerable, Factory and Child Labour Acts and encouraging 'right behaviour' by increasing participation in the free market economy. [194] Many of these suggestions were present in the pawnbroking debate.

Whether the poverty policy atmosphere was primarily driven by fear, as Stedman Jones argued, or guilt, as suggested by Himmelfarb, is debatable. In the case of pawnbroking, it is likely that both factors were at play. The *Daily Telegraph* suggested that pawnbrokers invoked guilt in the wealthy, as the shops reminded them of the 'painful necessities amongst the poor'. [195] However, fear better explains both the visceral anti-pawnbroking reaction and doubt about the financial evidence presented by Orr-Ewing and others. There was a disagreement between this attitude and the lived realities of the working poor. Charles Mills MP (Conservative) believed that pledgers wore expensive Sunday clothes above their means and needed cash as a result. Holford countered, saying that they simply wanted to wear clean clothes on Sunday

[194] Gertrude Himmelfarb, *The Idea of Poverty: England in the Early Industrial Age* (London: Faber, 1984).
[195] *Daily Telegraph*, reprinted in PBG, 5 August 1872.

and pledged them on Monday to keep them clean.[196] Pledging was used as a storage facility for families living in insanitary and cramped conditions.

Those with deeply held beliefs about the link between debt, morality and the 'undeserving poor' were not likely to have their mind changed by pawnbrokers, charity workers or others in favour of reform. McCall went so far as to say that people who pawn more than 10s were from a different moral class from those that pawned for 10s or less.[197] These people believed that borrowers were irrational and irresponsible and that 'indiscriminate' pawn credit led to pauperism. It was irrational to need small sums and pay such high rates for them. Like indiscriminate charity, pawnbrokers enticed workers away from thrift, savings and temperance, values that, if practised, led to success and economic advancement. The policymakers supporting greater regulation wanted to limit the industry and protect borrowers 'from themselves', neither of which related to the structural features of the economy. This scenario differed from efforts to regulate the railways. The impetus for the Railway Regulation Act 1844 was to counter monopolistic pricing power and subsidise travel for the working class.[198]

As Martin Daunton argued, while middle-class observers viewed pawning as irrational, for the lower classes it was a rational strategy utilised to overcome unavoidable budget shortfalls.[199] Surprisingly to many committee members, charity workers most familiar with the lives of the working poor countered anti-pawnbroker rhetoric and fought against attempts to link improvidence and poverty. Those in support of free trade were more likely to view lenders and borrowers as rational and responsible and to consider pawn credit as useful. William Miller, a magistrate, suggested that the poor and the rich alike needed access to banking facilities.[200] Some pawnbrokers, politicians

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196 PBSC 1872, 341-342, 867-873.
197 PBSC 1870, 1434-1435.
198 Johnson, *Victorian Market*, 16.
199 Martin Daunton, *Wealth and Welfare: An Economic and Social History of Britain, 1851-1951* (Oxford: Oxford University Press, 2007), 396.
200 PBSC 1870, 1547-1551.

and charity workers argued that removing price controls would best serve the working poor, a class that could control its own affairs. In this case lifting regulations was based on the belief that market competition provided the best form of borrower protection. From this vantage point neither borrower nor lender was considered evil, immoral or degenerate.

Although the process saw these Victorian small businessmen debate free trade theories, practical concerns and evidence proved more important. While many within the trade, certain MPs and other witnesses preferred unfettered market competition, they recognised that there was little political will, as well as resistance within the trade, for such a framework. Removing existing regulations would be an entirely different political process from updating aspects of a 72-year-old law. Although laissez-faire and poverty theory were engaged, the reform process advanced methodologically and practical concerns were at the fore.

It was believed that the PBA 1872 price schedule, forfeiture period, licensing system and disclosure requirements would protect borrowers while allowing the freedom to negotiate special contracts when appropriate. This supports Daunton's argument that the Victorian period was not simply a triumph of laissez-faire over moral economic principles.[201] In fact, for Orr-Ewing, morality and economic outcomes were interdependent. The efforts of the PPRA cannot be overestimated. Even if MPs were well disposed to free trade, more than a few needed to be convinced that the poor were helped by the pawnbroking system. Moreover, pawnbrokers had to overcome long-standing internal disagreements. The PPRA helped to form the PBA 1872, an Act that raised the price ceiling and required fewer administrative procedures. The organisation of the reform movement and its clarity of vision contrast with late nineteenth- and early twentieth-century moneylenders. This and related topics are examined in Chapter 3.

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[201] Martin Daunton, *State and Market in Victorian Britain: War, Welfare and Capitalism* (Woodbridge: Boydell Press, 2008), 4.

3 The Moneylenders Acts 1900-1927

This chapter analyses the Moneylenders Select Committee 1897 (MLSC 1897), the Moneylenders Act 1900 (MLA 1900), the Moneylenders Select Committee (MLSC 1925) and the Moneylenders Act 1927 (MLA 1927). In 1897, policymakers were motivated to reform moneylending as a result of growth in loan volume, prolific advertising and judicial conflicts concerning small debt claims. Their intention was to restrict the ‘evil’ industry. How far, though, was Parliament willing to regulate? Did policymakers use the price cap on pawnbrokers as a point of reference? Which options did they consider and what constraints did they face? Why were loan rates so high? Which evidence did moneylenders present to justify those rates and how was it received? If moneylenders were considered evil, why were price controls rejected? Did policymakers consider how market segmentation, credit rationing and price clustering would influence marginal borrowers? This research argues that the implementation of price controls was constrained by a preference for freedom of contract, which was considered a British value, as well as anti-usury sentiment. Instead, the MLA 1900 clarified the role of the judiciary in rewriting moneylending contracts. Policymakers did not institute a licensing requirement as they considered it would legitimise the industry and indicate government approval of the business model.

In the 1920s, the motivation for reform was to correct the ineffective MLA 1900 and limit the ‘evil’ industry. While politicians and the public were frustrated by the industry, were they focusing on the same issues as those expressed 25 years earlier? Did a fierce debate rage between the ‘protectors of capitalism’ and social reformers? How were high interest rates understood and what solutions were considered to relieve borrowers? Would they appeal to fraud laws or seek additional regulation against advertising? Did moneylenders consider certain regulations to be beneficial? Was the industry better organised than in 1900? This research argues that, unlike the MLA 1900 which was constrained by theoretical concerns over freedom of contract, price controls were rejected in 1925 owing to practical concerns about their implementation and fears of credit rationing. Instead, to help judges alleviate borrowers burdened with high rate loans, the MLA 1927 provided a 48 per cent guidance rate. This was intended to provide a benchmark without unduly interfering in the market's pricing mechanism. Also, to restrict the industry, the MLA 1927 limited advertising and enacted licensing requirements. Compared to 1900, there was greater willingness to regulate the 'dark methods' of capitalism.[1]

This chapter analyses what motivated reform and how regulation was formed. Key areas of interest include price controls, advertising, disclosure terms and enforcement mechanisms.

A. The judiciary and market intervention

Unlike pawn, obtaining a small unsecured cash loan required an application. The intent was to assess an applicant's ability to repay through a series of small regular payments, spread out over a period of many months. The repayment terms catered to borrowers living on low-wages and without adequate savings. It was paramount for a moneylender to understand an applicant's wage and expense obligations. While certain critics disparaged moneylenders for having created 'insulting' application procedures, moneylenders argued that in-depth questioning was part of the risk-assessment process.[2] Victorian lenders inquired as to an applicant's marital status, annual income, rent owed, rent accrued, employment details, an estimated value of furniture and effects, the utmost amount of debts and liabilities owed and past borrowing history.[3] Occasionally, especially for new

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[1] HC deb. 23 April 1926, vol. 194.
[2] Thomas Farrow, *In the Money Lender's Clutches* (London: Yeoman Company, 1896), 15-16.
[3] Ibid; Thomas Farrow, *The Money-Lender Unmasked* (London: Roxburghe Press, 1895), 213-214.

customers, a moneylender confirmed certain details through a home visitation. Successful applicants received cash on site. While these small loans were considered as ‘scraps from the banker’s plate’, moneylenders had developed a business model responding to the unique borrowing needs of the working poor.[4] Despite their high cost, costs moneylenders argued exceeded bank rates owing to high administration expenses and the risk associated with unsecured lending, in the late nineteenth century, loan volumes were growing.

In the 1890s, the media devoted attention to the industry’s growth, high interest rates and advertising.[5] The enormous number of advertisements was proof enough that the industry had grown. The *Daily Telegraph* and *Standard* carried an estimated 18,000 moneylending advertisements annually.[6] Certain policymakers considered the industry’s growth to be excessive and the advertising content was believed to seduce people with misleading terms. From 1895 to 1896, scarcely a day passed without reports of a moneylending contract that had carried ‘extortionate’ terms. Newspaper articles such as ‘Interest at 400 per cent’ and ‘Ruined by Exorbitant Interest’ made for sensational headlines.[7] The latter article recounted that in 1897, Simpson and Co. lent £5 16s to Arthur Slater, a railway fitter earning approximately £84 annually. Slater had borrowed the money to pay medical bills. After paying £9 12s to Simpson, a balance of £9 10s remained. *The Liverpool Mercury* categorised such transactions as abusive.[8]

Certain moneylenders, such as Isaac Gordon of Liverpool, relied on the court system to pursue their claims. Gordon was not alone. Isaac Samuel estimated that over a six-year period he had issued 34,344 loans and had sued

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[4] Dorothy Orchard and Geoffrey May, *Moneylending in Great Britain* (New York: Russell Sage Foundation, 1933), 31. The high cost of loans and the lender’s expense structure are detailed in sections B. and C. of this chapter.
[5] ‘Alleged legal abuse’, *Liverpool Mercury*, 3 January 1895; ‘The moneylending business’, *Pall Mall Gazette*, 9 January 1895.
[6] ‘Moneylenders’, *Cheshire Observer*, 15 May 1897.
[7] ‘Interest at 400 per cent’, *Lloyd’s Weekly*, 1 July 1900; ‘Ruined by Exorbitant Interest’, *Leicester Chronicle and Mercury*, 20 February 1897.
[8] ‘Alleged Legal Abuse’, *Liverpool Mercury*, 3 January 1895.

4,694 debtors.[9] On average, he pursued legal recourse on two loans a day. Gordon's and Samuel's use of the court system generated much interest in their affairs, the role of courts in amending loan contracts and moneylenders more generally.[10] Thomas Farrow's *The Moneylender Unmasked*, was critical of the industry and received considerable attention. He found a friendly audience in newspaper reviews and political circles. Farrow had been the private secretary of William Smith MP (Conservative, Leader of the Commons) and later Robert Yerburgh MP's (Conservative) political secretary.[11] As a political insider, Farrow's categorisation of the industry as evil and his call for an investigation did not go unnoticed. As early as June 1895, politicians asked the government to set up a commission to investigate the 'evil' industry.[12] On 16 April 1895, the *Shields Daily Gazette* reported that 'there is not one of the numerous class which preys upon society in general either so numerous or so aggressive as the unscrupulous moneylender'.

Market intervention and the judiciary

Alongside the rapid growth of the industry, two legislative Acts contributed to the industry's development. First was the repeal of the Usury Act in 1854. Legislators appeared not have to have considered how the repeal would affect the small loan market. One theory suggested that, at the time of repeal, the demand for small loans was insignificant.[13] It is more likely that few policymakers considered the borrowing needs of the working poor. Regardless, the repeal of the usury laws contributed to the development of the moneylending market. A county court judge reflected that 'the repeal of usury laws has brought into existence these swarms of moneylenders, who like

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[9] MLSC 1897, 1914.
[10] 'Money-lending revelations, 350 per cent interest', *Sheffield Evening Telegraph*, 27 February 1896.
[11] See the British Banking History Society entry concerning 'Farrow's Bank'. Ironically, in 1921, Farrow was convicted of bank fraud, having lost approximately £2.8 million (£124 million in 2015 terms) of investor funds.
[12] 'The usury laws', *Northern Echo*, 18 June 1895.
[13] MLSC 1897, 4522-4523.

parasites breed on animals, injure their vital power, and impair the health of the commercial body'.[14] Accompanying the repeal was a shift towards contractual relationships between unrelated parties. An institutional evolution was required to support the rise of contracts among the working class. This is reflected in the establishment of county courts, which were formed partly to handle an increase in small debt claims.[15]

County court judges were on the front line of the nascent consumer- and contractual-based society. Found in the legal system were 'liberal' judges who refused to interfere with contracts executed by able-minded adults on the one hand, and, on the other, 'revisionist' judges who proactively revised contracts in favour of the borrower. These opposing approaches created legal quandaries and public confusion concerning the small loan market. Margot Finn suggested that while classical theorists championed the 'freedom of contract', the daily interaction of individual economic activities with a 'malleable' legal system reflected a complex interaction between the law, commerce, class and gender.[16]

Finn argued that the 'outright refusals' of some county court judges to enforce small debt contracts demonstrated the complexity of personal credit relations in nineteenth-century Britain.[17] Revisionist judges showed sympathy for small loan borrowers and intervened to revise small debt contractual obligations in their favour. Judge Atkinson of Leeds County Court was one. His goal was to balance the contractual debts owed to lenders against the economic exigencies of the borrower.[18] James Mathew, a judge, rewrote contracts to avoid the judicial system acting as a 'lever of oppression'.[19] These

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[14] Thomas Farrow, *The Money-Lender Unmasked* (London: Roxburghe Press, 1895), prefatory.
[15] Margot Finn, *The Character of Credit: Personal Debt in English Culture, 1740-1914* (Cambridge: Cambridge University Press, 2003), 280.
[16] Ibid., 7.
[17] Ibid., 259.
[18] Finn, *The Character of Credit*, 262.
[19] MLSC 1898, 1441.

judges based their power to revise private contracts on a legal precedent known as ‘equitable jurisdiction’.

Equitable jurisdiction originated in the Court of Chancery, which enjoyed unique jurisdiction regarding ‘fiduciary relations, protecting persons who were unable to protect themselves’.[20] Previously, equitable jurisdiction was applied to nullify contracts for wealthy heirs who had borrowed against a reversion. By the late 1800s revisionist judges applied the same legal principle in the county court system. In doing so they breached more than juridical boundaries; the legal principle shifted from supporting the wealthy to supporting the poor and the middle classes. The application of this principle was limited. A judge could only investigate a transaction if he suspected fraud and if the amounts were for less than £500.[21] He could not, for example, hear a complaint based on the interest rate or because a borrower had incurred excessive loan renewal fees.

The activity of revisionist judges generated debate in Parliament. Notably, MPs took little issue with judicial intervention to stave off the financial disaster of wealthy families whose male heir had contracted under high rates of interest. Judge Owens recounted the case of Lord Aylesford, an heir, who contracted with a moneylender at an exorbitant rate.[22] The court set the moneylending transaction aside, requiring only the repayment of principal and 5 per cent interest. This was a well-known and often cited case in support of judicial interference. The debate turned on whether ‘ordinary’ transactions executed by the ‘poor and ignorant’ should be dealt with in the same way.[23]

Judge Frederick Falkiner testified that while ‘it is easy’ to find cases when the court had interfered in the case of wealthy heirs, it was ‘not easy’ to find cases of others who have borrowed, however ‘usurious’ the loan or for whatever ‘foolish’ purposes.[24] He believed the courts had drawn a clear legal distinction

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[20] MLSC 1897, 3660.
[21] MLSC 1897, 3659-3660, 4432-4436.
[22] MLSC 1897, 4431.
[23] MLSC 1897, 3661.
[24] MLSC 1898, 241-242.

between the two types of case. Activist judges countered with legal precedent, citing *Nevill v. Snelling*.[25] It was argued that this case applied equitable jurisdiction further than liberal theorists acknowledged. In 1898, George Lewis, a City lawyer who focused on financial institutions and was known for his prosecution of the directors of the Overend and Gurney Bank, testified that he failed to understand why a court of equity would set aside a harsh and unconscionable bargain for expectant heirs but was 'forbidden' to do so on behalf of the 'public'.[26]

While activist judges could not nullify a contract, 'reopen' past transactions or relieve against default interest, they could change the instalment due. By decreasing the instalment to a nugatory sum, the contract in practice became worthless.[27] In one case the judge decreased the instalment to 1d a month, thereby extending the loan maturity to more than 140 years.[28] The aim of this intervention was to 'protect those who are not capable of protecting themselves'.[29] Supporters argued that the execution of contracts by 'unequal parties' committed 'under duress' required judicial intervention.[30] Bargaining inequity, or when one party was 'weak' and the other a usurer or 'extortioner', presumed that the weak party was being taken advantage of. As with expectant heirs, the main point was not the legal doctrine of fraud, but satisfaction that the bargain was harsh and unconscionable.[31]

It can be argued that revisionist judges intervened because of bargaining inequity. Owing to economic need, the borrower had *not* entered a contract freely, and under the legal concept of harsh and unconscionable some judges were willing 'to correct' this failure. On a case-by-case basis, they implemented 'reform' according to their view of inequitable bargains and to protect the poor.

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[25] *Nevill v. Snelling* (1880) LR 15 CH D 679.
[26] MLSC 1898, 7-8.
[27] MLSC 1898, 228.
[28] MLSC 1897, 826, 931.
[29] MLSC 1897, 3450-3451.
[30] MLSC 1897, 4493, 4542.
[31] MLSC 1897, 4659; MLSC 1898, 1440.

These judges were not alone in their belief that a social economy existed within the market system. Farrow sought reform because the moneylending system ‘gnaws at the vitals of our social economy’.[32] This belief showed that the fair price of money differed from the market price.

The second judicial approach was influenced by classic economic theory. This view held that commercial transactions, industry and commerce should be free from regulation.[33] Proponents of this school found contractual interference particularly offensive and asked that if judges interfered with moneylending, what was to stop them from rewriting other contracts?[34] This school believed that transactional outcomes were efficient and that government interference distorted naturally occurring market incentives.[35] It was argued that criminal law dealing with fraud gave borrowers sufficient protection. Accordingly, moneylenders should be treated in the same way as other commodity traders.

[32] ‘Literary notes review’, *Birmingham Daily Post*, 15 February 1895.
[33] HC deb. 21 June 1900, vol. 84.
[34] MLSC 1898, 303-304.
[35] E. Philip Davis and Miguel Sanchez-Martinez, ‘Economic theories of poverty’, Joseph Rowntree Foundation (June 2015), 15-18.

B. The formation of regulation 1897–1900

> After diligent enquiry and long research, I am bound to come to the conclusion that a deeply rooted evil exists in our midst – an evil that eats into the bone and sinew of the poorer class, an evil that corrodes the happiness and comfort of many working men.
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> ‘Victims of usury’, *Sheffield Independent*, 8 January 1896

The repeal of the usury laws and the conflict between liberal and revisionist judges created uncertainty that impacted the moneylending market. How far should judges intervene in private contracts? Furthermore, media attention, the rapid growth of the industry and the proliferation of advertisements contributed to the calls for a parliamentary investigation. In 1894, Yerburgh, along with his secretary, Farrow, pushed the Board of Trade to prosecute ‘so-called banks’ that charged usurious rates.[36] Although sympathetic, the Board responded that it lacked the power to do so. Yerburgh then pressed for a Royal Commission to investigate usury and the ‘grave abuses’ of moneylenders whose ‘victims’ were the working class.[37] In 1895, William Harcourt MP (Liberal, Chancellor of the Exchequer), denied Yerburgh’s request for an investigation. Harcourt doubted that regulation could prevent moneylenders from making victims of people in desperate need of money. By 1896, however, Arthur Balfour MP (Conservative, Leader of the Commons, Prime Minister 1902-1905) agreed to form a select committee, which was commissioned on 6 April 1897 to uncover the ‘alleged evils’ of high interest loans and alleviate the ‘oppressive’ conditions of repayment between the poor and moneylenders.[38]

Over the course of 26 hearings the committee interviewed judges, magistrates, bureaucrats, lawyers, lenders and borrowers.[39] Given Gordon’s

[36] HC deb. 10 May 1894, vol. 24; HC deb. 1 April 1895, vol. 32.
[37] ‘Money-lenders’, *Western Mail*, 2 April 1895.
[38] HC deb. 8 June 1896, vol. 41; HC deb. 6 April 1897, vol. 48; MLSC 1897, Introduction. The committee included Robert Ascroft (Conservative), Thomas Bayley (Liberal), James Caldwell (Liberal), Richard Chaloner (Conservative), William Garfit (Conservative), Walter Hazell (Liberal), Arthur Jeffreys (Conservative), David Lloyd-George (Liberal), Archie Loyd (Conservative), Robert Price (Liberal), Terrance Russell (Liberal, Chairman), Augustus Warr (Conservative), George Whiteley (Conservative) and Robert Yerburgh (Conservative).
[39] HL deb. 20 February 1899, vol. 66.

and Samuel's use of the court system, it is not surprising that they were called to testify. In his opening remarks, Lord James of Hereford drew attention to the 'many distinguished judges' and officers of the court that had testified. The judiciary and lawyers were presented as having considerable knowledge of the moneylending market. Farrow based some of his testimony on 574 moneylending transactions that had appeared in the court system.[40] However, this sample was biased in that moneylending transactions that required recourse to the judiciary were more contentious than those remaining outside the legal system. The Select Committee held the opinion of the judiciary and legal profession in the highest regard. Revisionist and liberal judges, the ideas they espoused and the type of transactions that reached the court system influenced how the committee understood the moneylending industry.

After concluding slightly more than half of its scheduled hearings, the committee published its preliminary findings. The following excerpt demonstrates its thinking:

> The Committee unhesitatingly come to the conclusion that the system of money lending by professional money lenders at high rates of interest is productive of crime, bankruptcy, unfair advantage over other creditors of the borrower, extortion from the borrower's family and friends, and other serious injuries to the community and although your Committee are satisfied that the system is sometimes honestly conducted they are of opinion that only in rare cases is a person benefited by a loan obtained from a professional money-lender and that the evil attendant upon the system far outweighs the good.[41]

Before the 1897 committee was completed, many policymakers had rendered judgement on moneylenders and their trade. So strong was the anti-moneylending sentiment that George Lewis, with 40 years of 'great' judicial experience, argued that he '[had] never known a single instance in which the borrower has benefitted'.[42] Farrow claimed that no man had 'righted' himself by borrowing from a moneylender.[43] Unlike pawnbrokers, moneylenders failed to overturn the widespread belief that they encouraged crime, bankruptcy,

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[40] MLSC 1897, 487. Unfortunately, the data are not available.
[41] MLSC 1898, i-v.
[42] HL deb. 16 March, vol. 68.
[43] MLSC 1897, 1292.

extortion and injury. Henry Marks MP (Conservative) believed that the recent exposure of 'money-lending vampires' demanded urgent attention.[44] During that same debate it was argued that 'depriving the poor amongst the working-class of all moneylenders' would be 'distinctly good'. Marks, then, was not alone in seeking to bring an end to moneylending. The verdict was clear: small cash loans were of no benefit to the borrower.

How far, though, was Parliament willing to regulate? Which options did they consider and what constraints did they face? Why were loan rates so high? What evidence did moneylenders present to justify their rates and how was it received? The following subsections analyse the committee's investigation into high interest rates, price controls, disclosure terms and enforcement mechanisms.

High interest rates

Newspaper headlines reported APRs of 200 and 300 per cent and even rising into the thousands. The problem for policymakers was to decide why rates were so high, whether government should regulate and, if so, how. The evidence indicated that British moneylenders charged a wide range of interest. Data from 40 moneylenders showed rates of 60 to 170 pcpa.[45] These rates were on issued bills of sale and, as required by law, were registered with the local municipality. In 1897, 881 bills of sale were registered in the 15 courts that comprised district 36.[46] Of the 881 bills, 487 held rates not exceeding 5 pcpa and 169 held rates not exceeding 60 pcpa. However, the overwhelming majority of lending was in the form of promissory notes, which demanded a higher rate of return. In East London, the poor borrowed from professional moneylenders at 1d in the shilling a week (approximately 400 pcpa). In similar

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[44] HC deb. 26 June 1900, vol. 84.
[45] MLSC 1897, 110.
[46] MLSC 1898, appendix 5. The districts included Northampton, Oxford, Banbury, Wellingborough, Kettering, Abingdon, Wantage, Thame, Buckingham, Aringdon, Towcester, Bicester, Witney, Woodstock and Brackley.

neighbourhoods, larger loans were offered at lower rates. Often, these loans followed a pattern of £12 lent on a £18 promissory note with 30s due in twelve monthly instalments.[47]

In other cases, promissory notes were priced at 0.5d in the shilling a pound per week or 216 pcpa.[48] The highest rate admitted during the proceedings approached 3,000 pcpa.[49] Judge Francis Roxburgh of the Lord Mayor's Court of London suggested a range of 60-600 pcpa.[50] George Lewis, a solicitor, testified that the usual rate was 60 pcpa, but admitted to seeing rates exceeding 2,000 pcpa.[51] Farrow estimated that the usual interest rate was 60 pcpa.[52] Issac Samuel, a moneylender and principal owner of Fieldings Limited, confirmed Farrow's estimate. Over seven years and six months, Samuel issued 34,344 loans, 99.2 per cent of which were on promissory notes with an average rate of 60 pcpa.[53]

When James Caldwell MP (Liberal), a committee member, asked Gordon whether a loan of £100 with £100 interest due in three months was excessive, Gordon replied, 'Certainly not'.[54] Gordon believed that the interest rate reflected the risky nature of the business. In that transaction, he had lost not only the interest, but also the whole of his principal. Matching rates to perceived credit risk, Gordon charged men of 'good character in solvent positions' 15-20 pcpa.[55] By comparison, pawnbrokers were permitted to charge up to 25 pcpa on collateralised loans. When asked if moneylenders should be operating at the same rate as pawnbrokers, Judge Stevenson Owen declared that if a moneylender could not operate at 25 pcpa, 'he should put his shutters

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[47] 'Moneylenders', *Marlborough Express*, vol. XLI: 213, 1907.
[48] MLSC 1897, 110.
[49] MLSC 1898, iii-v.
[50] MLSC 1898, 3556.
[51] MLSC 1898, 6.
[52] MLSC 1897, 110.
[53] MLSC 1897, 1868-1892.
[54] MLSC 1897, 3369.
[55] MLSC 1897, 2204.

up'.[56] Another judge testified that, for moneylending, '20 per cent seems high'.[57] These comments demonstrated a misunderstanding of the risk differential between collateralised and promissory lending. Unlike pawnbrokers, moneylenders failed to counter those assumptions with concrete evidence.

Some moneylenders justified the cost of their loans by citing high expense ratios. As a percentage of the principal, moneylender loans were expensive to administer. John Kirkwood, a moneylender, cited expenses as justification for his interest charges: 'Rent, rates, and taxes, salaries, advertisements, law costs, commissions, travelling, hotel and incidental working expenses, all of which have to come out of whatever interest is obtained.'[58] During a parliamentary debate, it was estimated that expenses were 15-20 per cent of gross interest.[59] Samuel concurred with that range and submitted his accountancy-certified income statement, which showed expenses of 22 per cent.[60] Samuel explained that when he lent 1s and earned 1s one week later, his profit was 'but a shilling'.[61] The rate of interest of 1s on 1s was required to cover the risk of loss and operating expenses. Some politicians agreed with this. Augustine Birrell MP (Liberal) said that high interest rates were a result of office expenses and bad debt. Samuel compared moneylending to insurance underwriting, as both employed risk-based pricing.[62] Pushing the analogy further, Gordon claimed that he did not charge interest, 'but an insurance premium on sold money'.[63]

Another analogy treated moneylenders as money retailers. In this framework deposit-based commercial bankers, or wholesalers of money, had a

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[56] MLSC 1897, 4007, 4583.
[57] MLSC 1898, 596.
[58] MLSC 1897, 4000.
[59] HC deb. 21 June 1900, vol. 84. Moneylenders referred to 'gross interest', and from that amount subtracted expenses and bad debts. Samuel reported that over six years his gross interest was approximately 33 per cent, from which he subtracted 11 per cent in expenses and 11 per cent in bad debt, which left 11 per cent in profit.
[60] MLSC 1897, 1901.
[61] MLSC 1897, 2089.
[62] MLSC 1897, 2173.
[63] MLSC 1897, 2841.

lower cost of capital and thus operated profitably at lower interest rates. Continuing the retail model, and utilising a similar example as did John May, a pawnbroker, during the PBSC 1870, Samuel explained, ‘We sell £5 for £6 5s ... if a butcher sold 5s worth of meat and it cost him 4s that would be a shilling on the transaction; that is 20 per cent. If that was multiplied as you multiply moneylender’s interest that would be 7,000 pcpa.’[64] According to this logic, the principal is the product with an associated wholesale cost, whereas the interest charged is the product mark-up. Like retailers, lenders’ gross profit had to cover all expenses, including bad debt, administration, the owner’s salary and a return on capital.

Even with the support of Augustine Birrell, James Maclean MP (Liberal) and Walter Wormersley MP (Conservative), moneylenders failed to convince the majority that the interest rate charged on small sums had to cover expenses and default risk and provide a sufficient return on capital. There was little appreciation that most borrowers could not obtain finance elsewhere.[65] Although more support was offered during House debates than in the committee, it was impossible to overcome the shock value of newspaper headlines quoting interest rates into the thousands. Many considered that moneylenders were ‘unscrupulous men who prey’ and ‘entrap’ borrowers. Thomas Bayley MP (Liberal) believed that the high interest rate was ‘a sore eating in the very life of the working-class’.[66]

While some evidence suggested that moneylenders charged a range of rates based on risk categories and expenses, their business model drew little sympathy and contributed to hostility against it. Ultimately, the Select Committee reported that the usual interest rate was 60 pcpa.[67] Their conclusion set the first boundary for what might be considered a ‘normal’ market rate. Whether that charge was based on real expenses or reflected extortion was

[64] MLSC 1897, 2080.
[65] For an exception see MLSC 1897, 2096-2099.
[66] HC deb. 21 June 1900, vol. 84.
[67] MLSC 1898, iii.

debated. For those that believed moneylenders charged exorbitant rates, one option was to reinstate price controls. But if moneylenders were considered 'evil', why were price controls rejected? The next subsection analyses that question.

Price controls

Price controls were proposed to 'remedy the evils' of high-cost loans.[68] Advocates of price controls proposed a range of rates: 25 pcpa received the most support. However, this rate barely exceeded the *lowest* charge that Gordon had told the committee, which was 15-20 pcpa.[69] A rate of 25 pcpa demonstrated the committee's mind, which was set in favour of legal precedent and demonstrated its continued misunderstanding of the industry. The former claim is substantiated by reference to the PBA 1872 and its capped rate of 25 pcpa.[70] The latter was supported by the committee's refusal, in this instance, to acknowledge the risk differential between pawn and promissory lending. The repeal of the usury laws was a major constraint. To overcome that constraint, supporters of price controls cited pawnbroking legislation as legal precedent and argued that they were extending an approved restriction on economic activity.[71]

Gordon argued that usury was an affront to freedom of contract and that risk profiles should determine the interest rate.[72] Gordon's argument mirrored that of liberal judges. From a practical standpoint, he argued that price controls would limit the supply of funds and, through credit rationing, harm those most in need of emergency loans.[73] Lenders predicted that price controls would render 7-14 day loans unprofitable, and thus they would cease to be offered.[74]

[68] MLSC 1898, v-vi.
[69] MLSC 1897, 2204.
[70] MLSC 1898, 3516.
[71] MLSC 1897, 4425.
[72] MLSC 1897, 2173.
[73] MLSC 1897, 3094.
[74] MLSC 1897, 4586.

While it can be considered in the best interest of lenders to make such predictions, that price controls encouraged credit rationing was also an economic reality. Unlike their PBA 1872 counterparts, who were aware that price controls encouraged a black market, few policymakers voiced concern about the effects of market segmentation. Judge William Owen was an exception. He supported price controls and believed that the effects of credit rationing would be of benefit. He argued that borrowers no longer able to access credit were better off and that such loans simply deferred 'the evil day' of reckoning.[75] Whereas in 1897 his argument gained little support, this line resurfaced in 2014 and proved crucial to the implementation of price controls in 2015. Whether credit rationing helped or harmed borrowers is a recurring theme in the period covered by this research.

Another recurring theme was bargaining inequity. It was debated whether regulation could mitigate situations when the cost of a loan was secondary to non-price features such as speed and access. Judge Lumley Smith suggested that rates were high owing to bargaining inequity between lenders and working men making their 30s to 40s a week.[76] According to the chairman, '[E]verybody who has heard the evidence must feel that when people are hard pressed for money, and must get it, they will give anything for it. It is very hard for the law to protect people in that position.'[77] The MLSC 1897 concluded that price controls were not an appropriate solution. Although it was recognised that legislation could address the social needs of the people, Bentham's argument that usury made lenders and borrowers worse off, and the practical difficulties of implementing a single rate across an entire market were difficult to overcome.[78] Citing Jeremy Bentham and the economists Adam

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[75] MLSC 1897, 4587-4588.
[76] MLSC 1897, 1106, 3493, 4645, 4665.
[77] MLSC 1897, 2481.
[78] MLSC 1898, 249; HL deb. 20 February 1899, vol. 66; HC deb. 21 June 1900, vol. 84. Charles Geisst, a financial historian, suggested that pressure to repeal usury in Britain was based on Bentham's essays on the subject. Charles Geisst, *Beggar thy Neighbour: A History of Usury and Debt* (Philadelphia, PA: University of Pennsylvania Press, 2013), 143.

Smith and David Ricardo, Vicary Gibbs MP (Conservative) said that price controls were an attempt to 'knock … against' natural law.[79] Mackay Graham, the Official Receiver in Bankruptcy for Hereford, supported price controls, but refused to propose a single rate.[80] His reluctance reflected the difficulty of implementing a price ceiling that was an incentive to market activity, yet protected borrowers from extortionate bargains. The MLSC 1897 did not recommend price controls and reported:

> Your Committee consider that a high rate of interest is not in itself incompatible with fair dealing, and that no limit of interest can be prescribed which would be adapted to the widely different conditions under which these loans are contracted, and further, that if a maximum rate were fixed by statute, the interest would tend in all cases to rise to that maximum.[81]

Price controls were rejected for a variety of reasons. Foremost, there was an appeal to freedom of contract and a strong resistance to usury. Many felt the issue had been settled in 1854. Secondary considerations included fear that price caps would encroach on banking and commerce, and that rates tended to cluster around the ceiling thus reducing market competition. It was believed that the implementation of a cap, much less choosing a single rate, would have proved extremely difficult. It was impossible for the committee to determine where the line was drawn, what rate was 'too high' and what the just price of money was.

Despite the rhetoric, the committee believed that a high interest rate did not necessarily indicate an extortionate bargain. If not all high rates were extortionate, then applying a single price cap across the entire market was an inappropriate solution. Nevertheless, it was recognised that bargaining inequity existed. The *St. James's Gazette* reported that 'the borrower has no real freedom, or, at least, that he is about as unable under certain circumstances, to refuse a loan as he would as he would be to refrain from jumping into the

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[79] HC deb. 21 June 1900, vol. 84.
[80] MLSC 1897, 1525.
[81] MLSC 1898, v-vi.

sea from a burning ship.'[82] Accordingly, this conclusion narrowed from 'the market price of money was too high', to: Was a rate of interest charged in a specific transaction 'too high'?

Revising harsh and unconscionable contracts

After rejecting price controls, the committee supported the application of equitable jurisdiction already used by revisionary judges. The proposal sought acceptance of the practice and provided further legal powers to relieve harsh and unconscionable moneylending.[83] The committee's conclusion was clear: judges should have the power to rewrite private moneylending contracts. Despite its lack of precision, the phrase 'harsh and unconscionable' was recognised legal terminology.[84] The committee believed that the only effective 'remedy for the evils in the system of moneylending by professionals is to give the courts absolute and unfettered discretion in dealing with these transactions'.[85] Although the features of this proposal were new, the committee stressed that the proposal was based on legal precedent.[86]

The discretionary terms of revision included the power to revise the amount due, the interest rate and instalment frequency. Several judges requested the power to 'go behind' transactions.[87] This would allow them to take into account past dealings between moneylenders and borrowers. They were concerned with renewals. To avoid default, borrowers would take out renewals that included the former principal owed, penalty fees and interest charges on a new loan. In a renewal, the whole of back interest was made capital. This feature increased the principal amount of the new loan. By examining the structure of a renewal, a judge could take into consideration the

[82] 'The evils of the usury system: The prospect of legislation', *St James's Gazette*, 12 October 1898.
[83] MLSC 1897, 4659.
[84] MLSC 1898, 228.
[85] MLSC 1898, vi.
[86] MLSC 1898, 192.
[87] MLSC 1897, 3600, 3605-3606.

principal and interest already paid. With this information, he could decide whether a transaction was harsh and unconscionable and revise the terms of the contract accordingly. For liberals, this proposal far exceeded the already controversial practice of judicial discretion practised in the county courts.[88]

In terms of execution, Charles Inman, a solicitor, believed that there was 'nothing easier' than giving judges the power to revise 'the whole agreement'.[89] Farrow argued that while implementation could be difficult, the outcome 'cannot very well be worse' than the current situation.[90] Others were less sanguine. Hamilton Cuffee, solicitor to the Treasury, cautioned that while public opinion supported laws that protected the vulnerable, the application of an interest rate test would be applied inconsistently and was very near to usury.[91] Judge Collier of Liverpool believed that each judge would have his own opinion, thus jeopardising the consistency of the legal system.[92] If Collier was right, legal inconsistency would add to lenders' business risk. Moreover, a small lender disagreed with giving additional powers to a court system that he viewed as inherently biased.[93] It is difficult to determine whether the courts were biased against moneylenders. However, Paul Johnson's analysis of Victorian small debt claims suggested that the courts rarely ruled in favour of the borrower.[94] This, it can be argued, demonstrated that while judges might not hold moneylenders in high regard, their rulings followed the facts of a case.

Despite the repeal of the usury law, and with little support for its return, reformers decided that the line of demarcation between useful and extortionate moneylending in part depended on the interest rate.[95] The goal was a single interest rate that would, if met or exceeded, grant a judicial review without

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[88] MLSC 1897, 4436.
[89] MLSC 1897, 2481-2485.
[90] MLSC 1898, 1441, 1488.
[91] MLSC 1897, 3492.
[92] MLSC 1898, 303.
[93] MLSC 1898, 1409-1410.
[94] Paul Johnson, 'Small-debt and economic distress in England and Wales, 1857-1913', *The Economic History Review* 46:1 (1993), 70.
[95] MLSC 1898, 1525-1532.

directly or indirectly capping the interest rate charged. How that rate could be determined and administered without a return to usury proved difficult. Among the witnesses and within the committee there was no agreement on what this review threshold rate should be. There was some agreement on how the process could work. A transaction could not be reviewed unless the interest rate exceeded a guidance rate and the judge believed that the transaction was harsh and unconscionable.[96]

The moneylender was not breaking the law by contracting at an interest rate that exceeded the guidance rate. An interest rate above the review level was not to be considered prima facie exorbitant. Instead, the rate acted as a trigger, which, if exceeded, allowed for a judicial review. To determine if a transaction was harsh and unconscionable the risk profile of the borrower and return requirements of the moneylender had to be considered. If the lender charged a rate above the guidance rate, and the transaction was considered fair, the lender could expect to recover the debt. But if a lender charged a rate higher than the guidance rate and the transaction was found to be harsh and unconscionable, a judge had 'absolute and unfettered discretion' to deal with the transaction.[97]

Selecting the guidance rate generated debate. The committee was adamant that the threshold not be so 'ridiculously' low that it would threaten, even unintentionally, commercial transactions.[98] The committee sought to divide the overall credit market into 'useful loans' and loans that 'created victims'.[99] Within useful lending a clear distinction was made. Bankers were considered useful lenders. There is not a single incident of a banker being accused of creating victims. One of the testifying judges remarked, 'No respectable bank ever acts oppressively or takes an exorbitant rate of

[96] HC deb. 21 June 1900, vol. 84.
[97] Ibid.
[98] MLSC 1897, 1532-1538.
[99] MLSC 1897, 1525-1531.

interest.'[100] Without defined boundaries, how could the review process apply to small lenders and not bankers? Even supporters of judicial review did not seek to influence banking activities.

The committee proposed a guidance rate of 15 pcpa on loans of more than £10.[101] The moneylenders' response was not unanimous. Samuel, for example, found the rate low and sought a statute of limitation on reopening past transactions.[102] It is likely that he wanted to limit the judicial power of going behind transactions; and Gordon claimed that if the review rate was set below 30 pcpa, he would immediately leave the moneylending business.[103] Notably, 30 pcpa was half what was considered normal. Echoing the liberal approach, Alfred Moore, a moneylender, said that when 'two sane men enter into a contract' it would be 'unfair for anyone to interfere between them'.[104] Kirkwood argued that such powers would be 'ruinous' to the market and interest rates charged would 'have to be enormous' to cover losses due to judicial interference. The passage of these powers would be a 'gross interference with the liberty of British subjects'.[105] Kirkwood's appeal to liberty chimed with the ideals of freedom of contract, which many sought to preserve. Kirkwood's second point was lost on the committee.[106] In so far as the cost of regulation had to be paid for, the lender had to experience lower returns or charge higher rates. In the latter case, those who would have been approved (i.e., borrowers well above the margin) bore the cost of regulation. While the MLSC 1897 did not consider Kirkwood's concern, in 2014 the FCA considered how the cost of

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[100] MLSC 1897, 4494.
[101] 1899 Bill 215 Money-lending (HL). A bill instituted an Act to amend the law with respect to persons carrying on business as moneylenders.
[102] MLSC 1897, 1937.
[103] MLSC 1897, 3091.
[104] MLSC 1898, 2634.
[105] MLSC 1897, 4492-4494.
[106] On 21 June 1900, Terrance Russell MP (Liberal) argued the same in a House debate: 'The result must depend upon the Court in which the case may happen to be tried and the idiosyncrasies of the Judge who happens to preside. The risk which the money-lender will run of having his bargains upset will have to be paid for by those who borrow; in other words, instead of lightening the burden of the borrower the money-lender will require to exact a higher rate of interest for the money he lends in order to cover this additional risk.'

regulation would affect borrowers. The FCA's findings are analysed in Chapter 5.

After the committee was concluded, a draft bill proposed the 15 pcpa rate, which was strongly disapproved and denounced as 'an absurdly small and unreasonable' charge to be made for profitably administrating a small loan.[107] The schedule began with the pawnbroking rate of 25 pcpa, which was then scaled down.[108]

Table 12 Schedule of guidance interest rate

In respect of a loan (whether made by one or more advances)	
Not exceeding 40s	25 pcpa
Exceeding 40s, but not exceeding £10	20 pcpa
Exceeding £10	15 pcpa

Source: 1899 Bill 215 Money-lending (HL).

Parliament debated the application of the harsh and unconscionable test. Birrell and Sydney Gedge MP (Conservative) argued that the test would burden the industry and reduce the supply of small loans to the poor.[109] Unlike Birrell, Frederick Maddison MP (Liberal) believed that fewer loans would be good for the working class.[110] He suggested that poor workers were being exploited and that the review process would help borrowers overcome bargaining inequity. By contrast, Terrance Russell MP (Liberal) believed moneylenders were being targeted unfairly and questioned why bargains from every branch of trade should not be reviewed.[111] He suggested that the laws dealing with fraud offered borrower protection. The main debate was over the relationship between the guidance rate, price controls and freedom of contract.

[107] HC deb. 21 June 1900, vol. 84.
[108] HL deb. 16 March 1899, vol. 68.
[109] HC deb. 21 June 1900, vol. 84.
[110] Ibid.
[111] Ibid.

Ultimately, the ‘price control light’ guidance rate proved impossible to get through the Commons. Opponents argued that it was an attempt to reinstate usury. Arthur Balfour stated:

> Where we differ is as to whether the particular machinery which the Bill provides for dealing with harsh and unconscionable bargains is of a kind which interferes illegitimately with freedom of contract between adult human beings … we have no desire to revive the usury laws in any disguise whatever.[112]

Once the guidance interest rate was removed, opposition to the bill collapsed. The enacted MLA 1900 granted powers of judicial review without stating a guidance rate. The guidance rate had been resisted owing to a strong belief in freedom of contract and concerns about interference in commercial activities. Although many policymakers were offended by high interest rates, the committee concluded that high rates were not necessarily harsh and unconscionable. Arguably, the review process was a compromise that provided borrower recourse, while respecting freedom of contract. Whereas price controls were too blunt, judicial review was considered to be precise. This research argues, however, that the overarching concern for freedom of contract outweighed state intervention aimed at borrower protection. This explains why the committee’s preference for a guidance rate was overruled by MPs when the bill was debated in Parliament. In doing so, the final measure failed to address the key question: When was an interest rate too high?

Disclosure terms and licensing

Reformers believed that moneylenders frequently committed fraud. Farrow testified that ‘These evils would not be, perhaps, so great if they were accompanied by a lower interest rate; but accompanied as they are by a minimum of sixty per cent they do become evils.’[113] The committee chairman, Thomas Russell MP (Liberal), who before the hearings was committed to the

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[112] HC deb. 21 June 1900, vol. 84.
[113] MLSC 1897, 160-161.

'free trade' of money and believed that it was impossible to 'save a [fool] from his own folly', switched sides, now believing that regulation was necessary to combat fraud.[114] How important were advertisements to the business model? Which features were considered problematic and which goals were disclosure requirements expected to achieve? Why were there such divergent opinions on APR disclosure? Why did the committee support a registry but not licensing? This subsection analyses debates on advertisements, terms and conditions, trade names and licensing. First, it analyses the perceived problem and, finally, the proposed solutions.

Advertisements

Moneylenders generated business by advertising and with circulars. The importance of advertisements to the moneylending business was recognised by both policymakers and lenders.[115] So strong was this relationship that James Dodwell, a lender of small sums, denied being a moneylender because he did not advertise.[116] Newspaper advertisements targeted low- to middle-end borrowers, while London's West End sought high-end borrowers via circulars. Farrow claimed that advertisements were 'framed chiefly with the purpose of deceiving the … poor and ignorant'.[117] Advertisements indicating a 5 per cent rate were commonplace, but it was suggested this was a fraudulent teaser rate.[118] It was believed that the actual contracted interest rate was 5 per cent a month, annualising at 60 pcpa.[119] It was these advertisements that took advantage of the working man, enticing and 'entrapping' him to borrow.[120] Worse were 'fee-snatchers' who advertised and charged application fees with

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[114] HC deb. 21 June 1900, vol. 84.
[115] MLSC 1897, 46.
[116] MLSC 1898, 335-404.
[117] 'Shylock's methods', *Yorkshire Evening Post*, 20 May 1897.
[118] MLSC 1898, 4, 140-142, 293. *The Liverpool Daily Post* had 20 such offers in a single weekday edition.
[119] MLSC 1898, 422.
[120] HC deb. 21 June 1900, vol. 84.

no intention of lending.[121] Robert Finlay, Attorney-General, argued that misleading advertisements caused 'great mischief' and needed to be dealt with.[122]

To measure the relationship between loan demand and advertising effectiveness, Farrow conducted two experiments. In the first, he offered money to lend at 10 per cent in four London daily newspapers, to which he received 283 replies in a single day. In the second instance, he placed three advertisements in a London weekly, for which he received 450 replies. The replies came from 'bank clerks, civil servants, small tradesmen, and the working class'.[123] Farrow's experiment confirmed the effectiveness of advertising. He and his supporters, however, did not appreciate that it also demonstrated the fact that small loans were in great demand. Unlike the PBSC 1870, this committee showed little interest in examining the market's demand features.

Related to borrower demand and advertisements, some policymakers believed that 'only an idiot' would fail to ask the actual interest rate and repayment terms of a loan.[124] This demonstrated a misunderstanding of the borrowing needs of the working poor. For those in need of emergency cash, the cost and terms of a loan were secondary to securing the money. While there was consensus on the importance of advertising to generate new business, there was disagreement about how unambiguous the information was. However, policymakers and moneylenders agreed that fraudulent advertisers should be prosecuted.[125] The extent of that fraud was debated.

Terms and conditions

Lenders were accused of failing to disclose the interest rate expressed as a percentage, amortisation schedules and default terms.[126] The committee heard

[121] 'The money-lending business preliminary fees', *Pall Mall Gazette*, 9 January 1895.
[122] HC deb. 21 June 1900, vol. 84.
[123] MLSC 1897, 150-151.
[124] MLSC 1897, 1135, 4573.
[125] MLSC 1897, 3980.
[126] MLSC 1897, 121-122, 134-135, 917-918, 925, 1004, 1100-1101, 3855-3868.

extensive evidence on all three topics. Given the often dire straits of the borrower, reformers believed that lenders should disclose the terms and conditions more explicitly. By placing the onus on the lender, deception and fraud would be reduced. Moneylenders retorted that borrowers were welcome to request a copy of loan contracts and that nothing was ever hidden from them. John Faux, one of four borrowers interviewed, believed many of the important details were concealed and that he did not understand the terms to which he had agreed.[127] These issues raised points about how much and what types of information needed to be disclosed to encourage informed borrowing. An assumption, then, was that borrowers used such information when making credit decisions and that regulation could improve the process.

Key to this debate, lenders were accused of deception owing to their practice of quoting the interest rate as stated in currency terms; for example, a £7 loan would carry a £3 interest charge. However, under this disclosure method lenders informed the borrower of 'exactly what [he had] to pay'.[128] Debate ensued concerning the merits of stating the interest charge in percentage terms rather than in monetary terms. The committee received almost unanimous advice that the interest rate should be stated on the note and in percentage terms.[129] Moneylenders understood their business as a short-term 'retail operation' and strongly opposed giving percentage terms.[130] They suggested that since retailers of other commodities were not required to state their costs in percentage terms, they should not be either. More practical reasons were offered. Two lenders admitted that they were unable to work out the interest rate. Another dealt in 'lump sums, not percentages' as percentages would be 'very difficult and confusing'.[131] Whether the committee appreciated how difficult it was to calculate an APR, and the result was open to various

[127] MLSC 1897, 301-305, 636, 2177, 2718-2726, 3854-3858; MLSC 1898, iii-v, 1488, 1846.
[128] MLSC 1897, 1765.
[129] MLSC 1897, 1458; MLSC 1898, 1839.
[130] MLSC 1897, 1765, 2287.
[131] MLSC 1897, 1836, 3345-3348.

factors and required a high degree of standardisation to be implemented, was not fully engaged during the hearings.

In a heated exchange, one moneylender argued that any legal requirement forcing percentage disclosure would require two more clerks in each office.[132] To this a committee member responded, 'You could surely afford that expense at 179 per cent interest.' The moneylender reminded the committee that his net profit margin was 11 per cent and additional regulatory burdens would only decrease that already low rate. Evidence was presented that the borrowers were concerned with 'how much they will owe' and not the rate expressed in percentage terms.[133] This debate illustrates how different market participants and politicians understood the business of lending small sums. Curiously, neither the committee members nor the moneylenders mentioned that the PBA 1872 cited the interest rate in monetary terms. The APR debate - that is, whether it was a suitable to small loans issued on a short-term basis - resurfaced throughout the period covered by this research.[134]

There was also concern about interest-only payments. Some held that repayment terms were stacked against the borrower such that default was likely to occur.[135] Committee members believed that because most borrowers did not want others to know they had resorted to a moneylender, exposure through the court system practically ensured that loan renewal terms would be agreed.[136] If the borrower refused to take a rollover loan, lenders would threaten public exposure and a lawsuit. Exposure threats were particularly effective with public sector clerks, whose contract of employment forbade recourse to a moneylender.[137] If a clerk was found to have engaged a moneylender, he could be dismissed. Several references were made to the instant dismissal terms of

[132] MLSC 1897, 2002-2005.
[133] MLSC 1897, 2002-2005; MLSC 1898, 300-301.
[134] The topic is covered in depth in Chapters 4 and 5.
[135] MLSC 1897, 1099-1100, 4569; MLSC 1898, iv-v.
[136] MLSC 1897, 1553-1554, 3020, 3536; MLSC 1898, 1441, 1559, 3429.
[137] MLSC 1898, 3610-3611.

clerks employed by the Bank of England.[138] On one occasion, Robert Linnell, a moneylender, took his collection efforts too far, having written a letter to the senior managers of Messrs Pulham and Cooke, clerks at the Inland Revenue and the Ministry of Health, respectively.[139] Linnell complained of Pulham and Cooke's failure to repay. Refusing to succumb to 'this kind of blackmail', the Inland Revenue pursued legal resource against the lender. Linnell was found guilty by Mr Dummett, a magistrate of the Bow Street Court. Dummett referred to Linnell as a 'blood-sucking usurer'. For the most part, however, so feared was the threat of exposure that, according to James Mathew, 'the present state of the law leads to crime, gambling and suicides', all with the help of a court biased in favour of the lender.[140] Here again there was disagreement. Most moneylenders found the court system biased against them, while others believed it operated in their favour. This begs the question, if borrowers feared the court system, would the MLA 1900 judicial review process provide relief?

Trade names

Moneylenders often assumed multiple trade names and used the terms 'bank', 'finance' or 'trust company'. One moneylender admitted to trading under nine names, none of which was his own. Another conducted business using seven 'bank' names.[141] One bone of contention was that borrowers and the government should know the lender's identity. Owen and Lewis testified that the only reason to trade under multiple names was to commit fraud.[142]

The committee was critical of consolidation loans issued by the same moneylender under different names.[143] The committee heard of a woman who had trouble repaying a £50 note owed to a Chester-based lender. With the

[138] See MLSC 1898, appendix 'Bank of England'.
[139] CUST 49/2069 (Customs and Excise) 'Civil Servant Case and Moneylender', 24 September 1936, 6 November 1936, The National Archives (TNA). This example is indicative of the pressure placed on public sector clerks by moneylenders.
[140] MLSC 1898, 1559-1563.
[141] MLSC 1898, 46.
[142] MLSC 1897, 4420; MLSC 1898, 1-2.
[143] MLSC 1897, 194, 2874-2877.

intention of paying this lender she secured a £70 loan from a Liverpool concern. Further troubles caused her to default on that note too. In Birmingham, she acquired a third loan of £100 to repay the Liverpool-based lender. All three offices were owned by Isaac Gordon. Gordon was questioned aggressively about these transactions, and when asked if this was a 'legitimate business practice', he replied, 'I risk my money … and I have a perfect right to make any bargain I see fit … and give to that lady [under] forty names … I can do it.'[144] Not only was the committee surprised that Gordon failed to deny his actions, but also by his cavalier attitude to issuing renewals. Other lenders defended their use of multiple names, claiming that it improved the information flow and helped keep track of poor borrowers who 'skedaddle' from city to city.[145] While these transactions were legal, they were considered abusive. It was difficult for policymakers to determine how many loans a borrower should be permitted to transact.

Arguably of greater concern was the use of banking terminology in trade names. It was made clear that moneylenders were businesses that transacted at exorbitant rates of interest and should not be considered as bankers. Class distinction, anti-Semitism and xenophobia were all present in these discussions.[146] Throughout the investigation the banking profession was held in the highest regard and every effort was made to ensure that it was not to be confused with moneylending. William Anson MP (Liberal) declared that 'no one ever talks of a banker as a moneylender', and Lewis added that it was 'impossible' to mistake a professional moneylender for a banker.[147] While it was feasible to restrict the use of trade names without clearly defining a moneylender, it would be difficult to apply.

[144] MLSC 1898, 2874-2877.
[145] MLSC 1898, 1196-2000, 1305-1308, 2703.
[146] HC deb. 21 June 1900, vol. 84; MLSC 1897, 1548-1551.
[147] HC deb. 21 June 1900, vol. 84; MLSC 1897, 3731; MLSC 1898, 162.

Solutions

There was no agreement concerning remedies for the issues of fraud and transparency. Proposals included banning advertisements, licensing schemes and a requirement that transactions be filed with a local authority. A ban on advertising would be a draconian measure.[148] Lewis and Archie Loyd argued that if advertisements were 'attacked', then 'fewer people would come in contact' with moneylenders.[149] This was an attempt to limit, or even eliminate, moneylending.[150] Importantly, because bona fide bankers did not issue advertisements or circulars, this measure would not interfere with banking.[151]

Like many of the reforms under consideration, the power to ban advertisements was supported by legal precedent. Proponents were extending clause 2 of the Betting and Loans (Infants) Act. This Act forbade advertising to minors (those under the age of 21).[152] Its selection indicated the committee's paternalistic attitude to borrowers. Judge Francis Roxburgh testified that 'these borrowers are quite as childish and quite as foolish as persons under twenty-one … these persons require protection as much as legal infants.'[153] If the borrower was thought to be childlike and the lender a 'financial wolf and rapacious shark', there were grounds to regulate.[154] Instead, taking the liberal position, moneylenders asked why they should be precluded from advertising in 'any way they think proper'.[155] Liberal theorists suggested that criminal law already had the power necessary to prosecute false statements and thus no further measures were necessary.[156] Like high interest rates, although moneylending advertisements were held suspect, interfering at this level was resisted.

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[148] MLSC 1898, 4.
[149] MLSC 1898, 140-142, 3614.
[150] HC deb. 21 June 1900, vol. 84; HC deb. 31 July 1900, vol. 87.
[151] MLSC 1898, 1550-1552.
[152] MLSC 1898, 3620.
[153] MLSC 1898, 3632.
[154] MLSC 1898, 1436. Calling borrowers childlike also occurred during the PBSC 1870.
[155] MLSC 1897, 3980.
[156] HC deb. 21 June 1900, vol. 84.

The MLA 1900 did not address the interest rate in percentage terms, amortisation schedules, default terms or renewal loans. While it can be argued that these issues were dealt with under MLA 1900, clause 4, the wording of this section is vague. The clause failed to provide a legal test to determine whether a moneylender had 'fraudulently induced a person to borrow money'; essentially, the clause relied on the law relating to fraud. Although Ernest Beckett MP (Conservative) proposed regulation related to renewal, it was not included in the final Act.[157] As with advertising, there was resistance to interfering in legally conducted businesses.[158] Hugo Charteris, Lord Elcho of Wemyss (Conservative), believed there was a 'modern tendency' to support popular bills, which he argued against because 'legislation should be liberty, and this was the only sound basis upon which they could properly legislate'.[159] It was believed that the interest rate would be covered by judicial review and disclosure matters would be handled by fraud statutes.[160] If fraud or deception was proved in a court of law, then judges could nullify the contract. Thus, there was no need for further restriction.

In response to the use of trade names, many policymakers saw value in creating a registry. Henry Hawkins, a judge sitting in the High Court of Justice, declared that, like pawnbrokers, moneylenders should register, and if they fought the proposal, it only showed how ashamed they were of their business.[161] This proposal was based on legal precedent – the PBA 1872, sections 37-44. The proposal required that each moneylender register under a single name and file each location of their business.[162] Only registered offices could transact legally. The Inland Revenue was named as the agency in charge of the registration process. However, the MLA 1900 required that a moneylender file under a single name, without specifying whether that name

[157] HC deb. 31 July 1900, vol. 87.
[158] Ibid.
[159] HC deb. 1 May 1899, vol. 70.
[160] HC deb. 21 June 1900, vol. 74.
[161] MLSC 1898, 427.
[162] MLSC 1897, 1302, 1356, 1552; MLSC 1898, iii-xi, 1503, 1524; MLA 1900 2(1)(a).

was given or assumed. It is likely that the liberal elements sought to avoid damaging moneylending concerns with brand equity.

A definition of moneylenders was required for the registry. But defining moneylenders proved extremely difficult. Attempts at defining moneylending began by comparing it to banking. Bankers were defined as people who engaged in the activity of banking.[163] One witness identified that the source of capital distinguished bankers from moneylenders with the former taking deposits while the latter did not.[164] Others believed the profession was so readily understood that a definition was unnecessary.[165] The committee disagreed and, working from the legal phraseology assigned to bankers, defined moneylenders as, 'every person whose business is that of money-lending'.[166] But, how does that differ from the function of a banker?

The MLA 1900 also defined the industry by exclusion, that is, four specific industries were mentioned as not being moneylenders. These were pawnbrokers, friendly societies, any group granted special powers by Parliament to lend money and 'any person *bona fide* carrying on the business of banking or insurance'.[167] Ultimately, although a definition was included in the MLA 1900, Parliament failed to provide a working definition of moneylenders, nor did it develop an effective registry system. As a regulatory measure the Act did not require that a moneylender operate under his given name. Moreover, the Inland Revenue had no power to deny an applicant or to remove a moneylender from the registry. Even a lender with a criminal conviction under the Act itself could not be removed. In 1911, the Act was amended and clarified so that a moneylender whose registration name implied that he carried on the business of banking could be removed from the registry and subject to a fine and imprisonment.

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163 MLSC 1898, 165.
164 MLSC 1897, 1734-1737.
165 MLSC 1897, 1357.
166 MLA 1900, clause 6.
167 MLA 1900, clause 6.

Moving beyond the registry, during the MLSC 1897 several witnesses, including moneylenders, asked for licensing and proposed enhanced regulation, including a supervisory authority to deny or revoke a licence, audit financial statements and required moneylenders to post bond and maintain capital reserves.[168] Samuel agreed with the licensing scheme and argued that '£500-£1000 should be deposited in Consols to prove' that they had money to lend.[169] Samuel also believed that rooting out troublesome lenders would add to the stability of the industry, reduce transaction costs and keep more cases out of court.[170] Like pawnbrokers, moneylenders believed that enhanced licensing requirements would rein in unacceptable behaviour and improve the status of the industry. In that regard both groups saw aspects of regulation as beneficial.

Prima facie registration and licensing may seem secondary to interest rates and advertising. However, they proved crucial to the development of the market. The non-discriminatory registry implemented by the MLA 1900 and the committee's outright rejection of a licensing scheme reflected Parliament's unwillingness to legitimise moneylenders. The MLA 1900 required the Inland Revenue to compile a list of the names and locations of moneylenders and nothing more. The Inland Revenue had no supervisory role. It was recognised that a government licence implied implicit approval of the applicant and by extension the industry. Although the proposed licensing scheme was minimal, it was considered a step too far towards legitimation. The judiciary and committee were adamantly against any licensing scheme as 'some sort of approval or badge of respectability'.[171] Years later, Ernley Blackwell, Assistant Under Secretary at the Home Office, said that licensing was rejected because 'it [gave the] impression that moneylenders had a sort of guarantee by the

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[168] MLSC 1897, 2101; MLSC 1898, 184-185, 429.
[169] MLSC 1897, 2101.
[170] MLSC 1897, 2101.
[171] MLSC 1898, 1780-1781.

Government'.[172] Licensing requirements were not included in the MLA 1900 as fear of legitimising the market was too great.

Conclusion to section B. The Formation of Regulation 1897-1900

The committee concluded that moneylenders were evil and that their loans were detrimental to borrowers. However evil, there were limits to how far politicians were willing to regulate. Regulation was constrained by a strong belief in freedom of contract, an opposition to usury and fear of interfering in banking. Price controls were rejected as an affront to freedom of contract, a belief that the issue had been settled in 1854, rate clustering and the difficulty of implementation. Parliament was unwilling to regulate the price of money on a market-wide basis. Although high rates were considered problematic, they did not entail a harsh and unconscionable bargain. It was believed that there was no single rate that could accommodate the variation in risk. Conversely, George Murnaghan MP (Anti-Parnellite) argued for strong restrictions and believed that those concerned with the 'encroachment of personal liberty' represented only the wealthy.[173] Few shared his view.

Paramount in this debate was freedom of contract - that is, the ability to negotiate the price of money and conditions of contract. Once that freedom had been exercised, should the borrower seek legal recourse, the Act granted judges the power to determine whether the contract was harsh and unconscionable. Although no rate was set, it was believed that the review process would be effective.[174] It was assumed that the Act would encourage borrowers to utilise the court system. However, as the next section demonstrates, that assumption was wrong and, along with the failure to include a guidance rate, contributed to the need for regulation in 1927.

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[172] MLSC 1925, 1185-1190.
[173] HC deb. 21 June 1900, vol. 84. Anti-Parnellites were members of an Irish Nationalist party.
[174] Ibid.

Parliament spent much of its time focusing on the high interest rate, usury and judiciary power. As a result, there was very little debate on the non-price loan features, such as advertising and disclosure terms. Their focus on the judiciary review mechanism at the expense of other considerations supports the claim of this research that the starting point - that is, the conflict between liberal and revisionist judges - framed the debate. Despite support for mandated disclosure terms such as the percentage rate, the MLA 1900 relied on existing standards of fraud. While moneylenders believed stringent regulation would keep marginal lenders out of the market, Parliament did not enact them. In many respects, this was less a systematic analysis of moneylending than it was a debate on the role of the judiciary in a market economy, with a focus on why, and through which process, judges could review and rewrite a contract. Unlike blanket price control, it was left to individual judges to determine whether the interest rate was too high. This is not surprising given that much of the debate and calls for reform were based on transactions that had been contested in court.

Unlike the PBA 1872, the MLA 1900 did not debate the moral conduct of borrowers. That does not mean, however, that Parliament was unwilling to protect vulnerable borrowers; on the contrary, the Act was intended to do just that. Reform took place during a shift in poverty studies reflected in the work of Joseph Rowntree, Sidney and Beatrice Webb and William Beveridge, in which character played a smaller role.[175] The involvement of government coincided with a belief that the ‘problem of poverty’ was larger than the charitable sector could handle.[176] While the MLSC 1897 did not engage in the poverty debate directly, the MLA 1900 followed a series of Acts relating to working-class education, housing and factory conditions. Still, during the MLA 1900, policymakers were more interested in the lender than in the credit product and

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[175] Martin Daunton, *Wealth and Welfare: An Economic and Social History of Britain, 1851-1951* (Oxford: Oxford University Press, 2007), 541-542.
[176] Gareth Stedman Jones, *Outcast London: A Study in the Relationship between Classes in Victorian Society* (London: Verso, 2013), 328.

its users. Ensuring that moneylenders were not thought of as bankers and that the MLA 1900 would not interfere with proper commerce were important.

Overall, the intention was to limit an 'evil' industry without directly interfering in the market's price mechanism. It was expected that with less fraud and recourse to the courts, borrowers would be better protected. As Derek Fraser argued, by 1895 the government was willing to solve social problems related to the excesses of capitalism.[177] Nevertheless, individual liberties remained important and government interference met strong opposition. Accordingly, state intervention tended to be preventative rather than supportive as would be later seen in the welfare state and labour exchanges.[178] While price controls were imposed on the railway companies, regulating the price of money was believed to be a step too far. The price control debate reflected wider tensions between the role of the state and the individual.[179] Notwithstanding, the government believed that moneylending was the type of 'excessive' capitalism that required social policy. In this case, the solution was to provide borrower relief through the application of the harsh and unconscionable doctrine. In theory, the case-by-case approach provided relief to individual borrowers without offending market operations overall. This research suggests that concerns about freedom of contract outweighed borrower protection as is evident in the debates over, and removal of, a guidance rate.

Aftermath (1900-1924)

Not long after its passage the Act's shortcomings became apparent. In 1901, Horace Mansfield MP (Liberal) asked why the Inland Revenue had not prosecuted a single moneylender for failing to register.[180] This reveals how misunderstood and ill-crafted the Act was. The Inland Revenue was charged

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[177] Derek Fraser, *The Evolution of the Welfare State: A History of Social Policy since the Industrial Revolution* (London: Palgrave Macmillan, 2009), 167.
[178] Stephen Lee, *Aspects of British Political History, 1815-1914* (London: Routledge, 2004), 284-287.
[179] Daunton, *Wealth and Welfare*, 543.
[180] HC deb. 18 June 1901, vol. 11.

with registering moneylenders, but had no power to prosecute failure to do so. In 1907, the Metropolitan Police brought to the attention of the Inland Revenue a Bethnal Green resident who, while legally registered as a moneylender, had served two terms of penal servitude and was under arrest for receiving stolen goods.[181] In 1910, Rufus Isaacs and John Simon, lawyers with the Board of Trade, expressed frustration that the MLA 1900 usual trade name clause allowed ‘a great many persons’ to register under false names. Later that same year, the Board of Trade did not know whether it should prosecute Yorkshire Discount Bank and Cardiff Advance Bank for violation of trade name use.[182]

While the harsh and unconscionable clause provided a theoretical framework, it did little to advise judges in specific cases. Asked how he had arrived at a decision regarding a moneylending case, Justice Scrutton replied that ‘he did not propose to give a reason … [it would] only be reported and used against him and other judges’.[183] As expected, the interest rate was pivotal in the exercise of judicial review. Judges were left to determine how much a borrower understood the transaction, whether the lender had fulfilled the burden of proof and what constituted excessive interest. In practice the Act did little to settle the legal issues it was created to solve.[184]

Based on trade group data and government documents, it is likely that professional moneylenders numbered between 4,000 and 6,000 operating in approximately 8,000 offices.[185] While the Inland Revenue kept a central

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[181] MEPO 2/814 (Records of the Metropolitan Police Office), ‘Memorandum on MLA 1900, The Commissioner of Metropolitan Police, Executive Branch’, 2 August 1907, TNA.
[182] BT 103/28 (Board of Trade Solicitor’s Department), ‘Letter Rufus Isaacs, John Simon, MLA 1900-1911’, 29 December 1910, TNA.
[183] Charles Collard, *The Money-Lenders Acts, 1900-1911* (London: Butterworth, 1912), 172.
[184] *Samuel v. Bukton* (1903), *CAE-Bingtons v. Smith* (1905). Transcripts reprinted in Joseph Matthews, *The Law of Money-Lending, Past and Present* (London: Sweet & Maxwell, 1906); *Wilton v. Osborne* (1901) and *Barnett v. Corunna* (1902) ruled that the interest rate alone without further evidence could deem a transaction harsh and unconscionable, whereas *Re a debtor*, *ex parte The Debtor* 1 Kings Bench 705, 1903 ruled the opposite. Details reprinted in Charles ollard, *Money-Lenders Acts*, 19-23, 95 and appendix D.
[185] ‘The Moneylenders’ Federation manual and directory for the year 1913’, General collection PP2501, The British Library; IR 40/2736 (Inland Revenue), ‘Chief Inspector of Taxes Internal Memorandum, Registrations under the MLA 1900’, 15-31 January 1908, 14 January 1921, 3 March 1922, 1923, TNA; IR 40/3555 (Inland Revenue), ‘Registration of Moneylenders and

registry, the official figures were never released. In theory, within the Metropolitan area a list was forwarded to each Office of a Collector of Inland Revenue and in the provinces Collectors of Customs & Excise were required to send district inspectors details of new registrants under the MLA 1900. It seems that the process was never fully developed and was disrupted again during the First World War. In 1931, Mr Wilcock, an employee of the Chief Inspector of Taxes, after several failed attempts, said, 'Further enquiries have been made and it does not seem to be possible to do anything more in England with regard to obtaining lists of registered moneylenders.'[186]

C. The formation of regulation 1925-1927

> The world at large has recently had plenty of advertisements so far as the higher branches of blackmail are concerned. And presumably it is these revelations that prompted a Parliamentary effort to check the widespread and insidious evil… moneylenders are callous, bloodsucking parasites, without moral sense…lurking about in search of innocent victims.
>
> 'Upon usury', *Hull Daily Mail*, 27 March 1925

> On all hands there appears to be a substantial measure of agreement that the Act of 1900 has hopelessly broken down, and that more drastic legislation is necessary in order to curb the machinations of sharks … who wax fat on the misfortunes of others.
>
> *Aberdeen Journal*, 18 March 1925

During the 1920s moneylending was expanding rapidly. Between 1922 and 1924 there were 4,647 new registrations.[187] The *Edinburgh Evening News* feared for 'the shark's prey' and claimed that existing regulation was 'no effective curb on the social evil'.[188] Edward Carson, Lord Carson (Ulster Unionist Party) observed that judges believed that their powers were 'utterly useless' to control moneylenders.[189] Concerns that the MLA 1900 was failing were warranted as from 1920 to 1925 the Home Office was unaware of any

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Evasions of Tax, Mr Pool, Office of the Chief Inspector of Taxes', 8 November 1929, 28 November 1929, 30 November 1929, 26 September 1931, TNA.

[186] Ibid.

[187] HC deb. 23 April 1926, vol. 194.

[188] 'The shark's prey', *Edinburgh Evening News*, 26 September 1924.

[189] HL deb. 1 December 1925, vol. 62.

prosecutions concerning false advertising.[190] As before, advertising and court cases drew attention to the industry. Many parliamentarians were frustrated by the incessant 'siren' and 'plague' of moneylending circulars received in the post.[191] Carson cited how a single moneylender had sent 190,000 circulars in six months, a practice that Carson vowed to end.[192] Newspaper headlines and articles called moneylenders evil, Shylocks, satanic and loan sharks. Ralph Glyn MP (Conservative) disagreed. He believed that most moneylenders met the needs of working men who, without access to banking facilities, had no other option in a dire emergency.[193] His opinion remained in the minority.

Carson was offended by moneylenders who targeted civil servants and Crown employees.[194] He was concerned about civil servants such as Fred Webb, who had filed for bankruptcy after borrowing from a moneylender, and a naval commander who paid exorbitant interest over three years before the loan was paid.[195] It was assumed that a debt burden would encroach on their ability to carry out their work.[196] At any point, Carson feared, these civil servants could face bankruptcy and be 'driven out' of their careers. After investigating many cases of 'hardship and poverty', Carson doubted that moneylenders benefited society.[197] Despite his preference for eliminating the industry, he was willing to compromise and sought urgent action to curtail the moneylending machine.[198] In response, by 1925 two moneylending bills, one proposed by Richard Wells MP (Conservative) and the other by Carson himself, attracted enough parliamentary interest to warrant a joint select committee (MLSC 1925).

[190] MLSC 1925, 1196.
[191] 'Moneylending evils', *The Times*, 18 March 1925; 'Plague of moneylenders; MPs swamped with circulars', *Western Daily Press*, 3 July 1924.
[192] 'Letter 21 December 1925', Edward Carson papers Non-Irish 1921-1926, D1507/B/43 1-28, Public Records Office of Northern Ireland.
[193] HC deb. 23 April 1926, vol. 194.
[194] 'Moneylenders' methods', *Lancashire Evening Post*, 13 December 1924.
[195] HL deb. 1 December 1925, vol. 62.
[196] 'Civil servant affair', *Gloucester Journal*, 14 March 1925; 'Moneylending evils', *The Times*, 18 March 1925; HL deb. 11 Feb 1926, vol. 63.
[197] MLSC 1925, 5; HL deb. 1 December 1925, vol. 62.
[198] HL deb. 1 December 1925, vol. 62.

Although Carson was concerned that the committee was a 'shelving procedure', the Home Secretary, William Joynson-Hicks MP (Conservative), assured him that the intention was to draft a consolidated bill.[199]

Unlike the MLSC 1897, many interested parties testified, including trade associations and charitable organisations. The MLSC 1925 acknowledged the anti-moneylending bias of the 1900 proceedings.[200] Its mandate was to include moneylenders in the reform process. Notwithstanding the industry was held in disdain, it was claimed that 'moneylenders … are the scum of the earth' and that 'to look into the face of a moneylender … is to see the picture of the devil incarnate'.[201] As before, many select committee members considered moneylenders as not being part of traditional banking and treated the industry as criminal. While politicians and the public were frustrated by the industry, were they focused on the same issues as 25 years earlier? Was there a fierce debate between the 'protectors of capitalism' and social reformers?[202] How were high interest rates understood and what solutions were believed to relieve borrowers? Would they appeal to fraud laws or seek additional regulation of advertising? Did moneylenders consider certain regulations to be beneficial? Was the industry better organised than in 1900?

High interest rates, price controls and judicial review

Leslie Scott MP (Conservative) believed that high interest rates were degrading and that 'fear and the continual misery of the people who get into the toils of these financial meshes from which they cannot escape' had to be stopped.[203] There is little indication, however, that moneylenders earned abnormally high rates of return. Data on 15 moneylending firms over a five-year period revealed an average interest rate of 60 pcpa and a 15.3 per cent return

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[199] 'Letter 14 March 1925', Edward Carson papers Non-Irish 1921-1926, D1507/B/43 1-28, Public Records Office of Northern Ireland; HL deb. 1 December 1925, vol. 62.
[200] MLSC 1925, 9; HC deb. 23 April 1926, vol. 194.
[201] HC deb. 4 March 1927, vol. 203.
[202] Carson called his opponents 'protectors of capitalism'.
[203] HC deb. 23 April 1926, vol. 194.

on invested capital (ROIC).[204] The ROIC did not include a salary expense for the principal-owner and thus overstated the return. Comparatively speaking, a 15.3 per cent return was less than the banks and discount houses received.[205] A London moneylender (not in the sample in Table 13) submitted three years of financials showing a great variation in returns. He hoped to convince the committee that 'the risk is ever flowing'.[206] Moneylenders argued that their rates took into account bad debts and an expensive administrative structure designed to process weekly payments.[207] Table 13 gives the available data.

[204] MLSC 1925, 263-265, 274-275.
[205] MLSC 1925, 280. Cited bank and discount house dividend rates included Midland (18%), Lloyds (16.6%), National Provincial (16%), Westminster (20%), Barclays (14%), Alexanders (25%), the Union (25%) and the National (28%).
[206] MLSC 1925, 1996.
[207] MLSC 1925, 500, 1477.

Table 13 Data on 15 moneylenders

Lender	% of charged interest: Bad debts	% of charged interest: Expenses	% Return*
1	47.5	30.0	25.1
2	34.8	45.0	15.5
3	38.1	36.8	14.4
4	6.3	81.2	7.9
5	55.0	25.3	19.1
6	14.6	66.3	9.3
7	45.2	35.1	23.5
8	58.3	31.6	11.4
9	30.4	59.3	7.5
10	35.0	23.0	19.8
11	17.5	39.3	16.7
12	24.5	33.3	17.1
13	18.2	47.4	18.6
14	17.7	54.4	14.8
15	25.4	54.8	8.9
Average	31.2	44.2	15.3

Sources: MLSC 1925, 263-265, 274-275.
*Excluded salary for the principal-owner and in some instances family members working for the firm. Unfortunately, the evidence does not explain why lender 4 experienced relatively low levels of bad debt and a high expense ratio. Intuitively, higher levels of due diligence expense could lead to less bad debt.

Carson and others believed that the MLA 1900 had failed to mitigate high interest charges or improve on the Victorian market.[208] Charles James, a moneylender, stated that under the MLA 1900 there was 'no uniformity' in the county courts.[209] Determining whether a moneylending transaction was harsh and unconscionable varied widely. MPs were highly critical of the way in which the system had developed, claiming that the framers of the MLA 1900 'never intended to give such wide powers to county courts'.[210] While these frustrations

[208] 'Letter 14 March 1925', Edward Carson papers Non-Irish 1921-1926, D1507/B/43 1-28, Public Records Office of Northern Ireland.
[209] MLSC 1925, 3.
[210] HC deb. 4 March 1927, vol. 203.

were understandable, the judiciary's discretion and resulting inconsistencies were predictable. As this research demonstrates, the MLA 1900 framers created the system to review transactions individually and were aware of the potential for discrepancy. Despite Carson's assertion that in the 1900s 'everybody foretold that such a provision … would … not solve the question', the judicial system was operating as designed.[211]

Like the MLSC 1897, the 1925 debate centred on a solution to high interest rates. Politicians cited transactions such as a woman who borrowed 30s and owed £5 17s in return.[212] Another woman had borrowed £2 to pay for medical expenses for a sick child. Over 12 months she paid 4s a week, totalling £12. Ernest Greenhill of the Financiers' Association of Scotland argued that the problems associated with moneylending, especially the high interest rate, had not been dealt with because, instead of recognising that moneylenders were a 'necessary condition of modern' life, they were considered evil.[213] Citing research from both England and the United States, Greenhill suggested a fixed interest rate of 5 pcpm. He believed that a fixed rate of 60 pcpa allowed for a reasonable, but not excessive, return on capital and would mitigate abusive lending.

Greenhill aside, few others pushed for price controls. This time the ghost of Bentham was not raised, nor were there many objections based on liberal ideology. The Home Office argued that implementing a single rate that would compensate for the wide range of risks was impractical, if not impossible.[214] Also from a practical standpoint, Judge Mackenzie Chalmers, a Permanent Secretary at the Home Office, believed that usury did not work as it was easy to evade, failed to compensate moneylenders for the risk of lending on a note of hand (i.e., a promissory note) and encouraged credit rationing.[215] Richard

[211] HL deb. 3 January 1926, vol. 63.
[212] HC deb. 23 April 1926, vol. 194.
[213] MLSC 1925, 630-642.
[214] MLSC 1925, 1174-1177; HC deb. 23 April 1926, vol. 194.
[215] MLSC 1925, 1246, 1279, 1291-1292, 1309, 1325. It was estimated that 95 per cent of the market were promissory notes. See MLSC 1925, 64.

Haldane, Lord Haldane (Labour) recounted that, historically, usury was avoided through the issue of annuities and cautioned policymakers to be prepared for similar evasion.[216] Instead, policymakers focused on supporting the harsh and unconscionable test by implementing a guidance rate.

For guidance rates, Wells and Carson proposed 20 and 15 pcpa, respectively. The Moneylenders Association considered these rates too low. In so far as every transaction appearing in court was likely to exceed 15 pcpa, moneylenders feared undue legal prejudice.[217] H. W. Bagwell, an accountant and member of a friendly society, believed it was impossible to carry on a moneylending concern at Carson's rate.[218] Instead, the Yorkshire Association indicated that 60 pcpa was the lowest rate at which an adequate return could be earned.[219] Albert Partridge, a chartered accountant, affirmed the 60 pcpa rate.[220] So often quoted was the 60 pcpa rate that Lord Hunsdon claimed moneylenders must have conspired to present such consistent evidence.[221] Given that moneylenders quoted 60 pcpa during the MLSC 1897, Hunsdon's allegations were probably incorrect. Furthermore, this rate received support from an unlikely source. Dorothy Keeling, chairwoman and secretary of a Liverpool-based charity providing social services, testified that, '60 per cent for unsecured loans would give a fair but not exorbitant profit' to moneylenders.[222] Keeling supported the rate based on her experience of administering a charitable loan fund, which, owing to low rates, was operating at a loss.[223] Keeling suspected that the lowest end of the business would not be able to operate profitably at the 60 per cent rate. She believed that a contraction in the market and credit rationing would benefit marginal borrowers. Because borrowing high-interest money caused 'agony of mind' and many had 'no hope'

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[216] HL deb. 11 February 1926, vol. 63.
[217] MLSC 1925, 30-43, 100.
[218] MLSC 1925, 1722.
[219] MLSC 1925, 76.
[220] MLSC 1925, 281-283.
[221] HL deb. 26 February 1926, vol. 63.
[222] MLSC 1925, 905.
[223] HC deb. 23 April 1926, vol. 194.

of repaying under the current model, she advocated a regulated, respectable and profitable moneylending industry.[224] Ralph Glyn encouraged MPs in similar fashion. He argued demand for loans would always exist and that legislation would help moneylenders conduct their business properly and should not be seen as 'vindictive'.[225]

More dramatically, Mark Wilson, a moneylender in Brighton, believed that a guidance rate would restrain the supply of capital and 'kill in entirety' the moneylending trade. He reminded the committee that the money obtained by borrowers was 'not buried in the garden', but spent in the community.[226] Ellis Hume-Williams MP (Conservative) protested for a different reason. He suggested that a guidance rate implied that any lower rate was conscionable and that rates would therefore tend to cluster around the maximum.[227] Overall, when compared to earlier debates, practical issues were of greater concern than ideology.

In the end, the committee set the review threshold at 4 per cent a month (which in their view equated to 48 pcpa) and shifted the burden of proof by placing the onus on the moneylender to demonstrate that a transaction was *not* harsh and unconscionable. According to Ronald Barnes, Lord Gorell (Liberal), the 48 pcpa figure was arrived at by subtracting advertising circular costs (which the Act would ban) from the 60 per cent average rate.[228] By quoting the rate in monthly terms, there was recognition of the short-term nature of the business. The MLA 1900 did not state a threshold interest rate, nor was the base assumption one of guilt. Now, it was for the moneylender to prove that his rates were *not* excessive. Arguably, the presumption of guilt codified legislators' negative perceptions of the industry. Underlying this proposal was a belief that owing to costs and publicity, borrowers remained reluctant to resort to the court

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[224] MLSC 1925, 900-901.
[225] HC deb. 23 April 1926, vol. 194. It was Robert Dennison MP (Labour) who called Carson's bill 'vindictive'.
[226] MLSC 1925, 1511-1515.
[227] HC deb. 23 April 1926, vol. 194.
[228] HC deb. 26 November 1925, vol. 62.

system. By shifting the burden of proof, legislators hoped that borrowers would exercise their legal rights. This proposal divided moneylenders. Some found the county court system fair and believed they could satisfy the burden of proof without much effort. Others argued that the county court system was already biased against them and the proposal would only make matters worse.[229] It is unlikely that this provision would have encouraged borrowers to use the courts. In practice, borrowers were reluctant because of privacy concerns and the cost of litigation, issues this clause failed to address.

Setting the guidance rate at 48 pcpa, below the commonly cited 60 pcpa, demonstrated Parliament's intention to limit, but not eliminate, the supply channel. However, the 48 per cent level was higher than both Wells's and Carson's original proposals.[230] Although Carson privately lobbied Glyn to reduce the guidance rate, he and Wells were willing to compromise.[231] Joseph Kenworthy MP (Labour) argued that in a perfect world moneylenders, prostitutes and gambling would be eliminated, but the world was not perfect.[232] Moneylending required attention. The regulatory response was not seen as an affront to freedom of contract, but a practical response to a social issue that their predecessors had failed to address.

Advertising

Wells's bill prohibited all forms of advertising. Even letters addressed to former clients were banned.[233] Moneylenders argued that a restriction of this kind would make 'it impossible to carry on the trade'.[234] They argued that if a sudden need for funds arose, such as a death in the family, it was only through

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[229] MLSC 1925, 3, 488-490.
[230] After reviewing the select committee evidence Carson admitted that the 15 per cent rate was too low. HL deb. 26 November 1925, vol. 62.
[231] 'Letter 21 April 1926', Edward Carson papers Non-Irish 1921-1926, D1507/B/43 1-28, Public Records Office of Northern Ireland.
[232] HC deb. 23 April 1926, vol. 194.
[233] 1924-1925 (88) Moneylenders (Amendment). A bill to amend the law with respect to persons carrying on business as moneylenders [Wells]. See sections 1-3.
[234] MLSC 1925, 9, 153-154.

advertisements that a man could find a moneylender. Moreover, without the ability to attract clientele, new entrants to the market would cease. The clause in effect intended to shut down the industry. Charles James, representing the Moneylenders Association and the Yorkshire Moneylenders' Association, reminded the committee that similarly controversial alcohol and gambling concerns issued circulars without restriction. Instead, he argued that 'deceptive and misleading' statements were to blame, but not advertising per se.[235] Moneylenders also warned that a ban on advertising would 'weed out' the 'better type of moneylender' and that only the 'less worthy [would] remain'.[236] Many in the trade argued that if the public prosecutor enforced fraud laws, additional regulation would not be needed.[237]

To gain respectability and avoid deception, James suggested limiting advertisements to descriptive information such as name, address, statement of occupation as a moneylender and the foundation year of the business. Other moneylenders supported these restrictions.[238] Holding the liberal line, one moneylender claimed that other traders advertised freely and that the same should apply to moneylenders.[239] There was also disagreement concerning the banning of circulars. London West End lenders protested, while representatives of the Lancashire, Cheshire and Bristol moneylending association sought to ban them.[240] While it is understandable that the lower end of the market saw no need for high-end circulars, they showed little regard for the overall market, nor did they offer solidarity to their London counterparts.

The committee's final proposal was harsh. It banned circulars and narrowed newspaper advertisements to registered names, address, statement of occupation and the date of establishment.[241] During a Commons debate

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[235] MLSC 1925, 4, 1544-1546; HC deb. 4 March 1927, vol. 203.
[236] MLSC 1925, 9.
[237] MLSC 1925, 29-30, 915.
[238] MLSC 1925, 4, 197-201, 2255.
[239] MLSC 1925, 1546. Though medical and legal trade associations prohibited members from advertising, it was not required by law.
[240] MLSC 1925, 491, 1437-1438, 1598.
[241] MLSC 1925, xii.

Robert Dennison MP (Labour) remarked, ‘This is the most important clause in the Bill.’ [242] In opposition, and based on practicality and legal fairness, Kenworthy protested that it was ‘ridiculous’ and ‘perfectly absurd’ to prevent people from sending out circulars.[243] In the MLA 1927 ban, although not as developed as contemporary truth in lending, there is an indication that it was meant to improve the quality of information.[244] However, this research suggests that there is only limited evidence that advertising requirements were meant to overcome a market failure such as asymmetric information. Instead, the banning of unsolicited circulars targeted at wealthy borrowers was meant to rid their recipients of a nuisance that disturbed the ritual of reading their mail during breakfast.[245] By eliminating the nuisance and limiting the type of information, the intention was to restrict moneylending and to limit fraud. The clause was a restriction to protect borrowers from deception and not information requirements to improve competition.[246]

Terms and conditions

The APR debate was also revisited. It was believed that borrowers were being deceived by the monetary method. Many moneylenders claimed that they were incapable of calculating the rate, or if they could, it would be prohibitively expensive to do so.[247] In an honest exchange one moneylender admitted that he was rather ‘bad at percentages’ and could not do the calculation.[248] Proving how difficult it was to calculate the interest rate, one academic journal invited chartered accountants to calculate the interest on a small loan. Ten accountants responded, each with a different answer. Their answers ranged from 234 pcpa

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[242] HC deb. 4 March 1927, vol. 203.
[243] HC deb. 23 April 1926, vol. 194.
[244] Ibid.
[245] Ibid. Under the MLA 1927, lenders were permitted to send solicited circulars.
[246] The effectiveness of mandatory information disclosure is debated. This topic is covered in Chapter 5.
[247] MLSC 1925, 14, 831.
[248] MLSC 1925, 13, 1479-1489.

to 1,564 pcpa.[249] The instalment nature of differing amounts with various methods of amortisation made calculating the interest rate a difficult task.

A third argument against this clause was based on consumer demand. A moneylender of 40 years remarked that rarely were customers interested in the interest rate expressed as a percentage. Instead, they wanted to know 'how much they will owe in pounds and pennies'.[250] The qualitative data support this opinion.[251] Moneylenders proposed a compromise, suggesting that the term 'gross profit' be used. This harks back to the retail analogy, whereby it is from gross profit that expenses were deducted.[252] Committee members were sympathetic to the calculation difficulties, but the proposed alternatives were not entertained. The committee's insistence on expressing the cost of funds as a percentage indicates its misunderstanding of customer demand. It was assumed that if customers knew the cost as a percentage they would forgo the loan. However, the demand for loanable funds was not driven by a 'rational comparison' between available loan options, but to meet an unavoidable need for cash. It is understandable that the borrower would want to know how much it would cost. Knowing this allowed for an easy comparison with wages.

Beyond the APR debate, the MLA 1927 terms and conditions regulations departed from past practices. The Act prohibited preliminary fees and required that a contract state the loan date, the principal and the pcpa as calculated by a statutory formula. A copy of the contract was to be provided within seven days. Contracts that failed to comply could not be enforced. Suggestions were made requiring moneylending offices to display a pre-approved table providing a close estimate of the interest rate based on the terms and loan principal. This was not enshrined in the Act, yet soon after its passage these tables were made

[249] MLSC 1925, 235-239.
[250] MLSC 1925, 250, 519-523, 1789, 1898, 1958-1962.
[251] Even after the MLA 1927, certain transactions were agreed to in monetary terms and only after were calculations made for documentation purposes. For example, CUST 49/2942 (Custom & Excise), 'Moneylender Case', 4 October 1948, TNA.
[252] MLSC 1925, 6.

available.[253] At the borrower's request, and at a cost of 1s, lenders were required to furnish statements detailing the original contract, payments received and balances owed. Other than debates surrounding the APR, moneylenders responded with little protest.

In certain cases, lenders asked for more stringent measures than Parliament did. These measures were intended to increase transparency, but in large part they were driven by a desire to reduce fraud as opposed to empowering consumers to make 'rational' decisions based on key financial metrics. That is, fraud vulnerability is distinct from information vulnerability. This research argues that because many policymakers linked moneylenders with the court system and crime, the motivation for regulation was to decrease fraud, as opposed to improving market competition. As before, the state used regulation to limit behaviour rather than provide support for market operations.

Licensing and enforcement mechanisms

Under the MLA 1900 the registration fee was £1. In 1925, the Yorkshire Moneylenders' Association sought to increase this to £25.[254] It was argued that a higher fee would deter undercapitalised lenders from participating in the market. In turn, the entire industry would benefit by having rooted out problematic lenders. Several moneylending associations supported the increase.[255] In pursuit of a 'respectable trade', the Yorkshire group backed Wells's amendment requiring a pre-registration police background check.[256] Police certification informed the Inland Revenue whether the applicant was a person of good moral character. To be denied a police certificate one had to be either a suspected or a convicted criminal. It was hoped that the local police would be aware of a moneylender's behaviour and standing in the community.

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[253] Richard Ridsdale, The Shillings per Pound: The Moneylenders' Interest Table (London: Gledhill's Printing Words, 1928).
[254] MLSC 1925, 44-48.
[255] MLSC 1925, 122-129.
[256] MLSC 1925, 68-70.

This proposal was meant to combat lenders such as Mersey Financial, a company convicted of issuing pension draft-backed loans.[257] Despite their offence, they were operating 'quite cheerfully' as there was no government authority to prevent them doing so.

Certain moneylending associations, solicitors and government agencies took issue with this proposal.[258] The Moneylenders' Association would rather Somerset House [the Inland Revenue] retain registration powers. They also sought a procedure to appeal a denied application. Under Wells's and Carson's bills denied registration was considered final. The Moneylenders' Association believed that, with its financial and human resources, in conjunction with the Magistrate and Quarter Sessions for appeal, Somerset House was in the best position to administer registration procedures.[259] Sir Ernley Blackwell, a Permanent Assistant Under Secretary at the Home Office, and the Moneylenders' Association agreed that the local police were not in a position to administer a registry.[260] Bearing that in mind, the weight of Blackwell's testimony should be taken lightly as he lacked insight into the moneylending market. Blackwell admitted that he and the Home Office had 'very little knowledge' of moneylending transactions. Notwithstanding, he proceeded to testify extensively.

More general protests concerned the role of government in the registration process. Josiah Wedgwood MP (Labour) asked whether the Home Office would ask, 'Who was your father? What school did you study [at]?' Cautioning against the registration process as an affront to free trade and commerce, he added that Parliament should not make it 'more difficult for a man to take risks. Safety first never made England.'[261] Wedgwood's stance

[257] MLSC 1925, 905. At the time, it was illegal to collateralise against future pension income.
[258] MLSC 1925, 588-595.
[259] MLA 1925, 122-129, 526-528.
[260] MLSC 1925, 1174-1177.
[261] HC deb. 4 March 1927, vol. 203.

reflected his firm commitment to self-reliance and individualism.[262] Wedgwood believed that Shylock was only getting back what was legally his and claimed that moneylenders were acting no differently from British war reparation collection efforts from France. Wedgwood concluded that 'he hates [it when] superior people try to make workers moral'.[263] His opinions were reminiscent of the Victorian liberal and poverty debates. While not without supporters, the liberal position gained little traction. It was clear that the MLA 1900 had failed and the path forward was for more state intervention.

One London solicitor suggested that a national control board could help support the judiciary system.[264] It was argued that self-regulation was in the interest of respectable lenders and that industry participants could better limit criminal activity than outside government supervisors. While Parliament would determine the rules of operation and standards of membership, the control board would ensure their implementation.[265] Theoretically, a control board under parliamentary scrutiny could have helped legitimise the industry. However, associations were localised and had limited membership. Even the largest association in London, with its developed moneylending market and extensive borrowing population, had fewer than 300 members, and it was believed that 'no association in the country' was strong enough to bring about reform pressure from within.[266] Although many regional groups testified, they offered competing goals and there was conflict within and between associations.[267] Despite the support of numerous parties, a control board was not seriously considered. The Home Office believed that an association would fail because society generally lacked confidence in the industry.[268]

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[262] Paul Mulvey, *The Political Life of Josiah C. Wedgwood: Land, Liberty and Empire, 1872-1943* (Woodbridge: Boydell & Brewer, 2010).
[263] HC deb. 23 April 1926, vol. 194.
[264] MLSC 1925, 584.
[265] MLSC 1925, 972.
[266] MLSC 1925, 159, 1839.
[267] MLSC 1925, 1672.
[268] MLSC 1925, 1191-1192.

The MLSC 1925 debated enhanced licensing and regulatory schemes such as capital requirements and posted bonds.[269] Under this requirement a lender had to prove he had a balance of liquid funds. In the event of a fine, the monies in escrow ensured payment. With capital at risk, it was expected that moneylenders would follow the letter and spirit of the Act. A licence could be denied or revoked if there was failure to post bond or capital requirements were breached. The intention was to remove 'dud firms' from the system.[270] More precisely, any firm without a capital base was considered to be fee-snatching. These firms would collect application fees with no intention or ability to lend money. Moneylenders and government officials alike sought to close their operations.

However, having entertained enhanced regulatory features, Parliament failed to enact measures beyond an augmented version of the existing registration model. The MLA 1927 required every moneylender to obtain an annually renewed excise licence at a cost of £15 per location.[271] Despite its name, this required only descriptive information. In addition to the address of the business, the licence itself was 'to be taken out in his [the moneylender's] true name' and display all additional trade names.[272] Trade taking place under a false name or unregistered address incurred a £100 fine and the risk of imprisonment. To register for an excise licence, a certificate granted by a petty sessional court was required. However, the information and restrictions on obtaining a certificate were almost a verbatim repeat of the registration clause. For example, the issue of a certificate required a lender's true name, all trade names and disclosure of every office location. The difference was in the jurisdiction. Each moneylending office required its own certificate issued by the local petty sessional court. Certificates could be refused if the applicant was not

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[269] MLSC 1925, 632-642.
[270] HC deb. 23 April 1926, vol. 194.
[271] £15 was a compromise figure. At first, some policymakers wanted to license every partner in a firm and every location, for a maximum of £100 annually.
[272] MLA 1927, 1(1-2).

'of good character', 'nor fit to hold a certificate', 'or the applicant has been ordered by a court disqualified for holding a certificate'. The certificate clause also forbade the use of the term or any implication that a moneylender operated as a bank. Given that Parliament considered the banking industry to be responsible and ethically moral lenders, it is not surprising that on three occasions the bill addressed the relationship between moneylenders and bankers.[273]

Although more robust than its 1900 counterpart, the registration reform of the MLA 1927 was minimal. The excise licence required only that the government be aware of the actual name and location of the lender. While court certificates addressed the government's prior inability to deny an application, the terminology was vague and provided little guidance to the judiciary. Despite including a 'morality test', the certificate did little more than ensure that the applicant was not a convicted criminal. Many moneylenders sought enhanced reform, such as capital requirements, bond posting and supervision roles, such as office inspections and financial audits.[274] Parliament thought these measures would be impractical and impossible in practice.[275]

Conclusion to section C. The Formation of Regulation 1925-1927

There was agreement that the market had grown rapidly and that the MLA 1900 had failed. As before, many newspaper editorials and some in Parliament viewed moneylenders as evil. The Select Committee and much of the House debate were more measured. Although traces of liberal thought and Victorian poverty concepts were present, the main goal was to improve on existing regulation. As Sir Henry Slesser MP (Labour, Appeals Court judge and former Solicitor-General) suggested, the debate was settled in 1900, when it was

[273] MLA 1927, 2(1-2,6), 3 (3).
[274] MLSC 1925, 1816.
[275] MLSC 1925, 1214.

determined that moneylending was a 'peculiar kind of contract'.[276] How far, then, were they willing to go and why?

Kenworthy was cautious and suggested that too heavy an approach would drive out competition and encourage credit rationing. After all, he remarked, the Charleston was known to kill people, but that did not mean dancing should be regulated.[277] Reflecting aspects of new Liberalism, Glyn wanted to avoid creating a culture of 'grandmotherly' government intervention.[278] Glyn's support of moneylenders paralleled those who believed Victorian pawnbrokers were a form of independent self-help. This finding supports Daunton's argument that continuity existed between the Victorian moral economy and new Liberal social policy. Wider trends aside, Wells remained focused on the issue and argued that the final bill was meant to increase credit standards, reduce 'unnecessary' borrowing and decrease the costs for qualified borrowers.[279] In Wells's opinion, encouraging the market to ration credit away from marginal borrowers was a positive development. That is to say, marginal borrowers were better off without a loan. As a result, moneylenders would enjoy a better reputation as there would be fewer fraudulent lenders and stronger trade associations, as well as less bad debt. Wells argued that the guidance rate, which he called a 'limitation on interest', banning circulars and licensing together would accomplish that end. Moneylenders saw value in regulations that would improve market standards. Similarly, Rhys Davies MP (Labour), while recognising the merits of capitalism, believed the system produced 'doubtful ways and dark methods' and that regulation was required to protect the ignorant poor.[280] It is unlikely that Davies would suggest that the market had failed, but would instead categorise the regulation as social reform. Wells articulated a similar position.[281]

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[276] HL deb. 3 February 1926, vol. 63.
[277] HL deb. 4 March 1927, vol. 203.
[278] HC deb. 23 April 1926, vol. 194; Daunton, *Wealth and Welfare*, 532-533, 546-547.
[279] HC deb. 23 April 1926, vol. 194.
[280] Ibid.
[281] HC deb. 4 March 1927, vol. 203.

Walter Phillimore, Lord Phillimore of Shiplake, protested. He believed that advertising and interest rate restrictions would cause the market to contract and leave 'honest men who have no security' with few options.[282] William Wedgwood argued that the purpose of the Act was to limit moneylenders, a class that was viewed with contempt, without considering the implication for borrowers. He suggested that moneylenders provided loans to cover emergency medical, funeral and food needs and that regulation would make securing funds more difficult. Throughout the period covered by this research there was disagreement over whether regulation that limited the supply of loanable funds helped or harmed borrowers. For some, credit rationing drove marginal borrowers out of the market and away from harmful products. Others believed that since the demand for funds remained, market segmentation left borrowers with far worse alternatives.

Finally, few moneylenders or policymakers supported price controls. It was believed that price controls would not address the variety of lending risk factors, were easily evaded and encouraged credit rationing. They were viewed as impractical and received little attention. Instead, the debate focused on the harsh and unconscionable test. While some moneylenders challenged the concept of a guidance rate, more effort was focused on its selection. These efforts were successful in so far as the rate selected exceeded Carson's and Wells's original proposals. Although not as organised as their 1870 pawnbroking counterparts, moneylenders had convinced enough politicians that moneylending incurred high administrative and bad debt expenses. Although moneylenders remained outside the banking system and were not well liked, their case was given more consideration than in 1900.

Along with the onus of guilt placed on moneylenders, the implementation of the guidance rate was a sharp departure from the past. It was believed that the ineffectiveness of the MLA 1900 and inconsistency in the court system

[282] HL deb. 1 December 1925, vol. 62.

would be mitigated by the guidance rate. Along with disclosure terms, enhanced licensing and advertising restrictions, the supply of funds and fraud would decrease. The Act had addressed the problems of high rates, advertising and the industry's growth. Glyn, Wells and others believed that raising industry standards would lead to better outcomes, but that was not the driving force behind regulation and probably explains why enhanced features were not considered. This research argues that the Act did not generate much theoretical debate over freedom of contract and market intervention because, after 27 years of failed regulation, more practical measures were called for. While Carson's bill was considered to be unnecessarily aggressive, few if any proposed that the best option was to repeal all regulation. As before, small loans to the working poor were considered peculiar and required a regulatory response to limit lending activity and poor behaviour.

Without a strong liberal opposition there was little interest in revisiting 'the poverty debate'. Arguably, Conservative silence on the issue indicated that conditions of poverty were not necessarily self-created and reflected 'One Nation Conservativism'.[283] The Act's banning of circulars and protection of the working poor dovetailed with efforts by the new Conservatives to build a cross-class voting base and enact 'undogmatic social reform'.[284] Regardless of poverty's origin, moneylending was a specific problem that required an immediate and practical response. As Fraser argued, after the First World War people began to expect government action in new areas of social and economic life.[285] The effect of the MLA 1927, and in particular the guidance rate, advertising restrictions and licensing are examined in Chapter 4.

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[283] Peter Dorey, *British Conservatism: The Politics and Philosophy of Inequality* (London: IB Tauris, 2011), chapter 1.
[284] Andrew Taylor, 'Stanley Baldwin, heresthetics and the realignment of British politics', *British Journal of Political Sciences* 35/3 (2005), 441; Stuart Ball, *Portrait of a Party: The Conservative Party in Britain 1918-1945* (Oxford, Oxford University Press, 2013), 30.
[285] Fraser, *The Evolution of the British Welfare State*, 211.

D. Conclusion

In the 1900s and the 1920s a strong anti-moneylending sentiment prevailed. In both decades calls for an inquiry were based on an increase in moneylending, high interest rates and prolific advertising. High interest rates gave rise to sensational newspaper headlines. Moneylenders had few allies and were often categorised as evil. The parliamentary mandate authorising the MLSC 1897 was targeted at combating an 'evil' industry which encouraged gambling and fraud. MPs associated moneylenders so strongly with crime that they stated as much in their summary findings. In 1927, Wedgwood said that moneylenders were so vilified that he received more letters against his opposition to Carson's bill than in the entirety of his political career.[286] Moneylenders and their allies argued that only a small minority of providers behaved badly. Many sought targeted regulation to rid themselves of these rogue businesses. To that end, a number of lenders proposed more stringent rules, such as capital requirements, than Parliament was willing to entertain.

In 1897, the starting point and trajectory of reform were influenced by the judiciary. There were varying opinions about how far judges should intervene in private financial contracts. Liberal theorists held contracts to be sacrosanct and argued against government interference in private agreements, unless crime was involved. Revisionists and reformers were willing to protect poor borrowers by rewriting contracts that were deemed harsh and unconscionable. When compared to the PBSC 1870, these arguments were less concerned with borrower rationality and responsible credit usage. Although many policymakers believed small loans were harmful to borrowers, moneylenders themselves, as a 'personified' group, were considered a social ill. While there were calls to protect vulnerable borrowers, this research argues that it was the judiciary, with its theoretical underpinnings, that framed the debate. Unlike pawnbroking, there was no collateral or business operations

[286] HC deb. 4 March 1927, vol. 203.

beyond the cash loan. Moneylending reform was about trade in money, which directed the debate towards theory, especially theory concerning the role of the state and market intervention. Arguably, this led the committee away from investigating the source of borrower demand and the conditions of poverty, as was seen in 1872.

In the 1900s, the purpose of regulation was to clarify the judiciary's role and limit the evil industry. If the intention was to limit the trade, and it was believed that price controls would constrain the market, why were they rejected? Many considered usury an affront to British values (i.e., freedom of contract); controls would be difficult to implement (how would they select and enforce the rate?) and infringe competition (i.e., rate clustering). Furthermore, although high rates were undesirable, they were not all considered extortionate. For their part, lenders believed that price controls would force them to withdraw from the lowest end of the market. This debate revealed diverging opinions concerning credit rationing and market segmentation. Were marginal borrowers better off without a loan? Some argued that rationing helped them avoid the debt trap, while others believed that since the demand for loans remained, moneylenders were a better option than resort to an illegal lender or selling possessions to raise cash.

Instead of price controls, the Select Committee proposed a guidance rate. The rate was to guide the judiciary in determining whether a transaction was harsh and unconscionable. Moneylenders argued that legal costs associated with defending their charges under the guidance rate would limit the supply of loanable funds, increase borrowing costs and encourage the black market. It was debated whether the guidance rate or any regulation could overcome bargaining inequity, which in this case meant that in so far as borrowers desperately needed cash, the price was of secondary concern. Nevertheless, the committee believed that the guidance rate would alleviate abusive, high-rate lending. Although select committee members argued that the guidance rate was not a form of usury, sceptical colleagues were unwilling to implement the measure and it was removed.

Price controls and the guidance rate resurfaced during the MLSC 1925. Compared to the 1900s, few policymakers offered ideological opposition or support. Price controls were rejected because they were difficult to implement, easy to evade and would segment the market. Unlike before, the guidance rate received broad support. While there was concern that rates would cluster towards the maximum and the selection of the rate proved complicated, it was passed in the MLA 1927. The guidance rate was not seen as an affront to freedom of contract or the free trade of money, but as a practical response to what policymakers understood to be the damaging effects of a high interest rate and failed regulation.

Both the MLSC 1897 and 1925 debated advertising disclosure terms. Viewpoints ranged from those seeking a total ban to those who believed restricting advertising was an attack on the free market. It was argued that by limiting or banning advertising the market would contract as would-be borrowers would find it hard to access money. In 1900, it was argued that the legal precedent of protecting children from advertisements could be extended to poor borrowers, whose limitations were much the same. Although demeaning, this type of regulatory intervention demonstrated an ethic to protect those who could not protect themselves. However, this was not the dominant narrative. Instead, advertising restrictions were viewed as a mechanism to control the supply channel. Without sufficient support to intervene in ‘market freedom’, the MLA 1900 relied on the standards of fraud to punish misleading statements. By 1925, however, the proliferation of circulars and newspapers advertisements led Parliament to ban the former and limit the latter. Circulars were seen as a nuisance and newspapers advertisements were believed to lure people to unscrupulous moneylenders. While the newspaper measure was intended to improve the ‘truth’ of information, the aim was more to restrict activity and limit fraud than to improve the market’s efficiency.

Believing that their business model was analogous to retail and citing the challenge of calculating the rate, moneylenders argued against disclosing their rates in APR form. Customers, they argued, were more interested in how much they would owe in cash terms. Proponents countered that the disclosure of high rates would deter borrowing. Policymakers asserted that the APR was something that borrowers should ‘rationally’ want to know and that moneylenders intentionally withheld the rate from them. This measure would correct their irrational behaviour. The intention behind the requirement that moneylenders register under a single name and were prohibited from implying that they were bankers was clearer still. These measures were intended to correct abusive rollover terms and asymmetric information (i.e., multiple trade names) and prevent moneylenders from acquiring the legitimacy of bankers. Whether they were bankers or not, moneylenders sought legitimacy. By 1925, regional trade groups were actively involved in the reform process. To improve the lending environment and their image, moneylenders proposed advanced licensing features, among them capital requirements, posted bonds and an industry standards board. Fearful of legitimising the industry, Parliament rejected these measures.

Overall, the MLA 1900 and 1927 were intended to restrict what many viewed as an unsavoury business and pernicious product. That is not to say that a protective ethic, especially among revisionist judges, was not present. The focal point was to restrict the market and limit fraud. Both Acts failed to create an effective enforcement mechanism and relied on the borrower to pursue punitive action. That the once rejected guidance rate was adopted in 1927 can be considered a pragmatic response to the ineffectiveness of the MLA 1900. The aftermath of the regulation and the market’s development since 1927 is covered in Chapter 4.

4 The Consumer Credit Act 1974

In the 1970s, the purpose of reform was to create a unified consumer credit regulatory structure that would enhance the market's efficiency and increase access to credit. Although small loans contributed little to overall credit volumes, the MLA 1900-1927 and the PBA 1872 were seen as outdated and unnecessarily restrictive, which in turn hampered the credit market, standards of living and growth in the economy. The Crowther Committee was appointed to investigate the regulatory structure.[1] With regard to moneylending and pawnbroking: What was the goal of Crowther? Which features of the PBA 1872 and MLA 1900-1927 were examined and what were the results? How did Crowther view low-income borrowers? How were lenders seen and did trade associations contribute to the regulatory process? What prevented Crowther from implementing price controls? How did Crowther understand the harsh and unconscionable test, the guidance rate, advertising and licensing?

Crowther had a strong preference for less government interference in the credit market. It was believed that credit allowed many families to maintain a high standard of living. Crowther believed that even the lowest income groups utilised credit to their benefit. This research argues that price controls were rejected because Crowther was more concerned with consumers' freedom to choose than social policy obligations to protect the minority of users who struggled with indebtedness. In other words, credit access overrode other considerations. It was argued that protecting borrowers by means of lower pricing enacted by price controls would require market interference that would limit the supply of credit and need product-specific legislation. These end-points ran contrary to the goals of increased credit access and regulatory unity. The

[1] Hereafter Crowther refers to the committee and the Consumer Credit: Report of the Committee 1971 (4596). References to the person will appear as Lord Crowther. The other committee members were Andrew Carnwath, George Clayton, Cyril Colton, Royston Goode, Desmond Hirshfield, Kenneth Mackenzie, Millie Miller and Douglas Steen.

CCA 1974 considered all forms of consumer credit, even moneylenders and pawnbrokers, as legitimate finance. Under the CCA 1974, providers could issue all forms of consumer credit under a single licence. Advertising and disclosure requirements specific to moneylenders and pawnbrokers were lifted. For the first time in centuries, pawnbrokers operated without a price cap. Few considered small lenders as evil. The CCA 1974 sought to balance the need for regulation to redress bargaining inequality through disclosure against increasing the market's efficiency. Theoretically, greater transparency, especially concerning the APR, encouraged consumers to compare credit products, which would increase competition, prevent extremely high-risk lending and lower pricing. In short, the best form of consumer protection was a unified regulatory structure that encouraged competition.

This chapter analyses the market and political developments since the MLA 1927, the Crowther Committee and the CCA 1974.

A. Market and political developments

Market background

Beginning in the 1940s, the small loan industry experienced a decline in volume and loan providers. In 1953, Aron Minkes, an economist, noted that the pawnbroking market had peaked in 1914, with shops taking 6,000-8,000 pledges monthly, and declined thereafter.[2] It was argued that the welfare state had brought an end to 'real poverty' and with it the need for small loans.[3] According to the John Hilton Bureau while historically moneylenders performed a useful function as a 'child could die or a family be put out on the street for the want of a few shillings', by the 1970s the state provided for those basic

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[2] Aron Minkes, 'The decline of pawnbroking', *Economica* 20 (1953).

[3] BT 250/38 (National Pawnbrokers' Association), 'Oral Evidence', 20 March 1970; BT 250/52 (Beneficial Finance Company), 'Memorandum to Crowther', 26 September 1968; BT 250/66 (Provident Clothing and Supply Company), 'Oral Evidence', 20 March 1969; and FV 62/29 (Consumer Sale and Loan Group), 'Department of Trade and Industry, Pawnbrokers Special Provisions, Internal Report' 19 June 1972, The National Archives (hereafter TNA).

necessities.[4] In 1968, the Treasury stated that 'the basis for small under £50 emergency loans in the last century, most often the pawn … is now a dying trade'.[5] Most commentators agreed that the welfare state, regular employment, slum clearances, New Towns, higher wages and more credit options had lessened the need for pawnbroking and moneylending.

In the 1970s consumer credit statistics were lacking and unreliable. Information concerning the small loan market proved no exception. Under the Finance Act 1949 the power to license had devolved to the local authorities, making it difficult to collect information. However, even before 1949 very little data were made available. The Registrar of Companies and the Customs & Excise Department debated which group was in control of licensing. Moreover, the available data are of little value as they fail to distinguish between professional moneylenders and individuals who issued loans from time to time. Although the latter group was numerically larger, lending was not their primary business. As of 31 December 1927, there were 28,236 registered moneylenders; however, only an estimated 4,000 were considered professionals.[6] In 1969, while there were 2,500 licences outstanding, only 500

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[4] BT 250/100-101 (Newspaper Advice Bureaux), 'Letter from Mr Gray, Board of Trade, to Royston Goode, Crowther Committee', 3 July 1970, TNA.
[5] BT 250/4 (Official Bodies), 'Background Memorandum on the Scope of Enquiry, Board of Trade and HM Treasury', 1968, TNA.
[6] IR 40/3555 (Inland Revenue), 'Office of Chief Inspector of Taxes, Letter from Mr Wilcox to Mr Pool', 28 November 1929, TNA.

or so were issued to professionals.[7] In that year, the National Association of Moneylenders estimated that 25 per cent of licences were held by professionals. [8] Despite these statistical issues, it is certain that the moneylending trade declined between 1927 and 1969.

Table 14 shows the distribution of licences issued in 1969. London remained the most active small loan market. Figure 2 combines a variety of sources to demonstrate the decline in the pawnbroking market.

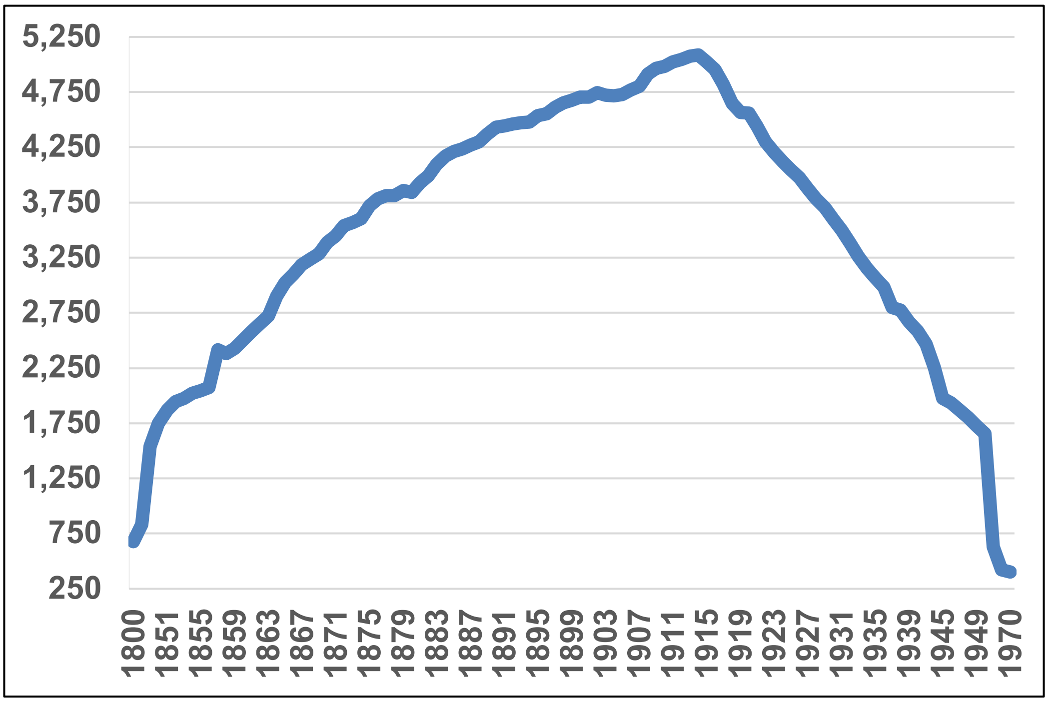
Table 14 Licencing distribution, 1969

	PB	ML
Greater London	108	730
Rest of South East	26	122
North West	64	464
Yorkshire	38	403
Northern	29	124
West Midlands	24	117
East Midlands	16	85
South West	11	78
East Anglia	6	13
Scotland	74	152
Wales	6	180
Total	402	2,468

Source: BT 250/93 (Councils on Moneylending and Pawnbroking), 'Licensing Data, Board of Trade Letter from Robin Gray to Peter Dewey', 12 March 1970, TNA.

[7] BT 250/34 (National Association of Moneylenders), 'Oral Evidence, R.B. Selig, Chairman, C.A. Yonwin, Secretary', 20 March 1969, TNA. 'Non-professionals' were lenders who issued loans infrequently and/or loans of extremely low value.
[8] Ibid.

Figure 2 Pawnbroking licences, 1800-1970



Sources: Annual report of the Commissioners of HM Inland Revenue and HM Customs & Excise, 1870-1970; Crowther testimony; National Pawnbrokers Association; and the PBSC 1870.

By 1970 the pawn market was at levels not seen since the early 1800s. Not only were there fewer pawnbrokers, but overall loan volumes had collapsed. According to a Crowther-commissioned NOP Market Research survey, 50 per cent of pawnbrokers issued fewer than 9,000 loans annually.[9] At the beginning of the twentieth century many pawnbrokers would have issued that number monthly. In 1969, the NPA estimated that a busy shop would transact 20-30 pawns a day.[10] The magnitude of this decrease can be appreciated by recalling that, on 2 May 1870, Mr Barnett of Lambeth took in 725 pledges and delivered 249. On Saturday of that week he delivered 1,899 and took in 225. In 1969, almost 80 per cent of pawnbrokers had been operating

[9] NOP randomly sampled 373 moneylenders and 115 pawnbrokers of whom 276 moneylenders and 85 pawnbrokers responded. See 'Pawnbrokers and moneylenders', a report for the Department of Trade and Industry by NOP Market Research (1971) (hereafter NOP Research).
[10] BT 250/38 (National Pawnbrokers' Association), '"The Pawnbroker" by Ruth Brandon of New Society', 16 June 1970, TNA.

for at least 25 years, indicating few new market entrants. In that year it was estimated that the 402 licensed pawnbrokers had issued approximately £6.3 million in loans on 1.4 million pledges, with an average pledge of £4.33. A century earlier, 30 pawnbrokers in Liverpool issued 1.4 million pledges valued at £300,000. Adjusted for inflation the £300,000 in 1869 was worth approximately £2.2 million in 1969.[11] The average pledge in the Liverpool sample was 4s 7.5d, which in 1969 terms was approximately £1.80. The NPA estimated that for a typical shop in London the average pledge was £5.[12]

Beyond adjusting for inflation, the increase in average pledge size corresponded to an increase in the value of pledged items. No longer did pawnbrokers participate in a weekly pledge cycle consisting of low-value clothing, but took in items such as radios, cameras, tape recorders, typewriters and jewellery. The NPA claimed that 'only one firm in London will take clothes at all, and then only brand new … You have to auction them … and you'll likely only get a £3 for a £40 suit … they took so long to parcel up, and then they're so bulky to store.'[13] The increase in average pawn loans supported the NPA's qualitative narrative. Table 15 and Table 16 show the breakdown and average value of low, auction and contract pledges. While low pledges comprised the highest volume, contract pledges were the most valuable. The trend for fewer, but high-value pledges contributing the most to market value is evident from 1869 to 1969.[14] Unlike before, when the redemption rates were a relatively uniform 90-98 per cent, in 1972 the NPA estimated a range of 75-95 per cent.[15] The wider spread and higher rate of default (lower redemption) may indicate

[11] The Bank of England inflation calculator.
[12] BT 250/38 (National Pawnbrokers' Association), 'Oral Evidence', 20 March 1970, TNA.
[13] Ibid.
[14] After 1872, small parts of the PBA were amended. The last was the Pawnbrokers Act 1960: 8 & 9 Eliz.2. Ch.25. This Act increased allowable charges and the loan maximum from £10 to £50. Because the Act is considered minor, was enacted with little debate and was rescinded by the CCA 1974, it is not covered by this research.
[15] FV 62/34 (Moneylenders, Cheque Traders and Pawnbrokers trade associations), 'National Pawnbrokers' Association', 21 November 1972, TNA.

that pawnbrokers issued more risky loans to compensate for lower loan volumes.

Table 15 Pawnbroking market estimates, 1970

Pledge type	Volume as a %	Market Value £m	Market Value as a %	Avg. pledge range
Low	48%	0.89	14%	20-35s
Auction	30%	1.84	29%	£2-£4
Contract	21%	3.61	57%	£10-£20
	100%	6.34	100%	-

Source: NOP Research.

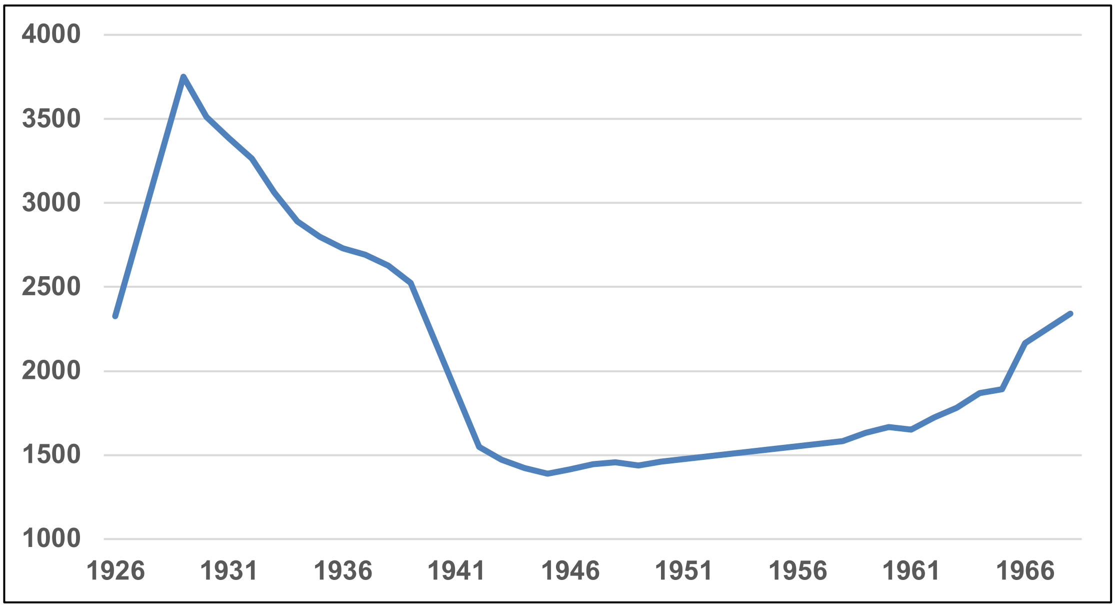
Table 16 Pledge analysis, 1970

Avg. value Low	Number of PBs	Avg. value Auction	Number of PBs	Avg. value Contract	Number of PBs
10s	2	£2	1	£5	8
15s	4	£2 10s	13	£10	29
£1	24	£3	16	£15	13
25s	22	£3 10s	24	£20	7
30s	15	£4	13	£25-£30	4
35s	3	£4 10s	0	£31-£40	3
£2	4	£5	4	£41-£50	1
NR	10	NR	14	NR	21
	85		85		85

Source: NOP Research. NR (No response).

The moneylending industry also declined. The increase in licensing after the MLA 1927 was arguably a result of small, non-professional lenders joining the legal system. Over time, owing to lack of enforcement, fewer participants registered. The downturn in moneylending began to reverse in 1946. Figure 3 demonstrates this trend. The upward trend corresponded to a sharp decline in pawnbroking. This dynamic coincided with the New Towns Act 1946, which relocated low-income families from urban to newly constructed population centres. Minkes suggested that these programmes contributed to the pawn industry's rapid decline after 1946. Given the limited data, it is difficult to demonstrate definitively that moneylenders benefited from the decline in pawnbroking, however Table 17 shows that in 1946 the moneylending industry began to expand, and at the same time the pawn market experienced an increase in the rate of its decline. From 1946 to 1969, the pawn industry had *contracted* by 79 per cent, compared to a 74 per cent *increase* in moneylending.

Figure 3 Moneylending licences, 1925-1970



Sources: NOP Research; and author estimates using data from the MLSC 1925 and Customs & Excise, England and Wales.

Table 17 Pawnbroking and moneylending licenses, 1942-1970

	Pawnbrokers	Moneylenders
1942	2,256	1,548
1943	-	1,472
1945	-	1,389
1946	1,932	1,414
1950	1,654	1,459
1964	632	1,869
1968	-	2,342
1969	402	2,468

Sources: NOP Research; Author estimates using data from the MLSC 1925; Customs & Excise, England and Wales (1929-1950); Crowther testimony; and the National Pawnbrokers Association.

Survey data from NOP Research confirmed that the moneylending industry took in new market entrants. Of the 276 sampled, 40 per cent had been in business for less than five years, 66 per cent for less than ten years and 76 per cent for less than 16 years. Pawnbrokers argued that price controls put them at a disadvantage compared to moneylenders. Although it is impossible to confirm, it is likely that more attractive financial returns and a general trend towards unsecured lending benefited moneylenders. Notwithstanding, moneylenders issued less in total loan value than their pawnbroker counterparts. In the late 1960s, the Treasury and the Board of Trade estimated that moneylenders issued £2.5 million annually.[16] The National Association of Moneylenders provided a higher estimate of £5 million annually.[17] Of the NOP sample (276 lenders), approximately 16 per cent issued less than £2,000 annually, 40 per cent issued less than £10,000 annually, 60 per cent issued less than £20,000 annually and only 11 per cent issued more than £50,000

[16] BT 250/4 (Official Bodies), 'Background Memorandum on the Scope of Enquiry, Board of Trade and HM Treasury', 1968, TNA.
[17] BT 250/34 (National Association of Moneylenders), 'Letter from RB Selig, Chairman, to Mr Gray, Board of Trade, Committee on Consumer Credit', 23 April 1970, TNA.

annually. Few lenders occupied a middle ground (more than £20,000 but less than £50,000), indicating that the market's structure was similar to its composition in 1927 when most lenders issued small loans, with a minority providing large loans to a wealthier clientele.

Approximately 100 of the 276 lenders said that more than 75 per cent of their business was the issue of unsecured loans of less than £50. Table 18 shows the average interest rate on unsecured loans in the NOP sample, with 166 of the 276 lenders charging, on average, 10-50 pcpa. Table 19 summarises data provided during the National Association of Moneylenders oral testimony on 20 March 1969. It supports average loan sizes of £20-£50 and that most loans were issued on a short-term basis.[18] The estimated average income of borrowers of between £18-£35 a week is higher than the results provided by the John Hilton Bureau of £12-£13 a week. This is not surprising as the Bureau's data were provided by customers who had defaulted or found the terms and conditions difficult to comply with.

[18] Ibid.

Table 18 Average rates on unsecured loans

Average pcpa	Number of MLs	%
10-20%	69	25%
21-30%	33	12%
31-40%	25	9%
41-50%	39	14%
51-60%	8	3%
61-70%	3	1%
71-80%	0	0%
81-90%	6	2%
91-100%	3	1%
100%+	0	0%
No unsecured	50	18%
Do not know	41	15%
Total	276	100%

Source: NOP Research.

Table 19 Unsecured loan profile

Range of duration	1-24 months
Common duration	6-18 months
Average duration	3-6 months
Range of loan size	£5-£1,000
Common range	£30-£150
Average range	£20-£50

Source: BT 250/34 (National Association of Moneylenders), 'Letter from RB Selig, Chairman, to Mr Gray, Board of Trade, Committee on Consumer Credit', 23 April 1970, TNA.

As discussed below, opponents of the MLA 1927's 48 per cent guidance rate, and of usury more generally, argued that ceilings deterred lenders from competing on price. The Consumer Council investigated loan rates and found a typical rate of 48 pcpa and a range of 20-90 pcpa.[19] Their findings provide evidence of price clustering. The National Association of Moneylenders found a normal rate range of 20-100 pcpa, which is not far off the Consumer Council, but higher than the NOP sample.[20] Based on a consumer complaint, the Islington Consumer Group found a £20 loan was repayable in eleven weekly instalments of 50s or approximately 54 pcpa. A second study found that a loan of £100 repayable by instalments of £5 weekly over seven months gave a rate of approximately 145 pcpa.[21] They, however, incorrectly stated that 'it is extremely unlikely that the moneylender could enforce this interest in court, as he has to prove that a rate of 48 per cent is reasonable'.[22] It is impossible to state what a court would have decided as they had sided for and against lenders since the implementation of the guidance rate in 1927. Regardless, the consumer group concluded that 'this method of borrowing is not recommended'.

Moving from rates to expenses, the National Association of Moneylenders suggested that 'the average cost of administering any loan was £9 and with the current rate of inflation it was necessary to charge 18 per cent interest even to stand still on a below average risk loan'.[23] Concerning profitability, the Lancashire and Cheshire Moneylenders Association estimated that its members earned, on average, a 15.2 per cent return on capital employed.[24] This result is similar to data provided during the MLSC 1925, as shown in Table 13. Unfortunately, the sample size limits any meaningful conclusion. The gains from capital, as with pawnbrokers, were distributed to

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[19] BT 250/47 (Consumer Council), 'Consumer Council: About Credit', Undated, TNA.
[20] BT 250/34 (National Association of Moneylenders), 'Oral Evidence, RB Selig, Chairman, CA Yonwin, Secretary', 20 March 1969, TNA.
[21] BT 250/50 (National Federation of Consumer Groups), 'The Islington Consumers' Group: Fair Deal', 1967, TNA.
[22] Ibid.
[23] FV 62/34 (Moneylenders, Cheque Traders and Pawnbrokers trade associations), 'Board of Trade Meeting with the National Moneylenders Association', 19 April 1971, TNA.
[24] BT 250/27 (Lancashire and Cheshire Moneylenders Association), 'Letter from MH Watson, Secretary, to NH Nail, Secretary, Board of Trade, Committee on Consumer Credit', 12 June 1969, TNA.

the principals, as both credit providers were funded primarily from their own capital.[25] While their capital structure had changed little since the 1870s, by the turn of the twenty-first century external funding from public and private equity had entered the market.

After the Second World War the pawnbroking and moneylending markets underwent significant changes. Developments in the welfare state, rising wages, slum clearances, urban redevelopment and an increase in alternative credit products led to smaller loan volumes and less market participation. By the time of Crowther, the pawnbroking market was a shadow of its former self. Only 400 or so pawnbrokers remained active compared to a peak of 5,087 in 1914. However, the NPA reminded Crowther that for people without a bank account and in need of cash urgently, pawnbrokers remained an important source of funds.[26] As before, pawn loan interest rates were considered high by many observers. Crowther positioned moneylenders similarly, saying that they were 'at the end of the credit line … and his clients could usually not secure accommodation elsewhere'.[27]

Political background

By the late 1960s there was a sense of urgency about the legal status of finance houses, hire-purchase companies and instalment credit under the restrictive and poorly designed MLA 1927. At risk were billions in credit contracts.[28] The MLA 1927 had failed to differentiate between 'proper' banking and moneylending. As the credit markets became increasingly complex and diverse, it was unclear whether banks, discount houses and merchant banks required an MLA 1927 licence. While section 123 of the Companies Act 1967 exempted certain finance houses from the MLA 1927, a long-term solution was needed. It was argued that regulation based on the form of lender created

[25] Crowther, 2.4.21.
[26] BT 250/38 (National Pawnbrokers' Association), 'Oral Evidence', 20 March 1970, TNA.
[27] Crowther, 2.4.15.
[28] BT 250/2 (Consumer Credit), 'Summary Conclusions from the Department of Trade and Industry', March 1971, TNA.

inefficiencies, including high pricing, misleading advertising and questionable APR disclosure.[29] George Darling MP (Labour, Minister of State at the Board of Trade), his predecessor, Niall Macpherson, Lord Drumalbyn of Whitesands (Conservative) and the Consumer Council pushed to overhaul the outdated and patchwork of legislation.[30] While Lord Chancellor Gerald Gardiner, Lord Gardiner of Kittisford (Labour) stated (incorrectly as this research has demonstrated) that historically policymakers easily distinguished between a banker and a moneylender, he, along with Frank Soskice, Lord Stow Hill of Newport (former Home Secretary and Lord Privy Seal, Labour) and Thomas Jay MP (Labour, President Board of Trade) urged Parliament to stop distinguishing among forms of lender.[31]

These issues only added to the government's concern over the volume of credit available to the consumer and its ability to manage the economy through monetary policy, terms controls and minimum down-payments.[32] Robert Painter of the Treasury remarked that the significance of consumer credit to the economy and its growth in recent years 'could alone justify' a review of the relevant laws and policies.[33] The government and the Bank of England sought unified credit regulation such that it could 'achieve the desired

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[29] 'High cost of credit to be reviewed', *Guardian*, 3 July 1968; 'Tighter law on loan advertising', *Guardian*, 12 September 1968; Michael Blanden, 'What is the cost of credit?', *Guardian,* 5 October 1968.

[30] HC deb. 12 July 1967, vol. 650; HC deb. 19 July 1967, vol. 750; AJ 10/60 (Consumer Council), 'Memorandum to the Committee on Consumer Credit', Undated, TNA. Ultimately, the CCA 1974 repealed the PBA 1872, MLA 1900, MLA 1927, PBA 1960, Hire-Purchase Act 1965 and Advertisement (Hire Purchase) Act 1967.

[31] HL 22 November 1966, vol. 278; HC deb. 14 February 1967, 741.

[32] BT 250/2 (Consumer Credit), 'Summary Conclusions from the Department of Trade and Industry', 'Bank of England, Memorandum', 1969, 'Bank of England, Oral Evidence', 18 July 1969, and BT 250/4 (Official Bodies) 'Board of Trade, Committee on Consumer Credit, Minutes' 25 September 1968; 'Letter from FW Glaves-Smith to RJ Painter, HM Treasury, TNA; 'MPs told of credit curbs', *Guardian,* 2 November 1968; HC written answers 2 July 1968, vol. 767.

[33] BT 250/2 (Consumer Credit), 'Summary Conclusions from the Department of Trade and Industry', March 1971 and BT 250/4 (Official Bodies), 'Background Memorandum on the Scope of Enquiry, Board of Trade and HM Treasury', 1968, TNA.

effects of economic policy'.[34] Although the Bank agreed that controlling 'quasi' financial institutions was necessary, it believed other agencies would be better suited to the task.[35]

Crowther and the CCA 1974 took place between two periods of economic and social change. In the 1940s and 1950s Britain saw the extension of the welfare state (the Education Act, The Beveridge Report, the NHS, etc.) while towards the end of the 1970s the mantra of deregulation had taken root.[36] From a financial regulatory perspective, the once dominant narrative, suggesting that the government could correct market failure, was, by the late 1970s, in question.[37] Now, social scientists and policymakers argued that government intervention made matters worse. Referring to this period, Jim Tomlinson, an economic historian, described the government's role in the economy as modernising rather than coercive.[38]

Crowther was appointed by a Labour government led by Harold Wilson and completed under Edward Heath's Conservative government. The CCA 1974 was enacted during Wilson's second premiership. Anthony Seldon, a political historian, has suggested that during this period economic and social institutional reform was in vogue. Heath was committed to organisational reform, streamlining and the modernisation of government and industry.[39] Although it sought less state interference in the economy, Crowther identified

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[34] Ibid.
[35] BT 250/2 (Consumer Credit), 'Bank of England, Memorandum', July 1969, TNA.
[36] The Institute for Economic Affairs among others challenged the so-called 'Big Bang' deregulation of financial services under the Thatcher government. See Larry Elliot, 'Margaret Thatcher's deregulation of the City a myth, says think tank', *Guardian*, 25 May 2015.
[37] Edward Balleisen and David A. Moss, 'Introduction', in *Government and Markets: Toward a New Theory of Regulation*, 1-10, eds. Edward Balleisen and David Moss (New York: Cambridge University Press, 2010).
[38] Jim Tomlinson, 'Managing the economy, managing the people', in *20th-Century Britain, Economic, Cultural and Social Change*, 234-246, eds. Francesca Carnevali and Julie-Marie Strange (London: Pearson Longman, 2007).
[39] Anthony Seldon, 'The Heath government in history', in *The Heath Government 1970-74: A Reprisal*, 1-20, eds. Stuart Ball and Anthony Seldon (London: Routledge, 2013).

similar goals before Heath's administration took office.[40] Nor was Crowther influenced by the 'rediscovery of poverty' in the 1960s.[41] Crowther was a technocratic process whereby a group of experts sought to solve the problem assigned to it. The evidence does not suggest that any one political group guided Crowther. Alongside changes in government, the Crowther process continued and was well received across the political spectrum.

What, then, was Crowther's goal? Which features of the PBA 1872 and MLA 1900-1927 were examined and what were the results? Concerning moneylending and pawnbroking, how did Crowther understand the borrower? How were lenders viewed and did trade associations contribute to the regulatory process? What prevented Crowther from implementing price controls? How did Crowther understand the harsh and unconscionable test, the guidance rate, advertising and licensing? What was the government's response to Crowther and did the CCA 1974 substantially differ from its recommendations?

B. The Crowther Committee 1968-1971

With Geoffrey Crowther as chairman, the committee was appointed by the Treasury and the Board of Trade in September 1968.[42] Its parliamentary mandate was to investigate the consumer credit regulatory structure, explore possible alternatives and consider amending the Moneylenders Act.[43] The

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[40] Peter Sloman, 'The pragmatist's solution to poverty: The Heath government tax credit scheme and the politics of social policy in the 1970s', *Twentieth Century British History* 27:2 (2016), 223.

[41] Crowther 9.3.2; Keith Banting, *Poverty, Politics and Policy: Britain in the 1960s* (London: Macmillan, 1979); Robert Pinker, 'Social policy and social justice', *Journal of Social Policy* 3:1 (1974) 1-19; Brian Abel-Smith and Peter Townsend, *The Poor and the Poorest: A New Analysis of the Ministry of Labour's Family Expenditure Surveys for 1953-54 and 1960* (London: G. Bell & Sons, 1965). For a critique of Townsend's findings see Ian Gazeley *et al.*, 'The poor and the poorest, 50 years on: evidence from British household expenditure surveys of the 1950s and 1960s', *Journal of the Royal Statistical Society* A:180 (2017), 455-474.

[42] On 19 October 1970, The Board of Trade was merged with the Ministry of Technology, creating a new cabinet post of Secretary of State for Trade and Industry. Hereafter the Department for Trade and Industry is abbreviated as DTI.

[43] Crowther, iii.

committee held 34 days of formal meetings and an unspecified number of informal meetings. Forty-two organisations presented oral evidence and 80 individuals and organisations submitted written evidence. Organisational testimony included groups as diverse as the Federation of British Carpet Manufacturers, the Leeds Junior Chamber of Commerce, the Law Society of Scotland, the Finance Houses Association, the clearing banks, the National Association of Moneylenders and the National Pawnbrokers Association. Government departments providing evidence included the Treasury, the Board of Trade, the Bank of England and local councils. Although Crowther was appointed by the Treasury, the Treasury approached the process cautiously. An internal Treasury memorandum stated:

> I think it would be unwise to give the impression that we are positively inviting Crowther to solve these particular problems for us, since we might then find it more difficult at a later stage to disregard any of the Committee's findings which were embarrassing to us.[44]

On 11 November 1968, Lord Crowther warned the Treasury and the Board of Trade that there would be 'consequences' if facts were 'concealed'.[45] Tensions aside, never before had government or private industry investigated the consumer credit market in detail. Since the PBA 1872, only eight committees had analysed any aspect of the market.

Crowther was Britain's first systematic study of the consumer credit market.[46] Roy Goode, a member of the committee, recalled their efforts to understand the social and economic aspects of consumer credit.[47] Based on the volume of his published works, Goode was the most active and arguably the most influential member of the committee. If not for the timely delivery of an academic paper dealing with regulatory reform it is likely that the Treasury

[44] BT 250/4 (Official Bodies), 'HM Treasury, Internal Letter RJ Painter to Mr Michelson', 29 October 1968, TNA.
[45] BT 250/4 (Official Bodies), 'Board of Trade, Internal Memorandum', 11 November 1968, TNA.
[46] Crowther's final report was segmented into a Lending and Security Act and A Consumer Sale and Loan Act. This research focuses on the latter.
[47] Royston Goode, personal interview, 20 November 2015.

would not have appointed him to Crowther.[48] Concerning that paper, the Law Society remarked that Goode's analysis was 'a bold and imaginative approach to a restructuring of the law'.[49] Within weeks of presenting the paper at the University of Cambridge, the Treasury, the Bank of England and judicial organisations supported his candidacy.[50]

Innovative for its time, Crowther understood that regulating the consumer credit market required an appreciation of its economic and social implications. Attention was given to levels of consumer indebtedness and family well-being. Managing an investigation into such a complex industry chimed well with Lord Crowther's 'tremendous capacity for work'.[51] When integrating their findings proved difficult, Lord Crowther convened a weekend retreat of senior committee members held at a hotel outside London. Without support staff, the members discussed, debated and synthesised their ideas, helping them to form a policy recommendation.[52] Ultimately, Crowther found that consumer credit legislation was 'gravely defective', too technical, created legal ambiguities and unnecessarily restricted lending activities.[53] They concluded that legislation had failed to perform in the real world.

The existing regulation lacked a 'functional basis' and distinguished among credit products based on 'legal abstractions' and business reality.[54] Although the framers of the MLA 1927 sought to avoid restricting 'proper commerce', it had done just that.[55] Moreover, the MLA 1927 made no

[48] T 326/805 (Setting up of Crowther Committee), 'HM Treasury, Consumer Credit Committee', 31 August 1967, 'HM Treasury, Internal Memorandum', 5 September 1967, 'HM Treasury, "R.M. Goode" Letter from Mr Gordon to RJ Painter', 24 October 1967, 'Consumer Credit Committee, Internal Memorandum "RM Goode" from PR Gordon to MR Bruce', 26 October 1967, TNA.
[49] BT 250/28 (Law Society), 'Oral Evidence', 15 May 1969, TNA.
[50] T 326/805, (Setting up of Crowther Committee), 'HM Treasury, Membership of Committee, Letter from PR Gordon to RJ Painter', 1, November 1967, TNA.
[51] Royston Goode, personal interview, 20 November 2015.
[52] Ibid.
[53] Royston Goode, *The Consumer Credit Act*: *A Student's Guide* (London: Butterworth, 1979), 6-7.
[54] Crowther, 1.3.6.
[55] Maurice Megrah, 'Banks and moneylenders', *Modern Law Review* 13:1 (1967), 86-89.

distinction between a minor breach and a grave infringement, both of which voided a contract. The Treasury found that many judges relieved borrowers not because their contracts were harsh and unconscionable or with any relation to inequity based on the 48 per cent guidance rate, but owing to legal technicalities.[56] The Law Society found this unfair, as the 'draconian manner' in which the Act was enforced allowed borrowers to discharge debts that were entered knowingly and freely.[57] Regulation focused on the legal form of a lending entity was fragmented, ineffective and outdated. It was argued that new regulation should focus on the function and effect of consumer credit products. Consumer credit regulation, including pawnbroking and moneylending, required a complete overhaul.[58]

A second criticism was that the MLA 1927 lacked an effective enforcement mechanism. Crowther wrote: 'Laws and regulations are useless unless they are enforced with some regularity and consistency.'[59] This was not simply an intellectual or legal abstraction. Concerned that a moneylender executed a contract in violation of the MLA 1927, the National Citizens Advice Bureau Council contacted the Board of Trade. The case involved a lender who had required a deposit of £30 for a loan of £300. The Advice Bureau was dismayed to learn that, in the words of the Board of Trade, 'no one is charged' with enforcing the Act.[60] In 1901, Horace Mansfield MP (Liberal) was disconcerted when he learned that the MLA 1900 did not provide the Inland Revenue with powers of prosecution.[61] For almost 75 years, government, advocacy and lenders had expressed frustration that the MLA 1900-1927 lacked an enforcement mechanism.

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[56] BT 250/112 (Summary of Existing Legislation), 'HM Treasury and Board of Trade, "Equity in Consumer Credit"', 18 December 1968, TNA.
[57] BT 250/28 (Law Society), 'Law Reform Committee of the Council of the Law Society', February 1969, TNA.
[58] Goode, *The Consumer Credit Act*, 6-7; Crowther, 3.9.1.
[59] Crowther, 7.4.1.
[60] BT 250/49 (The National Citizens' Advice Bureau Council), 'Oral Evidence', 16 May 1969, TNA.
[61] HC deb. 18 June 1901, vol. 11.

Without an effective licensing system, the government had little control over moneylenders. From 1900 to 1968, for reasons of privacy, legal costs, time away from work and unfamiliarity with the law, consumers were unwilling and unable to utilise the court system. There are no records of any major police force having systematically dedicated resources to enforcing the MLA 1927. As a result, there were few if any suspensions of licences. Of 170 licensing authorities surveyed by Crowther, only one had suspended a licence between 1958 and 1968.[62] Without police enforcement or judicial proceedings initiated by the debtor, Crowther found that the law failed to protect vulnerable borrowers. The harsh and unconscionable test, along with its 48 per cent guidance rate, had 'rarely been invoked successfully'.[63] The Islington Consumer Group found that moneylenders rarely had to justify their rates, even those exceeding 145 pcpa.[64] While rich in legal theory, in practice the MLA 1927 was of little use to borrowers.

The deficiencies in the regulation led interested parties to examine the rationale behind the PBA 1872 and MLA 1900-1927. The Treasury and the Board of Trade found that while 'the evil which the Acts aimed to control was the exploitation of borrowers who were in extremis', the regulation was not appropriate for contemporary needs.[65] Pawnbrokers argued that price controls had distorted competition and restricted new market entrants. The Treasury reached a similar conclusion. It was believed that the historical conditions that once required detailed protection were no longer relevant.[66] The Consumer Protection and Licencing Committee of the County Council of West Sussex believed that fewer regulations were needed. They suggested that since moneylenders were no longer regarded as 'vultures from whom poor and

[62] Goode, *The Consumer Credit Act*, 103.
[63] Ibid., 103, 204-205.
[64] BT 250/50 (National Federation of Consumer Groups), 'Letter from RGA Youard, Chairman, to NH Nail, Secretary to the Committee on Consumer Credit', 29 May 1969, TNA.
[65] BT 250/4 (Official Bodies), 'Background Memorandum on the Scope of Enquiry, Board of Trade and HM Treasury', 1968, TNA.
[66] FV 62/29 (Consumer Sale and Loan Group), 'Department of Trade and Industry, Pawnbrokers Special Provision', 19 June 1972, TNA.

feckless required protection', there was no valid reason to impose heavy restrictions on them.[67]

Few of the testifying parties categorised moneylenders or pawnbrokers as evil. The MLA 1927 and its effects on the market were used as a 'warning' of the systematic failure to demarcate the consumer credit industry by form of lender.[68] If lenders were no longer seen as evil and borrowers were not teetering on the brink of destitution, the existing regulation was ill suited to the needs of consumers in the 1970s. The extreme technical requirements of the MLA 1927, patchwork exemptions, restrictions on advertising, lack of an enforcement mechanism and usury in the pawnbroking market were seen as deficiencies. As a result, lenders of small sums argued that they were at a disadvantage in an increasingly competitive consumer credit market.

While Crowther believed it necessary to protect consumers, it held a strong preference for less government interference in the credit markets. Crowther reported:

> the existing legal tangle is badly overdue, and that liberation of the consumer credit industry from the antiquated provisions, and from the official restrictions, that hobble it will enable it to make an increasing contribution to the efficiency of the national economy and to the standard of living of the public.[69]

In no uncertain terms, the state was to 'interfere' as little as possible with consumer choice and it remained 'a basic tenet of a free society that people themselves must be the judge of what contributes to their material welfare'.[70] Such thinking was different from the days when credit use was stigmatised and regulators sought to restrict the 'evil' small loan market. It was believed that credit enabled many families to maintain a high standard of living.[71] Linking credit use and standards of living assumed that the primary function of

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[67] BT 250/75 (County of West Sussex), 'Letter from GC Godberg, Clerk of the County Council, to Mr Gray, Assistant Secretary to the Committee on Consumer Credit', 31 January 1969, TNA.
[68] Crowther, 1.1.4.
[69] Crowther, 3.9.1.
[70] Ibid.
[71] FV 62/10 (Inter-Departmental Consideration), 'Department of Trade and Industry, Draft White Paper', 20 July 1973, TNA.

consumer credit was income smoothing and that borrowers agreed to a regime of budgetary discipline in order to repay. This contrasts with earlier periods when personal credit was associated with moral failings and for many its use was to avoid destitution.[72]

For Crowther the purpose of financial regulation was to enhance consumer freedom, increase the market's efficiency and protect the consumer. According to Crowther, 'O*ur principal concern* is that this mechanism should operate as efficiently as possible, by enabling the transfer of funds to be completed with the minimal use of real resources.'[73] For its part, government would unify regulation and simplify disclosure terms. Theoretically, increased transparency encouraged consumers to compare credit products, which in turn increased competition, prevented extremely high-risk lending and reduced pricing.[74] In this model mandated disclosure terms mitigated asymmetric information. In turn, consumer protection occurred naturally in an increasingly competitive market. Crowther argued that a competitive environment would price credit 'sufficiently' without yielding excessive profits.[75] Borrowers would benefit from more competition and through regulatory features such as an updated licensing system and consistent enforcement of the Act.

For the first time in British history all forms of consumer credit were considered to be part of the wider financial system. The evidence identifies a shift in policy from the PBA 1872 and MLA 1900-1927, and demonstrates that moneylenders and pawnbrokers were to be considered as participants in the financial system.

[72] Again, a distinction should be made between productive and consumptive credit.
[73] Crowther, 3.3.2. Emphasis added.
[74] Crowther, 3.3.2, 3.7.17, 3.9.5.
[75] Crowther, 3.3.2.

In section 7.2.5 Crowther stated:

> Since we recommend that the Moneylenders and Pawnbrokers Acts should be repealed, these categories of lenders would, for the purpose of licensing, *be treated on an equal footing to all others*. Our reasons for this are partly to avoid the practical difficulties have arisen over the problem of defining certain categories of institutions that are exempted from the Moneylenders Act, especially banks, and partly because of our belief that the *general principle that all lenders, and all forms of lending, should be treated as nearly as possible alike*.[76]

Unlike parliamentary investigations in 1872 and 1900-1927, Crowther was not attempting to remedy the inherent evil of the moneylending industry or root out suspected criminal participation in the pawn market, but to improve the market's efficiency, reduce costs and ease the transfer of resources from savers to borrowers. Crowther believed that regulation should allow the market and the lenders competing in it the 'maximum freedom to develop'.[77] This begs the question: If lenders were to be treated uniformly, what was Crowther's opinion of borrowers of small sums?

The borrower

Crowther argued that most of the working poor managed unpredictable budgets and utilised credit to avoid disaster when 'as little as ten shillings on the wrong side' was of great consequence.[78] On an extremely limited budget, the working poor have 'little scope' to deal with unpredictable income streams and yet to a 'striking degree' manage without incurring 'excessive debt'. Crowther found that small sums were borrowed to purchase food, pay heating bills and care for a sick relative. The demand for cash was driven primarily by 'insufficient income … illness of the wage-earner … or loss through fraud'. NOP Research suggested that 56 per cent of pawnshop loans and 43 per cent of moneylending loans were issued to pay immediately due bills.[79] The Beneficial Financial

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[76] Emphasis added.
[77] Crowther, 1.3.4.
[78] Crowther, 3.7.8, 3.7.16, 6.1.9-6.1.10.
[79] NOP Research. Excludes essential living and household expenses.

Company suggested that its small loans went towards 'the needs of the necessitous borrower confronted by bills, personal and family needs and emergencies'.[80] The Consumers Association (Which?) believed that these borrowers lacked assets and bank accounts, and earned incomes well below the national average.[81] Beyond emergency need, Crowther found that in certain circumstances credit could 'tempt' a small minority of the less fortunate to 'taste … material prosperity'.[82]

Crowther argued that incurring debt to secure non-emergency needs such as a holiday, television or for recreation could be understood as rational. While this type of spending might be seen as indulgent and ill advised, these quality-of-life experiences 'from time to time' made life 'bearable' for low-income consumers. In the Victorian era, even supporters of moneylenders would have been unlikely to express a similar sentiment. Crowther cautioned against applying 'too rational a regime' to low-income consumers.[83] This way of thinking reflected behavioural economics which appreciates that 'borrowing decisions are not an unambiguously rational consumption optimisation'.[84] Whether small sums were needed to fulfil an essential obligation or to purchase a luxury item, neoclassical theory does not consider rational credit use by those who have no viable way of improving their financial situation.[85] Credit may be expensive, but neoclassical economics argues that a consumer will not borrow more than he can service and thus his credit decisions are optimal. According to Udo Reifner, an economist, in this framework 'credit demand is not simply a shortage of funds', but includes expectations of future income.[86] Crowther was using the term 'rational' in a way that extends beyond the neoclassical framework, appreciating that quality-of-life decisions may override repayment factors.

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[80] BT 250/52 (Beneficial Finance Company), 'Memorandum', 26 September 1968, TNA.
[81] BT 250/48 (Consumers Association), 'Oral Evidence', 17 July 1969, TNA.
[82] Crowther, 3.7.13.
[83] Crowther, 9.3.6-9.3.9.
[84] Study on interest rate restrictions in the EU, Final Report for the EU Commission DG Internal Market and Services, Project No. ETD/2009/IM/H3/87, Brussels/Hamburg/Mannheim.
[85] Ibid.
[86] Ibid.

Notwithstanding that certain consumers borrowed for recreation, there was an overriding belief that small sums were borrowed to fulfil immediate and unavoidable cash needs. Crowther also appreciated that borrowers 'rationally optimised' their use of HCSTC such that it was considered helpful when compared to the alternatives, such as failing to pay a bill.

If in the past the use of personal credit was thought a moral failing, a failure to repay was worse. By the 1970s this was no longer the case. Crowther even went as far as to categorise certain kinds of default as honest. Honest default was associated with conditions of unavoidable poverty.[87] Across all credit categories, survey data supported this belief as the main cause of default was illness followed by unemployment.[88] The Standing Conference on Organisation of Social Workers suggested that small loan borrowing occurred as a result of 'difficulties which arise in a family due to a sudden change in circumstances, perhaps from death, illness or unemployment'.[89] One such case was reported by the John Hilton Bureau. The Bureau recounted the debts of a father of four owed to a moneylender. The moneylender loan was issued to consolidate hire purchase (HP) debts. He could not repay the HP obligations because his wife had become ill and, without adequate savings and suffering a loss of income, he diverted spending towards medical expenses and necessities. Wanting to avoid repossession of HP-acquired goods, he borrowed £20 from a moneylender. Owing to several late payments, he incurred total charges of £60.[90] In total John Hilton studied 70 moneylender loans. It found that people who defaulted were ill, unemployed, widowed or earned between £12 and £13 a week.[91] This type of default was considered 'honest' and occurred for reasons beyond the borrower's control. Any association of honesty

[87] Crowther, 3.7.16, 6.1.8.
[88] Crowther, 3.83-3.85.
[89] BT 250/46 (Association of Family Case Workers), 'Memorandum', 1969, TNA.
[90] BT 250/100-101 (Newspaper Advice Bureaux), 'Summary Report', 3 July 1970, TNA.
[91] Ibid. Note, the sample set was composed of 70 borrowers who experienced problems with their loan and took the initiative to recount their troubles to the John Hilton Bureau.

with a defaulting borrower would not likely have occurred during the PBA 1872 and MLA 1900-1927 regulatory episodes.

When Crowther used terms such as 'improvident' it did so in a different way from previous policymakers' use. For Crowther, improvidence referred more to a 'lack of ability' than to a moral failing or intellectual deficiency. In theory, educational programmes could give a borrower the ability to understand value propositions offered by competing credit providers.[92] Both rich and poor borrowers were believed to possess the mental capacity to learn about credit. The Home Office agreed, observing that regulation under the MLA 1900 was introduced to protect a 'largely ignorant clientele without the knowledge that now exists as to how to obtain individual justice'.[93] By the 1970s, borrowers were not considered immoral, nor were they irresponsible to incur debts. Crowther's assumption of rationality and belief that low-income borrowers could use credit responsibly dovetailed with its attempts to gain support for a unified regulatory system that treated all lenders equally. This stands in contrast to Lucas Stubbs, a Liverpool magistrate, who during the PBSC 1870 had said, 'On the same principle that we shelter children who cannot take care of themselves, we ought to protect weak and ignorant men.'[94]

For Crowther, a typical small loan borrower, while income-constrained, had the ability, or at least the potential, to evaluate credit transactions rationally. In this instance rationality referred to the ability to discern that the utility of credit use exceeded that of forgoing the loan.[95] In terms of small loans, irrespective of cost, it may be considered rational for a 'heavily in debt' householder to borrow at high rates 'not for some extravagance but to pay the electricity bill'.[96] However, Crowther argued that small loan borrowers should avoid low-value credit, a situation in which the lender earned a return higher than that required

[92] Crowther, 3.7.13, 6.1.7.
[93] FV 62/52 (Consideration of Pawnbrokers), 'Home Office Memorandum', 17 November 1971, TNA.
[94] PBSC 1870, 3138-3148.
[95] Crowther, 3.2.6, 3.7.17.
[96] Crowther, 1.2.11; Goode, *The Consumer Credit Act,* 339.

to compensate for the risk. Crowther believed this occurred when borrowers failed to search for alternative, albeit still high-cost, creditors. Crowther reported that ‘the less-educated and poorer members of the community, through their ignorance of the credit market and of the protection of legislation, combined with their unwillingness to shop around, are frequently paying higher rates than is justified by their relative credit-worthiness.’[97] These findings were mitigated somewhat by results suggesting that while some borrowers were aware of lower-cost options, they believed they were unobtainable owing to travel costs, feeling unwelcome in a traditional bank setting and a preference to maintain relations with an existing provider.[98] Seemingly, borrowers valued convenience and maintaining their existing line of credit at least, if not more than, the total cost of that credit. The evidence confirmed that the market was driven by non-price factors. As before, policymakers in the 1970s struggled to make sense of this market feature.

Unlike previous generations, the need for small sums was not associated with immorality. As Steven Finlay and Dawn Burton argued, towards the middle of the twentieth century consumer debt became a sanctioned and acceptable part of daily life.[99] Crowther followed this thinking. In one of the only direct applications of morality concerning HCSTC, Crowther cautioned the upper classes against lecturing the poor on the avoidance of debt and asserted that applying morality to financial decision-making was a luxury of the wealthy. If the PBA 1872 and MLA 1900-1927 were designed in part to protect ignorant borrowers from unscrupulous lenders, Crowther assumed that borrowers were capable but ignorant of their legal rights, and failed to compare the price of competing credit products. In this context, the term ‘ignorant’ can be understood as ‘unaware of’ and not a limitation on intellectual capacity or an indication of recklessness. Surveys revealed that 20 per cent of lower-class borrowers

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[97] Crowther, 3.3.5, 3.6.3-3.6.8.
[98] Ibid.; Joy Melville, ‘Moneylenders are tough if you want £300’, *Guardian*, 17 June 1967.
[99] Steven Finlay, *Consumer Credit Fundamentals* (Basingstoke: Palgrave Macmillan, 2009), 7; Dawn Burton, *Credit and Consumer Society* (Oxford: Routledge, 2008), 1-3.

admitted to 'not understanding' the terms and conditions of executed contracts. Comparatively, across all income groups, 20 per cent of people failed to identify which forms of credit charged a comparatively high interest rate.[100] However, Crowther found that low-income borrowers were 'woefully unaware' of or unwilling to pursue their legal rights.[101] Concerning those legal rights, the Consumer Council found that of 1,238 consumer-related cases heard in the county courts in Leeds, Bolton, Leicester, Cambridge, Guildford and Worcester (including but not limited to credit), only 9 per cent were initiated by individuals.[102] The Association of County Court Registrars found that individual debtor defendants rarely appeared in court.[103] Much like their Victorian counterparts, debtors did not utilise the court system owing to fear of publicity, cost and a lack of knowledge concerning legal protection.[104]

Unlike a typical borrower, Crowther recognised that a small percentage of the population would get into trouble through their use of credit. The committee suggested that this type of borrower should be 'carefully watched' and, if it could be demonstrated that a 'substantial number of borrowers' suffered from 'undesirable hardship', then there would be a 'strong case on social grounds' to implement restrictive regulation.[105] Crowther called for further research on borrowers who got 'into difficulty' with over-indebtedness.[106] However, for the super-majority access to credit was cited as beneficial and, in aggregate, low-income borrowers used credit rationally.

[100] Crowther, 3.8.3-3.8.5.
[101] BT 250/100-101 (Newspaper Advice Bureaux), 'Summary Report', 3 July 1970, TNA.
[102] BT 250/47 (Consumer Council), 'Is the Legal System Any Use to Consumers? By Susan Marsden-Smedley', 7 January 1969, TNA.
[103] BT 250/16 (Association of County Court Registrars), 'Oral Evidence, JG Bryson, President', 2 December 1969, TNA.
[104] BT 250/100-101 (Newspaper Advice Bureaux), 'Summary Report', 3 July 1970, TNA. The implications of the borrower's failure to utilise the court system is analysed below.
[105] Crowther, 1.3.64.
[106] Crowther, 1.3.65-66.

Price controls, the harsh and unconscionable test and the guidance rate

Did Crowther's view of lenders and borrowers challenge earlier debates concerning price controls, the guidance rate and the harsh and unconscionable test? Crowther recognised that low-income borrowers valued convenience and maintaining their existing line of credit more than the total cost of that credit, which made 'the question of statutory control of interest rates extremely difficult to resolve'.[107] Prior to his appointment on Crowther, Goode suggested that owing to a lack of price competition, an interest rate cap would 'probably' be the only effective remedy.[108] Crowther argued that in certain scenarios, even if risk was priced appropriately, the social cost of high rates was higher still.[109] It understood that a socially desirable interest rate was 'quite a different thing from' a rate that was reasonable for a lender to charge after taking into consideration costs and risk factors.[110] Tension was found between Crowther's belief that moneylenders and pawnbrokers should be included in the financial system without prejudice and its recognition that high-cost credit could result in social harm.

However, Crowther showed an understanding of the high expense as well as the high and diverse risks associated with lending small sums. This led it to appreciate the difficulties of selecting, much less applying, a single maximum rate across all consumer credit products. A single rate could never account for the variety of loan sizes, counterparty risks and credit duration. Crowther believed that rates tended to gravitate towards statutory maximums and thus inhibited price competition.[111] Like the evidence provided during the PBSC 1872 and the MLSC 1897, Crowther explained that while a £10 loan repayable with £1 charges in 20 weekly instalments of 11s seemed reasonable, and would not be considered socially harmful, it carried with it an effective

[107] Crowther, 6.6.5.
[108] Goode, *Reform of English Instalment Credit*, 65-67.
[109] Crowther, 6.6.6.
[110] Crowther, 6.6.7.
[111] Ibid.

interest rate of 61 pcpa.[112] The Law Society sympathised: 'Prima facie interest rates could sometimes appear extortionate but that was no reason for setting an upper limit on rates.'[113] The NPA, a group that had long studied the effects of price controls, believed that as long as licensing schemes controlled market entry, pawnbrokers should have a 'free hand to quote whatever interest rate they liked'.[114] There was an overriding belief that competition through improved disclosure and a consistent enforcement mechanism was preferable to price controls. Limiting competition also conflicted with the intentions of Crowther to create a modern and rational regulatory system. Crowther found that reinstatement of price controls was 'not the answer to the problem' and they were rejected.[115] Accordingly, for the first time in centuries, Crowther advocated that pawnbrokers operate without an interest rate cap.

This research argues that price controls were rejected because Crowther was more concerned with a consumer's freedom to choose than with social policy obligations to protect the minority of users who struggled with indebtedness. In the 1970s, credit access overrode other considerations. Accordingly, price control-induced credit rationing would harm borrowers. Similarly, it was argued that to protect 'honest borrowers' from default through lower pricing enacted by price controls would require interference that would 'deprive much larger numbers of consumers' of the benefits of credit.[116] While the source of poverty was debated in 1872, and in 1900 and 1927 moneylender loans were considered harmful, Crowther believed that it was 'socially desirable that credit should be freely available'.[117]

With price controls rejected, the debate focused on the guidance rate and the harsh and unconscionable test.[118] In line with the MLA 1900-1927,

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[112] Crowther, 6.6.8.
[113] BT 250/28 (Law Society), 'Oral Evidence', 15 May 1969, TNA.
[114] Ibid.
[115] Crowther, 1.3.33, 6.6.9.
[116] Crowther, 3.3.5.
[117] Crowther, 3.7.12, 3.7.16.
[118] The term 'extortionate' is also used in this context. According to Goode, Judge Perks established as much in *Castle Phillips Finance Co. v. Khan* (1978).

Goode believed that beyond seeming unreasonable, a harsh and unconscionable transaction was one that carried with it the notion of 'moral reprehensible conduct' and when the profit was 'far beyond' the risk involved.[119] It was unclear how those terms and concepts could be applied in such a way as to provide fair and consistent justice across the entire market. While certain borrower circumstances, such as age of consent and diminished mental capacity, were unambiguous, determining the influence of other factors proved problematic. How to assess, for example, whether a potential borrower was suffering from ill health or extreme pressure to meet a financial need, especially if those conditions were the likely cause of the demand for funds.

A written exchange between Mr Hyde of the DTI's policy division and Mr Holmes of the Lord Chancellor's Office highlighted the difficulty in applying such notions. On 30 January 1973 Holmes wrote to Hyde, 'How, for example, can the lender know about the circumstances of the borrower at the time of transaction … is the enforceability of the contract to depend, for example, on the number of children the borrower has …?'[120] One week later, Holmes asked Hyde how the entire system would operate if identical transactions were to be treated differently based on the personal circumstances of the borrower, where a contract between 'A and X is valid', but between 'A and Y is void' owing to Y's personal circumstances.[121] In 1897, Judge Collier of Liverpool had voiced similar concerns. He questioned the wisdom of providing county court judges such discretion which would breed 'untold' confusion in the system.[122] Goode suggested that a small loan borrower experienced 'conditions which make him particularly vulnerable to acceptance of a harsh agreement; but on the other hand, it is these self-same conditions that may generate an urgent need for financial assistance, while making it difficult for the debtor to obtain credit

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[119] Goode, *The Consumer Credit Act,* 336-339.
[120] FV 62/60 (Regulation of the Cost of Credit: Recommendations), 'Correspondence Lord's Chancellor's Office, House of Lords, RJ Holmes and DG Hyde', 30 January, 5 February, 6 February 1973, TNA.
[121] Ibid.
[122] MLSC 1897, 303. See also Lawson Walton MP: HC deb. 21 June 1900, vol. 84.

because of his poor income prospects'.[123] Seemingly, the practicality of working in the harsh and unconscionable framework was no less erroneous in the 1970s than in the 1900s.

The Institute of Credit Management, the National Association of Retailers, the Hire Purchase Association, the John Hilton Bureau and the Consumers Association encouraged Crowther to maintain or lower the 48 per cent guidance rate and to extend it to all consumer credit transactions.[124] The National Association of Moneylenders was 'very strongly' against carrying forward the 'mischievous figure' of 48 per cent as 'it had no substance at all'.[125] The Association believed that the rate would have little effect on borrowers as almost all moneylending transactions would exceed that rate. They argued that in so far as the High Court had often found rates exceeding 48 per cent acceptable, the value of any guidance rate was questionable. Alternatively, they suggested that an entire range of loan factors should be used in deciding the merit of a transaction, including the size of the loan, its duration, repayment schedule, flexibility in default, the age, sex, marital status, income, stability of employment, owner or rental status, and educational background of the borrower and the lender's overheads and percentage return on capital.

In total, the National Association of Moneylenders suggested 33 factors, which were 'no more than the factors considered by a manager of a loan office'.[126] Guided by these factors, if an authority found a transaction to be harsh and unconscionable, a court could revise its terms. During a meeting with the National Association of Moneylenders, the Board of Trade said it would be

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[123] Goode, *The Consumer Credit Act,* 339.
[124] BT 250/23 (Hire Purchase Trade Association), 'Oral Evidence', 4 April 1969; BT 250/25 (Institute of Credit Management), 'Memorandum', November 1968; BT 250/48 (Consumers Association), 'Oral Evidence', 17 July 1969; BT 250/100-101(Newspaper Advice Bureaux), 'Summary Report', 3 July 1970; FV 62/115 (General Legislative Issues), 'Letter Department of Trade and Industry Legal Department from the Public Interest Research Centre', 9 January 1973, TNA.
[125] FV 62/34 (Moneylenders, Cheque Traders and Pawnbrokers Trade Associations), 'Pawnbroker Views', 21 November 1972, TNA.
[126] Ibid.

politically difficult to remove the guidance rate. After being enshrined in law for 43 years, doing so would require a 'substantive argument' and a suitable alternative proposal.[127] However, unlike before, when government officials were hostile to moneylenders, the Board of Trade took special note that the only class of lenders with experience of the guidance rate reported how unrealistic and ineffective its application was.[128] Notwithstanding, at this stage the Board of Trade and the Treasury believed that the regulation of the cost of credit needed a yardstick that reflected market reality where short-term small loans carried a 90-120 pcpa interest rate.[129]

Crowther proposed that any rate over 48 pcpa be considered prima facie harsh and unconscionable, and for those terms to be applied across all forms of consumer credit.[130] Lenders that consistently charged above the guidance rate would be required to submit quarterly returns to a newly created government department under the authority of a Consumer Credit Commissioner. To overcome the historical challenges associated with borrower-led court action, the Commissioner could initiate proceedings if a credit arrangement was deemed to be harsh and unconscionable.[131] This framework would reduce abuses of a small loan borrower who, when operating under severe bargaining inequity, accepted a high rate without negotiation.[132] As seen in 1927, the proposed guidance rate relied on the judiciary to relieve borrowers of extortionate transactions without capping the credit on a market-wide basis.

[127] Ibid.
[128] Ibid.
[129] FV 62/35 (Inter-Departmental Consideration and Submission to Ministers), 'Department of Trade and Industry General Considerations, 13 January 1972, TNA.
[130] Crowther, 6.6.9.
[131] Crowther, 1.3.33, 6.6.9.
[132] Crowther, 6.1.12.

Disclosure terms

Unlike the guidance rate and usury debate, consensus was reached that uniform disclosure of the total cost of credit would improve market competitiveness and lower prices.[133] Not only would this minimise misleading and inaccurate quotes, it would also allow a rational choice to be made among credit options, which would in turn allocate capital more efficiently.[134] The Institute of Credit Management suggested that 'if it were possible for the consumer to make a fair comparison … on the basis of the true interest rate alone this would provide an extremely useful and worthwhile guide'.[135] According to the Consumers Association, clearly presented costs expressed as a 'true' APR would allow for the 'increasingly educated public' to compare prices and thus keep overall interest at appropriate levels.[136] This is different from earlier periods when disclosure was, in part, meant to limit fraud.

Overall, moneylenders and pawnbrokers supported a uniform APR calculation.[137] Unlike in earlier periods they scarcely protested. However, as before, a bone of contention was that small loan borrowers did not demand such information. Not only did moneylenders and pawnbrokers raise this point, but consumer advocates, banks and cheque traders, to name a few, did so too. The National Citizens Advice Bureau Council believed that no matter what the quoted interest rate was, consumers were 'more concerned with whether or not they can afford what is being asked'.[138] Midland Bank believed that 'most people appeared to be interested only in the amount they had to repay and over what period'.[139] As in earlier periods, there was little quantitative data to support

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133 FV 62/35, (Inter-Departmental Consideration and Submission to Ministers), 'Department of Trade and Industry General Considerations, 13 January 1972, TNA.
134 Ibid.
135 BT 250/25 (Institute of Credit Management), 'Memorandum', November 1968, TNA.
136 BT 250/48 (Consumers Association), 'Oral Evidence', 17 July 1969, TNA.
137 FV 62/34 (Moneylenders, Cheque Traders and Pawnbrokers Trade Associations), 'Meeting, Department of Trade and Industry, National Association Pawnbrokers' Association, Moneylenders Association', 19 April, 25 April, 21 November 1972, TNA.
138 BT 250/49 (National Citizens' Advice Bureau Council), 'Written Evidence', 1969, TNA.
139 BT 250/61 (Midland Bank), 'Oral Evidence', 22 April 1970, TNA.

the claim that consumers preferred monetary over percentage quotations.[140] Crowther pushed back, saying that the situation was circular - consumers did not want the information because the information was not available. In turn, the information was not available because consumers do not demand it.[141] It was argued then, almost as a matter of course, that APR disclosure would encourage rational consumer credit decisions.

Historically, a second objection was the difficulty calculating an APR. In 1897, a moneylender estimated that percentage disclosures would require two more clerks in each office.[142] Similar concerns were expressed by moneylenders and pawnbrokers of the day. That small loan lenders were concerned with mathematical complexities aligns them with their historical counterparts. However, that government and outside bodies agreed was, for the most part, a break from the past. The Home and Social Affairs Committee recognised the difficulties involved and noted that there was 'no ideal formula'.[143] For example, the APR on a £100 loan due in one month's time at 5 per cent interest with a £10 application fee can be expressed without the fee as approximately 80 per cent and with the fee as approximately 435 per cent. There was much debate about which type of fee should be included. The only accurate rate is found using an actuarial approach, which takes into consideration the ratio of interest to funds available to the borrower. In fact, the entire Crowther and CCA 1974 process was delayed owing to this issue, which had grown more, not less, complex over time.[144]

In 1968, the Board of Trade was less concerned with the formula if it was universally employed, but by 1972 the DTI was focusing on the formula.[145]

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140 Quantitative data concerning how borrowers responded to APR information collected by the Competition and Markets Authority are reviewed below.
141 Crowther, 3.3.13, 3.8.1-3.8.5.
142 MLSC 1897, 2002-2005.
143 FV 62/102 (Major Policy Papers on the Whole of Proposed Legislation), 'Home and Social Affairs Committee', 1 June 1972, TNA.
144 Goode, *The Consumer Credit Act*, 158-159.
145 BT 250/112 (Summary of Existing Legislation), 'Equity in Consumer Credit', 18 December 1968, TNA.

While it agreed that finding a formula that was suitable for all consumer credit transactions was difficult, it believed that without one there was little chance that the government would be interested in the bill.[146] A uniform APR was paramount to Crowther. It was anticipated that uniformity in calculation and disclosure would increase the quantity and quality of information, resulting in an increase in lender competition and market efficiency. Theoretically, a uniform APR would serve as a powerful consumer protection tool. For all the criticism levied against the MLA 1927, few parties recognised that it required disclosure of the cost of credit.

The disclosure of rates of interest in advertisements was also discussed. The Board of Trade was concerned with protecting the public from misleading advertisements, especially when these involved costs and fees.[147] Moneylenders argued that MLA 1927 advertisement restrictions put them at a disadvantage and demanded the removal of most, but not all, restrictions.[148] As late as 1969, they believed lenders should not advertise interest rates.[149] They were concerned that rates based on the borrower's personal risk profile would differ from advertised rates such that moneylenders would be accused of misleading consumers.[150] For example, they could not advertise a lower rate than the median charge based on a typical borrower profile else they be accused of displaying a teaser rate.

Under the premise of equality and to improve competition among lenders Crowther recommended that prohibiting quoting an interest rate for non-purchase money loans and the ban on postal advertising be repealed. In other words, all lenders would be subject to the same advertising regulation.

[146] FV 62/41 (Report of the Committee), 'Submission to Ministers', 16 December 1971; FV 62/102 (Major Policy Papers on the Whole of Proposed Legislation), 'Department of Trade and Industry, Correspondence D Simpson and RW Gray', 9 March 1972, TNA.
[147] BT 250/112 (Summary of Existing Legislation), 'Inter-Departmental Meeting, Department of Trade and Industry, HM Treasury, Board of Trade, 18 December 1968, TNA.
[148] FV 62/34 (Moneylenders, Cheque Traders and Pawnbrokers Trade Associations), 'National Association of Moneylenders', 25 April 1972, TNA.
[149] BT 250/34 (National Association of Moneylenders), 'Oral Evidence', 20 March 1969, TNA.
[150] Crowther, 6.4.11.

Addressing the concerns of moneylenders, advertised effective rates would be accompanied by a set of qualifying criteria to borrow at that rate. Lenders were committed to advertised rates for one month. Should they contract at a rate higher than that advertised, the onus was on the lender to justify the rate. Crowther reported that the MLA 1927 advertisement restrictions were too 'inhibiting and inflexible' for the present day and that over the past 40 years advertising of all kinds had increased and become the norm.[151] Instead, it was suggested that false and misleading credit statements be considered a criminal offence.[152] As in 1900, controlling advertisements was left to fraud law.

In its final report, Crowther suggested that adequate advertising and contractual information would protect the consumer.[153] A central component was the APR. The Government Actuary's Department provided seven pages of calculation guidance. Unlike the MLA 1927 constant ratio formula that assumed each payment was divided between principal and interest at a fixed rate, Crowther proposed a rate inclusive of all borrowing costs, as calculated on an actuarial basis that incorporated annual compounding.[154] Other mandated disclosure terms included the size of the loan, a summary of fees and charges, the total charge expressed as a percentage rate calculated actuarially, the total amount the borrower had to pay and the amount of each instalment and its due date.[155] APR and clear and concise disclosure terms were central to Crowther's desire to increase the competitiveness of the market. While certain features were products of the time, the idea that borrowers should have access to information, especially concerning price expressed in percentage terms, was similar to 1900 and 1927.

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[151] Crowther, 1.3.27, 6.4.2.
[152] Crowther, 6.4.9.
[153] Crowther, 6.3.1.
[154] See Crowther, 'Disclosure of the cost of credit' beginning 6.5.15.
[155] See Crowther, 6.5.11 for the complete listing.

Enforcement and licensing

Starting in the 1920s the British consumer credit market grew in both volume and diversity. Part of the rationale behind Crowther was to consolidate and update the 'chaotic' law and the government ministries responsible for enforcing the law.[156] Crowther's solution was to argue for the creation of an agency that would be autonomous of current government departments. Britain's first independent regulator dates back to 1954 with the creation of the Independent Television Authority.[157] Crowther's plan was for a Consumer Credit Commissioner who would head the agency and be empowered to administer the licensing scheme, regulate possible changing circumstances, enforce the Act, collect statistical data and educate the public about consumer credit.[158] The Commissioner would be appointed by the Secretary of State for Trade and Industry. It was argued that an independent agency was better suited to the complex business aspects of the consumer credit market and the semi-juridical functions needed to regulate it.[159] Crowther was concerned that the civil service employment structure was too narrow and would inhibit the recruitment of qualified experts. Crowther's advocacy of an independent agency led by experts and its critique of the 'generalist' civil service echoed the Fulton Committee's findings (1968).[160]

One of the main features of Crowther was the implementation of a uniform licensing system. Despite Crowther's belief that business should operate with little government interference, the licensing of pawnbrokers and moneylenders during a period of a 'universal belief in laissez-faire' set a precedent that Crowther was unwilling to overturn.[161] That is not to say, as was the case during the PBA 1872, that policymakers were unwilling to overturn

156 Crowther, 7.1.12.
157 Robert Baldwin, 'Introduction', in *Understanding Regulation: Theory, Strategy and Practice*, 1-11, ed. Robert Baldwin *et al.* (Oxford: Oxford University Press, 2011), 5.
158 See Crowther, 7.1.4 for a complete listing.
159 Crowther, 7.1.6.
160 Report of the Committee on the Civil Service, vol. 1 1966-68, June 1968 (Cmnd 3638). Fulton had been set up by the Labour government led by Harold Wilson.
161 Crowther, 7.2.2.

legal precedent as a matter of course. Quite the contrary, Crowther was created to investigate the regulatory framework with the aim of dismantling outdated provisions. Under Crowther, entities issuing loans of not more than £2,000 made to an individual or partnership carrying an interest rate of 2.5 per cent above Bank rate for unconnected loans or repayable in three or more instalments on connected loans required a licence. Loans falling under those conditions issued without a licence were illegal.[162] The Bank rate test excluded building societies, life assurers and small loan societies. With the repeal of the PBA 1872 and MLA 1900-1927, small lenders would be equal to all others. Should banks enter the consumer credit market, they too would need a licence. Crowther critiqued the 'aloofness of the British banks from direct involvement with the financing of the consumer credit'.[163] It was hoped that, like their US counterparts, British banks would enter the field and increase competition.

With the inclusion of 220 banks, it was expected that 50,000-60,000 entities would require licensing.[164] Licences would be valid for three years and cover all branches. Regardless of market conditions, a licence would be granted to first-time applicants unless his 'record or known character' indicated that he was unsuitable.[165] The Home and Social Affairs Committee supported this 'negative vetting basis' whereby a licence was automatically granted unless the applicant demonstrated a history of inappropriate behaviour.[166] Crowther did not provide guidance on what constituted grounds for denial, refusal to renew or revocation of a licence. Instead, it granted the Commissioner wide latitude to exercise his judgement. Crowther argued that 'his power to revoke a licence, or to refuse to renew it, will be by itself a powerful weapon, and will no doubt prove to be the one that he most frequently uses'.[167] Recognising the

[162] See Crowther, 7.2.3 for the complete listing.
[163] Crowther, 2.1.28.
[164] Crowther, 7.2.8.
[165] Crowther, 7.2.9.
[166] FV 62/102 (Major Policy Papers on the Whole of Proposed Legislation), 'Home and Social Affairs Committee', 12 June 1972, TNA.
[167] Crowther, 7.4.3.

rights of lenders, the Commissioner's decisions were subject to appeal. This centralised power, sitting outside the judiciary, is in stark contrast to the judiciary-led system that hitherto had controlled licensing. Like the aggrieved parties, the Commissioner could seek recourse through the court system. While Crowther believed that the Commissioner should be empowered to initiate civil proceedings, a measure found in some countries with no comparable provision in British law, it felt such a provision should be decided by Parliament.[168]

With few exceptions, the Lancashire and Cheshire Moneylenders Association (the earliest known moneylenders association) and the National Association of Moneylenders supported Crowther's licensing and enforcement recommendations. The Lancashire Association lobbied to end the requirement that renewals take place in person.[169] Crowther believed that almost all licensing would be by post. The National Association of Moneylenders sought a more substantial control mechanism than Crowther thought worthwhile. They sought licensing for each branch manager and proprietor. Under this scheme an individual would be held accountable for unacceptable conduct. Crowther believed that licensing at the business level, with a requirement that all office and branch locations be included in the application, sufficed. As before, the trade desired more stringent regulation than the government was willing to provide. Moneylenders had long viewed regulation as a route to legitimacy.

While small loan lenders supported the plan, several government agencies voiced strong opposition to the power granted to the Credit Commissioner. The DTI believed that the scheme would not be 'in accord with our constitutional practice'.[170] It argued that there was no basis for an independent agency to create or adapt statutory provisions based on evolving market conditions without approval of a government minister. Turning to

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[168] Ibid.
[169] BT 250/27 (Lancashire and Cheshire Moneylenders Association), 'Letter MH Watson, Secretary, to NH Nail, Secretary to the Committee on Consumer Credit', 30 December 1968, TNA.
[170] FV 62/25 (Consideration by Administrative Group), 'Department of Trade and Industry, Evaluation of Consumer Credit Commissioner', 7 November 1972, TNA.

licensing, the DTI preferred that the enforcement mechanisms be used at the local level through the Weights and Measures authorities. Moreover, it was argued that the civil service was qualified to administer the licensing scheme and would do so more economically. The DTI estimated that an independent commissioner would cost an additional £50,000 a year and suggested after the first year that the licensing function could be administered on a part-time basis, leaving Crowther's ideal and highly capable executive with very little to do.[171] Finally, they saw no reason to duplicate data collection and education programmes that could be performed by other agencies. As will be demonstrated, their opposition shaped the outcome of CCA 1974.

Conclusion to section B. The Crowther Committee, 1968-1971

It was believed that consumer credit legislation had failed to define the market, encourage competition among lenders, stifled innovation and gave consumers inadequate protection. While the value of moneylending and pawnbroking was of little consequence to the economy, the financial regulation governing the industry was the starting point of reform. Over the decades following the MLA 1927 various amendments and exclusions (e.g., section 123 of the Companies Act) were enacted in response to its poor design and the ever-evolving credit markets. Crowther sought to unify regulation and increase competition, which in turn would better protect borrowers while allowing for more flexibility for lenders to innovate. As opposed to restricting behaviour, Crowther viewed regulation as enabling the market to compete more efficiently through increased information.[172] This corresponds to Friedrich Hayek's understanding that, given all relevant information, rational actors will choose an optimal economic outcome.[173] Intervention of this sort fits within a neoclassical

[171] Ibid.; FV 62/104 (Major Policy Papers on the Whole of Proposed Legislation), 'Minister for Trade and Consumer Affairs, Proposed Consumer Credit Bill', 16 March 1973, TNA.
[172] Baldwin, *Understanding Regulation*, 4.
[173] Friedrich Hayek, 'The use of knowledge in society', *The American Economic Review* XXXV:4 (1945), 519.

understanding that government intervention is warranted when the efficient allocation of resources is distorted by information asymmetry.[174]

Crowther's default position was to interfere as little as possible. However, it understood that small loan borrowers required protection. Minutes from a meeting held on 20 December 1968, attended by representatives from Crowther, the Treasury and the Board of Trade, show an appreciation that HCSTC demand features differed from other borrowers. Whereas higher-income groups borrowed to enhance their standard of living, lower-income groups did so 'in a desperate effort to maintain an existing standard'.[175] From a regulatory viewpoint it was recognised that distinguishing among demand features was difficult. Some argued that consumer credit legislation could do little to protect those 'who through no fault of their own' have an insufficient income.[176] Notwithstanding, the Treasury, the Board of Trade and Crowther believed that certain measures could mitigate inequality between lenders and low-income borrowers. The Home Office was less confident. As late as January 1972, it argued that borrowers were not so disadvantaged as to warrant a social policy response. As in 1897, it was doubted that regulation could mitigate the unique demand features of small loan borrowers.

Since 1872, policymakers believed percentage disclosure was important and struggled to believe that borrowers were more interested in the total cost of credit as expressed in monetary rather than percentage terms. Crowther argued that a uniform APR would increase competition and cut prices. As discussed in Chapter 5, it was not until 2015 that policymakers confirmed what lenders argued: access to credit, the speed of approval and the quick delivery of funds were and are still more important to borrowers than the cost of credit and its related APR.

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174 Niamh Moloney, 'Introduction', in *The Handbook of Financial Regulation*, 1-12, eds. Niamh Moloney *et al.* (Oxford: Oxford University Press, 2015).
175 BT 250/14 (HM Treasury), 'Meeting of the Committee, HM Treasury, Board of Trade', 20 December 1968, TNA.
176 Crowther, 6.1.8-6.1.9.

By empowering a Consumer Credit Commissioner to control the licensing process and initiate enforcement proceedings, Crowther broke with the norms that relied on the judiciary. This was an attempt to overcome the strict and binding nature of regulation in the past, which had failed to appreciate the dynamic nature of the market. Crowther was unwilling to recommend a statutory price cap on the cost of small loans. It believed that a price cap would lead to market segmentation and price clustering. Even more, Crowther suggested that the lone remnant of statutory usury - the profit restrictions placed on pawnbrokers - be rescinded. Instead, and linking APR, disclosure terms and lender behaviour, Crowther extended the 48 per cent guidance rate and the harsh and unconscionable test to the entire field of consumer credit. However, Crowther did not provide strict rules for the Commissioner to enforce. It believed that lenders and borrowers would be better served by a flexible mechanism, one that encouraged innovation yet would intervene to protect consumers by revoking a licence or through the court system if necessary. The use of licensing and punishment for violation are considered a 'micro-prudential' financial regulatory response that seeks to influence behaviour at the firm level.[177] By consolidating regulatory power in one agency, Crowther tried to make rules uniform and enforce them consistently. These are among the reasons why small loan lenders were admitted into the wider financial system and, at least from a regulatory viewpoint, the borrowers of small sums were not judged by a nineteenth-century moral matrix.

Section C. analyses responses to Crowther and aspects of the CCA 1974 pertaining to moneylenders and pawnbrokers.

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[177] Moloney, *Handbook of Financial Regulation*, 1-12.

C. The Consumer Credit Act 1974

The Crowther Report was published in March 1971.[178] There was widespread agreement that its systematic approach and integrated recommendations offered ample consumer protection and provided lenders with the structure they required if they were to grow. As the Hire Purchase Association remarked, 'The Committee were given a task of truly herculean proportions; few we believe will disagree with the view that they have done it superbly well.'[179] The *Observer* claimed, 'Seldom has a report of such a complex subject been greeted with such a chorus of approval.'[180] In more muted terms, John Davies, Secretary of State for Trade and Industry, wrote to Prime Minister Heath that the Report 'as a whole has not had an unfriendly reception from commercial interests'.[181]

The government responded by issuing 'Reform of the Law on Consumer Credit'.[182] In agreement with Crowther, the first paragraph stated that the current piecemeal regulations were no longer appropriate. In the second paragraph, the PBA 1872 and MLA 1927 were deemed deficient. The MLA 1927 was believed to have inhibited the growth of credit and funding for industry.[183] The government announced a bill that would offer a unified yet flexible framework that would be applied to the whole consumer credit system. It was expected that legislation would release 'the credit industry from existing outdated' regulation, encourage competition and protect consumers.[184] Much

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[178] There was a great deal of controversy surrounding Crowther's proposal to create a registry of securities. This and similar issues were dealt with by the Lending and Security Act, which falls outside the scope of this research, which focuses on the Consumer Sales and Loan Act.
[179] BT 250/23 (Hire Purchase Trade Association), 'The Journal of the Hire Purchase Trade Association', Spring 1971, TNA.
[180] 'All for Crowther', *Observer*, 28 March 1971.
[181] FV 62/157 (Crowther Committee Report on Consumer Credit: Letter from Prime Minister's Secretary Suggesting Early Action), 'Letter from John Davies, Secretary of State of the Department of Trade and Industry, to Prime Minister Edward Heath', 30 June 1971, TNA.
[182] 'Reform of the Law on Consumer Credit', Department for Trade and Industry Cmnd. 5427 (1973), 5 (hereafter White Paper).
[183] White Paper, 8.
[184] Ibid.

of the business community saw the reform as a balanced package and resisted political efforts to regulate by product.[185]

Crowther and the government's bill were not uncontroversial. An unnamed employee at the DTI argued that Parliament would not engage in wholesale reform of the credit markets 'simply on the grounds that [the] existing law is untidy'.[186] F. J. Broomfield of the Board of Trade agreed with Crowther's findings, yet averred that reform efforts of this magnitude were impractical.[187] The Home and Social Affairs Committee suggested that any proposed bill longer than 50 clauses stood little chance in Parliament.[188] R. J. Meadway, Minister for Trade and Consumer Affairs, retorted that while an early draft of the bill was 84 pages long, it removed 126 pages of legislation, giving a loss of 42 pages.[189] Meadway also believed that 'there might be considerable sex-appeal' in focusing attention on the government's efforts to help people who 'run up excessive debts'.[190] The Conservative Research Department agreed, stating that attention should be given to the protection benefits the CCA 1974 would bring to the poor.[191]

Motives aside, they were not alone in expressing interest in protecting the poor and controlling the working practice of lenders. Harold Davies, Lord Davies of Leek (Labour), while sympathetic to the idea that credit facilitated the acquisition of the 'necessities for a good life', argued that it was the duty of

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[185] FV 62/102 (Major Policy Papers on the Whole of Proposed Legislation), 'Home and Social Affairs Committee', 1 June 1972, TNA.
[186] FV 62/27 (Consideration by Lending and Security Group), 'Department of Trade and Industry, Memorandum', 20 November 1972, TNA.
[187] BT 250/5 (Board of Trade Evidence Submitted), 'Memorandum, FJ Broomfield', 2 January 1969, TNA.
[188] FV 62/102-103 (Major Policy Papers on the Whole of Proposed Legislation), 'Home and Social Affairs', 1 June 1972, TNA. Others were concerned about the length of the bill. See also BT 250/5 (Board of Trade Evidence Submitted), 'NH Nail, Secretary', 2 May 1969.
[189] FV 62/106 (Major Policy Papers on the Whole of Proposed Legislation), 'Minister for Trade and Consumer Affairs', 7 September 1973, TNA. The enacted CCA 1974 repealed six Acts and overturned 232 sections and 22 schedules of legislation.
[190] FV 62/104 (Major Policy Papers for the Whole of Proposed Legislation), 'Minister for Trade and Consumer Affairs, RJ Meadway, Office Minute 993, 2 April 1973, TNA.
[191] FV 62/103 (Major Policy Papers for the Whole of Proposed Legislation), 'Department of Trade and Industry, Minutes', 24 July 1972, TNA.

legislation to keep an eye on 'the sharks and cheats'.[192] John Roper MP (Labour), while not opposed to the bill, dissented and challenged the basic 'philosophy of economics' that had 'glorified' the role of credit in society.[193] He remarked, 'To allow a situation in which all the essentials of life get more expensive and at the same time to talk of protecting the consumer is not keeping the faith with the public.'[194] Most, however, would have agreed with Geoffrey Howe MP (Conservative), who found little difference in Crowther, the White Paper and the proposed CCA 1974 bill, all of which sought to improve competition and protect the consumer.[195]

The government's bill applied to the whole of the UK for loans valued between £30 and £5,000 issued to individuals and non-corporate bodies. Loans for the acquisition of goods or services (purchase loans or supplier credit) of less than £30 were exempted from certain requirements. Cash loans of any value charging less than 10 pcpa were exempted. William Williams MP (Labour) and Janet Fookes, Baroness Fookes of Plymouth (Conservative) believed that the government's loan floor of £30 was too high. Williams argued that the 'poorest among us … borrow small amounts because they need the money as a lifeline' and deserved protection from excessive charges.[196] Apparently, many of his constituents owed more in interest and charges than the original small loan. Baroness Fookes proposed that the floor value be set at £10. The Consumers Association proposed that all CCA 1974 provisions apply to small cash loans of £10 or more, but unsecured credit for goods and services provided through cheque traders and mail order companies be exempted. Concerns were raised that the cost of regulating small loans would be passed on to those least able to afford it. It is unclear why moneylenders

[192] HL deb. 28 June 1972, vol. 332.
[193] HC deb. 14 November 1973, vol. 864.
[194] Ibid.
[195] Ibid.
[196] Ibid.

and their clients could afford the cost of regulation, but cheque traders could not.

The CCA 1974 repealed six Acts, including the Moneylenders, Pawnbrokers and the Hire-Purchase Acts.[197] Unlike the MLA 1900-1927, the Act defined the market by size and recipient. It also provided a table listing the common credit products that came within its jurisdiction.[198] Specific to pledged items but not pawnbrokers per se, as the form of lender was no longer relevant, the CCA 1974 removed price controls. Pledged goods were redeemable for six months or longer if the parties agreed. Upon default, items pledged for £15 or less became the immediate property of the creditor. For an amount of more than £15 the creditor had to 'take reasonable care to obtain a proper price when disposing' of the good.[199] Any surplus from a sale, less expenses, was given to the borrower.

The following paragraphs analyse the key parliamentary debates, White Paper and early draft legislation concerning price controls, the guidance rate and the grossly exorbitant test.

Price controls, the guidance rate, grossly exorbitant and grossly contravening credit transactions

Debates concerning the interest rate followed a similar pattern to previous periods. There was limited support for usury and disagreement about a guidance interest rate.[200] The government did not implement price controls or provide a guidance rate.[201] It was argued that a single interest rate would fail to account for the diversity of credit products and would narrow the judicial review process. The White Paper cited an example: a £10, two-day loan, carrying a charge of 10p, would not be considered harsh, yet it works out at 100 pcpa.

[197] The CCA 1974 repealed the PBA 1872, MLA 1900, MLA 1927, PBA 1960, Hire-Purchase Act 1965 and Advertisement (Hire Purchase) Act 1967.
[198] White Paper, 30.
[199] Ibid., 22.
[200] HL deb. 28 June 1972, vol. 332; HC deb. 14 November 1973, vol. 864.
[201] White Paper, 20.

Patrick Pery, Lord Pery of Limerick (Conservative, Under Secretary of State for Trade) believed that no single rate could cover a loan for the purchase of a car and a 'loan granted to someone in a very straitened circumstance to tide him over the weekend'.[202] It was expected that by removing the guidance rate the courts would have wider latitude to review a transaction.[203] This mirrors arguments made in favour of removing the guidance rate from the MLA 1900. Under the CCA 1974 the onus was on the lender to prove that a transaction was not extortionate based on these criteria: loan size and duration, current interest rates, collateral-backed versus unsecured loans and the credit profit of a borrower.[204] Though more specific than past efforts, the rationale was similar to the MLA 1900.

Under CCA 1974 sections 137-140, the court had the power to reopen a consumer credit transaction when the debtor or surety alleged extortion.[205] Though the CCA 1974 did not provide a guidance rate, it specified the power of the courts to intervene in the market. It balanced this expansion by requiring the debtor to provide evidential burden of his claim. Accordingly, any credit transaction could be reviewed and the onus was on the lender to account for his charges. The courts were empowered to take into account the main credit agreement and auxiliary bargains dealing with compulsory charges. Past transactions (e.g., rollovers) were insufficient grounds to reopen a current transaction.[206] However, nothing precluded a borrower from presenting a past transaction as an additional grievance. Section 138(1) defined a credit bargain as extortionate if,

> (a) it requires the debtor or a relative of his to make payments which are grossly exorbitant, or
> (b) otherwise grossly contravenes ordinary principles of fair dealing.

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[202] HL deb. 28 June 1972, vol. 32.
[203] HC deb. 14 November 1973, vol. 864.
[204] White Paper, 20; HC deb. 17 June 1974, vol. 875.
[205] A hirer is protected under s.132.
[206] Goode, *Consumer Credit Act*, 334-335.

The CCA 1974 did not define 'grossly exorbitant' or 'grossly contravenes ordinary principles'. Instead, section 138(2) required the court to consider a range of factors when determining whether a transaction was extortionate, including the prevailing interest rate at the time of a contract was made and risk levels, age, experience, business acumen, financial position and overall health of the borrower. As Goode pointed out, to be considered extortionate the lender must have been aware of the borrower's specific situation when the loan was issued.[207] Importantly, the court could not open a case on its own motion; it had to rely on the debtor or a surety. The court could revise, in part or whole, any obligation of the borrower. The creditor could be required to repay, in part or whole, money received from the borrower.

In terms of small agreements, after considerable debate, the CCA 1974 section 17 granted special provisions for certain contracts under £30.[208] However, there were no exemptions for small cash loans, including pawn. Exempted were low-value debtor-creditor-supplier agreements (e.g., a milk delivery), cheque traders and mail order companies. For those traders the requirement for periodic account statements, cooling-off provisions and contract formalities were waived. The Consumers Association was vital in securing the exemption. Without it, it was argued that consumers would be worse off owing to an increase in the cost of credit and a decrease in the supply of credit for loans of less than £30.

Terms of disclosure

The White Paper suggested that the full cost of credit be disclosed in both cash and pcpa terms. The total cost had to include interest and all compulsory charges. Misleading advertisements became a criminal offence. The Commissioner was empowered to ban the use of certain words and

[207] Royston Goode, 'The Consumer Credit Act 1974', *The Cambridge Law Journal* 34:1 (1975), 120.
[208] HC deb. 17 June 1974, vol. 875.

phrases. As far as possible, the bill made provisions to ensure that the borrower was aware of the terms and conditions.[209] Disclosure requirements included the sum borrowed, the total owed, payment schedules, the date of execution, creditor information, debtor information, the type of credit offered and the duration. Prior to default penalties, for secured loans of more than £15 and all cash loans the lender had to issue a notice of default.[210] As with Crowther, it was argued that clear information enabled the consumer to make a rational choice among competing credit products.[211]

This argument also received support from MPs. Sally Oppenheim (Conservative) suggested that truth in lending was key for consumer welfare.[212] William Montgomery (Conservative), a director of a consumer credit company as well as an MP, believed that respectable firms would support disclosing the total cost of credit, inclusive of fees and charges. He expected that only the 'sharks … who bleed dry unsuspecting and naive' people will protest.[213] What Montgomery failed to appreciate was that 'respectable firms' differed on how the rate should be calculated. Table 20 demonstrates the difference between nominal as advertised rates and the equivalent effective rate as calculated by each bank. Note that while Midland's actual rate was lower than Lloyds's, its effective rate was higher.[214] The proposed bill provided a standardised APR for use in advertisements and contracts. The borrower was to be supplied with copies of executed documents. The agreements were to state clearly the rights and duties of the lender and borrower.

[209] White Paper, 15.
[210] Ibid., 18.
[211] Ibid., 12.
[212] HC deb. 14 November 1973, vol. 864.
[213] Ibid.
[214] The raw data are not available. It is likely that fees, charges and the effects of period compounding contributed to the difference.

Table 20 Actual versus effective rates

	Interest Rate	
	Actual pcpa	**Effective** pcpa
Natwest	8.0%	15.7%
Midland	9.0%	17.7%
Lloyds	9.5%	17.2%

Source: Kevin Lindgren, ‘The Consumer Credit Act 1974: Its scope’, *The Modern Law Review* 40 (1977).

Agreeing with Crowther, the rationale behind truth in lending was to increase competition. The government’s position was made clear by Alan Williams MP (Labour), who on the floor of the Commons stated,

> We want to give greater equality in bargaining between the debtor and the creditor, and we believe, as did the Conservative Government, that we can achieve this greater protection and this greater equality in bargaining only by establishing greater truth in lending. Through truth in lending, we hope that we shall have open disclosure of all the terms which are involved in an agreement. We hope that this will make for true competition and will avoid some of the grosser examples that we have had of interest rates in the last few years.[215]

As opposed to price controls or a guidance rate, the government believed that bargaining inequity would be mitigated by increased competition driven by information disclosure.

Enforcement and licensing

The White Paper supported Crowther’s recommendation that an independent Consumer Credit Commissioner be appointed. His main function would be to administer the licensing system and monitor developments in the consumer credit industry. However, the White Paper curtailed the Commissioner’s independence by making his appointment subject to the Secretary of State who

[215] HC deb. 17 June 1974, vol. 875.

would issue formal directions to the Commissioner.[216] At the local level, Weights and Measures would prosecute individuals, leaving the Commissioner to deal with systemic issues.[217] Importantly, the Director, the Commissioner and Weights and Measures had prosecutorial powers.[218] The Commissioner, under the scrutiny of Parliament, could issue regulatory orders in response to developments in the field. The Fair Trading Act and the Director General of Fair Trading were cited as precedents.[219] The minister would be given power to set rules of conduct, and the Commissioner would issue, suspend or revoke a licence.[220] Applicants found to be unfit would be denied a licence. Unfit behaviour included violation under the Act or similar consumer legislation, charging excessive interest, conduct unfair to the consumer or refusing credit based on the borrower's race, creed or gender.[221] An appeal process was provided. Oliver Kitson, Lord Airedale of Gledhow (Liberal) questioned whether the Director would have enough 'local knowledge' to make an informed decision.[222] His concerns echoed Josiah Wedgwood MP's (Labour), who, during the MLSC 1927, inquired whether the Home Office would send inspectors to ask 'Who was your father? What school did you study [in]?'[223] Although criteria were provided, the subjective concept of a 'fit' person, or the use of terms from the 1920s (e.g., 'of good moral character'), was an obstacle for some lawmakers. Since 1900, policymakers had debated the merits of providing the judiciary with specific criteria versus the use of general but accepted legal terminology. The latter was intended to offer judges wider latitude to relieve borrowers.

Despite reassurance that the civil service could manage the licensing system, the DTI expressed concern that there would be great difficulty in

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[216] White Paper, 10.
[217] Ibid., 26.
[218] Ibid., 27.
[219] Ibid., 8.
[220] Ibid., 25-26.
[221] Ibid.
[222] HL deb. 30 April 1974, vol. 351.
[223] HC deb. 4 March 1927, vol. 203.

operating 'on the scale envisioned'.[224] The DTI was reminded that it had lobbied for a 'less identifiable' unit to handle licensing, while Crowther had argued for a full department. As before, a small minority of members baulked at the idea of licensing. In response, Howe reminded members that moneylenders and pawnbrokers were already licensed. Licensing, he argued, was a flexible regulatory tool that could respond to the ever-evolving credit markets.[225] A licence enabled a lender to issue all forms of consumer credit. This provision would have a substantial impact on the moneylending and pawnbroking markets. As discussed below, within a relatively short period small loan lenders evolved from proprietor and partnerships into corporations offering multiple products, including payday, pawnbroking, cheque cashing, automobile title and similar loans.

D. Conclusion

Given that Crowther, the White Paper and the CCA 1974 sought to modernise, consolidate and rationalise the then fragmented consumer credit regulatory framework, it is not surprising that they were at or near agreement concerning economic and social policy. Crowther's equal treatment of lenders, including providers of small loans, provoked little debate. A handful of legislators used terms such as 'sharks' to describe particular lenders; however, only a few categorised the entire industry as evil or parasitic. The ideology underpinning Crowther was adopted by the government. Both believed that truth in lending would overcome information vulnerability. It was believed that the disclosure of clear and truthful information would facilitate rational decision-making.

Regulation that mitigated asymmetric information would encourage competition among credit providers, resulting in a decrease in the cost of credit. It was argued that a high level of competition offered the best form of consumer

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[224] FV 62/102 (Major Policy Papers on the Whole of Proposed Legislation), 'Department of Trade and Industry, Memorandum', 12 June 1972, TNA.
[225] HL deb. 28 June 1972, vol. 332.

protection as dubious lenders would be forced out of the market. This is not completely dissimilar to Judge Charles Darling, Lord Darling's (Conservative) argument that the MLA 1927 system would 'protect those who are forced to borrow money by improving the class of people who are permitted to lend it'.[226] However, the MLA 1900-1927 episode viewed the market with suspicion and sought to limit its size and scope. In that regard, the purpose of the MLA 1900-1927 and the CCA 1974 differed.

Complementing the improved competitive environment was an enhanced licensing system, an enforcement regime headed by the Director General of Fair Trading and an expansion of powers to deal with extortionate agreements. The CCA 1974 licensing system shifted power from local administration to a centralised ministry. This decision fitted with the government's and industry's desire for a consolidated and consistently enforced regulatory procedure. It was believed that a single regulator would better track market trends. By granting a multi-year licence, the industry faced a smaller administrative burden. However, like the MLA 1927 system, some legislators challenged the fitness criteria for applicant approval. The MLA 1927 tested for good character, and a magistrate could refuse a certificate if the applicant was deemed unfit. Similarly, the CCA 1974 tested the fitness of an applicant to hold a licence. The appeal process notwithstanding, the power to deny a licence on such poorly defined terms was a matter of concern. Opponents countered that a narrow test parameter was less likely to achieve its goal. The CCA 1974 sought maximum flexibility both to increase market competition and protect the consumer.[227] The regulation was designed to encourage and respond to credit product innovation. Advocates believed the best way to achieve its goals was to give the Director of Fair Trade wide-ranging powers in granting, suspending and revoking a licence. Similarly, the reason

[226] HL deb. 11 July 1927, vol. 68.
[227] FV 62/35 (Inter-Departmental Consideration and Submission to Ministers), 'Department of Trade and Industry General Considerations, 13 January 1972, TNA.

why the guidance rate was dropped was to expand the courts' ability to protect the consumer. The same reasoning could be found in 1900.

For moneylenders, the lifting of advertising restrictions was another indication of their admittance into mainstream finance. While the MLA 1927 limited their ability to seek business, the CCA 1974 facilitated more equal terms. For disclosure requirements, it is worth nothing that the PBA 1872 and MLA 1927 provided details on agreement form and content. While the CCA 1974 provisions reflected the needs of the period, the concept of truth in lending was not new. Similarly, the PBA 1872, MLA 1900-1927 and CCA 1974 focused on the APR and how it was calculated. These facts seem to have been lost in the critique of the existing legislation and the policy solutions put forth.

In other respects the CCA 1974 was a departure from the past. Understanding the industry from the perspective of the credit product as opposed to the form of lending was key to legitimising moneylending and pawnbroking. In this case legitimacy meant that moneylenders and pawnbrokers were afforded the same protections and subjected to standardised rules of conduct. For pawnbrokers this also occurred with the lifting of interest rate restrictions. Small loan lenders and borrowers were treated in the same way as other market participants. Although it is impossible to verify, perhaps small loan borrowers were of less concern because the industry contributed marginally to overall credit volume. Some expected the pawn industry to disappear, while others believed mainstream credit providers would overtake moneylenders in providing short-term credit to low-income borrowers. Another possibility is that the policymakers recognised the limitation of the law to affect small loan borrowers. According to Goode, 'The law cannot by itself redress bargaining inequality, educate the ignorant, eliminate trading malpractice or remove hardship caused by sheer inadequacy of a consumer's financial resources.'[228] What is clear is that Crowther was unwilling to regulate

[228] Goode, 'The Consumer Credit Act 1974', 130.

HCSTC on behalf of the few who might suffer from credit use. While specific protections were implemented, moneylenders were not singled out and low-income borrowers were deemed to be rational and responsible users of credit. With a preference for less government interference and an enhanced competitive environment, price controls, and later in Parliament, the guidance rate, stood little chance of implementation. It was believed that competition, judicial powers over grossly exorbitant transactions and the licensing system would protect borrowers. Clear, transparent and consistent information would encourage product comparison in a borrowing class that, for the most part, benefited from readily accessible credit. While the CCA 1974 revamped the regulatory framework, it was a market-friendly process, one that included moneylenders and pawnbrokers.

5 Financial Inclusion and the Great Recession

This chapter focuses on the Consumer Credit Act 2006 (CCA 2006), the Great Recession and its aftermath as they related to moneylending (now called payday lending), pawnbroking regulation and market development. It analyses how the financial inclusion agenda interacted with the belief that regulation could add to consumer protection and enhance the market's efficiency. Concerning the CCA 2006 the chapter asks: Were price controls considered? Which position did consumer advocacy groups support? Would ethical concerns influence the process? Were vulnerable borrowers considered 'rational maximising agents' or morally degenerate and unable to make sense of interest rates approaching an APR of 3,000 per cent? If the CCA 1974 was believed to have failed, what changes would the CCA 2006 consider concerning the APR, extortionate test, licensing and enforcement mechanisms?

Turning to moneylending and pawnbroking, this chapter argues that the CCA 2006 was motivated by the financial inclusion agenda and the belief that regulation could 'enhance the market'. To reduce poverty, the former was concerned with increasing access to mainstream banking, affordable credit and financial competence. The latter believed legislation in the past had failed and sought to improve information disclosure and licensing requirements to encourage competition and lower prices. Both agendas considered the market to be normative, yet certain 'irresponsible' lenders were believed to target vulnerable borrowers and challenged the view that credit use had raised living standards across the board and contributed to economic growth. In response, the CCA 2006 broke with Crowther and required stringent licensing of high-risk lenders. In 2006, regulation was enacted to encourage a specific kind of market, one in which responsible lenders competed on price and issued affordable credit, which in turn was expected to reduce poverty.

In 2007-2008, as loan volume grew, regulators would again focus on moneylending. Did this growth encourage a response, as seen in 1900 and 1927 when regulators sought to restrict the market? Which factors were analysed concerning the effect of price controls? Was there any evidence of lenders earning an exorbitant return from vulnerable borrowers during a period of financial crisis?

The Great Recession and its aftermath increased payday loan volume. Increasingly, policymakers viewed the industry as predatory, their product harmful and its users, by definition, vulnerable. 'Irresponsible' finance not only targeted the working poor, it had a negative impact on the economic and social conditions of poverty. The newly created Financial Conduct Authority (FCA) sought to restrict marginal borrowers from accessing payday loans. There was widespread political though not economic consensus that the 'normal' laws of economics (e.g. price competition) did not apply to payday loans and that direct intervention in the market's pricing mechanism and restricting credit access were the only solutions to provide relief for vulnerable borrowers.

Section A. analyses the political and market developments following enactment of the CCA 1974; section B. analyses the CCA 2006; and section C. covers the Great Recession and its aftermath. The chapter's conclusion is presented in section D.

A. Political and market developments

Political developments

The consumer credit landscape changed dramatically in the decades following the CCA 1974. Beginning in the 1980s, British banking and consumer credit were influenced by global trends and the deregulation of the UK financial system. Both were credited for offering increasing market competitiveness and product diversity.[1] The amount of unsecured credit more than doubled between

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[1] Elaine Kempson *et al.*, 'In or out? Financial exclusion: A literature and research review', Financial Services Authority (2000), 14-15; Richard Berthoud and Elaine Kempson, *Credit and*

1994 and 2001.[2] In 2004, for the first time, British personal debt exceeded £1 trillion.[3] In 1974, the credit card system was in its infancy, with one provider, Barclays, issuing £32 million.[4] By 2003, there were over 1,300 credit card products with £49 billion outstanding.[5] In 2004-2005, the Office of Fair Trading (OFT) had issued 16,568 consumer credit licences.[6] It was believed that consumer credit had contributed to economic growth and rising real incomes. Patricia Hewitt MP (Labour, Secretary of State for Trade and Industry) argued that a competitive financial system was vital for 'sustainable economic growth' and that an 'innovative consumer credit market' had contributed to 'robust growth' in consumer spending.[7]

However, the Bank of England expressed concern over the high levels of unsecured debt held by low-income households.[8] It was suggested that these debts would prove problematic during an economic downturn. Between 2001 and 2004, the DTI published three reports on over-indebtedness and encouraged 'responsible' lending.[9] Much of the government's efforts were led by Melanie Johnson MP (Labour) when she was first Economic Secretary to

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Debt (London: Policy Studies Institute, 1992), 46; Richard Davies and Peter Richardson, 'Evolution of the UK banking system', *The Bank of England Quarterly Bulletin* (2010), Q4.

[2] Elaine Kempson, 'Over-indebtedness in Britain', A report issued to the Department of Trade and Industry (2002), i-iv. Adjusted for inflation.

[3] HC deb. 9 June 2005, vol. 434.

[4] Ibid.

[5] 'The consumer credit market in the 21st century: Fair, clear and competitive', Department of Trade and Industry CMD 6040 (2003), 4.

[6] HL select committee on European Union 36th annual report 2007, Chapter 4 UK Consumer credit legislation, 64-65.

[7] 'Fair, clear and competitive', 10. In *The Challenge of Affluence* (Oxford: Oxford University Press, 2007), Avner Offer challenges the assumption that as affluence rises society develops an increased capacity for 'rational' and prudent (or less fallible) decision making. Inherent in Hewitt's statement is a link between higher income, growth, standards of living and the responsible use of credit akin to the life-cycle theory of credit. This research has demonstrated that there is a distinction between credit use to secure consumer wants versus credit use to satisfy an immediate need, such as rent or a utility bill. Whether it is 'prudent' or 'rational' to use HCSTC for an emergency payment is questionable.

[8] Speech by Professor Stephen Nickell (BOE Monetary Policy Committee), 'Two Current Monetary Policy Issues', 16 September 2003.

[9] Responsible lending was understood as 'more than just meeting the minimum legal requirements. It is also about driving forward best practice and treating customers fairly.' See 'Transparency of credit charges', House of Commons Treasury Committee First Report of Session 2003-2004 vol. 1, section 83.

the Treasury and later in the DTI as Minister for Competition and Consumers. Charles Hendry MP (Conservative) cautioned that while debt was not necessarily 'a bad thing', it was rising at a rate of £1 million every four minutes.[10] In the first decade of the twenty-first century, regulators were increasingly concerned that the CCA 1974 was ill equipped to function in the much larger and diverse credit market, especially for credit cards users (the UK represented 50 per cent of the EU credit card market) and credit designed for 'vulnerable' borrowers.[11] There is tension, then, between the belief that consumer credit had raised living standards and supported economic growth, yet at some point 'too much' debt was harmful. For decades policymakers had struggled to determine when an interest rate was 'too high' and, in the twenty-first century, it was questioned whether there was too much available credit.

Starting under the 1997 Labour government, a financial inclusion initiative sought access to basic banking facilities, affordable credit and financial literacy.[12] The financial inclusion agenda considered the market as normative and believed access to mainstream banking in an increasingly competitive environment was an effective poverty reduction strategy.[13] Donncha Marron argued that, as opposed to the socialisation of 'harmful' risk found in the state welfare system, financial inclusion relied on the market to price and profit from 'opportunity' risk.[14] New Labour believed that the right kind of market would

[10] HC deb. 9 June 2005, vol. 434.
[11] HC deb. 13 January 2005, vol. 429.
[12] According to the FSA, the financial inclusion agenda was stimulated by the 1997 Labour government's Social Exclusion Unit initiative. See 'In or out?' The first government strategy report, 'Promoting financial inclusion', was issued by HM Treasury in 2004. While the initial focus was on increasing access to basic banking facilities, ATMs and affordable credit, it was expected that insurance and related products would follow. Alternatives to the banks were also promoted, including the Post Office, Community Development Finance Initiatives and credit unions. Financial illiteracy was to be addressed in school-based programmes and money advice centres.
[13] The financial inclusion agenda is critiqued for that reason. A critique and comparison with the Victorian period are found in section D. of this chapter.
[14] Donncha Marron, 'Governing poverty in a neoliberal age: New Labour and the case of financial exclusion', *New Political Economy* 18:6 (2013), 789-790.

reduce poverty and decrease government welfare expenditure.[15] It was expected that consumers and financial institutions would benefit from such an arrangement. To the extent that payday loans contributed to poverty, they were considered the wrong kind of credit. In the 1990s, New Labour directed its efforts to removing barriers that kept individuals from engaging meaningfully in economic and social affairs. Supply-side barriers included bank branch closures, account minimums and a lack of affordable credit options. Demand-side barriers were related to financial ignorance and poor decision-making.[16]

As in the Victorian era, it was recognised that the cost of poverty was borne at both the individual and societal level. However, despite the Treasury claiming that certain market failures (e.g., information asymmetry, externalities and distributional concerns) as opposed to state welfare, had encouraged exclusion, the government wanted to improve the capacity of vulnerable individuals to participate 'freely' in a globalised finance system.[17] Drawing from the sociologist and social theorist Nikolas Rose, Marron argued that in its early form financial inclusion was a manifestation of the political link made between individual consumer freedom, economic growth and societal well-being.[18] While in 1900-1927 vulnerable borrowers were to be protected by restricting access to credit, leading up to the CCA 2006 the agenda was to increase access to the right kind of market.

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[15] In 2003-2004, the majority of households lacking access to basic banking facilities were also supported by the government: 64 per cent received council tax benefit, 62 per cent received housing benefit and 48 per cent received income support. See 'Promoting financial inclusion', HM Treasury (2004), 12.

[16] Kempson and Whyley categorised exclusion by access (bank closures or high-risk factors), conditions (i.e., attached to a financial product), price (lack of affordability) and marketing (financial firms ignoring some groups). Elaine Kempson and Claire Whyley, *Kept In or Opted Out? Understanding and Combating Financial Exclusion* (Bristol: Bristol University Press, 1999).

[17] Marron, 'Governing poverty', 789-792. 'Promoting financial inclusion', HM Treasury (2004), 3; 'Access to financial services,' HM Treasury (1999); 'Promoting financial exclusion', HM Treasury (2004), 3.

[18] See Nikolas Rose, *Powers of Freedom: Reframing Political Thought* (Cambridge: Cambridge University Press, 1999).

Although not statutory, the Treasury 'encouraged' mainstream banks to offer basic current accounts and to increase product diversity to low income households.[19] In 1975, only 45 per cent of adults held a current account; by 1998 that figure had risen to approximately 85 per cent.[20] Once a 'preserve of the rich', financial services had become mainstream.[21] Moreover, the House of Commons Treasury Committee argued that financial inclusion was an effective way to combat poverty.[22] The Treasury Committee identified access to affordable credit as a pillar of the financial inclusion agenda and believed that the government should 'spearhead action to tackle high-cost credit'.[23]

Ironically, the vast expansion of financial services had left a minority of households more excluded than ever.[24] As financial inclusion spread, it became more expensive to pay bills and store or save money outside the current account system. Whereas in the past those outside traditional banking paid high rates for credit, by the 1990s they were also penalised for lacking access to basic banking facilities.[25] As mainstream lenders quit the lowest end of the market, both physically by closing branches in low-income neighbourhoods and by raising account minimums, so the alternative lending industry grew. The DTI argued that over-indebtedness 'fuelled' by poverty was 'often linked' to financial exclusion and was contrary to the government's objectives on social justice.[26] As this chapter argues, in 2006 the financial inclusion agenda blended with 'regulation as [a] market enhancing' precedent and encouraged regulators to

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[19] HL select committee on financial inclusion, evidence, session 11, 25 October 2016; HC Library, 'The consumer credit bill', Research paper 05/03, 11 January 2005.
[20] Kempson, 'In or out?', 11. See also Kempson and Whyley, *Kept In or Opted Out?* This increase was attributed to the Financial Inclusion Taskforce and HM Treasury pressure, so that by 2010 fewer than 890,000 adults were without a current account. See Marron, 'Governing poverty', 789-790.
[21] Kempson, 'In or out?', 1; Andrew Leyshon and Nigel Thrift, 'Geographies of financial exclusion: Financial abandonment in Britain and the United States', *Transactions of the Institute of British Geographers* 20 (2005), 316-317.
[22] 'Financial inclusion: Credit, savings, advice and insurance', House of Commons Treasury Committee Twelfth Report of the Session 2005-2006 vol. 1, 3.
[23] Ibid.
[24] Kempson, 'In or out?', 11.
[25] See Leyshon and Thrift 1993, 1994, 1995 and 2005.
[26] 'Fair, clear and competitive', 24, 74.

organise credit providers into risk categories and implement stringent measures on high-risk payday lenders. The solution to protect borrowers and reduce poverty was access to a specific type of 'proper' credit. A priority of financial inclusion - access to mainstream banking to reduce poverty, fit alongside the belief that credit use raised standards of living and that updated regulation would encourage competition and lower the cost of borrowing.

Market developments, 1970s-2006

This subsection analyses the economic conditions of borrowers and the business environment since the CCA 1974. While average real incomes rose by approximately 40 per cent between 1979 and 1995, they were not distributed evenly. The income of the bottom 10 per cent grew by 10 per cent, whereas the top 10 per cent grew by 60-68 per cent. Richard Berthoud and Elaine Kempson found that between 1979 and 1988 the bottom 10 per cent gained a 'mere half of one per cent of the increase in national disposable income'.[27] If housing costs are taken into consideration, the poorest 10 per cent experienced an 8 per cent decrease in real income.[28] From 1979 to 2005 the Gini coefficient increased from 0.25 to 0.35.[29] Figure 4 demonstrates this.

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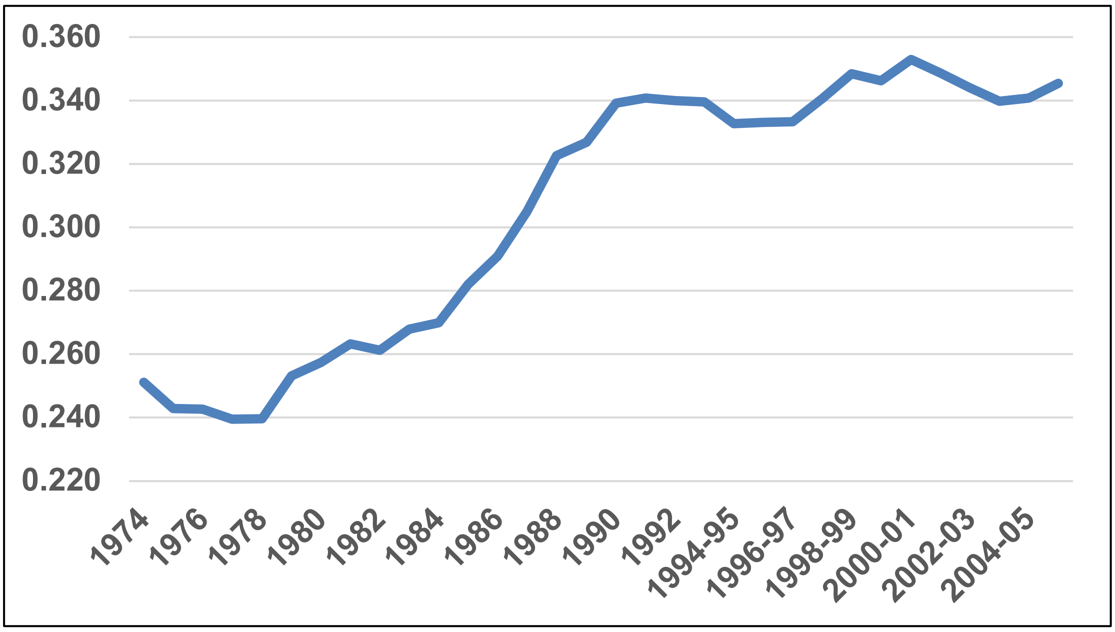
[27] Berthoud and Kempson, *Credit and Debt*, 9.
[28] Kempson, 'In or out?', 11.
[29] Jonathan Cribb, 'Income inequality in the UK', Institute for Fiscal Studies (2013).

Figure 4 Gini coefficient



Source: Institute of Fiscal Studies, Gini coefficient data set, accessed 28 August 2016.

This income inequality can be partly explained by changes in the labour market conditions, including a higher premium on skilled labour, the contraction of some trade unions, an increase in flexible or part-time labour and a widening of the pay gap between senior managers and employees.[30] In addition, according to the economist Jonathan Cribb, tax, welfare and trade policy contributed to greater inequality.[31] Various studies confirmed that half of working-age adults living in poverty could be found in households with at least one adult in paid work.[32] This supports the concept of the working poor.

Those experiencing insecure and low incomes were at high risk of financial exclusion. In 1998, approximately 20 per cent of adults were without a current account, 31-37 per cent had no savings and 29 per cent had no access

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[30] Kempson, 'In or out?', 11-12.
[31] Cribb, 'Income inequality'.
[32] Gary Palmer *et al.*, 'Monitoring poverty and social exclusion 2006', Joseph Rowntree Foundation (2006), i-iv. Poverty was defined as households with an income of less than 60 per cent of the median.

to credit from a mainstream provider.[33] Those with low incomes were most likely to be without a mainstream bank account and to manage weekly budgets.[34] In 2002, Kempson found that 25 per cent of households reported having been in financial difficulties in the last twelve months, with 18 per cent on at least one occasion in arrears on household bills.[35] Another study found that 7.7 million people were in debt to utility companies and that more than 1 million had their telephone service disconnected owing to late payments.[36]

Certain findings concerning low-income households and borrowers in their twenties challenged the life-cycle theory: those on low incomes used credit differently from higher-income families.[37] These findings support claims that certain economic theory does not fully appreciate the borrowing pattern of the lower classes. Berthoud and Kempson found that households with low incomes accessed half as many credit sources as higher-income families. Unlike wealthy households, households living in hardship scored low on a consumerism index designed to measure the value of durable goods purchased in the previous twelve months. The evidence suggested that poor households used credit to overcome poverty rather than to raise their standard of living. John Caskey, an economist, found similar patterns in the United States. Caskey's research suggested that, beginning in the 1980s, alternative lending expanded owing to financial market deregulation, income inequality and financial exclusion.[38]

While these borrowers were aware that lenders charged high rates, they valued the convenience, speed and repayment options. There is agreement in the contemporary literature that alternative credit providers tailored their

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[33] 'Financial inclusion: Credit, savings, advice and insurance', House of Commons Treasury Committee Twelfth Report of the Session 2005-2006 vol. 1, 21.
[34] Berthoud and Kempson, *Credit and Debt,* 14.
[35] Kempson, 'Over-indebtedness', v.
[36] Jenny Rossiter and Niall Cooper, 'Scaling up for financial inclusion', Church Action on Poverty: Debt on Our Doorstep Campaign (2005), 7.
[37] Berthoud and Kempson, *Credit and Debt*, 56.
[38] John Caskey, *Fringe Banking: Check-Cashing Outlets, Pawnshops, and the Poor* (New York: The Russell Sage Foundation, 1994).

products to meet the needs of low-income borrowers in a way that banks, credit unions and the Social Fund failed to.[39] HSBC told the Treasury Committee that it could not lend small sums on a short-term basis cost-effectively as it would need a 'very high APR' to cover the cost.[40]

Kempson and Whyley argued that borrowers seek HCSTC for both 'positive' and 'negative' reasons.[41] From the borrower's perspective, lenders provide a fast service as the application process is simple and there is a high level of confidence that the loan application will be approved, the loan is convenient as the outlet is close to home or work and offers extended trading hours, and is transparent as the principle and amount owed are stated clearly. As before, high prices were viewed negatively, with typical APRs ranging from 100-400 per cent.[42] However, as pawnbrokers and moneylenders explained over a century ago, APRs and the cost of credit were not the main factors in considering a small loan. This research has demonstrated that, since 1872, lenders have questioned the value of APR disclosure when applied to short-term loans. Instead, borrowers have valued their convenience, speed and repayment terms. Also, and relatively consistently, politicians and experts have struggled to understand why borrowers appreciate non-price loan factors a lot more than price. As late as 2005, Kempson and Whyley wrote that the reasons were 'not well understood'.[43]

While certain market data are more readily available than previously, no agency tracks the HCSTC sector. Since the CCA 1974, licensing data have not identified pawnbroking separately and no definitive data exist on the total market size. In 2005, the NPA estimated that there were approximately 800 pawnshops in the UK, approximately double the number in the early 1970s as

[39] The Social Fund was established in 1987 to provide loans for immediate and exceptional need. The fund did not effectively compete with the alternative loan industry as it was limited in scope and required a lengthy application process.
[40] 'Financial inclusion: Credit, savings, advice and insurance', House of Commons Treasury Committee Twelfth Report of the Session 2005-2006 vol. 1,13-14.
[41] Kempson and Whyley, 'Extortionate credit', iii.
[42] Collard and Kempson, 'Affordable credit', 1.
[43] Ibid.

recorded by Crowther.[44] Nevertheless, in terms of loan volume and market participants, the 2006 industry remained smaller than it was at its peak of 5,087 licensed providers in 1914. In 2006, OC&C Strategy Consultants estimated that the UK pawnbroking market earned £130 million in revenues and expected that to reach £165 million by 2008.[45] Typical APRs ranged from 5 to 12 per cent a month; based on a loan of £100, this equates to an APR of some 70-200 per cent.[46]

Like their Victorian predecessors, modern pawnbrokers provide cash loans collateralised by a pledged item, without a credit application or inquiry into the borrower's intended use of funds. As before, pawnbrokers assessed the value of the pledged good, the advance rate and the forfeiture risk. While the CCA 1974 required disclosure of the loan terms and conditions, essentially, the customer was provided with a pawn-receipt that differed little from documents issued in Victorian times. Though the Internet has altered the competitive dynamic, borrowers continue to visit pawnshops that are conveniently located. In 2005, one owner of a multi-location pawnshop business suggested that 90 per cent of his customers lived within two miles of his outlets.[47] The Personal Finance Research Centre found that advertising and trade directories played a minor role in attracting pawn customers.[48] While long-standing and well-established pawnbrokers, such as T.M. Sutton, founded in 1800, and George Attenborough Company, advertised in the London Yellow Pages, few others followed suit. From 1975 to 1990, London Yellow Page listings averaged less than twenty pawnshop locations annually.[49] Over the centuries, the business model and the importance of conveniently located shops, have remained remarkably stable.

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[44] Collard and Kempson, 'Affordable credit', 3.
[45] Ibid., 6.
[46] Memorandum of Association, H&T Group plc (1 May 2006), 6.
[47] Kempson and Whyley, 'Extortionate credit', 18-19.
[48] 'Pawnbroking customers in 2010', A report for the National Pawnbrokers Association prepared by the Personal Finance Research Centre, University of Bristol (2010), 20.
[49] A 42 DIR 57, London Yellow Pages, Guildhall Library, 1975-1990.

Notwithstanding the stability of the pawn business model, the market structure and certain operational features have evolved, which has contributed to the industry's resurgence since the 1970s. Owing to the CCA 1974 single license provision, the structure of the market shifted from self-funded proprietorships towards international companies funded by banks and the capital markets. By 2006 demand for small loans was being fulfilled by multi-location 'supermarket' providers. Many pawnbrokers now offered cheque cashing, prepaid debit cards, payday and unsecured loans. Accompanying these structural changes, pawnbrokers have adopted modern retailing methods including high-street retail locations, modern floor plans, sophisticated accounting software, high-end security systems and e-commerce.[50] These infrastructure investments coincided with a shift in collateral from low-value clothing and home goods towards jewellery, gold and watches. These items were easily appraised and stored, generally held their value and could be sold on the second-hand market. The majority of shops retailed forfeited gold and jewellery through modern display windows and internal counters. While financial exclusion and economic inequality have contributed towards the industry's growth since the 1970s, likewise capital investment, extensive rebranding and refurbishment and innovative retail management have helped to satisfy unmet consumer demand.[51] The NPA believed that the above factors, coupled with the recession of the late 1980s and early 1990s, sparked an expansion of the HCSTC.[52] These market developments and claims can be

[50] 'The pawnbrokers guide', The National Pawnbrokers Association (1999), 20; Albemarle & Bond Holdings plc annual report, 2005 and 2006; Memorandum of Association, H&T Group plc (1 May 2006), 8-11; 'Information package', The National Pawnbrokers Association (March 2017), 6. Similar developments occurred in the modern American market, see Wendy Woloson, *In Hock: Pawning in America from Independence through the Great Depression* (Chicago: The University of Chicago Press, 2009, 1-20.

[51] In addition to Leyshon and Thrift, see Dawn Burton, *Credit and Consumer Society* (Oxford: Routledge, 2008), 61.

[52] Steve Boggan, 'Pawn again', *Guardian*, 20 October 2016. The early 1990s recession was the longest in Britain since the Great Depression, during which unemployment rose from 1.6 million in 1990 to approximately 3 million in 1993. See Jamie Jenkins, 'The labour market in the 1980s, 1990s and 2008/09 recessions', *Economic & Labour Market Review* 4:8 (2010).

better understood by examining H&T Group and Albemarle & Bond, two of Britain's largest pawnbrokers.

In 2006, the largest player as measured by number of stores and its pledge book, H&T Group, founded in 1897, was listed on the AIM stock exchange.[53] At the time it operated 69 outlets, up from 27 in 1992. Only three other companies operated more than 20. In 1992, H&T was acquired by Cash America Inc. Shortly thereafter it had been transformed into a multi-channel provider of small loans.[54] Like its competitors, H&T focused on customers that did not satisfy the lending requirements of high street banks. It also retailed forfeited and new goods. In 2004, Rutland Partners, a private equity fund, led a management buyout. From 2001 to 2005, net revenue and earnings before interest, taxes, depreciation and amortisation (EBITDA) grew at an annualised compound rate of 14.1 and 14.9 per cent, respectively. Between 2003 and 2005 revenue increased from £16.4 million to £20.1 million and EBITDA from £5 million to £7.4 million. Over 70 per cent of the business was from pawn services. Over the same period, H&T's pledge book grew from £21.3 million to £24.4 million, 98 per cent of which was secured by gold or jewellery.[55] This confirms that the days of pledging coats, flat irons and trousers had ended. In 2005, they charged between 7 and 9 pcpm, with an average of 7.1 per cent.

For the three months ending 31 March 2005, by value, approximately 22 per cent of pledges were forfeited after an average of 8.7 months in pawn.[56] H&T's forfeiture level of 22 per cent was higher than most in the Victorian era and in line with the Crowther study. In Crowther's pawnbroker sample set, and for H&T, approximately 50 per cent of items were redeemed within three months. Both results are lower than in the Victorian and Edwardian eras, when they were approximately 80-85 per cent. This could be because there was a greater likelihood of redemption of lower-value goods in the weekly pawn cycle

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[53] A pledge book is the amount lent of pledged items in the pawnbroker's possession.
[54] Unsecured loans offer a longer repayment period than unsecured payday loans.
[55] Memorandum of Association, H&T Group plc (1 May 2006), 6, 10.
[56] Ibid., 13.

than higher valued, less frequent pawns. Only 85 per cent of H&T's customers had pawned in the last twelve months.[57] In 2005, H&T cashed £27 million in cheques, with an average value of £356 at an average fee of £23. A typical payday loan was £365, carrying with it an average fee of £47.[58] This compares with an industry-wide average of £75 for a £300 loan.[59] In terms of capital structure, prior to the equity offering (£18.2 million in new shares), H&T had a term loan and revolving facility with Barclays Bank. Post-equity, Barclays intended to offer a working capital facility. Unlike in the past, pawnbrokers were no longer limited to internal funding.

In 2005-2006, H&T's closest competitor, Albemarle & Bond, had a pledge book of £11 million, up from £496,000 in 1988.[60] In 2005-2006, it acquired eleven shops and increased its pre-tax profit by 18 per cent year on year to £6.7 million. Across its entire network, on average, it loaned £96 per pawn on 135,000 loans. By comparison, a single shop in nineteenth-century Liverpool issued almost as many loans annually. Like H&T, Albemarle & Bond offered a range of services, including cheque cashing, payday loans and retail sales. Over the previous twelve months, secured, unsecured and cheque cashing services had grown. Albemarle & Bond operated 62 of the estimated 550 cheque cashing outlets in the UK.[61] Bearing in mind the limitations of the data, H&T's public listing and Albemarle & Bond's annual accounts offer some insight into the small loan market, which was growing and profitable, leading up to the CCA 2006.

Like their historical counterparts, borrowers also sought unsecured small loans. By the late 1990s, the term 'payday lending' had gained in usage over the traditional form of 'moneylender'. However, the main loan features and the typical borrower profile of moneylenders and payday lenders are similar. Both

[57] Ibid.
[58] Ibid., 15.
[59] Kempson, 'Financial exclusion', 13-14.
[60] Albemarle & Bond Holdings plc annual report, 1989 and 30 June 2006.
[61] Ibid.; Kempson and Whyley, 'Extortionate credit', 2-6.

providers offered/offer high-cost, small value, short-term unsecured loans. Based on these features, the essential loan product is identical. Since the 1890s, a typical borrower will have struggled to cover basic expenses and was without savings to cover an emergency expenditure.[62] Though standards of living have increased since Victorian times, the typical borrower profile is consistent. Though payday lenders rely on sophisticated credit check software, the input's analysed are similar to that of decades past, including an applicant's financial, personal and borrowing history. Notwithstanding, differences in the two businesses exist. Though certain payday lenders provide 'cash on site' in retail locations, many issue loans and collect repayment by accessing a borrower's current account. Also, payday loans are repaid in a single instalment inclusive of the loan principal and interest. This 'bullet structure' differs from earlier when repayment occurred through a series of small weekly instalments. The 'payday' namesake brings together these two loan features, that is, the single instalment falls due on the borrowers 'pay day' and it is electronically deducted from a current account. While the payday lending market structure and its growth are analysed in Section C., as seen in pawnbroking and beginning in the 1990s, multi-location loan providers offering a wide range of credit products had, for the most, replaced single shop proprietorships. Although still relatively fragmented, international and domestic corporations had emerged, bringing with them capital market and bank financing. These corporations deployed expansion capital and had invested in e-commerce platforms. However, the key loan features and the typical borrower profile are consistent overtime, which facilitates a comparison of the moneylending and payday loan markets.

Since 1974, the overall consumer credit market had grown in volume and in the range of products it offered. Small loan providers, while contributing little to the total volume of credit issued, played an important role in the

[62] Elaine Kempson and Claire Whyley, 'Extortionate credit in the UK', a report to the Department of Trade and Industry (June 1999), 13-15.

everyday financial life of the working poor. Before the CCA 1974, a licence was required for each pawnshop and across products (e.g., moneylending and pawn). The CCA 1974 removed those barriers. As mentioned, without licensing data and with unreliable trade directory information, it is difficult to estimate market participation.[63] Nonetheless, the available data indicates that, beginning in the 1990s, in response to growing inequality, financial exclusion and a generally overlooked market niche, the pawn and unsecured loan market was growing. The industry's growth soon prompted the Office of Fair Trading to investigate the effectiveness of the CCA 1974 to regulate HCSTC.[64] These initial government findings were the first steps of the CCA 2006 regulatory process.

This remained of this chapter asks: In light of the financial inclusion agenda, how were moneylenders understood? Had the definition of 'vulnerable borrower' evolved since the CCA 1974? If borrowers were considered vulnerable, why were price controls rejected in 2006? Was the APR debate revisited? If the CCA 1974 was believed to have failed, what changes would the CCA 2006 consider concerning the extortionate credit test and enforcement mechanism? The next section B. addresses these questions by focusing on the development of the CCA 2006 as it related to moneylenders.

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[63] Before the CCA 1974, the Yellow Page trade directory provided a moneylenders category. By 1980, moneylenders were listed within the 'Credit and Finance Companies' section. As a result, it is impossible to determine which companies offered small value unsecured loans. See A 42 DIR 57, London Yellow Pages, Guildhall Library, 1975-1990.

[64] 'The true cost of credit', Office of Fair Trading (1990); 'Unjust credit transactions', Office of Fair Trading (1991); 'Consumer credit regulation', Office of Fair Trading (1994); 'Extortionate credit', Office of Fair Trading (1998); Kempson and Whyley, 'Extortionate credit in the UK' (1999).

B. The Consumer Credit Act 2006

> There will be casework that shows the level of abuse by unscrupulous lenders who prey on the vulnerable, and on the poorly informed consumer… They highlight the real human misery that underlies the statistics on debt... no humane society' should allow predatory lenders to operate.[65]
>
> Gerry Sutcliffe MP (Labour), Parliamentary Under Secretary of State for Trade and Industry

In 2003, the government linked improved financial regulation, especially targeted at the HCSTC sector, with its anti-poverty campaign. As seen in the 1970s, higher volume and value credit - in this case credit cards - had become a matter of concern. However, as in 1900 and 1927, and unlike the 1970s, moneylenders came under considerable scrutiny. In her introductory letter to the government's DTI white paper 'Fair, Clear and Competitive: The Consumer Credit Market in the 21st Century', Patricia Hewitt wrote, 'It is simply not possible to escape from poverty if what little you have is asset-stripped by predatory lenders.'[66] Hewitt's use of the word 'predatory' would not have been out of place in the Victoria era, yet during the Crowther process few in government would have used it. Two years later, the House of Commons Treasury Committee stated that the 'first priority area' of financial inclusion was to improve access to affordable credit, in the belief that 'an effective and coherent strategy to promote financial inclusion can make a substantial contribution to the fight against poverty'.[67] Hendry believed that the poorest 10 per cent in Britain were vulnerable to high-cost providers and suffered from 'financial shocks' daily.[68] By bringing the CCA 1974 up to date, the government sought to mitigate the effects of moneylending, help borrowers with issues related to over-indebtedness and tackle illegal moneylending.[69] Still, it was

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[65] HC deb. 13 January 2005, vol. 429.
[66] 'Fair, clear and competitive', 3.
[67] 'Financial inclusion: credit, savings, advice and insurance', House of Commons Treasury Committee Twelfth Report of the Session 2005-2006 vol. 1, 3.
[68] HC deb. 9 June 2005, vol. 434.
[69] 'Fair, clear and competitive' followed the Task Force on Tackling Over-indebtedness and preceded The Ministerial Group on Over-indebtedness Action Plan 2004.

believed that most lenders acted responsibly. The HCSTC sector was not considered to be inherently flawed. The ideal was to rely on the market to allocate credit, yet to mitigate its most damaging effects by encouraging competition and increasing the supply of ‘proper’ banking facilities. The financial inclusion agenda and the belief that regulation could encourage price competition were both operative.

In many respects, the government’s vision for improved regulation echoed that of policymakers in the 1970s. The goal was to create a framework that encouraged innovation, improved competition and provided ample consumer protection. In turn, these goals would achieve poverty reduction as desired by the twenty-first-century financial inclusion agenda. However, other than encouraging mainstream finance to offer banking facilities to the working poor, as previously, the reform efforts focused on information disclosure to enhance the competitive environment. In 2003, the DTI found that 56 per cent of consumers did not understand the terms used in credit agreements and 77 per cent found credit advertisements confusing.[70] As before, it was argued that more transparency would enable consumers to make better decisions. In turn, better-informed consumers would drive the market towards more efficient outcomes or ‘fairer deals’ for consumers.[71] It was argued that ‘vigorous competition’ among lenders would result in lower prices and more choice.[72] So too, clearly stated and consistently applied regulation would ‘level the playing field’ for lenders.[73] Like previous legislation, the CCA 1974 was deemed to be too technical; as a result some lenders were unfairly penalised. Sutcliffe argued for regulation that balanced the needs of consumers and lenders.[74] Although the financial inclusion agenda recognised that the market had excluded the

[70] ‘Fair, clear and competitive’, 19.
[71] Ibid., 1-5.
[72] Ibid., 27.
[73] HC deb. 9 June 2005, vol. 434.
[74] Ibid.

working poor from 'affordable' credit, to what extent was the price control debate influenced?

Price controls

How did the financial inclusion agenda and the 'market-enhancing regulatory' framework influence the price control debate? Was competition viewed as the ultimate arbiter of the price of money or was capping the cost of credit considered a viable option? Would ethical concerns, seen during the Victorian era, influence the process? Which position did consumer advocacy groups support? As demonstrated below, there was very little support for implementing price controls. Price controls that restricted the supply of credit were contrary to the goal of increased access to 'proper' credit and the belief that, on average, credit use raised the standard of living. As before, the government believed that price controls would fail to mitigate excessive credit. As in 1900-1927, the government suggested that a high APR was not necessarily indicative of an unfair transaction. Some believed that a cap would encourage lenders to increase costs falling outside the APR calculation. John Battle MP (Labour) saw no reason to cap rates at 30 per cent if a lender could charge a 29.9 APR and add-on fees.[75] As seen in 1900, 1927 and 1974, controlling the cost of credit was viewed as too complex and unlikely to reduce the total cost of credit.

As seen previously, the government was concerned that rates would gravitate towards the ceiling and inhibit product diversity. The market would then segment away from the poor, who would be left with few alternatives other than illegal lenders. Hendry was concerned that caps would 'close down whole sections of the credit industry', including pawnbrokers.[76] The government provided evidence that several EU countries and US states with interest caps had a less diverse market and more illegal lending.[77] For many policymakers,

[75] HC deb. 9 June 2005, vol. 434. He later argued that the government should reserve the power to cap rates if the need arose.
[76] HC deb. 9 June 2005, vol. 434.
[77] 'Fair, clear and competitive', 62-63; HC deb. 9 June 2005, vol. 434.

access to credit and the freedom to choose from among a variety of products were more important than capping the cost to the benefit of the few. Consumer groups including the Consumers Association, Citizens Advice Bureaux and the National Consumer Council, alongside academics such as Kempson and Collard, argued against price controls.[78] There was concern that consumers would be harmed by a decrease in credit supply and would turn to illegal lenders to fill the gap.

Unlike in the 1970s, some supporters of capping challenged high interest rates owing to their ethical concerns. David Chaytor MP (Labour) and Edward Vaizey MP (Conservative) believed there was ‘no moral case’ to allow excessive rates of interest.[79] Although Vaizey believed borrowers were responsible for their behaviour, he argued that lenders’ ‘use of loans and debt effectively to enslave people in debt is reprehensible’. He went on to argue that even in a free market 1,000 per cent rates could not be justified. Stephen Hepburn MP (Labour) argued for caps and likened them to limits on speeding. He added that when drivers were caught speeding, they paid severely for their indiscretion; so too lenders should be ‘hammered’ for excessive charges.[80] Such thinking suggested that a line existed when the market price shifted from acceptable to unacceptable, and like excessive speeding, was harmful to both individual and society. Reminiscent of Archibald Orr-Ewing, Michael Foster MP (Labour) believed that a high interest rate indicated that a loan should not be extended and that reining in the market would be a positive development.[81]

Despite the government’s research, which found that interest rate caps had failed to protect consumers in the European Union, Australia, the United States and Canada, Adam Price MP (Plaid Cymru) argued that a cap would eliminate exploitative lending.[82] Vaizey was in a quandary as his instinct was to

[78] HC deb. 9 June 2005, vol. 434; Kempson and Collard, ‘Affordable credit’, 30.
[79] HC deb. 9 June 2005, vol. 434.
[80] Ibid.
[81] Ibid.; PBSC 1870, 526.
[82] HC deb. 9 June 2005, vol. 434.

avoid ‘interfering with the free market’, yet he found that ‘obeisance at the altar of the free market’ when it comes to protecting vulnerable people was unacceptable. Vaizey supported interest rate caps to protect people who were vulnerable when taking out a loan and for longer-standing factors such as educational background.[83] Such thinking demonstrated a broad understanding of vulnerability. Sutcliffe agreed to keep the issue under review, but there were few signs that the government was seriously considering price controls. As was the case in 1900, 1927 and 1974, the government believed that enhanced licensing, disclosure requirements and the unfair relationship test would protect the consumer without interfering unduly in the market. This research also suggests that price controls were rejected because it was believed that poverty reduction and borrower protection were best achieved through increased access to ‘the right kind of market’ credit, the price of which would fall as a result of increased competition. This period is unique in that the association between ‘irresponsible’ finance, exclusion and poverty was articulated in policy. However, it mirrors the CCA 1974 in that the goal of regulation was an enhanced competitive environment that reduced costs and increased access to credit.

APR disclosure

If the government was to rely on information disclosure to improve price competition, what did they think of the contemporary regulation and to what did they attribute its failure? Were vulnerable borrowers seen as ‘rational maximising agents’ or as morally degenerate and incapable of making sense of interest rates approaching 3,000 per cent APR? As was the case during Crowther, the entire consumer credit market was analysed. Prior to the CCA 2006 process, the government had investigated APR disclosure in credit card

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[83] Ibid.

advertisements.[84] That and similar investigations suggested that the system was too technical and had areas of ambiguity. Advertisements that met the requirements of the CCA 1974 were found to be confusing and lacking in transparency.[85] Recall that similar charges were made against the MLA 1900 and 1927. The government wanted to 'ensure greater consistency and transparency in credit advertising, so that consumers can compare … products'.[86] As before, advertisements would have to state an APR, but with an eye to making them easier to understand, the amount of 'small print' would be reduced.[87]

Since 1900, the calculation of APR had been baffling and this period proved no exception. John McFall MP (Labour) argued that the draft CCA 2006 bill failed to address the problem of a single APR, without which there could not be an informed consumer and competitive market.[88] Norman Lamb MP (Liberal Democrat) believed that the calculation of interest had to be standardised. Moving against decades of government policy and echoing the desire of moneylenders and pawnbrokers a century earlier, Lamb also suggested that the cost of credit should be disclosed in pounds and pence, so that consumers could see what they had to pay.[89] Although the CCA 2006 updated some of the disclosure requirements, including mandatory annual statements for credit contracts of more than twelve months' duration, the requirements for the total charge for credit and the calculation of APR remained relatively unchanged from the CCA 1974, the statutory implementation of which had taken place in 1977 and updated in 1980.[90]

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[84] See Consumer Credit (Advertisements) Regulations 1989 and the House of Commons Treasury Committee inquiry into the transparency of credit card charges, first report of session 2003-2004.
[85] 'Fair, clear and competitive', 37.
[86] Ibid., 30-31.
[87] Ibid., 33.
[88] HC deb. 9 June 2005, vol. 434.
[89] HC Standing Committee D, 15 June 2005.
[90] 'Consumer credit regulation: Guidance on the regulations implementing the Consumer Credit Directive', Department for Business, Innovation and Skills, August 2010; 'The Consumer Credit (Total Charge for Credit) Regulations 1980', The Department of Trade, 28 April 1980.

The CCA 2006 increased the amount of information lenders had to provide.[91] John Battle challenged this. He questioned the entire rationale of information disclosure and informed choice, saying, ‘We have two images of the person taking out a loan. Sometimes we think that they can absorb incredible amounts of information and detail and analyse the fine print, and then are OK. That is not the reality.’[92] His assumption is supported by Peter Cartwright, a legal scholar, who suggested that it is difficult to know how many consumers are equipped to understand complex disclosure terms.[93]

The intention of a standardised APR calculation was to provide better information to consumers. Although in 2006 there was more agreement that the APR was not borrowers’ primary concern, and that for small short-term loans it often ‘distorted the apparent’ cost of credit, few suggested suitable alternatives.[94] While Kempson, Whyley and Lamb argued that cash flow information was more relevant, their ideas were not adopted in the legislation. The edifice of APR as the universal indicator of credit value was questioned, but it remained in place. As was the case for over century, there was an expectation that if only borrowers would use the information to their advantage, the price of credit would fall. Unlike before, low-income borrowers were not categorised as unintelligent; instead, the rationale to regulate was framed around vulnerability and poverty on the one hand, and encouraging the ‘right kind’ of market on the other. To that end it was hoped that better information disclosure would motivate borrowers to look for cheaper credit. This begs the

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[91] ‘A guide to the Consumer Credit Act 2006’, *Glovers Solicitors* (October 2006).
[92] HC Standing Committee D, 15 June 2005. See also Matthew Hilton, *Consumerism in Twentieth-century Britain: The Search for a Historical Movement* (Cambridge: Cambridge University Press, 2003). Hilton asked a similar question, ‘How much responsibility ought to be expected of the individual in the exercise of his or her consuming duties and how much should the state seek to protect the rights of the collective mass of all consumers?’ (p. 14). Like this research, Hilton was trying to understand the inherent tension between a consumer’s freedom of choice and the role of the state in structuring such decisions.
[93] Peter Cartwright, ‘Understanding and protecting vulnerable financial consumers’, *Journal of Consumer Policy* 38 (2015), 126.
[94] Kempson and Whyley, ‘Extortionate credit’, 21-22.

question: How did policymakers understand the role of APR in determining whether a transaction was extortionate and unfair?

From extortionate lending to unfair relationships

In 1999, Kempson and Whyley reported to the DTI that the extortionate credit bargain test under the CCA 1974 had failed to protect consumers.[95] It was believed that the legal test to prove a transaction was grossly exorbitant was too high and the wording of the CCA 1974 was imprecise. Accordingly, the courts took a restrictive view and focused disproportionately on the interest rate.[96] So ineffective was the test that, since 1974, a mere 26-30 cases had reached the courts, with ten finding in favour of the borrower.[97] Battle argued that the CCA 1974 was crippled because 'no one could define the terms, so there were no extortionate lenders'.[98] He argued repeatedly that poor borrowers 'do not get anywhere near the courts'.[99] In 1926, Walter Wormersley MP (Conservative) had made the same argument: 'Ninety-eight per cent of them [borrowers] never dream of going to a court of law.'[100] As before, the legal process was seen to be expensive, complicated and risky.[101] Maria Miller MP (Conservative), while preferring 'opportunity and freedom', believed that this was an area where it was 'required to protect consumers in the unequal battle with lenders'.[102] Concerns over bargaining inequity echo those of revisionist judges in 1897 and, as in 1927, there was a willingness to regulate because existing legislation had failed. However, although Battle recognised that earlier failures were for the most part a result of misunderstanding how low-income borrowers made financial decisions, few policymakers sought a solution built on the lived realities of these borrowers.

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[95] Ibid., i-iv.
[96] 'Fair, clear and competitive', 52-53.
[97] Ibid.; HC Standing Committee D, 23 June 2005.
[98] HC deb. 9 June 2005, vol. 434.
[99] Ibid.; HC Standing Committee D, 23 June 2005.
[100] HL deb. 23 April 1926, vol. 194.
[101] Ibid. See also HC deb. 14 July 2005, vol. 434.
[102] HC deb. 9 June 2005, vol. 434.

Nonetheless, the government proposed expanding the scope of extortionate transactions to include the concept of unfairness and to implement an alternative dispute resolution (ADR) system.[103] Their intention was to create a framework within which borrowers could more readily challenge an unfair relationship. The term was vague and deliberately so. While it was expected that the OFT would provide guidance, the government wanted to avoid creating a list of factors such that lenders could 'hide' behind them.[104] The government sought flexibility for the judiciary to rule in accordance with the unique terms of an executed transaction and, departing from the CCA 1974, a court would be empowered to consider the lender's behaviour and financial penalties imposed on the borrower following the transaction. Whereas the extortionate credit test was seen to be too narrow, the unfairness relationship would take full account of the borrower's circumstances. Cost was to be considered alongside other factors that influenced the relationship between a borrower and lender. The DTI white paper made clear that transaction costs were not 'high or low in the abstract', but had to be evaluated in the context in which they were agreed. Again, this is almost identical to the intention of over a century of regulation. Furthermore, it was assumed that low-income borrowers would utilise the ADR mechanism.

Many within Parliament feared that without detailed guidance the unfair transaction test would fail to protect consumers.[105] Hendry argued that 'There is no guidance in this whatsoever. It is a bit like a minister coming in and saying "We have introduced a new punishment, which is a fine of £3,000" and when we ask, "What is it for?" he replies, "Well, I haven't actually thought of that yet, but I am sure it must be for something."'[106] The CBI and Lloyds TSB were concerned that neither consumers nor lenders would benefit from such a

[103] 'Fair, clear and competitive', 54.
[104] HC Standing Committee D, 23 June 2005.
[105] Ibid.
[106] Ibid.

sweeping test as it would create too much uncertainty.[107] Sutcliffe believed that 'we risk losing the new test's effectiveness' if terms were defined too narrowly or employed 'artificial' definitions and lists.[108] Instead, on a case-by-case basis, a court would decide whether a lender had engaged a borrower in an unfair relationship.[109] Hendry disagreed, pointing out that the Unfair Contract Terms Act 1997 and the Unfair Terms in Consumer Contract Regulations 1999 employed the unfair test and provided guidance.[110] Adam Price questioned whether it was the role of Parliament or the courts to make the law and stated that only lawyers gain from vaguely written laws.[111] For over a century, and to little effect, policymakers had debated the merits of definitions, tests and market-wide versus case-by-case regulation to relieve borrowers of extortionate bargains. Since 1900, policymakers had sought to protect a certain type of borrower - one often considered as vulnerable - from a type of credit often defined by its high cost, without distorting the pricing mechanism for HCSTC or, worse still, the wider consumer credit market and 'proper' banking.

In its final form, the CCA 2006 did not provide a precise definition of unfairness or a guidance rate. After a debtor brought a case to court, the onus was on the lender to prove that the transaction was fair. A court could examine the terms of agreement, the way in which those terms were enforced and 'any other thing done (or not done) by, or on behalf of, the creditor'.[112] In everyday language, a court could determine that a credit relationship was unfair based on the terms of the contract or business practice. If found to be unfair, a court had the power to reopen or set aside a transaction. To address the reality that many borrowers avoided the court system, the government sought to expand the ADR system under the Financial Ombudsman Service (FOS), implemented by the Financial Services and Markets Act 2000. CCA 1974-2006 licensed

[107] Ibid.; HC deb. 9 June 2005, vol. 434; HL 19 July 2005, vol. 673.
[108] HC Standing Committee D, 23 June 2005.
[109] HC deb. 14 July 2005, vol. 434.
[110] Ibid.
[111] HC deb. 14 July 2005, vol. 434.
[112] See CCA 2006 section 14.4.

credit providers came within the expanded scheme and were bound by its decisions. Because the scheme was free to consumers and required no legal representation, it was viewed as an efficient alternative to the courts. The FOS was and remains neither a consumer advocacy group nor an industry trade body, but is an independent agency. Like visions of the potential effectiveness of APR to market pricing, it was hoped that the ADR process would provide borrowers with an accessible way to challenge unfair agreements.

Enforcement and licensing

Anyone offering consumer credit required a licence under the CCA 1974. However, Crowther's 'powerful tool' was not functioning as intended, as was the case in 1900 and 1927, as only a serious offence called for a licence to be suspended or revoked.[113] More technically, the OFT 'lacked flexibility in the imposition of intermediate measures to promote compliance'.[114] In terms of licensing and ongoing regulatory investigation, as in the CCA 1974, would the government treat high-cost lenders in the same way as other credit providers? For all providers, the government proposed making the fitness test more robust and increasing the investigatory powers of the OFT. In addition to past conduct, the OFT would determine whether a business was competent to issue credit based on its business experience. In a departure from the CCA 1974, the revised plan was to implement a risk-based assessment. This method allocated resources to the screening and continuing compliance reviews of high-risk credit providers. Those deemed to be at low risk would enjoy less scrutiny and compliance costs. Through increased powers of investigation, the OFT would take a 'proactive approach to enforcement'.[115] These enhanced measures included the power to review accounts and records and make on-site visits. Across all risk categories a licence was valid indefinitely, thus removing renewal

[113] 'Fair, clear and competitive', 45.
[114] Ibid., 46.
[115] Ibid., 45.

requirements and rewarding low-risk business practice. As demonstrated by this research, since 1900 many lenders had lobbied for enhanced requirements such as those implemented by the CCA 2006. Thus, while these measures can be considered to be new to policymakers, the trade itself had recognised their value for over a century. Individual moneylenders and pawnbrokers, along with trade organisations, sought regulation to eliminate what they saw as the minority fringe, which was believed to have generated much of the 'predatory' behaviour and negative publicity. Since 1900, the industry had tried to control the fringe and in 2006 this was generally acknowledged by policymakers.

Another departure from the CCA 1974 was the OFT's power to grant special or intermediate conditions. These conditions would apply to a licence-holder who had departed from the spirit or letter of the law. A condition would require a lender to address an identified problem. Failure to comply could lead to a licence being suspended or revoked. David Sainsbury, Lord Sainsbury of Turville (Labour) agreed with these new powers of 'proportional action'.[116] It was expected that the system would increase consumer confidence in the credit market and thereby increase competition.[117] Again, there is a link between new regulations and increased competition. The desired end was to lower prices for consumers and to root out irresponsible lenders. However, Nick Hawkins MP (Conservative) voiced concern that the OFT was being granted 'unfettered powers'.[118] From the industry perspective, the Finance and Leasing Association expressed similar sentiment.[119] Without the consent of a minister, the OFT would have wide powers of investigation and the ability to issue fines. Hendry feared that the OFT would be both 'judge and jury'.[120] Sutcliffe countered that the Enterprise Act 2002 had set up the OFT as an independent regulator, designed to be 'free of ministerial control'.[121] In many respects this

[116] HL 8 November 2005, GC 153.
[117] 'Fair, clear and competitive', 46.
[118] HC deb. 3 March 2005, vol. 431.
[119] Ibid.
[120] HC deb. 14 July 2005, vol. 434.
[121] Ibid.

debate mirrored that between Crowther and the DTI in the 1970s. Crowther lobbied to create an independent regulator, while the civil service argued in favour of regulating the credit market from within existing structures. Ultimately, the CCA 2006 implemented the white paper's risk-based approach, granted enhanced powers to investigate the fitness of lenders and issue intermediate sanctions. To prove their fitness, lenders operating in a high-risk category were required to submit a credit competence plan or a credit risk profile. As enacted, the OFT would consider whether a lender had a history of irresponsible lending. The OFT stated:

> lenders should always take reasonable care in making loans or advancing lines of credit and should take full account of the interests of consumers in doing so. Lenders should undertake proper and appropriate checks on the potential borrower's creditworthiness and ability to repay the loan and to meet the terms of the agreement.[122]

Once again, moneylenders were understood to be outside mainstream banking, but why? This research argues that the CCA 2006 broke from Crowther's approach of equality among lenders, and treated moneylenders differently owing to the government's focus on financial exclusion, poverty reduction and responsible lending. These evolving concepts provided a different rationale to regulate the credit market. While borrowers were expected to act responsibly, proponents claimed that systemic over-indebtedness was the result of 'irresponsible lending'. This belief argued that it should be the prerogative of lenders to ensure that borrowers incurred debts appropriate to their income. Battle, Ian Wright MP (Labour), Lamb and the DTI white paper believed that the concept of 'responsible lending' should be incorporated into the unfair bargain and licensing fitness test.[123] Battle reminded the Commons that the concept of responsible lending was incorporated in mortgages and believed it should be extended to other credit products.[124] Hendry questioned

[122] 'Consumer Credit Act 2006', Slaughter and May (October 2008). See also 'Irresponsible lending - OFT guidance for creditors', Office of Fair Trading 1107 (February 2011).
[123] HC deb. 9 June 2005, vol. 434; HC deb. 14 July 2005, vol. 434.
[124] HC deb. 9 June 2005, vol. 434.

whether such a test would be legally enforceable and cautioned against the perils of vague and imprecise legislation.[125] Often, irresponsible lending was seen as predatory. This harks back to the PBA 1872 and the MLA 1900-1927 process when certain policymakers held lenders in low esteem, unlike the Crowther process which avoided such categories. During the parliamentary debate, few mentioned that it was not in the interest of lenders to extend credit to applicants who had little chance of repaying the loan. Although not all high-cost lending was thought to be a problem, politicians once again focused on high headline rates of interest.

Alongside the focus on predatory lending was an expansion in the concept of a vulnerable borrower. While traditional factors such as mental state, income level, age, business experience and financial pressure applied still, the mere state of being in debt and the use of HCSTC indicated that a person was vulnerable. Additionally, a borrower could be vulnerable at the time cash was needed and owing to long-term circumstances such as illness and/or educational background. While this association is not entirely novel, it was made more explicit. Put clearly, a low income, financial exclusion and resort to moneylenders made people vulnerable.[126] This belief was influenced by an increase in the debt burden of low-income households. The Bank of England indicated that the lowest income group's average debt as a percentage of income had risen from 17 per cent in 1995 to 36 per cent in 2000.[127] By 2006, vulnerability, high-cost credit, over-indebtedness, financial exclusion and poverty were understood to be systemic, which encouraged an economic and social policy response that differed from Crowther's. In 2006, high-risk lenders were singled out as different from mainstream banking. However, the entire payday loan industry was not considered to be fundamentally flawed. As

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[125] Ibid.
[126] 'Financial inclusion: Credit, savings, advice and insurance', House of Commons Treasury Committee Twelfth Report of the Session 2005-2006 vol. 1, 3.
[127] 'Fair, clear and competitive', 24.

section C. demonstrates, owing to the Great Recession and growth in payday lending the entire market was deemed to be harmful.

Conclusion to Section B. The Consumer Credit Act 2006

While Crowther put all lenders on an equal footing, by 2006 certain high-risk lenders had been singled out. This can be seen in the revamped licensing system and fitness test which allocated lenders into risk categories. Higher-risk lenders required enhanced fitness and compliance requirements. Small loan providers were targeted because their clientele was vulnerable and got by on low incomes. Without questioning their morals or intellectual ability, the vulnerability of borrowers was of greater concern than in 1974. This can be explained, at least in part, as a policy response to over-indebtedness, inequality, financial exclusion and poverty. Regulating high-risk lenders was one aspect of the government's poverty reduction and financial inclusion strategy. Other areas included financial education, alternative supply channels and the Social Fund. This research argues that it was precisely that agenda that facilitated a demonstrable shift in how policymakers understood moneylending and, in turn, how far they were willing to intervene. However, the goal of poverty reduction and the financial inclusion agenda were to be achieved at least in part through market-enhancing regulation that improved competition and lowered prices. Far from restricting access to credit, the goal was to increase the availability of 'proper' and 'responsible' credit. Regulation was intended to form the 'right' kind of market.

When compared to the 1970s, the structure of the market had changed considerably and now included international companies backed by capital market and bank finance. While it was understood that many lenders acted responsibly, policymakers used negative terms, such as 'predatory', 'loan sharks' and 'rogue' to define the fringe. Similarly, certain MPs advocated market intervention based on moral and ethical reasons, which was not as prevalent during Crowther. Financial exclusion, inequality and poverty shifted the policy response towards a social justice mandate not witnessed in the 1970s. Putting lenders in risk categories, intermediate sanctions and the ADR expanded regulation. The price control debate related to these factors. It was viewed as a direct response to relieve the pressure on low-income borrowers by some. To the majority (i.e., elected officials, academics and charities) it was a blunt instrument that would fail to solve the high cost of short-term credit. Either lenders would allocate costs to fees not captured in the cap, or worse, a cap would segment the market and leave scope for illegal lenders to meet the demand for small sums. Although there was a growing sense that the issue was being addressed under the guise of social justice, interest rate capping was not seen as an effective way to reduce the cost of small loans and was not implemented. At this point the entire industry was viewed as ‘predatory’.

Owing to the financial crisis of 2007-2008, which encouraged a substantial increase in loan volumes, regulators would again focus on moneylending. Did this growth encourage a response similar to that seen in 1900 and 1927 when regulators sought to restrict the market? Were the goals of the financial inclusion agenda, including access to affordable credit, reconsidered during the Great Recession and its aftermath? Which factors concerning the effect of price controls on the payday loan market were analysed? Was there evidence of lenders earning unusually high returns from vulnerable borrowers during the financial crisis? Did policymakers engage borrowers differently from in the past? Section C. analyses the development of regulation and the moneylending market during the crisis, with a focus on price controls and the APR debate.

C. The Great Recession and market expansion

By 2013, an estimated 1,800 retail outlets were offering payday loans, more than the approximate 1,200 McDonalds and 764 Starbucks outlets operating in the UK.[128] The Competition and Markets Authority (CMA) estimated that from 2008 to 2014, at least 2-5 new payday lenders entered quarterly.[129] In 2010, the University of Bristol estimated that 1,300 pawnshops were lending £192 million annually, as compared to 800 in 2003.[130] From 2007 to 2010, NPA membership rose from 530 to 1,080 outlets, and by 2015 pawnbrokers were lending £930 million annually.[131] One independent pawnbroker with four shops competed with 13 others in his vicinity. Another claimed that 10-12 pawnshops operated in his local area.[132] A main shopping street in the Borough of Rochdale was reported to have at least ten payday lenders.[133] Although a far cry from the late 1920s, in Manchester, where 47 pawnbrokers competed within six miles of each other, pawnbrokers and payday lenders expanded rapidly between 2006 and 2013.[134] Table 21 demonstrates the growth of payday loans from 2008 to 2013. In 2013-2015, pawn and payday lenders issued approximately £3.5 billion annually, an approximate threefold increase over 2008. Table 22 supports the expansion narrative, demonstrating that from 2006 market entry and acquisition activity had increased.

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[128] 'Payday lending: Fixing a broken market', Association of Chartered Certified Accountants (May 2014), 10; Company websites and statistica.com.
[129] 'Payday lending market investigation: Final report', Competition and Markets Authority (February 2015), 16 (hereafter CMA (2015)).
[130] 'Pawnbroking customers in 2010', 7-9.
[131] Ibid.; 'Key facts', The National Pawnbrokers Association (8 October 2015), thenpa.com.
[132] 'The impact on business and customers of a cap on the total cost of credit', A report for the Department for Business, Innovation and Skills prepared by The Personal Finance Research Centre, University of Bristol (2013), 10 (hereafter Bristol Report (2013)).
[133] HC deb. 20 January 2014, vol. 574.
[134] Melanie Tebbutt, *Making Ends Meet: Pawnbroking and Working-Class Credit* (Leicester: Leicester University Press, 1983), 142.

Table 21 Payday loan market growth

	2008	2011	2012	2013
Estimated				
Value of loans	£700 - £800 m	£1.9 bn	£2.8 bn	£2.5 bn
Number of loans	2.3-3.0 m	7.4 m	10.2 m	10.0 m

Sources: CMA (2015); NPA (2015); and the Bristol Report (2013).

Table 22 M&A and market expansion

Lender (owned by)	**Market Entry**	**Acquired**
Cheque Centres (CNG Financial)	1996	2006
The Money Shop (DFC)	1998	1999
Payday Express (DFC)	1999	2009
H&T	2003	-
PaydayUK (DFC)	2006	2011
WageDayAdvance (Speedy Group)	2007	2013
Wonga	2007	-
CashEuroNet (Cash America)	2008	-
CFO Lending	2008	-
Global Analytics	2009	-
MYJAR	2009	-
Ariste (EZCORP)	2009	2012
The Cash Store	2010	-
Speedy Cash (Speedy Group)	2010	-

Source: CMA (2015), table 7.1.

There was widespread consensus among politicians, think-tanks and academics that the growth in payday lending was due to financial exclusion, economic inequality, stagnant wages and the rising cost of living, all of which were exacerbated by the Great Recession. This is similar to 1872-1927, when loan volume was increasing, yet distinct in that inclusion in the mainstream banking system was seen as a solution to the excessive costs of financial exclusion. In 2011, the Institute for Fiscal Studies expected that household disposable income would experience its largest fall since 1981.[135] StepChange, Consumer Focus and the Money Advice Trust saw increased arrears across priority debt categories, including telephone, energy, water, rent and council tax.[136] It was argued that up to 6.2 million low-income people could not meet modest expenditure without borrowing.[137] The CMA found that over 70 per cent of payday loans were taken out to cover living, household and vehicle expenses.[138] Recall that in the 1970s Crowther found that 43 per cent of loans were used for immediately due bills.[139] Clive Hollick, Lord Hollick of Notting Hill (Labour), argued that,

> The demand for short-term payday loans and longer-term high-interest loans is being driven by the crushing impact that the very tough economic climate is having on personal and family budgets. The fall in real incomes and the above-inflation increases in the price of essentials such as utilities and food are leaving many people short of the money they need to make ends meet, so they turn to the payday lenders.[140]

Without financial reserves, the working poor used payday loans to avoid having to choose between 'putting the heating on and putting food on the table'.[141] This is similar to Mabel Robinson's findings in 1888 when the use of small loans was driven by insufficient wages that were 'barely enough to keep body and soul together'.[142] Yvonne Fovargue MP (Labour) sought to regulate the 'proliferation' of payday lenders and ease 'the pressure on their [borrowers'] squeezed living standards and … ever-rising bills'.[143] Many believed lenders

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[135] HC deb. 4 July 2011, vol. 530; HC deb. 10 December 2012, vol. 555.
[136] HC deb. 2 July 2013, vol. 565; 'Consultation response: FCA proposals for a price cap on high-cost short-term credit', Money Advice Trust (August 2014).
[137] Tim Edmonds, 'High cost consumer credit', House of Commons Library briefing paper 05849 (15 July 2014), 4.
[138] CMA (2015), 4.
[139] NOP Research.
[140] HL deb. 20 June 2013, vol. 746.
[141] HC deb. 3 February 2011, vol. 522.
[142] Mabel Robinson, 'Pawnbroking in England and abroad', *Fortnightly Review* 44:259 (1888), 70-71, 86-87.
[143] HC deb. 16 May 2012, vol. 545.

were targeting and preying on vulnerable borrowers. While the CCA 1974 sought to treat moneylenders and pawnbrokers equally and the CCA 2006 reversed that process somewhat, by 2010 the industry was again understood to be largely predatory. The Great Recession had amplified concerns over the industry and the goals of the financial inclusion agenda.

Moneylenders had been removed from the mainstream and had rejoined the legal 'loan sharks'.[144] Unlike in 2006, much of the HCSTC sector was considered to be problematic. Similarly, Tom Blenkinsop MP (Labour) argued that pawnbrokers facilitated 'criminal activities', including 'hiding fenced goods, drugs and weapons'.[145] His comments echoed those of a Victorian-era speaker, who, at the Annual Congress for the Promotion of Social Sciences, claimed that pawnbrokers 'willingly received stolen goods'.[146] Accompanying the more general use of the term 'shark' and associating the legal industry with criminal activity, some policymakers felt obliged to reform the market on moral grounds. Owing to the vulnerability of borrowers, Susan Jones MP (Labour), Duncan Hames MP (Liberal Democrat), Neil Parish MP (Conservative) and Andrew Percy MP (Conservative) sought to reform, or even close down, the immoral and 'evil' industry.[147] Such moralising had not systematically been heard since the nineteenth century.

Payday lending was of interest to policymakers because, as James Younger, Lord Younger of Leckie (Conservative) stated, it affected 'the most vulnerable'.[148] Younger believed it was in line with coalition values to foster free choice among consumers, regulate irresponsible lending and protect

[144] HC deb. 3 February 2011, vol. 522; HC deb. 17 February 2011, vol. 523; HC deb. 4 July 2011 vol. 530; HL deb. 11 June 2012, vol. 737; HL deb. 13 September 2012, vol. 550; HL deb. 24 October 2012, vol. 740; HL deb. 28 November 2012, vol. 741; HL deb. 9 December 2012, vol. 750; Abdul Aldohni, 'Loan sharks v. short-term lenders: How do the law and regulators draw the line?', *Journal of Law and Society* 40:3 (2013), 421-422.
[145] HC deb. 3 February 2011, vol. 522.
[146] MPPS, 1870-1871; PBG, 16 October 1871.
[147] HC deb. 3 February 2011, vol. 522; HC deb. 4 July 2011, vol. 530; HC deb. 20 January 2014, vol. 574.
[148] HL deb. 20 June 2013, vol. 746.

vulnerable borrowers.[149] MPs and peers, among them Stella Creasy, Rachel Reeves (Labour), Justin Tomlison (Conservative), Yvonne Fovargue, Sheila Gilmore (Labour), Rebecca Harris (Conservative), Lorely Burt (Liberal Democrat), Parry Mitchell, Lord Mitchell of Hampstead (Labour) and Maurice Glasman, Lord Glasman of Stoke Newington and Stamford Hill (Labour) had directly encountered many of the issues involved in their surgeries, academic research and by consulting charities and lenders.[150] For the first time, in any meaningful way, politicians had sought and heard borrowers' experiences. However, like the bias in nineteenth-century courts, constituents willing to engage their local MPs were unlikely to have a positive experience of payday loans. Also unique to the period, the government had conducted or sponsored several research projects, including the OFT's Review of High Cost Credit (2010) and Payday Lending Compliance Review (2013), the Bristol Report (2013), the FCA's Consultation Paper Proposals For a Price on High-Cost Short-Term Credit (2014) and the CMA's Payday Lending Market Investigation (2015). Consistent with earlier generations, the media paid considerable attention to payday loans and focused on their high cost.[151] By 2010, policymakers felt the need to intervene as a result of personal experience, morality and having widely reviewed market research.

The next subsection demonstrates that as economic conditions worsened and the payday loan market grew in response, the relationship between financial exclusion and borrower vulnerability were driving features in the price control and APR debate. It seeks to understand why, after refusing to do so for over a century, policymakers imposed price controls on moneylenders. What had changed and what evidence was presented to support the measure? How did policymakers understand the business of

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[149] Ibid.
[150] HC deb. 3 November 2010, vol. 948; HC deb. 3 February 2011, vol. 530; HC deb. 12 July 2013, vol. 566; HC deb. 20 January 2014, vol. 574; HL deb. 29 November 2012, vol. 741; HL deb. 28 November 2012, vol. 741.
[151] Hilary Osborne, 'Payday loans the industry in numbers', *Guardian*, 27 June 2013; HL deb. 5 December 2012, vol. 741.

moneylending, bargaining inequity and credit rationing, leading up to the implementation of price controls in 2015?

Price controls

From 2010 to 2015 several initiatives sought to impose a limit on the total cost of HCSTC.[152] This is not surprising as Edward Glaeser and Jose Scheinkman argued that price control measures gain support during periods of economic recession and increasing inequality.[153] Glaeser and Scheinkman's model of usury laws:

> explain these regulations as a primitive means of social insurance. In the model, agents are faced with temporary, idiosyncratic income shocks. These agents are assumed to be unable to insure themselves through credit markets (or through sufficient savings) against these negative income shocks. Agents can only respond to bad shocks by borrowing.[154]

Relating high-cost credit and usury as a form of social insurance is not entirely different from the way Paul Johnson analysed the working poor's burial insurance. While the upper classes rightly thought of this insurance as inferior, the product was designed to meet the needs of those who bought it. This research supports Glaeser and Scheinkman's findings, as parliamentary interest in the industry grew as the economic conditions of the working poor deteriorated. However, the implementation of price controls was not immediate or uncontroversial. From 2010 to 2013 the government rejected price controls. It was not until 2014 that a cap on the total cost of credit was approved. What follows analyses key areas of the debate and compares the progression from 2010 to 2015 with periods examined previously.

Arguably, one reason why the process took several years was because 'the problem', and by extension a definitive solution, was disputed. Whether or not payday loans helped or harmed consumers, the effectiveness of price

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[152] Unlike an interest rate cap, a total cost credit limits the total amount of paid over the life of a loan.

[153] Edward Glaeser and Jose Scheinkman, 'Neither a borrower nor a lender be: An economic analysis of interest restrictions and usury laws', NBER Working Paper No. 4954 (1994), 4-5.

[154] Ibid.

controls was and remains contested.[155] Michael Stegman and Robert Faris argued that payday loans harm consumers as they create debt-traps, and Paige Skiba and Jeremy Tobacman suggested that turning to payday loans increased the risk of bankruptcy.[156] In separate studies, John Caskey and Younghee Lim *et al.* could not decide whether payday loans helped or harmed consumers.[157] Conversely, Petru Stoianovici and Michael Maloney found no evidence that payday loans encouraged a cycle of debt and Donald Morgan and Michael Strain found that access to payday loans helped consumers and led to fewer dishonoured cheques and bankruptcy filings.[158] Whereas Milton Friedman suggested that he 'knows of no economist of any standing … who has favored a legal limit on the rate of interest,' Kenneth Avio found that price controls could help those at the lowest end of the market, but then Jonathan Zinman studied the effects of an interest rate cap in Oregon and he found restrictions on credit had harmed consumers.[159] Michael Staten and Robert Johnson believed that competition was the best form of price control and questioned how any government could legally define an 'excessive rate' or 'unconscionable transaction'.[160] Finally, the often cited work of David Cayne

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[155] The research cited in this paragraph analysed the US market. During 2010-2015, owing to similar market structures, some commentators found comparing the UK and US markets was appropriate. Others did so with caution as they believed it had serious drawbacks. Regardless, as there is very little research on the UK market, Parliament and think-tanks drew on international research.

[156] Michael Stegman and Robert Faris, 'Payday lending: A business model that encourages chronic borrowing', *Economic Development Quarterly* 17:1 (2008), 8; Paige Skiba and Jeremy Tobacman, 'Do payday loans cause bankruptcy?', Vanderbuilt Law and Economics Research Paper 11:13 (2011), 1.

[157] John Caskey, 'Payday lending: New research and the big question', in *The Oxford Handbook of the Economics of* Poverty, 681-708, ed. Philip Jefferson (Oxford: Oxford University Press, 2012); Youngee Lim *et al.*, 'Payday loan use and consumer well-being: What consumers and social workers need to know about payday loans', *Journal of Poverty* 18:4 (2014), 391.

[158] Donald Morgan and Michael Strain, 'Payday holiday: How households fare after payday credit bans', Federal Reserve Bank of New York Staff Reports 309 (2007).

[159] Milton Friedman, 'Defense of usury', *Newsweek*, 6 April 1970; Kenneth Avio, 'An economic rationale for statutory interest rate ceilings', *Quarterly Review of Economics and Business* 13 (1973), 67; Jonathan Zinman, 'Restricting consumer credit access: Household survey evidence on effects around the Oregon rate cap', *Journal of Banking & Finance* 34:3 (2010), 546.

[160] Michael Staten and Robert Johnson, 'Case for deregulating interest rates on consumer credit', Credit Research Center, Purdue University (1995), 40-42.

and Michael Trebilcock determined that without independent conditions such as high entry barriers or a monopolistic market structure, price control 'is not only naive, it clouds the relevant issues by framing an economic problem in moralistic terms'.[161]

As late as 2014, the FCA had claimed that 'there is no clear conclusion as to whether HCSTC is good or bad for consumers' or on 'the impact of HCSTC bans, price caps or lending restrictions'.[162] Without conclusive data, on what grounds were regulators basing intervention? If, as John Campbell argued, borrowers do not always maximise their own welfare, are limited cognitively or exhibit a present-biased preference, then, as Ian Ramsey suggested, regulators could appeal to interest rate ceilings as a corrective.[163] However, in another paper Campbell found that the payday loan market did not exhibit traditional market failures such as abnormal profits, high barriers to entry or market power and displayed no appearance of asymmetric information or high search costs.[164] During the regulatory process many of these arguments and market conditions were debated.

That many payday loans were used for basic expenses was not disputed. The Bristol Report distinguished between pawnbroker and payday loans on the one hand, and home credit products on the other, because pawn and payday loans were used for 'bills and everyday spending', whereas home credit was issued for larger amounts and for different purposes.[165] Without an adequate income or savings the need for loans was urgent and desperate. The

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[161] David Cayne and Michael Trebilcock, 'Market considerations in the formulation of consumer protection policy', *University of Toronto Law Journal* 23 (1973), 399-400.
[162] 'Proposals for a price cap on high-cost short-term credit: Consultation paper', Financial Conduct Authority CP 14/10, July 2014, 74.
[163] John Campbell *et al.*, 'Consumer financial protection', *The Journal of Economic Perspectives* 25:1 (2011), 91; Ian Ramsey, 'To heap distress upon distress? Comparative reflections on interest-rate ceilings', *The University of Toronto Law Journal* 60:2 (2010), 710-712.
[164] John Campbell *et al.*, 'The regulation of consumer financial products: An introductory essay with four case studies', Harvard University Faculty Research Working Paper 10:40 (2010), 28-29.
[165] Bristol Report (2013), i.

Bristol Report found that without payday loans and pawnbroking borrowers were likely to default on other household bills.[166] The two main advantages cited were convenience and speed. It was recognised that there were few if any alternatives.[167] Borrowers also expressed high levels of satisfaction. The University of Bristol found satisfaction levels exceeding 95 per cent among pawnbroker customers.[168] In comparison, only 38 per cent of surveyed customers ranked Natwest Bank's service as 'good'.[169] In fact, so valued were small loan products that many consumers indicated that they would choose to borrow at *higher* prices.[170] As before, borrowers were more concerned with non-price features than APRs and the total cost of credit. Few borrowers shopped around. Approximately 80 per cent of retail payday borrowers lived within 3.2 miles of the outlet they used.[171] The highest level of price comparison - 46 per cent - was conducted by online borrowers.[172] On average, this group had slightly higher incomes and were younger than retail borrowers.

That borrowers needed cash quickly to pay for unavoidable expenses and were price-insensitive is consistent across time. What differed was the political response. In this period policymakers were increasingly convinced that more information disclosure would fail to encourage price competition. Creasy, the most active and vocal MP seeking to reform the industry, argued that the debt cycle and high costs were grounds for market intervention.[173] The proposed solution was to control the total cost of credit. The adoption of this measure took time and required a major policy reversal. In 2010, the OFT found that the HCSTC 'markets work reasonably well', but less than three years later it was arguing that 'the payday loans market is not working well for many

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166 Ibid., vii.
167 Ibid.
168 'Pawnbroking customers in 2010', 3.
169 Sophie Christie, 'Rated: The best and worst banks this year for customer service', *Telegraph*, 28 August 2014.
170 Bristol Report (2013), ii.
171 CMA (2015), 181.
172 Bristol Report (2013), ii.
173 HC deb. 3 November 2010, 948.

consumers'.[174] In 2010, consumer groups had not yet reversed their protest against price caps. These included Citizens Advice, the Association of British Credit Unions, the Institute of Public Policy Research, Which? and Advice UK.[175] As before, policymakers were concerned that capping the cost of credit would result in rationing and potentially drive borrowers to illegal providers.[176] There was not yet enough support to enact legislation or empower a regulator to control the price of credit.

By 2011, the ease of access, financial exclusion, economic inequality, lack of price competition, the debt-trap, high levels of lender concentration, perceived levels of 'excessive' profit and the overall growth of the market were cited as justifications for the government to intervene in the payday loan market.[177] It was believed that the market was impaired owing to limited price competition and the OFT's inability to regulate the industry. Creasy argued that without renewed regulation 'family debt, poverty and financial difficulties' could only get worse.[178] As a precedent, the government had intervened in the water and energy industries. Creasy claimed that such efforts were 'best practice market intervention'.[179] In 2011, Ian Lavery MP (Labour) argued that owing to insufficient competition the price of loans was 'artificially high, with the most vulnerable having to pay the price'.[180] Nick Boles MP (Conservative), although an 'economic liberal', agreed that there was substantial market failure and sought new regulations.[181] Jenny Chapman MP (Labour) suggested that the only way to solve the problem of high prices was to implement price controls.[182]

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[174] 'Review of high cost credit final report', Office of Fair Trading 1232 (2010), 4-6; 'Payday lending compliance review final report', Office of Fair Trading 1481 (2013), 2.
[175] HC written statements, 22 March 2010, 146.
[176] Ibid.; HL deb. 17 June 2010, vol. 719.
[177] HC deb. 3 February 2011, vol. 552.
[178] Ibid.
[179] Ibid.
[180] Ibid.
[181] HC deb. 1 December 2011, vol. 536.
[182] Ibid.

This met resistance from Richard Bacon MP (Conservative), who argued that an 'all-powerful regulator' was in no position to implement such 'draconian' price control measures.[183] Damian Hinds MP (Conservative) believed that the use of payday loans could be rational and that regulating such a free and diverse market would lead to adverse consequences and growth in alternative products.[184] Hinds did however suggest that, regardless of one's 'spectrum of belief in the free market,' the industry excess should be curbed and the vulnerable protected. John Woodcock MP (Labour) agreed with the importance of consumer freedom, but overriding that choice was the government's responsibility to prevent exploitation of the vulnerable who were at risk of 'making the wrong short-term choices when in a desperate situation'.[185] Hersh Shefrin and Meir Statman, economists, classify this type of regulation as paternalistic - that is, an act to benefit persons who might make mistakes if left to their own devices.[186] This framework is the opposite of many frameworks found in the past, when in Lord Elcho words it was impossible to save 'a fool from his folly'. At this point, however, few disagreed that vulnerable members of society required some protection.

Reformers drew on evidence from abroad. Jonathan Edwards MP (Plaid Cymru) cited the 'backlash' against lenders in the US, where in 35 states price controls were operating, and that 14 countries in Europe had restrictions of some sort.[187] James Sassoon, Lord Sassoon of Ashley Park (Conservative) nuanced the argument saying that while successful implementation of price caps and rollover limits in Japan had brought 'huge benefits' to the poorest consumers, similar regulation in France and Germany had resulted in negative consequences such as reduced access to credit and a rise in illegal lending.[188]

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[183] HC deb. 3 February 2011, vol. 522.
[184] Ibid.
[185] Ibid.
[186] Hersh Shefrin and Meir Statman, 'Ethics, fairness and efficiency in financial markets', *Financial Analysts Journal* November-December (1993), 22.
[187] Ibid.
[188] HL deb. 28 November 2012, vol. 741.

With respect to the Japanese market, Hiroshi Domoto, an economist, would probably disagree with Sassoon. Domoto argued that, as a direct result of regulation, loan volumes fell from 8.5 trillion yen to 2.5 trillion yen and that this decrease had a harmful impact on the working poor.[189] Domoto found that 'with the cap interest rate being lowered … workers whose creditworthiness is relatively weak have run into difficulties borrowing, public officers and employees of big companies have become able to borrow at lower interest rates than in the past, and thus the disparity in standards of living between the two groups has widened.'[190] If poverty and inequality were driving demand, and if the British market responded as the Japanese market did, inequality would worsen.

Many policymakers suggested that the payday lending model relied on repeat borrowing. This claim was supported by the data. In 2012, the CMA found that among the eleven major lenders, 80 per cent of loans (ex-rollovers) were issued to repeat borrowers.[191] However, Table 23, using data from the Association of Chartered Certified Accountants (ACCA), which was no friend of the industry, demonstrates that, to remain profitable lenders needed to extend multiple loans. Furthermore, first-time borrowers are more likely than repeat customers to default. In 2011 and 2012, lenders incurred doubtful expense rates equal to 45 per cent of total costs.[192] This rate is higher than the estimated 33 per cent rate documented during the MLSC 1897 and MLSC 1925.

As a comparison, in 1973 the National Association of Moneylenders estimated that the average cost of administering a loan was £9 which, adjusted for inflation, was £84.89 in 2010.[193] In 2005, Collard and Kempson found that it cost commercial and non-profit lenders £30-£75 in set-up costs for a new

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[189] Hiroshi Domoto, 'The risk of the Yamikin market, which is spreading quietly in Japan', *Institute for Research on Credit Business* 12:003 (2012), 1-2. A 'yamikin market' is the Japanese term for a black market.
[190] Hiroshi Domoto, 'Adverse effects caused by the revised Money Lending Business Law', *Institute for Research on Credit Business* 13:001 (2013), 9.
[191] CMA (2015), 47.
[192] Ibid., 131.
[193] Cost data for first loans are unavailable.

customer.[194] The higher expenses shown below were probably a result of increased client acquisition costs. From 2008 to 2013, the CMA noted 'fierce competition' to acquire new clients.[195]

Table 23 Cash America estimated UK loan p/l

2010-2011	
Revenue per first loan (after discounts)	£35.26
Cost per first loan	104.66
Average loss per first loan	**(£69.40)**
Revenue per repeat loan	£78.35
Total cost per repeat loan	22.01
	£56.34
Revenue total per three loans	£191.96
Cost total per three loans	148.68
	£43.28

Source: 'Payday lending: Fixing a broken market', 18.

The ACCA and CMA estimated that, on average, customers took out 3-4 loans a year.[196] Though distinct from repeat borrowing, Wonga, the largest UK lender, advocated that its clients limited rollovers to three.[197] Table 24 shows that of all loans issued in 2012, the majority were paid early or on time (64 per cent) and that 84 per cent were eventually paid in full.[198]

Under normal circumstances, delayed payment resulted in additional fees and charges. In 2012, approximately 36 per cent of borrowers incurred penalty charges, the cost of which, as Table 25 demonstrates, varied. Like

194 Collard and Kempson, 'Affordable credit', 19.
195 CMA (2015), 139.
196 Ibid., 5, 14, 139.
197 HC deb. 4 July 2011, vol. 530. As of October 2013.
198 CMA (2015), figure 2.5.

credit card companies, payday lenders earn more from clients who incurred interest and penalty fees but eventually paid off the principal in full.

Table 24 2012 payday loan repayment

Repaid	All	Online	High street
Early	14%	16%	7%
On Time	50%	51%	48%
Late	22%	20%	29%
Never	14%	13%	16%

Source: CMA (2015), figure 2.5.

Whether payday lenders entrapped borrowers was debated. However, the data supported the assertion that repeat borrowing was necessary for a lender to remain profitable and that 86 per cent of loans were repaid, with 22 per cent having incurred penalty fees. Debates on the debt cycle also led to questions concerning the high cost of payday loans, with headline rates of more than 5,800 APR.[199] The average amount borrowed was £260 and 50 per cent of loans were for less than £200.[200] The average duration was 22 days and the most frequent amount borrowed was £100.

Table 25 demonstrates that while headline prices tended to cluster around £30 for a £100 month-long loan, there was a great variation in fees.[201] As a point of comparison, under most scenarios these charges were considerably less than unauthorised bank overdraft fees.[202] As of 9 July 2016, for an unarranged overdraft of £100 outstanding for 28 days, Lloyds TSB charged £80 and The Royal Bank of Scotland charged £90.

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[199] HC deb. 3 February 2011, vol. 522; Emma Dunkley, 'Wonga caps fees on payday loans', *Financial Times,* 16 December 2014.
[200] CMA (2015), 35.
[201] Ibid., table 4.1 and 5.6.
[202] 'Overdraft charges more expensive than payday loans', Which? (9 July 2016).

Table 25 Total cost of credit for the largest high street lenders

	Borrow for:			
Lender (product)	**28 days**	**14 days**	**28 days 11 days late**	**28 days 28 days rollover**
Cheque Centres (payday)	£29.99	£29.99	£59.99	£59.98
The Money Shop (cheque)	29.85	29.85	58.85	59.70
The Money Shop (other)	29.99	29.99	58.99	59.98
H&T (cheque)	17.64	17.64	48.80	35.28
H&T (debit)	20.00	20.00	52.37	40.00
Speedy Cash (payday)	25.00	25.00	37.50	50.00
Speedy Cash (flex)	23.01	11.51	32.05	46.03
Speedy Cash (flex)	23.01	11.51	32.05	45.92
The Cash Store (payday)	38.24	34.06	66.74	76.48
Maximum	£38.24	£34.06	£66.74	£76.48
Minimum	17.64	11.51	32.05	35.28
Difference	£20.60	£22.55	£34.69	£41.20

Source: CMA (2015), table 4.1 and 5.6.

Like the PBA 1872 and MLA 1900-1927, it was assumed that the high cost of borrowing resulted in abnormal returns.[203] Major expenses for lenders included bad debts, client acquisition, advertising, retail operations and, for large lenders, the cost of capital. For online lenders client acquisition, including advertising, lead generation and the application process were all expensive. The Bristol Report suggested that these lenders, on average, screened 100 customers for every ten loans, a rejection rate of 90 per cent.[204] Dollar Financial estimated a conversion rate of 3.75 per cent. A statistical outsider was industry

[203] MLSC 1897, 2002-2005; MLSC 1898, 300-301.
[204] Bristol Report (2013), 10.

leader Wonga, which rejected an estimated 60 per cent of applicants, far fewer than the 90 per cent online industry average.[205]

Critics in Parliament questioned the tactics of the 'very profitable' industry; often these critiques coincided with the industry's peak ROCE in 2011.[206] From 2009 to 2013, the ROCE of the eleven major lenders ranged from 17 to 44 per cent.[207] At the firm level there was variation between lenders, with larger lenders varying less than smaller providers, and their returns ranged from -175 to 170 per cent. ROCE peaked in 2011 and decreased thereafter. From 2009 to 2013, the CMA believed that the three largest lenders had returns 'indicative of shortcomings in the competitive process'.[208] However, by 2013 the industry had begun to experience a downturn, and now three of the nine large lenders were no longer profitable. In 2013, ROCE averaged 17 per cent compared to 33 per cent in 2012. This decrease was primarily a result of shrinking loan volumes. Although there is no study of the British market, Aaron Huckstep, and Skiba and Tobacman found no evidence of abnormal returns in the US industry.[209] At the very least the CMA study demonstrated that the industry is cyclical and that returns vary by provider, with some having positive returns in the same period that others lost money. As demonstrated in Table 13 and Table 25, this is consistent across time, as the operations of any one business were influenced by market factors and company-specific operations. Although not a universally held view, the assumption that high prices resulted in excessive profits is found in each episode examined by this research.

Fovargue summarised many of the issues of concern: consumers borrow to pay for everyday necessities; demand features are driven by

[205] 'Payday lending fixing a broken market', 22.
[206] HC deb. 3 February 2011, vol. 522.
[207] CMA (2015), 6, 130-134, 146-150. Profitability as measured by the weighted average annual return on capital employed (ROCE). ROCE is calculated by dividing EBIT by the capital employed. The eleven lenders studied by the CMA comprised 90 per cent loan volume.
[208] Ibid., 150.
[209] Aaron Huckstep, 'Payday lending: Do outrageous prices necessarily mean outrageous profits?', *Fordham Journal of Corporate & Financial Law* 12:1 (2007), 204; Paige Skiba and Jeremy Tobacman, 'The profitability of payday loans', Working paper (2007).

inequality and rising prices; and lenders exploit borrowers and so unfairly profit and trap borrowers in a debt cycle:

> According to a recent report, 48 per cent of people who go to payday lenders are female, and the majority of females have borrowed for everyday necessities. They have borrowed to buy food for the family, or to pay the heating bills. Capping the cost of credit constitutes a welcome recognition that these companies are making profit from despair, but there is much more to be done. The root cause of rising prices and low incomes needs to be addressed if people are to be saved from being dragged into a spiral of debt…The people I represent are hard-working people who want the best for their families and who are doing the right thing.[210]

Categorising female borrowers as ‘hard-working people … who do the right thing’ is a far cry from the Chief Magistrate of the Metropolitan Police Courts, Thomas Henry’s claim made in 1870: ‘There is no doubt that a great number of the women in this town go into a pawnbroker’s shop and pledge a shawl to get 4d to enable them to go into the public-house.’[211] However, while Martin Lewis, a financial commentator, did not blame borrowers for their behaviour, a remnant of the Victorian-era ethic can be discerned in his suggestion that, instead of taking out a payday loan, borrowers should place a credit card in a tub of water and keep it frozen for emergencies. Lewis and Jo Swinson MP (Liberal Democrat) suggested this technique ‘might instil in them the discipline of not being tempted to use it for everyday spending’.[212] Lewis and Swinson failed to appreciate that for the working poor, emergency and everyday spending were often one and the same.

Despite widespread support, price controls were again rejected by the government in 2013.[213] On behalf of the government, the University of Bristol Personal Finance Research Centre studied the impact of capping the total cost of credit on HCSTC lenders and borrowers. It advised against capping the cost of credit. As before, it suggested that controls would lead to price clustering, credit rationing and less competition as lenders would quit the market. The

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[210] HC deb. 27 November 2013, vol. 571.
[211] PBSC 1870, 3663.
[212] HC deb. 12 July 2013, vol. 566.
[213] HL deb. 28 November 2012, vol. 741.

Centre found that there was no clear evidence that controls reduce the actual cost of credit to the consumer.[214] Still, it was concerned about repeat borrowing, the high cost of credit and that lenders were not performing adequate affordability checks.

In that same month, the OFT published its findings concerning the compliance of payday lenders.[215] The OFT concluded that the market was not functioning to the benefit of 'many consumers' and found 'widespread non-compliance' with the CCA 1974.[216] In response, they required that 50 lenders, who made up approximately 90 per cent of the market, prove compliance within twelve weeks or their licences could be revoked.[217] They were particularly concerned with the systematic failure to perform affordability tests and excessive loan pricing.[218] As in previous episodes, they argued that owing to a weak competitive structure, firms competed on non-price features with very little pressure on pricing. This is not surprising given that 74 per cent of borrowers identified speed as an extremely or very important feature of payday loans.[219]

To address the issues of concern the government planned to overhaul the market through the 'tough, flexible and dynamic' powers of the then newly created FCA.[220] Oversight of payday lenders was being transferred from the OFT to the FCA.[221] Using similar terminology to that found in the CCA 1974 and CCA 2006, the government believed that 'more effective regulation of the

[214] Bristol Report (2013), v-vi, 83, 98-99.
[215] 'Payday lending compliance review final report', Office of Fair Trading 1481 (2013).
[216] Ibid., 1-2.
[217] This decision was received positively in the House of Lords. See HL 12 July 2013, vol. 566.
[218] HL 12 July 2013, vol. 566, 4.
[219] CMA (2015), 151.
[220] 'Government response to the Bristol University report on high cost credit', Department for Business, Innovation and Skills (March 2013), 3-4.
[221] On 1 April 2014 enforcement of the CCA 1974 would be transferred from the OFT to the FCA. The Financial Services and Markets Act 2000 (FSMA) replaced the provisions of the CCA that dealt with licensing. On 1 April 2013, the FCA was established and took over responsibility from the FSA for the conduct and relevant prudential regulation of financial services firms and financial markets. Parliament directed the FCA to introduce some form of price control under section 137C of the FSMA and section 131 of the Financial Services Banking Reform Act 2013. The FCA is funded by the firms it regulates and held accountable to the Treasury and Parliament. Consumer credit firms are regulated by the FCA and subject to the CCA 1974.

credit industry is vital to securing better outcomes for consumers. The Government wants to see a regulatory regime which can keep pace with the innovative and fast-moving consumer credit market.' [222] Unlike before, protecting the consumer was cited as more important than market efficiency and the well-being of lenders. Sarah Brown, a legal scholar, identified this hierarchy as a 'protective ethic'.[223]

It was believed that regulation had failed to supervise the payday lending market. Even recent innovations such as the CCA 2006 ADR mechanism had failed because it 'resembled a middle-class service for middle class people'.[224] In 2012, Sassoon suggested that 'compared to the current regulatory regime under the OFT, the FCA will have a broader and more effective toolkit to monitor and tackle developments in the market and supervise practice among firms.'[225] As seen in 1974 and 2006, successive governments had critiqued existing regulation and sought improvements to encourage competition while providing ample consumer protection.

As politicians debated the merits of price controls and with the OFT having placed 50 lenders on notice, the business response was decisive. By July 2013, eleven of the 50 firms had ceased issuing payday loans and three more had their licences revoked.[226] Just as Isaac Gordon had feared in 1900, regulation had made it difficult to issue loans profitably. Comparing Q3 2014 to Q3 2013, for seven major lenders revenue and new lending decreased by 40 per cent and profits by 30 per cent.[227] Wonga attributed these declines to the changing regulatory environment and higher costs. CMA research agreed,

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[222] 'Government response to the Bristol University report on high cost credit', 3-5.
[223] Sarah Brown, 'Consumer credit relationships - protection, self-interest/reliance and dilemmas in the fight against unfairness: The unfair credit relationship test and the underlying rationale of consumer credit law', *Legal Studies* 36:2 (2016), 232; Sarah Brown, 'Consumer credit and over-indebtedness: The Parliament response: Past, present and future', Unpublished PhD thesis, University of Leeds School of Law (2006).
[224] Peter Cartwright, 'Understanding and protecting vulnerable financial consumers', *Journal of Consumer Policy* 38 (2015), 133.
[225] HL deb. 5 December 2012, vol. 741.
[226] HC deb. 12 July 2013, vol. 566.
[227] CMA (2015), 134, 142.

stating that 'the contraction is likely to have been driven by a combination of lenders tightening their credit policies and the exit of some suppliers from the market as they adjust to and anticipate tighter regulatory conditions.'[228] Major lenders modified their participation in the market: Cheque Centres ceased offering single-instalment payday loans, CFO Lending stopped offering payday loans, EZCorp, a subsidiary of Ariste, ceased UK operations and Cash Store went into bankruptcy. By November 2014, an estimated 50 lenders had left the market.[229] The Consumer Finance Association, an industry trade group, referred to 2013, a year during which members experienced a 68 per cent decrease in loan volumes, as the 'perfect political, media and regulatory storm'.[230]

Three charges commonly held against the industry were that the market lacked price competition, granted credit too easily and exploited vulnerable people.[231] From 2013 to 2015 the OFT, University of Bristol, FCA and CMA released detailed reports on the payday lending market. Comparatively, more data became available in 24 months than in the previous 144 years. In 2014, using its statutory powers, the FCA gathered information from eight leading lenders and was able to amass data on 16 million loans. Using qualitative and quantitative techniques, the FCA analysed how a price cap would affect lending decisions and the financial position of borrowers.[232] They found that the industry's pricing was excessive, harmful to 'significant numbers' of borrowers and that these high-priced loans were of limited benefit.[233]

Although not unanimous, opinion supported price controls. Damian Hinds, previously a vociferous opponent of price capping, had changed his mind:

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[228] Ibid., 234.
[229] Ibid., 235-236.
[230] 'Annual report 2014', The Consumer Finance Association.
[231] Tim Edmonds, 'High cost of consumer credit', House of Commons briefing paper 05849 (15 July 2014), 4.
[232] The FCA mandate to investigate the industry began on 1 April 2014.
[233] 'Proposals for a price cap on high-cost short-term credit', 6.

> I was reluctant because, in this country, [apart from] natural monopolies … we do not price control. It goes against the philosophy of our economy and our politics … I believe in the efficacy of markets, in consumer sovereignty… I was trying to reconcile all those beliefs about what markets do … and in many ways the normal laws of economics do not seem to apply [to payday loans].[234]

Hinds cited over-optimistic consumers concerning their ability to pay back, and the ineffectiveness of disclosure terms which had become 'blah … blah … blah …'. Concerns over the limitations of information disclosure find support in economic, legal and behavioural research.[235] Hinds and others considered it a positive outcome that certain firms would leave the market and overall loan volumes would decrease.[236] For the FCA and its supporters the verdict was clear: payday loans were a peculiar kind of credit and the market was fundamentally different from mainstream banking. However, while the CMA agreed that price competition was an issue, it was less confident that price controls could overcome the urgency of borrower demand.[237] The CMA believed that price controls would harm competition owing to price clustering around the ceiling and decreased profitability, which would act as a deterrent to market entry. As in previous disclosure arguments, the CMA suggested that lenders be required to provide total cost information in a clear way so that borrowers would search for lower-priced alternatives.[238] Seemingly, like the economics literature, the government had failed to reach a consensus in support of price controls. However, price control advocates had won enough support and the FCA's cap on the total cost of credit came into effect on 2 January 2015. Table 26 illustrates the FCA's three-part mechanism, including an initial cap, default fee maximum and limits on the total cost of credit. The cap

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[234] HC deb. 20 January 2014, vol. 574.
[235] Geraint Howells, 'The potential and limits of consumer empowerment by information', *Journal of Law and Society* 32:3 (2005), 350-351; Marianne Bertrand and Adair Morse, 'Information disclosure, cognitive biases, and payday borrowing', *The Journal of Finance* LXVI:6 (2011).
[236] HC deb. 20 January 2014, vol. 574.
[237] CMA (2015), 149-160.
[238] Ibid., 23.

ensured that customers would not pay more than £24 per £100 borrowed.[239] Officially recognising that APR calculations were ill suited to short-term credit, the cap was not stated in APR form. However, an official government publication revealed that under the FCA price cap a 14-day loan APR worked out at 1,492 per cent, and for loans of more than 30 days the APR was 1,270 per cent.[240] While repeat borrowing was permitted, borrowers were limited to two rollovers and lenders could not access a borrower's bank account under the continuous payment authority after two unsuccessful attempts.[241] As opposed to Crowther, which sought a unified calculation for disclosure purposes, the FCA provided product-specific formulas for price calculations.[242]

Table 26 Three-part price control

0.8% daily	**When loans are taken out or rolled over, the interest and fees charged must not exceed 0.8% per day or the amount borrowed**
£15 Default fee	**If borrowers default, fees must not exceed £15. Firms can continue to charge interest after default but not above the initial rate**
Total cost cap 100%	**Of amount borrowed, applying to all interest, fees and charges. Borrowers must never have to pay more in fees and interest than 100% of what they borrowed.**

Source: 'FCA confirms price cap rules for payday lenders', FCA press release (11 November 2014).

Philip Davies MP (Conservative), Jacob Rees-Mogg MP (Conservative), Nadhim Zahawi MP (Conservative), Graham Stuart MP (Conservative) and

239 'Detail rules for the price cap on high-cost short-term credit, including feedback on CP 14/10 and final rules', Financial Conduct Authority PS 14/16 (November 2014), 7-8.
240 Edmonds, 'High cost consumer credit', 44.
241 'Tougher rules for payday lenders take effect', Financial Conduct Authority press release (1 July 2014). See also the FCA's Consumer Credit Sourcebook 6.7 Rules on refinancing.
242 'Detail rules for the price cap on high-cost short-term credit', 48.

Judith Wilcox, Baroness Wilcox (Conservative), among others, dissented.[243] For the most part the arguments against capping, like the arguments in favour, were not new. It was feared that caps would result in credit rationing, fewer lenders and an increase in illegal lending. In fact, the FCA agreed that price controls would lead to market segmentation, an increase in loan duration and fewer firms in the market.

Unlike before, regulators believed that the lowest segment of the market was better off without access to payday loans and that any decrease in the profitability of firms was required to 'secure protection for borrowers'.[244] For those at the margin, it was expected that these changes would lead to an improved financial position, better mental health outcomes and less stress.[245] Like the expanded definition of vulnerability, these expected improvements demonstrate a broad understanding of the effects of poverty. Moreover, Robert Mayer, a political scientist, argued that borrowers at the highest risk of default were subsidised by the more deserving struggling borrowers.[246] Credit rationing would eliminate the penalty placed on the majority by segmenting marginal borrowers out of the market. Mayer was responding to Alyssa Labat and Walter Block's article published one year earlier and in the same journal, where they argued that 'setting an arbitrary interest rate and claiming that rate is the just price does not allow consumers and producers to communicate. Therefore, the just price must be, and can only be, the mutually agreed upon price.'[247] Although the FCA admitted that the literature was inconclusive, it had implemented price controls based on its belief that the lowest segment of borrowers were better off without loans. The goal was to restrict access to the wrong kind of credit. The FCA also determined, without conclusive evidence,

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[243] HC deb. 12 July 2013, vol. 566; HC deb. 11 December 2013, vol. 572; HC deb. 20 January 2014, vol. 574; HL deb. 20 June 2013, vol. 746.
[244] 'Detail rules for the price cap on high-cost short-term credit', 14-17.
[245] Ibid.
[246] 'When and why usury should be prohibited', *Journal of Business Ethics* 116 (2013), 513-527.
[247] Alyssa Labat and Walter Block, 'Money does not grow on trees: An argument for usury', *Journal of Business Ethics* 106:3 (2012), 385.

that an increase in illegal money lending was unlikely to occur. It was argued that the three-part cap structure allowed companies to respond and adapt, which would encourage viable market competition.

The industry's argument that the caps were too low and that affordability checks would protect borrowers and foster price competition received little support. Until 2013, few charities sought price controls. By 2014, and in response to the FCA's policy statement, dozens of organisations were in support. Though many organisations argued for a lower cap and/or further restrictions, groups such as Transact, StepChange, Association of British Credit Unions, Citizens Advice, Community Investment Coalition, Christians Against Poverty, Which?, Money Advice Trust, the Money Charity and the Trading Standards Institute supported capping the total cost of credit.[248] These organisations agreed with the FCA's conclusion that payday loans did not benefit consumers, failed to conform with regulatory standards and that pre-cap pricing was excessive. Edward Carson's position in 1927, that moneylender loans provided little to no benefit, had found support in the twenty-first century. While the BCCA, an alternative finance trade group, agreed that 'given past behaviour, our sector does not get a lot of sympathy', it cautioned that the industry was now dramatically reshaped, with 700 fewer retail outlets and dozens of online providers having exited the market.[249] As many cautioned would be the case, major lenders such as Wonga priced their loans at the cap,

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[248] Found on each respective website: 'Transact response to FCA price cap', Transact (August 2014); 'StepChange debt charity response to FCA', StepChange (September 2014); 'Credit Union Association response to caps', Association of British Credit Unions (undated letter); 'FCA's proposals for a price cap on high-cost short term credit', Citizens Advice Bureau (August 2014); 'Proposals for a price cap on high-cost short-term credit', Community Investment Coalition (undated letter); 'Proposals in response to the CMA's recommendations on high cost short term credit', Christians Against Poverty (October 2015); 'Hope for millions of borrowers stuck in a cycle of debt, Which? response to the FCA announcement on a price cap for payday lenders', Which? (11 November 2014); 'Consultation response: FCA proposals for a price cap on high-cost short-term credit', Money Advice Trust (August 2014); 'Response to the FCA's proposals for a price cap on high-cost short-term credit', The Money Charity (August 2014); 'Proposals for a price cap on high-cost short-term credit', Trading Standards Institute (August 2014).

[249] 'Our quarterly magazine', BCCA 73 (July 2016).

indicating that few lenders would undercut the regulatory pricing structure.[250] As predicted in both 2014 and 1900, price controls had forced lenders into higher-value loans with longer durations and instalment payments.

Disclosure terms

As before, there were calls to ban payday loan advertising. It was argued that advertising had grown considerably between 2008 and 2012, targeted young people, seemed to 'normalise' the product, failed to offer clear and pertinent information and too easily permeated daily life in public transport, on websites and on the high street. Data indicated that advertising's impact had grown from 12 million in 2008 to 7.6 billion in 2012 or 152 loan advertisements per viewer annually.[251] Martin Wheatley, CEO of the FCA, did not rule out the 'extreme option' of banning advertisements.[252] It was believed that limiting advertising would influence consumer behaviour and result in fewer loans. Wheatley's opinion mirrored George Lewis's and Archie Lloyd's, who in 1898 had argued that if advertisements were 'attacked', then 'fewer people would come in contact' with moneylenders.[253] Crowther, however, took little issue with the normalisation of advertising all consumer credit products. It was taken for granted that advertising was a part of daily life and went mostly unchallenged.

The post-2006 period broke from the past in that there was growing agreement among politicians, industry, charities and borrowers that APR was not suited to short-term credit. It was argued that for loans of less than twelve months, APR was too sensitive to loan duration. The CMA concluded that 'that the regulatory obligations on lenders to disclose APRs were unlikely to be of much, if any, assistance to customers'.[254] Again, a simple example was used to demonstrate why the use of APR was deceptive. According to Martin Lewis

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[250] Dunkley, 'Wonga caps fees on payday loans'.
[251] HC deb. 20 January 2014, vol. 574.
[252] Rupert Jones, 'Crackdown on payday loans advertising', *Guardian*, 1 July 2013.
[253] MLSC 1898, 140-142.
[254] CMA (2015), 209-211.

if someone were to lend £20 and asked the borrower to repay with a pint of beer next week, 'most people would see it as reasonable deal'; at £3 the APR is 141,000 per cent.[255] Government-led research found that borrowers considered the APR irrelevant. Instead, 89 per cent of borrowers took into consideration the total cost of credit in cash terms and were well aware of the amount owed.[256] These findings - that APR was irrelevant and that customers were aware of the high costs - were further supported by academics and government research. These included John Caskey, the Bristol Report, Tim Edmonds of the House of Commons Library, the FCA and the CMA.[257] As moneylenders and pawnbrokers had argued over a century earlier, the amount owed in pounds and pence was of greater concern than percentage disclosure. There was widespread support for providing costs in cash terms. Tellingly, when in 2015 the FCA implemented price controls, they did not specify an APR, but quoted a daily rate.

A major component of the PBA 1872, MLA 1900-1927, CCA 1974 and CCA 2006 were debates and plans to overhaul the regulations pertaining to disclosure. In terms of consumer protection, theory indicates that disclosure requirements are considered market-friendly, inexpensive and protective of 'personal autonomy'.[258] As this research has demonstrated, in the moneylending and pawnbroking markets there has long been a difference in focus between borrowers, who have ignored mandatory disclosure terms, lenders, who have claimed the terms do little to help consumers, and regulators, who relied on this mechanism even before the PBA 1872 came into effect. The

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[255] Martin Lewis, 'Don't tell MPs I'm against payday loan regulation', moneysavingexpert.com (28 January 2011).
[256] Conducted by the Department for Business, Innovation and Skills and found in CMA (2015), 209-211.
[257] Caskey, 'Payday lending: New research and the big question', 681-708; Bristol Report (2013); Tim Edmonds, 'High cost consumer credit', House of Commons Library briefing papers 05849 (July 2014), 06842 (March 2014); 'Proposals for a price cap on high-cost short-term credit'; CMA (2015).
[258] Cartwright, 'Understanding and protecting vulnerable financial consumers', 125; Omir Ben-Shahar and Carl Schneider, 'The failure of mandated disclosure', *University of Pennsylvania Law Review* 159:647 (2011), 647-651.

legal scholars Omir Ben-Shahar and Carl Schneider argued that mandated disclosure, or what they call the regulatory 'Disclosure Empire', has been a 'spectacular failure'.[259] They believed that, while mandated disclosure focuses on a real problem and rests on a credible assumption that the more information the better, it fails to appreciate how people actually make decisions and there is no evidence that disclosure improves the terms of borrowing.[260] As seen in 1900 and 1927, regulators were concerned about the influence of advertising on vulnerable borrowers and attention was directed to the industry during periods of perceived or actual growth in loan volume. In each period regulators sought to reduce the number of advertisements and require clear and consistent disclosure terms.

Conclusion to section C. The Great Recession and market expansion

The regulatory process from 2010 to 2015 built on concerns raised during the 2006 debate, among them financial exclusion, poverty, economic inequality and borrower vulnerability. As the payday lending market expanded and with economic conditions deteriorating policymakers focused on the industry. The narrative had shifted from targeting the 'abusive fringe minority' to considering much of the industry as predatory. Unlike in earlier periods politicians communicated directly with borrowers. For them, payday loans were a 'real' problem as opposed to a theoretical debate. Also unique to the period, price controls were supported by charities and think-tanks. In 2012, Citizens Advice began an aggressive campaign after experiencing a twelve-fold increase in consumer complaints.[261] It is not that the warnings about price caps, such as the consequences of credit rationing and fewer competitors, went unheeded, but that these market conditions were considered beneficial. In 2014, Simon Danczuk MP (Labour) said, 'There are far too many of them [payday lenders],

[259] Ben-Shahar, 'The failure of mandated disclosure', 647-651.
[260] Ibid.
[261] 'Payday loans: An improved market?', Citizens Advice, March 2016.

and better regulation will be critical in that regard.'[262] The FCA estimated that price controls would cause profits before overheads to fall by 43 per cent.[263] With the support of Parliament, HM Treasury and leading charities the FCA believed that the most effective way to protect borrowers and reduce poverty was to restrict access to credit by controlling its price. As seen in 1900 and 1927, restriction in the supply of credit were viewed favourably. While in 2006 regulation was expected to create the 'right' market, by 2015 the market and its pricing mechanism were the problem.

Despite admitting that the evidence concerning the efficacy of payday loans and the effect of price controls were inconclusive, the FCA determined that 'excessive' charges 'contribute to borrowers' worsening financial situation' and reinstated usury.[264] If, as in 1900 and 1927, moneylenders were seen as evil, the product harmful and borrowers vulnerable, what contributed to the implementation of price controls? Since 2004, political interest in payday lending had coincided with New Labour's financial inclusion agenda, which included banking facilities, affordable credit and financial education.[265] The Great Recession added to these concerns. While regulation was considered a corrective to the lack of price competition, that market structure had existed for over a century. Advocates of financial inclusion argued that while 'proper' finance alleviates poverty, payday loans were harmful. This position embraced an expansive definition of poverty, vulnerability and harm, including financial, mental health and general welfare.[266] Accordingly, price controls were

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[262] HC deb. 20 January 2014, vol. 574.
[263] 'Proposals for a price cap on high-cost short-term credit', 50-51.
[264] 'Consultation paper CP 14/10', Financial Conduct Authority, 22. The FCA considered charges excessive if those charges resulted in an unacceptable risk of harm such that the borrower's financial situation was made worse by loan repayment.
[265] For example: 'Promoting financial inclusion', HM Treasury, 2004; 'Financial inclusion an action plan 2008-2011', HM Treasury, 2007; 'Financial inclusion the way forward', HM Treasury, 2007.
[266] Reflecting, for example, arguments developed by Amartya Sen and the Continental European tradition. For an accessible summary, see Philip Davis *et al.*, 'Economic theories of poverty', Joseph Rowntree Foundation, June 2015; 'Proposals for a price cap on high-cost short-term credit', 61-63.

implemented to mitigate the working poor's 'failure' to mitigate financial risk and encourage 'responsible' behaviour in the 'proper' markets.[267] The links between financial exclusion, poverty and payday loans were different from previous frameworks and facilitated the implementation of price controls. The issue was not solely a government response to a market failure but an intervention on social grounds.

In 2014-2016 policymakers believed that price controls would reduce prices for qualified borrowers and that those denied loans would be better off. While there was concern that illegal lenders might fill the void, the FCA found little evidence to support that.[268] There were suggestions that, instead of turning to illegal lenders, the working poor would once again borrow from friends and family.[269] In addition to being historically inaccurate, it is unlikely that friends and family would have sufficient capital to supply the multi-billion pound market.

Before price controls came in many lenders were charging above the 0.8 per cent daily maximum. Once the market became aware of the cap, as predicted and sought, firms began adjusting their pricing or withdrawing from the market. These results indicate that capping the total cost of credit had influenced the supply side. On the demand side it is unclear where customers such as Edward, who took out a £100 to pay his final notice electricity bill, would turn without access to payday lending.[270] Karen Rowlingson, an expert on HCSTC social policy, suggested that borrowers would turn to other forms of credit (pawn, doorstep, overdrafts, etc.) that were not subject to price controls.[271] Rowlingson advocated a wider reform of the social system that would mitigate the need for HCSTC in the first instance. The CMA recognised this too, asserting that the price cap would do little to alleviate the 'perceived

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[267] Marron, 'Governing poverty', 785-810.
[268] 'Consultation paper CP 14/10', Financial Conduct Authority, 10-11.
[269] HC deb. 5 September 2013, vol. 567.
[270] Karen Rowlingson *et al.*, 'Capping the cost of payday lending in the UK: What will the impact be?', A paper for the Financial Conduct Authority (July 2014), 5.
[271] Ibid.

urgency' of the payday loan decision.[272] Moreover, it argued that, with fewer firms in the market, the cap would reduce competition and fewer incentives would deter new entrants. However, the FCA was aware of the risks; in fact, smaller loan volumes and a less attractive market were stated intentions of the reform.

D. Conclusion

In the decades following CCA 1974, consumer credit use increased dramatically. As early as 2003, policymakers were concerned about the high level of credit card debt and the 'extortionate bargains' contracted by HCSTC lenders. By then, pawnbroking and moneylending businesses were owned by corporations backed by funding from public and private equity. Many policymakers believed that credit was too easily obtained and that the cycle of debt was conditioned by unavoidable economic circumstances and predatory lenders who too readily took advantage of the working poor. The OFT sought to distinguish between 'irresponsible' and 'responsible' lending. This type of thinking resembled the Victorian debate over what constituted helpful and harmful credit. Owing to financial exclusion, over-indebtedness, economic inequality and poverty, policymakers became concerned with the vulnerability of HCSTC borrowers. Their concern encouraged expansion of the boundaries of what constituted vulnerability and an appreciation of how debt burdens influenced the financial, social and health outcomes of low-income families. Accordingly, consumer protection began to outweigh concerns about interfering too much in the market. What was seen to benefit consumers in the 1970s (i.e., accessibility) was challenged during this period. Even so, in 2006 credit access outweighed any serious debate concerning price controls. Instead, lenders were placed in risk categories, with high-risk providers having to meet stringent business and filing requirements. By segmenting the HCSTC sector, this research argues that the CCA 2006 reflected the priorities of the financial

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[272] CMA (2015), 270, 396-399.

inclusion agenda which linked poverty and access to 'proper' finance. However, the response also indicated that the market allocated credit efficiently so that government interference in the pricing mechanism was unwarranted. As seen in the 1970s, it was expected that targeted regulation would encourage price competition. The market and not government was best positioned to achieve the goals of financial inclusion and consumer protection.

To place some of these targeted measures in context, the CCA 2006 expanded or widened the legal test to determine whether a transaction was extortionate or unfair. The CCA 1974 test was considered imprecise and too narrow. Since 1900, in almost identical manner, each successive regulatory episode considered prior regulatory efforts to have failed and yet replaced each one with a largely similar measure. In 1974, the government provided an exhaustive list of test factors. Against Crowther's recommendation, the CCA 1974 rejected the 48 pcpa guidance rate in order to widen the test. Again in 2006, Parliament sought to provide the courts with wide powers of review. However wide and with similar consistency low-income borrowers have shown little interest in seeking redress through the courts. Although strengthened by the ADR system, the long-standing and failed policy of a case-by-case approach, which was seen as harsh and unconscionable, grossly exorbitant, unfair, and the like, was again relied on. However, a definitive break from the CCA 1974 was enacted with licensing and monitoring segmented lenders into a risk category. HCSTC lenders were once again regulated differently and no longer considered part of mainstream finance.

As the payday loan market expanded and the Great Recession ground on, support for price controls gained momentum. While most policymakers appreciated that the industry served a purpose, they believed that lower loan volumes and fewer market participants would benefit society. Regulating the industry was a response to a perceived structural failure (lack of price competition), but was also influenced by financial inclusion and poverty reduction. Given that a lack of price competition was identified in the 1970s, and arguably before then, this research argues that the financial exclusion and poverty link facilitated market intervention. Adding to this argument, the CMA believed that price controls were not likely to correct the lack of price competition, thus it would be difficult to argue that price controls were implemented to improve the efficiency of the market. In many respects, when considering market efficiency and innovation, the HCSTC sector responded to borrower demand when other institutions failed to. While Crowther relied on consumer protection through market competition and a unified regulatory framework in which easily accessible credit was viewed positively, by 2014 policymakers were seeking to limit the market with price controls.

In 2006, the industry was singled out as different and fringe lenders were targeted as abusive. With the onset of the Great Recession, the entire industry was deemed predatory. The FCA was convinced that price controls would usher in lower costs for those borrowers considered viable credit risks and those segmented out of the market would be better off without a loan. This position is far different from Thomas Chambers MP's (Liberal), who in 1870 argued that freedom of contract provided far better borrower protection than regulation.[273] In 2015, price controls were implemented to protect marginal borrowers and reduce loan volumes and profitability. Even before then the creation of the FCA, with an explicit brief to protect consumers, caused the market to contract.[274] While there was evidence that earnings had increased in the aftermath of the Great Recession, the financial gains varied by provider and were not long lived. The CMA evidence demonstrated the cyclical nature of the business.[275] During the MLSC 1925, a London moneylender testified to the same. Since 1900, many policymakers have equated high interest rates with high profit rates, a view moneylenders have found difficult to overturn. From the industry's perspective, a small victory is that, after over a century of debate,

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[273] PBSC 1870, 261-262.
[274] 'Detail rules for the price cap on high-cost short-term credit', 1-6, 13.
[275] CMA (2015), 6, 130-134, 146.

there was agreement that APR was an inappropriate, if not ineffective, measure of short-term credit.

Since the cap, early data suggest that higher-income borrowers are paying less for payday loans and that credit availability for marginal borrowers has decreased.[276] Whether marginal borrowers are better off remains unclear. The demand for emergency credit has not fallen and 40 per cent of the British population have less than one week's income in savings.[277] While advocates of price controls argue that payday loan users are vulnerable, trade associations suggest that payday loan borrowers are sophisticated and proactive managers of their financial resources.[278] What is clear is that price controls have had a dramatic impact on the market. This research argues that the financial inclusion agenda, when combined with the growth of the market as a result of the Great Recession, facilitated the implementation of price controls.

The motivation for and impact of the financial inclusion agenda is a developing field of research. Rowlingson has argued that regulation has normalised payday lending and failed to address the causes of demand: labour market insecurity, withdrawal of some state welfare and increasing financialisation.[279] This is distinct from when, in 1900, policymakers refused to implement a moneylending licensing system as they were concerned it would normalise and legitimise the industry. Scholars have suggested that the financial inclusion programme and payday loan regulation demonstrated a substitution of the role of the state as 'provider/redistributor' for 'regulator/enabler'.[280] Donncha Marron, Craig Berry and Rajiv Prabhakar argued separately that it is assumed that financial markets are natural and the

[276] 'A modern credit revolution: An analysis of the short-term credit market', Independently produced by the Social Market Foundation on behalf of the Consumer Finance Association (2016).
[277] Ibid.
[278] Paul Ali *et al.*, 'Payday lending regulation and borrower vulnerability in the UK and Australia', *Journal of Business Law* 223 (2015), 3.
[279] Karen Rowlingson *et al.*, 'Payday lending in the UK: The regul(aris)ation of a necessary evil?', *Journal of Social Policy* 45:3 (2016), 527-543.
[280] Ibid., 527.

inclusion agenda focuses on how to dismantle barriers to increase participation.[281] From this perspective, the financialisation of daily life shapes social participation and 'responsible' citizenship. Increased participation in the 'proper' markets rewards consumers with lower pricing. Moreover, a greater ability to manage financial risk and uncertainty was expected to improve health outcomes and family life. Further historical research is needed to understand the relationship between normative, 'proper citizenship', poverty and financial market participation.

As in the nineteenth-century poverty debate, it was believed that government intervention was necessary to overcome a social problem that limited productive self-sufficiency.[282] Under financial inclusion, the goal for vulnerable borrowers was greater access and improved financial skills to enhance self-support, which would offer economic and life security.[283] One of the assumptions of its agenda is that with better financial management and skills, borrowers could avoid HCSTC. An alternative view is that the working poor manage rationally and extraordinary well on limited budgets. In 1900, Maud Pember Reeves, a feminist, author and member of the Fabian Society, argued along the same lines. From 1900 to 1904, she studied the weekly budget of 30 working-class families in Lambeth, and found that 'there seems to be little choice in the manner of keeping a family on 20s a week'.[284]

This research's historical perspective has demonstrated that the price control debate is more complex than viewing the issue through the single lens of traditional market failure-oriented economic theory. This research argues that the financial inclusion agenda influenced the regulation and development

[281] Marron, 'Governing poverty', 791; Craig Berry, 'Citizenship in a financialised society: Financial inclusion and the state before and after the Crash', *Policy & Politics*, 43:4 (2015), 509-525; Rajiv Prabhakar, 'Asset-based welfare: Financialisation or financial inclusion?', *Critical Social Policy*, 33:4 (2013), 658–678.
[282] Marron 'Governing poverty', 793.
[283] Ibid., 802.
[284] Maud Pember Reeves, *Round About a Pound a Week* (London: George Beel & Sons, 1914), 18.

of the payday loan market, first through the CCA 2006 and its segmentation of high-risk lenders and then through price controls. While related to the historical poverty debate, by the twenty-first century the link between finance, poverty and vulnerability had expanded to include 'unemployment, poor skills, low income, poor housing, high crime environments, bad health and family breakdown'.[285] However, whereas targeted measures enacted in the CCA 2006 were expected to encourage price competition and protect vulnerable borrowers, by 2015 the FCA was intervening in the market's pricing mechanism. The FCA's position directly conflicted with Crowther's belief that regulation could not protect those 'who through no fault of their own' experience insufficient incomes.[286] Justifying the implementation of price controls based solely on market failure itself fails to appreciate the influence of social justice concerns, especially those related to inequality and economic 'fairness', concepts previously unseen.[287] Whereas it was suggested that 'proper' finance would reduce poverty, payday loans were considered to have contributed to it. The issue was not solely a government response to market failure, but a social justice intervention driven by concerns about economic fairness and the government's role in constructing the 'right' kind of market participation.

[285] 'In or out?', 7, citing the Cabinet Office.
[286] Crowther, 6.1.8-6.1.9.
[287] See Stephen Timms MP (Labour, Financial Secretary to the Treasury) in 'Scaling up for financial inclusion', Church Action on Poverty: Debt on Our Doorstep (2005), 3. Additionally, while HM Treasury stated that financial inclusion was intended to improve the market's efficiency, it believed that financial inclusion was a matter of social policy and social justice. See 'Financial inclusion: An action plan for 2008-11', HM Treasury, December 2007 and 'Promoting financial inclusion', (2004). On p. 3 of the latter, The Treasury claimed that beyond market failures, government intervention was warranted based on equity.

6 Conclusion

This thesis has analysed the regulation and development of the British moneylending and pawnbroking markets since the 1870s. The six regulatory episodes examined demonstrate that the role of state intervention in these markets has long been debated. It has identified five areas of regulatory concern and three main policy responses. The areas of regulatory concern are: the high cost of loans, advertising, the use of the annual percentage rate and the legitimacy of moneylenders and pawnbrokers in the financial system and regulatory enforcement. The three main policy responses are: price controls, information disclosure and licensing. This research has examined how freedom of contract, borrower rationality, bargaining inequity, market segmentation and credit rationing were understood by politicians, lenders, trade groups, the judiciary, charities and other interested parties. It has shown how majority and minority viewpoints informed regulation and has documented the often conflicting expectations of how regulation was meant to influence lending decisions, borrower outcomes and poverty. By identifying the primary motivating factors to regulate, the study answers why and how some policymakers sought to restrict low-income borrowers from gaining access to credit. This topic is not solely an exercise in historical analysis; answers to such questions influence policy seen in Britain, the United States and Japan.[1] This conclusion examines the implications, limitations and future work pertinent to the research. Finally, it offers an answer to why moneylending and pawnbroking have generated such passionate debate, even being described as the devil incarnate.

In 1900, 1927, 2006 and after the Great Recession there were calls to limit an 'evil' industry whose loan product had harmed vulnerable borrowers. In

[1] 'FY 2007 National Defense Authorization Act', 109th US Congress H.R. 5112: 120 Stat. 2083 (2006); 'Interest-rate caps: Cut-price logic a bad idea that is remarkably common', *The Economist*, 10 September 2016.

response, price controls were believed to encourage market contraction by credit rationing. However, at the end of the nineteenth century price controls and 'price control light' by means of a guidance rate in the courts were considered controversial and were rejected in 1900 as they conflicted with belief in freedom of contract and an ideology that held that state intervention undermined the market. In 1927, a guidance rate was adopted because the MLA 1900 had failed to limit the 'evil' and protect borrowers. In 1974, price controls and the guidance rate were deemed unnecessary because the CCA 1974 was expected to improve competition and reduce prices. In 2015, the FCA cited a lack of price competition as a reason for implementing its three-part payday loan price control.

Since 1870, many policymakers have believed that moneylender and pawnbroker rates and profits are excessive. Price controls were advocated to mitigate this. However, the pre-2013 profit data compiled by this research show that moneylenders did not consistently or comparatively earn excessive profits. In 1925, the evidence indicated that returns varied widely by firm and over time. Additionally, based on licensing data and qualitative evidence from official publications and journalism, the pawnbroking and moneylending markets had new entrants during periods of growth and declined during periods of falling demand. These results indicate low barriers to market entry. Researchers have found no evidence of traditional market failures in the US market. Post-2013 data reveal that the majority of borrowers repay their loans and, on average, it took British lenders three payday loans per customer before they reached profitability. However, it is true that a minority of lenders issued loans to borrowers who had limited means to honour them.

Despite conflicting evidence, price controls were imposed in 2015. Since the Great Recession, the historical record has received little attention. Few price control advocates appreciated that under the capped rates of the PBA 1800, pawnbrokers were struggling in a competitive environment characterised by high loan advanced rates. In the 1870s, it was acknowledged that price controls were an incentive to credit rationing and illegal lending and incurred an expensive administrative burden. Pawnbroking price controls had created the market conditions predicted by its opponents both then and now.

With the implementation of price controls in 2015, this research suggests that the regulatory environment has gone full circle. Once again, a dominant HCSTC product, payday loans, is restricted by price controls, just like the dominant Victorian-Edwardian product: pawnbroking. A perceived lack of price competition was central to the price control debate. The FCA determined that the pricing structure warranted control over the market's pricing mechanism. Whether a lack of price competitiveness was a failure justifying price controls has been debated for decades. While this research cannot solve the debate, it has shown that non-price competition has been present since the 1870s. It has documented that lenders have responded to borrower demand for convenience and speed. The evidence shows high levels of customer satisfaction and indicates that borrowers were and are willing to pay more for payday loans if they deliver convenience and speed. While the FCA and CMA have found that the market is fiercely competitive with regard to speed, product innovation, payment flexibility, market entry and customer satisfaction, like previous policymakers they have struggled to understand why borrowers have failed to drive price competition. This leads to a question for economists to explore: Do these features indicate market failure or borrower preferences that regulators disapprove of?

Whether borrowing decisions are considered informed or uniformed, rational or irrational, has motivated policymakers to regulate. Related to this is the effect moneylending and pawnbroking had on poverty. While Gareth Stedman Jones and Gertrude Himmelfarb have helped to frame the poverty debate, and Melanie Tebbutt has applied that debate to pawnbroking, this research analyses how perceptions of poverty influenced the drafting of new regulation. It also analyses conflicting opinions within the industry. This approach is unique in that it links the poverty debate to a financial product and provides the industry's perspective. Also new to the literature, this research compares the results to the twenty-first-century financial inclusion agenda.

Although some Victorian politicians, charity workers and pawnbrokers supported transacting free of regulation, those same advocates believed Parliament was unlikely to remove price controls. Despite a strong belief in freedom of contract, a compromise was reached and a two-tiered fixed pricing regime was agreed. Moreover, much of the PBA 1800 remained in force. There are limits, then, to how far narrative labels such as 'Victorian free trade' can be applied. This research argues that the PBA 1872 was favourable to industry because pawnbrokers presented a coherent narrative and supported their position with financial evidence. That pawnbrokers did not gain public sympathy further endorses the pivotal role of the pawn trade association in advancing regulation.

To use the full circle analogy again, successful price control regulation that sought to restrict credit access arose when the cause and effect of poverty were debated intensely. In Victorian Britain, Archibald Orr-Ewing argued that pawn loans contributed to immoral and irrational behaviour which excluded borrowers from economic self-sufficiency and social freedom. This line of thought equated poverty with a lack of effort. Both indiscriminate charity and pawn loans were thought to encourage, if not accelerate, an individual's journey into pauperism. In this context, while the conditions of poverty were the result of individual choice, the effects and costs of poverty were borne by society as a whole.

The implications of the Victorian poverty debate as applied to pawnbroking and the financial inclusion agenda as applied to payday lending are many. In both episodes there is a connection between a specific financial product and poverty. Pawn and payday loans were accused of exacerbating the conditions of poverty. In essence, the wrong kind of finance contributed to poverty. Opponents of pawn believed that by making 'rational' decisions and with 'prudent' budgeting the working poor would no longer need small cash loans. It was believed that friendly society borrowers had improved their life outcomes through hard work and moral propriety. By participating in a friendly society borrowers exhibited self-sufficiency, the opposite of dependence-driven charity and pawn loans. Notwithstanding that the right kind of finance was unavailable to a typical pawn borrower, the right kind of market opportunity existed and access was a matter of working harder.

In the twenty-first century, payday lending was argued to be the wrong kind of finance. Payday loans were thought to have a deleterious impact on finances, health outcomes and well-being of individual borrowers' families. The Victorian and contemporary episode were framed by the belief that, by making the right decisions, an individual could improve his life, social and financial outcomes. The modern goal of financial literacy lacks Victorian moral language. It suggests that 'responsible' financial management needs to be taught and implies that the working poor manage risk and their budget poorly. This research has documented that borrowers used loans for priority debts and that not having access to such loans would lead to questionable and more expensive outcomes, such as service disruptions, insufficient food and higher finance charges. Since the PBSC 1870, the evidence indicates that low-income borrowers have developed a complex hierarchy of bill payments on limited budgets and resort to pawn and moneylending to fulfil immediate cash needs. While not a critique of the financial inclusion agenda, this research nonetheless recognises that the ability of poor borrowers to manage has been underappreciated by most policymakers.

In Victorian and contemporary Britain, in some sense, an appropriate financial market existed, one that was considered normative. An individual's participation in that market benefited both the individual and society. Despite the ramifications of credit rationing and illegal lending, price controls were used to restrict credit access to the wrong kind of market. From 1927 to 1974, advertising restrictions were in place to accomplish that end. Further research is needed to understand the historical development of the 'right' market participation, financial citizenship and its relationship to poverty.[2] Recent comments made by Ben Carson, head of the US Department of Housing and Urban Development, claiming a relationship between poverty and 'mind-set', and Gordon Brown's (Labour, former Chancellor of the Exchequer and Prime Minister) observation that two-thirds of British children living in poverty are in families where someone is working, should prioritise such research.[3]

The expectation that the working poor participate in mainstream banking in part indicates an acceptance of the pervasive role of finance in modern society. However, while affordable credit is a pillar of the financial inclusion agenda, mainstream banks do not offer short-term cash loans to the working poor. In addition to concerns about reputational damage, banks have noted the high expense and credit risk associated with payday loans. This scenario is similar to that in the Victorian era when the working poor had no access to basic banking facilities. Common to all periods examined by this research, few policymakers have supported viable alternatives to HCSTC. While Nadhim Zahawi MP (Conservative) suggested that providing income support to the poor would reduce the demand for high-cost loans, such proposals have failed to gain political or electorate support.[4] Although state-sponsored pawnbrokers were discussed in the 1870s and at various times credit unions were proposed, neither were entertained seriously.

As Sean O'Connell, Richard Berthoud and Teresa Hinton have argued, credit unions link debt capacity to savings and are therefore ill suited to the

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[2] Berry and Serra suggest that financial citizenship demands access to basic financial products and a participatory role in shaping the entire financial system. Financial citizenship extends beyond but includes the financial inclusion agenda. See Craig Berry and Valentia Serra, 'Financial citizenship: Rethinking the state's role in enabling individuals to save', The International Longevity Centre, April 2012.
[3] Emily Badger, 'Does "wrong mind-set" cause poverty or vice versa?', *New York Times*, 30 May 2017; Gordon Brown, 'Theresa May is creating an epidemic of poverty. Don't give her a free hand', *Guardian*, 12 May 2017.
[4] HC deb. 20 January 2014, vol. 574.

credit needs of low-income borrowers.[5] Crowther noted the inherent tension in pricing risk and expense for a market segment that experienced financial difficulties before seeking credit. This dynamic is one of the peculiar features of the market. Moreover, to the extent that payday loans are taken to meet priority debts owed by the working poor, the industry is at the crossroads of private markets and public welfare. As Chapters 4 and 5 demonstrate, payday loan and pawnbroking volume is believed to be inversely related to support provided by the welfare state. While the limitations of the Social Fund have been discussed, further research that compares the development of welfare policy in terms of poverty reduction, economic self-sufficiency, risk mitigation and private market solutions such as payday loans is needed.[6] As this research has demonstrated, economic and social policy approaches can lead to different regulatory outcomes.

Government control of the cost of credit is a major intervention in the marketplace. Nevertheless, Patrick Collinson, a journalist, criticised the FCA for allowing the 'crack addicts of the debt world' to continue borrowing.[7] Collinson argued that retail payday outlets would not survive the rate cap and 'probably revert back to what they were before: pawnshops'. As this research has shown, although the CCA 1974 facilitated a single licence, pawn and moneylending have a long history of providing credit and operated independently for centuries. It is historically mistaken to claim that payday lending evolved out of pawn. Irrespective, Collinson's comment reflected the longstanding belief that borrowers are better off without HCSTC. Recall that in 1897 William Owen supported price controls and credit rationing because small loans only delayed the evil day of reckoning.[8] In many respects, it was assumed that high prices

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[5] Sean O'Connell, 'Alternatives to money lenders?', *History and Policy*, 3 May 2005; Richard Berthoud and Teresa Hinton, 'Credit unions in the United Kingdom', London Policy Institute, 1989.
[6] For a thorough treatment of the Social Fund, see Chris Grover, *The Social Fund 20 Years on: Historical and Policy Aspects of Loaning Social Security* (Farnham: Ashgate, 2011).
[7] Patrick Collinson, 'Payday lending will shrink but only a complete ban will do', *Guardian*, 24 February 2015.
[8] MLSC 1897, 4587-4588.

yielded high profits. Many considered the HCSTC pricing and profit structure to be excessive and that the product unfairly gained from the already limited resources of the working poor. However, whether it was Orr-Ewing in the nineteenth century or Collinson today, those seeking to abolish pawn and moneylending have not presented viable alternatives.

To a lesser degree, moneylenders and pawnbrokers have demonstrated frustration with their industry. They have sought legitimisation and want to curb abuse through regulation. Moneylenders believed enhanced regulation such as capital requirements and posted bonds would legitimise their role in the financial system. In the 1900s, Parliament was unwilling to provide such legitimacy. Despite their best efforts, moneylenders and pawnbrokers have struggled to overcome the shock value of high interest rates and fees. In the 1900s, the burdensome cost of loans and the typical borrower profile gave rise to resistance from those who considered licensing to indicate government approval. More dramatically, regulation categorised transactions as legal or illegal without necessarily influencing the demand curve. This dynamic is no different from contemporary debates concerning British drug policy and the legalisation of cannabis.[9] Similarly, since 1870 pawnbrokers and moneylenders have believed regulation should be applied consistently. In 2017, this position was shared by Jamie Dimon, CEO of JP Morgan Chase.[10] Like their Wall Street contemporaries, lenders of small sums have sought stable markets and in part saw regulation as contributing to that goal. From an historical perspective, examining how government has legitimised HCSTC, acted as an incentive to illegal markets and contributed to market stability are topics in need of further research.

The response to high interest rates has focused on many of the issues examined by this research, including price controls, benchmarks to measure

[9] 'Legalisation of cannabis "only solution to crime and addiction problems"', *Guardian*, 20 November 2016. The *Guardian* cited research from the Adam Smith Institute.

[10] Tim Mullaney, 'Lessons from the CEO Warren Buffet turns to for guidance', CNBC.com, 4 April 2017.

harsh transactions, APR, advertising and multiple loans for each borrower. In fact, there is very little evidence that moneylenders and pawnbrokers disputed the high cost of their credit. However, while the cost of credit was considered shocking, the expenses incurred received little sympathy. From a business history standpoint and of value to providers today, this research suggests that lenders have benefited from providing policymakers with expense and profit data. In 1870-1872, such data persuaded Parliament to raise the price ceiling on pawn, and, in 1900-1927, comparing their margin to banks' and retailers' influenced the price control debate. As a related point, this research suggests that while Victorian pawnbrokers informed Parliament on the effects of seasonal cyclicality and forfeiture resale, later providers failed to analyse how economic and business cycles influenced the pawn and moneylending markets. Regulators and lenders may benefit from analysing the market over longer periods than did the CMA and FCA. As before, data could be compiled by trade associations.

This research has found that increased loan volumes and blanket advertising have led to calls for regulation to restrict the market. In 2016, and like Edward Carson in 1925, Google considered payday lenders predatory and banned them from advertising with it.[11] Since 1900, tension has existed between lenders who relied on advertising to generate business and policymakers who believed lenders were withholding information from uninformed borrowers. This research has shown that the motivation for advertising and information disclosure regulation varied. In 1900-1927, disclosure terms were intended to restrict market access, while in the 1970s, they were amended to increase competition and lower pricing. Given these variations, it is important to clarify the purpose of advertising restrictions and information disclosure so that they align with desired outcomes.

[11] 'An update to our AdWords policy on lending products', Google press release, 11 May 2016.

Along with the price control and advertising debates, attention centred on how the cost of a loan should be stated. Repeatedly, the response was through the APR. It was believed, perhaps even hoped, that borrowers would utilise APR information to drive price competition. Technology has mitigated the calculation burden and the CMA and FCA have recognised the limitations of APR when applied to short-term loans, but its use as a benchmark remains. As late as 2014, Wonga was censured by the Advertising Standards Authority for a television commercial that highlighted the cost of a loan in monetary form while claiming the APR was irrelevant.[12] This research has documented that for over 100 years, those outside looking in - parties other than lenders and borrowers - have sought more disclosure in percentage form. Beyond consumer credit, and as John Kay, an economist, argued, the interaction of information disclosure, market efficiency and consumer protection has serious implications when considering the increased presence of financialisation.[13] Accordingly, the historical study of HCSTC information disclosure and its influence on the borrowing decision add to an important field of research.

This research has shown how the high cost of loans, advertising, the use of APR, the legitimacy of moneylenders and pawnbrokers within the financial system and regulatory enforcement have interacted with debates concerning poverty and the role of financial regulation in the British economy. Since the turn of the twentieth century, the high cost of loans and prolific advertising have been matters of concern and have generated intense scrutiny by Parliament. Along with period-specific motivation, this scrutiny has led to six major regulatory episodes. While the regulatory debate once focused on freedom of contract and consumer choice, it has since shifted to financial exclusion and poverty. However, during each episode, economic and social concerns were debated and no period slots into a simple category. While opinions mirroring

[12] 'Wonga banned from using ad that didn't mention 5,853% interest rate', *Guardian*, 8 October 2014.
[13] John Kay, *Other People's Money* (London: Profile Books, 2015), 260.

that of the Lord Salisbury who, in 1872, argued that free trade between lender and borrower offered the best form of protection, are found throughout, even Crowther, with its focus on regulatory unification and market competition, suggested that the moneylending and pawn markets were unique.

Generations of policymakers have struggled to comprehend borrowers' preference for non-price features. While in the 1900s many believed regulation would impede market operations, Crowther argued that targeted regulation would enhance the market's efficiency. At times theories attributed to Jeremy Bentham and Adam Smith were used to counter the advance of price controls. Others sought regulation to limit, even eliminate, what was seen as the moral and financial harm inflicted on poor borrowers by unscrupulous lenders. While the industry's high pricing and use of advertising have attracted much attention, these factors alone do not warrant the amount of time and effort that government and others have devoted to regulating the industry.

It is only by coupling high interest rates with the typical end-user (most often the working poor) that such efforts can be understood. This is supported by the fact that, despite moneylenders and pawnbrokers contributing little to overall consumer credit volume, they have for decades generated newspaper headlines and debate. Few save the owner are outraged when an entrepreneur in need of capital transacts with a venture fund on unfavourable terms. The formation of moneylending and pawnbroking regulation incorporated economic concern and social policy aimed at protecting the vulnerable. If not, it is unlikely that the price control debate would have been revisited so often. However, this research argues that high interest rates and the conditions of the working poor are insufficient to explain such persistence.

A final consideration and complication is the product itself: money. Who decides monetary value and determines the fairness of its cost and distribution?[14] For now, concerning payday loans, the answer is the FCA under

[14] In *Money: The Unauthorized Biography - From Coinage to Cryptocurrencies* (London: Vintage Books, 2015), Felix Martin examines these and related themes.

the authority of the government. The FCA believed that above 0.8 per cent a day, the cost of credit was excessive and harmful to the borrower. Still, the question remains, does freedom to participate in the financial markets offer protection to the poor or should they be precluded, protected and limited from accessing HCSTC? This research suggests that the peculiarity of the subject is driven by its high cost, the working poor's borrower profile and, however small the amount, the role of money and its regulation is complicated. This reality helps to explain why, whether framed in economic terms or social policy, motivations to limit the supply of funds and restrict the working poor's access to high-cost credit have varied so dramatically.

Sources

Archive Material

The British Library, London

M78445-55	Pawnbrokers Gazette and Trade Circular, 1867-1894
PP2501	The Moneylenders' Federation Manual and Directory, 1913
GC948028	Woodhead's Directory of the Credit Drapers of Great Britain, 1909

The Guildhall & City Business Library, City of London

MSS295	Pawnbrokers Gazette and trade circular, 1895-1941
MSS295	National Pawnbrokers' Association Journal, 1959-1986, 1988-1992
S1752	National Pawnbrokers' reports and accounts, 1975-1979, 1998-2001, 2006-2007, 2011-2012
S1752	Times: The House Magazine of the National Pawnbrokers' Association, 1993-2004
332.34	The Pawnbroker, 2005-present
A 42 DIR 57	London Yellow Pages

The London Metropolitan Archives

CLC/034 The Bouverie Society

MS22321	Rules of the society 1885, 1889 and 1934
MS22322	Minutes 1801-11, 1841-1948
MS22323	Visitors book
MS22324	Society papers and invoices
MS22325	List of sons of members on active duty in the First World War
MS22326	Photographs

CLC/063 The Eastern Society of Master Pawnbrokers

MS22327	Society minutes, 1813-1821, 1824-1831
MS22328	Society papers, 1821-1830

CLC/093 Metropolitan Pawnbrokers' Protection Society

MS22329	Society minutes, 1863-1913
MS22330	Society papers and correspondence

CLC/097 Parliamentary Pawnbrokers' Reform Association

MS22331	Minutes and executive reports, 1868-1871
MS22332	Telegraphs, Alfred Hardaker
MS22333	Photographs

The National Archives, London

AJ 10 Consumer Council

AJ10/60	Submissions to public inquiries

BT 103 Board of Trade Solicitor's Department

BT103/28	Correspondence and papers, MLA 1900-1911

BT 250 Board of Trade Committee on Consumer Credit

BT250/2	Consumer credit: Summary of conclusions
BT250/4	Official bodies
BT250/5	BT evidence submitted
BT250/14	HM Treasury
BT250/16	Association of County Court Registrars
BT250/27	Lancashire and Cheshire Moneylenders Association
BT250/23	Hire Purchase Trade Association
BT250/24	HP Information Ltd
BT250/25	Institute of Credit Management
BT250/28	Law Society
BT250/34	National Association of Moneylenders
BT250/38	National Pawnbrokers' Association
BT250/46	Association of Family Case Workers
BT250/47	Consumer Council
BT250/48	Consumers' Association
BT250/49	National Citizens Advice Bureaux Council
BT250/50	National Federation of Consumer Groups
BT250/52	Beneficial Finance Company
BT250/61	Midland Bank
BT250/66	Provident Clothing and Supply Company
BT250/75	County of West Sussex
BT250/93	Councils on moneylending and pawnbroking
BT250/100-01	Newspaper Advice Bureaux
BT250/112	Summary of existing legislation on consumer (credit) protection

CUST 49 Custom & Excise

CUST49/2069	Linnell moneylending case
CUST49/2942	Moneylender case

FV 62 Department of Trade and Industry: Industrial and Commercial Policy D2

FV62/10	Inter-departmental consideration
FV62/25	Consideration by administration group
FV62/27	Consideration by lending and security group
FV62/29	Consumer sale and loan group
FV62/34	National Association of Moneylenders, Cheque Traders Federation and National Pawnbrokers Association
FV62/35	Inter-departmental consideration and submission to ministers
FV62/41	Consumer credit: Report of the Committee; submission to ministers
FV62/52	Consideration of pawnbrokers: Recommendation 197
FV62/60	Regulation of the cost of credit: Recommendations 237-241, 244
FV62/102-06	Major policy papers on the whole of proposed legislation
FV62/115	General legislative issues: Consultations with general bodies
FV62/157	Crowther Committee Report on Consumer Credit: Letter from Prime Minister's Secretary suggesting early action

IR40 Board of Inland Revenue: Stamps and Taxes Division

IR40/2736	Registrations under the MLA 1900
IR40/3555	Registrations of moneylenders and evasion of tax

MEPO2 Records of the Metropolitan Police Office

MEPO2/814	Special report no. 282 ref 459818 'MLA 1900'

T326 Treasury: Finance, Home and General Division

T326/805	Setting up of Crowther Committee on consumer credit: Composition and terms of reference

Interview

Sir Royston Goode, CBE, QC, DCL, FBA, 20 November 2015.
Member of the Crowther Committee

Public Records Office of Northern Ireland

D1507 Edward Carson Non-Irish papers

D1507/B/43/1-28 Letters, 1925-1926

Official Publications

The Pawnbrokers Select Committee 1870 (377).
The Pawnbrokers Select Committee 1872 (288).
The Pawnbrokers Act 1872: 35 & 36 Vic. c. 93.
Report from the Select Committee on Moneylending 1897 (364).
Report from the Select Committee on Moneylenders 1898 (260).
The Moneylenders Act 1900: 63 & 64 Vic. c. 51.
The Moneylenders Act 1911: 1 & 2 Geo. 5 c. 51.
Report from the Joint Select Committee of the House of Lords and the House of Commons on the Moneylenders Bill 1925 (153).
The Moneylenders Act 1927: 17 & 18 Geo. 5 c. 21.
The Pawnbrokers Act 1960: 8 & 9 Eliz. 2 c. 25.
Consumer Credit, Report of the Committee 1971 (4596).
The Consumer Credit Act 1974, c. 39.
The Consumer Credit Act 2006, c. 14.
*
‘Access to financial service’, HM Treasury (1999).
Consumer credit (Advertisements) Regulations 1989.
‘The Consumer Credit Bill’, House of Commons Library Research paper 05/03 (11 January 2005).
‘Consumer credit regulation’, Office of Fair Trading (1994).
‘Consumer credit regulation: Guidance on the regulations implementing the consumer credit directive’, Department for Business, Innovation and Skills (August 2010).
Consumer credit sourcebook (CONC) release 8, Financial Conduct Authority (2016).
Consumer credit sourcebook (CONC), release 1, Financial Conduct Authority (2013).
‘The consumer credit (total charge for credit) regulations 1980’, The Department of Trade (28 April 1980).
‘Credit union expansion project’, Department for Welfare and Pensions (May 2012).
Davies, Richard and Peter Richardson, ‘Evolution of the UK banking system’, *Bank of England Quarterly Bulletin* Q4 (2010).
‘Detail rules for the price cap on high-cost short-term credit, including feedback on CP 14/10 and final rules’, Financial Conduct Authority PS14/16 (November 2014).

Edmiston, Kelly, ‘Could restrictions on payday lending hurt consumers?’, *The Federal Reserve Bank of Kansas City Economic Review* Q1 (2011).
Edmonds, Timothy, ‘High cost consumer credit’, House of Commons Library briefing paper 05849 (15 July 2014).
Edmonds, Timothy, ‘Consumer credit regulation’, House of Commons Treasury Committee briefing paper 06842 (7 March 2014).
‘Extortionate credit’, Office of Fair Trading (1998).
‘Fair, clear, and competitive: The consumer credit market in the 21st century’, Department of Trade and Industry (December 2003).
‘FCA confirms price cap rules for payday lenders’, Financial Conduct Authority press release (11 November 2014).
Flannery, Mark and Katherine Samolyk, ‘Payday lending: Do the costs justify the price?’, Federal Deposit Insurance Corporation Center for Financial Research working paper 9 (2005).
‘Financial inclusion: An action plan for 2008-11’, HM Treasury (December 2007).
‘Financial inclusion: Credit, savings, advice and insurance’, House of Commons Treasury Committee Twelfth Report of Session 2005-06 vol. I (November 2006).
‘Government response to The Bristol University report on high cost credit’, Department for Business, Innovation and Skills (March 2013).
‘Guide for consumer credit firms’, Financial Conduct Authority (February 2016).
House of Lords Select Committee on Financial Inclusion, evidence session 11, 25 October 2016.
House of Lords Select Committee on European Union 36th annual report 2007, Chapter 4: UK Consumer credit legislation.
‘Home credit market investigation’, Competition and Markets Authority (30 November 2006).
‘Illegal lending in the UK’, A report for the Department for Trade and Industry by Policis Ltd and the Personal Finance Research Centre, University of Bristol University (November 2006).
‘The impact on business and customers of a cap on the total cost of credit’, A report for the Department for Business, Innovation and Skills by The Personal Finance Research Centre, University of Bristol (2013).
‘Irresponsible lending - OFT guidance for creditors’, Office of Fair Trading (February 2011).
Kempson, Elaine, ‘Over-indebtedness in Britain’, A report to the Department of Trade and Industry by The Personal Finance Research Centre, University of Bristol (September 2002).
Kempson, Elaine and Claire Whyley, ‘Extortionate credit in the UK’, A report for the Department for Trade and Industry by the Personal Finance Research Centre, University of Bristol (June 1999).
Kempson, Elaine *et al.*, ‘In or out? Financial exclusion: A literature and research review’, Financial Services Authority (July 2000).

Nickell, Stephen, 'Two current monetary policy issues', Bank of England Monetary Policy Committee (16 September 2003).
Morgan, Donald and Michael Strain, 'Payday holiday: How households fare after payday credit bans', Federal Reserve Bank of New York Staff Reports 309 (2007).
'OFT launches review into payday lending', Office of Fair Trading (24 February 2012).
'Pawnbrokers and moneylenders', a report for the Department of Trade and Industry on behalf of the Crowther Committee by NOP Market Research (1971).
'Payday lending compliance review final report', Office of Fair Trading 1481 (2013).
'Payday lending market investigation: Final report', Competition and Markets Authority (24 February 2015).
'Payday lending: Pieces of the picture', Financial Ombudsman Service Insight Report (2014).
'Promoting financial inclusion', HM Treasury (2004).
'Proposals for a price cap on high-cost short-term credit: Consultative paper', Financial Conduct Authority CP 14/10 (July 2014).
Report of the Commissioners of HM Inland Revenue, 1870-1909.
Report of the Commissioners of HM Customs & Excise, 1910-1949.
'Review of high cost credit', Office of Fair Trading 1232 (2010).
Rowe, Becky *et al.*, 'Consumer Credit Research: Payday loans, logbook loans and debt management services', A report for the Financial Conduct Authority written by ESRO Research (24 April 2014).
Rowlingson, Karen *et al.*, 'Capping the cost of payday lending in the UK: What will the impact be?', A paper for the Financial Conduct Authority (July 2014).
Study on interest rate restrictions in the EU, Final Report for the EU Commission DG Internal Market and Services, Project ETD/2009/IM/H3/87, Brussels/Hamburg/Mannheim.
'Technical annexes: Supplement to CP 14/10', Financial Conduct Authority (July 2014).
'Three centuries of data', available for download from the Bank of England website.
'Tougher rules for payday lenders take effect', Financial Conduct Authority press release (1 July 2014).
'Transparency of credit charges', House of Commons Treasury Committee First Report of Session 2003-04 vol. 1.
'The true cost of credit', Office of Fair Trading (1990).
'Unjust credit transactions', Office of Fair Trading (1991).

Primary Sources

Books

Bellot, H. L. and R. J. Willis, *The Law Relating to Unconscionable Bargains with Moneylenders*, London: Stevens, 1897.
Collard, Charles, *The Money-Lenders Acts, 1900-1911*, London: Butterworth, 1912.
Farrow, Thomas, *In the Money Lender's Clutches,* London: Yeoman Company, 1896.
Farrow, Thomas, *The Moneylender Unmasked*, London: Roxburghe Press, 1895.
Goode, Royston, *The Consumer Credit Act: A Student's Guide,* London: Butterworth: 1979.
Hardaker, Alfred, *A Brief History of Pawnbroking,* London: Jackson, Ruston & Keeson, 1892.
Matthews, Joseph, *The Law of Money-Lending, Past and Present*, London: Sweet & Maxwell, 1906.
Rowlingson, Karen, *Moneylenders and Their Customers*, London: Policy Studies Institute, 1994.
Weir, William, *The First Hundred Years, 1851-1951: A Sketch of the History of the Glasgow Pawnbrokers Association*, Glasgow: Glasgow Pawnbrokers Association, 1952.

Miscellaneous

'A guide to the Consumer Credit Act 2006', Glovers Solictors (October 2006).
'A modern credit revolution: An analysis of the short-term credit market', Independently produced by the Social Market Foundation on behalf of the Consumer Finance Association (2016).
'Annual report', Albemarle & Bond Holdings plc (1989 and 2006).
'Annual report 2014', The Consumer Finance Association.
Berry, Craig and Valentia Serra, 'Financial citizenship: Rethinking the state's role in enabling individuals to save', The International Longevity Centre (April 2012).
'Changing household budgets', Money Advice Trust (June 2014).
Collard, Sharon and Elaine Kempson, 'Affordable credit: The way forward', The Joseph Rowntree Foundation (2005).
Collard, Sharon, Elaine Kempson *et al.*, 'Tackling financial exclusion: An area-based approach', The Policy Press (2001).
'Consultation response: FCA proposals for a price cap on high-cost short-term credit', Money Advice Trust (August 2014).
'Consumer Credit Act', Slaughter & May (October 2008).
'Credit 2.0: Commentary on borrowing and spending in the 21st Century', Consumer Finance Association (July 2015).

‘Credit crunched: Commentary on the UK’s changing attitude towards borrowing and spending’, Consumer Finance Association (May 2013).
Cribb, Jonathan, ‘Income inequality in the UK’, Institute for Fiscal Studies (2013).
Davis, Philip, ‘Economic theories of poverty’, Joseph Rowntree Foundation (June 2015).
‘Farrow’s Bank’, British Banking History Society (undated).
‘FCA’s proposals for a price cap on high-cost short term credit’, Citizens Advice Bureau (August 2014).
‘Financial inclusion commission call for evidence response from the Consumer Finance Association’, Consumer Finance Association (December 2014).
Gibbons, Damon and Nehra Malhotra, ‘Payday lending in the UK: A review of the debate and policy options’, Centre for Responsible Credit (2010).
‘Hope for millions of borrowers stuck in a cycle of debt, Which? response to the FCA announcement on a price cap for payday lenders’, Which? (11 November 2014).
‘How the casual labourer lives’, Liverpool Joint Research Committee (1909).
‘Information package’, The National Pawnbrokers Association (March 2017).
Institute of Fiscal Studies, Gini coefficient data set accessed 28 August 2016.
‘It’s absolutely right that payday loan customers are compensated for such poor practices’, Which? (27 July 2015).
Journal of the Statistical Society 35:4 (1872): 541-545.
‘Key Facts’, National Pawnbroker Association (2 October 2015).
Lane, Pippa and Laura Rodrigues, ‘Filling the gap: Can banks step into the gap left by payday loans - and if so, how?’, Citizens Advice Bureau (21 July 2015).
‘Memorandum of association’, H&T Group plc (1 May 2006).
Mitton, Lavinia, ‘Financial inclusion in the UK: Review of policy and practices’, Joseph Rowntree Foundation (2008).
‘OFT launches compliance review into payday lending’, BCCA Quarterly Newsletter 61 (2002).
‘Our quarterly magazine’, BCCA 73 (July 2016).
‘Overdraft charges more expensive than payday loans’, Which? (9 July 2016).
Palmer, Guy *et al.*, ‘Monitoring poverty and social exclusion 2006’, the Joseph Rowntree Foundation and the New Policy Institute (2006).
‘Payday lending: Fixing a broken market’, The Association of Chartered Certified Accountants (May 2014).
‘Payday lending: Its role and purpose in credit granting’, Consumer Finance Association (March 2013).
‘Payday loans’, Citizens Advice Bureau (Campaign 2014).
‘Payday loans: An improved market?’, Citizens Advice Bureau (March 2016).
‘Pawnbroking customers in 2010’, A report for the National Pawnbrokers Association prepared by the Personal Finance Research Centre, University of Bristol (2010).

‘Proposals for a price cap on high-cost credit’, Association of British Credit Unions (2014).
‘Proposals for a price cap on high-cost short-term credit’, Financial Services Consumer Panel (2 August 2014).
‘Proposals for a price cap on high-cost short-term credit’, Toynbee Hall (August 2014).
‘Proposals for a price cap on high-cost short-term credit’, Trading Standards Institute (August 2014).
‘Proposals for a price cap on high-cost short-term credit CP10/14’, StepChange (September 2014).
‘Proposals in response to the CMA’s recommendations on high cost short term credit’, Christians Against Poverty (October 2015).
‘Response to the FCA consultation CP 14/10: Proposals for a price cap on high-cost short-term credit’, Community Investment Coalition (undated).
‘Response to the FCA’s proposals for a price cap on high-cost short-term credit’, The Money Charity (August 2014).
Ridsdale, Richard, Shillings per Pound: The Moneylenders’ Interest Table, London: Gledhill’s Printing Words (1928).
Rossiter, Jenny and Niall Cooper, ‘Scaling up for financial inclusion’, Debt on our Doorstop campaign (2005).
‘Scaling up for financial inclusion: A national strategy for expanding access to affordable credit and financial services’, Debt on our Doorstep campaign (2005).
‘StepChange debt charity response to FCA’, StepChange (September 2014).
‘The pawnbrokers guide’, The National Pawnbrokers’ Association (1999).
‘Transact response to FCA price cap’, *Transact* (August 2014).

Journalism and Periodicals

‘All for Crowther’, *Observer*, 28 March 1971.
‘Alleged legal abuse’, *Liverpool Mercury*, 3 January 1895.
Badger, Emily, ‘Does “wrong mind-set” cause poverty or vice versa?’, *New York Times*, 30 May 2017.
Boggan, Steve, ‘Pawn again’, *Guardian*, 20 October 2007.
Brown, Gordon, ‘Theresa May is creating an epidemic of poverty. Don’t give her a free hand’, *Guardian*, 12 May 2017.
Christie, Sophie, ‘Rated: The best and worst banks this year for customer service’, *Telegraph*, 28 August 2014.
‘Civil servant affair’, *Gloucester Journal*, 14 March 1925.
Collinson Patrick, ‘Payday lending will shrink but only a complete ban will do’, *Guardian*, 24 February 2015.
Creasy, Stella, ‘Legal loan sharks are circling the poor’, *Guardian*, 3 February 2011.
‘Credit to Crowther’, *The Times*, 30 March 1971.

Dakers, Marion, ‘Payday loans past their peak as price cap comes into force’, *Telegraph*, 3 January 2015.
Dickens, Charles, ‘Sketches of London No. 35’, *Evening Standard*, June 1835.
Dunkley, Emma, ’Wonga caps fees on payday loans’, *Financial Times,* 16 December 2014.
Elliot, Larry, ‘Margaret Thatcher's deregulation of the City a myth, says thinktank’, *Guardian*, 25 May 2015.
‘The evils of the usury system: The prospect of legislation’, *St James’s Gazette*, 12 October 1898.
Friedman, Milton, ‘Defense of Usury’, *Newsweek*, 6 April 1970.
Goff, Sharlene, ‘Tougher UK rules drive payday lenders away’, *Financial Times*, 20 May 2014.
‘High cost of credit to be reviewed’, *Guardian*, 3 July 1968.
Hollingshead, John, ‘The poor man's banker’, *Good Words* 5 (1864): 179-182.
‘Interest at 400 per cent’, *Lloyd’s Weekly*, 1 July 1900.
Jones, Rupert, ‘Crackdown on payday loans advertising’, *Guardian*, 1 July 2013.
‘Legalisation of cannabis “only solution to crime and addiction problems”’, *Guardian*, 20 November 2016.
Lewis, Martin, ‘Don’t tell MPs I’m against payday loan regulation!’, moneysavingexpert.com, 28 January 2011.
‘Literary notes review’, *Birmingham Daily Post*, 15 February 1895.
Melville, Joy, ‘Moneylenders are tough if you want £300’, *Guardian*, 17 June 1967.
Merrill, Jamie, ‘Church of England to open credit union in its “war” on Wonga’, *Independent*, 20 June 2014.
‘Moneylenders’, *Cheshire Observer*, 15 May 1897.
‘Moneylenders’, *Marlborough Express,* vol. XLI:213, 1907.
‘Money-lenders’, *Western Mail*, 2 April 1895.
‘Moneylenders’ methods’, *Lancashire Evening Post*, 13 December 1924.
‘Moneylending evils’, *The Times*, 18 March 1925.
‘The moneylending business’, *Pall Mall Gazette*, 9 January 1895.
‘The money-lending business preliminary fees’, *Pall Mall Gazette*, 9 January 1895.
‘Money-lending revelations, 350 per cent interest’, *Sheffield Evening Telegraph,* 27 February 1896.
‘MPs told of credit curbs’, *Guardian*, 2 November 1968.
‘Mr Plimsoll’s pawnbroking bill’, *The Spectator*, 2 May 1870.
Mullaney, Tim, ‘Lessons from the CEO Warren Buffet turns to for guidance’, CNBC.com, 4 April 2017.
O’Connell, Sean, ‘Alternatives to money lenders?’, *History and Policy*, 3 May 2005.
Osborne, Hillary, ‘Payday lenders may vanish within year as result of price cap, says economist’, *Guardian,* 10 November 2014.

‘Pawnbrokers’, *Chamber’s Journal* 19 (1882): 158-161.
‘Pawnbrokers’, *Daily Telegraph*, 21 August 1871.
‘Pawnbrokers’, *The Latest News*, 25 April 1870.
‘Pawnbrokers’, *The Sheffield and Rotherham Independent*, 28 August 1871.
‘Pawns, pawners and pawnbrokers’, *Once a Week* 10:247 (1864): 340-345.
‘Plague of moneylenders; MPs swamped with circulars’, *Western Daily Press*, 3 July 1924.
Rigby, Elizabeth, ‘Miliband attacks Britain’s “Wonga economy”’, *Financial Times*, 5 November 2013.
Robinson, Mabel, ‘Pawnbroking in England and abroad’, *Fortnightly Review* 44:259 (1888): 69-88.
Rowlingson, Karen, ‘Short of cash, rent and food - Britons in dire financial straits’, *The Conversation*, 2013.
‘Ruined by exorbitant interest’, *Leicester Chronicle and Mercury*, 20 February 1895.
‘Shylock’s methods’, *Yorkshire Evening Post*, 20 May 1897.
‘The shark’s prey’, *Edinburgh Evening News*, 26 September 1924.
‘Tighter law on loan advertising’, *Guardian*, 12 September 1968.
The usury laws, *Northern Echo*, 18 June 1895.
‘Uncle’s bill’, *Daily Telegraph*, 9 April 1870.
Warren, Rachel, ‘Uncle breaks loose; pawnbrokers; family money’, *The Times*, 24 September 1988.
Watt, Nicholas and Patrick Wintour, ‘Payday loan firms face cap after government U-turn’, *Guardian*, 28 October 2012.
‘Wonga banned from using ad that didn’t mention 5,853% interest rate’, *Guardian*, 8 October 2014.
‘What is the cost of credit?’, *Guardian*, 5 October 1968.

Secondary Sources

Books

Abel-Smith, Brian and Peter Townsend, *The Poor and the Poorest: A New Analysis of the Ministry of Labour’s Family Expenditure Surveys for 1953-54 and 1960*, London: G. Bell & Sons, 1965.
Atiyah, Patrick, *The Rise and Fall of Freedom of Contract*, Oxford: Oxford University Press, 1979.
Ball, Stuart, *Portrait of a Party: The Conservative Party in Britain 1918-1945,* Oxford: Oxford University Press, 2013.
Banting, Keith, *Poverty, Politics and Policy: Britain in the 1960s*, London: Macmillan, 1979.
Berthoud, Richard and Elaine Kempson, *Credit and Debt*, London: Policy Studies Institute, 1992.

Bigelow, Gordon, *Fiction, Famine, and the Rise of Economics in Victorian Britain and Ireland*, Cambridge: Cambridge University Press, 2003.
Burton, Dawn, *Credit and Consumer Society,* Oxford: Routledge, 2008.
Calder, Lendol, *Financing the American Dream: A Cultural History of Consumer Credit*, Princeton, NJ: Princeton University Press, 2001.
Caskey, John, *Fringe Banking: Check-Cashing Outlets, Pawnshops, and the Poor,* New York: The Russell Sage Foundation, 1994.
Chinn, Carl, *Poverty amidst Prosperity: The Urban Poor in England, 1834-1914*, Manchester: Manchester University Press, 1995.
Coopey, Richard, *Mail Order Retailing in Britain: A Business and Social History*, Oxford: Oxford University Press, 2005.
Daunton, Martin, *Progress and Poverty: An Economic and Social History of Britain, 1700-1850,* Oxford: Oxford University Press, 1995.
Daunton, Martin, *Wealth and Welfare: An Economic and Social History of Britain, 1851-1951*, Oxford: Oxford University Press, 2007.
Daunton, Martin, *State and Market in Victorian Britain: War, Welfare and Capitalism*, Woodbridge: Boydell, 2008.
Daunton, Martin and Matthew Hilton, *The Politics of Consumption: Material Culture and Citizenship in Europe and America*, Oxford: Berg 2001.
Dicey, Albert, *Lectures on the Relation Between Law and Public Opinion in England during the Nineteenth Century,* Indianapolis, IN: Liberty Fund, 2008.
Dorey, Peter, *British Conservatism: The Politics and Philosophy of Inequality*, London: IB Tauris, 2011.
Elliehausen, Gregory, 'An analysis of consumers' use of payday loans', Financial Services Research Program Monograph 41, George Washington University School of Business, Washington, DC, 2009.
Elliehausen, Gregory and Edward Lawrence, 'Payday advance credit in America: An analysis of consumer demand', Credit Research Center Monograph 35, McDonough School of Business, Georgetown University, Washington, DC, 2001.
Englander, David, *Poverty and Poor Law Reform In 19th Century Britain, 1834-1914: From Chadwick to Booth*, London: Routledge, 2013.
Finlay, Steven, *Consumer Credit Fundamentals*, Basingstoke: Palgrave Macmillan, 2009.
Finn, Margot, *The Character of Credit: Personal Debt in English Culture, 1740-1914*, Cambridge: Cambridge University Press, 2003.
Fraser, Derek, *The Evolution of the British Welfare State: A History of Social Policy since the Industrial Revolution*, London: Palgrave Macmillan, 2009.
Geisst, Charles, *Beggar Thy Neighbour: A History of Usury and Debt*, Philadelphia: University of Pennsylvania Press, 2013.
Geisst, Charles, *Loan Sharks: The Birth of Predatory Lending*, Washington, DC: Brookings Institute Press, 2017.

Goode, Royston, 'The Consumer Credit Act 1974', *The Cambridge Law Journal* 34:1 (1975): 79-130.
Grover, Chris, *The Social Fund 20 Years On: Historical and Policy Aspects of Loaning Social Security*, Farnham: Ashgate, 2011.
Hatton, Thomas, *The New Comparative Economic History: Essays In Honor of Jeffrey G. Williamson*, Cambridge, MA: MIT Press, 2007.
Hilton, Matthew, *Consumerism in Twentieth-Century Britain: The Search for a Historical Movement*, Cambridge: Cambridge University Press, 2003.
Himmelfarb, Gertrude, *The Idea of Poverty: England in the Early Industrial Age*, London: Faber, 1984.
Hoppen, Theodore, *The Mid-Victorian Generation,* Oxford: Clarendon, 1998.
Horne, Oliver, *A History of Savings Banks*, London: Oxford University Press, 1947.
Hudson, Kenneth, *Pawnbroking: An Aspect of British Social History*, London: Bodley Head, 1982.
Hyman, Luis, *Debtor Nation: The History of America in Red Ink*, Princeton, NJ: Princeton University Press, 2011.
Johnson, Paul, *Saving and Spending: The Working-Class Economy in Britain 1870-1939*, Oxford: Clarendon Press, 1985.
Jones, Gareth Stedman, *An End to Poverty: A Historical Debate*, London: Profile Books, 2004.
Jones, Gareth Stedman, *Outcast London: A Study in the Relationship Between Classes in Victorian Society*, London: Verso, 2013.
Karger, Howard, *Shortchanged: Life and Debt in the Fringe Economy*, San Francisco: Berrett-Koehler, 2005.
Kay, John, *Other People's Money*, London: Profile Books, 2015.
Kempson, Elaine and Claire Whyley, *Kept In or Opted Out? Understanding and Combating Financial Exclusion*, Bristol: Bristol University Press, 1999.
Lastra, Rosa Maria, *Legal Foundations of International Monetary Stability*, Oxford: Oxford University Press, 2006.
Lee, Stephen, *Aspects of British Political History, 1815-1914*, London: Routledge, 2004.
Martin, Felix, *Money: The Unauthorized Biography - From Coinage to Cryptocurrencies*, London: Vintage Books, 2015.
Mayer, Robert, *QuickCash: The Story of the Loan Shark*, DeKalb, IL: Northern Illinois University Press, 2010.
McBriar, Alan, *An Edwardian Mixed Doubles,* Oxford: Oxford University Press, 1987.
Mulvey, Paul, *The Political Life of Josiah C. Wedgwood: Land, Liberty and Empire, 1872-1943*, Woodbridge: Boydell & Brewer, 2010.
O'Connell, Sean, *Credit and Community: Working-Class Debt in the UK since 1880*, Oxford: Oxford University Press, 2009.
Offer, Avner, *The Challenge of Affluence*, Oxford: Oxford University Press, 2007.

Orchard, Dorothy and Geoffrey May, *Moneylending in Great Britain*, New York: Russell Sage Foundation, 1933.
Rock, Paul, *Making People Pay*, London: Routeldge, 1973.
Rose, Nikolas, *Power of Freedom: Reframing Political Thought*, Cambridge: Cambridge University Press, 1999.
Routh, Guy, *Occupation and Pay in Great Britain 1906-1979*, London: Macmillan, 1980.
Searle, Geoffrey. *Morality and the Market in Victorian Britain.* Oxford: Oxford University Press, 1998.
Schwed, Peter, *God Bless Pawnbrokers*, New York: Dodd Mead, 1975.
Taylor, Avram, *Working-Class Credit and Community since 1918*, Basingstoke: Palgrave Macmillan, 2002.
Tebbutt, Melanie, *Making Ends Meet: Pawnbroking and Working-Class Credit*, Leicester: Leicester University Press, 1983.
Trumbull, Gunnar, *Consumer Lending in France and America: Credit and Welfare*, New York: Cambridge University Press, 2014.
Vincent, David, *Poor Citizens: The State and the Poor in Twentieth-Century Britain*. London: Longman, 1991.
Walsh, Michael, *Sacred Economics: Buddhist Monasticism and Territoriality in Medieval China*, New York: Columbia University Press, 2009.
Winstanley, Michael, *Gladstone and the Liberal Party*, London: Routledge, 1992.
Woloson, Wendy, *In Hock: Pawning in America from Independence through the Great Depression*, Chicago: The University of Chicago Press, 2009.

Edited Volumes

Baldwin, Robert, 'Introduction' in *Understanding Regulation: Theory, Strategy and Practice*, 1-11, eds. Robert Baldwin *et al.*, Oxford: Oxford University Press, 2011.
Balleisen, Edward and David Moss, 'Introduction', in *Government and Markets: Toward a New Theory of Regulation*, 1-10, eds. Edward Balleisen and David Moss, New York: Cambridge University Press, 2010.
Caskey, John, 'Payday lending: New research and the big question', in *The Oxford Handbook of the Economics of Poverty,* 681-708, ed. Philip Jefferson, Oxford: Oxford University Press, 2012.
Hall, Peter and David Soskice, 'Introduction', in *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*, 1-68, eds. Peter Hall and David Soskice, Oxford: Oxford University Press, 2001.
Johnson, Paul, 'Credit and thrift and the British working class, 1870-1939', in *The Working Class in Modern British History*, 147-170, ed. Jay Winter, Cambridge, Cambridge University Press, 1985.

Lanzalaco, Luca, ‘Business interest associations’, in *The Oxford Handbook of Business History*, 293-318, eds. Geoffrey Jones and Jonathan Zeitlin, Oxford: Oxford University Press, 2009.

Logemann, Jan, ‘Introduction’, in *The Development of Consumer Credit in Global Perspective*, 1-20, ed. Jan Logemann, New York: Palgrave Macmillan, 2012.

Moloney, Niamh *et al.*, ‘Introduction’ in *The Handbook of Financial Regulation*, 1-12, ed. Niamh Moloney *et al.*, Oxford: Oxford University Press, 2015.

Seldon, Anthony, ‘The Heath government in history’, in *The Heath Government 1970-74: A reprisal*, 1-20, eds. Stuart Ball and Anthony Seldon, London: Routledge, 2013.

Tomlinson, Jim, ‘Managing the economy, managing the people’, in *20th-century Britain, Economic, Cultural and Social Change*, 234-246, eds. Francesca Carnevali and Julie-Marie Strange. London: Pearson Longman, 2007.

Articles

Aldohni, Abdul Karim, ‘Loan sharks v. short-term lenders: How do the law and regulators draw the line?’, *Journal of Law and Society* 40:3 (2013): 420-429.

Ali, Paul *et al.*, ‘Payday lending regulation and borrower vulnerability in the UK and Australia’, *Journal of Business Law* 3 (2015): 223-225.

Anderson, Elisabeth, ‘Experts, ideas and policy change: The Russell Sage Foundation and small loan reform, 1909-1941’, *Theory and Society* 37:3 (2008): 271-310.

Avio, Kenneth, ‘An economic rationale for statutory interest rate ceilings’, *Quarterly Review of Economics and Business* 13 (1973): 61-72.

Baker, David and Mackenzie Breitenstein, ‘Is history repeating itself? Why interest rate caps pave the way for the return of the loan shark’, *Banking and Law Journal* 579 (2010): 581-603.

Ben-Shahar, Omir and Carl Schneider, ‘The failure of mandated disclosure’, *University of Pennsylvania Law Review* 159:647 (2011): 647-749.

Berthoud, Richard and Teresa Hinton, ‘Credit unions in the United Kingdom’, London Policy Institute, 1989.

Bertrand, Marianne and Adair Morse, ‘Information disclosure, cognitive biases, and payday borrowing’, *The Journal of Finance* LXVI:6 (2011): 1865-1893.

Berry, Craig, ‘Citizenship in a financialised society: Financial inclusion and the state before and after the Crash’, *Policy & Politics*, 43:4 (2015): 509-525.

Bristow, Edward, ‘The Liberty and Property Defence League and Individualism’, *The Historical Journal* 18:4 (1975): 761-789.

Brown, Sarah, ‘Consumer credit relationships - protection, self-interest/reliance and dilemmas in the fight against unfairness: The unfair credit relationship test and the underlying rationale of consumer credit law’, *Legal Studies* 36:2 (2016): 230-257.
Burkey, Mark and Scott Simkins, ‘Factors affecting the location of payday lending and traditional banking services in North Carolina’, *The Review of Regional Studies* 34:2 (2004): 191-205.
Campbell, John *et al.*, ‘Consumer financial protection’, *The Journal of Economic Perspectives* 25:1 (2011): 91-113.
Campbell, John *et al.*, ‘The regulation of consumer financial products: An introductory essay with four case studies’, Harvard University Faculty Research Working Paper Series 10:40 (2010): 1-48.
Cartwright, Peter, ‘The vulnerable consumer of financial services: Law, policy and regulation’, Centre for Risk, Banking and Financial Services, University of Nottingham, February 2011.
Cartwright, Peter, ‘Understanding and protecting vulnerable financial consumers’, *Journal of Consumer Policy* 38 (2015): 119-138.
Cayne, David and Michael Trebilcock, ‘Market considerations in the formulation of consumer protection policy’, *University of Toronto Law Journal* 23 (1973): 396-430.
Collins, Daniel, ‘Misleading APRs in consumer credit agreements: A new influence?’, *The Journal of Business Law* 7 (2012): 629-639.
Domoto, Hiroshi, ‘The risk of Yamikin market, which is spreading quietly in Japan’, *Institute for Research on Credit Business* 12:003 (2012): 1-18.
Domoto, Hiroshi, ‘Adverse effects caused by the revised money lending business law’, *Institute for Research on Credit Business* 13:001 (2013): 1-10.
Fearon, Peter, ‘A “social evil”: Liverpool moneylenders 1920s-1940s’, *Urban History* 42:3 (2015): 440-462.
Finn, Margot, ‘Working-class women and the contest for consumer control in Victorian county courts’, *Past & Present* 161 (1998): 116-154.
Fleming, Anne, ‘City of debtors: Law, loan sharks, and the shadow economy of urban poverty, 1900-1970’, *Enterprise & Society* 17:4 (2016): 734-740.
Gazeley, Ian, ‘The poor and the poorest, 50 years on: Evidence from British household expenditure surveys of the 1950s and 1960s’, *Journal of the Royal Statistical Society* A:180 (2017): 455-475.
Glaeser, Edward and Jose Scheinkman, ‘Neither a borrower nor a lender be: An economic analysis of interest restrictions and usury laws’, *National* Bureau of Economic Research Working Paper 4954 (1994): 1-45.
Granovetter, Mark, ‘The impact of social structure on economic outcomes’, *The Journal of Economic Perspectives* 19:1 (2005): 33-50.
Greenwald, Bruce and Joseph Stiglitz, ‘Externalities in economies with imperfect information and incomplete markets’, *The Quarterly Journal of Economies* 101:2 (1986): 229-264.

Hayek, Friedrich, ‘The use of knowledge in society’, *The American Economic Review* XXXV:4 (1945): 519-530.
Howells, Geraint, ‘The potential and limits of consumer empowerment by information’, *Journal of Law and Society* 32:3 (2005): 349-370.
Howells, Geraint, ‘The consumer credit litigation explosion’, *The Law Quarterly Review* 126 (2010): 617-644.
Huckstep, Aron, ‘Payday lending: Do outrageous prices necessarily mean outrageous profits?’, *Fordham Journal of Corporate & Financial Law* 12:1 (2007) 203-231.
Jenkins, Jamie, ‘The labour market in the 1980s, 1990s and 2008/09 recessions’, *Economic & Labour Market Review* 4:8 (2010): 29-36.
Johnson, Paul, ‘Small debts and economic distress in England and Wales, 1857-1913’, *The Economic History Review* 46:1 (1993): 65-87.
Johnson, Paul, ‘Market discipline in Victorian Britain’, London School of Economics working paper 06/05 (2005): 1-32.
Labat, Alyssa and Walter Brock, ‘Money does not grow on trees: An argument for usury’, *Journal of Business Ethics* 106:3 (2012): 383-387.
Laybourn, Keith, Book review ‘Working class credit and community since 1918 by Avram Taylor’, *The American Historical Review* 108:5 (2003): 1527-1528.
Lee, Jinkook and Jeanne Hogarth, ‘The price of money: Consumers’ understanding of APRs and contract interest rates’, *Journal of Public Policy & Marketing* 18:1 (1999): 66-76.
Leyshon, Andrew and Nigel Thrift, ‘The restructuring of the UK financial services industry in the 1990s: A reversal of fortune?’, *Journal of Rural Studies* 9:3 (1993): 223-241.
Leyshon, Andrew and Nigel Thrift, ‘Geographies of financial exclusion: Financial abandonment in Britain and the United States’, *Transactions of the Institute of British Geographers* 20 (2005): 312-341.
Lim, Ghee-Soon, ‘Pawnbroking in Singapore’, *Asian Case Research Journal* 5:2 (2001): 251-270.
Lim, Youngee *et al.*, ‘Payday loan use and consumer well-being: What consumers and social workers need to know about payday loans’, *Journal of Poverty* 18:4 (2014), 379-398.
Lindgren, Kevin, ‘The Consumer Credit Act 1974: Its scope’, *The Modern Law Review* 40 (1977): 159-173.
Lomincka, Eva, ‘The future of consumer credit regulation’, *Contemporary Issues in Law* 7:2 (2005): 184-210.
Marron, Donncha, ‘Governing poverty in a neoliberal age: New Labour and the case of financial exclusion’, *New Political Economy* 18:6 (2013): 785-810.
Martin, Nathalie, ‘1,000% interest-good while supplies last: A study of payday loan practices and solutions’, *Arizona Law Review* 52:3 (2010): 563-622.
Mayer, Robert, ‘Loan sharks, interest-rap caps, and deregulation’, *Washington and Lee Law Review* 69:2 (2012): 807-848.

McKibbin, Ross, 'Working-class gambling in Britain 1880-1939', *Past and Present* 82:1 (1979): 147-178.
Minkes, Aron, 'The decline of pawnbroking', *Economica* 20 (1953): 10-23.
Oeltjen, Jarret, 'Pawnbroking on parade', *Buffalo Law Review* 37:751 (1989): 751-788.
Oeltjen, Jarret, 'Pawnbroking: An historical, comparative perspective', *Arizona Journal of International and Comparative Review* 8:1 (1991): 53-74.
Peterson, Christopher, 'Truth, understanding, and high-cost consumer credit: The historical context of Truth in Lending Act', *Florida Law Review* 55 (2003): 807-903.
Pinker, Robert, 'Social policy and social justice', *Journal of Social Policy* 3:1 (1974): 1-19.
Prabhakar, Rajiv, 'Asset-based welfare: Financialisation or financial inclusion?', *Critical Social Policy*, 33:4 (2013): 658–678.
Ramsey, Ian, 'To heap distress upon distress? Comparative reflections on interest-rate ceilings', *The University of Toronto Law Journal* 60:2 (2010): 707-730.
Rubin, Gerry. 'From packman, tallymen, and "perambulating Scotchmen" to Credit Drapers' Association, 1840-1914', *Business History Review* 28:9 (1986): 206-233.
Scott, Peter, 'The twilight world of interwar British hire purchase,' *Economic History Review* 56:2 (2003): 195-225.
Serpell, Andrew, 'Protecting the desperate: The regulation of payday lending', *The Federal Law Review* 43 (2015): 147-176.
Sheen, Na, 'Consumer rationality/irrationality and financial literacy in the credit card market: Implications from an integrative review', *Journal of Financial Services Marketing* 19:1 (2014): 29-42.
Shefrin, Hersh and Meir Statman, 'Ethics, fairness and efficiency in financial markets', *Financial Analysts Journal* November-December (1993): 21-29.
Skiba, Paige and Jeremy Tobacman, 'Do payday loans cause bankruptcy?', Vanderbilt Law and Economics Research Paper 11-13 (2011): 1-32.
Skiba, Paige and Jeremy Tobacman, 'The profitability of payday loans', Yale Law School working paper (2007): 1-14.
Sloman, Peter, 'The pragmatist's solution to poverty: The Heath government tax's credit scheme and the politics of social policy in the 1970s', *Twentieth Century British History* 27:2 (2016): 220-241.
Smith, Harold, Book review 'Making ends meet: Pawnbroking and working-class credit by Melanie Tebbutt', *Journal of Economic History* 44:3 (1983): 856-857.
Staten, Michael and Robert Johnson, 'Case for deregulating interest rates on consumer credit', Credit Research Center, Purdue University, Indiana (1995): 1-60.

Stegman, Michael and Robert Faris, 'Payday lending: A business model that encourages chronic borrowing', *Economic Development Quarterly* 17:1 (2008): 8-32.

Stoianovici, Petru and Michael Maloney, 'Restrictions on credit: A public policy analysis of payday lending', Clemson University, South Carolina (2008).

Taylor, Andrew, 'Stanley Baldwin, heresthetics and the realignment of British politics', *British Journal of Political Sciences* 35/3 (2005): 429-463.

Thompson, Paul, Book review 'Making ends meet: Pawnbroking and working-class credit', *The American Historical Review* 89:2 (1984): 433-434.

Vesselitsky, V. and M. Bulkley, 'Money-lending among the London poor', *Sociological Review* 9 (1917): 129-138.

Wilson, Bart *et al.*, 'An experimental analysis of the demand for payday loans', *The B.E. Journal of Economic Analysis & Policy* 10:1 (2010): 1-27.

Zinman, Jonathan, 'Restricting consumer credit access: Household survey evidence on effects around the Oregon rate cap', *Journal of Banking & Finance* 34:3 (2010): 546-556.

Theses

Brown, Sarah, 'Consumer credit and over-indebtedness: The Parliament response: Past, present and future', Unpublished PhD thesis, University of Leeds School of Law (2006).

Egginton, Heidi, 'Popular antique collecting and the second-hand trade in Britain', Unpublished PhD thesis, University of Cambridge (2016).

Fleming, Anne, 'City of debtors: Law, loan sharks, and the shadow economy of urban poverty, 1900-1970', Unpublished PhD thesis, University of Pennsylvania (2014). Abstract: *ProQuest* AAI3670898.