

HM Treasury

By e-mail: [goodsmortgagesbill@hmtreasury.gsi.gov.uk](mailto:goodsmortgagesbill@hmtreasury.gsi.gov.uk)

12<sup>th</sup> October 2017

Dear Sir/Madam

### **GOODS MORTGAGES BILL: CONSULTATION**

- 1 This is a response by the Financial Law Committee of the City of London Law Society to certain aspects of the Consultation by HM Treasury on the Goods Mortgages Bill which was published on 22 September 2017.
- 2 The City of London Law Society represents approximately 17,000 City lawyers, through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues. The CLLS responds to a wide range of consultations on issues of importance to its members through its 18 specialist Committees.

**Question 1: Do you agree that reform of the law in this area is required?**

**Question 2: Do you support the approach as set out in the draft Goods Mortgages Bill published today?**

- 3 We deal with these two questions together.
- 4 In the long term, we consider that a reform of the law in this area would be useful; but it is not pressing requirement, and we do not support the approach set out in the Goods Mortgages Bill.
- 5 The Bill is concerned with one aspect of the law of secured transactions, which is a topic which we have been discussing for over 20 years in the context of various proposals for reform. We consider that there would be advantages in simplifying, clarifying and codifying the law of secured transactions, and we have been involved in proposals to do this. But we do not think that it is sensible to amend the law relating to security granted by individuals over goods in isolation from the rest of the law of secured transactions.
- 6 The Bill is concerned with security granted by individuals over their goods. In practice, it is primarily concerned with security granted by consumers. The main effect of the Bill, if it is passed, will be to make it easier for consumers to grant security over their goods. We totally support the idea that the ease of creation of secured credit is important for businesses, but the same considerations do not apply to consumers. The Bill will encourage secured consumer debt, after a period of well over a century in which consumers have in practice only granted security over land and in pledge/pawn transactions where the goods are given into the possession of the lender.
- 7 The Bill also does not exclude the possibility of security being given to secure a non-monetary obligation (save where it arises in the context of an employment contract or engagement personally to provide work or services). The term "obligation" is not defined and the Law Commission has indicated that it intends to cover non-monetary obligations (Paragraph 1.61 of its response to consultation published September 2017). This is something not permitted under the Bills of Sale Act and outside the scope of a pawn-broking business, so again it raises issues on which there is no UK experience to draw on.

- 8 The Bill appears to have no provision for interaction with the provisions of bankruptcy legislation which prevent certain goods of the bankrupt (tools of trade and certain other essentials) from being seized for sale. Will a goods mortgagee be able to seize what the trustee in bankruptcy could not? This could cause persons declaring bankruptcy hardship and potentially cut across the policy of bankruptcy legislation.
- 9 Quite apart from these concerns, in our view the new legislation fails on a cost/benefit analysis. The numbers of bills of sale are relatively small and it appears that the vast majority are log book loans taken out by consumers in relation to their motor cars. Each new goods mortgage would require to be registered at the High Court.
- 10 In our view, the High Court is quite the wrong body to run such a register: its role is in the administration of justice, in particular dealing with significant civil disputes. We also consider that the cost of setting up this new register will far outweigh any benefits to be obtained from the new ease of creating goods mortgages, even if that were in itself desirable. The numbers simply do not warrant it, particularly in light of the fact that consumers can acquire motor cars on hire purchase, so that they have an easy alternative to goods mortgages.
- 11 In our view, further consideration should be given to whether there is a necessity to register charges created by consumers. We entirely accept that the registration of security created by businesses is important and is extremely beneficial in practice. But the same considerations do not apply to consumer credit. This is an issue which we think is best considered in the context of an overall reform of the law of secured transactions.

**Question 8: Do you consider the Bill suitable for a Parliamentary procedure designed for uncontroversial Law Commission Bill?**

- 12 For the reasons described above, we do not think that this Bill is suitable for this procedure. We set out below issues which seem to us potentially controversial.
- 13 As explained above, the UK has very little experience of the societal effects of charges over personal goods, including potentially essential household goods

(which are not excluded from being given in security) - especially given the limited availability of legal aid and the fact that the court fees and interest may add very greatly to the debt, leaving the mortgagor facing unsecured claims if the value of the goods is exceeded. The Bill puts the seizure of the goods constituting security as the first remedy, which is not the case for an unsecured debt. With concern being expressed at levels of household debt generally and no discussion in the preparatory work of the potential effects if that debt becomes secured (especially on the more vulnerable in society) we doubt that this Bill, once put before Parliament, would prove uncontroversial.

- 14 We explain above that giving security to secure a non-monetary obligation does not appear to be excluded from the scope of the Bill, although there have been significant improvements in relation to the employment or work/services context. Given the risks of unexpected use, (for instance in the context of inheritance, or compulsion in social or religious practices), we consider that a Bill that allowed for the possibility of another means of affecting the behaviour of potentially vulnerable individuals (which only court intervention could overcome) would not be uncontroversial. We note also the concerns mentioned at paragraph 1.58 of the Law Commission's September 2017 Response. Of course it would be relatively simple to restrict the scope of the Bill to monetary obligations and closely related matters, including e.g. obligations to pay an insurance premium which might be satisfied by payment direct to insurers.
- 15 The approach to registration at the High Court is not uncontroversial as a potential drain on public funds intended for the administration of justice, especially as the purpose of the reform is apparently that this simple system of creating a goods mortgage should be accessible and therefore likely to be much more widely used.

**Question 9: Are people with protected characteristics under the Equalities Act 2010, or any consumers in vulnerable circumstances impacted by the policy proposed?**

- 16 As the Law Commission has not consulted on this issue significantly, we do not believe that this question has been sufficiently or thoroughly investigated and

we are pleased that the Government are raising this issue in this short consultation. We believe that this legislation, by making goods mortgages easy after over 100 years of almost complete disuse, carries a real risk of harsh and unquantifiable outcomes for more vulnerable individuals. Leading on from our comments above, we urge a full consultation exercise (at least the full three month consultation recommended for major legislation) with bodies such as charities working with debt issues and the commissioning and analysis of surveys, as well as a careful consideration of the resulting evidence.

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