Desperate times desperate consumers

CAB evidence on the consumer problems caused or exacerbated by the recession

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The current economic recession has provided rogue traders with opportunities to make money out of desperate consumers who are seeking to manage their more restricted finances. Citizens Advice Bureaux in England, Wales and Scotland have been reporting scams and sharp practices experienced by consumers who are looking for work, training or affordable accommodation, trying to cut their expenditure or increase returns from investments, looking for credit to make up the shortfall and to reduce their debt repayments.

The immediate future looks set to get worse before it gets better. Cuts in public spending and a gloomy economic forecast for the UK could simply encourage more scams and sharp practices.

Whilst existing consumer protection law cover the cases we highlight in this report, inspection and enforcement work by regulators and enforcers will never be sufficiently resourced to tackle all the reported breaches. And those working in the new consumer landscape proposed by Government face tighter financial constraints. In these desperate times, we believe that consumers will need information, advice, education, enforcement, regulation, empowerment and redress to work together to protect them.

Introduction

The longest recession since 1955 hit the UK in 2007/08. The impacts have been damaged consumer confidence in fiscal markets, increased unemployment and businesses failing. Banks have been bailed out using taxpayers' money, at huge public expense, and regulation of the sector is to be changed. The UK Government has now set out plans to narrow the £163 billion gap between national income and expenditure.[1]

As a result, central and local government are making drastic budget cuts. For example:

- The Government plan to make £18 billion of savings in the welfare benefits system over the period 2011-14.
- The number of jobs in the public sector will reduce by up to 500,000 by 2015/16, and there is a two year pay freeze for those staff remaining in the public sector.[2]
- Central government grants to local authorities in England were cut by 27 per cent in the 2010 Comprehensive Spending Review settlement.[3] Local authorities in England have been required to freeze their council tax for a year.

Not surprisingly, many people are looking to maximise their income and cut their own costs. And whilst some will weather the economic downturn, others are facing desperate times. Consumers seeking to manage their more restricted finances face a range of sharp practices by businesses they thought they could trust. The recession also provides opportunities for money making scams disguised as sources of help.

This report gives a snapshot of what is happening now for consumers and for consumer protection, using cases from Citizens Advice Bureaux in England, Wales and Scotland about the consequences of some of the spending decisions their clients are making.

In what way are people's choices affected by the economic times?

Consumers are reporting problems at an alarming rate. Consumer Direct dealt with 1,139,179 cases following 1.5 million contacts to the service in 2009/10.[4] The Citizens Advice service in England and Wales deal with an average 1,631 consumer enquiries each working day.[5] The National Fraud Authority's latest annual fraud indicator identified £3.5 billion of the £4 billion losses to individuals resulting from reported mass marketed frauds.[6] And the OFT recently found that only one in five businesses using the internet to sell complied with consumer protection law when it published its plan for internet enforcement at the end of 2010.[7]

There are key problem areas where CAB clients have sought to increase their income or reduce and manage their spending but have experienced, at best, poor service or, at worst, an outright scam:

- Looking for work and retraining.
- Looking for affordable accommodation.
- Trying to cut expenditure on utilities such as fuel and telecoms and purchases such as second hand cars.
- Trying to increase income.
- Trying to access credit.
- Seeking to reduce debt repayments.

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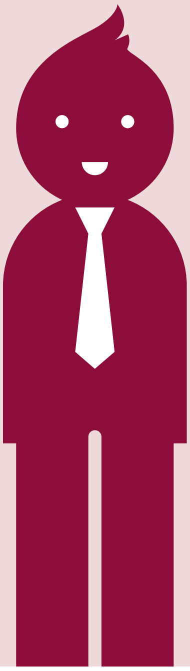
1. June 2010 Emergency Budget
2. Office of Budget Responsibility June 2010, and June 2010 Emergency Budget
3. Spending review 2010, HM Treasury
4. Annex F, *OFT annual report 2009-2010*
5. Enquiries in categories for consumer goods and services, travel and transport, utilities and financial services
6. NFA Annual Fraud Indicator 2011 Posted by Attorney General's Office on 17/02/2011
7. OFT December 2010 *National e-Consumer Protection Strategy*



Looking for work

Increases in unemployment and changes to the benefits system mean that more people are vulnerable to training and employment scams and sharp practice. Currently 2.48 million people are out of work,[8] compared to 813,000 at the end of 2007.[9] The number of unfilled vacancies was estimated by the Office of National Statistics at 469,000 for the three months to April 2011, down 30,000 on the previous quarter.[10]

At the same time, there is an increased emphasis in the benefits system for people to do as much as possible to look for work. If they do not, their benefit claim will be subject to a sanction, possibly losing all their benefit for up to six months. In April 2010, changes in the rules for jobseekers allowance meant that benefit cutting sanctions were extended, for example to claimants who were late for interviews. The Welfare Reform Bill, which is currently going through Parliament, contains proposals to require more benefit claimants to do more to look for work or face loss of their benefit for up to three years.

Citizens Advice Bureaux report that unscrupulous employers can take advantage of people's desperate search for work. In some cases 'jobs' have been advertised in Jobcentres but have left people without work:

A 56 year old unemployed woman in the South West of England had started a job advertised in the local Jobcentre as a kitchen designer at £200 per week. She attended training at her own expense. The job turned out to be sales and after three weeks she was told she was self-employed so she left. No wages were paid and she told the bureau that she had suffered sexual harassment. Because she had resigned, she then lost jobseekers allowance for a period. The bureau won £600 at an Employment Tribunal for this client and commented that jobseekers allowance should continue to be paid where there is a valid reason for resigning, such as the Jobcentre's failure to vet the advertisement. The company was subsequently removed from the Jobcentre's client list.

A CAB in the West Midlands reported that a man responded to an advertisement on the Jobcentre Plus website for 'film extras'. He was told he had to pay £1,000 and had to have blood tests, which he did but was still not offered any work. He subsequently discovered that the job was to star in a pornographic film. The bureau commented on the Jobcentre's failure to properly vet advertisements to ensure that claimants do not become the victims of fraudulent activity where advance fees are required and no work is available.

A CAB in the South East of England saw a man who had been on jobseekers allowance for three years before taking a driving instruction job that had been advertised in the local Jobcentre Plus office. He sought advice when the franchise employing him could only supply 11 hours of work a week, at between £15 and £22 a lesson, but had required him to sign up with them for a whole year. He had to pay the company £370 a month, which comprised £270 a month to lease the car and £44 for insurance. When he questioned the hours available they told him he was doing well compared to other instructors but they stopped sending him clients when he could no longer afford their monthly payments. The bureau commented on the apparent lack of checks by Jobcentre Plus to ensure that advertised jobs were a

8. Office of National Statistics quarterly statistics published 20 May 2011
9. Reported by www.economicshelp.org as the lowest figure for 22 years - 12 December 2007
10. DWP press release 18 May 2011

real alternative to the benefits they were expected to replace.

Employment is also proving a lucrative avenue for fraud, exploiting the expectation that an employer needs their employees' bank account details to pay them. The internet is a popular search tool for people seeking work but it also provides an easy way of publicising scam job offers.

A CAB in the North East of England reported a fraud designed to ensnare unwary job hunters. A Latvian woman had applied for a home based job. When she received the job offer they asked for her bank details and internet access to her computer. The job appeared to be involved with selling fine art/furniture, but using the employee's own bank account to transfer the money. She sought advice when she became suspicious that the job might be a money laundering fraud. The bureau called for better public awareness as well as regulation of the internet.

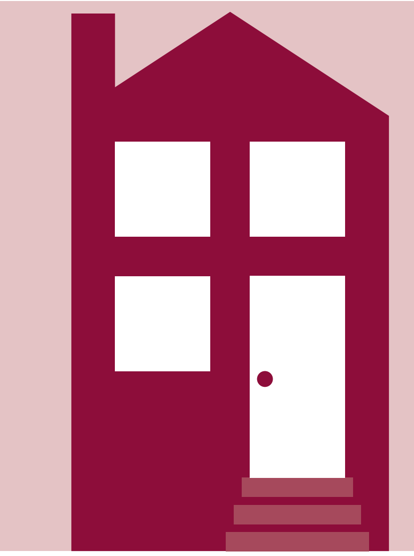
A CAB in the East of England saw a 27 year old Polish woman who had been looking for work on the internet. She found an advertisement for a cleaner/housekeeper. Her prospective employer asked her, as a favour, to transfer money to an unknown person and then she would be reimbursed by travellers' cheques. The client agreed to do this. The first travellers' cheques bounced but not until after the client had transferred the sum of £930 of her own money. The client was very distressed to have lost £930 as a result of being cooperative to an employer because she was hoping for work.

To gain or regain employment in a tough jobs market people may need retraining to improve their chances of getting work. Offers of training courses therefore seem attractive. Our case evidence shows that people are falling victim to high pressure selling tactics used by firms and scams involving adverts for courses that often promise marketable qualifications but fail to deliver, leaving prospective students seriously out of pocket. Many of these courses are paid for by consumer credit agreements on which interest is charged. The advertising often targets people who are out of work or trying to improve their job prospects. In some cases mis-selling is involved. In others the 'college' doesn't exist, or goes bust, or the course fails to materialise.

A CAB in the West Midlands saw a 19 year old homeless unemployed man who was living with friends. In an attempt to improve his prospects, he investigated a three year course with a company that promised skills training which would cost £3,750 in total. The sales person for the company said that the Jobcentre would pay the costs if the client could not, so he signed a credit agreement which would be repaid at £110 a month. He paid the first instalment but could not afford to pay the second. Needless to say, the Jobcentre would not pay. The client was facing either an extra late payment fee and paying the money himself, which he could not do, or paying an extortionate cancellation fee of £750 per £1,000 borrowed.

A North of Scotland CAB reported the case of a young man who identified a course on the internet to train for construction industry trades. The course was linked to and financed by a personal loan with a well known bank. Halfway through the course the bank withdrew their financial support for the course. The client received none of the certificates from the elements of the course he completed. After a month the bank wrote to the client offering him an alternative course. The letter stated that if he did not take up this offer he would need to repay the loan immediately. He had no faith in the set-up as the previous course had been poorly run.

Jobseekers need more support to help them know their consumer rights about how jobs and training courses are described and should be able to rely on the accuracy of information in advertisements. **In an environment where people are under pressure to find work, we believe that government services should take great care to check out employment offered via free advertisements in their premises in order to protect their clients.** They should be ready to take up cases where their services are abused by employers.



Looking for affordable rented accommodation

With access to mortgage finance squeezed and high numbers of people on council waiting lists for social housing, access to affordable accommodation in the private rented sector has never been so important.[11] Recent research published by Shelter found that high housing costs had particularly affected the ability of some 18 – 24 year olds to move to take up employment, which had meant that they had to move back with their parents and had delayed starting a family until they could afford to rent or buy their home.[12]

CAB evidence shows that people who are desperate to find a home can be vulnerable to renting scams:

A CAB in the East of England saw a Polish lone parent who had just moved to a new town. She had answered an advert on a classified advertisments website for a flat in the local town. The 'landlord' said he needed proof that she could afford the rent before he would accept her, and asked her to transfer £760 to her friend via a money transfer service and then email him a copy of the transfer documentation. The 'landlord' then collected the money, but the flat was not forthcoming. The client had been to the police who said this crime was a daily occurrence. She could not afford to lose this amount of money, and had no money for a deposit on another flat.

A CAB in London reported that a 25 year old man had seen an advert for a flat rental on a classified ads website. He went to the flat and met an individual who purported to be the landlord's agent. He paid the 'agent' a deposit of £500 in cash and was given a tenancy agreement and a set of keys. The client became suspicious and rang the landlord who said the person that the client had met was not his agent but a tenant. The landlord said the tenancy agreement was not legal and asked for the keys back.

An East of Scotland CAB saw a man who had signed a tenancy agreement in early February 2011 for a room in a flat, which he had found via a classified advertisments website. He paid £300 deposit and £200 for the first month's rent into the landlord's bank account. When he tried to phone the landlord to get the keys for the flat the call went straight to voicemail and this happened every time he tried to phone. He went to the flat a few times but never managed to find anyone in. The client had no contact details other then the phone number and bank account number.

Money transfer businesses and classified advertisement websites are useful conduits for frauds. In February 2010 Citizens Advice publicised the problem of phantom flats being offered on classified advertisement websites to would be tenants. Subsequently, we met with money transfer and online classified advertisement businesses and persuaded them to improve their information to consumers. Whilst CAB reports of these cases initially diminished, they have now reappeared. We plan to contact these businesses again to update them on our latest evidence. **We believe that immediate and proactive action to locate and remove the perpetrators is essential to avoid the misuse of money transfer and online classified advert services.**

11. Gross mortgage lending declined to an estimated £9.8 billion in April, down 14 per cent from £11.4 billion in March, Council of Mortgage Lenders data 20 May 2011. A Department for Communities and Local Government press release 30 November 2010 stated that the number of people on council waiting lists in England had risen by 72 per cent in 13 years
12. Shelter press release 31 May 2011

Trying to cut expenditure and save money on bills

Consumers looking to cut their everyday costs for utilities and travel are vulnerable to mis-selling by sales people trying to make a quick buck at their expense. Products are mis-described, consumer protection rights are not delivered and the contractual paperwork that should inform is not provided.

Specific rules in markets such as credit, fuel and telecoms should mean that consumers are protected in these markets. In addition, the overarching provisions of the Consumer Protection from Unfair Trading Regulations (CPRs) 2008 should be ending bad practice. But our evidence suggests that consumers are still being ripped off.

Fuel

Fuel prices have risen dramatically in recent years. For example, between January 2008 and January 2011 gas bills on a standard tariff rose by about 50 per cent.[13] By January 2011 average direct debit levels for annual bills were reported to be £608 for gas and £424 for electricity.[14] And heating oil prices have rocketed to such an extent that the OFT has announced a market study into the sector to find out what is going on.

Competition should be helping cash strapped consumers select a better deal. But this is far from apparent in our evidence. Fuel companies selling gas and electricity are still mis-selling. Ofgem, the energy regulator, has had to bring in a new rule (from 28 April 2011) to make energy companies give their consumers 30 days advance notice of fuel price increases, rather than taking three months to let customers know the cost of their fuel has already gone up. A further rule, that sales agents should provide information in writing to consumers about promised savings on bills, has also been necessary. These cases illustrate why.

> A CAB client in London sought advice for her 80 year old mother who had been mis-sold fuel. The doorstep sales agent had claimed her fuel bills would be reduced if she switched supplier. When she questioned the monthly payments she was assured they were fine. The low payments she was told to make allowed arrears to accumulate and the new suppliers then installed a pre-payment meter, calibrated to collect the debt. The level of these repayments resulted in her being unable to heat her home.

> A CAB client in the North West of England was told by a doorstep sales person that she could save £250 a year if she switched fuel suppliers. The advantages he wrote down included a capped rate until December 2012 and a monthly direct debit of £65, which was less than she was paying. She discussed it with her partner and they agreed to sign a contract that stated that, based on the amount of fuel she was using, she should pay £65 a month on a direct debit. She then received a letter to say the rate was going up. When she rang to remind the company that she had been told her tariff was capped she was told this was wrong and she should never have been promised this and that she needed to pay £120 a month, £40 more than she was paying to her original suppliers. The amount subsequently went up to £185 a month. When she contacted the suppliers, they said that the sales person no longer worked for them. She received an apology but nothing else. The person in their complaints department said she just had to pay or she would be referred to a debt collector. He did not seem to think the mis-selling had any bearing on the matter.

13. *Typical domestic energy consumption figures,* Ofgem factsheet 96 – 18.1.2011
14. *Household energy bills explained,* Ofgem factsheet 97 – 18 1 2011

Frauds and scams add to consumers' problems in accessing the best utility deals as they try to save money.

> A CAB client in the East of England with mental health problems paid £189 in fees, following a call from someone claiming to be from the Indian Ministry of Justice. They claimed he was due a refund on his utility bills of over £13,000. It never materialised.

In the summer of 2010 energy companies became aware that fraudsters were using stolen pre-payment meter master keys to sell consumers cheap pre-payment meter top ups. Some 165,000 of these transactions occurred, leaving consumers still liable to pay the true rates.[15] For example:

> A CAB in the North West of England saw a woman who had three young children and who had literacy problems. She was caught out by what appeared to be a fuel savings offer. She was sold £50 worth of pay-as-you-go utility meter gas credits for £25 by someone claiming to be from her fuel suppliers, who called at her home. It was a scam and she was left to repay the £50 via direct deductions from her benefits.

Phone

Mobile phones are now commonplace and millions of consumers rely on them as their primary means of keeping in contact. There is a proliferation of different deals available from suppliers and via retailers. Mis-selling has been common in this market and Ofcom, the telecommunications regulator, has published a new call for evidence to find out why consumers are suffering the 'bill shock' of higher telecoms bills than they expected.[16] The regulator has also looked at the outcomes from their work on cash-back offers, between 2007 and 2009, which resulted in Ofcom introducing a new licence condition.[17] Under these deals retailers offered to pay part of the mobile phone bill, to boost their sales in this competitive market, by sharing the commission from the line providers. The retailers often found their offers were too costly and ceased trading, leaving consumers to pay the whole bill. CAB evidence shows that very similar deals have now emerged to tempt consumers. People, keen to reduce their mobile phone bills, are again finding that revenue sharing offers from retailers prove to be an expensive mistake.

> A woman sought advice from a CAB in the South East of England after she had taken up what appeared to be an offer from a mobile phone retailer to buy out her existing contract and to share the proceeds, thus reducing her outgoings. The shop closed down without paying her and she now had a debt of £2,668 with the airtime provider, who accepted no responsibility. The client had developed rheumatoid arthritis and had had to give up work so could not afford to pay.

> A CAB in the East of England saw a man who thought he was getting an affordable mobile phone deal when he signed up to the agreement. The payments were to be split between him and the retailer. But the retailer failed to pay their share after the first 12 months and the airtime provider threatened to sue him for the missing £1,200 fees. He was faced with having to sue a retail business that might not remain solvent.

Cars

The costs associated with buying and running a car are a major purchase for consumers and therefore an example of an area where people look to save money when times are hard. Subsidies for public transport are amongst the spending cuts local authorities are considering.[18] Some local transport links will no longer be available and local people will be more dependent on cars.

But many consumers do not have the mechanical knowledge to judge the quality of second hand vehicles or whether a vehicle has been properly serviced and will trust that the trader's description is accurate. Because this is a major purchase, consumers buying cars are often buying a credit agreement as well, to finance the purchase. Some of the most expensive credit is offered in this market, and consumers experience a range of

15. www.energy-uk.org.uk industry update November 2010
16. http://stakeholders.ofcom.org.uk/consultations/unexpectedly-high-bills/
17. http://www.ofcom.org.uk/static/tce-10/fig-157.html OFCOM consumer experience 2010
18. Campaign for Better Transport letter to Prime Minister 17 February 2011

misleading selling practices, defective vehicles and poor servicing.

Advice providers are dealing with more problems than ever about cars and vehicle servicing. Consumer Direct statistics (50,790 in 2009, eight per cent more than the 2008 figure of 47,026) and by those of the CAB service in England and Wales (26,622 in 2010/11).[19]

A high level of complaints prompted OFT to investigate the market in 2009. They then published a guide for traders on sale of goods and unfair commercial practices obligations, to help inform business about their obligations and consumers' rights. There are also OFT approved codes in this sector but it still remains attractive for rogue traders. For example:

An East of England CAB reported several of their Portuguese clients had bought cars on credit from a local trader. The trader supplied no credit agreements, insisted on collecting cash payments rather than by direct debit, and provided no payment record so that customers did not know when they had finished paying. He was known to use unscrupulous methods to get money from debtors and to keep log books. Fear of reprisals meant that clients were unwilling to report the trader. One client told the bureau he had used this firm because he could not get main stream credit due to his poor credit record. He had no lump sum available to buy a second hand car but needed one to get to work at unsociable hours and had felt this was his only option.

Two London CAB clients sought advice separately, having bought second hand cars from the same trader for £7,000, using a loan from a finance company at the same address. The credit charges were a further £7,000. Both cars were faulty and would be expensive to repair. The trader was not accepting liability. One of the clients told the bureau they had been offered a warranty for an additional fee but, as the trader said the car had been checked and was in good condition, had decided against this only to find it broke down immediately. The bureau commented that the cars were only likely to have been worth £2,000.

A CAB in South East England saw a 66 year old woman in receipt of pension credit. She had bought a second hand car for £1,700 which had broken down within a couple of weeks. When she tried to return it to the dealer they refused to refund her money and offered to repair it instead. When she picked the car up, she found that it had been repaired using second hand parts from another car on the forecourt. Within days the car completely stopped working while she was out driving. On inspection it was discovered the head gasket had blown. The client had since addressed two letters to the garage requesting a refund, but they did not respond until she threatened court action. Even then they said they would not give her a full refund but would take a look at the problem and see if it could be repaired. The client had made contact with the previous owner of the car who told her that she too had returned the car and managed to get a full refund due to problems with it.

How can consumer protection help?

There is already a range of licence requirements and consumer protection in these markets, from standard licence conditions set by Ofgem and general licence conditions set by Ofcom to sale of goods, consumer credit and unfair commercial practices law. If these protections are to work, consumers need to be aware of the law and able to access advice and support from advisers, regulators and enforcers.

19. In 2010/11, Citizens Advice Bureaux in England and Wales in 2010/11 dealt with 3,342 problems about new cars, 16,719 on second hand vehicles and 6,561 on vehicle repairs and servicing

Trying to increase income through compensation, refunds and investments

People are trying to increase their income. They are, therefore, vulnerable to high pressure selling techniques. Offers to help people claim compensation for mis-sold services or to reduce outgoings are attractive. These are often marketed to consumers by unsolicited calls. The consumer is not prepared for the purchase and is often caught off guard by a persuasive sale person.

Claims management

Claims management firms have been quick to offer to help consumers get compensation for accidents, housing disrepair, mis-sold credit and insurance and unenforceable credit agreements. Consumers have often heard about potential compensation claims in the news and may therefore be receptive to offers of help because they think that they may have a valid claim. But all these firms require payment which comes out of the compensation, where it is awarded.

A London CAB saw a Tamil man with a poor understanding of English who was cold called by a claims management company in November 2010. They told him he could win up to £36,000 compensation for mis-sold payment protection insurance (PPI). When the company asked him how many PPI policies he had, the client gave them details of all his loans and cards, and apparently signed up for their service without really understanding what he was doing. This included details of his credit card, from which a sum of just under £10,000 was debited without (he felt) his authorisation. The client explained that he only had one credit agreement with PPI. Nevertheless, the company wrote to all the companies he had borrowed money from, most of which wrote back to say there was no PPI policy in place. The client had unsuccessfully asked the company to refund the money.

Another London CAB saw a single woman in the early stages of multiple sclerosis. She was cold called by a claims management service offering to help her challenge mortgages or secured loans. Whilst on the phone, the client agreed to buy the package being offered for £352.50 but when she put the phone down she had second thoughts and sent an email the same day to cancel the agreement, asking them not to take money from her debit card. Nevertheless, the money was debited from her card and the client had still not received a refund despite contacting the company several times. The stress of trying to resolve this problem had adversely affected her health.

A CAB in the North East of England saw a woman who needed help to pursue a company who had contacted her claiming they could reclaim the interest she had paid on a credit card. She had been persuaded to give her card details but had second thoughts. They quickly took £352 from her account and, when she tried to cancel, told her the payment had already gone through. They then tried to avoid her using her cancellation rights by telling her to wait for the claim pack. She was so worried she cancelled the card.

A North of Scotland CAB client was contacted by a firm who told her she was due for a refund of £3,600 accrued from back payments from a payment protection scheme. She was told an officer would be coming to the door to deliver a cheque as he was in the area, and that before he called she needed to get to the Post Office money counter and fill in a form for an administration charge of £199. She needed to do this within a couple of hours and then call Customer Services back. The cheque would then be delivered. When she told Customer Services that the weather was too bad for her to get there, she was advised to get a taxi.

Regulation of this market began in 2007. Whilst the latest report about regulation emphasises its success, claims management has always attracted a rogue element.[20] For example, in December 2009 the Ministry of Justice warned of scam callers who told consumers they could help them reclaim bank charges and other debts but whose objective was to obtain consumers' bank details and fraudulently take an upfront payment.[21] In March 2010 consumers were further warned about misleading claims about having credit card debts written off.[22]

A North of Scotland CAB saw an elderly woman living in sheltered accommodation. Out of the blue, she had apparently been called by the 'Office of Fair Trading' who promised to get her bank charges refunded. They advised that all she had to do was to pay £199 to a bank in New Delhi. She was given a reference number and a phone number to contact them if she had any problems. The client was phoned again a day later and given a different reference number and was asked to pay another £199 because the first one had gone astray because of her name and initials. She paid another £199. She was phoned a third time and asked for another £400 – she told them she only had £140 in her account but they said if she paid £100 they would put the other £300 towards the money owing and she would then get the charges refunded. She again paid the amount requested but she did not receive any refund.

Some claims management firms have already begun to offer their services in matters that are not defined as compensation under the legislation, such as re-banding for council taxes as in this example:

A CAB in the North West of England reported a client was asked for upfront fees of £185 to arrange the re-banding of their council tax. They commented that the challenging of council tax banding was something the client could do free of charge.

It seems likely that the scope of claims management activities will continue to grow and that regulation will need to be widened to accommodate this. The Ministry of Justice is currently looking at who should be regulating this sector in the future. **The Citizens Advice service believes that regulation is still necessary and recommends that this opportunity is taken to review the scope of claims management regulation, to ensure that it is future-proof.**

Investments

With the Bank of England base rate remaining at 0.5 per cent for the last 27 months,[23] savers are tempted to look beyond safe options. Fraudulent investment schemes are targeted to attract people in this situation. Some appear so good that consumers are willing to borrow to pay for them.

A CAB in Wales saw a man who had been looking for an investment. He had answered an internet survey and was then contacted by a firm who sold him an interest in plots of land they claimed they would be getting planning permission for. He invested £75,000 through savings and a £48,000 loan that would take five years to repay. The firm appeared to be a sole trader, rather than a registered company and the client sought advice when they stopped contacting him.

A CAB in the South East of England saw a man who had been looking for alternative investment opportunities when he found he was losing money on his shares in high street banks. He was subjected to pressure

20. *Claims Management Regulation I impact of regulation third year assessment* – July 2010 Ministry of Justice
21. Ministry of Justice press release 2 December 2009
22. Ministry of Justice press release 2 March 2010
23. www.bankofengland.co.uk

selling by a sales person who spoke fast and loud. When the client asked about cancellation rights, the salesman said there did not seem to be any paperwork so he asked for further details to be sent. But when the paperwork arrived it said he had agreed to buy plots of land. He had already invested £32,000 using the equity in his property when he sought advice and was also being sold wine as an investment. He believed his name was being sold on and was now afraid to answer the phone.

Advance fee frauds are also employed to extract money from consumers who have been told they have won money. They are then persuaded that the money can only be released if they pay first.

An East of Scotland CAB reported their client had received telephone calls telling them they had won £800,000 from Euro Millions Lottery International. The client was receiving daily phone calls asking them to send one per cent of the £800,000 before they would be entitled to receive their cheque. When this client sought advice they had already sent a payment of £179. The bureau was relieved to note that they had not also given their bank details as other clients had.

A CAB in the East of England was helping a 77 year old man with his ongoing debt problems. He showed the adviser a letter saying that he had won £172,000. The letter encouraged him to respond immediately, with a £20 administration fee to arrange payment. The client half believed the letter and thought it might help solve his debt problem. He was angry to discover that it was a scam.

By the time the consumer realises their mistake these fraudsters are long gone. For individuals it can be impossible to trace them. The Enterprise Act 2002 allows enforcers to provide contact details about the business to consumers affected by fraud, to enable them to take action against that business, but not all cases will be investigated. **The National Fraud Authority needs to develop ways for consumers affected by fraud to obtain redress.**

24. London Evening Standard 27 July 2010

Looking to access credit and deal with debt

For today's consumers credit is part of everyday life. Whilst the low bank base rate has been good news for people who were struggling to pay their mortgage, access to credit has been restricted since the credit crunch in 2007. Meanwhile more people than people are facing financial difficulties. Recent estimates indicate that up to six million households are either in arrears with bills or credit commitments or are finding it a constant struggle to keep up.[24]

Funding an affordable loan

For consumers with a poor credit history, affordable credit is now hard to get. Consequently, people are taking out expensive credit with companies who target lending on people who are credit impaired. The income generated by sub-prime lenders is high and has increased in recent years. For example, Provident Financial, a major doorstep lender, reported a seven per cent rise in customer numbers in the first six months of 2010, to 2.3 million, with profits up 1.7 per cent to £54.1 million;[25] and Payday Loans report a record breaking 2010, with 13 new stores opening.[26]

The following cases show the consequences for clients:

A West of Scotland CAB saw a woman who had taken out a payday loan without checking the interest rate as she was desperate for the money. The client obtained the loan over the internet in a rush and did not check the terms and conditions. When the adviser and the client looked at the terms together on the company's website, they found that the APR on the loan was 1,700 per cent. The client informed the adviser that the loan was quicker to obtain than a crisis loan from the social fund as she had had previous experience of having to wait on the phone when applying for one of these.

A CAB in the North West of England saw a married woman whose household income was entirely derived from benefits. Gas, electricity, water and the TV licence were paid using payment cards; the cooker was on hire purchase and she rented a washing machine. To survive, she had taken several subprime loans and had sought advice about the 59 per cent interest rate on one of them. The bureau commented that the company's practice of offering new loans to cover old loan payments were adding to her spiralling debts.

A man sought advice from a London CAB about the payday loans his brother had taken out. The interest was 60 per cent and the brother owed £1,250. He had tried to access a high street bank loan to pay this off with less interest but had been refused because of his low income. The bureau commented on the extortionate interest rates offered to poor borrowers and the role these play in increasing poverty.

Despite the high interest rates some subprime lending is virtually a secured loan because the lender requires a guarantor. And credit secured by a bill of sale allows the lender to repossess the item on which the credit is secured (usually a car) without a court order. Consumers taking out these agreements do not have the same rights as consumers with hire purchase:

24. *The impact of Independent Debt Advice Services on the UK Credit Industry*, Friends Provident Foundation, 2010
25. London Evening Standard 27 July 2010
26. PaydayLoans.co.uk

A CAB in Yorkshire and Humberside saw a young, unemployed mother who had taken out an internet loan, with her father as guarantor. She was unable to meet the payments and agreed a settlement figure which was paid by a friend as a final settlement. But the loan company had still contacted the father and his employers. Their demands for the employer to make deductions from the father's wages resulted in his being threatened with dismissal.

A CAB in Wales saw a man who had bought a car with credit in the form of a bill of sale. The APR was 44.9 per cent and the agreement was secured on the car. When he developed serious, unstable angina and missed a payment, the company refused a reduced payment offer and said they would seize the car. There was some £9,000 left to pay on a car worth only £2,500 and the client could not get to his hospital appointments without it.

Bureaux are also seeing cases where victims of the recession are being cold called by credit broker firms offering to help find a loan. People are then charged a hefty fee for a loan that often fails to materialise, and cannot get their money back. In many cases they are persuaded to part with bank account details only to find money is withdrawn from their account without their consent. Their details are often then passed on to other companies who bombard them with more texts and cold calls offering loans, debt management or claims management services.

A CAB in the South West of England saw a Slovakian man who had limited English. He had applied for a loan from an internet company. Instead of receiving the loan, his bank details appeared to have been passed around four different credit brokers who all took a fee. He had not been able to convince his bank of the need to close his account in order to stop further losses and only achieved this with the bureau's help.

A West of Scotland CAB reported that out of the blue, a man had received a text message informing him that his application for a £2,000 loan had been accepted and to contact the company to complete the transaction. As the client had never applied for a loan, he contacted the company to complain about their marketing practices and to find out how they obtained his mobile number. They said this had been done through another company whom the client had never contacted. The client , who was extremely angry at the aggressive and unscrupulous marketing practices of the firm wanted advice on how to stop these methods.

In March 2011 Citizens Advice made a super-complaint to the OFT, which highlighted the level of detriment consumers are suffering as a result of unsolicited marketing and up-front fee charging practices by credit brokerage firms and by other consumer credit businesses.[27] In early June 2011, the OFT responded by setting out a package of measures to tackle unfair business practices in these business sectors, including new guidance on credit brokerage.[28]

They also supported our call to ban up front fees charged by credit brokers and asked the Government to look at the case for changing consumer credit legislation. **We believe that the Government should act on this recommendation.**

The OFT, however, do not agree that cold calling for credit broking, lending and debt management services should be banned under consumer credit law. **We continue to believe, however, that cold calling has provided a gateway to frauds and needs to be more tightly controlled.**

Whilst some credit practices are new, moneylenders have been subject to legislation for over a century. But loan sharks, trading outside the law and using threats and coercion, are still in evidence today. In 2004 the Illegal Moneylenders Teams were set up by the government to tackle the huge detriment suffered by consumers who fall victim to these traders. **We strongly support the continuation of funding of specialist Trading Standards teams, including the illegal moneylenders teams.** They are still an

27. *Cashing in* – 3 March 2011 – Citizens Advice and Citizens Advice Scotland
28. *Marketing and charging practices, in the sub-prime credit brokerage and debt management sectors, response to the super-complaint by Citizens Advice,* Office of Fair Trading, June 2011

essential provision, as illegal moneylenders are likely to proliferate in the current financial climate. The following cases show the detriment caused by illegal lending:

A West Midlands CAB reported the harrowing case of a man who had attempted suicide following threats from a loan shark charging extortionate interest. The client, a self-employed plasterer living with his parents, had only earned £120 in a six week period and had accumulated debts. He had never claimed benefits and instead turned to someone he knew who lent money, borrowing £2,000 to pay off arrears on his debts. Three months later he received a text demanding £3,200 and threatening to pass the loan on to someone who would charge even more and would beat him up. The police found him two days later with his wrists slashed.

A London CAB saw a pensioner whose only income was pension credits and disability living allowance, who had taken out a £1,000 loan with a seemingly legitimate doorstep lender. She sought advice when their collection agents frightened her by claiming to be a bailiff and using paperwork which looked like court forms. Her aunt had received the same papers. The bureau could find no evidence of a consumer credit licence or certified bailiff status and reported the case to Trading Standards.

A North of Scotland CAB saw a man who was struggling to repay money to a loan shark. The client borrowed £2,000 from the loan shark two years earlier, but despite making the agreed monthly payments, the debt had increased to £4,000. There was no written agreement and the client was worried that the lender was "very dangerous". He had been sleeping in his car or at his parent's house as he felt too threatened by the loan shark to stay at home. The client was in heavy rent arrears as result of the repayments, but did not want to report his situation to the local authority or the police.

Seeking to reduce debts – helping with debt management

Citizens Advice Bureaux in England and Wales deal with over 9,000 debt problems every working day. But not all debt advice is free. In 2010, 26 per cent of UK consumers were contacted by a business offering debt management services.[29] In November 2009 the OFT announced a formal compliance review of their statutory debt management guidance, which sets out minimum standards for the industry. They found widespread non-compliance, including misleading advertising that suggested their services were free of charge, poor advice based on inadequate information, and widespread non-compliance with the Financial Ombudsman Service's complaint handling rules.[30]

CAB evidence shows that many debt management companies use unfair and misleading marketing techniques, charge high fees and provide a poor service:

A CAB in the East of England saw a lone parent who was working part-time and was receiving tax credits. She had debts totalling £8,000. In March 2011, she was cold called by a company who asked for her by name. They claimed that they were calling on behalf of Citizens Advice as they could see she had debts, and that by the end of the phone call she would be debt-free. The client immediately put the phone down and went to her local CAB for the first time ever to find out how Citizens Advice knew she had debts and how they had got her contact details.

A South of Scotland CAB client applied online for a consolidation loan for card debts of £14,000. She was going on maternity leave in six months time and would not be able to make the usual monthly minimum payment of £350. She entered some contact details on one of the sites she found and was immediately called by a debt management company to say she had not qualified for a loan, but her details had been passed to them as they could help. The client gave details of all her debts

29. *Marketing and charging practices,* in the sub-prime credit brokerage and debt management sectors, response to the super-complaint by Citizens Advice, Office of Fair Trading, June 2011
30. OFT press release 101/10 28 September 2010

and monthly outgoings and the company's adviser told her that they would take all the debt, freeze the interest, and all she would have to pay them was £197 per month for seven years and the debt would be cleared. When the client asked about their fees, they said the first month's payment of £197 would go to them, plus a one off fee of £100. She thought this was too good to be true. When the CAB checked the website, they found that their fees are the first monthly payment of £197, a one off fee of £100 plus a monthly management fee of £100 while the agreement is in force, totalling approximately £8,400 over the seven years.

A CAB in the South West of England saw a 43 year old widow who was working part time. She had over £1,000 in rent arrears and her landlord had obtained a suspended possession order, meaning that her home was at risk if payments were not maintained. She also had £3,878 in non-priority debt. In 2010, she was signed up by a debt management company, paying them £70 per month, £30 of which was their fee. The CAB calculated that she would end up paying nearly double what she owed over eight years if she stayed with this company. The CAB also noted that as she had been paying the debt management firm at the expense of her rent, the debt management plan was not in her best interests. The company also had not spotted that she would be eligible for a debt relief order which would have written off all her debt within 12 months.

A CAB in the South East of England reported that within two days of having been declared bankrupt, a woman had received an offer of a secured loan to annul the bankruptcy. As she was not a home owner, she would not have been able to take up the offer. The bureau was concerned that other clients could find that what appeared to be a solution to debt problems could add further debt and homelessness to their problems.

In other cases frauds and scams are disguised as debt management businesses, for example:

A CAB in the South East of England saw a woman who had been cold called by a company offering assistance with her debts. They took a £400 fee from her and suggested that she could apply for a debt relief order, a low cost alternative to bankruptcy for people in England and Wales. They helped her produce a list of creditors and then told her to come to the CAB to make the application. When the CAB looked at her case, they quickly ascertained that she would not be able to apply for a debt relief order as she owed more than £15,000. The client had lost £400 and faced eviction.

The OFT has recently taken licencing action against a number of debt managementcompanies for breach of the debt management guidance[31] and have just published a consultation on how it should be revised to capture new unfair practices. This is welcome. **We believe that the OFT must continue to take prompt enforcement action where licensed debt management companies are failing consumers.**

31. OFT press releases on 2 November 2010, 2 December 2010, 28 January 2011, 22 February 2011

What needs to be done to tackle these problems?

Most of the problems identified in this report are already covered by existing consumer protection law on consumer credit and unfair commercial practices. This legislation requires that consumers should receive the information they need to make a purchase and are treated fairly. Where cases involve cold calling, the contracts made would be covered by distance selling legislation including cancellation rights. And the Payment Services Regulations 2009 require banks to refund monies when they are taken from their bank accounts without the customer's proper authorisation.

Most regulators have comprehensive rules designed to protect consumers and evidence of non-compliance can lead to enforcement action. Trading Standards and the OFT also can also enforce breaches of a wide range of consumer protection legislation. The police have relevant powers too, particularly in respect of fraud.

Whilst much enforcement work is carried out by regulators and trading standards, there will never be sufficient resources to tackle all these breaches. There will need to be changes to deal with the problems consumers face.

The future of enforcement

The immediate future looks set to get worse before it gets better. Amongst other things, the Office for Budget Responsibility (OBR) has forecast higher than expected inflation, a squeeze on household disposable income, and a weak labour market.[32] And over the whole five year forecast recovery is expected to be weaker than the recession of the early 1990's. We are concerned that this could simply encourage more scams and sharp practices.

In these circumstances we believe that consumers, their advisers, enforcers and regulators will need to join forces to tackle rogue traders more effectively. Enforcement actions can improve consumers' confidence by providing them with redress as well as punishing the criminal aspects of the wrongdoing. And if enforcers use the restorative justice powers in the Regulatory, Enforcement and Sanctions (RES) Act 2008 to require the perpetrator to provide redress to consumers, the incentives for business compliance will be huge. Unfair practices should not pay.

There are a number of new developments which link enforcement and redress:

- The civil sanctions pilot which allows enforcers to use restorative justice, fines and undertakings for breaches of consumer protection law.
- A new Consumer Rights Act to simplify consumer protection law, provide simpler redress, co-ordinated Trading Standards powers and to transpose the proposed new EU Consumer Rights Directive into UK legislation.
- EU proposals for Alternative Dispute Resolution.
- The proposed new consumer landscape.

Civil sanctions

The civil sanctions pilot is designed to be the Government's practical trial of new enforcement powers contained in the RES Act 2008. The pilot will involve 17 Trading Standards Services (TSS) and the OFT taking enforcement action against unfair commercial practices, breaches of general product safety and lack of compliance with weights and measures law. The enforcers can choose from a wide range of enforcement powers, including undertakings, injunctions, fines and consumer redress, rather than just costly criminal prosecutions.

This represents real potential for a regime where enforcement and redress work together to stop

32. *Economic and Fiscal Outlook*, OBR, March 2011

businesses profiting from unfair trading practices. But the legislation needed to use the RES Act powers in all relevant legislation for the agreed enforcers has not yet been laid. This means that the pilot cannot start, despite three Government consultations on the detail of the pilot and how it will work.[33] The monitoring group was set up early in 2011. Consumer groups and the participating enforcers are very keen for it to start. **The CAB service calls on the Government to take urgent action to lay the legislation that will enable the pilot to commence and to announce a firm date for the start of the pilot.** Without this pilot, the RES Act powers will not allow cash-strapped enforcers to use a better and cheaper range of enforcement tools.

The UK could then lead the way in future proposals for EU consumer protection law simplification, by making the link between enforcement and redress. The Civil Sanctions Pilot could also establish which enforcement tools work most effectively.

Redress for unfair commercial practices

Enforcement will never be able to prevent or fully remedy breaches of consumer protection law alone. Consumers also need a private right to redress to challenge businesses that trade unfairly. In April 2011 the Law Commission consulted on providing consumers with a clear legal right of redress for all unfair commercial practices.[34] It also contains proposals to simplify consumer law redress, including aligning public law obligations with private legal rights for misrepresentation.

If the proposals in the consultation become law, there will be a clear link between enforcement and redress, and it should be easier for consumers to get redress. **The CAB service supports the reform of consumer redress proposed by the Law Commission including the recommendation that private rights of redress are available for misleading and aggressive practices.**

Simplifying consumer law

The Government has been seeking views on which laws, including consumer protection laws, we really need and which should be included in a bonfire of unnecessary red tape. Any changes to simplify the law will be included in a Consumer Rights Bill in 2014.

This initiative could ensure that consumer law is easier to understand and use. But it should not be an opportunity to diminish consumers' rights.

Incomprehensible and outdated legislation can certainly be a barrier to businesses' understanding and delivery of consumer rights. UK consumer protection law has developed on a piecemeal basis over many years and consequently some of the same protections are delivered in several pieces of legislation, whilst gaps remain in other areas. But all this legislation was enacted in response to proven consumer detriment.

What is red tape to a business can be an essential protection for vulnerable consumers. **We are concerned that this initiative could lead to the abolition of legislation simply because it is unpopular with those it is designed to regulate.** Specific proposals to repeal consumer protection legislation need to be carefully assessed against that legislation's objectives, including whether the problem the law was designed to stop might re-emerge. Where modern consumer and market practices do not fit easily with existing legislation, amendments may be needed, rather than just repealing the whole legislation. For example, consumers seeking to sell their home on supermarket internet sites have found that the Property Misdescriptions Act 1991 raised concerns for the site host. But this Act was designed for a time when estate agents were the main means of selling property and because there were problems of misleading and vague advertising.

We recommend that the consumer law simplification agenda is guided by the recent experience of transposing the Unfair Commercial Practices Directive (UCPD) into UK legislation. Twenty three pieces of UK consumer protection law were replaced by the more widely drafted provisions of the UCPD. But first the existing UK law was carefully reviewed to ensure that elements which were not adequately

33. Civil Sanctions Pilot – a consultation on the pilot operation of civil sanction powers for consumer law enforcement – BIS – March 2010; Civil Sanctions Pilot - Joint consultation by the OFT and LBRO on the operation of the BIS Civil Sanctions Pilot – December 2010 (OFT 1296)

34. *Consumer redress for misrepresentation and aggressive practices: a joint consultation paper* – Law Commission consultation paper no. 199 / Scottish Law Commission discussion paper no.149

covered by the UCPD were kept. This avoided the expense of re-enacting much needed legislation when previously acknowledged detriment re-emerged.

Some simplification of consumer law has already been the subject of research and consultation. For example, the Law Commission reported on amalgamating Unfair Terms in Consumer Contracts Regulations 1999 and the Unfair Terms Act 1977, where it can be difficult to establish which law applies to different circumstances. **We support re-enactment of unfair terms law into a single piece of legislation.**

In addition, unnecessary differences in legislation, such as different cancellation periods, should be rectified through the simplification agenda. This is being changed to a standard 14 days in all the EU consumer protection Directives. It had been enacted in the new Timeshare Directive and is incorporated in the proposed Consumer Rights Directive for distance and doorstep sales. **Simplification that delivers alignment on issues such as cancellation rights is very welcome and can simplify things for business and consumers.**

EU proposals for Alternative Dispute Resolution (ADR)

The cost to consumers in time, money and anxiety of taking a business to court in order to seek redress is often such that people give up rather than pursuing their legal rights. Whilst consumer education empowers people, straightforward means of resolving complaints are also needed. Traders could also find that ADR might be a better alternative than taking court action against a consumer.

At the beginning of 2011 the EU consulted on improving consumers' access to redress. Statutory ADR is already provided in the UK for complaints about fuel, telecommunications, estate agencies and financial services. Consumers in these sectors can complain to the statutory provider when they have been treated unfairly and the business involved will not resolve the problem satisfactorily. In addition some self regulatory initiatives provide dispute resolution, including OFT approved codes of practice and some local authority assured trader schemes run by Trading Standards Services to help local people chose traders who offer good customer service and comply with consumer protection legislation.

The Government recognises the value of ADR in the recently published consumer empowerment paper. They are considering new measures to develop ADR where no scheme exists. Despite strong evidence that consumers would be more willing to defend their rights in court if they could join a class action, it is disappointing that the Paper rejects class action, due to concerns about costs on business. **We believe that the EU and UK Government should ensure that simple and effective redress is available for all consumer purchases.**

The consumer landscape

On 14 October 2010 Dr Vince Cable, Secretary of State for Business, Innovation and Skills, announced an exciting new consumer landscape:

> "Consumers are represented by a bewildering array of public, private and voluntary bodies, which often duplicate efforts to inform, educate and advise consumers of their rights. Our aim is to create a simpler structure with a single competition authority and a stronger role for front-line consumer services."

Trading Standards will take over much of the OFT's consumer law enforcement role and will need to work across their traditional local authority borders as a result. But this is not new for enforcers – the Scambuster and Illegal Moneylender teams provide good examples of the need and value of regional working.

In addition, Consumer Direct will be transferred to the Citizens Advice service from 2012. Consumer Direct provides the evidence and intelligence enforcers and regulators need where things are going wrong. This provides an opportunity for enforcers and regulators to work with consumers and advisers to tackle those who continue to act outside the law. In 2013 the Consumer Focus advocacy functions will also pass to the Citizens Advice service.

Those working in the new consumer landscape face tighter financial constraints. As a result, better use will need to be made of all the intelligence and resources available for enforcement. Consumers and their advisers will need to share information about the problems consumers are experiencing and understand the whole range of consumer protection available to tackle them.

Everyone will have fewer resources. Consumer protection as a whole and across markets currently regulated separately will need a co-ordinated and joint approach. **In these desperate times, consumers will need information, advice, education, enforcement, regulation, empowerment and redress to work together.** The CAB service is fully engaged with this joint approach to protecting consumers.

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