

**A Better Deal for Consumers  
Delivering Real Help Now and Change for the Future  
July 2009**

**HM Government**

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## **CORRECTIONS**

**Page 90: second row of the table; the text below replaces the original text**

<b>Measures to regulate bailiff activity</b> and address concerns about the behaviour of bailiffs, fees charged and proposals for regulation of the industry.	By the end of this year the Government will introduce interim measures on training and on a bailiff register. We will also consult stakeholders on a package of measures to address concerns about the bailiff industry in 2010. An impact assessment on the proposals will be published at the same time. Subject to the outcome of this consultation, we will set out draft regulations on seizure of goods and a standardised fee structure in 2011. Any changes arising will be implemented in April 2012.	Ministry of Justice	Ch 1, Page 27
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*July 2009*

LONDON: THE STATIONERY OFFICE



HM Government



A Better Deal for Consumers

Delivering Real Help Now and  
Change for the Future

JULY 2009

Building   
Britain's Future



# **A Better Deal for Consumers**

## **Delivering Real Help Now and Change for the Future**

Presented to Parliament by  
The Secretary of State for Business, Innovation and Skills

By Command of Her Majesty  
July 2009

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# Foreword



Consumers are central to the success of the UK economy. The downturn has had an impact on all consumers and put unprecedented strain on many family budgets. We are already providing targeted real help now to protect people from falling into debt and to support those who do get into difficulty. We need to do more, not only for the remainder of the downturn, but also to prepare for the future. Together with the Treasury's forthcoming financial services paper, this White Paper brings a new approach to personal finance.

In our report on Digital Britain we highlighted the digital revolution that is transforming the world in which consumers live. In the last ten years, the way that people buy goods and services has changed enormously. Many consumers have embraced the benefits and flexibility of internet shopping, downloading music and video and browsing for good prices and information. When consumers know they are getting a fair deal, and they are confident that things can be put right when transactions go wrong, then that is good for business, good for the economy and good for them. We need to make sure that our consumer framework is flexible and fit to deal not only with today's markets, but also those of the next 10 years.

"A Better Deal for Consumers" responds to this dual challenge, providing both real help now to those in financial difficulty, and also building a consumer policy that will work in years to come.

The help we are providing for consumers now aims to help keep people in their homes, offer advice to those in debt, deal with sharp business practice and help people cope with essential bills. Looking further ahead we set out a new approach to consumer credit that learns the lessons from recent events and aims to help consumers make better borrowing decisions.

Our consumer policy will be active in identifying and dealing with new consumer markets; proportionate in its approach to business regulation and concentrate resources on rooting out the minority of rogue businesses.

The proposals and actions in this White Paper will form the basis of a consumer policy that responds to change and helps all consumers make informed and responsible choices.

A handwritten signature in black ink that reads "Peter Mandelson".

Rt Hon Lord Mandelson

A handwritten signature in black ink that reads "Kevin Brennan".

Kevin Brennan MP



# Executive summary

**This White Paper sets out the Government's new, more active and strategic approach to financial and other consumer markets. The proposals explain how we will extend this approach to the major challenges that the global financial crisis and economic downturn has created for consumers. We also explain how we will reshape consumer regulation to reflect the new ways we shop, so our regime remains one of the best in the world.**

**This White Paper focuses on four key themes:**

- Real help now for vulnerable consumers
- A new approach to consumer credit
- Empowering consumers through better enforcement and information
- Modernising consumer law

## REAL HELP NOW FOR VULNERABLE CONSUMERS

The last ten years have seen significant growth in levels of household debt, both secured and unsecured. There is evidence that consumers are starting to reduce their exposure to debt – the debt to income ratio fell by almost 10 percentage points during 2008. Nevertheless, significant numbers of people are struggling with the finances. The Government has taken urgent action at the macroeconomic level to support business during the recession, and has also developed a programme of action for families and individual consumers.<sup>1</sup>

Our key objectives in providing **real help now for people in financial difficulties** are to:

- Keep people in their homes
- Help people in difficulty with debt
- Tackle poor practice by business
- Assist vulnerable consumers to cope with essential bills.

To achieve this we are delivering:

- Help to support homeowners and social housing tenants in arrears, and better legal protection for mortgage holders and tenants
- "Breathing space" relief for consumers overburdened with arrears on their utility bills and other unsecured debts
- A new debtors' guide to help those with debt problems understand their options
- A new self-help debt advice toolkit to support debtors who want to negotiate repayment proposals with their creditors themselves
- A Money Guidance service in the North West and North East of England to help people make better financial decisions and avoid problem debt
- A new dedicated NHS helpline to offer healthcare support to those experiencing recession-related stress and anxiety
- Improved guidelines for health and social care workers to support people with mental health problems and overburdened with debt
- Reviews into how effectively energy and water suppliers protect vulnerable customers from disconnection and help customers with problem debt
- Swift enforcement action against debt write-off scams and against firms who exploit the vulnerable in debt
- Measures to ensure more responsible debt recovery practices by debt collectors and bailiffs
- Programmes to reduce household energy bills.

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<sup>1</sup> YouGov Debt Tracker, October 2008



## A NEW APPROACH TO CONSUMER CREDIT

Consumers have been seriously affected by the past two years of turmoil in the financial markets. UK consumers currently owe around £1.4 trillion to banks and other financial institutions. The vast majority of this borrowing is for mortgages on houses. However, £230 billion is consumer credit, which includes personal loans, overdrafts, credit cards, store cards and some other forms of specialist lending.

The Government is determined that we learn lessons from the experience of the credit crunch and the past two decades and we will take decisive action now to improve the regime for the future. We want to see a credit market emerge in a better shape, with fairer outcomes for consumers, and contributing to, rather than potentially operating against, wider financial stability.

This paper represents **a new approach to consumer credit**.

Our key objectives for the future are:

- Continuing access to credit for the most vulnerable in society to smooth income flows
- Fewer people taking on unsustainable amounts of debt
- Help for people to keep their finances on a solid footing
- Profitable businesses, which treat their customers fairly.

Actions to support these objectives include:

- A review of the regulation of credit cards and store cards, including a ban on the sending of unsolicited credit card cheques
- Ensuring consumers can access impartial support on choosing and managing credit cards and other consumer credit products
- Implementation of the Consumer Credit Directive, including new requirements on all lenders:
  - to explain their products to consumers adequately before they enter into a contract, including the consequences of any failure to repay
  - to check the credit worthiness of consumers before they lend to them
  - to follow guidance from the OFT to tackle irresponsible lending practices
- A review by the OFT of high cost credit markets
- A continuing programme of reforms to make the credit market work effectively for consumers and lenders.

## EMPOWERING CONSUMERS THROUGH BETTER ENFORCEMENT AND INFORMATION

Research by the OFT<sup>2</sup> estimated that there were 26.5 million problems with goods and services purchased in the year to April 2008, representing a loss of £6.6 billion to consumers. Many respondents to the Consumer Law Review highlighted the need for further support for vulnerable consumers taking action, and the need for a faster redress mechanism for disputes involving small sums of money. Consumers also need clearer information and better enforcement in order to take advantage of (and not be taken advantage by) new and rapidly developing markets.

The Government's objectives are to:

- Provide a new approach to enforcement which encourages responsible business to compensate consumers appropriately
- Ensure that those who enforce the law are equipped to deal with new ways of selling goods and services
- Improve the effectiveness of consumer education and awareness campaigns
- Provide a facility for collective actions to be taken on behalf of consumers, as a last resort to achieve compensation.

Actions to support consumers in a changing world include:

- A series of pilot projects to test the use of new powers to deliver compensation for consumers
- A new national strategy and specialist team for internet enforcement on consumer issues
- A central "Fighting Fund" to tackle rogues operating on a big scale
- A new Consumer Advocate who will co-ordinate work to educate consumers and be a champion for groups of consumers who have suffered a loss at the hands of a business
- A mechanism for consumers to get money back that has been recovered from overseas scams
- Support for product safety testing of imported goods at major ports
- Stronger penalties for rogue traders through new banning orders
- Simplifying the confusing array of sources of information and advice to ensure consumers can more easily find the support they need
- A new Consumer Rights Campaign.

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<sup>2</sup> Consumer Detriment: Assessing the frequency and impact of consumer problems with goods and services, Office of Fair Trading, April 2008, <http://www.offt.gov.uk/news/press/2008/49-08>

## MODERNISING CONSUMER LAW

Modernisation of consumer law is the final piece of the jigsaw which will enhance and protect consumer rights in a changing world. The actions here are based on the Consumer Law Review, carried out in 2008 by the Department for Business Enterprise and Regulatory Reform (BERR), the predecessor of the Department for Business, Innovation and Skills (BIS) (see box).

The Government's aims are that:

- Consumer rights should be clear in law and simple to understand, based on core principles of consumer protection
- Consumer laws must fit the modern marketplace and be suited to new ways of buying and selling that develop in the future
- Consumer rights should be accessible to the many, not the few.

Actions include:

- Developing rules on new “digital” products to ensure the core principles of consumer protection apply
- Looking at how the law on misrepresentation and duress can be made simpler, more transparent and accessible to business and consumers
- Reforming consumer law and simplifying weights and measures legislation without diluting consumer protection
- Modernising Trading Standards powers to help them deal more effectively with modern trading conditions
- Bringing forward, in due course, a new Consumer Rights Bill which will implement the proposed EU Consumer Rights Directive and modernise and simplify UK consumer sales law.

This Consumer White Paper has been produced in consultation with the Devolved Administrations. In those policy areas where the Government's responsibilities extend, the proposals outlined will apply across the UK. However, other aspects of policy highlighted in the document are devolved, in differing settlements, to the administrations in Scotland, Wales and Northern Ireland. It is the benefit of devolution that the Devolved Administrations can tailor their policies and thus deliver public services to meet the specific needs of their countries.

## THE CONSUMER LAW REVIEW

In May 2008 the Government issued a consultation paper calling for evidence on a comprehensive review of the UK's consumer protection regime. The Consumer Law Review looked at whether there were new approaches to deliver better outcomes for consumers, whilst at the same time reducing unnecessary burdens for business and promoting fair and competitive markets.

We received around 100 responses from a wide range of business associations, individual businesses, regulatory and enforcement bodies (including many local trading standards departments), consumer interest groups, legal and academic institutions, professional organisations and individual consumers. A summary of these responses has been published with this White Paper. The responses have informed the proposals set out in chapters 3 and 4 on empowering consumers through better enforcement and information and modernising consumer law.

## ENQUIRIES

For further information about this White Paper,<sup>3</sup> including enquires about any specific proposal, please use BIS's dedicated email address:

[Consumer.White.Paper@bis.gsi.gov.uk](mailto:Consumer.White.Paper@bis.gsi.gov.uk)

or contact

Consumer Policy Directorate  
Department for Business Innovation and Skills  
1 Victoria Street  
London SW1H 0ET  
020 7215 5000 (BIS switchboard)

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<sup>3</sup> [www.berr.gov.uk/whatwedo/consumers/index.html](http://www.berr.gov.uk/whatwedo/consumers/index.html)



# Introduction

**This White Paper seeks to address two challenges: first, how to help consumers during the downturn, and second, how to respond to the way consumer markets are changing because of the effects of globalisation, and the increasing use of technology by consumers and business to buy goods and services.**

The proposals in this paper are in part a response to an economic downturn that is unlike any other; a global slowdown in growth accompanied by a global contraction in credit available to consumers and business. The Government has acted quickly to restore confidence, through stabilising the banking system to protect savings, get credit flowing, VAT cuts and other changes. But we need to do more for hard-pressed consumers and this paper outlines what help we are providing now for people in financial difficulties, and longer term support for consumers as Britain emerges from the downturn.

Although many people have felt the impact of the economic downturn most acutely in relation to financial products, its effects have pervaded other consumer markets. As families tighten their belts, they become more conscious of every pound they spend. Evidence gathered by Consumer Focus suggests that consumers now perceive as risks what once they saw as opportunities, for example larger ticket items such as cars.<sup>4</sup> Increasing numbers of consumers are seeking out value by using the internet to research and/or buy goods.<sup>5</sup>

For consumers, value for money, perceived risks, word of mouth about good and bad service and confidence in the future will remain key factors in their purchasing decisions. The changing nature of consumer markets brought by globalisation, such as greater cross-border purchasing and increased use of the internet, are challenging Britain's consumer legislation and enforcers to respond to new and constantly evolving methods of selling.

Businesses now face tighter margins and more competitive markets, which can act as an incentive to provide greater choice and lower prices leading to increased transparency, greater profitability for the most efficient and an opportunity to build and develop customer loyalty. It is also important at all times, but particularly in these challenging economic times, that Government is committed to minimising the burdens – including regulation – on business.

A difficult economic climate can, however, also provide an incentive to a small number of disreputable firms to bend the rules, mislead consumers and gain an unfair advantage over the vast majority of businesses which behave legally and competitively. We take action where this has occurred (through intervention by regulators) and are determined to ensure that Britain remains a country where businesses thrive in fair and competitive markets, and consumers benefit from these. The Government's long-standing policy remains to promote open, competitive and independently regulated markets in an economy that is open to the world.

Competitive markets provide the best means of ensuring that the economy's resources are used to encourage enterprise, efficiency and choice for consumers. For example, new technologies will drive consumer demand, transforming existing products, and changes in demographic patterns will affect consumer demands for new products and services from

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<sup>4</sup> Unpublished research from Consumer Focus. Courtesy of Consumer Focus, May 2009.

<sup>5</sup> The Insight Report – An Experian Report Q1 2009

the businesses that provide them.<sup>6</sup> In turn, informed consumer choice helps to promote competitive markets. Four out of five consumers, for example, pass on news of their good or bad experiences to other people.<sup>7</sup>

This paper explains the Government's plans to maintain the UK's record of one of the best consumer frameworks in the world. Consumer confidence is essential to the smooth functioning of business and this paper sets out the Government's role in helping consumers deal with the challenges of a modern economy and how we will provide clarity and transparency for businesses and consumers alike.

### KEY PRINCIPLES OF OUR CONSUMER STRATEGY

In developing this strategy we have followed a number of key principles:

**Protection** – consumers are protected from unfair practices

**Responsibility** – consumers enabled to exercise greater personal responsibility and are helped to do so through greater transparency and information provision

**Enforcement** – businesses that behave fairly are not disadvantaged by the few that attempt to break the law. Breaches will be identified quickly and the full force of enforcement will be targeted at the law breakers rather than the majority that are generally compliant

**Change** – new and emerging consumer markets are identified and we ensure consumers have information about them and that laws and enforcers are able to deal with them

**Proportionality** – our actions will be accountable, consistent and transparent, targeted on the areas where major breaches or areas of confusion occur. The Government remains committed to carefully scrutinising proposals for new regulations that impact on business. Where relevant, we will consult fully with business and consumer groups

**Competition** – consumers benefit from open and competitive markets, so pressures for protectionism and anti-competitive practices and structures will continue to be resisted

<sup>6</sup> "Building Britain's Future – New Industry, New Jobs" HMG April 2009. [www.berr.gov.uk/files/file51023.pdf](http://www.berr.gov.uk/files/file51023.pdf)

<sup>7</sup> "Streetwise: real people, real issues" Consumer Focus, March 2009. [www.consumerfocus.org.uk/en/contents/cms/publications](http://www.consumerfocus.org.uk/en/contents/cms/publications)

## Chapter 1

# Real Help for Vulnerable Consumers



## 1.1 Overview

**This chapter sets out what the Government is doing to support those who find themselves in financial difficulty during the recession. Our priorities are to:**

- Keep people in their homes
- Help people in difficulty with debt
- Tackle poor practice by business
- Assist the vulnerable to cope with essential bills



To achieve this we are delivering:

- Help to support homeowners and social housing tenants in arrears, and better legal protection for mortgage holders and tenants
- "Breathing space" relief for consumers overburdened with arrears on their utility bills and other unsecured debts
- A new debtors' guide to help those with debt problems understand their options
- A new self-help debt advice toolkit to support debtors who want to negotiate repayment proposals with their creditors themselves
- A Money Guidance service in the North West and North East of England to help people make better financial decisions and avoid problem debt
- A new dedicated NHS helpline to offer healthcare support to those experiencing recession-related stress and anxiety
- Improved guidelines for health and social care workers to support people with mental health problems and overburdened with debt
- Reviews into how effectively energy and water suppliers protect vulnerable customers from disconnection and help customers with problem debt
- Swift enforcement action against debt write-off scams and against firms who exploit the vulnerable in debt
- Measures to ensure more responsible debt recovery practices by debt collectors and bailiffs
- Programmes to reduce household energy bills.

The last ten years have seen significant growth in levels of household debt, both secured and unsecured. People are also carrying higher levels of debt compared to their income. Along with overall rising debt levels, the use of credit has increased, with more people having access to credit facilities and more borrowers using multiple credit products. Survey data shows that the number of people with four or more credit commitments has doubled from 7% in 2002<sup>8</sup> to 14% of respondents by 2008.<sup>9</sup>

There is evidence that consumers are starting to reduce their exposure to debt – the debt-to-income ratio fell by almost 10 percentage points during 2008. With interest rates at historic lows, the cost of servicing debt is also low. Nevertheless significant numbers of people are struggling with their finances. Personal insolvencies grew by about 5% during 2008 to just under 130,000, with the first quarter of 2009 showing a further quarter-on-quarter rise of 5%.

<sup>8</sup> Kempson E, Personal Finance Research Centre (2002) 'Over-indebtedness in Britain'

<sup>9</sup> YouGov Debt Tracker, October 2008

The Government has taken urgent action at the macroeconomic level to support consumers and business during the recession, stabilising the banking system to protect savings and increase the flow of credit and cutting the rate of VAT to reduce the cost of consumer spending. We have also established a programme of real help to vulnerable consumers.

## 1.2 KEEPING PEOPLE IN THEIR HOMES

One of the most significant risks for people in difficulty with their debts is the loss of the family home. A large number of people are struggling to pay their mortgage as a result of the recession. 220,000 people were in 3-months arrears with their mortgages at the end of 2008, a year-on-year increase of 72%.<sup>10</sup> The Government's top priority has therefore been to deliver real help and better legal protection for homeowners in financial difficulty, and also for tenants whose landlords have their properties repossessed.

### 1.2.1 Help for homeowners struggling with mortgage arrears

The Government introduced Financial Services Authority (FSA) regulation of mortgages in 2004. The FSA's regime provides important protections for borrowers. It requires lenders to treat their customers fairly and to treat repossession as a last resort.

FSA regulation is now supported by the new mortgage pre-action protocol introduced in November 2008. This sets out clear guidance on what actions judges expect lenders to take before bringing a claim in the courts. This will help ensure that lenders have tried to discuss and agree other alternatives with the borrower.

We have also introduced further key measures to provide real help to homeowners in financial difficulty:

- We have enhanced **Support for Mortgage Interest** to give out of work households help with interest payments on eligible capital up to £200,000 (twice as much as before), and we have shortened the waiting period so that households can now receive help 13 weeks after claiming benefits at Jobcentre Plus instead of the previous 39 weeks, and there is no waiting period for pensioners
- We have rolled out a £285 million **Mortgage Rescue Scheme** for some of the most vulnerable households, where local authorities step in to help people stay in their homes
- We have launched **Homeowners Mortgage Support** which will enable households that experience a significant loss of income to defer a proportion of the interest due on their mortgage for up to two years, temporarily reducing their monthly payments to a more manageable level.

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<sup>10</sup> According to Council of Mortgage Lenders

The Welsh Assembly Government has introduced a £9.5 million Mortgage Rescue Scheme to assist in the most urgent cases where repossession and consequent homelessness will lead to additional pressures on social housing waiting lists.

Alongside these measures, the Government is providing:

- An extra £2.5 million for debt advice services to support the delivery of the Homeowners Mortgage Support scheme
- Universal court desk coverage to provide free legal representation for households facing possession proceedings
- Additional funding for local authorities to enable them to offer households small loans or one off payments to help prevent repossession or eviction.

These measures, along with low interest rates, will help prevent thousands of repossessions and will help provide reassurance to households that there is real help available to help keep them in their homes.

### 1.2.2 Improving legal protections for mortgage holders

Since May 2009, following a cross-Whitehall review of the legal protections afforded to homeowners by the law, the Government has started taking forward a series of measures to ensure that current protections are operating as they should and to improve those protections where necessary:

- We are inviting the Civil Justice Council (CJC) to produce a definitive statement on the powers available to the court in possession cases and the circumstances in which they can be used. This will help consumers by clarifying the present law. We expect this to be available in the autumn
- We are asking the Law Commission to conduct a review of the fundamental principles of residential mortgage law. Much of the current law is based on Victorian conveyancing reforms and 1970s consumer legislation. A detailed review would be an opportunity to bring the law up to date
- We are evaluating the effects of the Mortgage Pre-Action Protocol, which was introduced in late 2008. This evaluation will assess the extent to which lenders are treating court action as a last resort and will be complete by the end of the year
- We also intend to consult shortly on proposals to amend the law to ensure that owner-occupied homes cannot be sold by lenders without taking court proceedings.

### 1.2.3 Help for tenants

This year the Government has introduced real help to tenants falling behind with their rent and acted to protect those at risk of eviction because their landlord has defaulted on mortgage payments:

- We are currently piloting the **Housing Advice Pre-action Scheme** to help social housing tenants in rent arrears. Tenants are invited to a meeting with a local advice provider to explore the reasons behind the arrears and to try to reach agreement with their social landlord on a sustainable repayment plan
- We are also ensuring that private tenants whose landlords face potential repossession receive decent notice of a repossession hearing, regardless of their landlord's actions. The Civil Procedure Rules were amended from 6 April 2009 to ensure that tenants receive up to 7 weeks notice of the date of any repossession hearing
- We will introduce new legislation at the next opportunity to fill a gap in legal protection for private tenants whose landlords are repossessed. This will ensure that those tenants receive adequate notice to vacate the property, regardless of whether their tenancy has been authorised by the landlord's lender.

#### Figure 1: Fact box

##### Real help for homeowners and tenants in Scotland

Scotland has had its own Mortgage to Rent Scheme for homeowners at risk of repossession since 2003. Further measures to support homeowners at risk include:

- A new Mortgage to Shared Equity Scheme and improved Mortgage to Rent Scheme were launched in March 2009 by the Scottish Government with £35 million over two years
- A Scottish Government funded TV advertising campaign also helped raise awareness in Scotland of the support available through the National Debtline, and action has been taken to expand in-court advice services and significantly increase access to legal aid in Scotland
- The Scottish Government announced plans on 9 June to strengthen legislative protection for homeowners in Scotland following the report of an independent review of the legislation.

The Scottish Government's Wider Role Fund supports Registered Social Landlords (RSLs) to undertake projects in their local communities, beyond their principal role as landlords, which make life better for the people living there. A number of RSLs provide tenants with welfare rights and money advice, either by employing specialists themselves or by buying in services from local providers. The Wider Role Fund has helped fund the development of a best practice guide for the RSL sector in Scotland.

### 1.3 HELPING PEOPLE IN DIFFICULTY WITH DEBT

Increasing numbers of people are in difficulty with their debts, and struggling to regain control of their finances. Recent survey results suggest that the proportion of the population falling behind with any payment had risen from 13% in July 2008 to 15% by February this year. Roughly two thirds of those in arrears are more than three months behind in paying their creditors and 16% of households consider their repayments to be a 'heavy burden'.<sup>11</sup>

People in financial difficulty often need time to make plans for settling their debts without being pursued by creditors for payment. They can also benefit from professional support in assessing their financial situation and dealing with their creditors. Yet rising demand for debt advice, linked strongly to unemployment during the economic downturn, has put increasing pressure on the advice agencies. Capacity is likely to be stretched even further in the coming months.

That is why the Government is focusing efforts to ensure that:

- Creditors across the board offer some relief to customers who find themselves in financial difficulty
- Free, independent debt advice and support is available for those who need it
- Industry and the advice community both follow best practice guidance in handling clients with problem debt
- The most appropriate debt remedies are in place to support the over-indebted
- There is better legal protection for debtors' property.

#### 1.3.1 A "breathing space" to help people plan their debt repayments

The Government has been in discussion with a range of lenders and other creditors about what relief they can offer people who are in difficulty with repayments in order to help them sort out their financial situation:

- In December 2008, the credit card companies agreed to give a 30 day breathing space during which debts will not be pursued for people who had approached them through a not-for-profit debt adviser. In March the Credit Services Association, which represents debt collectors, put a similar 30 day breathing space for borrowers into its Code of Practice. If approached through a not-for-profit debt adviser, the major banks are now also offering consumers a 30 day grace period during which debts are not pursued on unsecured loans and overdrafts. This should give people time to work with an advisor to arrive at a credible and sustainable repayment plan to take control of their finances.

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<sup>11</sup> YouGov Debt Tracker, February 2009

- Energy and water suppliers have similar arrangements in place with a 30 day breathing space offered to over-indebted consumers if they have sought help from a debt advice agency in managing their debts. Suppliers may also extend this grace period during which they will not disconnect the customer. This will help such consumers by lessening the short term pressures, allowing them to sort out their affairs, and will help businesses by helping to bring about agreed regular payments in place of erratic and uncertain receipts.

### 1.3.2 Good practice by local authorities to help the indebted

The Government wants to ensure that consumers in financial difficulty are treated with consideration by all their creditors. Council tax is rightly considered a priority debt and given precedence over other debts by people unable to pay all their debts when drawing up a repayment schedule. But local authorities recognise that some people will face real difficulties in meeting their obligations during the downturn. Council tax benefit is available for those on low incomes and we are keen that everyone entitled should claim it. Councils have discretion to agree a payment arrangement with any taxpayer to enable them to clear arrears. They can also, and frequently do, make such arrangements instead of pursuing formal enforcement measures. Two further initiatives are underway:

- The Local Government Association and Citizens Advice have jointly developed a good practice **council tax collection protocol** on the steps for local authorities to consider in their council tax debt recovery and enforcement policy. The protocol, to be launched in July, will be used as part of a more formal, structured engagement between local authorities and advice agencies to provide better help for customers in difficulty with council arrears.
- We are considering the need to produce a new guidance document as an agreed **statement of good collection practice** for councils.<sup>12</sup> Similar guidance has already been issued by the Office of Fair Trading (OFT) on minimum standards expected of those engaged in debt collection practices in respect of debts arising from regulated consumer credit agreements.

In Scotland, councils have a corporate debt strategy. This aims to ensure consistent corporate treatment towards the recovery of arrears of council tax, council house rents, and other council charges by council staff, council funded voluntary organisations, and council appointed sheriff officers, and allows councils to balance their social responsibilities with their requirement to collect debts owed to them by citizens.

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<sup>12</sup> The Department for Communities and Local Government (CLG), in discussion with the Local Government Association, the Chartered Institute of Public Finance and Accountancy, the Institute of Revenues Rating and Valuation, Citizens Advice and other organisations

Figure 2: Case study<sup>13</sup>

### Real help with council arrears in Leeds

Leeds City Council believe they can improve collection rates for council tax and other council debts whilst also improving the financial circumstances of its residents. It has brought together the five main debt advice agencies, Leeds City Credit Union, the Council's housing providers and in-house welfare rights and benefits teams to help residents experiencing financial difficulties.

The Council's Corporate Debt Team assist customers who are struggling with council and other debts by ensuring that customers receive all the benefits they are entitled to and free independent debt advice. Whilst this process takes place, the team helps customers by coordinating their Council debts, suspending further recovery action (including evictions) where possible, and negotiating interim arrangements to prevent further debt.

One example of this policy at work involved a single woman on a low wage, whose monthly income was £780, with a monthly expenditure of £714. She had debts of £23,000, including £1,000 in rent arrears, 2 years Council Tax arrears, £600 in parking fines and £7,000 on overpaid housing benefit.

Working in partnership with Burley Lodge Centre Advice Service, the Corporate Debt Team secured payment arrangements for her priority rent and Council Tax debts, and arranged a minimal payment to her overpaid housing benefit. The parking debt was recalled from the bailiffs and written off, due to her severe financial circumstances.

### 1.3.3 Advice for those struggling with problem debt

The Government has invested significant funds to strengthen the provision of debt advice, including:

- Over £130 million in England and Wales for free face to face debt advice, targeted at financially excluded people between 2006 and 2011. Since summer 2006, over 220,000 clients have been counselled by the 500 face-to-face debt advisers funded through this scheme.
- Last November, the Chancellor announced additional resources in the pre-Budget Report for advice for those suffering in the economic downturn. This covered £10 million to support longer opening hours at over 330 Citizens Advice Bureaux and £5.85 million for the National Debtline to increase staffing levels on the helpline by 50% and thereby enable them to handle 1,600 calls a day.

<sup>13</sup> Courtesy of Leeds City Council

This is in addition to investment in legal advice available through the Legal Services Commission (LSC) to help those most in need in the current economic climate:

- The LSC has increased the civil eligibility limits by 5% to ensure that more people will be financially eligible for civil legal aid. Up to 750,000 additional people could become eligible for help and representation with their debt, housing and related problems.
- The Community Legal Advice (CLA) telephone service, operated by the LSC, helped more than 330,000 people in 2008/09, an increase of more than 30% on the previous year. This service offers help with a wide range of issues such as debt, welfare benefits, housing and employment. From April 2009, opening hours have been extended to include Saturday mornings and week day evenings. In July 2009, a new CLA Family Service will be launched. This will help a further 25,000 people a year with family law problems.
- The LSC made up to £13 million available to advice providers to fund extra debt, housing and employment cases towards the end of 2008/09.

The Government will deliver further support for those overburdened with debt, particularly the most vulnerable, to help them regain control of their finances:

- A new **Debtors' Guide**, to be published shortly by the Insolvency Service, will help those with debt problems to consider their options. The Guide will explain what the alternatives are, how they work and their pros and cons. It will provide vital assistance to individuals with consumer or business debts, or a combination of both. In Scotland, the Accountant in Bankruptcy currently publishes debtor and creditor guides on the bankruptcy process, including "Debt and the Consequences", which gives important information on dealing with creditors and debt in Scotland.<sup>14</sup>
- We will fund a **new self-help debt advice toolkit** being developed by the Money Advice Trust on behalf of the money advice sector and in conjunction with creditors. Available in the autumn, the toolkit will enable people to negotiate debt repayments with creditors themselves with more targeted advice agency support. The toolkit, to be accessed through debt advisers, will offer creditors reassurance that clients have gone through an approved debt advice process. This assisted self-help approach should allow over-indebted consumers to reach agreement more speedily and start making regular payments to reduce their debt. Use of the toolkit will also reduce pressure on the debt advice agencies and allow many more debtors in need of advice to be assisted.
- We will invest a further £300,000 in free **face to face debt advice**. This will give an immediate boost to debt advice capacity for six months and enable the equivalent of 12 full-time debt advisers to help an extra 1,200 people struggling with crisis debt.

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<sup>14</sup> www.aib.gov.uk



- Recognising how depression and other mental health problems often go hand in hand with financial distress, the Department for Health is providing £1.5 million from the Improving Access to Psychological Therapies initiative to set up a dedicated **NHS helpline**. Available this summer, the service will offer healthcare advice and support to people experiencing stress and anxiety related to the economic situation and refer them to local health and other appropriate services including, where their difficulties relate to problems with debt, to debt advice agencies.

### Figure 3: Fact box

#### Real help for the vulnerable in Wales

The **Community Advice and Listening Line for Wales** (CALL helpline)<sup>15</sup> provides a free, confidential service to members of the general public across the whole of Wales who are experiencing any kind of mental health problem, such as depression. They also give advice on the local services available to help with depression in the local area. CALL maintains a comprehensive, annually updated information database of organisations and the service they provide.

The Welsh Assembly Government is also funding the **Housing Debtline Wales**, a dedicated free housing debt telephone helpline for people in Wales. The all-Wales helpline will offer advice and support to people who face the threat of repossession of their property or eviction from their home in both the private and social housing sector. It provides a full debt advice service with the aim of minimising the number of repossessions and evictions and offering people an appropriate solution to their housing problems.

#### 1.3.4 Help to avoid getting into financial difficulty

As well as help for those already in difficulty with debt, the Government is committed to helping consumers to stay in control of their finances and make informed financial choices:

- The **Money Guidance service** provides free financial advice and help, in particular, to those at risk of getting into unmanageable debt. The service, currently being trialled in the North West and North East of England, under the Moneymadeclear brand, is available on the phone, online and face to face. In addition, the FSA's Moneymadeclear website and helpline are available to consumers wherever they are in the UK.<sup>16</sup> Subject to evaluation findings from the pathfinder trial, the Money Guidance service will be rolled out across the UK from 2010.

<sup>15</sup> CALL: Freephone 0800 132 737; Text HELP and question to 81066; [www.callhelpline.org.uk](http://www.callhelpline.org.uk)

<sup>16</sup> [www.moneymadeclear.fsa.gov.uk](http://www.moneymadeclear.fsa.gov.uk)

### 1.3.5 Best practice in debt repayment planning

One of the difficulties that people in debt have in negotiating with a range of creditors is working out and agreeing a repayment schedule that is realistic for their income and outgoings. The Government welcomes the progress being made by the financial services industry, the advice community and other parties to develop more effective ways of agreeing these repayment schedule. In particular, we support the development of:

- The **Common Financial Statement** (CFS), developed by the Money Advice Trust, the Finance and Leasing Association and the British Bankers' Association, as a common basis for debt advice agencies and their clients to communicate with creditors. The CFS allows all parties to work on solutions with common data and from a common standpoint. From August, debt advisors will help consumers by adopting an improved approach to assessing current and reasonable costings of their expenditure in working out their budget for repayments. Creditors are adopting improved new procedures to let consumers know whether or not their repayment offers have been accepted or rejected or are subject to query, providing clear reasons for any rejection.

People with mental health issues are far more likely to fall into debt and difficulties with debt can lead to a worsening of mental health condition; the mentally ill are a particularly vulnerable group during the current downturn. One in four adults in the UK will suffer some form of mental illness.<sup>17</sup> One in two adults in difficulty with debt also has a mental health problem.<sup>18</sup> Many people with mental health problems find it difficult or even impossible to cope with their debts and the stress that they cause. In order to help those with mental health problems who are in debt:

- The Money Advice Liaison Group has led work with the health profession, creditors and debt advisors to create good practice **Mental Health Awareness Guidelines**, in order that proportionate and sensitive approaches are adopted. The guidelines will be underpinned by the release of a new supporting pack aimed at helping advisors and creditors to resolve debt problems.
- In May, the Royal College of Psychiatrists and the FSA jointly published **Final Demand**, a booklet for health and social care workers to support people with debt and mental health problems and help them obtain the advice they need to cope with their financial difficulties.<sup>19</sup> Over 100,000 booklets have already been circulated to GP surgeries, health clinics and job centres.

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17 NHS Information Centre for Health and Social Care (2009).

18 Jenkins, R et al (forthcoming). Journal of Public Health as cited in "Final Demand" published by Royal College of Psychiatrists (2009)

19 [www.mhdebt.info](http://www.mhdebt.info)

Figure 4: Case study<sup>20</sup>

### Real help for those with mental health and debt problems

A Financial Inclusion Fund debt adviser recently helped a client with learning disabilities who suffered from paranoid schizophrenia and post traumatic stress disorder. Her health conditions affected her ability to manage money and assess financial risk. She was receiving threatening letters and multiple phone calls demanding payment of outstanding debts which she found extremely distressing.

The client attended Bristol Citizens Advice Bureau with her support worker seeking advice about an unsecured loan, her credit card debt and an overdraft she had with a major high street bank.

The adviser wrote to the bank and used the **Mental Health Awareness Guidelines**, the Banking Code and the Consumer Credit Act 2006 to request a write off for all accounts due, to which the bank agreed.

#### 1.3.6 Alternative remedies for those in debt

The Government is working on a number of new statutory schemes to assist the over-indebted:

- With effect from 6 April, we introduced the new **Debt Relief Order (DRO)**, one of a package of measures included in Part 5 of the Tribunals Courts and Enforcement Act 2007. The DRO, which does not apply in Scotland, is designed to assist those who will never be able to pay their debts and who have minimal assets. This provides a low cost way out of debt for people who would otherwise be trapped because of too low an income though there are consequences for the debtor.
- We will consult shortly on whether to introduce a new **statutory Debt Repayment Plan (DRP)** as a strengthened alternative to the voluntary Debt Management Plans (DMP) currently operating. A DMP is an informal and flexible agreement set up by a provider, who re-negotiates repayment terms for a debtor with creditors, so that all payments are consolidated into one affordable monthly payment, which the provider collects and distributes. The Ministry of Justice (MOJ) and Insolvency Service consultation will consider whether to bring into force regulations allowing the Lord Chancellor to approve operators of a statutory DRP that would stop the addition of interest/charges and restrict enforcement without leave of a court. Such plans could compel creditor participation and allow debts to be partially written off. The consultation will also ask what form of regulation is needed to ensure the introduction of effective plans that strike an appropriate balance between providing better protection for debtors and the best possible return for creditors.

<sup>20</sup> Courtesy of Bristol Debt Advice Centre

### 1.3.7 Better safeguards for debtors at risk of losing their home

A creditor can apply to the courts for a “charging order” to place a charge on an asset, usually the debtor’s property. Charging orders, which are not available in Scotland, do not require debtors to sell their property but a creditor can then apply to the court for an order for sale to enable the property to be sold to repay the debt.

Recent evidence shows that only a very small proportion of charging orders result in an order for sale application. However, there has been a steep rise in charging orders in recent years as creditors seek to secure arrears against debtors’ homes. It is important to ensure all appropriate safeguards are in place to avoid debtors unfairly losing their homes as a result of what might have been originally relatively small, unsecured borrowing.

The Government will therefore:

- Look at **putting better warnings/explanations into unsecured credit agreements** highlighting the risk of losing your home if you default on repayments
- Consult on **introducing a financial limit below which a creditor could not apply for an order for sale**. In doing so, we will explore the implications of the threshold only applying to cases where the original debt arose under regulated consumer credit agreements.

## 1.4 TACKLING POOR BUSINESS PRACTICE

The Government is committed to taking tough, swift action against those who exploit the vulnerable through misleading advertising and who undermine individual responsibility to repay debts; and to pressing for better practice by the debt collection sector.

### 1.4.1 Tougher enforcement against those exploiting the vulnerable

- We are **tackling “debt management” scams**, such as where businesses use “look alike” websites to lead consumers to believe that they are charity-based sources of free debt advice. More recent examples of bad practice include firms using unsolicited and misleading calls to advertise debt management services. The OFT has taken action against rogue firms seeking to exploit people in debt by advertising their services in a misleading way.
- We are also **taking action to protect consumers who may be misled** by claims management companies, debt management companies or solicitors. For example, some of these businesses are engaged in highly questionable practices and often misleading consumers by offering to help borrowers get out of their commitments by using powers on unenforceable loan agreements in consumer credit legislation. The MOJ, the OFT and the Solicitors Regulation Authority are working together to inform consumers about the dangers of being misled by advertising or marketing, and to take enforcement action against firms who breach regulatory requirements.

### 1.4.2 Better compliance by the debt recovery sector

- We have agreed with industry **measures to strengthen compliance by debt collectors**. As well as providing a 30 day breathing space to debtors, as outlined in section 1.3.1, following discussions in March, the Credit Services Association has also reinforced to members that they must investigate disputed debts seriously and suspend collection while doing so. They have further introduced a suite of advice leaflets for their members and debtors to remind them of their legal and other rights, and updated their website to provide similar advice for enquirers.
- We will also introduce, by the end of the year interim measures in advance of regulation, including minimum training requirements and competences for bailiffs and an online certificated bailiff register which can be checked by debtors. Similar training and transparency requirements for the debt collection industry are already set out in the Credit Services Association code of practice.
- We will consult on a package of **measures to address concerns about the bailiff industry** in response to concerns raised about the behaviour of bailiffs, the fees charged and proposals for the regulation of the bailiff industry. The MOJ will not now implement measures to extend the powers of entry and the use of force by bailiffs and enforcement officers. The consultation will set out draft regulations on seizure of goods, and allow for detailed consideration of a standardised fee structure. We intend to implement the changes in April 2012 which will provide clarity for debtors and certainty for creditors.

## 1.5 HELP FOR VULNERABLE CONSUMERS TO COPE WITH ESSENTIAL BILLS

Increases in fuel prices during 2008 have had an impact on poorer households with increases in numbers in fuel poverty. The number of vulnerable households facing fuel poverty in 2008 was approximately 3 million, up from 1 million in 2004. Water bills, similarly, have increased above the rate of inflation. By 2009/10, 40% of households on the lowest income are likely to be paying more than 3% of their income on water and sewerage charges, compared with 29% in 2004/5.

The Government is therefore dedicated to ensuring help for vulnerable families as they continue to cope with their utility and other essential bills. We want to see people helped to avoid debt in the first place, and for those who still get into difficulty to have their problems managed more effectively.

### 1.5.1 Support and protection for vulnerable energy consumers

Following a voluntary agreement between the Government and the energy suppliers in 2008, the big six energy suppliers now offer programmes of assistance to their most vulnerable customers:

- Last year the energy suppliers spent £100 million on **social assistance** and in 2009/10 they will spend £125 million, rising to £150 million in 2010/11
- Last summer Ofgem set out guidance that a **social tariff** should be the best one a supplier offers in the customer's area, including online. In December, Ofgem estimated that around 800,000 customer accounts were benefiting from a social tariff securing significant annual savings. Suppliers' social programmes also include discounted tariffs, debt relief advice and trust funds for their most vulnerable customers.

During winter, gas and electricity companies are not allowed to disconnect pensioner households knowingly and have to take all reasonable steps to avoid disconnecting households where someone is sick or disabled. Ofgem and Consumer Focus are undertaking two reviews:

- To examine how effectively the energy suppliers are **protecting vulnerable customers in practice from having their gas or electricity disconnected**. The review will be reporting its findings and recommendations later this year.
- To consider how energy suppliers are **helping their customers to avoid and manage debt during the recession**. This will cover how well suppliers take a customers' ability to pay into account when agreeing debt repayment levels; practices around the installation of prepayment meters for debt recovery; and promoting best practice amongst suppliers on how to help customers on low incomes.

### 1.5.2 Affordable household bills

- In 2008, the Government commissioned an independent review of household charging and metering for **water and sewerage services** (Walker Review) to explore whether new actions are needed to ensure a sustainable and fair system of charging, particularly for the more vulnerable consumers. The interim report was published in June 2009 and the final report is expected in autumn 2009. We will provide a full response to the final report, including possible consultation on the recommendations.
- We are exploring the **impact of food price rises and the economic downturn** on the poorest and most vulnerable households. We will consider whether there are any suitable policy interventions by autumn 2009.

Figure 5: Fact box

**Real help to reduce household energy bills**

The Government has programmes in place which contribute to reducing household energy bills and tackling fuel poverty. The Warm Front Scheme, Carbon Emissions Reduction Target and the Decent Homes Programme primarily address household energy efficiency through the installation of insulation and heating improvements. Winter Fuel and Cold Weather Payments increase qualifying household incomes during the winter months.

Warm Front, the Government's flagship scheme in eradicating fuel poverty, has assisted nearly 2 million vulnerable households since its inception in June 2000. This has included 500,000 households in the last two years alone. On average, each household receiving Warm Front assistance, including insulation and heating measures along with a Benefit Entitlement Check, has the potential to save £300 per year on energy bills.

Winter Fuel Payments give reassurance to older people that they can afford to turn up their heating in the winter months without worrying about the cost. We spent over £2 billion on Winter Fuel Payments in winter 2007/08. An additional payment for last winter (2008/09) of £50 for households with someone aged between 60 and 79 and £100 for households with someone aged 80 or over was made. This payment will be retained for winter 2009/10.

Cold Weather Payments are part of the Social Fund scheme. They help towards extra heating costs during a week of very cold weather. From 1 November 2008 to 31 March 2009 actual expenditure in the UK (excluding Northern Ireland) was £210 million with 8.4 million payments made.

## Chapter 2

# A New Approach to Consumer Credit



### 2.1 Overview

**This chapter sets out how the Government intends to make the personal finance market work better for consumers. We want to see:**

- Continuing access to credit for the most vulnerable in society
- Fewer people taking on unsustainable amounts of debt
- Help for people to keep their finances on a solid footing
- Profitable businesses, which treat their customers fairly



The Government will achieve this by a series of measures that will ensure the right balance between protection for consumers and a market in which business can continue to meet diverse consumer needs. This will involve:

- A review of the regulation of credit cards and store cards, including a ban on the sending of unsolicited credit card cheques
- Ensuring consumers can access impartial support on choosing and managing credit cards and other consumer credit products
- Implementation of the Consumer Credit Directive, including new requirements on all lenders:
  - to explain their products to consumers adequately before they enter into a contract, including the consequences of any failure to repay
  - to check the credit worthiness of consumers before they lend to them
  - to follow guidance from the OFT to tackle irresponsible lending practices
- A review by the OFT of high cost credit markets
- A continuing programme of reforms to make the credit market work effectively for consumers and lenders.

The past two years have seen extraordinary turmoil in financial markets. As well as leading to significantly reduced access to credit for financial institutions and for businesses, consumers have also been seriously affected. Chapter One set out what the Government is doing to help people who find themselves in financial difficulty.

This chapter sets out our plans for the longer term for consumer credit. It looks at:

- The lessons we can learn from recent events
- The future for credit cards and high cost credit
- How we can help everyone make better borrowing decisions
- How we can make the credit regime work more effectively for consumers and lenders.

Figure 6: Fact box

### Rebuilding consumer trust in financial markets

The Treasury is leading the Government's thinking on how to restore confidence in financial markets and will publish a paper shortly on renewing financial markets.

As part of this, the Government will look to pursue the objective of building consumer trust and confidence in financial markets, to support:

- confident and capable consumers able to exert genuine competitive pressure on the industry
- high quality advice and guidance
- access for all consumers to simple, transparent, value for money products which meet their needs
- an appropriate level of consumer protection
- swift redress when something goes wrong.

## 2.2 THE LESSONS FROM RECENT EVENTS

UK consumers currently owe around £1.4 trillion to banks and other financial institutions. The vast majority of this borrowing is for mortgages on houses. However, £230 billion is consumer credit, which includes personal loans, overdrafts, credit cards, store cards and some other forms of specialist lending.

The amount we all borrow on an unsecured basis has increased dramatically over the past twenty years; in 1993 total consumer credit borrowing was only £70 billion. This period saw considerable growth in the use of credit cards. Interest rates were low which kept the cost of repayments, even on larger debts, manageable for most people.

As a result of the credit crunch and the recession, total levels of consumer borrowing are currently flat or even in decline. Many people who can afford to are paying back their debts. Lenders are adopting a more cautious approach to accepting new business. Some lenders have found it difficult to fund further lending, with the number of companies offering personal loans halving over the last two years.

Despite these current trends, we fully expect confidence in the credit market to return in due course. As house prices recover and we emerge from the recession, people will want to borrow again. Lenders will also regain confidence in this market, building on the measures that we have taken to support the financial sector along with recovery in the real economy.

The Government is determined that we learn lessons from the experience of the past two decades and the credit crunch and will take decisive action now to improve the regime for the future. We want to see a credit market emerge in a better shape, with fairer outcomes for consumers and contributing to, rather than potentially operating against, wider financial stability.

Consumer credit regulation should support access to credit and fair treatment for consumers while helping to prevent people from becoming over-indebted. We recognise that any move to strengthen regulation and reduce the risk of over-indebtedness carries the risk of making credit more expensive and less readily available.

Nonetheless, the Government believes that some limited reform may be necessary. We entered this recession with higher levels of household debt as a proportion of income than ever before. There are four sources of particular concern:

- We now have direct evidence of the negative consequences of poor lending and borrowing decisions for confidence in the whole financial system, particularly at times of wider economic uncertainty.
- We have record (and still rising) numbers of people seeking debt advice, suggesting that we are yet to see the full effects of the easy availability of credit during the past decade.
- Some credit card companies are increasing their rates at a time when base rates are falling. This is causing anger amongst consumers, but partly reflects the difficulties facing all participants in the credit market.
- Recent events have also reinforced the Government's long-standing concern about families on lower incomes who have to pay more for their credit.

Figure 7: Fact box

### Tackling over-indebtedness

Even before the current crisis, the Government was already concerned about the number of people with too much debt. In the early years of this decade we identified an increasing risk of over-indebtedness. This led to a major push across Whitehall with:

- Significant investment in support for debt advice, which has left us relatively well placed to deal with the currently high levels of demand
- Significant investment in the Financial Inclusion Growth Fund to support third sector lenders as a low cost alternative for financially excluded people
- Additional support for the Social Fund, which provides interest free credit to vulnerable people, allowing them to spread the payment of unexpected costs
- Major reforms to the way that consumer credit should be regulated, the first overhaul of the regime since the seventies
- New insolvency arrangements for people with limited assets and low incomes to avoid people becoming trapped in debt.

The Government has been working closely with consumer groups and lenders to understand the scale of the challenge facing UK consumers and to identify how best to respond. The issues are complex but we are already clear that both credit cards and the high cost credit sector need to be looked at particularly closely.

## 2.3 THE FUTURE FOR CREDIT CARDS

Interest rates for loans and overdrafts have begun to drop, but credit card rates have changed little during the recession and the Government is concerned that continuing high interest rates are putting pressure on household budgets and leading to increased levels of indebtedness. Credit card complaints amounted to 75% of the 24,300 complaints received on consumer credit issues by the Financial Ombudsman Service in 2008/09 – 34% of all the banking and credit complaints they received last year.

### 2.3.1 Review of how we regulate credit and store cards

Consumers value the flexibility of credit cards and their use has risen dramatically in the past decade. There are now 66 million cards in circulation, accounting for around 22% of all unsecured borrowing. Outstanding balances on credit cards amount to around £53 billion with the average card holder owing approximately £1,800. Store cards are a smaller market with about £2 billion of outstanding debt.

Most consumers use their credit and store cards responsibly but a significant minority consistently owe large sums, often including balances transferred from other lenders. People who regularly make only the minimum payment are using what should be a short term product for longer term borrowing needs, even where a personal loan could be much cheaper. Some people can lose control and take on unsustainable debts, particularly if they have several cards or are refused more appropriate forms of credit.

The Government has already taken decisive action to deal with the emerging practice of credit card companies imposing significant increases in the interest rate for riskier customers, (sometimes as much as 10-15%), often with little warning. As a result of our intervention, credit card providers have developed a set of Fair Principles governing how and when they will change a customer's interest rate when his or her risk profile alters.

We understand the need for regulation to strike the right balance between protection against indebtedness and having cards that are useful and accessible for the majority of consumers. It must result in products that are simple for consumers to use and understand while allowing firms the freedom to innovate in response to changing customer needs. We are also aware of the need to guard against unintended consequences when considering reform of a complex area such as consumer credit. However, we believe the time has come to examine whether the balance we currently have is right.

In particular we are concerned that a minority of consumers carry high levels of unsustainable debt with no prospect of paying it off in a reasonable time or at all. Better off, less vulnerable consumers are generally benefiting from free use of their cards or from 0% balance transfer deals, while customers who don't pay their card off in full each month now account for a large share of lender revenue. The complexity of cards is a real barrier to consumers looking to make the best use of their cards or to shop around effectively before selecting their card provider.

The flexibility of cards is at the heart of what makes them useful, but it can also allow consumers to quickly accumulate unsustainable debts. This is of particular concern at this time when people are facing financial pressures as a result of the downturn. We want to be sure that the commercial incentives of lenders are aligned with the best interests of borrowers, preserving the most positive features of credit cards while at the same time limiting the potential for borrowers to incur serious financial difficulty.

We will therefore review the regulation of credit and store cards, considering, in particular, where indebted consumers may be most at risk of incurring increased costs as they try to repay their debts. This includes whether future regulation should explicitly:

- **Place restrictions on card providers' ability to raise interest rates on existing debt.** Card providers are still putting up rates without properly explaining why and without any obvious change in the consumer's circumstances. We will look at whether

lenders should be required to provide more information to consumers when they raise rates, or even whether regulation should restrict the circumstances in which such increases can be introduced.

- **Require that repayments to a credit card account are allocated to debts attracting different interest rates on a fairer basis.** Currently all but a very small minority of card companies allocate any payment from a consumer to their cheapest debts first. We will look at whether debts should be paid off on a pro-rata basis, or whether the most expensive debts should be paid off first.
- **Require higher minimum payments to enable full repayment of the debt within a reasonable period.** Although standard practice varies among card providers, the vast majority of minimum payments are set very low. In some cases it can take 25 years or more to pay back. We will also consult on whether more information could help consumers understand the implications of making only minimum payments.

As part of the review, the Government will also look at the benefits and risks of banning the practice of increasing borrowers' credit limits without their consent. We plan to publish a consultation document on the future of credit cards in the autumn for discussion with industry and other stakeholders.

### 2.3.2 Unsolicited credit card cheques

There have been concerns for some time that the practice of sending out unsolicited credit card cheques to customers could tempt people to over-borrow when they may already be in financial distress. Earlier this year, the Government announced that it would legislate to ban this practice. We propose that the ban would prevent the credit card issuer sending out cheques except in response to a specific request from a customer at a particular time. The credit card issuer would be able to offer cheques to the customer but would require the customer to opt into receiving them.

### 2.3.3 Helping consumers make informed decisions about credit cards

Credit cards are complex products and it can be difficult to choose between them, especially as providers calculate and charge interest in different ways. Currently, only around 30% of consumers shop around before choosing a credit card.<sup>21</sup> Subject to consultation and feasibility, an impartial comparison tool for credit cards will be included on the MoneyMadedclear website to help consumers make an informed decision about which credit card would suit them.<sup>22</sup>

This is part of a wider aim to expand the MoneyMadedclear website, working towards the Thoresen Review's vision of an impartial and non-commercial 'one-stop-shop' Money

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21 "Credit Card Comparisons" Office of Fair Trading, February 2008 [http://www.offt.gov.uk/shared\\_offt/reports/financial\\_products/oft978.pdf](http://www.offt.gov.uk/shared_offt/reports/financial_products/oft978.pdf)

22 [www.moneymadedclear.fsa.gov.uk](http://www.moneymadedclear.fsa.gov.uk)

Guidance service.<sup>23</sup> We also intend to take steps to ensure that the Money Guidance service will not be subject to certain statutory provisions intended for the regulation of commercial credit firms.

## 2.4 THE FUTURE FOR HIGH COST CREDIT

Even for people on low incomes, access to credit can be vital at times. It allows families to respond to unexpected events such as their washing machine breaking down. It also allows people to pay for expensive items like a car that they would otherwise have to save for years to buy.

### 2.4.1 Review of high cost credit market

There is considerable political, media and stakeholder concern about the role of high cost credit (with typical APRs of 50% or more) particularly against a backdrop of rising credit exclusion. People on low incomes or with poor credit records can struggle to obtain access to cheaper credit from high street banks and building societies. Instead, they may use home credit (also known as doorstep lending), unauthorised overdrafts or sub-prime personal loans, all of which are typically more expensive than mainstream credit, reflecting the flexibility of the product, the cost of collecting the debts and the higher risk of default.

**The Government welcomes the OFT's announcement that its review of the consumer credit sector will focus on high cost credit and whether competition in these markets is effective in current conditions.**<sup>24</sup>

The review will identify: the level and drivers of competition in this market; the sources of suppliers' revenue; the choices faced by consumers; and the factors that influence their decisions. It will look across the range of options available to consumers, including payday lending and home credit, and examine the impact that the current crisis is having on both suppliers and consumers.

Some people would like to see a cap on the level of interest which can legally be charged on these types of credit. When we have previously considered the case for this, we have concluded that caps could be detrimental to consumers, resulting in lenders withdrawing products or substituting the reduced interest with higher charges on late payment or default. Higher-risk consumers could be denied access to legitimate sources of credit and have no option but to resort to illegal, unlicensed lenders, exposing them to much higher borrowing costs and potentially violent methods for obtaining repayment. The OFT review will, among other things, look at the experience of other countries including those that have introduced interest rate caps.

<sup>23</sup> [http://www.hm-treasury.gov.uk/thoresen\\_review\\_index.htm](http://www.hm-treasury.gov.uk/thoresen_review_index.htm)

<sup>24</sup> Consistent with its obligation to keep under review developments relating to the provision of credit to individuals, the OFT invited comments earlier this year on the scope of a review of the consumer credit sector which sought to assess the effectiveness of competition; examine the offerings of suppliers; and examine the behaviour of, and decisions made by, consumers. The review's scope has been refined to focus on high cost credit.

Figure 8: Fact box

### International comparisons on interest rate caps<sup>25</sup>

Evidence from previous studies of other countries has indicated that caps restrict access to credit for sub-prime groups as specialist lenders stop offering certain products or increase other charges to compensate for the cap on interest rates.

- More borrowers in France and Germany (which have caps) said that they, or someone in their household, had used an illegal lender than in the UK (7% in France, 8% in Germany and 3% in the UK).
- In Germany high-risk borrowers may be excluded from access to credit as minimum loan amounts are typically much higher than in the UK, and loans are only given to those in regular employment or with guarantors.
- Extra charges which fall outside the capped rate are levied for irregular payment behaviour. In France, for example, the stated typical APR on a credit card in 2004 was 20.8%, in line with that country's cap. However, the de facto APR if the account was properly managed was on average 29.4%, but if payments were missed, charges brought the rate up to 47.9%.

#### 2.4.3 Government funded loans for the vulnerable

The Government is committed to providing a safety net for people in need who are struggling to find affordable credit. In the recent Budget, we allocated:

- **An additional £270 million over the next two financial years to the Social Fund**, which provides grants and interest free loans to millions of people at times of pressure or crisis. In 2007/08 alone the Social Fund provided over three million grants and loans in the UK.
- **An extra £18.75 million to the Growth Fund, which supports community-based lenders such as credit unions and community development finance institutions to provide affordable loans** for a wide range of people on low incomes who cannot access mainstream credit. The additional investment, which is in addition to the £80 million already committed, will make 45,000 more loans available in 2009/10 and 40,000 more in 2010/11, reaching more families all over the country in these difficult times.

In addition, we will publish a consultation document on the long term reform of the Social Fund. This will consider improvements to the administration of the scheme and also look at how we can provide customers with help in managing their finances.

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<sup>25</sup> Policis, *The Effect of Interest Rate Controls in Other Countries*, 2004.



## 2.5 HELPING EVERYONE MAKE BETTER BORROWING DECISIONS

Consumers face a bewildering choice of credit products and different credit providers. They can borrow money in traditional ways from their banks or by using their credit cards. Many people borrow money when they shop, e.g. taking out 0% interest deals on a new sofa, or on a car. Department stores and other retailers will offer their own store cards, sometimes with a significant discount on that day's purchases for people signing up for the first time. Other consumers might want to cover a very short term problem with a payday loan or by using a home credit company or catalogue credit.

### Figure 9: Fact box

#### The European Consumer Credit Directive

The UK is currently implementing the European Consumer Credit Directive which will come into force in June 2010. This Directive is intended to support the development of a single market in consumer credit based on standard levels of consumer protection across the EU. It covers how credit products are advertised, the provision of consumer information, a right of withdrawal, termination of agreements, early repayment and creditors' liability for defective goods/services.

Many aspects of the Directive are similar to existing UK provisions, which will therefore require a degree of modification rather than complete overhaul. However, there are some new provisions, including in particular:

- a new 14-day right of withdrawal for consumers from credit agreements
- the right to make partial early repayments (in addition to the existing right to repay early in full)
- a requirement for lenders to provide adequate explanations about their products before the contract is signed
- a requirement for lenders to assess the consumer's creditworthiness before they grant credit.

The Government is currently considering the responses to its recent public consultation on how to implement this Directive and will be publishing draft regulations later in the summer.

In the face of this choice and complexity, the majority of consumers find it difficult to make informed decisions. This is particularly true when they are being sold a product in a pressured environment such as a busy shop, or by inexperienced staff. Individual lenders have also tended to base their lending decisions on whether they are likely to be paid back, rather than on whether the consumer can really afford the credit that is on offer.

Initiatives such as Money Guidance should help consumers feel more confident, knowledgeable and better able to identify the pros and cons of particular products when making borrowing decisions in the longer term. However, the Government is concerned that, in some cases, consumers are currently being encouraged to sign now and read the small print later, and that completing the sale is taking precedence over the full consideration of the long term consequences for individuals who may already be struggling with their finances. However, we want to ensure that any new requirements are fit for purpose and do not encourage a “tick box” approach which creates bureaucracy without offering real protection to the consumer.

With a view to helping consumers to make better borrowing decisions and forcing consumer credit providers to be more responsible, the Government will introduce:

- **New requirements on consumer credit providers adequately to explain their products to consumers, including the consequences of any failure to repay.**  
The requirement to provide a consumer with an adequate explanation of their credit product is one of the major provisions of the EU Consumer Credit Directive (CCD). We want to see consumer credit providers face up to their responsibilities to explain products properly even if it means a change in the way some lending takes place, particularly for in-store credit. We will publish draft regulations implementing this provision later in the summer.
- **New requirements on all consumer credit providers to check consumers’ creditworthiness.** This is another central provision of the CCD and draft regulations implementing this provision will also be published later in the summer. We want to see all consumer credit providers checking consumers’ creditworthiness before lending.
- **New guidance on what constitutes irresponsible lending to be issued by the OFT.** The requirement not to lend irresponsibly is a cornerstone of the reforms introduced by the Consumer Credit Act 2006. The new guidance will apply to all steps in the transaction process from advertising and marketing through to the handling of arrears and default. The OFT will consult on draft guidance this summer with a view to issuing final guidance early in 2010.

These three measures, taken together with the other requirements being introduced by the CCD, will create a new, stronger foundation for the regulation of all consumer credit lending in the future. They will be actively enforced by the OFT which **will be able to take away companies’ credit licences** where they fail to comply with the new legal requirements introduced by the CCD, and similarly if they fail to follow the OFT’s Irresponsible Lending Guidance.

- **We need to ensure that the OFT has adequate resource to continue to monitor compliance with consumer credit legislation efficiently and effectively and to take robust action where there are breaches.** The OFT will review the consumer credit licensing fee with a view to ensuring that fees are equitable and proportionate

for licensees. Options to be considered will include whether there is a case for differential pricing, taking account of the potential risk to consumers of different licensable activities. The OFT will consult fully and report to the Secretary of State for Business in early 2010.

## 2.6 HOW WE WILL MAKE THE CONSUMER CREDIT REGIME WORK MORE EFFECTIVELY FOR CONSUMERS AND LENDERS

The UK consumer credit market is complex and diverse. It has been shaped in recent decades by significant economic, social, and technological change. We have witnessed increased social acceptance of borrowing and widening access to credit, coupled with the growth of online delivery channels and high levels of automation. As markets continue to evolve and new innovative products are developed, the regulatory regime must be enabled to respond in ways that it has not been able to in the past, which are both fair to borrowers and minimise burdens on industry. For example, the system has been slower than is desirable to establish clear precedents to tackle emerging unfairness, undermining consumer trust in financial services and the regulatory system. At the same time, regulation has created technical difficulties where the rules do not easily fit with industry practice, difficulties which can be costly to resolve in a highly automated world.

To tackle areas of emerging bad practice, we will:

- **Consult on banning the use of Bills of Sale for consumer lending.** Bills of Sale are being used to support “log book” lending, which has been the subject of relatively high levels of complaints to consumer groups and the OFT. Bills of Sale are written in complex language that consumers often cannot understand and can lead to consumers having their assets – often their car – repossessed without the need for a court order. The Government therefore intends to consult this autumn on banning the use of Bills of Sale for consumer lending.
- **We will address systematic unfairness to borrowers so that the victims of unfair treatment obtain proper redress.** We will consult on whether the proposed Consumer Advocate should have powers to address unfairness in consumer credit agreements, including the possibility of challenging unfair relationships through the courts on behalf of consumers. (See Chapter 3 for more detail on the Consumer Advocate.)
- **We will curb excessive fees and charges.** At the moment vulnerable consumers are often those worst hit by high costs for unauthorised borrowing or missed payments, leaving them deeper in debt. This system can mean that a relatively small number of borrowers who incur default charges are providing a disproportionate share of lender revenues. We consider that all arrears and default fees and charges (and similar or analogous charges such as charges for unauthorised borrowing) on credit accounts

should be transparent, cost reflective and reasonable. The fairness of charges levied by banks for unauthorised overdraft borrowing is currently the subject of a test case brought by the OFT and seven banks and building societies. Litigation on this issue could take several years to reach a final conclusion. The Government calls on the regulators and the banks to explore whether there is a quicker way of resolving consumer complaints about unauthorised overdraft charges. Following the forthcoming decision of the House of Lords in the test case brought by the OFT and the banks, we will work with interested parties with a view to moving the market to a more efficient, equitable, and transparent system as quickly as possible.

Credit reference agencies perform a vital role in credit markets. They provide consumers with a simple and efficient way of demonstrating their past record of managing credit when applying for new loans and give lenders a view of a consumer's existing financial commitments so they can take these into account when deciding to grant new credit. Where they work well, credit referencing systems can help support more accurate lending decisions and provide incentives for borrowers to manage their commitments responsibly. The World Bank's Doing Business project<sup>26</sup>, which recognises the central importance of effective credit information registries to a regulatory environment which supports enterprise and competitiveness, ranks the UK system of credit referencing second out of 181 countries studied. Nonetheless, the Government believes there is scope for improvement. Data is not currently shared on certain types of credit commitment, meaning that lenders do not have the full picture of their customers' financial situation. Consumers can also find the system complex and confusing. To promote more effective lending and borrowing decisions, we will:

- **Work with industry to promote data sharing to improve the accuracy of lending decisions.** Sharing more data about potential borrowers' existing financial commitments and about the way they use their available credit facilities can help lenders to make more accurate decisions, promote competition in credit markets, and may help prevent some consumers from taking on too much debt. We will work with industry to identify ways in which data sharing can be improved in a way that respects the privacy of individuals' personal information.
- **Improve consumers' access to and understanding of their credit reference files.** The Government wants to ensure all consumers have access to the right tools to help them better understand their credit reference files, protect themselves against identity fraud and, if necessary, take legitimate steps to improve their credit rating. Currently, consumers have a statutory right to write to any credit reference agency and request a paper copy of their credit reference file for a £2 fee. We will work with industry to look at improving people's access to (and understanding of) their file, including whether files can be made available online under the existing statutory scheme.

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<sup>26</sup> <http://www.doingbusiness.org/>

To improve the credit framework, balancing the interests of both consumers and lenders, we will:

- **Consult on ways to minimise the risk of fraud or confusion which can sometimes arise from the requirement to send consumers regular statements.** Lenders are concerned that sending regular statements to consumers who may have moved house without informing them could lead to fraud. Similarly, there is a risk that consumers who have entered into an Individual Voluntary Arrangement (IVA) to pay their creditors could be confused if they continue to receive a standard statement. We will consult in the autumn on proposals to amend the law so that, in these cases, only a reduced amount of information needs to be sent while ensuring that consumers still receive important information about their accounts.

Finally, to tackle the exploitative practices of loan sharks:

- **We will continue to raise awareness of the impact of illegal money lending.** Loan sharks prey on some of our most vulnerable communities, often using violence and intimidation to keep poor families locked into extortionate repayments they cannot afford. The launch of a national telephone hotline and the Stop Loan Sharks campaign on Directgov in March 2009 was part of our longstanding programme of action to warn against the dangers of illegal lending. More cases are now being prosecuted in England and Wales. As part of our ongoing work to raise awareness, we will consider how best to increase understanding of the crime of illegal money lending and the impact it has on communities.

### Figure 10: Fact box

#### Illegal Money Lending

- The Government has invested more than £16 million since 2004 to tackling illegal money lending.
- Over 6000 victims of illegal loan sharks have been helped to date, saving them more than £21 million.
- There have been more than 100 successful prosecutions with more than 100 further prosecutions in the pipeline.

Figure 11: Case study

### **Illegal Money Lending**

In February 2009 the South East of England illegal money lending team organised an event in Gosport where £17,000 of money confiscated from a local loan shark was handed back to the community.

The family 'Fun and Finance Day' was held to encourage people in the community to open accounts and save, as well as giving them the opportunity to talk to organisations about debt and finance issues. New account holders were each offered £20 of the seized and forfeited cash, to be deposited directly into their account if they hold savings for at least a year. Over 300 people attended the event and 80 accounts were opened on the day.

Due to the success of the event the local credit union will now be holding a surgery at the community centre once a week so that people can access advice and support in managing their money.

## Chapter 3

# Empowering Consumers through Better Enforcement and Information

### 3.1 Overview

**This chapter sets out how the Government will ensure consumers have access to the skills and knowledge they need to make informed decisions as well as helping consumers that lose out because of the provision of poor quality consumer goods and services or because they are targeted by businesses that set out to mislead or rip people off.**

The aims are:

- To provide a new approach to enforcement by which responsible business is encouraged to compensate consumers appropriately
- To ensure that those who enforce the law are equipped to deal with new ways of selling goods and services
- To improve the effectiveness of consumer education and awareness campaigns
- To provide a facility for collective actions to be taken on behalf of consumers as a last resort to achieve compensation

There are a number of key actions which the Government intends to take to achieve these aims:

- A series of pilot projects to test the use of new powers to deliver compensation for consumers
- A new national strategy and specialist team for internet enforcement on consumer issues
- A central “Fighting Fund” to tackle rogues operating on a big scale
- A new Consumer Advocate who will co-ordinate work to educate consumers and be a champion for groups of consumers who have suffered a loss at the hands of a business
- A mechanism for consumers to get money back that has been recovered from overseas scams
- Support for product safety testing of imported goods at major ports
- Stronger penalties for rogue traders through new banning orders
- Simplifying the confusing array of sources of information and advice to ensure consumers can more easily find the support they need
- A new Consumer Rights Campaign.

### **3.2 A NEW APPROACH TO ENFORCEMENT**

When consumers suffer at the hands of traders who treat them unfairly, it is not unreasonable for them to expect to get some or all of their money back. In the current economic climate, consumers can ill afford to lose money on sharp practice, shoddy goods or poor services.

Traditionally public enforcement of consumer law has focused on stopping bad practice through enforcement orders (equivalent to injunctions or, in Scotland, interdicts) and prosecuting offenders. This is important and can be effective but it rarely helps the consumer who has suffered the frustration and financial loss of being ripped off.



Figure 12: Fact box

### Enforcement of consumer law

Enforcers of consumer protection legislation include the Office of Fair Trading and local authority Trading Standards Services. These enforcers ensure that businesses comply with consumer protection legislation through advice and/or enforcement. The more serious breaches are dealt with through civil action such as obtaining undertakings from the business or enforcement orders to prevent the business carrying on the unfair activity, or by taking criminal prosecutions which can be punishable by either a fine or even imprisonment. In this way enforcers ensure that businesses act in a fair and competitive way, and also protect consumer interests.

Responses to the Consumer Law Review highlighted three key reasons why consumers are not always getting the compensation that they are due when things go wrong:

- Enforcement action taken by enforcement authorities does not normally include any element of redress for individuals, leaving consumers to take their own civil actions to recover any losses<sup>27</sup>
- Some consumers do not have a sufficient understanding of their rights to know when they should receive redress
- Even if consumers know that they should receive compensation they may not know where to apply, or they may not have the confidence or resource (financial or time) to take an action forward in the courts.

Figure 13: Fact box

### Consumer Law Review

The Consumer Law Review has been looking at whether there are new approaches to deliver better outcomes for consumers, whilst at the same time reducing unnecessary burdens for business and promoting fair and competitive markets. In May 2008 the Department for Business, Enterprise and Regulatory Reform (BERR) issued a consultation paper calling for evidence on a comprehensive review of the UK's consumer protection regime.

<sup>27</sup> Representative Actions and Restorative Justice: A Report for the Department for Business, Enterprise and Regulatory Reform (BERR), Professor John Peysner and Angus Nurse Lincoln Law School, University of Lincoln, December 2008, <http://www.berr.gov.uk/files/file51559.pdf>

Over recent years, the Government has looked hard at this problem and acted to develop new enforcement powers.<sup>28</sup> There is now a need to implement the powers and continue to develop an enforcement culture that focuses first on compliance, second on restoring any damage done to consumers by breaches of the law, and only third on punitive prosecution.

The Government proposes to take significant steps to build on and accelerate this new approach, placing the consumer at the heart of our enforcement framework.

### 3.2.1 The problem

Research by the OFT has estimated that there were 26.5 million problems with goods or services purchased in the year to April 2008 with consumers suffering a detriment amounting to an estimated cost of £6.6 billion.<sup>29</sup>

Many respondents to the Consumer Law Review outlined that vulnerable consumers need more support in taking action. It was also pointed out that there is a need for a faster redress mechanism for disputes involving very small amounts of money for all consumers.

A significant proportion of Trading Standards Services' enforcement actions originate from consumer complaints. However, research we commissioned from the Lincoln Law School in 2008 has shown that whilst consumers generally benefit from public enforcement through prevention of the spread of malpractice, victims seldom obtain compensation as a result.<sup>30</sup> The criminal courts rarely award compensation, perceiving this to be the function of civil justice and victims have to pursue separate action.

In 2008, the Regulatory Enforcement and Sanctions Act (RES Act) introduced a framework for new powers for regulators so that there was more choice in how they enforce, ensuring that action taken could fit the offence and the harm caused to the victim. Under these new powers, a range of new civil sanctions including fixed monetary penalties, restoration orders, stop notices and enforcement undertakings can be imposed.

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28 Reducing administrative burdens: effective inspection and enforcement, Philip Hampton, HM Treasury, March 2005, [http://www.hm-treasury.gov.uk/bud\\_bud05\\_hampton.htm](http://www.hm-treasury.gov.uk/bud_bud05_hampton.htm);

Regulatory Justice: Making Sanctions Effective Final Report, Professor Richard B. Macrory, Cabinet Office, November 2006,

<http://www.berr.gov.uk/whatwedo/bre/reviewing-regulation/compliance-businesses/page44102.html>

More information about the Regulatory Enforcement and Sanctions Act 2008, including Impact Assessments can be found at: <http://www.berr.gov.uk/whatwedo/bre/inspection-enforcement/implementing-principles/sanctions-bills/page44047.html>

29 Consumer Detriment: Assessing the frequency and impact of consumer problems with goods and services, Office of Fair Trading, April 2008, <http://www.offt.gov.uk/news/press/2008/49-08>

30 Representative Actions and Restorative Justice: A Report for the Department for Business, Enterprise and Regulatory Reform (BERR), Professor John Peysner and Angus Nurse Lincoln Law School, Univeristy of Lincoln, December 2008, <http://www.berr.gov.uk/files/file51559.pdf>

But the Government does not want to see a surge in monetary penalties as the new powers are used more and more. Rather it wants companies who have infringed legal provisions to take the opportunity to put things right before any formal public enforcement takes place. Many good businesses do this already.

This is a fundamental tenet of the Macrory Review and Part 3 of the RES Act, which implements a number of the review's recommendations.

Enforcement authorities should take into account any compensation awards by the business in their decision making. They should use the new powers to help persuade businesses to do the right thing, reserving formal action only for those who refuse to do so. But if businesses break the law and yet refuse to compensate, they should not be allowed to gain from this refusal.

Criminal powers should be reserved for more serious breaches and real rogue traders who set out to scam and defraud the public.

### **3.2.2 Compensation pilots for enforcers – a new approach**

The Government proposes to work with the Local Better Regulation Office (LBRO) to test the new powers described above to encourage compensation for consumers through a number of pilots. The pilots will focus on delivering consumer compensation through voluntary compensation offers by business when breaches of consumer law are discovered.

The Government will start to use these new powers through a series of pilot projects. The pilots are expected to start in autumn 2010 or spring 2011 and we will consult on the detail later this year. Only those enforcers who carry out their regulatory activities in a way which is transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed will take part in the pilots. This is a requirement of the RES Act and so it is important to ensure they meet these criteria. LBRO is currently working to establish a system for assessing local authorities' compliance with the criteria.

It is hoped that around 10 Trading Standards Services and the Office of Fair Trading will be able to participate in the pilot across the whole of Great Britain. Before the pilots can begin, we will need to complete arrangements for an appeal body to be put in place to hear any appeals against any sanctions which may be imposed under the pilots.

The pilots will be evaluated carefully in order to shape best practice and guidance prior to decisions being made about the continued application of the new powers.

The Government will ensure that the new approach will offer benefits for consumers, reputable traders and enforcers alike.

### 3.3 ENFORCEMENT FOR THE 21ST CENTURY: E-CONSUMER PROTECTION AND THE INTERNET AGE

The internet has transformed the way millions of us buy goods and services. It presents opportunities but it also harbours threats. In the area of consumer protection, problems from non-delivery of goods to online scams and fraud shake consumer confidence and must be addressed effectively if the significant opportunities offered by the internet are not to be undermined by a lack of confidence. We need to tackle the full range of issues which have the potential to cause problems for the consumer in an online environment.

The UK is the leader in Europe in terms of size of the internet shopping market. In the UK in 2008, 57% of individuals had ordered goods or services over the internet for private use over the last year.<sup>31</sup> Internet sales continue to grow very dramatically; in 2008 the value of online retail sales was £48 billion which is an increase of 10% on the previous year.<sup>32</sup>

Despite the UK's success compared to other European countries, almost one in three UK internet users are not shopping online, with a lack of trust in the internet the biggest reason. Of these internet users, 30% identified lack of trust as the main factor holding them back, whilst 20% cited fears over personal security and 15% said they did not trust companies that sell online.<sup>33</sup>

#### 3.3.1 Digital Britain Report

The Digital Britain Report (DBR) was published on 16 June 2009.<sup>34</sup> The Report marked the culmination of a six month period of in-depth consultation with stakeholders and analysis of the UK's digital economy and society.

The DBR set out actions to strengthen the nation's digital infrastructure and support the development of high quality content in the UK, as well as measures to support take-up, skills and confidence among users of technology. The Report highlighted the importance of consumers' confidence in official measures to prevent crime and poor consumer practice in an online environment, and in particular pointed out the need to ensure consumer interests were properly addressed.

#### 3.3.2 Cost of problems in online transactions and e-crime

E-crime is a threat to all of us who use, or want to use, the internet for buying goods and services.

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31 [http://ec.europa.eu/consumers/strategy/docs/com\\_staff\\_wp2009\\_en.pdf](http://ec.europa.eu/consumers/strategy/docs/com_staff_wp2009_en.pdf)

32 UK Plastic Cards 2009, The Way We Pay, The UK Cards Association, 2009, [www.theukcardsassociation.org.uk](http://www.theukcardsassociation.org.uk)

33 Findings from consumer surveys on Internet Shopping A comparison of pre and post study consumer research, Office of Fair Trading, May 2009, <http://www.oft.gov.uk/news/press/2009/52-09>

34 "Digital Britain: final report". The Department for Culture, Media and Sport and the Department for Business, Innovation and Skills, June 2009 See [http://www.dcms.gov.uk/what\\_we\\_do/broadcasting/5631.aspx](http://www.dcms.gov.uk/what_we_do/broadcasting/5631.aspx)

The impact of e-crime reduces consumer confidence and the costs to consumers can be high. For example:

- losses from credit card fraud where the consumer's card was used without them being present, were £328 million in 2008 (an increase of 13% from the previous year)<sup>35</sup>
- crimes that steal the innovation and design of software, music and film in the UK was worth £650 million in 2006; and the trade in counterfeit goods is estimated to be worth £10 billion in the UK alone and £3 billion is lost in revenue per year<sup>36</sup>
- The annual loss to the economy from unresolved delivery problems for online sales is estimated to be worth as much as £55 million per year.<sup>37</sup>

Below are two examples which illustrate the types of online scams that can affect consumers across the UK.

#### Figure 14: Online ticket scam

In 2008, two online tickets agencies offered tickets for the Beijing Olympics and other events including well known music festivals in the UK, such as the V Festival, Reading Festival and Leeds Festival. However, the tickets failed to turn up. The families of UK Olympic contestants were amongst 4,000 customers in 60 countries who paid for tickets but did not receive them. The companies entered liquidation in September 2008. Following complaints from the public an investigation was started looking into a suspected online ticket fraud. In November 2008, the Serious Fraud Office searched premises and arrested five people in connection with this ongoing investigation.<sup>38</sup>

35 UK Plastic Cards 2009, The Way We Pay, The UK Cards Association, 2009, [www.theukcardsassociation.org.uk](http://www.theukcardsassociation.org.uk)

36 The Gowers Review of Intellectual Property, HM Treasury, 2006, [http://www.hm-treasury.gov.uk/gowers\\_review\\_index.htm](http://www.hm-treasury.gov.uk/gowers_review_index.htm)

37 Internet shopping: An OFT Market Study, Office of Fair Trading, June 2007, [http://www.offt.gov.uk/advice\\_and\\_resources/publications/reports/consumer-protection/oft921](http://www.offt.gov.uk/advice_and_resources/publications/reports/consumer-protection/oft921)

38 Taken from a Serious Fraud Office press release, 26 November 2008, [http://www.sfo.gov.uk/news/prout/pr\\_592.asp?id=592](http://www.sfo.gov.uk/news/prout/pr_592.asp?id=592)

### Figure 15: Problems with distance learning materials

The sale of poor quality distance learning and skills training is a consumer problem exacerbated by the economic downturn and one where the internet plays a role. Between January and March 2009 Consumer Direct recorded 563 complaints about distance learning/correspondence courses. 98 of these complaints related to such courses sold over the internet. The main causes of complaint, around 70%, were substandard services, misleading claims/omissions and cancellation rights. Around 10 complaints involved consumers who had paid some money, but are now having difficulty contacting the trader or because the materials supplied are extremely poor. The internet is another way in which such products and services can be sold to unsuspecting consumers.

This growth in the proportion and absolute value of consumer transactions taking place over the internet poses new challenges for consumer protection enforcement structures. Recognising these challenges the Government has set up the National Fraud Authority, and through the City of London Police is establishing the National Fraud Reporting Centre (NFRC) and the National Fraud Intelligence Bureau to tackle the most serious and harmful fraud, including mass marketed fraud. We have also launched the Police Central eCrime Unit within the Metropolitan Police to tackle large scale internet crime, including online fraud. The OFT has also set up an embryonic internet team and co-ordinates internet "sweep" days with Trading Standards Services.<sup>39</sup>

But it is recognised that more must be done. We must learn from the most advanced consumer protection authorities around the world in how they monitor and supervise the internet, tackle internet scams and other online issues, and dedicate more resource to help make it safe for consumers even when resources overall are tight. We must also gather better data and intelligence on the problems consumers encounter when purchasing online.

As the internet is a borderless medium, it may not always be most effective for individual Trading Standards Services to respond locally. There are also special problems of jurisdiction and the need for cross-border co-operation with other EU and international enforcement agencies.

#### 3.3.3 Enhanced Intelligence System

The Government will set up a single complaints register for any citizen encountering an online scam, breach of consumer laws or other problems with online transactions. This will form part of the Consumer Direct service and online complaints will become very easy to register and information will be available for use by the police, Trading Standards Services and the OFT. This work will also complement the work of the NFRC. The new online complaints system will go live in 2010.

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39 Either through OFT-led initiatives or with the International Consumer Protection and Enforcement Network (ICPEN)

### 3.3.4 New Enforcement Team

A new enforcement team will be set up to tackle online consumer protection issues and protect consumers from e-crime. The Government will ensure that enforcers work together, whether in the OFT, Trading Standards Services or the police, to share information, build up the ability to investigate potential crimes and take action to protect consumers from online rogues and scams.

The Government is this year investing in the OFT and regional Scambuster teams in order to analyse the complaints data and pursue problems consumers experience online and to provide advanced equipment and other resources to lead a new drive towards electronic consumer protection and enforcement.

The new team will comprise members from the OFT and regional Scambuster teams. There will be joint training and a secondments programme with the Police Central eCrime Unit. We will also encourage businesses to play a role in sharing information and training enforcers, making the most of best practice across the industry. The OFT will also dedicate resource from its market studies programme to investigate online consumer markets, looking at where consumers are getting a raw deal and why.

This team will ensure that consumers and online retailers will both benefit from establishing a high degree of trust in the online marketplace.

#### Figure 16: Case study internet enforcement

eBay has created a Global Law Enforcement Operations Team (GLEO) that is a worldwide organisation consisting of investigators, security engineers and law enforcement relationship managers located in various cities and countries. The company has built close relationships with law enforcement agencies around the world, including the Serious Organised Crime Agency, the FBI, and Interpol. The company works with these agencies to offer assistance and refers potential matters to them and provides them with information to actively fight against fraud and counterfeiting through a dedicated Fraud Investigations Team. eBay also has a Special Investigation Group which is able to investigate matters and, where appropriate, can prepare detailed cases to be presented to authorities.

In 2008, the GLEO team assisted law enforcement in 71,332 investigations and proactively referred 505 cases to law enforcement. In the UK in 2008, the team assisted in 6,876 investigations which led to 162 arrests and convictions.

In addition, GLEO trained approximately 4,200 law enforcement officials around the world on eBay's platforms and how it partners with law enforcement. This co-operation has resulted in the arrest or conviction of 567 individuals in 2008 from a total of 86 million users trading on eBay in the same period.

### 3.3.5 Enforcement Powers fit for the 21st century

The legal powers enforcers use need to be constantly updated to ensure they are fit for the 21<sup>st</sup> century. Too often rogues can get away with breaking the law because the rules do not reflect the latest technologies and rogue practices. In order to keep up to date with these changes, the Government will review the powers available to consumer law enforcers in an online world. For example, the OFT and Trading Standards need to be able to act against online scammers in the UK even if they are targeting consumers overseas and we need to consider whether abuse of personal data should be a breach of consumer law and whether current laws adequately allow enforcers to act against such scammers, for example, in the way they use “spyware” and “malware” attached to some commercial websites.

The powers of the OFT and Trading Standards Services to require internet service providers to close down websites used for illegal purposes may also need to be clarified. Finally, the Government will consider whether to empower the OFT, in particular to prosecute online offences under the Fraud Act and the Computer Misuse Act.

### 3.3.6 Developing a Strategy for Protection and Enforcement in the Internet Age

The Government has asked the OFT to develop a longer term national strategy for consumer protection and enforcement on the internet. This strategy, to be delivered by the end of 2010, will enable the OFT, Trading Standards and other agencies to work together even more effectively and will consider the implications in terms of resources, training and staffing requirements.

The credit card industry will need to be involved in any discussions given that the major security for consumers buying online is the ability to have recourse to their credit card company in the event of online losses. As credit card companies are liable for losses they clearly have an interest in improving enforcement in the online environment.

The objective must be to make UK online enforcement as good as anywhere else in the world and to maximise consumer confidence in online shopping. Legitimate online businesses will benefit from enforcement tackling unfair competition presented by rogue traders operating on the internet and increased economic activity by confident consumers.

### 3.3.7 Banning orders – strengthening action against rogue traders and stronger penalties

The Government will bring forward legislation to give the courts the power to prohibit traders who persistently breach their obligations, whether individuals or a company, from carrying on business with consumers. We will consult on the best way of achieving this so that the court should be able to target the order at particular kinds of activity (e.g. supplying particular kinds of goods and services to consumers), or in extreme cases consideration may also be given to a total prohibition on dealing with consumers.



Persistent rogue traders are a menace who take advantage of consumers and cause damage to legitimate traders. These few unscrupulous traders often treat criminal fines as a business overhead; ignore county court judgements made against them; and alter their practices to avoid breaching a specific enforcement order or apply similar malpractices to a different trade.

In certain cases, banning orders will be a more effective deterrent and punishment for breaches of consumer protection law than existing enforcement mechanisms.

### 3.3.8 Promoting joint working and shared services within Trading Standards

Trading Standards Services are run through local government because they provide a valuable service in our local communities. Local enforcement capacity is vital for spotting rogue traders and ensuring that enforcement practice is targeted and proportionate.

Responses to the Consumer Law Review showed that there was concern over the level of resources for some Trading Standards Services. The need for prioritisation can result in a limited service for consumers and diminished opportunities, particularly in smaller services, to take enforcement action, for example. The Government will therefore encourage Trading Standards Services to work across local authority boundaries and to share resources and overheads with their neighbours. There are already some excellent examples of joint working, co-operation, and sharing of resources between Trading Standards Services.

#### Figure 17: Fact box

##### Shared services within Trading Standards

West Yorkshire Joint Services is a joint body set up by agreement between 5 local authorities: Bradford, Calderdale, Kirklees, Leeds, and Wakefield.

West Yorkshire has a population of 2.2 million with 492 high risk businesses. The Trading Standards Service costs £3.1 million.<sup>40</sup> Officers are employed by West Yorkshire Joint Services; the service has 66 staff involved in direct service provision with others providing support services including legal, HR and ICT support. The shared services model provides a Trading Standards Service that is efficient, effective and provides real value for money.

But a report by the LBRO on best practice indicates that national leadership is needed to help Trading Standards Services assess and implement shared services schemes more widely.<sup>41</sup>

The Government has supported the regional Scambuster teams and the regional illegal money lending teams to encourage pooled resource for particular enforcement priorities.

<sup>40</sup> Information provided by West Yorkshire Joint Services, June 2009

<sup>41</sup> The full report is due in summer 2009 and will be available on the LBRO website, [www.lbro.org.uk](http://www.lbro.org.uk)

The Government will work with the Local Government Association Group, the Local Authorities Co-ordinators of Regulatory Services (LACORS), LBRO and local government to promote efficient and effective cross-border working, and the greater use of shared services where this is what local councils want and where it would provide a real benefit to consumers, business and enforcers alike.

### 3.3.9 A Fighting Fund for new and innovative enforcement

We will establish a central Fighting Fund so that consumer enforcers can afford to fight cases where rogue traders have affected consumers across the UK.

Enforcers have reported to Government cases where their resources were stretched when acting against rogue traders who cause detriment to large numbers of consumers across the country. Stakeholders from smaller Trading Standards Services also told the Consumer Law Review that they would avoid a prosecution case as it ties up their resources for too long. Respondents also referred to the Food Standards Agency's Fighting Fund as a model which could be copied to ease these constraints.

The regional Scambuster teams have demonstrated that tackling rogue traders who operate across local authority borders, such as tarmac gangs, is very resource intensive.

#### Figure 18: Case study

One case involving a rogue trader summonsed for alleged conspiracy to defraud and Trade Descriptions Act offences, is the largest prosecution undertaken by a Trading Standards Service, and involved 130 police and Trading Standards professionals across the country. It involves more than 6,500 customers across the UK, with the victims suffering around £2,000 detriment each, amounting to a total detriment of around £13 million. The case is due to start in September 2009; there are 30 victims who are prosecution witnesses and the local authority will, in this case, ask the Court for compensation for them. The authority will also seek to seize the assets of the defendant arising out of the defendant's criminal activities. The defendant is already banned from being a company director, and has been a recipient of a Stop Now Order which bans the defendant continuing that unfair conduct. The case involved forensic analysis and thousands of documents and is likely to cost around £3 million to bring to court.

The criteria for providing funding from the Fighting Fund could include cases where:

- there is a serious risk to consumer safety or there is an element of fraud
- the case is of 'national importance'; e.g. where consumers across local authority boundaries are affected
- an important legal precedent needs to be set or the case is particularly complex
- innovative enforcement practices are being used.

The Government intends that this Fighting Fund should assist as many Trading Standards Services' investigations of national or regional importance as possible. To this end the Government proposes that the agreement to provide funding for a case will include an agreement on the part of the local authority to pay a proportion of any proceeds they receive back into the Fighting Fund.<sup>42</sup> There is a precedent in food safety for the possibility of proceeds from such cases to be paid into the Fund.

The Government will consult stakeholders on this proposal, including the criteria on how to assess the types of cases which are appropriate to receive support from the Fighting Fund.

### 3.3.10 Safer consumer goods – product safety testing of imported goods at major ports

We will provide more money to test more consumer products at key ports helping those local authorities that perform a service for the whole country.

A number of local authorities are responsible for checking goods entering the EU through UK ports. Effective enforcement at borders is key to preventing unsafe products entering the UK market place. However, with the exception of fireworks, this is not co-ordinated nor funded on a national basis.



*Courtesy of the  
Port of  
Felixstowe*

For example, the Port of Felixstowe is the UK's busiest container port, and one of the largest in Europe, dealing with 40% of the UK's import and export trade. Research commissioned by LBRO has shown that, approximately 2.86 million consignments are imported through Felixstowe each year with an estimated 5,200 consignments containing products at high-risk of non-compliance with safety regulations.<sup>43</sup> The majority of the

<sup>42</sup> Proceeds from the asset recovery incentivisation scheme under the Proceeds of Crime Act 2002 (does not apply to Scotland).

<sup>43</sup> Addressing national threats through local service delivery, report commissioned by the Local Better Regulation Office, Matrix Knowledge Group, 2009. The full report will be available on the LBRO website [www.lbro.org.uk](http://www.lbro.org.uk)

goods originate from third countries. Suffolk Trading Standards Service is responsible for targeting incoming goods for surveillance.

Experience from the sampling of consumer goods coming into the EU through Felixstowe over the past five years has demonstrated that 40% of the goods tested infringe EU product safety legislation requirements. Furthermore, almost half of those infringing goods are found on testing to be unsafe. Approximately 64% of product recalls in the UK are for goods that Suffolk County Council prioritises as high risk, such as electrical goods and toys. It is important to be able to detect and intercept unsafe products before they are widely distributed around the UK.

### Figure 19: Case study

In one case a product called the G-wheel, was imported through the port of Southampton from China and was offered for sale through a number of foreign websites. HM Revenue and Customs alerted Hampshire County Council which in turn alerted Bournemouth Trading Standards Service which tracked the product to a secure storage facility in the town. The G-wheel is powered by a 50cc engine and is a cross between a mini motor-bike and a motorised scooter. The rider steers it with their front foot and can reach 45mph. The results of laboratory testing funded by BERR indicated that the product failed on 16 safety related points, including a leaking petrol tank, excessively hot exhaust and one inadequate brake. There was also concern as to how it could be controlled when ridden, particularly by children. Indeed it is illegal to use them on the road.

Investigations led to swift action being taken by enforcers to remove these products from sale and alerts were sent across the EU to ensure other consumers were aware of this dangerous product.<sup>44</sup>

From the research carried out on behalf of LBRO, it is estimated that:

- The incorrect/unsafe goods currently coming through Felixstowe alone cause or contribute to:
  - 95,000 injuries each year
  - 100 fires each year
  - 3 deaths each year and
- The net value of these and other impacts on the UK (falling on consumers, public services, and businesses) is approximately £60 million.<sup>45</sup>

44 ts today, The Trading Standards Review, Volume 116 Issue 2 February 2008, Trading Standards Institute, [www.tsi.org.uk](http://www.tsi.org.uk)

45 Addressing national threats through local service delivery, report commissioned by the Local Better Regulation Office, Matrix Knowledge Group, 2009. The full report will be available on the LBRO website [www.lbro.org.uk](http://www.lbro.org.uk)

The research by LBRO also suggests that when scaled up to the national level, the net value of these impacts is in the order of £155 million.

The Government is therefore committed in these circumstances to providing support for targeting product safety sampling and testing of imported goods at the most effective points; i.e. at ports of entry, where regulation can be effectively delivered at the source of the problem. This should also reduce the need for duplication of effort at other local authorities. The Government will work with LBRO to determine how to achieve the best outcomes, based on an analysis of risk.

Legitimate businesses will benefit from a reduction in supply chain costs due to product withdrawals and recalls and damage to their reputation as well as from the reduction in unfair competition presented by unsafe products.

### 3.3.11 Consumer prepayments

The collapse of Farepak in October 2006 caused financial and emotional loss to many consumers. The Government has therefore done all it can to ensure that it does not happen again. Working closely with the remaining Christmas savings clubs, we have put in place effective protection specifically for customers' prepayments. Independently-controlled, ring-fenced trust accounts have been introduced by the companies for customers' payments, and these new arrangements are overseen by a new body, the Christmas Prepayments Association.

The Government has also given the OFT funding for a consumer awareness campaign so that consumers are better informed of their options for Christmas savings, and empowered to make decisions that are right for their own circumstances.

The Government will also reassess the regulatory framework for prepayments in general, taking account of advice from the OFT and the Financial Services Authority and the recommendations to be contained within Consumer Focus's forthcoming report on the prepayments market. The Consumer Focus report is expected this summer. The Government will work with the full range of stakeholders to assess what regulatory action would be sensible and practicable.

### 3.3.12 Action on silent calls

Silent calls occur when call centres with automated systems dial more numbers than staff can deal with. When a consumer answers the telephone, and no agent is available to take the call this results in silence on the line. Consumers are left frustrated as they do not know who the call is from and this can cause distress especially to vulnerable groups. The Government will consult on possible regulations to increase the maximum fine for silent calls which is currently £50,000, in order to crack down harder on this harmful activity.

### 3.3.13 Low quality and bogus colleges

The Government is concerned that some organisations are preying on the vulnerable, especially as a result of the downturn, by offering training and education which is of poor quality or simply does not meet the specifications which are claimed.

Some of the victims are students from overseas drawn to this country by its high educational reputation, but who are unable to judge the quality of courses and facilities before they have to pay for them. Others are unemployed people seeking retraining who are vulnerable to false claims about new qualifications and enhanced job prospects. Some so-called "colleges" are also suspected of being fronts for illegal immigration. The shady and low quality operators damage the reputation of the sector as a whole as well as creating significant consumer detriment.

We will convene a Task Force to address these problems. It will involve consumer enforcement agencies, immigration officials and officials from the Department for Business Innovation and Skills who will draw in the necessary educational expertise. It will review policy, including accreditation options, and enforcement practice, including exchanges of intelligence and co-ordinated enforcement actions, where possible.

As far as potential breaches of consumer law are concerned, the Government has asked the OFT to consider whether a market study of this sector would be worthwhile and to look at upgrading its enforcement activity in this sector.

## 3.4 APPOINTING A CONSUMER ADVOCATE

### 3.4.1 Championing education, information and enforcement

In a climate where consumers are under pressure it is important that they are empowered to assert their needs clearly and make the best purchasing decisions possible. It is also important to reduce the cost to the economy of problems after sales have been made. Empowered consumers are confident consumers. Yet too often the help that is available to consumers is scattered and hard to find. We need to find new ways to better signpost the information that is out there and to champion consumers through the enforcement process.

A Consumer Advocate will be appointed to bring a national profile to improving the co-ordination of education and information campaigns. The Advocate will also monitor and champion the new approach to consumer-focused enforcement described in Section 3.2 of this Chapter.

The Consumer Advocate will be part of Consumer Focus and subject to consultation the Advocate will, in due course, be equipped through new legislation with the following specific powers: (i) the power to take legal actions on behalf of a group of consumers following a breach of consumer protection law if other routes for obtaining compensation have been tried or judged inappropriate; (ii) the power to distribute compensation to UK

consumers from ill-gotten funds seized by overseas enforcement agencies; and (iii) the power to tackle unfairness in consumer credit agreements.

### Figure 20: Consumer Focus

Following the Consumers, Estate Agents and Redress Act 2007, Consumer Focus came into being at the end of 2008 as a new statutory consumer agency. Consumer Focus was formed out of a merger of the National Consumer Council, Postwatch and energywatch. Alongside the enhancement of the consumer advice service Consumer Direct, complaints handling standards for business in energy and postal sectors and better rights of redress, were designed to strengthen and streamline consumer advocacy and give a better service to consumers.

In its first period of operation, Consumer Focus has proved to be a vocal and effective champion for the interests of consumers. Its achievements include partnership campaigning which has helped to deliver:

- Greater convenience and better information for consumers in Scotland through the successful introduction of the Home Report
- £1.2 million repaid to customers by Npower in relation to unfair charges to billing
- An end of overcharging of £150 per year for motorists who use one of the 5,000 garages signed up to a tough new code
- Action to waive 50p local redirection charges levied on consumers by Royal Mail and
- Action by Ofgem to cut excess charges by an annual £332 million.

#### 3.4.2 Improving the effectiveness of consumer education and information

In the area of consumer education responses to the Consumer Law Review gave much praise for the good work being done by a number of different organisations but seemed to indicate a fragmentation amongst providers. The Consumer Minister met representatives from consumer organisations, business organisations, enforcers and others involved in education on 8 May 2009 to discuss how best to improve the effectiveness of consumer education and information campaigns.

Figure 21: Fact box

### Consumer education in Northern Ireland

In Northern Ireland, a number of consumer education initiatives have been successful at raising awareness of consumer rights. Over 150,000 Shoppers' Rights Cards have been distributed throughout Northern Ireland since their launch in 2003. This credit card sized resource explains consumers' rights under the Sale of Goods Act 1979 and gives a reminder of shoppers' responsibilities. The card also provides the Consumerline telephone number and website address for expert advice with queries and complaints.

Every youth worker in Northern Ireland received a free copy of the Buy Rights – Have Your Say DVD and support pack, produced in partnership with the Curriculum Development Unit of the Youth Service. The 12 minute film and support materials aim to increase young people's consumer knowledge, confidence and communication skills, enabling them to deal positively with everyday consumer problems and situations. This resource is also widely used by teachers and the uniformed youth sector i.e. Scouts, Girls' Brigade and Boys' Brigade.

26,785 children in Northern Ireland aged between 11-14 years have access to Ecoworld – an interactive 3-D web-based resource developed by the Consumer Council and Council for Curriculum Examinations and Assessment for Key Stage 3 Education for Sustainable Development module. Visit [www.ecoworld.org.uk](http://www.ecoworld.org.uk)

The consensus was that specific initiatives to raise consumer awareness about rights and what to do when things go wrong are best provided by a range of organisations in response to need. However, there is a need for the Government to provide greater co-ordination of all the different initiatives at both a strategic and national level.

The Government believes that this co-ordination can be best delivered through the appointment of a new high-profile figure: a Consumer Advocate.

The Consumer Advocate will provide a strategic overview of consumer education activities and seek to deliver real benefits by identifying synergies and sharing best practice. The Advocate will also engage directly with consumers through the media to, for example, warn consumers about the latest scams.

The Advocate will have a particular responsibility to look after the vulnerable. He/she will work with community groups and others to deliver messages to the least confident consumers about how to protect their interests.



### 3.4.3 Championing compensation and collective actions

Alongside the role to co-ordinate consumer education the Consumer Advocate will also have a role to champion the work of enforcers (and others, for example, businesses) to deliver appropriate compensation to consumers where breaches of consumer law are discovered. Specifically the Advocate will champion and monitor the pilots of new enforcement approaches described in Section 3.2.2 of this Chapter. The new powers to be tested in these pilots should be a strong tool to deliver consumer compensation but there may be cases where business is unwilling to compensate. There may be circumstances that will make it difficult for enforcers, in practice, to use their new powers to order compensation, especially if amounts of loss vary and consumers are numerous and hard to identify and trace.

The Consumer Advocate's role will be to monitor cases where a large number of consumers have been affected in a similar way by a business breaking the law. The Advocate will liaise with relevant enforcers and seek to help the business in question to propose a satisfactory compensation package on a voluntary basis. For the few cases where a business is not prepared to provide compensation voluntarily despite having been found liable of a breach of consumer protection law, the Government will consult on equipping the Advocate with an effective and workable power to take collective actions to obtain compensation on behalf of a group of consumers.

Subject to this consultation the power will be to allow the Consumer Advocate to take forward a collective action following a breach of consumer protection law once a significant number of named consumers have agreed to join the action to obtain compensation. There would however be a possibility for other consumers to join the action at a later stage after exact liability had been established but before the final compensation awards had been made. This would ensure clarity for business but at the same time reduce the barriers to compensation for more vulnerable consumers.

The Government consulted on the possibility of allowing private bodies to take representative actions for breaches of consumer law in 2006.<sup>46</sup> The conclusion of the 2006 consultation was that, although there was support from a number of consumer organisations, there was a lack of clear evidence for introducing representative actions. The Government commissioned further research in 2008 which suggested that there is a gap between successful enforcement action and adequate consumer compensation and that representative actions by an independent publicly-funded figure could be a way to meet this gap alongside attempts to deliver compensation through public enforcement.<sup>47</sup>

The Civil Justice Council (CJC) produced a report on Collective Actions on 12 December 2008 as formal advice to the Lord Chancellor. The report recommended amongst other

<sup>46</sup> Representative actions in consumer protection legislation, Consultation, Department of Trade and Industry, July 2006, <http://www.berr.gov.uk/consultations/page30259.html>

<sup>47</sup> Representative Actions and Restorative Justice: A Report for the Department for Business, Enterprise and Regulatory Reform (BERR), Professor John Peysner and Angus Nurse, Lincoln Law School, University of Lincoln, December 2008, <http://www.berr.gov.uk/whatwedo/consumers/enforcement/index.html>

things the introduction of a generic collective action that could be brought by a wide range of representative bodies. The Government is currently considering in detail the recommendations made by the CJC and intends to issue its formal response before the summer recess.

The model of establishing a publicly-funded figure to negotiate compensation on behalf of groups of consumers is one that has been working effectively in some Scandinavian countries for a number of years.

## Figure 22: Fact box

### Example of collective actions in Scandinavia

In Finland the Director General of the Consumer Agency is the Consumer Ombudsman. The role of the Finnish Ombudsman is to monitor compliance with legislation that has been enacted to protect consumers. In 2007 the Consumer Ombudsman was given the power to initiate legal action on behalf of a group of consumers. However the Consumer Agency took the decision only to use this power when all other means to obtain appropriate compensation for consumers had been exhausted. The experience of the Consumer Agency has been that the desired result for the consumer has in all cases been reached through negotiation rather than going down the more onerous route of group action.

In Sweden the Director General of the Consumer Agency is the Consumer Ombudsman. The role of the Swedish Ombudsman is to represent consumer interests to the business world and pursue legal action on behalf of consumers. The Swedish Ombudsman has had the power since 2003 to take action on behalf of a group of consumers. In 2007 an evaluation of this power was conducted which included interviews with several hundred Swedish businesses. No information emerged to suggest the power was being misused, i.e. to force a business to make unjust settlements out of court. There was evidence that the power had enabled consumers to take forward cases that without the power they would have been unable to pursue.

In Denmark the Consumer Ombudsman heads a separate agency, the Office of the Danish Consumer Ombudsman. The Danish Ombudsman seeks to induce trade and business to comply with the law. The Ombudsman has had the power to take collective actions since January 2008. The experience in Denmark so far has been that there has been a much greater willingness of business to settle because the Ombudsman has the power to take group actions.

#### 3.4.4 Distributing compensation to consumers

In order to help consumers obtain compensation that is due to them from overseas enforcement, and which has already been secured, the Government will consult on giving the Consumer Advocate the power to receive, hold and distribute compensation for UK consumers.

The primary aim of this power is for cases where UK consumers have been the victims of an overseas scam and overseas enforcement bodies have seized or confiscated funds that they have identified as belonging or due to UK consumers. There have been just a handful of cases of this kind in the past few years but in these cases it has proved difficult for that compensation to be sent for onward distribution to UK consumers. The Consumer Advocate will be well-placed to provide this role given the clear fit with the Advocate's work to champion compensation for consumers.

The Advocate would be expected to use a third party to carry out the detailed work to identify and distribute the compensation to consumers and would need to be able to recover costs. In some cases the Advocate might conclude that the administrative costs of identifying relevant consumers and distributing the compensation to them would be disproportionate to the amount of compensation available. In these circumstances the Advocate would need to have the power instead to use the compensation to finance, for example, relevant consumer awareness/education activities.

#### 3.4.5 Addressing unfairness in consumer credit agreements

There is concern amongst some consumer organisations that the consumer credit protection regime has been slower than is desirable in tackling emerging unfairness and needs to be enabled to respond in ways that it has not been able to in the past when evidence emerges of issues causing widespread unfairness which may affect many consumers. In order to address this concern the Government will consult on equipping the Consumer Advocate with further, specific powers to tackle unfairness such as a power to take cases under the unfair relationships test on behalf of consumers.

### 3.5 BETTER INFORMATION FOR CONSUMERS

The Consumer Law Review asked businesses, consumer groups and regulators for their views on improving consumers' understanding of their rights.

Responses to the Review highlighted:

- Gaps in knowledge of consumer rights, business responsibilities and access to redress when things go wrong
- Confusion from multiple sources of information<sup>48</sup>
- Low awareness of Government sources of advice
- Evidence of poor consumer experiences and existing provision failing to meet needs, including a lack of co-ordination between web and helplines, with vulnerable consumers worst affected.

There was broad consensus among respondents that more could be done to raise consumers' awareness of their rights and responsibilities and on the scope for more effective and widespread education. Research carried out by BERR in the summer of 2008 found 60% of a representative sample of adults across the UK claimed to have been in a situation where they faced a problem as a consumer.<sup>49</sup>

While most in the sample said they were fairly well informed about their rights, almost a third said they were **not** well informed. And while 80% said they were confident about making a complaint or returning goods, they were much less confident about dealing with problems when buying on the internet, compared to buying from a high street or local independent store. Furthermore, less well educated adults and those aged 16-24 said they were less informed, knowledgeable or confident about using their rights generally.

Personal confidence plays a key role in influencing usage of consumer rights. And while confidence is partly driven by knowledge, an individual's approach to "challenging situations" will also determine their ability to use the protection system available.

This section looks at:

- A new Consumer Rights Publicity Campaign
- Improving access to information and advice
- Better information for consumers in specific situations.

### 3.5.1 Consumer Rights Publicity Campaign

To raise awareness of key rights and the availability of advice provided by Consumer Direct, the Government will launch a new consumer rights publicity campaign.

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48 For more information about the provision of information see, Warning: Too much information can harm, A final report by the Better Regulation Executive and National Consumer Council on maximising the positive impact of regulated information for consumers and markets, November 2007, <http://www.berr.gov.uk/files/file44588.pdf>

49 The survey was carried out by TNS System Three during the period 11 – 15 June 2008. A total of 1012 interviews were conducted amongst a representative sample of adults aged 16+ across the UK, <http://www.berr.gov.uk/whatwedo/consumers/page51180.html>

BIS has joined forces with Consumer Focus, the Office of Fair Trading and Consumer Direct to develop a campaign to improve awareness of consumer rights, and to direct consumers to Consumer Direct as the source of online and telephone advice and support on consumer issues. The campaign will reach its peak in September 2009 during National Consumer Week.

The campaign is divided into two distinct elements. Firstly it will be targeted at those consumers with the lowest levels of understanding of, and confidence in using, their consumer rights. These are less well-educated adults, but we will also target 16-24 year-olds within this group.

Messages will outline some of the key legal rights for consumers and the ways in which they can be more confident shoppers. The essence of these key rights is that goods must:

- Fit the description given
- Be of satisfactory quality and
- Be fit for their purpose.

In addition services must be carried out with reasonable care and skill in a reasonable time.

Our intention is to work in partnership with retailers in store and online to convey these messages, complemented by a media campaign.

The second element of the campaign is designed to improve awareness of consumer rights among businesses who deal directly with consumers, particularly small and medium-sized enterprises (SMEs). This will involve providing SMEs with messages around their need to understand better the rights their consumers have through education and training for staff. The aim here will be to foster a culture of better and more informed interaction with customers.

This will use [businesslink.gov](http://businesslink.gov) and the local Business Link face-to-face network to increase knowledge on what different types of businesses need to do to comply, as well as improving advice available to address needs of businesses as consumers.

### 3.5.2 Improving access to information and advice

Government policy is to change public services so they meet the needs of the people who use them, rather than the needs of those who provide them and by doing so reduce the frustration and stress of accessing them. As part of this, DirectGov, which currently has over 16 million visitors a month, will become the single point for citizens to access Government information and services on the web.

A new consumer area will be created on the DirectGov website. This will present in one place guidance, self-help tools and templates, with clear signposting to where to find further support, including access to redress and Good Trader Schemes. The new area will

be created by the end of 2009 and we will work with all of our delivery partners to converge all consumer content from across Government to DirectGov by March 2011.

Information on DirectGov is available on Freeview, Teletext, Virgin Media and Sky and can be accessed on any internet enabled mobile phone, but we must ensure that all consumers, particularly the most vulnerable, can get access to the right information and support first time in the way that they prefer to receive it.

BIS will therefore lead a wider programme of work to bring together all key providers of consumer advice to enable closer integration of digital, phone and face-to-face channels. Where providers give telephone support, the Government will improve referral mechanisms between these helplines, as well as the transition to specialist face to face support. Consumers will get access more quickly to the information they need, particularly detail on complaint/redress mechanisms, including Alternative Dispute Resolution and guidance to enable easier use of courts where this action is the last resort.

### **3.5.3 Better information for consumers in specific situations**

#### *3.5.3.1 Information for people attending court involved in disputes*

Since March 2009, the Ministry of Justice (MoJ) has provided additional information for people going to court about repossession of their homes. This information strongly encourages borrowers to take early action to resolve their debt and to attend the court hearing. Defendants are provided with a list of free local advice providers and are also advised, in particular, if there is a Housing Possession Duty Court desk scheme that can provide support on the date of the hearing in the particular court. MoJ is currently exploring the options for providing similar information for other types of claims.

Working in partnership with DirectGov, MoJ is also developing new web-based step-by-step guides in the form of civil justice "walkthroughs". These will tell the public what to expect of various dispute resolution processes, including the county court and enforcement processes. The walkthroughs will provide information to help people make informed decisions about resolving disputes that they may have over goods and services, banks and financial services, money or housing. The walkthroughs will explain the alternative dispute resolution options available to consumers, for example, through mediation or ombudsman services. They will highlight the importance of obtaining early independent advice and of engaging with the problem and attempting to resolve it without the need for court intervention, where possible. In the event that court action is necessary as a last resort, the walkthroughs will also "demystify" the court and enforcement processes to help individuals actively engage in resolving their disputes. The new walkthroughs are currently scheduled for deployment on a rolling schedule starting in autumn 2009.

### 3.5.3.2 Finding good trades people

The Government held a Home Improvement Summit on 8 June 2009 to explore possible solutions to the issues facing those considering having work done in their home. The objectives were to identify ways in which consumer awareness of problems in the sector can be improved, to improve awareness of recognised “Good Trader” schemes and to raise the profile of these schemes among business to encourage wider participation.

As a result we have agreed to work with enforcement authorities, business, and scheme operators over the coming months on a range of issues, from helping and encouraging consumers to make good decisions about local home improvement traders and finding good advice and information, to how scheme operators and other agencies can work together to provide clear messages on the roles and benefits of different schemes and about the benefits of dealing with accredited scheme members.

### 3.5.3.3 Flights and holidays

The failure of XL Leisure Group in September 2008 revealed the need for better information for consumers affected by airline or tour operator failure. The Civil Aviation Authority (CAA), which runs the Air Travel Organisers’ Licensing (ATOL) scheme, mounted a very effective exercise to provide flights home for XL customers abroad but in the immediate aftermath of the failure there was confusion amongst those customers about their entitlement to financial and practical assistance for their journey back to the UK.

The Department for Transport (DfT), with the CAA, BERR and the travel trade, undertook a ‘lessons learned’ exercise to review the failure of XL. It became clear that the financial protection of air travel was difficult for consumers and even for some working in the trade to understand because of complexities of the legal framework surrounding it and developments in the ways people book their holidays, notably via the internet.

This spring DfT launched a campaign to increase public understanding of the options for protection against airline or tour operator insolvency and what to do in the unlikely event of being affected by the collapse of an air travel company. Clear and comprehensive guidance targeting consumers booking their holidays is now available on the DirectGov website at [www.direct.gov.uk/holidayprotection](http://www.direct.gov.uk/holidayprotection).

Other measures resulting from the lessons learned exercise include clearer information on the documentation received after a holiday booking is completed and better communications in resorts in the unlikely event that an airline or tour operator should fail.

For the longer term, DfT is working with the CAA, other Government Departments and the travel trade, to explore whether financial protection for air travellers can be clarified. The measures under consideration include:

- Extending financial protection to all flights sold with another holiday component
- Allowing airlines to protect flights sold with another holiday component through the ATOL scheme

- Allowing ATOL licence-holders' non-air packages to be financially protected through ATOL or parallel arrangements.

Depending on the outcome of its work, DfT expects to consult on options for reform, including any legislative changes required, later in 2009.

#### *3.5.3.4 Gas and electric bills*

Energy prices have risen dramatically – gas prices rose 49% over 2008, electricity by 29%.<sup>50</sup> In October 2008 Ofgem, the gas and electricity markets regulator, reported on its Energy Supply Probe that identified a number of important areas where competition in the gas and electricity industry could work more effectively, particularly for more vulnerable consumers. Following responses to that report Ofgem are now proposing a range of remedies:

- Improving the information that consumers have so that they can make well informed decisions about the choices that they make in the energy market. These include having better information on bills including the exact tariff name that the consumer is on and their yearly consumption. This will make it easier for consumers to accurately use comparison and switching sites to decide the best supplier and tariff for them.
- A number of changes to the rules governing door to door sales, including written estimates of the cost of the new deal, to ensure that consumers have good quality information before deciding whether to sign up with a particular supplier and tariff.
- Consumers should be reminded at least once a year by their supplier that they are able to switch supplier if they wish to do so and that this will not affect their supply.

#### *3.5.3.5 Housing and care for the elderly: FirstStop*

FirstStop is a free, independent national information and advice service for older people, their family and carers funded by the Department for Communities and Local Government (CLG). It provides joined-up advice across a range of housing, care and finance rights and issues. The FirstStop partnership brings together resources from Help the Aged, Counsel and Care, Elderly Accommodation Counsel and NHFA Ltd.

CLG will invest in up to ten local FirstStop partnerships to offer more intensive local support and advocacy services for older people and to broker links with the national service.

The FirstStop website is at: [www.firststopadvice.org.uk](http://www.firststopadvice.org.uk)

Telephone: 0800 377 7070

e-mail: [info@firststopcareadvice.org.uk](mailto:info@firststopcareadvice.org.uk)

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<sup>50</sup> Source : Consumer Focus, 2009



### 3.5.3.6 *Climate change and energy strategy*

In July 2009 the Government will publish a White Paper on climate change and energy. This will set out our vision of a future that is fair, low-carbon, prosperous and energy-secure, and will detail the policies to help get us there.

Actions are also being taken in the Devolved Administrations. The Climate Change (Scotland) Bill was passed by the Scottish Parliament on Wednesday, 24 June. June also saw publication of Scotland's Climate Change Delivery plan which identifies the high level measures required in key sectors to meet Scotland's statutory climate change targets, to 2020 and in the long term. In addition, following its Programme of Action consultation this summer, the Welsh Assembly Government will be launching a Climate Change Strategy at the end of the year and the Renewable Energy route Map focuses on how Wales might exploit its own renewable energy resources over the next twenty years.

However, past emissions mean we are already committed to 30 years of temperature rise and over 100 years of sea level rise. Therefore it is important that all sectors, including consumers, adapt to increase our resilience to these impacts, but also to take advantage of any opportunities.

The Department for Environment, Food and Rural Affairs (Defra) and the Devolved Administrations launched the UK Climate Projections in June 2009, which describe how the UK's climate might change through the 21st century.

As the impacts of climate change will vary from place to place as well as across sectors, so consumers will need to take decisions that reflect their particular circumstances and vulnerabilities to the impacts of climate change.

### 3.5.3.7 *Act on CO<sub>2</sub> campaign and greener living on the DirectGov website*

The Act on CO<sub>2</sub> campaign and environment and greener living pages on DirectGov provide advice and information for consumers about how they can reduce the impact of their lifestyle on the environment.<sup>51</sup> Such measures will mean wasting less energy, water and food and so help consumers to reduce their energy, water (as water metering becomes more widespread) and shopping bills.

The Act on CO<sub>2</sub> campaign aims to provide consumers with information to enable and encourage them to make a difference on reducing CO<sub>2</sub> emissions, and in particular to:

- Reduce their energy use in the home (including the contribution of using less hot water)
- Reduce their paper use
- Re-use plastic bags
- Recycle batteries

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<sup>51</sup> The Act on CO<sub>2</sub> campaign applies in England only; customers in Wales can find similar advice through the "Help Wales reduce its carbon footprint" campaign.

- Use water in the home and business environment efficiently
- Reduce food waste
- Buy sustainable and energy efficient products
- Encourage businesses to use resources more efficiently.

A campaign will be launched in summer 2009 to inform consumers of the best sources of relevant climate change information, and provide tips that they could consider to increase their resilience to a changing climate.

To support this, the Government funds the Energy Saving Trust and its network of advice centres to provide advice for consumers on what they can do in the home to use less energy and water, as well as to minimise their waste. The Trust advises consumers on action they can take to save energy and reduce their fuel bills by installing household insulation and other energy efficient products and informs consumers of the help available through Government schemes including the Carbon Emissions Reduction Target and Warm Front.

People can find advice on the changes they can make across their life on the DirectGov website, alongside wider information and advice for consumers.

<http://www.direct.gov.uk/ActOnCO2>

#### *3.5.3.8 Green claims code*

Defra's voluntary "Green Claims Code" was developed in 2003 to provide guidance to businesses on how to present their environmental credentials in their marketing claims. However, over time the market has evolved, consumer awareness of environmental issues has heightened and there have been a growing number of complaints to the Advertising Standards Authority over green claims, prompting concerns that some businesses are marketing unfairly on green credentials.

Defra is currently updating the code in order to create a constructive framework to assist business to understand the main responsibilities in applying environmental claims and to protect consumers from misleading claims in order to:

- Enable the production of high quality claims about sustainability of companies or products underpinned by robust environmental practices
- Support business to convey the environmental qualities of their goods and services or to expand into new markets
- Support the development of promotional claims on specific themes where current guidance does not exist and to ensure a level playing field

- Harness consumer action to purchase greener products and encourage environmentally-positive consumer action by increasing availability of more environmentally-friendly products
- Ensure that consumer confidence is protected by ensuring misleading claims are eradicated through provision of guidance.

### 3.5.3.9 Energy efficient products

Working with major retailers, the lighting industry and UK energy suppliers the Government is phasing out traditional energy guzzling bulbs, replacing them with energy efficient light bulbs, which now come in all shapes and sizes and will fit most electrical fittings. All lamps now have alternative, energy efficient bulbs that will bring forward the energy savings that will result from mandatory measures across the EU that will begin in September 2009.

The Government is helping consumers by ensuring that products that are lagging behind others and have become inefficient and therefore costly to run, are no longer allowed to be placed on the EU Single Market. For example, the minimum product standards agreed in the last year in Europe on simple set-top boxes, external power supplies, domestic lighting, commercial and street lighting, stand-by televisions, fridges, washing machines, motors and circulators are expected to generate a net benefit of over £900 million per annum to the UK as a whole, mostly in the form of reduced energy bills to householders.

We will continue to argue hard in Europe for new and dynamic products standards that can generate further saving to UK consumers and businesses.

We will support the extension of the Energy Labelling Directive, known as the 'A to G' label to help consumers choose those products that can help them reduce their energy bills.

### 3.5.3.10 Reducing Waste

The Waste and Resources Action Programme (WRAP) are running "Love Food Hate Waste"; a consumer facing campaign to encourage behaviour change, and working with the UK grocery sector, food industry, Government and organisations such as the Food Standards Agency to develop practical solutions and improved communications to enable consumers to get the most from the food they buy and waste less of it.

The Government is committed to reducing the environmental impact of carrier bag usage (in 2008 UK shoppers took nearly 9.9 billion new carrier bags) and ultimately phasing out the unnecessary distribution of single-use carrier bags of all material types.

In order to achieve this, the Government has legislated to give itself the power to make retailers charge for bags, but favours a voluntary approach, giving individual retailers flexibility in achieving 50% reduction in bag distribution by the end of May 2009 (and aspiring towards an ultimate reduction of 70%). Alongside this, in April 2009 the Government, BRC (the British Retail Consortium) and WRAP launched Get a Bag Habit, a consumer facing campaign to promote reuse of all types of bags by consumers.

Defra, BIS and the Devolved Administrations recently published a new strategy for packaging, which explores how the overall environmental impact of packaging can be reduced. In the current economic climate, resource efficiency is one of the key issues for the strategy. Making this a central theme for businesses will help reduce the costs. Savings may be passed on to the consumer, and consumers may also benefit from lighter or less bulky packaging, more of which is recyclable, which ultimately means less waste in their bins.

The Government's new water strategy for England (Future Water: the Government's Water Strategy for England, February 2008) sets out our plans for water in the future including how we intend to reduce demand for water and the need to value water more and use it more wisely. Consumers are at the heart of policy making in this area and fair charging and affordability are key issues for the Government. Wales, which has a separate, strategic policy position statement on water, also places consumers at the heart of water service delivery.

'Environment and Greener Living' information on the DirectGov website provides consumers with advice on the measures that can be taken to improve energy and water efficiency in the home and as water metering becomes more widespread, this will help consumers reduce their bills. In addition, the Government's Act on CO<sub>2</sub> media campaign (see above) has highlighted the contribution that hot water saving in the home can make to reducing carbon emissions.

To support this, the Government is now asking the Energy Saving Trust to develop advice for consumers on water saving in the home.

## Chapter 4

# Modernising Consumer Law



Photo: Neil Watson

## 4.1 Overview

**This chapter sets out what the Government intends to do to modernise consumer law over the coming years, in order to meet the challenges of a rapidly changing marketplace.**

Our aims are that:

- Consumer rights should be clear in law and simple to understand, based on core principles of consumer protection
- Consumer law must fit the modern marketplace and be suited to deal with new ways of buying and selling that develop in future
- Consumer rights should be accessible to the many and not the few

We will achieve these aims by:

- Developing rules on new “digital” products to ensure the core principles of consumer protection apply
- Looking at how the law on misrepresentation and duress can be made simpler, more transparent and accessible to business and consumers
- Reforming consumer law and simplifying weights and measures legislation without diluting consumer protection
- Modernising Trading Standards powers to help them deal more effectively with modern trading conditions
- Bringing forward, in due course, a new Consumer Rights Bill which will implement the proposed EU Consumer Rights Directive and modernise and simplify UK consumer sales law.

Consumers enter into contracts every day and in the vast majority of cases, these contracts are successful and we get what we pay for with no problems.

There are occasions though when things go wrong and as consumers we have important protections to ensure that we are treated fairly. We also have important duties to be responsible consumers and to act reasonably.

While the law can often be complex the underlying principles are relatively straightforward: traders must not mislead consumers or unfairly pressurise them into making wrong choices; consumers should not be given less than they paid for; products should be safe and do what they are supposed to do; contracts need to be clear, and not unduly weighted in favour of the business.

When problems arise, however, consumers and shop assistants often find themselves talking at cross-purposes; confusing legal rights with what we think is fair and muddling-up store policies with “statutory rights”.

Rights that match the reality of our consumer experiences are central to ensuring consumers get treated fairly. Knowing your rights, and having the confidence to state them, improves the ability of consumers to get the best outcome when something goes wrong.

Rights need to be accessible if we are to use them in our everyday lives.

Simple enough for the average consumer to read and understand, straightforward enough for the shop assistant to explain, strong enough to protect consumers from the rogue traders.

The Consumer Law Review conducted in 2008 demonstrated that the UK has a generally well established and mature framework of consumer legislation which provides a high level of consumer protection and a reasonable balance of rights. But the law is complex, fragmented and inflexible. This can lead to higher levels of consumer detriment as well as unnecessary costs for business and less effectiveness for enforcers. This complexity has to a considerable extent arisen because of overlaying EU legislation on UK law.

The Government is committed to a fundamental modernisation of the consumer law framework to fit the modern, interconnected and interdependent world. This will ensure consumer rights are fit for purpose in the age of the internet. It will provide consumers, business and enforcers with the clarity and confidence to explain, to exercise and to enforce the protections and responsibilities we all have as consumers.

This commitment includes:

#### *In the medium term*

- Negotiating the EU Consumer Rights Directive as a basis for simplification and modernisation of consumer sales law, while retaining important consumer protections.
- Developing rules on new “digital” products to ensure the principles of consumer protection apply.
- The Law Commission (in consultation with the Scottish Law Commission) will be invited to advise on a possible restatement and simplification of the law on misrepresentation, incorporating developments in case law to make it more transparent and accessible to business and consumers. They will also be asked to look at the law on duress in order to clarify whether aggressive commercial practices under the Consumer Protection from Unfair Trading Regulations 2008 should be automatically classed as a form of illegitimate pressure. The overall effect will be to ensure that business liability under public and private law is aligned as far as possible.
- Reforming UK consumer law, including the simplification of weights and measures legislation, in order to address the longstanding criticisms that years of piecemeal changes have resulted in complicated legislation, difficult for business and consumers to understand and costly to comply with.
- Bringing forward proposals which look to develop a new single set of powers and more flexible qualification requirements for the Trading Standards Service to reflect modern trading conditions, together with better sentencing guidelines for trading standards offences.

#### *In the long term*

- Introducing a Consumer Rights Bill to enshrine these protections, both old and new, in a simpler and clearer way.

## 4.2 A NEW LEGISLATIVE FRAMEWORK FOR CONSUMER PROTECTION

### 4.2.1 A new EU Consumer Rights Directive

In October 2008, the European Commission published a proposal for a Consumer Rights Directive, as an outcome of the “review of the consumer acquis”. The Directive would replace four existing consumer directives on doorstep and distance selling, unfair contract terms and sale of goods and associated guarantees. The Directive would set out simpler and more consistent rules for both business and consumers across the EU through use of a maximum harmonisation clause, whereby Member States could not maintain or adopt provisions providing different protection than those laid down in the Directive.

The Consumer Rights Directive will, if taken forward as proposed, provide important new or strengthened protections, including a 14 day cooling off period for off-premises and distance sales during which consumers can cancel the agreement without penalty. This mirrors the similar 14 day cooling off period in the Consumer Credit and Timeshare Directives. Having the same length of cancellation period in all circumstances where such a right exists will make it easier for consumers to understand how long they have to exercise their cancellation rights.

#### Figure 23: Fact box

##### Cross Border Shopping in the Single Market

The internet has revolutionised the way many of us shop. It gives consumers easy access to many more retailers than they could ever have reached before, both at home and in other Member States. But often traders are reluctant to sell, and consumers to buy, across borders because of the fragmentation of national laws regulating consumer transactions. The Consumer Rights Directive is intended to harmonise these national laws to boost consumer confidence and at the same time make it easier for traders to sell their products to consumers in other Member States. This will contribute to the creation of a genuine cross-border retail market where consumers will be able to shop around to obtain the best value on offer.

### 4.2.2 A Consumer ‘Bill of Rights’

Once the EU Consumer Rights Directive is agreed this will provide the framework for setting out all the key consumer rights in a practical and accessible way.

The recent Unfair Commercial Practices Directive has already set out a principles-based approach to deal with traders whose marketing and sales practices treat consumers unfairly. The new Consumer Rights Directive takes this a step further by providing contractual rights for consumers across a range of areas including shopping online, doorstep selling, unfair contract terms and sale of goods.



Our intention is to place all these European protections within a simplified domestic consumer law framework that will provide UK consumers with a set of principles-based consumer rights that are fair, understandable and can be enforced. We will also eliminate overlaps, conflicts and duplication between domestic and European inspired rights; a principled rather than a patchwork approach.

The Europe-wide rights will form the heart of the legislation and we will bring together those rights not covered by the Directive to create a one stop shop for consumer law.

We will set at the heart of this legislation four key consumer principles:

- traders must not mislead consumers or unfairly pressurise them into making wrong choices
- consumers should not be given less than they paid for
- products should be safe and do what they are supposed to do
- contracts need to be clear, and not unduly weighted in favour of the business.

In doing so we propose to bring together consumer rights into a coherent legislative framework:

- EU Consumer Rights
- Unfair Commercial Practices
- Cancellation Rights
- Weights and Measures
- Unfair Contract Terms
- Supply of goods, services and digital content
- Misrepresentation and law on duress.

### **4.2.3 Consumer rights in the digital age**

Consumer legislation also needs to be flexible to keep pace with technological developments. In the last decade we have seen a revolution in the way we purchase goods and services. The growth of the internet and new technologies has seen exciting opportunities for business to reach new markets and for consumers to access a greater choice of products at different prices.

Consumers are embracing the digital economy; downloading music, films and software. Yet it is not clear what rights consumers have in these circumstances, and how their rights differ from buying a CD or DVD. Our consumer legislation has sometimes struggled to keep pace with this constantly developing marketplace.

Figure 24: Fact box

### Digital Rights for Consumers

Computers are an essential part of modern living. Usually they are supplied with certain software already preloaded but which must be correctly configured on first using the machine. However, the current uncertainty about the legal status of software can cause difficulties for consumers on the few occasions the installation fails. Consumers may assume that, as with any other good, they are entitled to return the computer to the shop and get, for example, their money back or a replacement computer. But the seller may argue that, as software is not a good, he or she is not liable to the consumer for the faulty installation.

The Government intends to streamline and update consumer law to deliver better outcomes for consumers and business, whilst at the same time reducing unnecessary burdens for business and promoting fair and competitive markets. In taking forward this strategy, we intend to ensure that our new consumer law regime is adapted to the internet age.

#### 4.2.4 Sale and supply of goods and services

Consumers have extensive rights when they buy goods and services, but their rights are spread across a number of statutes which overlap and interact. This law evolved before the development of digital technologies and is therefore not well suited for dealing with “digital” products such as music, films and digital content to be used in mobile phones (e.g. ring tones and games) in the form of data files legally downloaded from the internet.

Responses to the Consumer Law Review suggested that there would be strong benefits for business, consumers and enforcers from a coherent consolidated law which as far as possible minimised the differences between different types of contract and different manners of purchase.

The proposed Consumer Rights Directive covers part of this law: the sale of goods, including goods supplied as part of a mixed goods/services contract, but at present it does not fully cover, for example, sales of services or digital downloads. The Government would have preferred the Directive to include sales of services and “digital” products.

The Government proposes to use the resulting Directive as the basis for a wider reform to consolidate the various pieces of legislation on the sale and supply of goods and services to consumers into one measure to make it more accessible to consumers, business and their advisers.

The Government intends to:

- Press in EU discussions for bolder simplification in the proposed Consumer Rights Directive while maintaining necessary protection for consumers

- Use the resulting Directive as the basis for wider reform of UK business to consumer sales law, replacing three current Acts, removing unnecessary distinctions between goods and services contracts (and combined contracts) and between different types of transaction, for example, sale, hire or hire purchase<sup>52</sup>
- Clarify the position on combined goods/services contracts
- Review the existing laws in terms of applicability to “digital” products and make provision to ensure appropriate consumer protection
- Make business to consumer sales law separate from business to business sales law, but consider updating business to business law to keep it in line.

### 4.3 REDRESS FOR CONSUMERS WHO HAVE BEEN HARMED BY UNFAIR COMMERCIAL PRACTICES

An important first step on simplifying the consumer framework was taken with implementation of the Unfair Commercial Practices Directive (UCPD) which is based on principles together with a list of 31 specific practices which are banned outright. The Consumer Protection from Unfair Trading Regulations (CPRs) 2008 implementing the Directive came into force in May 2008.

The CPRs are enforceable by public enforcement authorities. The Government said it would review, two years after the Regulations came into force, whether business should also be given the right to enforce the CPRs, e.g. in relation to copycat packaging which mislead consumers.

The CPRs do not, however, provide consumers with an individual right under private law to claim compensation when they have been harmed by an unfair commercial practice. In order to achieve a remedy for a breach of these new Regulations, consumers will have to rely on existing rights introduced before the new UCPD was agreed.

In the Consumer Law Review, consumer groups argued strongly that a new private law right of action would provide an easier avenue of redress for wronged consumers than the current inaccessible law, and would provide new rights in some circumstances. This would encourage compliance. Business expressed concerns that new private rights would risk increasing the number of claims made by consumers, including vexatious cases, and would make existing civil law even more complex.

In 2008, the Government asked the Law Commission to consider whether adopting a private law right of action for the whole of the CPRs might have unintended and adverse consequences, or might lead to confusing overlapping remedies.

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<sup>52</sup> Supply of Goods (Implied Terms) Act 1973; Sale of Goods Act 1979; and Supply of Goods and Services Act 1982

Their paper, which was published on the Law Commission website on 10 November 2008, recognises that while there would be some advantages in giving consumers a private law private law right of action for the whole of the CPRs there are real dangers it could also produce unintended and undesirable consequences.

The Government now believes that the law could be improved without introducing a new private law right of action. This would reduce the risk of unintended consequences.

- The Law Commission (in consultation with the Scottish Law Commission) will be invited to advise on a possible restatement and simplification of the law on misrepresentation, incorporating developments in case law to make it more transparent and accessible to business and consumers. They will also be asked to look at the law on duress in order to clarify whether aggressive commercial practices under the CPRs should be automatically classed as a form of illegitimate pressure. The overall effect will be to ensure that business liability under public and private law is aligned as far as possible.
- Our compensation pilots outlined in chapter 3 will also test to what extent the powers similar to those in the Regulatory Enforcement and Sanctions Act 2008 can be applied to breaches of the CPRs, and compensation awarded to consumers.

#### **4.4 REFORMING UK CONSUMER LEGISLATION**

The Government will simplify and modernise existing UK legislation at the same time as it implements the new Consumer Rights Directive. We will consult further about amendments to the following legislation:

- Unfair Contract Terms: we will use the Consumer Rights Directive as a basis for a simpler, clearer unified regime on unfair business to consumer contracts and consider wider protections for consumers.
- Remove UK specific requirements for consumer product safety which have become ineffective or where international or EU standards (which may be called up under EU law) are equivalent. Where there are not international or EU equivalent measures for specific UK consumer product safety requirements (for example, children's nightwear, plugs and sockets, flammable furniture) we will continue to ensure UK citizens remain fully protected by UK law.
- Where appropriate, we will lobby the Commission and international and EU standards-making bodies to develop measures that will provide the same level of consumer product safety across the EU that the UK enjoys. In the event that any such new EU measures provide equivalent consumer safety and enforcement powers, we will strongly consider removing the UK specific requirements.

- Simplify weights and measures legislation, reviewing controls on how products are to be sold, removing potential duplication of standards, and providing manufacturers with greater freedoms to place new instruments on the market and better methods for in-service controls, and reviewing the case for National Measurement Office to have concurrent enforcement powers. This shift of compliance control to manufacturers/producers should reduce the risk of non-compliance and the level of inspections required; firmly in line with Hampton principles.
- Consult on the repeal of the Property Misdescriptions Act 1991 as the CPRs provide broadly equivalent protections.
- Subject to detailed review, simplify the law on estate agents, taking account of approaches in financial services legislation.
- Consider the responses to the Department for Communities and Local Government's consultation on the regulation of letting agents, landlords etc with a view to announcing new regulation in due course.

#### **4.5 TRADING STANDARDS: MODERN POWERS FOR MODERN TRADING CONDITIONS**

The Government is committed to bringing forward proposals to modernise Trading Standards' powers to reflect modern trading conditions; we will look at developing a new single set of powers for Trading Standards Services. In relation to enforcement practice, we recognise that the objective is to encourage compliance; a proportionate enforcement response to breaches; and to effectively stop and where appropriate, penalise deliberate malpractice and fraud. We also need to ensure that Trading Standards' powers will promote cross-boundary working and cooperation.

##### **Figure 25: Fact box**

###### **Lessons from Scambusters – cross border working**

For Scambusters to operate effectively, they have to be able to work across local authority boundaries. Trading Standards officers are empowered to enforce legislation in their own local authority area. Formal approval to work outside their area can be sought through, for example, a section 101 Local Government Act 1972 agreement with the authority concerned. However, this can be a very bureaucratic and time consuming process and some teams have had difficulties in obtaining cross border authorisations.

The powers will be aligned in equivalent areas to reduce complexity and there will be provision for further flexibility in qualifications and competencies for Trading Standards Services. The Government is also committed to ensuring that there are no unnecessary barriers to local authorities taking enforcement action for breaches which have occurred outside their own local authority boundary.

The trading environment is rapidly changing as a result of technologies such as the internet and mobile phones and itinerant traders who operate across local authority boundaries. We need to ensure that enforcement powers reflect the modern trading environment.

The Government will:

- Look to develop a single set of powers for Trading Standards Services which will bring together current powers scattered in different pieces of consumer protection legislation. This will help improve consistency as well as providing clarity and transparency to business in any circumstance. Such powers will also need to take into account the new EU regulation setting out the requirements for the powers of enforcers of Community harmonised legislation.<sup>53</sup>
- Look at ways to improve cross border co-operation and ensure that Trading Standards officers' authorisations are clear in every case.
- The Government believes that criminal prosecutions should be reserved for the most serious breaches and other responses, notably civil enforcement action, may be more proportionate for other particular breaches under investigation, in line with Hampton principles.<sup>54, 55</sup> To support this approach when re-framing Trading Standards officers' powers the Government will seek to ensure that the powers can be used to determine whether there has been a breach of consumer laws, and not merely in relation to a criminal offence. This will ensure that use of the powers does not determine how the breach will be tackled: either criminal or civil enforcement routes can be used.
- Update and clarify Trading Standards powers and qualification requirements as part of the Consumer Bill of Rights. Trading Standards Officers' powers need to reflect modern trading conditions, including the online trading environment. Continuing to provide less prescriptive and more proportionate qualifications and competency requirements will enable more flexible staffing for local authorities. This will need to be balanced by defining a competency standard as part of a wider common framework for

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53 Regulation (EC) No 765/2008 of the European Parliament and Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing EEC No 339/93, Official Journal of the European Union, 13 August 2008, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0030:0047:EN:PDF>, <http://www.berr.gov.uk/consultations/page38188.html>

54 The Government's response to the consultation on the draft Consumer Protection from Unfair Trading Regulations implementing the Unfair Commercial Practices Directive, February 2008, <http://www.berr.gov.uk/files/file39705.pdf>

55 "The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions" – Reducing administrative burdens: effective inspection and enforcement, Sir Philip Hampton, 2005, <http://www.berr.gov.uk/whatwedo/bre/inspection-enforcement/assessing-regulatory-system/page44042.html>

competency to help ensure that officers in local authority regulatory services, including Trading Standards Services, have the necessary knowledge and skills to enforce the requirements of legislation, support businesses effectively and to deliver successful outcomes for consumers and business. LBRO is working with professional bodies and national regulators to implement a common competency framework.

- Look at providing Trading Standards Services with rights of audience in county courts and we are engaging with the judicial community to determine what skills and training are needed in order for this to be delivered.

The Government will be consulting on these proposals to ensure that enforcers are able to meet the challenges of the modern trading environment.

#### **4.5.1 Sentencing Guidelines**

In response to the Consumer Law Review, a number of businesses, business representative organisations, and Trading Standards Services expressed some concern that there was inconsistency in sentencing for trading standards offences. There was a broad call for sentencing guidelines, to assist courts and to provide for greater consistency.

At present, the Sentencing Guidelines Council (SGC) and the Sentencing Advisory Panel are responsible for setting sentencing guidelines following consultation. The Government plans to replace the Sentencing Guidelines Council and the Sentencing Advisory Panel with a single body, the Sentencing Council for England and Wales.

Given the degree of support from Trading Standards and businesses alike, the Government will ask the new independent Sentencing Guidelines Council to consider the need for guidelines for trading standards offences.

## Chapter 5

# Next Steps



**This White Paper has set out both the real help we are providing now, and the longer term measures we are planning, to bolster confidence and help consumers exercise greater personal responsibility, while protecting consumers from unfair practices, and ensuring effective and proportionate enforcement. The preceding chapters include information on a wide variety of policy proposals which indicate how we hope to achieve this, working across Government and with many other organisations.**



The table below gives an overview of the main policy proposals set out in the White Paper with an indication of the future course of action for each of these proposals, including details for the timing of forthcoming legislation and or consultation, where relevant. It also includes a small number of proposals that have not been specifically mentioned in this White Paper but that are still relevant to wider consumer policy. The table is by no means a comprehensive list of all the proposals outlined in the White Paper, but gives an indication of the wide scope of the policy areas that it covers.

<b>Policy Proposal and Objective</b>	<b>Further actions and timing</b>	<b>Lead</b>	<b>Reference</b>
<b>Changes to residential mortgage law</b> to ensure homes cannot be sold by lenders without taking court proceedings.	The Government will hold a formal consultation with stakeholders in summer 2009, with a view to amending legislation via the Civil Law Reform Bill.	Ministry of Justice	Ch 1, Page 17
<b>Help for housing arrears for those in social housing</b> by inviting tenants with rent arrears to attend a meeting with a local advice provider to agree a repayment plan and avoid court action where possible.	The pilot of the Housing Advice Pre-action Scheme is ongoing. If the scheme proves successful, national rollout will follow in 2010.	Ministry of Justice	Ch 1, Page 18
<b>New legislation to protect private tenants whose landlords are repossessed</b> to ensure that tenants receive adequate notice to vacate the property.	Consultation is due to be published over the summer of 2009, with a view to legislate at the next opportunity.	Department for Communities and Local Government	Ch 1, Page 18
<b>Creditors offer a “breathing space” for consumers in difficulty</b> to provide struggling borrowers and customers time to repay debts or work out a repayment plan.	In place.	Department for Business, Innovation and Skills	Ch 1, Page 19
<b>A new debtors’ guide</b> to help those with debt problems to consider their options.	The Debtors’ Guide will be published by The Insolvency Service in July 2009.	The Insolvency Service	Ch 1, Page 22

Policy Proposal and Objective	Further actions and timing	Lead	Reference
<p><b>A new self-help debt advice toolkit</b> which combines a self help approach with advice agency input to help those in debt to reach agreement more quickly with creditors and to start making regular payments to reduce their debt.</p>	<p>The toolkit will be funded by Government and developed by the Money Advice Trust on behalf of the money advice sector and in conjunction with creditors. The toolkit process will be launched in autumn 2009.</p>	<p>Money Advice Trust and Department for Business, Innovation and Skills</p>	<p>Ch 1, Page 22</p>
<p><b>Additional investment in face to face debt advice</b> to enable the equivalent of 12 full-time debt advisers to counsel 1,200 cases in need.</p>	<p>The funds will be used to provide an immediate boost to adviser capacity over the next 6 months on the face-to-face debt advice programme, targeting the financially excluded.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 1, Page 22</p>
<p><b>A dedicated NHS helpline</b> to provide help and support to people with mental health problems who are suffering financial distress.</p>	<p>Operated by NHS Direct, the dedicated helpline will go live with a soft launch in July 2009 followed by a three month review.</p>	<p>Department of Health</p>	<p>Ch 1, Page 23</p>
<p><b>Better debt repayment planning</b> by improving use of the Common Financial Statement to help consumers work out a realistic debt repayment schedule.</p>	<p>The new improvements in the use of the Common Financial Statement will start to be introduced from August 2009.</p>	<p>Industry and money advice community</p>	<p>Ch 1, Page 24</p>

Policy Proposal and Objective	Further actions and timing	Lead	Reference
<p><b>Improved mental health awareness</b> guidelines to encourage good practice by creditors, the debt advice community and local government in supporting people with mental health problems struggling with debt.</p>	<p>The new evidence form which will be used to underpin the Money Advice Liaison Group voluntary guidelines for creditor and debt collection agencies received a soft launch in June 2009 at Money Advice Scotland and will be launched officially in July 2009 at the Institute of Money Advisers' conference in London.</p> <p>The Royal College of Psychiatrists and the Financial Services Authority published a booklet on debt advice for health and social care workers in May 2009.</p>	Industry	Ch 1, Page 24
<p><b>A Debt Relief Order</b> to assist those who will never be able to pay their debts and who have minimal assets.</p>	<p>The Debt Relief Order was introduced on 6 April 2009 under powers in Part 5 of the Tribunal Courts and Enforcement Act 2007.</p>	The Insolvency Service	Ch 1, Page 25
<p><b>A new statutory Debt Repayment Plan</b> to allow debtors to access advice, money handling, debt solution options and, where appropriate, management of debt all in one place.</p>	<p>A consultation paper on Debt Management Schemes will be issued before summer recess with a view to possible introduction of statutory Debt Repayment Plans under powers in the Tribunal Courts and Enforcement Act 2007 in April 2010.</p>	Ministry of Justice and The Insolvency Service	Ch 1, Page 25

Policy Proposal and Objective	Further actions and timing	Lead	Reference
<p><b>Reform to Charging Orders</b> to ensure that all appropriate safeguards are in place so that Charging Orders only become an order for sale application where absolutely necessary.</p>	<p>The Government will consult on introducing a financial limit, below which a creditor could not apply for an order for sale, by the end of 2009. The consultation will explore the implications of the threshold only applying to cases where the original debt arose under regulated consumer credit agreements. An impact assessment on the proposals will be published as part of the consultation.</p>	<p>Ministry of Justice</p>	<p>Ch 1, Page 26</p>
<p><b>A new code and measures to regulate bailiff activity</b> and address concerns about the behaviour of bailiffs, fees charged and proposals for regulation of the industry.</p>	<p>The Bailiff Code will be implemented by the end of 2009.</p> <p>The Government will consult stakeholders on a package of measures to address concerns about the bailiff industry in 2010. An impact assessment on the proposals will be published at the same time. Subject to the outcome of this consultation, we will set out draft regulations on seizure of goods and a standardised fee structure in 2011. Any changes arising will be implemented in April 2012.</p>	<p>Ministry of Justice</p>	<p>Ch 1, Page 27</p>

Policy Proposal and Objective	Further actions and timing	Lead	Reference
<p><b>Two reviews on energy supplier practice</b> to investigate how effectively they are protecting vulnerable consumers and helping customers with problem debt.</p>	<p>The Ofgem review will report its findings and recommendations later this year.</p>	<p>Ofgem and Consumer Focus</p>	<p>Ch 1, Page 28</p>
<p><b>Independent review of household charging for water and sewerage services (the Walker Review)</b> to explore whether new actions should be taken to ensure there is a sustainable and fair system of charging in place, particularly for more vulnerable consumers.</p>	<p>The interim report was published in June 2009. The final report is expected in autumn 2009. The Government will provide a full response to the final report, including possible consultation on the recommendations, once published.</p>	<p>Department for Environment, Food and Rural Affairs</p>	<p>Ch 1, Page 28</p>
<p><b>Consider whether low income and vulnerable consumers can be helped especially in the light of the economic downturn and rising food prices.</b></p>	<p>The Government is exploring the impact of food price rises and the economic downturn on low income and vulnerable households. We will consider whether there are options for potential policy interventions by autumn 2009.</p>	<p>Department for Environment, Food and Rural Affairs</p>	<p>Ch 1, Page 28</p>

Policy Proposal and Objective	Further actions and timing	Lead	Reference
<p><b>Review of regulation of credit and store cards.</b> To examine whether future regulation should explicitly: place restrictions on card issuers' ability to raise interest rates on existing debts; require that repayments to a credit card account are allocated to debts attracting different interest rates on a fairer basis; require higher minimum payments to enable full repayment of the debt within a reasonable period; and/or ban the practice of increasing borrowers' credit limits without their consent.</p>	<p>The Government will consult stakeholders formally in autumn 2009. An impact assessment on the proposals will be published with the consultation.</p> <p>Subject to the outcome of the consultation, firm proposals will be brought forward in spring 2010.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 2, Page 34</p>
<p><b>Legislation to ban the issuing of unsolicited credit card cheques.</b> The intention is to prevent credit card issuers sending out cheques except in response to a specific request from a customer at a particular time.</p>	<p>The Government will publish an impact assessment on the proposal to ban unsolicited credit card cheques in autumn 2009 and will introduce legislation to give effect to the ban at the earliest opportunity.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 2, Page 36</p>

Policy Proposal and Objective	Further actions and timing	Lead	Reference
<p><b><i>An impartial comparison table for credit cards on the FSA's Moneymadeclear website.</i></b> Subject to consultation and feasibility, an impartial comparison tool for credit cards will be included on the Moneymadeclear website to help consumers make an informed decision about which credit card would suit them, based on their expected usage of the card.<sup>56</sup></p>	<p>The Financial Services Authority will publish a timetable for the launch of an independent price comparison tool for credit cards on the Moneymadeclear website by the spring of next year. This timetable will set out details of consultation on the proposed tool, to be accompanied by an impact assessment.</p>	<p>The Financial Services Authority</p>	<p>Ch 2, Page 36</p>
<p><b><i>Review of high cost credit markets</i></b> by the Office of Fair Trading to determine whether competition in high cost credit markets (products with a typical APR of 50% or more) is effective in current conditions.</p>	<p>The Office of Fair Trading will call for stakeholder evidence in the summer and will publish interim findings by the end of 2009 and a final report early in 2010.</p>	<p>Office of Fair Trading</p>	<p>Ch 2, Page 37</p>
<p><b><i>Additional funding for the Social Fund and Growth Fund.</i></b> There will be additional funding of around £270m in the Social Fund and additional funding of £18.75m in the Growth Fund over the next two years.</p>	<p>Announced in the 2009 Budget.</p>	<p>Department for Work and Pensions</p>	<p>Ch 2, Page 38</p>
<p><b><i>Review of the Social Fund</i></b> to consider improvements to the administration of the scheme and look at how it can provide customers with help in managing their finances.</p>	<p>A consultation document will be published in 2009. The Government will undertake a full consultation with stakeholders.</p>	<p>Department for Work and Pensions</p>	<p>Ch 2, Page 38</p>

Policy Proposal and Objective	Further actions and timing	Lead	Reference
<p><b>Lenders to provide clear and adequate explanation of new loans to prospective borrowers.</b> This will place requirements on lenders to give consumers adequate explanations of any new loans.</p>	<p>This will be implemented via the Consumer Credit Directive. The Government consulted formally with stakeholders on the implementation of the Directive in spring 2009. An impact assessment on the proposals was published in April 2009. The Consumer Credit Directive will be implemented in June 2010.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 2, Page 40</p>
<p><b>Creditors to check borrowers' creditworthiness.</b> There will be a new requirement on all lenders to check a consumer's creditworthiness before lending to them.</p>	<p>This will be implemented via the Consumer Credit Directive. The Government consulted formally with stakeholders on the implementation of the Directive in spring 2009. An impact assessment on the proposals was published in April 2009. The Consumer Credit Directive will be implemented in June 2010.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 2, Page 40</p>
<p><b>Guidance on irresponsible lending.</b> The Office of Fair Trading will bring forward new guidance for all lenders setting out what it considers to be irresponsible lending practices.</p>	<p>The Office of Fair Trading will consult with stakeholders on draft guidance in the summer. Subject to the outcome of the consultation, the new guidance will come into force in early 2010.</p>	<p>Office of Fair Trading</p>	<p>Ch 2, Page 40</p>



Policy Proposal and Objective	Further actions and timing	Lead	Reference
<b>Review of consumer credit licence fee regime</b> , including exploring the case for differential pricing.	The Office of Fair Trading will consult formally with stakeholders by the end of 2009 and will report to the Secretary of State early in 2010.	Office of Fair Trading	Ch 2, Page 40
<b>Consultation on banning the use of Bills of Sale for consumer lending.</b>	The Government will consult formally with stakeholders and publish an impact assessment in autumn 2009. Subject to the outcome of the consultation, the Government intends to bring forward legislation to ban the use of Bills of Sale in relation to consumer lending at the earliest opportunity.	Department for Business, Innovation and Skills	Ch 2, Page 41
<b>Action to ensure fees and charges on credit accounts are transparent, cost reflective and reasonable.</b>	Following the forthcoming decision of the House of Lords in the test case brought by the Office of Fair Trading and seven banks and building societies, the Government will work with interested parties with a view to moving the market to a more efficient, equitable and transparent system as quickly as possible.	Department for Business, Innovation and Skills	Ch 2, Page 41

Policy Proposal and Objective	Further actions and timing	Lead	Reference
<p><b>Work with industry to promote data sharing to improve the accuracy of lending decisions.</b></p>	<p>The Government will conclude the work of the Expert Working Group on Non-Consensual Credit Data at the earliest opportunity, and will work with industry to assess the potential benefits and costs of sharing other types of data.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 2, Page 42</p>
<p><b>Work with industry to examine scope to improve people's access to and understanding of their credit files,</b> including whether files can be made available online under the existing statutory scheme.</p>	<p>The Government will initiate discussions with interested parties in summer 2009.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 2, Page 42</p>
<p><b>Consultation on amendments to the requirement for lenders to send consumers regular statements</b> where they suspect that a consumer has moved house without informing the lender of their new address, or where the consumer has entered into an individual voluntary arrangement (IVA).</p>	<p>The Government will consult formally in autumn 2009 on proposals to amend the law. Consultation will be accompanied by an impact assessment.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 2, Page 43</p>
<p><b>Ongoing action to raise awareness of the impact of illegal money lending,</b> including considering how best to increase understanding of the crime of illegal money lending and the impact it has on communities.</p>	<p>The Government and the regional illegal money lending enforcement teams will continue to work with partner agencies to build on the existing awareness raising strategy. The Government will publish an interim evaluation of the project in 2010.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 2, Page 43</p>

Policy Proposal and Objective	Further actions and timing	Lead	Reference
<p><b>Compensation pilots for breach of consumer law</b> to give businesses an opportunity to refund consumers or restore the harm done, as well as incentives to be compliant and resolve consumer disputes fairly and bilaterally in the future.</p>	<p>The two year pilots will start in autumn 2010 or spring 2011 and will be extensively evaluated before national roll out. The Government will consult formally on the detail of these pilots later in 2009.</p> <p>Regulations will be made under s.2(2) of the European Communities Act 1972, with provisions drawn from part 3 of the Regulatory Enforcement and Sanctions Act 2008.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 3, Page 49</p>
<p><b>A new Enhanced Intelligence System</b> which will provide a high profile single complaints register for any citizen encountering a breach of consumer laws.</p>	<p>The new online complaints system will go live in 2010 and will be implemented via enhancements to the Consumer Direct online presence.</p>	<p>Office of Fair Trading</p>	<p>Ch 3, Page 52</p>
<p><b>New investment for enforcement teams</b> to provide more capacity in the Office of Fair Trading and in regional scambuster teams to analyse the data in the enhanced intelligence system and to pursue online trading scams.</p>	<p>Additional investment for the OFT and Trading Standards Services' regional scambuster teams will be provided from 2009.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 3, Page 53</p>
<p><b>Review of enforcement powers for consumer law enforcers</b> to review the powers available to them and to consider whether to provide additional powers to the Office of Fair Trading and Trading Standards Services to tackle online rogue traders.</p>	<p>The Government will consult formally with stakeholders on reviewing the enforcement powers in 2010.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 3, Page 54</p>

Policy Proposal and Objective	Further actions and timing	Lead	Reference
<p><b>National internet enforcement strategy</b> to enable the OFT, Trading Standards Services and other agencies to work together more effectively.</p>	<p>The OFT will deliver this strategy by the end of 2010.</p>	<p>The Office of Fair Trading</p>	<p>Ch 3, Page 54</p>
<p><b>Action on rogue traders</b> to consult on bringing forward legislation to give the courts the power to prohibit persistent rogue traders from carrying out business with consumers.</p>	<p>The Government will consult formally with stakeholders in 2010 on bringing forward new legislation. Subject to the outcome of consultation, the ban would be introduced through the Consumer Rights Bill.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 3, Page 54</p>
<p><b>A new central Fighting Fund to prosecute rogue traders operating on a large scale</b> to assist local authority Trading Standards Services to undertake investigations and prosecutions of national or regional importance.</p>	<p>The Government will consult informally on guidance to local authorities on how to apply for funding, and establish an assessment panel to assess applications against the set fund criteria in 2010.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 3, Page 56</p>
<p><b>Product safety sampling of imported goods at key ports</b> to detect and intercept unsafe products before they are widely distributed around the UK.</p>	<p>The Government will work with the Local Better Regulation Office to ensure funding is provided on the basis of risk. Funding will be available from 2010.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 3, Page 57</p>
<p><b>Reassessing the regulatory framework for consumer prepayments.</b> The Government will take advice from the OFT, the FSA, and the recommendations to be contained in Consumer Focus' forthcoming report on the prepayments market.</p>	<p>The Consumer Focus report is expected this summer, and the Government will work with a full range of stakeholders to assess what regulatory action would be sensible and practicable.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 3, Page 59</p>

Policy Proposal and Objective	Further actions and timing	Lead	Reference
<p><b>Stronger action against silent calls</b> by increasing maximum penalty which is currently £50,000. Silent calls occur when call centres with automated systems dial more numbers than staff can deal with. When a consumer answers the telephone and no agent is available to take the call this results in silence on the line, which can cause distress, especially to vulnerable groups.</p>	<p>The Government intends to issue a formal consultation later this year on regulations to increase maximum penalty for persistent misuse which mainly includes silent calls. An impact assessment will be published at the same time. Subject to the outcome of this consultation, regulations will be laid in Parliament early in the New Year and changes implemented by April 2010.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 3, Page 59</p>
<p><b>Task force to address problems associated with low quality and bogus colleges.</b></p>	<p>The Government task force will be set up in autumn 2009 to review policy, including accreditation options, and enforcement practice, including exchanges of intelligence and coordinated enforcement actions, where possible.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 3, Page 60</p>
<p><b>Appointment of a Consumer Advocate</b> who will co-ordinate and spearhead work to educate consumers. The Advocate will also be a high profile media figure in a position to warn consumers about latest scams.</p>	<p>The intention is that the Consumer Advocate will be appointed in 2010.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 3, Page 60</p>
<p><b>Provide the Consumer Advocate with the power to take collective actions to obtain compensation on behalf of a group of consumers.</b></p>	<p>The Government will consult formally on how these new powers for the Consumer Advocate would be framed by the end of 2009.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 3, Page 63</p>

Policy Proposal and Objective	Further actions and timing	Lead	Reference
<p><b>Provide the Consumer Advocate with the ability to receive, hold and distribute compensation for UK consumers</b> to help consumers obtain compensation that is due and that has already been secured, primarily for cases where UK consumers have been the victims of overseas scams, and possibly for compensation to consumers by UK businesses.</p>	<p>The Government will consult formally on the most effective means to implement this policy, including legislative changes required, by the end of 2009.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 3, Page 65</p>
<p><b>Consider whether the Consumer Advocate should have powers to address unfairness in consumer credit agreements</b>, including the possibility of challenging unfair relationships through the courts on behalf of consumers.</p>	<p>The Government will consult formally on whether the Consumer Advocate should have these powers by the end of 2009.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 2, Page 65</p>
<p><b>Launch of a consumer rights publicity campaign</b> to raise awareness of key rights and the role of Consumer Direct in providing information and advice on consumer issues.</p>	<p>The campaign will reach its peak in September 2009 during National Consumer Week.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 3, Page 66</p>
<p><b>Develop a new consumer space on direct.gov.uk and bring together all key providers of consumer support</b> to improve access to information and advice through closer integration of web, phone and face to face channels.</p>	<p>The new consumer web space will be created by the end of 2009 with all content moved from across Government by March 2011. The Department for Business, Innovation and Skills will agree a programme of closer integration with the key providers by the end of 2009.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 3, Page 67</p>

Policy Proposal and Objective	Further actions and timing	Lead	Reference
<p><b>Civil justice walkthroughs on DirectGov</b> will provide information to help consumers make informed decisions to resolve disputes over goods and services, banks and financial services, money or housing. These will highlight sources of advice and assistance as well as explaining options such as mediation and ombudsman services, and the court process.</p>	<p>The new walkthroughs are currently scheduled for deployment on a rolling schedule starting in autumn 2009.</p>	<p>Ministry of Justice</p>	<p>Ch 3, Page 68</p>
<p><b>Review of financial protection for air travellers</b> to explore whether financial protection for air travellers can be clarified and improved.</p>	<p>The Government will consult formally on options for reform, including any legislative changes required, by the end of 2009.</p>	<p>Department for Transport</p>	<p>Ch 3, Page 69</p>
<p><b>Consumer Rights Bill</b> to implement the EU Consumer Rights Directive and to modernise and simplify UK consumer sales law.</p>	<p>There will be a number of formal consultations on the various specific proposed elements of the Consumer Rights Bill over the period 2010 to 2012.</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 4, Page 78</p>
<p><b>Consider a new single set of powers for Trading Standards Services</b> in the area of consumer protection to reflect modern trading conditions and enforcement practice.</p>	<p>The Government will consult formally on these powers as part of the consultation process for the Consumer Rights Bill (see above).</p>	<p>Department for Business, Innovation and Skills</p>	<p>Ch 4, Page 83</p>



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