

# **Review of the Timeshare Directive (94/47/EC)**

**A consultation response by the  
Office of Fair Trading**

**August 2006**

© **Crown copyright 2006**

This publication (excluding the OFT logo) may be reproduced free of charge in any format or medium provided that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as crown copyright and the title of the publication specified.

## CONTENTS

<i>Chapter</i>		<i>Page</i>
1	Introduction	1
2	The scope of the timeshare directive	4
3	Information requirements and language	9
4	Advance payments	12
5	Professional and financial requirements	13
6	Criminal sanctions	15
7	Consumer awareness	18
8	Contact details	19
9	Annex A - Additional Information	20



# 1 INTRODUCTION

1.1 We are grateful for the opportunity to provide input into the review of the Timeshare Directive currently being conducted by the Commission as part of the Review of the Consumer Acquis process. The Timeshare Directive, since its introduction, has put in place important protections to address real problems faced by consumers and has helped to develop consumer confidence in this market. However, the strict legal definitions put in place by the Directive have allowed certain traders to circumvent the protections offered to consumers by adapting the products or services offered. We therefore welcome this review and as set out in this document our points are:

- A widening of the scope of Directive 85/577/EEC to protect the consumer in respect of contracts negotiated away from business premises (Doorstep Selling) to cover situations where a trader makes an unsolicited approach to a consumer away from business premises but then completes the negotiation the contract on business premises would provide important protections such as cancellation rights in relation to new products not covered under the Timeshare Directive. This would provide an effective mechanism of future proofing the directive to ensure traders do not develop products to circumvent consumer protection measures.
- The definition of a timeshare contract should be widened, by removal of the requirement that a contract should be concluded for at least three years, to ensure timeshare like products are covered by the Directive. We would also support a widening of the definition to include non-fixed properties such as canal boats.
- All sales either by or through a professional sales agent should be covered by the Timeshare Directive irrespective of whether the vendor is a private individual or the resort/developer.

- A set cooling off period and cancellation process should be introduced across all Member States to increase consumer confidence in utilising these provisions.

1.2 Whilst there are some directives, such as Timeshare, which are in need of vertical review to amend problems which have been identified we believe it is vital that, in general, the *acquis* review takes a longer term more flexible view of the development of markets, in line with the approach taken by the introduction of the Unfair Commercial Practices Directive<sup>1</sup> (UCPD). The UCPD provides a new light in which to view the *acquis* and we are supportive of the principles of maximum harmonisation where effective common standards of consumer protection can be applied across affected markets in the EU/EEA.<sup>2</sup>

1.3 We also believe that it should not be forgotten that the rules created by Consumer Protection legislation are only one half of the picture and that of equal importance is effective enforcement of those rules. We believe that many of the problems which occur within, and around, the Timeshare industry as it currently stands can be solved through co-operation of enforcement authorities between Member States and look forward to working closely with enforcement colleagues across the EU under the Consumer Protection Co-operation Regulation.

---

<sup>1</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council

<sup>2</sup> It is of note that there are some markets where national development in one Member State is far in excess of other EU members and where maximum harmonisation would, consequently, significantly reduce the current level of consumer protection in that country. The consumer credit market in the UK is one such, and thus there cannot yet be one level of protection at EU level without too high a risk to consumers here.

## The Office of Fair Trading

- 1.4 The Office of Fair Trading (OFT) is the UK's competition and consumer authority. Our mission is to make markets work well for consumers. Our vision is for competitive, efficient, innovative markets where standards of consumer care are high, consumers are empowered and confident about making choices and where businesses comply with consumer and competition laws but are not overburdened by regulation.
- 1.5 We adopt a market-informed approach with a focus on outcomes that support productivity growth and consumer and business welfare. We believe this approach is in the best interests of both businesses and consumers as well as to the benefit of the UK economy.
- 1.6 Our capacity to remedy ill-functioning markets stems from our ability to use the most appropriate mix of consumer and competition instruments and remedies. In order for this approach to work, it is essential that the instruments at our disposal are effective and reflect current concerns in the market. To do this they must be able to adapt with advancements in technology, product development and sale and marketing practices.

## 2 THE SCOPE OF THE TIMESHARE DIRECTIVE

### Timeshare-like products

- 2.1 Timeshare-like products are designed to circumvent the Directive, for example contracts which last for just under three years or for non fixed properties such as canal boats. For products such as these we believe that there is some merit in extending the definition of a timeshare contract to cover non-fixed properties such as canal boats and removing any minimum contract length requirement. There is no doubt that many consumers purchasing timeshare-like products suffer as a result of not having the benefits / protection built into the Timeshare Directive and that the reputation of the Timeshare industry as a whole suffers from this incongruity. We would therefore support the removal of a minimum time period on the contract to prevent traders supplying what is essentially timeshare without providing the consumer with the same rights as they would have if the same contract fitted the tight definition under the Directive.
- 2.2 Many of the problems associated with products not currently covered under the Directive could be solved by bringing them within its scope. However, we believe that many of the problems within this wider sector and within sectors which as perhaps incorrectly labelled in popular perception with the 'Timeshare' banner - in particular travel discount clubs - relate to business practices (especially in relation to sales) rather than with the actual nature of the product or service being sold. These include practices such as:
- gross exaggeration of the benefits of club membership (for example, Club Class flights from UK to Australia for ridiculously low fares)
  - telling the consumer that the 'discount' price quoted for membership is available on that day only to force the sale through

- being aggressive towards consumers during the sales process when the consumer has said they are not interested, and
- advising consumers that they cannot go away and think about whether they want to purchase or not because it is against the law for the sales company to allow the consumer to return to the sales premises within a time period, usually quoted as two years.

2.3 We also believe that it will be extremely difficult, if not impossible, to define the intangible service provided by discount clubs without inadvertently bringing in a whole range of similar products, such as staff discount holiday clubs operated by companies, trade unions etc., which do not cause consumer detriment. In all likelihood this would add administrative burdens to those organisations who obey the law, whilst only encouraging a re-definition of product by those currently behind the discount clubs.

2.4 Certain traders will continue to develop new products / services that fall outside of definitions contained in the directive, and that the same business practices will be used to sell these new products or services. This will leave the legislation consistently playing catch-up to protect the interests of consumers.

2.5 The Unfair Commercial Practices Directive will provide additional safeguards for the consumer, in that it is designed to address the pressure selling scenario, other aggressive sales practices and misleading actions and omissions, however, the UCPD does not provide the consumer with any additional rights. The fundamental rights that the consumer needs when encountering the marketing of discount clubs is a cooling-off right and up front disclosure and information provisions with regard to the service they are to receive. It is important that the review of the Acquis considers the need to future-proof all legislation to take account of such sales-driven marketing scenarios.

2.6 Many of the concerns about the consumer's position in relation to the seller that are mentioned in recital five to the Doorstep Selling Directive are pertinent to the consumer's position in relation to the sale of

timeshare-like products, even if the circumstances of the sale are not covered by the definition of a 'Doorstep' sale. The consumer is taken by surprise and unprepared to enter into a binding contract and does not have the opportunity to compare prices and services. Extending and redefining the legislation such as the 'Doorstep Selling' Directive that provides consumer benefits in relation to a business practice regardless of product would be a much more effective way of ensuring that consumers are protected for future developments.

- 2.7 The OFT does not believe that discount clubs would effectively be addressed under the Package Travel Directive. A contract for membership of a discount club is not in itself a contract for travel. Most of the elements of any holidays booked through a discount club are subject to separate payment. The package travel directive is therefore not an appropriate vehicle for regulating such clubs. As stated above we believe that legislation that provides consumers with rights, especially a 'cooling-off' right in relation to business practices would provide a better regulatory tool. It would also be worth examining the possibility of developing legislative tools to protect the consumer's investment when a right to an ongoing service over a period of time has been paid for in advance.

## **Resale of timeshare**

- 2.8 Many complaints to OFT indicate that many of the problems in relation to resale relate to fraudulent activity – for example an 'agent' charging an up-front fee to a person wishing to sell a timeshare when the 'agent' has no intention of selling the timeshare, an 'agent' charging for a timeshare exchange where no sale takes place at all, so the consumer ends up with two timeshares, or where there is a sale it is at a price which barely covers the agent's fees at all. This activity usually falls outside of the scope of consumer protection and should be covered by criminal law enforcement authorities.

- 2.9 However, there are also genuine re-sale agents that also take an upfront fee to cover marketing costs. This makes it very difficult for the consumer to identify which is a genuine and a fraudulent operator. Due to widespread fraud the OFT advises consumers to avoid any resale agent that asks for a fee up front as we view that the business should suffer the marketing costs and only receive payment on completion of a successful sale (as UK Estate Agents do). If a legislative ban on advance fees were introduced and consumers were made aware that it was illegal for a company re-selling timeshare to take an advance fee then the fraudulent operators would very quickly be put out of business and the consumer education message to timeshare owners would be clear and simple.
- 2.10 However, there is another issue relating to timeshare resale and the definition of 'vendor' within the directive that does fall within the scope of consumer protection. OFT is aware that consumers purchasing what appears to be a timeshare at a timeshare sales premises on a timeshare resort have not been given a cooling off period. The sales agents have stated that this is because the sale is a 'resale' on behalf of a private owner. However, the sales process and contracts used are the same as when the agent is selling timeshare on behalf of the developer (either previously unsold or repossessed). From the consumer's perspective, there is no way of distinguishing between a sale by a private individual and a sale by the developer (in fact, some sales agents argue that a resale is totally exempt regardless of whether the seller is a private owner or the resort selling a repossessed unit).
- 2.11 We would support an amendment to the Timeshare Directive to bring all sales by or through a professional sales agent within the scope of the directive irrespective of whether the vendor is a private individual or the resort / developer. Only purchases *directly* from a private individual owner should be exempt.

## Cash back schemes and upgrading

- 2.12 There is scope to regulate cash-back schemes through the unfair contract terms legislation. As with discount clubs, the sales process is one of the major problems in this area. We have already suggested how this may be addressed through legislation targeting business practices rather than products.
- 2.13 In respect of upgrades, we would argue that an 'upgrade from a 35 month 'timeshare' product to a full product is a new contract and the directive should apply at this point. If consumers are provided with information and cooling off rights at the time of the original purchase through, for example, abolishing the minimum three year contract period in the case of timeshare or by widening the scope of legislation targeted at business practices in relation to discount clubs, this question would become redundant.

### **3 INFORMATION REQUIREMENTS AND LANGUAGE**

#### **Information provision**

- 3.1 The OFT believes that consumer understanding of the protections offered by the Timeshare Directive would be increased if information requirements imposed by the directive were harmonised across all Member States. This would also assist in increasing compliance by businesses that operate across borders as there would be only one set of information provisions to apply to contracts.
- 3.2 To counter the problem of traders hiding a consumer's right to withdraw from a contract in small print or in the middle of a long and detailed contract the OFT suggests that the directive is amended to ensure the right of withdrawal is afforded no less prominence than that given to any other information. A similar clause is included in Consumer Protection (Cancellation of Contracts Concluded Away from Business Premises) Regulations 1987 which transposes the Doorstep Selling Directive in the UK.

#### **Language**

- 3.3 Large numbers of consumers who enter into contracts for timeshare are in another Member State to which they reside and as such may be at a disadvantage in terms of language. We therefore believe that consumers should be able to request that all timeshare related correspondence is written in a Member State language which they are familiar with.

#### **Right of withdrawal**

- 3.4 Rights of withdrawal and how consumers are able to serve them are an area which we would suggest as far as possible the Commission looks at as part of the horizontal acquis review. A harmonised system regardless of sales medium or product would reduce confusion and increase confidence in consumers exercising their rights.

3.5 However any attempt at harmonisation or standardisation would need to be carried out carefully to ensure that it occurred at a level which was appropriate for all the acquis directives, taking into account any necessary differences in consumer protection levels due to substantial difference in product costs etc. For example the cooling off period contained in the Timeshare Directive exists to:

**'... give the purchaser the chance to realize more fully what his obligations and rights under the contract are...since the property in question is often situated in a State and subject to legislation which are different from his own.'**<sup>3</sup>

3.6 Given that in Timeshare the purchaser in many instances will, at the time of entering into the contract, be on vacation and may only be able to seek legal advice on the obligations and rights contained in the contract when back in their own member state we would recommend that the cooling off period for timeshare is increased to the level set in the UK transposition of 14 days, regardless of any general principles applied across all other consumer contracts.

3.7 For business, harmonised principles on cancellation rights would ensure that the consequences of its actions across the EU would be easily understood, therefore helping to promote the single market. In the view of the OFT a contract should be unenforceable if a trader fails to provide important information, such as the right of withdrawal, to a consumer.

---

<sup>3</sup> Recital 11 of Directive 94/47/EC of the European Parliament and Council of 26 October 1994 on the Protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis.

3.8 Given the different principles of contract law that apply throughout member states and the difficult issues that can arise in determining when contracts are formed which in some cases then determines consumer rights or remedies such as time periods for cancellation or the provision of information we believe that there would be some merit in defining the event that will determine this - either by standardised terms deeming the relevant event to have occurred at a defined point, or by reference to an event other than formation of contracts. This would have the obvious advantage of increasing certainty for the consumer and trader across borders thus promoting consumer protection and cross border sales.

## **4 ADVANCE PAYMENTS**

- 4.1 The OFT is concerned that the transposition of a ban on accepting advance payments is ambiguous in certain Member States. Evidence from consumer complaints and the timeshare industry suggests that the Spanish transposition allows deposits to be accepted by a third party. As the Commission consultation document states this creates confusion for consumers to judge whether the third party is reliable and independent from the seller.
- 4.2 We would favour a clarification of this matter to ensure transpositions by all Member States had the same effect of either a complete ban on third parties accepting advance payments or the use of an approved industry standard escrow system which holds payments until the cooling off period had elapsed. However the use of any escrow systems will need to be tightly monitored to ensure rogue traders do not create their own services as has happened in some on-line fraud cases.

## 5 PROFESSIONAL AND FINANCIAL REQUIREMENTS

- 5.1 We are aware that some timeshare owners become unhappy some time after acquiring ownership due to the way resorts are managed, associated costs etc. We also agree that the network of companies involved in a single transaction is frequently unclear. In the UK the issue of rogue traders starting a 'phoenix' company is potentially not such a great problem as we are able to injunct against individuals as well as corporate entities. Thus an individual continuing a practice in a new corporate identity would probably be individually in breach of the injunction. We understand that in some countries, such as Spain and Belgium, it is only possible to injunct against the corporate entity. We believe that the review of the Injunctions Directive may be a vehicle to enable action against individuals as well as corporate entities across the EU.
- 5.2 Through discussion and gaining a good understanding of businesses the OFT is attempting to bring about a market-wide improvement to the trading behaviour of the marketing companies of discount clubs and the introduction of a cooling-off period. We have been partially successful in persuading the second largest discount club provider to introduce more transparent contracts, more control over marketers and their sales processes and the introduction of a cooling-off period.<sup>4</sup> More transparent contracts have been introduced in which many unfair terms have been withdrawn or satisfactorily amended, a UK law and jurisdiction clause has been introduced and a contractual relationship between the service provider and the consumer introduced. Control over marketers has improved with the discount club provider withdrawing its authorisation to sell to two of the most problematic marketing companies. However, despite an initial introduction of the cooling-off period the companies have reneged on their promise due to stiff

---

<sup>4</sup> See OFT Press Notice. 57/05 [http://www.offt.gov.uk/News/Press + releases/2005/57-05.htm](http://www.offt.gov.uk/News/Press+releases/2005/57-05.htm)

competition from rival marketers of both discount clubs and timeshare trial pack operators who do not offer a cooling-off period.

- 5.3 More long lasting success was achieved through enforcement action against One World Holiday Club who sold Club Atlantis timeshare packs where undertakings were received to address unfair terms and misleading representations<sup>5</sup>.
- 5.4 In the UK market we have obtained a string of undertakings from discount club marketing companies.<sup>6</sup>

---

<sup>5</sup> See OFT Press Notice: 67/05 [http://www.offt.gov.uk/News/Press + releases/2005/67-05.htm](http://www.offt.gov.uk/News/Press+releases/2005/67-05.htm)

<sup>6</sup> See PN 166/05 [http://www.offt.gov.uk/News/Press + releases/2005/166-05.htm](http://www.offt.gov.uk/News/Press+releases/2005/166-05.htm) , 74/05 [http://www.offt.gov.uk/News/Press + releases/2005/74-05.htm](http://www.offt.gov.uk/News/Press+releases/2005/74-05.htm) , 213/04 [http://www.offt.gov.uk/News/Press + releases/2004/213-04.htm](http://www.offt.gov.uk/News/Press+releases/2004/213-04.htm) , 23/04 [http://www.offt.gov.uk/News/Press + releases/2004/23-04.htm](http://www.offt.gov.uk/News/Press+releases/2004/23-04.htm) , 02/04 [http://www.offt.gov.uk/News/Press + releases/2004/02-04.htm](http://www.offt.gov.uk/News/Press+releases/2004/02-04.htm) , & 163/03 [http://www.offt.gov.uk/News/Press + releases/2003/PN163-03.htm](http://www.offt.gov.uk/News/Press+releases/2003/PN163-03.htm) ,

## 6 CRIMINAL SANCTIONS

- 6.1 The OFT would support the introduction of measures aimed to oblige Member States to provide either criminal sanctions, or other severe penalties, for serious breaches of the Timeshare Directive such as failing to comply with provisions on deposit taking and failing to provide a cooling-off period. We believe enforcers should be provided with a full range of tools and sanctions to allow them to use the most appropriate and effective mechanism to protect consumers interests. This can range from 'soft' remedies such as publishing guidance, providing advice and information to businesses to 'harder' sanctions such as injunctive remedies, or full criminal penalties for very serious breaches or recidivist behaviour.
- 6.2 The OFT seeks market-focused outcomes that are proportionate to any regulatory breach. For example, conduct which has relatively minor effects can be remedied without the use of formal sanctions (e.g. persuasion, warning letters, using reputational effects through publicity, and obtaining binding undertakings from business). Similarly, many breaches of consumer law are committed through ignorance rather than intentionally and can be remedied by education.
- 6.3 Compliance with the law should be achieved as far as possible through businesses being aware of their obligations and complying voluntarily, using advice, guidance and education provided by enforcers to help them.
- 6.4 Whilst it is the OFT's aim to reinforce a compliance culture, the OFT must also ensure that its enforcement is effective in stopping hardcore offenders such as persistent offenders in consumer protection (in particular those responsible for scams). Where action is required we aim to adopt a targeted, risk-based approach to that enforcement.
- 6.5 Further to the above, persistent, deliberate or reckless breaches of the law may require stricter penalties, including periods of imprisonment for the worst offenders. The OFT believes that the strong deterrent effect of

a possible prison sentence is often the only effective method of dealing with the small minority of traders who refuse to trade fairly or engage in consultation with enforcers.

6.6 In light of the above arguments, the behaviours listed below are those that are most likely to require use of criminal sanctions to prevent further harm to consumers.

- Deliberate and/or Reckless illegal behaviour
- Avoidance of compliance<sup>7</sup>
- Fraudulent behaviour
- Aggressive behaviour
- Recidivist/Persistent illegal behaviour
- Total disregard for the law and/or for consumers

6.7 Enforcement action is central to an effective compliance regime. Strong enforcement action sends a message to companies considering illegal behaviour. Compliance and enforcement are interrelated in that deterrence only works if backed up by a strong enforcement record.<sup>8</sup>

6.8 Enforcement action will normally be taken in cases where the OFT can achieve a high impact and influence the market by addressing a nationwide issue, setting a precedent, clarifying the law, having a major deterrent effect, or tackling a problem which cuts a cross more than one economic sector.

6.9 The OFT believes that criminal sanctions are appropriate for the worst breaches of competition and consumer protection law. Rogue traders purposefully deceiving consumers to sell goods and services on false

---

<sup>7</sup> For example, by refusing to enter into dialogue with enforcers, or taking steps to avoid detection deliberately.

<sup>8</sup> On the interrelationship between compliance and enforcement, see Australia's competition and consumer law: ensuring compliance and enforcing the law, speech by Louise Sylvan, ACCC Deputy Chair, to the Trade Practices & Competition Law Conference, Sydney, 16 February 2004

pretences or engaging in aggressive tactics to force purchase or payment should be subject to criminal penalties.

- 6.10 Both the punishment and the possibility of compensation orders that criminal sanctions can provide, represent a powerful deterrent to those traders intent on causing significant consumer detriment. To date the only OFT related criminal sanctions to have been obtained are for contempt of court relating to breaches of injunctive enforcement orders.

## 7 CONSUMER AWARENESS

- 7.1 The OFT has previously conducted consumer awareness campaigns<sup>9</sup> in regard to discount clubs however there has not been an evaluation of their effectiveness. We have produced and disseminated a consumer information brochure on Holiday Clubs and disseminated these through targeted ways such as in ticket wallets for holiday makers going to Spain and through advertising in Airline magazines. However, many consumers are still suffering detriment. In our view sustained campaigns at the point at which consumers are most likely to be approached by a marketer, that is, in resorts, would be likely to prove to be successful
- 7.2 In November 2004 the OFT published its *Consumer education: a strategy and framework* (OFT753),<sup>10</sup> which emphasises that to be most effective, consumer education initiatives must be focused on clear priorities and targeted at those most in need.
- 7.3 To deliver this in the UK we have formed a Planning Group to identify consumer education priorities, and established the Consumer Education Alliance – including over 70 representatives from business, consumer bodies, education, government bodies, the public and regulators - to coordinate consumer education.
- 7.4 The OFT believes a similar approach bringing together enforcement and government bodies, consumer organisations and industry representatives at a European level would help to deliver coordinated and targeted messages to consumers at points where they face most problems, such as in a resort

---

<sup>9</sup> See OFT PN 30/3 <http://www.offt.gov.uk/News/Press+releases/2003/PN+30-03.htm>

<sup>10</sup> This document can be downloaded at : [www.offt.gov.uk/education/background/Default.htm](http://www.offt.gov.uk/education/background/Default.htm)

## **8 CONTACT DETAILS**

- 8.1 Should you have any enquiries regarding this response, in the first instance, please contact:

Neil Smart  
Consumer Regulation Enforcement Division  
Strategy and Policy Development team  
[neil.smart@oft.gsi.gov.uk](mailto:neil.smart@oft.gsi.gov.uk)  
Tel: 020 7211 8894

## **ANNEX A**

### **Additional information – overview of the OFT experience of consumer problems in the timeshare and holiday club sector**

Complaints and enquiries from UK consumers to the OFT, Trading Standards Departments, the UK Government's 'Consumer Direct' call centres, and the network of Citizens' Advice Bureaux indicate that UK consumers experience significant detriment, particularly in terms of the large amounts of money they lose at the hands of these traders, whose trading practices may be in breach of UK (and we presume Spanish) laws which implement several European Union Directives.

#### **Holiday Clubs**

The holiday club sector is particularly problematical, especially in terms of the ways in which membership is frequently sold, and in terms of the contracts that consumers enter into.

From information available to us, there appear to be five or six holiday clubs operating, in that services are provided from premises, within Spain, although the companies are frequently registered in locations such as Gibraltar or the British Virgin Islands. These are mainly located around the Malaga area. The number of traders selling membership of the holiday clubs is much greater and frequently changes as some companies fold and others open. The two biggest holiday clubs currently have between them around twenty marketing outlets in Spain. The majority of these are on the Costa Del Sol and in the Canary Islands. There are also some outlets on the Costa Blanca and in the Balearics, particularly Mallorca.

Membership of a holiday club usually provides the consumer with a 'guaranteed' number of weeks of holiday accommodation each year at discounted prices. As membership does not provide the consumer with access to a specific property, the activities of the clubs do not fall within the provisions of the Timeshare

Directive. Some clubs also claim to provide discounted air travel and other travel-related products.

Just as with timeshare contracts in the 1970s and 1980s, the techniques used by marketing companies to sell holiday club memberships are of particular concern. It is clear from consumer correspondence and from research on various internet sites that marketers put a great deal of pressure on consumers to make a purchase. Sales presentations normally last for several hours. Marketers will usually not allow consumers time to think about what their needs are and compare these with what is on offer, telling the consumer that the offer is available only at that time. It also seems to be standard practice that, when consumers are wavering about whether to buy or not, several sales representatives will talk to them at once. It has also been known for sales representatives to drive one partner in a couple to their holiday accommodation to collect their credit card whilst the other partner remains at the sales premises. Consumers stating that they only signed the contract in order to escape from the sales presentation are common. In spite of this, most holiday club providers and their marketers do not provide consumers with a cooling off period.

Consumer complaints further indicate that marketers frequently over-exaggerate the benefits of membership of the holiday club, and in some cases tell outright lies. For example, one marketer claims that Manchester United Football Club uses the club to book travel for the team. Manchester United has confirmed that it does not have any connection with the holiday club concerned.

The frame of mind of the consumer is also a relevant factor in considering the practices of these businesses. Holiday club membership, like timeshare, is something that is sold rather than bought. In other words, unlike shops, holiday club marketers proactively approach consumers in circumstances where the consumer is not considering making such a purchase, as opposed to passively awaiting an approach from the consumer.

One way that marketers attract consumers to their sales presentations is through the use of 'scratch card' prizes. People approach consumers in the streets, in bars, and on beaches, and present them with a scratch card. The consumer invariably 'wins' a prize but has to attend a sales presentation in order

to claim it. This is commonly referred to as OPC or 'cold line' marketing. The prize usually turns out to be a holiday, which may be discounted by the marketer against the cost of holiday club membership in the event the consumer buys, or may be subject to a number of restrictions which significantly affect the consumer's ability to use it. Consumers approached in this manner are particularly vulnerable to the high pressure techniques used in the sales presentation.

### **Cash-back schemes**

Many holiday club marketers also use ancillary products to convince consumers to buy membership of the holiday club. The most worrisome of these are 'cash back' products. These are separate contracts from the holiday club contract, and are contracts between the consumer and another trader. The idea of this product is that the consumer will receive money back from the operators of the scheme after a fixed time period.

Some of the money the consumer pays to the holiday club marketer pays for their participation in the cash back scheme. The marketer is able to afford this as only a small proportion (c. 10%) of the money paid by the consumer is handed over to the company operating the holiday club. The rest is retained by the marketer. The money paid to the company providing the cash back scheme is thus taken from the money that the marketer would normally retain. The fact that the marketer will charge whatever the customer is willing to pay also provides them with a high degree of flexibility to do this. It is not clear whether the marketer receives a commission for selling the cash back scheme, but it is clear that the possibility of the consumer getting their money back after a period of time as well as their membership of the holiday club, frequently convinces the consumer to proceed with the purchase of the holiday club.

As with the holiday club membership, the marketers frequently misrepresent the cash back schemes in that they tell the consumer that they are guaranteed to receive back all of the money they have paid for their holiday club membership when this is not the case. At best, the schemes may pay out only a percentage of the money paid by the consumer. At worst the scheme may fold before the consumer receives their money.

The OFT also has strong concerns about the fairness of the cash back contracts. In short, they are designed to ensure that as many consumers as possible who take part in the schemes fail to make their claim properly. This invalidates the claim, removing the requirement for the company behind the scheme to pay the consumer anything. It is only through the failure of the majority of scheme members to receive any payment that the trader behind the scheme is able to make relatively high level of payments to a small number of scheme members.

Other marketers contact UK consumers who have previously bought cash back products to advise them that they have been defrauded by those operating the cash back scheme. They then tell the consumer that they can assist them in getting their money back. They require the consumer to travel to Spain to meet with Spanish legal adviser, but when the consumer arrives, they are taken to another sales presentation.

### **Attempts to improve marketing of holiday clubs**

Since the transposition of the Injunctions Directive into UK law, the OFT has worked hard to develop positive working relationships with traders in the holiday club and timeshare sectors in order to seek improvements for consumers. We believe that by working, where possible, with the industry, rather than simply enforcing consumer protection legislation through lengthy and costly legal action, we are able to resolve the issue more speedily. We have found that the major companies involved in the provision of holiday club services have a strong desire to achieve a change in the public reputation of the sector, and have been open to co-operating with the OFT to change contracts, exert greater control over the sales process, and introduce cooling off periods. We are confident that the willingness of some traders to go beyond what the law requires, or to co-operate with the OFT in circumstances where it is not clear that we would be able to take enforcement action if the trader declined to co-operate, justifies our approach.

### **Continuing problems with timeshare**

Although the introduction of timeshare legislation has made a big difference to many of the problems consumers previously experienced with this sector, UK

consumers remain a target market for Spanish traders involved in the sale and provision of timeshare, and continue to experience problems. For example, marketers selling timeshare weeks continue to require that consumers pay a deposit before the cooling off period has expired, but to a third party rather than directly to the marketer.

Some traders involved in selling timeshare do not provide a cooling off period at all, arguing that they are engaged in timeshare resale and are therefore exempt from the provisions of timeshare legislation. This argument appears to be based on the definition of a 'vendor' in the Timeshare Directive and the argument that the seller is a private individual not operating in a business capacity. However, the contractual documentation does not appear to reflect this in any way, and, from the consumer's perspective, they appear to be entering into a contract with a business. Moreover, we have seen no evidence that the vendor is actually a private individual selling in a personal capacity. It seems highly likely that the vendor in many timeshare re-sales is the resort selling on weeks repossessed from other consumers.

A number of UK consumers who already own timeshare at Spanish resorts have also contacted the OFT and other UK authorities about significant problems with the way the resorts are run. A particular issue that has arisen in relation to this is resort managers who dramatically increase annual maintenance fees to unfair levels, but do not carry out maintenance work. It is felt that this is a deliberate ploy to force timeshare owners to relinquish their ownership in order that the resort developer may retake control of the resort and sell the land and / or properties at current market rates.