

OFT's response to the EU Discussion Paper on Consumer Collective Redress

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OFT1100

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1 INTRODUCTION

- 1.1 The OFT is the UK's competition and consumer authority. Our mission is to make markets work well for consumers. Our goal 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.
- 1.2 We adopt a market based 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.
- 1.3 We welcome the opportunity to contribute further to the debate on collective redress for consumers. We have responded to the Commission's previous consultations on consumer collective redress, including the consultation on consumer collective benchmarks (March 2008)¹ and the Green Paper on consumer collective redress (March 2009)². In those papers we set out our support for the Commission's aims in progressing this area which we believe is an essential element to meet the aim of increasing consumer confidence when shopping cross border.

¹ *OFT's response to the EU consultation on consumer collective redress benchmarks*. OFT 983. March 2008.

² *OFT's response to the EU Green Paper on Consumer Collective Redress* OFT 1063. March 2009.

www.offt.gov.uk/advice_and_resources/publications/reports/oft_response/

2 BACKGROUND

- 2.1 In our response to the Commission's Green Paper we indicated that our preferred option was No 4 – a judicial system for consumer collective redress with appropriate safeguards. Our view was that this was likely to provide the only solution that would avoid the inconsistencies and complexities of differing legal systems and regimes. A common and coherent judicial mechanism would be able to transcend differences in national systems and achieve economies of scale and clarity that would not otherwise be achievable.
- 2.2 We suggested that a single European level representative body could be a way of avoiding inconsistency of application and ensure that only the worst and most damaging breaches were subject to claims for redress. Our alternative suggestion was to create a national network of bodies to bring representative claims. This would mean that more cases could be brought and each jurisdiction could make easier use of its own law.
- 2.3 Another option would be to set up a Europe-wide legal process accessible by consumers and consumer groups. This would facilitate existing groups and bodies to make use of a new pan-European process. This court process could be used in all jurisdictions and be accessible to competent bodies bringing legitimate cases on behalf of consumers.
- 2.4 However, we recognise that the implementation of option 4 would be a bold response to the problem of the lack of an EU wide collective redress mechanism and we therefore also supported further consideration of the range of issues and suggestions in option 3 (mix of policy instruments) for the future development of consumer collective redress. We believe there is merit in considering the widest possible number of solutions to the problem.

3 DISCUSSION PAPER

Problem Definition

- 3.1 We agree with the assertion in the paper that there is a lack of an effective legal framework for consumers to obtain adequate compensation for mass claims, and we have been supportive of work in the UK to consider how to implement an effective consumer collective redress mechanism. We are conscious of the limitations of the current system of the UK Group Litigation Orders as essentially a case management tool for the courts. We are concerned that such systems do not address the need for an accessible mechanism which is flexible enough to meet the needs of all types of cases which could be dealt with by collective redress. We are also conscious that such systems do not take into consideration the cross-border element.
- 3.2 As part of the UK's consideration of the potential for representative actions for consumers, we completed an assessment of which types of complaints are likely to be suitable for a collective consumer redress mechanism. Although our analysis has been limited to the UK, the findings could be read across to potential cross border complaints in future.
- 3.3 Data from the Consumer Direct³ database was used to identify cases within targeted areas which could potentially benefit from a representative action. We are aware that a straightforward analysis of complaints per trader could be misleading as larger companies with a greater number of consumer transactions are potentially likely to attract the most complaints. The type of complaint is also a determining factor. Our analysis has therefore taken this into account and considered complaints falling within specific sectors as an example of the type of cases where a representative action may be suitable.

³ Consumer Direct is a government funded service offering information and advice on consumer issues. It is funded by the OFT and delivered in partnership with Local Authority Trading Standards Services.

- 3.4 From an initial analysis of the complaints data from Consumer Direct, a more detailed study was made of four sectors where it was considered that a representative action could be of benefit – double glazing, furniture, mobility aids and package holidays. These sectors were chosen for illustrative purposes only and we do not suggest that collective redress mechanisms should be restricted to these sectors or indeed any sectors but should be available across all areas.
- 3.5 The analysis showed there are sufficient similarities between complaints within sectors which could be addressed by a collective redress mechanism. The OFT's view is that complaints do not need to be exactly the same in terms of detriment in order to be suitable for a collective redress action – it is the trader's actions/behaviour across a number of transactions which should be the determining factor. The full report of the analysis can be found at Annexe A to this paper.

Policy Options

- 3.6 We agree with the view that the use of collective ADR mechanisms would be most effective if combined with a judicial collective redress mechanism to encourage its use and act as a deterrent for traders seeking to avoid legitimate claims. On its own, as a voluntary option, we do not believe that collective ADR mechanisms can be effective in addressing potential claims which should be dealt with by collective redress. It is our view that the incentive of a judicial solution is necessary to ensure the effectiveness of ADR mechanisms.
- 3.7 We are also concerned that if too great a flexibility is given to the nature of both ADR mechanisms and collective redress schemes that the redress available to consumers across the EU will be inconsistent and patchy with some Member States offering good, effective, simple to use systems and others offering much less consumer friendly alternatives. The differences across the EU will do little to resolve the current problems as all that is likely to be achieved is a complicated and diverse system of different procedures depending upon which state the business is operating in. This will not increase confidence for

consumers or traders to deal across borders. Nor is it likely to improve the knowledge and ability of consumers to take part in mass claims.

- 3.8 We support Option 5⁴ as the only option which provides the necessary instrument to create a level playing field across the EU with an appropriate mix of the availability of a collective ADR system together with a judicial redress mechanism to provide the necessary certainty of a remedy. This option still provides flexibility within the structure of the systems but with the necessary parameters delineated across all member states. This would engender greater confidence to trade cross border for both traders and consumers. The other options proposed rely too heavily on individual member states' and traders voluntary actions to provide an effective mechanism which is accessible for consumers and provides a level playing field for businesses and consumers across the EU.
- 3.9 We note the strong focus on voluntary collective ADR as a potential mechanism within several of the options in the paper. While the OFT is very supportive of ADR as a mechanism for individual consumers and traders to resolve complaints quickly and at minimal cost we have concerns regarding the use of **non-binding** instruments to implement ADR mechanisms. We are also concerned at the idea that such schemes should be subject to non-binding benchmarks which they would only be encouraged to meet which in our view would result in a wide variety of the quality and effectiveness of such schemes.
- 3.10 The OFT operates a Consumer Codes Approval Scheme (CCAS) which grants OFT approval to consumer codes of practice which meet specified criteria. Key criteria which the code must meet for approval are requirements for traders to have internal complaints handling mechanisms, conciliation procedures to be available, and for consumers to have access to an effective independent redress scheme. The trader is not allowed to refuse to use the scheme if the consumer wishes and is bound to accept the decision.

⁴ An EU-wide judicial collective redress mechanism including collective ADR.

- 3.11 From our experience, we are conscious of the limitations of self regulation and the CCAS in providing access for all consumers to such redress. Our extensive experience in this area has shown that it is requires substantial commitment and effective leadership within sectors for voluntary codes and ADR mechanisms to be implemented and managed effectively. Therefore, we are not confident that adopting a similar voluntary approach for both implementation and participation for consumer collective redress mechanisms across the EU would be successful.
- 3.12 We have said previously that we are reluctant for the Consumer Protection Co-operation Regulation (CPC) to be extended to support mechanisms of this nature and repeat our concerns that in our view the CPC is not the right instrument to introduce regulation in this area. To use it as such a tool could be damaging to the integrity and support for the CPC as a mechanism for cross border enforcement and confusing to consumers. It would also have limited application.

4 CONTACT DETAILS

4.1 For further information regarding this response please contact:

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ANNEXE

A Analysis of the Consumer Direct Database to identify cases that could benefit from a representative action

Introduction

A.1 This report aims to identify cases within targeted areas of the Consumer Direct Database that could potentially benefit from a representative action.

Background

A.2 The OFT has previously stated that representative actions would be beneficial to groups of consumers who have been unable, for whatever reason, to resolve their disputes through direct settlement or alternative dispute resolution mechanisms (ADR).

A.1 The OFT's Consumer Detriment Study¹ found an estimated 34 per cent of consumer problems are considered not resolved at all by the consumer, and in around 19 per cent of cases, consumers who considered their problem resolved were not satisfied with the outcome.²

A.2 The OFT has surmised that representative actions could be of benefit in particular areas such as scams, or issues with defective goods and questionable selling practices. However there is a need to identify real case examples to provide evidence of need for this additional redress mechanism.

¹ OFT 'Consumer Detriment Study' April 2008.

² OFT 'Consumer Detriment Study' April 2008, p50-53.

- A.3 There is currently no mechanism for representative actions for consumer protection issues in the UK. The closest alternative is the Group Litigation Order (GLO), which is effectively an administrative grouping of similar cases. A GLO can be made for any type of claim where there are multiple parties or claimants to the same cause of action. GLOs represent an opt-in case management regime that requires each claimant to file a claim form individually and be entered upon a group register.
- A.4 The current system of GLOs is useful for some consumers who have been unable to obtain a satisfactory outcome for their disputes, but it requires consumers with equal interest to represent themselves. The introduction of representative actions could build on this, allowing organisations to bring actions on behalf of consumers. It may also be reasonable to expect that the possibility of a representative action could act as an incentive for non-compliant businesses to operate more responsibly in the competitive marketplace.
- A.5 The OFT Consumer Detriment Study found that two thirds of consumers who experience a problem complain or take some form of action, with three per cent of those consumers complaining through Consumer Direct.³
- A.6 Consumer Direct is the government-funded telephone and online service offering information and advice to consumers. Case information from each of the service's regional contact centres is consolidated into a centrally managed system, referred to as the Consumer Direct Database. The database provides a reporting function which allows access to case information over the internet. Reports provided by the central database are used by contact centres and stakeholders for analysis and follow up action.
- A.7 The Consumer Direct Database provides a ready resource to explore actual complaints as potential cases that could benefit from representative actions.

³ OFT 'Consumer Detriment Study' April 2008, p63.

Scope and Methodology

- A.8 Complaints data and cases have been sourced from the Consumer Direct Database, specifically complaints recorded between 1 January 2007 and 31 December 2007.
- A.9 The scope of this analysis is limited to complaints within the database about traders only, therefore it does not explore feedback received from consumers or other more general queries received by Consumer Direct.
- A.10 With 829,275 trader complaints received by Consumer Direct in 2007 alone, it was essential to first identify some of the most relevant and likely areas within which to focus the search for case examples. For this initial analysis, the general approach was to identify the most common complaints, followed by the purchase methods and service areas where these complaints were likely to occur. Some areas that have been identified within previous OFT work on representative actions were also analysed, such as complaints about direct marketing to vulnerable consumers and inadequate offers of redress.
- A.11 A table of relevant and likely areas that could benefit from representative actions was produced to help target the search for case examples in the Consumer Direct Database. This table can be found at Attachment A. Due to the number of areas identified for follow up in the initial analysis, a select few are investigated in this report for illustrative purposes. These areas are double glazing, leather furniture, motorised scooters and overseas package holidays. Scams are also discussed.
- A.12 The initial analysis of the Consumer Direct Database also suggested that future work to identify appropriate case examples would benefit from contextual analysis, such as consideration of market reports and other relevant studies. Accordingly, consideration has been given to additional information sources such as industry market reports, the OFT's Consumer Detriment Study, and results of Consumer Direct Customer Satisfaction surveys throughout 2007.
- A.13 Consideration of specific complaint types, for example, complaints about defective goods, selling practices or substandard services, highlighted a

significant point about how individual cases might be grouped together for a representative action. Many similar complaints are recorded in different complaint categories within the Consumer Direct Database, although they could have easily been grouped together in a number of ways in the context of a potential representative action.

- A.14 For example, a complaint about 'defective goods' could often just as easily be described as a complaint about 'substandard services' due to the nature of the problem. A number of factors may contribute to this labelling issue, including the fact that each complaint in the database is given only one descriptor when there may be several issues within it, and more than one could have been used as the primary descriptor.
- A.15 This suggests that it may make more sense to group cases together by the actions of a trader rather than the details of each individual case and/or the type of complaint received. This complements the OFT position that the common link in a representative action should be the actions of the trader rather than being overly prescriptive about how cases are grouped.
- A.16 Brief consideration is also given to other sources of information that may help to illustrate where a representative action could be of benefit to consumers in obtaining redress, such as GLOs and enforcement actions under Part 8 of the Enterprise Act 2002.

Limitations

- A.17 This report is intended as a basic analysis using the Consumer Direct Database to identify case examples that may benefit from representative actions.
- A.18 While an attempt has been made to view complaints in their economic context, this report should be considered as an illustrative analysis rather than a rigorous economic study of the sectors chosen for examination. For example, not all market reports relate specifically to the same year that the complaints data has been taken from (2007), and there may be a range of factors that contribute to the number of complaints received

about a certain trader which have not been explored for the purpose of this study.

- A.19 The limitations of the Consumer Direct Database should also be recognised. The database contains self-reported complaints that have been reported to Consumer Direct only. It should be noted that the Consumer Direct service makes no opinion on, or verification of, facts when gathering its information, and due care should be taken when using it to direct further action or activity.
- A.20 As noted above, each complaint is given one descriptor only when there may be several ways a complaint could be defined, or indeed, several complaints within the same case. While this may reduce the issue of double-counting, it also limits the way in which complaints are logged and may result in some labelling inconsistencies.
- A.21 It is acknowledged that the database was not originally designed for interrogation to support research of this kind. Given the information it holds, however, the database is an invaluable resource.

Findings

- A.22 Several service areas have been examined in order to illustrate where a representative action could be of benefit to groups of consumers.
- A.23 The use of GLOs by consumers seeking redress, and recent enforcement actions under Part 8 of the Enterprise Act 2002, are also noted as indicators for where a representative action could be of benefit to consumers in obtaining redress.

Double glazing

- A.24 The double glazing domestic market (excluding new build applications) is estimated to be worth around £1.8 billion.⁴

⁴ Mintel 'Double Glazing: Market Intelligence' January 2004, p6.

- A.25 The top four traders in this industry account for 32 per cent of double glazing sales to the UK domestic market.⁵
- A.26 While double glazing is a popular product, the fragmented nature of the market has resulted in a highly competitive field, with many consumers reportedly viewing the stereotypical sales approach used by glazing companies as intrusive and unwelcome.⁶ This view is reflected in the number and nature of complaints about double glazing received by Consumer Direct.
- A.27 The key complaints received about double glazing are defective goods, substandard services, breach of contract, high pressure selling, and direct marketing to vulnerable groups. The OFT's Consumer Detriment Study identified glazing products as one of the areas where consumers most often report having to put things right at their own expense.⁷ The length of time that consumers experience problems with glazing products was also highlighted as an issue, with 25 per cent of problems with glazing products beginning over a year ago.⁸
- A.28 There were 11,885 complaints about double glazing in 2007, with more than half of these (6191) regarding substandard services. An attempt has been made to outline some of the common themes to illustrate potential cases that may benefit from a representative action.
- A.29 Companies of note include:
- Company 1** had a relatively high number of complaints about defective goods compared with the company's reported position in the double glazing market.

⁵ Mintel 'Double Glazing: Market Intelligence' January 2004, P6.

⁶ Mintel 'Double Glazing: Market Intelligence' January 2004, p1.

⁷ OFT 'Consumer Detriment Study' April 2008, p48.

⁸ OFT 'Consumer Detriment Study' April 2008, p52.

Company 2 is among the market leaders in double glazing, but heads the lists for complaints about defective goods, breach of contract, substandard services, high pressure selling and direct marketing to vulnerable groups. The number of complaints about this company is considerable, though not necessarily disproportionate to the company's position in the market.

Company 3 is not listed amongst the leading companies in the market but features amongst the top ten traders for complaints about high pressure selling and direct marketing to vulnerable groups, indicating that complaints may be disproportionate to the company's market share.

Company 1

Complaints commonly involve issues about the quality of the double glazing products installed in homes, and the quality of the workmanship.

These complaints are often accompanied by consumer dissatisfaction with the remedy presented by the trader – either receiving an inadequate response or no response at all regarding their complaint. Where some form of redress is offered the consumer often feels it is inadequate.

A number of consumers also noted this trader's aggressive approach to responding to complaints.

- **Example 1**

Consumer called the trader to have double glazing and door supplied and installed. Consumer was told she did not have to pay until completion. Fitters came and demanded £2245 upfront, which the consumer paid. Consumer reported that the fitter supplied the wrong window, the surveying was not done correctly, and there was no frosted window in the bathroom. Consumer called trader who became abusive and told her if she was complaining they would not come out to fit the window and door. Consumer called Consumer Direct to say that the managing director of the company offered her £5

compensation for the window. After refusing to accept this £5 the consumer told the trader that she wanted the frosted window as agreed. Managing director sent the fitter to look at the window with £10 to give to the consumer, which was rejected by the consumer. Trader did not reply to a letter sent by recorded delivery and the case was referred to Trading Standards.

- Example 2

Consumer had double glazing installed by the trader. As part of the installation the trader removed some of the outside rendering and refused to offer any redress. Consumer took photos and video evidence of the workmanship and sent a letter of complaint to the trader, to which there has been no response. Consumer has had the rendering fixed at a cost of £100, however the inside of the work is a mess, with one of the windows leaking due to a crack.

- Example 3

Consumer had windows fitted, one of which was not fitted correctly. The trader tried to resolve using expanding foam, which caused further damage. Consumer sought advice after six weeks trying to resolve the matter, as felt that the trader was making excuses for not rectifying the problem. Case was referred to Trading Standards.

Company 2

A common theme amongst the complaints relates to defective goods or poor workmanship, followed by inadequate repairs or offers of redress. Several complaints involve the trader seeking additional payment above and beyond what the consumer agreed to pay.

- Example 4

Consumer had double glazing installed and a new door. The door does not close properly, despite 11 visits to try and rectify. Trader started

to state that charges would apply for any further call outs, however the initial problem was not fixed. Trader repeatedly promised repairs, and acknowledged a letter sent by the consumer, however refused to adequately fix the problems. Case referred to Trading Standards.

- Example 5

Consumer complained about defects in new windows installed at their property, including scratches and discolouration in the glass, and reported that the work was not completed. The consumer's interest free finance agreement now requires payment, yet the consumer has found that they owe more than the agreed sum. Consumer pursued complaint for nine months but felt ignored as promises to rectify were not kept. Consumer feels as though a new installation by a reputable company is the only satisfactory outcome, and in the meantime is paying interest on the loan for the initial work. Case was referred to Trading Standards.

- Example 6

Consumer has had new double-glazed windows installed by trader. Over a two year period the trader has been out 10 times to repair, and there are still ongoing problems.

Company 3

This company received numerous complaints about its selling practices throughout 2007. In some cases the consumer appears to have been able to cancel an agreement they felt they were pressured into making, however others do not appear to have been able to do so. Vulnerable elderly consumers appear to be particularly affected by this behaviour.

- Example 7

Consumer was contacted by trader via an unsolicited phone call. Consumer eventually agreed to a sales representative coming to her

house in order to stop the unsolicited phone calls. The salesman was in the consumer's home for three hours, during which the consumer found it very difficult to get him to leave. Eventually the consumer agreed to order some windows, and placed a deposit to get the trader out of the house. After the sale, the consumer felt as though she was bullied into the order and does not want to go ahead.

- Example 8

Consumer's niece called on behalf her elderly uncle, who had entered into a contract for £4,300 after an unsolicited sales call. Niece cancelled the order within the cooling off period but the consumer has not received a refund. Trader will not discuss the issue with the niece due to privacy rights, however the elderly consumer is vulnerable and unable to confidently manage this issue.

Leather furniture

A.30 The value of the living room furniture market was estimated at £3.86 billion in 2007.⁹ The market has experienced a period of weak demand since 2005, which is reflected in underperforming sales in the furniture market overall. Contributing factors for this weak demand include falling house prices and growing levels of cheap imported furniture.¹⁰ Specialist furniture retailers are also under increased pressure from the rise of non-specialists who tend to target the lower end of the market.¹¹

A.31 The cost of leather has reduced dramatically since 2000, bringing leather sofa prices close to the prices of fabric upholstered ones and making them more attainable to the point where budget ranges are common.¹²

⁹ Mintel 'Living Room Furniture, Market Intelligence' March 2008, p3.

¹⁰ Mintel 'Living Room Furniture, Market Intelligence' March 2008, p3.

¹¹ Mintel 'Living Room Furniture, Market Intelligence' March 2008, p3.

¹² Mintel 'Living Room Furniture, Market Intelligence' March 2008, p23.

- A.32 There is relatively poor brand recognition in the living room furniture market, and in large part, the retail brand plays a bigger role in the purchasing decision.¹³
- A.33 Key complaints about leather furniture include defective goods, breach of contract, and other offers of inadequate redress. The OFT Consumer Detriment Study noted that problems with furniture in general were considered to be completely resolved in 59 per cent of cases¹⁴, leaving around 40 per cent of problems either partly resolved or not resolved at all.
- A.34 Consumer Direct received 11,642 complaints in 2007 about leather furniture, including 8462 regarding defective goods.
- A.35 Companies of note include:

Company 4 tops all trader lists for complaints about leather furniture regarding defective goods, breach of contract and other offers of inadequate redress, which would appear to be significantly disproportionate to its position in the leather furniture market.

Company 5 features in the top ten of lists for most complained about traders in relation to leather furniture complaints about defective goods, breach of contract and other offers of inadequate redress. This would appear to be noticeably disproportionate to this company's position in the market.

¹³ Mintel 'Living Room Furniture, Market Intelligence' March 2008, p25.

¹⁴ OFT 'Consumer Detriment Study' April 2008, p51.

Company 4

Common complaints against this trader involved the delivery of faulty or damaged goods, followed by inadequate repairs and unsatisfactory offers of redress.

There were numerous complaints about this trader's use of non-independent assessment reports about defective goods, and other common themes that indicate a range of issues, including failure or delay in delivery, breach of contract, not honouring warranty, inadequate offers of redress, poor repair work, and misdescription of non-leather goods as leather goods.

- Example 9

Consumer purchased sofa from trader. Within four months the consumer called the trader to report that the leather was peeling off and the stitching was coming undone. Trader agreed to repair the goods but consumer refused, seeking a replacement. Trader sent another representative to assess the goods, who advised the consumer that the goods were faulty. However the consumer then received a letter from the trader stating that the problems were caused by misuse. After further complaints from the consumer, the trader again sent someone to assess the problem, who repeated the advice to the consumer that the leather was faulty, however the consumer again received a letter from the trader stating the problem was misuse and wear and tear. Consumer reported ongoing unsatisfactory response from the trader.

- Example 10

Consumer called Consumer Direct about sagging of a purchased leather suite. Trader has had the suite assessed twice and sent reports stating that the suite is fine, however the consumer does not agree with these reports. Trader refused redress and the case was referred to Trading Standards.

- Example 11

Consumer purchased goods from trader, who failed to deliver goods on time. Part of the order was delivered three months late and was defective upon delivery. Trader offered to repair faulty goods but consumer was seeking replacement. Consumer followed up with requests in writing but received no response from the trader.

- Example 12

Consumer ordered a sofa, but after 12 weeks had not heard from the trader regarding delivery. Consumer was advised the delivery would take six weeks only and has paid a deposit on the goods. Consumer now wants to cancel, but has not received a response. Case was referred to Trading Standards.

- Example 13

Consumer purchased a leather suite from trader with a three year warranty. Goods became faulty within this warranty period, with the leather peeling off. Trader refused to offer remedy.

- Example 14

Consumer bought a suite from trader, and was sold an insurance policy which she could not claim on as the suite is not leather. The ombudsman managed to get the price of the insurance policy back. Original faults with the product have never been rectified. The trader has offered to give her £511 in a credit note for her to use in the store against a new suite, however the consumer is not satisfied with either the amount or the fact that they will not give her cash, which was how she initially paid for the goods.

- Example 15

Consumer purchased a suite that was advertised as all leather, which the trader confirmed prior to the sale. The consumer paid a deposit, and upon delivery noted that the suite was not genuine leather. Trader

committed to fix the issue, but did not follow through, and the suite remained advertised as all leather.

Company 5

Common complaints include the delivery of defective or damaged goods, consumer dissatisfaction with remedy offered, or no remedy offered at all by the trader.

- Example 16

Two leather sofas purchased from the trader. Upon delivery, consumer noted a scar on the leather of parts of the goods. Consumer contacted the trader on the same day to reject the goods and trader advised they would send a representative to inspect the problems. Trader advised the scarring was natural and not an issue, however consumer disagreed. Consumer sent letters to the trader to outline consumer rights and resolve the issue but the trader did not respond.

- Example 17

Consumer purchased leather chairs with foot stools, which arrived faulty. Trader advised three week period for repair, which was then delayed by a further three weeks, after which the goods were still not repaired.

Motorised scooters (mobility aids)

A.36 The mobility sector in the UK accounts for over 30 per cent of the overall market for disability aids, with the market for scooters specifically valued at £70m in 2006.¹⁵ Motorised scooters are amongst

¹⁵ Key Note 'Equipment for the Disabled' Market Report 2006, p18-19.

the most advertised disability products in newspapers and on television.¹⁶

- A.37 A range of companies supply equipment to the disabled in the UK, from multinationals to niche market suppliers.¹⁷ The most common type of complaint for motorised scooters is about defective goods.
- A.38 Consumer Direct recorded 1164 complaints about motorised scooters in 2007, with 626 complaints specifically about defective goods.
- A.39 Based on the volume of complaints, there is one main company of note in this area:

Company 6 tops the number of complaints about defective goods in relation to motorised scooters, with three times more complaints than the trader who attracted the second-most number of complaints.

Company 6

Many complaints resemble the same story, starting with the delivery of a faulty scooter, followed by a trader promising to repair, repairs are not done to an adequate standard or the trader fails to fix it altogether, and finally, the trader fails to respond to correspondence and/or fails to recognise the product warranty. Consumers affected by these actions in this particular sector are likely to be elderly and vulnerable.

- Example 18

81 year old wanted a new mobility scooter to replace existing one. The trader offered to visit and award her with £500 for her old scooter and set up a contract for a new one at a cost of £1000. The

¹⁶ Key Note 'Equipment for the Disabled' Market Report 2006, p41.

¹⁷ Key Note 'Equipment for the Disabled' Market Report 2006, p33.

replacement scooter arrived and was a reconditioned product, which was faulty and kept failing. Trader sent a representative to assess the problem, who sold the consumer a bigger and better model for an additional £600. Elderly consumer is vulnerable, with impaired vision and memory due to a stroke, and family member was worried that the company is preying on vulnerable customer.

- Example 19

82 year old consumer purchased a mobility scooter. Had used it three times before the tyre became flat and the valve came away from inner tube. Trader came out and tried unsuccessfully to repair, after which committed to sending out solid tyres. This commitment was not followed through. Vulnerable consumer was seeking a full refund. No response was received from the trader. Case was referred to Trading Standards.

- Example 20

Consumer purchased used mobility scooter and was told that the battery would last for 11 miles. The battery lasted only 2.5 miles. Consumer advised trader, who advised that the battery should be charged for longer, which the consumer tried to no avail. Trader said they would charge to come and assess the problem, but consumer was not happy with this and wrote to the trader to advise them of the issues. Case was referred to Trading Standards.

- Example 21

Within a couple of days of delivery, the mobility scooter battery would not charge. Trader said they would come to assess, however they sent a new charger instead. The new charger worked only once. The consumer called trader numerous times but trader has not honoured their promises to remedy the problem. The goods were only used twice.

Package holidays overseas

- A.40 The package holiday market has stagnated as independent holidays drive the market, attributed greatly to easy access to online booking facilities.¹⁸ In 2006, overseas package holidays that were booked through an agent made up 30 per cent of the UK holiday market, and overseas package holidays booked through a tour operator made up 18 per cent of the UK holiday market.¹⁹
- A.41 Key complaints about overseas holiday packages include substandard services, verbal misrepresentation/misdescription, advertising, breach of contract, and other offers of inadequate redress. 7152 complaints were received by Consumer Direct about overseas package holidays in 2007.
- A.42 Identifying potential examples that might benefit from representative actions in this service area proved more difficult than anticipated due to the variety of complaints.
- A.43 Common themes across complaints in this service area included dissatisfaction with components of overseas package holidays, such as the trader booking incorrect hotels or transfers, complaints about misdescription and advertising, and breach of contract.
- A.44 However, unlike other industries with more tangible problems such as leather goods, complaints about holidays (including package holidays) appear to be much more personalised and therefore potentially more difficult to group together.
- A.45 Conversely, package holidays can also lend themselves to easier grouping when a number of people book the same holiday package through the same trader and share similar experiences as a result of issues with their purchase.

¹⁸ Mintel 'Holiday Review, Leisure Intelligence' March 2007, p3.

¹⁹ Mintel 'Holiday Review, Leisure Intelligence' March 2007, p47.

A.46 This is illustrated by the fact that there have been four GLOs brought by dissatisfied holidaymakers since the introduction of the GLO mechanism in 2000. The use of the GLO facility suggests that the package holiday market is one that may benefit from an accessible representative actions mechanism.

Scams

A.47 Scams is a particular area that OFT has surmised would benefit from an additional redress mechanism in the form of representative actions. Research published by the OFT in 2006 revealed that UK consumers lose around £3.5 billion to scams every year, with an estimated 3.2 million adults falling victim to scams annually.²⁰

A.48 This research further suggests that consumers lose around £1.2 billion every year to bogus holiday clubs, £490 million to high risk investment scams, £420 million to pyramid and get-rich-quick schemes, and £260 million to fake foreign lotteries.

A.49 The OFT considers that obtaining redress for scam victims may present particular challenges, such as identifying affected consumers and tracing scammers, as well as issues relating to the financial capacity of the scammer to repay victims. However, there is significant potential for a representative action mechanism to benefit victims of scams.

A.50 A high proportion of consumers who encounter a scam (38 per cent) do not report or talk about their experience, and less than five per cent tend to report a scam to the authorities (OFT, police, or local authority Trading Standards Services).²¹ The main reasons for not reporting scams include that the consumer perceives that it is not worth taking any action or would not be of interest to the authorities, with 21 per cent of

²⁰ OFT 'Research on impacts of mass marketed scams' December 2006.

²¹ OFT 'Research on impacts of mass marketed scams' December 2006, p.35.

victims who did not report the scam admitting they were too embarrassed to take action.²²

A.51 A representative action may be of particular benefit to these types of consumers, who are unlikely to pursue redress individually or by other means.

A.52 The OFT's research into scams provides an overview of individual scams, including:

- Prize draw and sweepstake scams
- Foreign lottery scams
- Work at home and business opportunity scams
- Premium rate telephone prize scams
- Miracle health and slimming cure scams
- African advance fee frauds/foreign money making scams
- Clairvoyant and psychic mailing scams
- Property investor scams
- Pyramid selling and chain letter scams
- Bogus holiday club scams
- Internet dialer scams
- Career opportunity scams
- High risk investment scams

²² OFT 'Research on impacts of mass marketed scams' December 2006, p.37.

- Internet matrix scheme scams, and
- Loan scams

A.53 The Consumer Direct service commenced a new online scams reporting program in 2008, with 1896 scams reported between 1 February and 30 April 2008. Recognising potential difficulties in identifying scammers who employ various tactics to avoid being brought to justice, it is possible to use the Consumer Direct Database to source cases where representative actions may assist in obtaining redress for consumers.

Other sources of case examples

A.54 Under Part 8 of the Enterprise Act 2002, OFT and other enforcement bodies have powers to seek court orders against, and accept undertakings from, businesses that breach certain consumer protection laws. Undertakings accepted and enforcement actions imposed by the OFT and other enforcement agencies may be published on the OFT website and via OFT media releases.²³

A.55 Enforcement action taken by the OFT and other enforcers during 2007 suggests there are a number of specific instances where consumers may have been eligible for redress and are unlikely to have been compensated. For example, Local Authority Trading Standards Departments were involved in 137 enforcement outcomes, including undertakings and court orders, against 89 traders throughout 2007. OFT media releases detail a further 21 cases where undertakings were accepted or orders obtained by the OFT.

A.56 Some of these cases could potentially benefit from a representative action mechanism. A table of enforcement actions published via OFT media releases since January 2007 is at Attachment B.

²³ www.offt.gov.uk

Conclusion

- A.57 The Consumer Direct Database provides access to useful case examples of consumer issues where a representative action may be of benefit to consumers.
- A.58 Viewing actual complaints in detail highlights a number of points, such as the fact that if a mechanism for representative action was to be introduced in the UK, it may make more sense to group cases by the actions of a trader rather than the specifics of each complaint.
- A.59 Combined with supplementary sources, the database has enabled an illustration of a broad range of cases that could potentially benefit from a representative action mechanism.

Attachment A: Table of relevant and likely areas within which to search for case examples that could benefit from representative action.

Complaint type	Service area	Purchase method
defective goods (01A)	double glazing, leather furniture, upholstered furniture, TVs, DVDs, lap tops, washing machines, fridges and freezers, second hand cars purchased by independent dealers, toys, cameras, women's clothing, jewellery including repairs, watches including repairs, women's footwear, motorised scooters, buggies/prams/pushchairs	trader premises internet doorstep invited
substandard services (02A)	other general building work, fitted kitchen, central heating, roofing, plumbers and plumbing, fitted bathrooms, double glazing, conservatories, car repairs and servicing purchased at independent garages, car parking and clamping, dry cleaning and laundry, holiday package overseas, other holiday types, guest houses and B&Bs, internet service	trader premises doorstep invited telephone

Complaint type	Service area	Purchase method
	providers, health clubs and gyms, photography, estate agents, letting agents advertising agencies	
breach of contract	fitted kitchen, double glazing, upholstered furniture, leather furniture, TVs, Lap tops and notebooks, package holidays overseas	telephone internet
safety	toys	
failure in delivery	other personal goods and services, women's clothing	trader premises internet
overcharging	Plumber and plumbing, other general building work	doorstep invited
bogus selling	lotteries, prize draws, roofing, tarmacing and paving	unsolicited postal
high pressure selling	double glazing, holiday clubs	uninvited doorstep unsolicited telephone
direct marketing to vulnerable groups	lotteries, prize draws, roofing, double glazing, tarmacing and paving, burglar alarms	unsolicited postal doorstep uninvited

Complaint type	Service area	Purchase method
verbal misrepresentation/ misdescription	lotteries, prize draws, advertising agencies, second hand cars from independent dealers, package holidays overseas	
advertising	lotteries, prize draws, package holidays overseas	trader premises unsolicited postal internet
other offers of inadequate redress	upholstered furniture, package holidays overseas, leather furniture, fridges and freezers, washing machines, internet service providers, fitted kitchens	trader premises

Attachment B: Undertakings accepted and orders obtained as published in OFT media releases since January 2007.

Date	Release title	Description
38/08 18 March2008	OFT stops South African marketer sending misleading mailings	Scam – approx 15000 responses to bogus lotteries. Overseas trader
28/08 25 February2008	OFT seeks court order against letting agent Foxtons	Unfair contract (not yet resolved)
12/08 22 January2008	OFT obtains injunction against bogus racing tipster	Scam – approx 3000 consumers affected
10/08 17 January2008	Furniture retailer Land of Leather to make credit advertising clearer	Consumer credit/ misleading advertising
3/08 11 January2008	MB Designs (Scotland) Limited gives undertakings to the Court of Session in Scotland	Double glazing – defective goods, substandard services and other consumer issues.
158/07 19 November2007	Scottish mobility products company undertakes to provide higher standards of consumer protection	High pressure selling, vulnerable consumers
148/07 29 October2007	OFT obtains undertakings from directors of solar water heating companies	Misleading claims, substandard services, unfair contract terms
143/07	OFT obtains injunction against prize draw promoters	Scam – bogus prize draw

15 October 2007		
140/07 11 October 2007	OFT obtains assurances from South African prize draw promoter	Scam – bogus prize draw. Overseas trader
137/07 26 September 2007	OFT obtains undertakings from Belgian mail order company	Scam – misleading prize draw mailings. Overseas trader
118/07 9 August 2007	OFT takes action against 13 airlines over misleading holiday pricing	Advertising/misleading claims or omissions
102/07 17 July 2007	OFT secures prison sentence for rogue trader	Rogue trader in roofing sector
101/07 13 July 2007	OFT accepts undertakings from Book Club Associates	Misleading adverts
100/07 12 July 2007	OFT obtains enforcement order against prize draw promoter	Scam – misleading adverts
82/07 12 June 2007	OFT acts against 'slimming capsule' advertisers	Bogus weight scam. Overseas trader
73/07 14 May 2007	OFT receives assurances from publisher of 'charitable fund' mailing	Misleading/ bogus cash award. Overseas trader
40/07 9 March 2007	OFT stops 'male enhancement' advert	Misleading claims. Overseas trader
35/07	Fairer terms for mobile park	Unfair contract terms

1 March 2007	home residents	
4/07 12 January2007	OFT takes action against 'miracle slimming chocolate'	Bogus weight loss scam. Overseas trader