

## **Consumer interest in fair markets particularly in a recession**

I would like to thank Consumer Focus Scotland for inviting me here to speak today. The OFT has had a very strong working relationship with Consumer Focus Scotland in recent years and I must thank Martyn Evans for his continuing support and critical friendship since I joined the OFT. I wish Martyn well in the future.

Our role is to make markets work well for consumers. This is a broad mandate covering consumer and competition issues across the economy. It involves a range of civil and criminal powers. We are primarily an enforcement agency rather than a regulator. We want to see vibrant and competitive markets across the economy in which vigorous competition between fair-dealing businesses simultaneously drives both a good deal for consumers and productivity growth.

Today I want to talk about three issues and show how the OFT has responded quickly and flexibly to the problems consumers have faced in the recession. I will deal with:

- consumer vulnerability and what this means
- how this is changing, both in terms of the recession and longer-term trends; issues such as the growth of the internet, and
- what the OFT is doing to address these issues.

### **Types of consumer vulnerability**

I want to distinguish two different types of vulnerability.

**Individual vulnerability** relates to the characteristics and capacity of the individual, which includes literacy and numeracy. Data from the Literacy Trust from 2003 showed that 16 per cent of 16 to 65-year olds in England had literacy and numeracy skills at a level expected of an 11-year old or below. This figure was 23 per cent in Scotland in 2001. The implications are significant in terms of the ability of consumers to make informed choices. For example, if you ask people to choose between £30 or 10 per cent of £350, 20 per cent of people will chose £30 because they are unable to process and compare the information. Problems with capacity therefore create vulnerability.

Lower income consumers are also particularly vulnerable and may experience what can be described as the vicious circle of debt. They are more likely to be affected by bank overdraft charges which increase their debts and they then find that a poor credit rating leads them to high interest moneylenders. The collapse of Farepak, the hamper savings

scheme business, had the greatest impact on low income consumers who were trying to put money aside for Christmas and were unaware of the alternative methods they could have used to save.

Lower income consumers may also in effect pay an insurance premium that others do not and pay higher prices because of the higher costs to business of supplying them. For example, if they have to use more expensive pre-payment methods (such as meters) rather than post-payment methods. We have seen in consumer credit that the market can be slow to respond because there is no incentive for businesses to compete for lower income consumers. Similarly, lower income consumers generally find it difficult to self-insure and lose out because self-insurance is likely to be much cheaper.

Geographical location, age, and access to support networks are also key factors which impact on consumer vulnerability. Research in the United States has suggested a particular vulnerability for those who live alone. This is important because much of what we learn about markets, for example the dangers of scams, comes from others close to us. Without the support of friends and family there is an absence of shared learning.

**Situational or transactional vulnerability** concerns the nature of the goods or services, or the way they are purchased. We are all vulnerable in this way. Where there are changes in markets – reflected in new technology, new sales media etc, - the consumer relies upon the skill, honesty, and expertise of the supplier to trade safely.

All consumers are susceptible to being misled before they purchase, for example by high pressure selling at the point of sale for products such as payment protection insurance and home improvements.

Vulnerability then continues after the purchase because consumers are locked into the contract. We know about the potential consequences of lock-in through our investigation into contracts signed by occupants of purpose-built owner occupied retirement homes. Our work in this area is motivated by the need to ensure that terms and conditions are clear and fair, particularly in this sector where customers are already vulnerable because of their age. We are thus concerned about the fairness and clarity of contract terms providing for the so-called 'exit fees', charged to occupants of purpose built retirement homes.

The complexity of pricing structures also create problems because there are limits to the capacity of many consumers to understand what they are being offered. We have seen this with mobile phone tariffs and also bank charges where consumers find it difficult to make meaningful comparisons which are often key to motivate switching.

## **Vulnerability in a recession**

In a recession some elements of vulnerability will become more acute as consumers face financial difficulty with rises in energy and food prices. They also face a reduction in their capacity to access a wide range of suppliers across markets generally.

At the OFT we have seen the impact of the recession most clearly in the consumer credit market where there are two effects pushing in the same negative direction. There is increasing demand for credit as more consumers face problems in meeting their payments which leads to an increase in levels of personal debt. At the same time there has been a contraction of supply as lenders change their criteria for offering loans and tighten up on pursuing existing debts.

Vulnerable consumers are likely to have poor credit scores which in turn makes them more expensive to serve and results in them paying higher prices. They are often also specifically targeted by scammers, who create 'suckers lists' and can bombard them with mailings and calls.

The 'Drowning in Debt' report published by Citizens Advice Scotland in June showed that personal debt among Citizens Advice Bureaux ('CAB') clients has more than doubled in the last five years. Half of CAB debt clients owed between £7,500 and £30,000 and almost one in ten owed in excess of £50,000. The report suggested that debt recovery tactics are becoming increasingly aggressive. We know that the UK already has one of the highest levels of personal debt in the world.

Increases in debt levels lead to consumers being vulnerable in other situations. We continue to take appropriate regulatory action to ensure that debt collectors, debt purchasers and lenders collecting their own debts deal fairly and proportionately with individuals and fully comply with the minimum standards of the OFT's Debt Collection Guidance.<sup>1</sup> Debt collection firms have a clear legal obligation to deal fairly and proportionately with consumers. We have used our credit powers to deal with debt related issues such as debt sales, lookalike websites, debt collection, debt management, and unlicensed trading.

We took action against Mackenzie Hall Limited, a Scottish based company with UK wide operations, to improve its handling of disputed debts and statute-barred debt.<sup>2</sup> Persisting with debt collection activity when debts are in dispute can give rise to significant consumer detriment, particularly

---

<sup>1</sup> Debt collection guidance: Final guidance on unfair business practices, July 2003 (updated December 2006) OFT664.

<sup>2</sup> OFT Press release, OFT imposes requirements on Mackenzie Hall to improve handling of disputed debts, 21 April 2009.

where vulnerable consumers are involved. We also took action against 1<sup>st</sup> Credit Ltd to improve its debt collection practices which included ensuring that sensitive cases involving vulnerable consumers are handled appropriately.<sup>3</sup>

During the recession we have seen the rapid growth of markets such as sale and rent back and claims management which have their origins in the financial difficulties experienced by consumers.

Sale and rent back is the practice of buying homes from individuals, usually at a significant discount, and renting them back to the same individuals. This market has grown very quickly with around 1,000 companies emerging over the last few years. Around 50,000 transactions had already taken place by October 2008. The unsubstantiated claims used by some sale and rent back firms have caused concern because the consumers being targeted are already in a cycle of vulnerability and at risk of losing their homes due to loss of jobs or illness. By choosing sale and rent back these consumers only increased their vulnerability. We want to see greater transparency about the initial valuation and sale price, the terms of the tenancy and the amount of rent to be paid. We also want a requirement on firms to tell consumers about the free, independent advice available to them before they decide to sell. Following an OFT market study<sup>4</sup> the FSA has already taken steps to set up an interim regime.

Scams are even more prevalent in a recession as scammers look for opportunities to exploit consumers. The recession provides lots of opportunities. Scammers may prey on the charitable nature of consumers, their entrepreneurial spirit, or simply their vulnerability. Vulnerability can result from consumer desperation, greed, or emotion etc. There is risk of becoming a victim through 'over-confidence'. We have worked closely with Trading Standards Service partners on scams awareness campaigns including health scams, get-rich-quick/prize scams, fake ticket websites, and charity scams. Public awareness of scams rose by 10 per cent following Scams Awareness Month in February this year.<sup>5</sup> As part of Scams Awareness Month we alerted consumers to the dangers of pyramid selling schemes which have increased in the recession. We have since brought charges against three people under the Consumer Protection from Unfair Trading Regulations in connection with suspected

---

<sup>3</sup> OFT Press release, OFT imposes requirements on 1st Credit over debt collection practices, 25 February 2009.

<sup>4</sup> Sale and rent back: an OFT market study, October 2008, OFT1018.

<sup>5</sup> Independent evaluation of the OFT Scams Awareness Month campaign (February 2009) found there was increased consumer awareness of scams following the campaign with those claiming to be very or fairly knowledgeable about major scams increasing by between seven and 10 per cent (OFT Press release, Public increasingly aware of scams, 23 June 2009).

unlawful pyramid scheme in the South West of England and Wales.<sup>6</sup> Pyramid scams are estimated to collectively cost UK consumers £420 million every year.

The recession has therefore increased the likelihood of consumers falling into this vicious cycle of vulnerability.

### **Longer-term trends**

There are a number of longer-term trends which will impact on consumer vulnerability, such as demographic trends and also the way in which numeracy and literacy are taught in the education system. However, the trend I want to focus on here is the role of the internet in markets.

The growth of online transactions presents new challenges for business, consumers, and regulators. The internet brings great benefits, for example by connecting those who live in remote areas to a wider choice of goods and services. However, it brings with it extra risks around situational and transactional vulnerability. The distance between the seller and the consumer creates risk. This means we need payment and delivery systems which create and maintain trust in that relationship.

Despite the efforts of legitimate businesses to build trust, a lack of consumer confidence persists. Our market study into online shopping in 2007<sup>7</sup> found that 79 per cent of internet users were very concerned about the risks to the security of their payment details from online shopping. In the United States in 2008 the most common complaint about web sites was non-delivery of goods followed by internet auction fraud and credit card fraud. Authorities there have also recently reported a 33 per cent increase in internet fraud.<sup>8</sup>

Marketing has become more professional with more sophisticated use of information about consumers allowing suppliers to better meet their needs. An important change is the increased amount of data that companies now hold on all of us. Where we used to pay for goods with cash we often now pay with cash and personal data or, sometimes, just personal data. We increase our vulnerability when we hand over personal data and although there can be benefits, the increased risks this exposes us to have yet to be fully understood in consumer protection terms.

For example, supermarkets did not know much about the behaviour of consumers until they began to issue cards which could record what consumers had bought. Now when you shop online retailers can record

---

<sup>6</sup> OFT Press release, OFT announces criminal charges in suspected pyramid scheme case, 2 October 2009.

<sup>7</sup> Internet shopping: an OFT market study, June 2007, OFT921.

<sup>8</sup> Internet Crime Complaint Center (IC3).

what you have bought over time in their shops, what you didn't buy and, via third parties, what you have bought in other shops. This gives companies greater information and leads to both behavioural pricing and targeted advertising.

At the OFT we want to learn more about how consumers and businesses behave in internet transactions and have launched two studies to do this. The first, into online targeting of advertising and prices<sup>9</sup> covers behavioural advertising and customised pricing, where prices are individually tailored using information collected about a consumer's internet use. The second, into advertising of prices,<sup>10</sup> will consider various pricing practices which may potentially mislead consumers. These studies will ensure that we keep up to date with the latest developments and, in particular, on how new pricing and advertising practices are emerging and evolving online.

The internet is bringing more choice and more information for consumers. However, our work on behavioural economics shows that more choice and information is not always necessarily good for consumers as proliferation of choice and price complexities can create problems. We have experience of this from our work on airline pricing. Consumers welcome the general reduction in fares and improved flexibility for purchasing tickets which the internet has brought. However, while competition has brought benefits we need to be extra vigilant in terms of consumer protection issues which come with it. Hidden charges in airline pricing play to the vulnerability of consumers and we have worked to improve clarity and transparency so consumers are made aware of any fixed non-optional costs early in the booking process.

### **What is the OFT doing to address these issues?**

There are two main areas of OFT activity to address the types of issues I have mentioned.

#### **Improving business behaviour**

We have a wide range of instruments which allow us to improve the behaviour of businesses that sell to consumers. We can use our enforcement powers, make references to the Competition Commission, make recommendations to government to bring in regulation, take cases

---

<sup>9</sup> This market study was launched in October 2009 and will cover behavioural advertising and customised pricing, where prices are individually tailored using information collected about a consumer's internet use. It is expected that this study will be completed by spring 2010.

<sup>10</sup> This market study was launched in October 2009 and will consider various pricing practices which may potentially mislead consumers. The study will look in particular, but not exclusively, at how these practices are used online. It is expected that this study will be completed by summer 2010.

to establish legal clarity, use our credit licensing functions and our Consumer Codes Approval Scheme. We work closely with our partners to deliver outcomes for consumers and use Consumer Direct to help us get our messages across.

I have already outlined some of the high-profile enforcement work we have been doing in the areas of consumer credit and scams. Our case against Foxtons Estate Agents provided legal clarity that certain terms and conditions used by Foxtons Ltd in its lettings agreements with landlords were unfair.<sup>11</sup> It sent out a clear and unambiguous message (though one still potentially subject to appeal) that businesses offering services need to ensure unexpected or surprising terms are not hidden away in small print. Contracts need to be written in clear and straightforward language with important provisions, particularly those which may disadvantage consumers as in this case, given prominence and actively brought to people's attention.

Guidance is a vital part of our engagement with the industry and for raising standards. In the credit market we are updating our debt collection guidance<sup>12</sup> which provides clarity on the respective obligations of creditors, debt collectors and tracing agents, to ensure that data used for debt collection is accurate and up to date. This year we have also issued draft guidance on irresponsible lending<sup>13</sup> and final guidance on secured second lending.<sup>14</sup>

When we provide advice to government we think carefully before recommending a regulatory solution to a problem. On sale and rent back we felt that a regulatory solution was necessary. In contrast, following the collapse of Farepak, we did not believe that regulation was appropriate for the hamper and voucher industry or for pre-payments across the economy. We want to see less and smarter regulation.

We continue to develop and promote self-regulatory initiatives, particularly through the OFT Consumer Codes Approval Scheme. This is a good way of getting smaller traders to group together to invest in reputation and standards. It complements our work with business generally on compliance.

Partnership working is key to a lot of our delivery. We work particularly

---

<sup>11</sup> High Court ruling found terms and conditions used by Foxtons Ltd in its lettings agreements with landlords are unfair (OFT Press release, OFT welcomes high court ruling on Foxtons' use of unfair terms, 10 July 2009).

<sup>12</sup> Debt collection guidance: Final guidance on unfair business practices, July 2003 (updated December 2006) OFT664.

<sup>13</sup> Irresponsible lending – OFT guidance for creditors: an OFT consultation, July 2009, OFT1107con.

<sup>14</sup> Second charge lending – OFT guidance for lenders and brokers, July 2009, OFT1005.

closely with the Trading Standards Service, the sector regulators, and international colleagues. On scams we have worked with the Serious Organised Crime Agency, the Police, and the Trading Standards Service. We have led European Union cross-border information sharing and enforcement action on scams.

### **Changing consumer behaviour**

We aim to change consumer behaviour through our consumer education work. Skilled, confident and well-informed consumers contribute to the OFT's wider remit of making markets work well for consumers.

We have started to take a different approach to consumer education recently. We aim to achieve long term behavioural change by equipping consumers with the necessary skills. We have linked Consumer Direct into our education messages and are using evaluation to measure changes in consumer behaviour.

Our Save Xmas campaign, which followed the collapse of Farepak, works through organisations delivering face-to-face financial advice, principally CAB. Our evaluation work estimates 40,000 consumers have attended face-to-face sessions. After attending a session, 71 per cent of consumers felt more confident about choosing how to save and 38 per cent went on to make some change to their saving behaviour. Of those who did change, half of these opened a credit union, bank, or building society account. We found that 20 per cent began to save where they had never saved before.<sup>15</sup>

We launched our 'Skilled to go' education initiative in June 2008.<sup>16</sup> This aims to help adult learners develop consumer skills such as writing a letter of complaint, buying goods such as a mobile phone, and calculating discounts on products. These are everyday consumer skills that some people take for granted. The toolkit is free to users, and is designed to increase consumer confidence and knowledge. More than 4,000 toolkits have been downloaded from the OFT website.

The toolkit was trialed for a six week period, involving 135 adults attending literacy and numeracy courses in further education colleges in London and Glasgow. Our evaluation work shows that 64 per cent of those who have used the toolkit said they now felt very or quite confident in knowing their consumer rights, compared to 20 per cent at the beginning of the course. The research also found that 'Skilled to go' had particular

---

<sup>15</sup> Evaluation of the Save Xmas awareness campaign: Prepared for the OFT by Ipsos Mori, October 2008, OFT1029.

<sup>16</sup> Developed by the OFT with South Bank University, Skilled to Go helps to develop transferable consumer skills, knowledge and confidence. It has been developed for use by tutors working with adult or young adult learners.

appeal to groups of learners who were traditionally hard to reach in an educational setting.<sup>17</sup>

Almost half of further education colleges in the UK have now signed up to use 'Skilled to go' on the OFT website. A new version of 'Skilled to Go' has been developed specifically for use in Scottish secondary schools. The new version has been updated to reflect Scottish law, procedures, and the curriculum. This will be free to Scottish schools and will be available to download from the OFT website in February 2010.

We still do a lot of our more traditional consumer education work, for example on scams or doorstep selling where warning consumers is still the best approach because of the nature of the problem.

Evaluation is crucial both on consumer education and throughout the rest of our work. We should not be intervening in markets without asking whether what was done in the past worked and thinking about how it might have been done better. We recently commissioned London Economics to evaluate the impact of a sample of six completed consumer enforcement cases. The study,<sup>18</sup> which uses different data sources to measure intervention outcomes, found that all six cases delivered positive benefits for consumers totalling an estimated £243 million per year. These benefits compare very favourably with the estimated costs of the cases for the OFT (£2.4 million). Even allowing benefits to last for one year only, this represents a value for money ratio of 100:1.

We need to realise that consumer vulnerability is not simply about individual characteristics but can affect all of us. The recession has had a particular impact, with those on lower incomes generally the worst affected and online trade, raises new opportunities and challenges. In the OFT we have had to adapt our priorities to reflect that. By working with partners such as the Trading Standards Service, Citizens Advice, Consumer Focus, and a range of international partners we can achieve the agility we need to deal with these issues. This is key to allowing us to identify the problems, move our resources where they are most needed, and provide the type of support consumers require at this difficult time.

---

<sup>17</sup> Skilled to go evaluation: Researching the effectiveness of the Skilled to go further education toolkit, January 2009, OFT1040.

<sup>18</sup> Evaluation of a sample of Consumer Enforcement Cases, October 2009, OFT 1139.