

# **Marketing and charging practices in the sub-prime credit brokerage and debt management sectors**

Response to the super-complaint by Citizens  
Advice

June 2011

OFT1333

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# 1 EXECUTIVE SUMMARY

## Introduction

- 1.1 On 3 March 2011, Citizens Advice submitted a super-complaint to the OFT relating to marketing and charging practices carried out by consumer credit brokerage firms and certain other ancillary consumer credit businesses.
- 1.2 The super-complaint is a timely input into the OFT's ongoing work to ensure that consumer credit markets work well for consumers and has provided an opportunity for further scrutiny of an area in which the OFT has already noted there are risks of detriment to vulnerable consumers.
- 1.3 The super-complaint raised a number of concerns, but its core focus was the alleged consumer detriment caused by two practices:
- firms taking upfront fees for the services that they provide, and
  - firms 'cold calling' consumers by telephone and text to promote consumer credit products and ancillary credit services.
- 1.4 Citizens Advice asked the OFT to investigate the current scale of these practices and to consider a number of measures which Citizens Advice considered would address the related consumer detriment alleged. The OFT has focused its evidence gathering and analysis on cold calling and upfront fee charging in the sub-prime unsecured credit brokerage and debt management sectors. These are the sectors in which Citizens Advice indicated that greatest consumer detriment was occurring. In addition, the OFT is active in these sectors, regulating the conduct of licensees through the consumer credit licensing process.

## Upfront fees

### Credit brokerage

- 1.5 Credit brokers introduce individuals looking for credit to businesses or individuals that can provide it. Since the onset of the liquidity crisis in financial markets towards the end of 2007, the practice of credit brokers charging upfront fees has become increasingly prevalent in the sub-prime, unsecured personal loans sector. We estimate that around 270,000 UK consumers paid an upfront fee to a sub-prime, unsecured credit broker on the expectation of being offered a loan in the last 12 months. Sub-prime credit brokers typically charge consumers an upfront fee of between £50 and £70. This fee is paid before they have performed any work on the consumer's behalf.
- 1.6 The number of complaints to Consumer Direct that involve upfront credit brokerage fees has more than doubled, increasing from between 944 and 1,906 in 2008 to between 4,823 and 6,267 in 2010.<sup>1</sup> The evidence we have collected during our consideration of the super-complaint suggests that there are a number of businesses in the unsecured sub-prime credit brokerage market whose business models are based on taking upfront fees for a service which they are unlikely to be able to provide. In particular, we have found that:
- **Sub-prime credit brokers often fail to introduce consumers to a lender that can offer them a loan in exchange for the upfront fee that they receive.** Based on the evidence that we have gathered during our consideration of the super-complaint, we estimate that approximately

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<sup>1</sup> These estimates are derived from analysis of samples of 300 Consumer Direct complaints for both years. A 95 per cent confidence interval for the total number of complaints about upfront fees was created using the results of this analysis.

45 per cent of consumers who pay upfront fees for sub-prime credit brokerage services may not be offered a loan at all.<sup>2</sup>

- **Where sub-prime credit brokers do introduce the consumer to a lender, it is common for the consumer to be offered a different type of unsecured loan than they were led to expect might be made available to them when they paid the fee.** Based on the evidence gathered during our consideration of the super-complaint, we estimate that approximately 36 per cent of consumers who pay upfront fees for credit brokerage services may subsequently be offered a different type of loan to that which they were seeking.<sup>3</sup> Consumers are often introduced to a lender that provides smaller, shorter-term loans, with higher APRs, which may be unsuitable for them given their particular financial circumstances.
- **Sub-prime credit brokers often do not provide refunds to those consumers who are entitled to them.** Under section 155 of the Consumer Credit Act 1974, consumers are entitled to a refund (less £5) of the fee paid to a credit broker if they do not enter into a relevant agreement with a lender within six months. The evidence that we have gathered in the course of considering the super-

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<sup>2</sup> Our lower bound estimate for the proportion of consumers who pay upfront fees for sub-prime credit brokerage and are not offered any service at all is 27 per cent. These estimates are based on responses to an OFT consumer omnibus survey, which found that of the 11 consumers that we identified as being charged an upfront fee by a credit brokerage business, five consumers were not introduced to a lender or offered a loan. These findings are also broadly consistent with evidence gathered during investigations carried out by the OFT's Credit Group.

<sup>3</sup> Our lower bound estimate for consumers who pay upfront fees for credit brokerage services but are not subsequently offered the type of loan which they were seeking is 19 per cent. These estimates are based on responses to an OFT consumer omnibus survey, which found that of 11 consumers that we identified as being charged an upfront fee by a credit brokerage business, four were offered a loan that was not of a similar amount and cost to that which they had been led to expect when they paid the upfront fee. These findings are also broadly consistent with evidence gathered during investigations carried out by the OFT's Credit Group.

complaint, indicates that it is possible that as many as two-thirds of consumers who are entitled to a refund may not receive one.<sup>4</sup>

**1.7 In order to address the issue of brokers failing to introduce consumers to a lender and then not providing a refund, the OFT proposes the following actions:**

- The **OFT will set out in new credit brokerage guidance**, published for consultation simultaneously with this response:
  - that consumers may have a right to a refund of an upfront fee where no introduction to a lender is made, and
  - that it expects brokers, six months after introducing a consumer to a lender, to advise any consumer who has not entered into a relevant agreement during that time of their right to a refund of the upfront fee.
- The **OFT will continue to scrutinise sub-prime credit brokers' business models** and, where the object or effect of a broker's business model appears to be based on taking an upfront fee, without providing a suitable service or a refund to consumers, the OFT will take robust enforcement action including, where appropriate, refusing or revoking a consumer credit licence.
- At the first available opportunity, **the Government should carry out an impact assessment to establish whether legislative change would effectively address the consumer detriment caused by upfront fees in the credit brokerage sector both in the immediate and longer term**, including considering a ban on credit brokers charging upfront fees for the brokerage of sub-prime unsecured loans. This will provide the opportunity to expand the limited evidence base that the OFT has so far gathered in the course of considering the super-complaint.

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<sup>4</sup> This estimate is based on evidence gathered during investigations carried out by the OFT's Credit Group.

- 1.8 With regard to the issue of **sub-prime credit brokers charging consumers upfront fees on the basis of misleading representations that they will introduce those consumers to an unsecured personal loan** but subsequently introducing the consumer to a different type of loan, the OFT will, where it has evidence of brokers misleading consumers, take robust enforcement action including, where appropriate, refusing or revoking a consumer credit licence.

### **Debt management**

- 1.9 The majority of debt management businesses in the UK charge a fee for providing advice and arranging financial solutions for consumers with debt problems. However, in contrast with the upfront fees charged in the sub-prime unsecured credit brokerage sector, the fees are usually paid to debt management businesses after the consumer has signed a written agreement to purchase a debt management product and has agreed, therefore, to pay the debt management business's fees. This 'initial arrangement' fee is typically one or two times the amount that consumers have available for monthly debt repayment, with the average initial arrangement fee estimated to be around £290.
- 1.10 The initial payment model may create a disincentive for debt management businesses to ensure that debt management plans are successful in the long term by allowing these businesses to obtain much of their fees in the early stage of a plan. However, the evidence that the OFT has collected during its consideration of the super-complaint suggests that initial arrangement fees, provided that they are proportionate to the value of the service that is being provided, and that their level and use is transparent to the consumer, may assist debt management businesses to manage the consequences of the risk that a consumer will default on a repayment plan early in the lifetime of the agreement. Preventing debt management businesses from charging initial arrangement fees may, therefore, reduce the availability of debt management services to consumers in financial difficulty.

1.11 Further, the OFT has found limited evidence in its consideration of this super-complaint that initial arrangement fees in themselves are a significant cause of consumer detriment in the debt management sector.

1.12 The OFT does not, at the present time, consider that further or revised legislation regarding the charging of initial arrangement fees by debt management businesses is required. Instead the OFT proposes to take the following actions:

- **Publication of revised OFT Debt Management Guidance** for consultation later in June 2011 which explicitly identifies the types of behaviour which the OFT considers falls within the category of unfair or improper business practices and which, if engaged in, may call into question a person's fitness to retain or be given a consumer credit licence.
- **Continued robust and targeted enforcement action** against debt management businesses that employ unfair or improper business practices as identified in the revised Debt Management Guidance.<sup>5</sup>

## **Cold calling**

1.13 We have found that a significant minority of UK consumers receive unexpected marketing calls, e-mails and texts from businesses operating in both the credit brokerage and debt management sectors every year. We estimate that, in the last year, around 12 per cent of UK consumers aged 18 and over were unexpectedly contacted by a business other than a bank or building society and offered help finding an unsecured loan; around 18 per cent of consumers were contacted in this way by a business that purported to offer the consumer an unsecured loan; and, around 26 per cent of consumers were contacted by a business that offered them a debt management service.

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<sup>5</sup> A summary of recent enforcement action taken by the OFT in relation to the practices identified in the super-complaint are set out in Annexe F.

- 1.14 It would appear that the majority of the unexpected marketing calls, e-mails and texts received by consumers are being made with consumers' consent. This contact is not therefore regarded by businesses as being cold calling. In their responses to an OFT questionnaire issued to credit brokers and debt management businesses, most businesses told us that they do not use cold calling, but may instead use what they describe as 'warm calling'. Such 'warm calling' involves contacting consumers who these businesses say have, at some stage, either directly given their consent for that business to contact the consumer, or the consumer has indirectly given consent by agreeing that another business can pass their details to a third party.
- 1.15 The use of cold or warm calling enables some businesses to access consumers and then to carry out practices that may cause consumer detriment. We estimate that, in 2010, between 10 and 19 per cent of complaints made to Consumer Direct about credit brokerage and between 25 and 44 per cent of complaints about debt management involved a form of unexpected marketing contact. However, the vast majority of complaints focused on the conduct of the business after the unexpected contact was made, rather than the marketing contact itself.
- 1.16 At the present time, the OFT does not consider it appropriate to recommend that the Government considers legislation to ban cold or warm calling. Although unexpected calls may, on occasion, enable certain credit businesses to engage in activity which results in consumer detriment, there are steps that consumers can take to avoid receiving these calls, such as joining the Telephone Preference Service (TPS).<sup>6</sup> The OFT also notes that unexpected calls will not in themselves always cause consumer detriment. Indeed, some consumers who were unaware of the existence of a service may, for instance, benefit from an unexpected call even if they did not remember giving their consent to receiving it.

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<sup>6</sup> The Telephone Preference Service (TPS) is the official central opt out register on which individuals can record their preference not to receive unsolicited sales or marketing calls.

1.17 **The OFT proposes to take the following actions in relation to cold calls:**

- The OFT's new draft Credit Brokerage Guidance and revised draft Debt Management Guidance, will set out a number of specific practices relating to cold calling of consumers that the OFT considers may constitute unfair or improper business practices.
- The OFT will continue to take robust and targeted enforcement action against credit businesses that engage in specific practices relating to cold calling of consumers that the OFT considers may constitute unfair or improper business practices.

1.18 In addition to the actions set out above, **the OFT proposes to take the following actions relating to the issues identified around unexpected warm calling:**

- The OFT's new Credit Brokerage Guidance and revised Debt Management Guidance will make it clear that the OFT expects any privacy notice<sup>7</sup> to be prominently positioned and sufficiently clear about the way in which the licensee intends to use consumers' personal information, and about what consumers need to do, or not do, to prevent their details from being shared with other businesses.
- The OFT will discuss with Citizens Advice hosting a joint round-table discussion with relevant stakeholders, such as the Information Commissioner's Office, the Direct Marketing Association, the Ministry of Justice, the Department for Culture, Media and Sport, and Ofcom. The discussion could focus on lead generation, data sharing and warm calling by businesses in credit and debt markets in order to determine whether consumers' interests are being sufficiently protected by current legislation and whether current or emerging credit businesses' practices indicate that there is a case for additional action to be considered.

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<sup>7</sup> A privacy notice is the oral or written statement that individuals are given when information is collected about them and which explains how the information will be used.

## **Conclusion and next steps**

- 1.19 In order to progress the proposals set out above, the OFT plans to engage with the Department for Business, Innovation and Skills, HM Treasury and Citizens Advice to discuss how our recommendations can be progressed.

## 2 INTRODUCTION

### Structure of this report

2.1 This report sets out the OFT's reasoned response to the super-complaint from Citizens Advice. It is structured as follows:

- This chapter describes the legal basis for making a super-complaint, the issues raised in the super-complaint submitted by Citizens Advice and how the OFT has considered those issues. It also sets out the background on the sectors which the super-complaint covers.
- Chapter 3 sets out our analysis of the evidence that we have gathered on upfront fee charging in the sub-prime unsecured credit brokerage and debt management sectors, our conclusions and proposed recommendations.
- Chapter 4 sets out our analysis of the evidence that we have gathered on cold calling in the sub-prime unsecured credit brokerage and debt management sectors and our conclusions and proposed recommendations.

2.2 This report also contains the following Annexes, which relate to other issues raised in the super-complaint and to other relevant background information:

- Annex A sets out the evidence that we have gathered on loan advance fee frauds<sup>8</sup> carried out by those purporting to be credit brokers.

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<sup>8</sup> An advance fee fraud involves the victim making an advance payment for goods, services and/or financial gains that are not subsequently supplied. A loan advance fee fraud is one type of advance fee fraud. The fraud may involve criminals posing as licensed credit brokers, and then contacting individuals and offering to find them a loan and requesting an upfront fee to cover processing costs. Consumers then receive no service in exchange for the fee they have paid.

- Annexe B sets out the evidence that we have gathered on upfront fee charging and cold calling in the claims management sector.
- Annex C sets out the evidence that we have gathered on the use of premium rate telephone numbers by sub-prime credit brokers.
- Annex D describes the range of parties that we consulted when formulating our reasoned response.
- Annexe E provides a summary of the results of an OFT consumer omnibus survey.
- Annexe F contains a summary of recent enforcement action by the OFT in relation to the practices identified in the super-complaint.

## **The super-complaint process**

- 2.3 The right to submit a super-complaint was created by section 11 of the Enterprise Act 2002 (EA02). A super-complaint is defined under section 11(1) EA02 as a complaint submitted by a designated consumer body that 'any feature, or combination of features, of a market in the UK for goods or services is or appears to be significantly harming the interests of consumers.' Citizens Advice is a designated consumer body for the purposes of the EA02.
- 2.4 Section 11(2) EA02 requires the OFT, within 90 days after the day on which it receives a super-complaint, to publish a response saying whether it has decided to take any action, or take no action, in respect of the complaint and, if it has decided to take action, what action it proposes to take. The response must state the reasons for the OFT's proposals (section 11(3) EA02).
- 2.5 This report sets out the OFT's reasoned response to the super-complaint from Citizens Advice.

## Issues raised in the super-complaint

- 2.6 On 3 March 2011, Citizens Advice submitted a super-complaint to the OFT relating to marketing and charging practices in the consumer credit sectors.<sup>9</sup>
- 2.7 Citizens Advice raised a number of concerns within the super-complaint, but the core focus was what Citizens Advice described as the 'widespread consumer detriment flowing from two related practices in the consumer credit market:
- firms cold calling consumers by telephone and text to promote consumer credit products and ancillary credit services, and
  - firms taking upfront fees for credit services, often by persuading consumers to give them their banking details, sometimes by taking unauthorised deductions.'
- 2.8 Citizens Advice alleged that these practices are being carried out by credit brokerage businesses that offer to help people who are denied access to credit by mainstream lenders to find unsecured loans. The super-complaint also alleged that similar issues arise in the debt management and claims management sectors. In the report which accompanied its super-complaint, Citizens Advice said that 'many of the problems seen by the CAB service involved seemingly legitimate licensed credit businesses breaching current consumer protection rules'.<sup>10</sup>
- 2.9 Citizens Advice asked the OFT to investigate the current scale of these practices and to consider a number of measures which Citizens Advice considered would address the alleged related consumer detriment.

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<sup>9</sup> Further details of the super-complaint, including the Citizens Advice letter to the OFT and the related *Cashing In* report are available at [www.citizensadvice.org.uk/cashing\\_in.htm](http://www.citizensadvice.org.uk/cashing_in.htm).

<sup>10</sup> Citizens Advice, *Cashing In*, available at [www.citizensadvice.org.uk/index/policy/policy\\_publications/er\\_credit\\_debt/cashing\\_in.htm](http://www.citizensadvice.org.uk/index/policy/policy_publications/er_credit_debt/cashing_in.htm), p. 2.

- 2.10 The super-complaint is a timely input into the OFT's ongoing work to ensure that consumer credit markets work well for consumers and provides the opportunity for further scrutiny of an area in which the OFT has already noted there are risks of detriment to vulnerable consumers.
- 2.11 In considering this super-complaint, the OFT has focused its evidence gathering and analysis on cold calling and upfront fee charging in the sub-prime unsecured credit brokerage and debt management sectors. These are the sectors in which Citizens Advice indicated that the greatest consumer detriment was occurring. In addition, the OFT is active in these sectors by regulating the conduct of licensees through the consumer credit licensing process.<sup>11</sup>
- 2.12 In addition, in the annexes to this report, we set out the evidence that we have gathered on the other issues highlighted in the super-complaint, namely loan advance fee fraud, the use of premium rate telephone numbers by consumer credit businesses and cold calling and upfront fee charging by claims management firms.

### **Background on the credit brokerage sector**

- 2.13 Credit brokers introduce an individual looking for credit to a business or individual willing to provide it. Brokers are usually remunerated for this work by a fee paid by the consumer, a commission from the lender that provides the loan or a combination of both of these.
- 2.14 The super-complaint focuses specifically on the sub-prime unsecured credit brokerage sector. That is, those brokers that are offering consumers denied access to mainstream credit (for example due to

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<sup>11</sup> Under section 21 of the Consumer Credit Act 1974 (CCA74), most consumer credit, consumer hire and ancillary credit businesses must be licensed by the OFT. The CCA74, as amended, provides the OFT with a range of powers to regulate the conduct of licensees, including powers to refuse or revoke licences, impose requirements and impose civil penalties. A summary of recent enforcement action taken by the OFT in relation to the practices identified in the super-complaint are set out in Annexe F.

having a poor credit history) the opportunity to access a variety of unsecured loans.<sup>12</sup>

- 2.15 We have found that a number of characteristics are often prevalent among consumers who use sub-prime credit brokerage services and which may make them more vulnerable to detriment arising from unfair or improper business practices.<sup>13</sup> Many of these consumers are under financial pressure and/or have experienced recent income shocks. They also tend to have low incomes, few assets, poor credit histories and are unable to access mainstream credit from the usual sources. Furthermore, many of these consumers tend to have low financial capability.
- 2.16 In recent years, the OFT has taken enforcement action against a number of businesses in the credit brokerage sector in relation to practices that include unlicensed trading, unauthorised fee deductions and failure to refund fees. Annexe F includes a summary of such recent actions.
- 2.17 In February 2011, the OFT advised stakeholders that it would be producing guidance on credit brokerage. The guidance, which is being published for consultation alongside this document, sets out the standards of conduct that the OFT expects of credit brokers and credit intermediaries. In particular, the guidance identifies types of behaviour that the OFT considers may constitute unfair or improper practices and which, if engaged in, may call into question a person's fitness to hold a consumer credit licence.

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<sup>12</sup> An unsecured loan is a type of loan which is made without the borrower providing an asset as security against him failing to pay back the loan.

<sup>13</sup> These findings are based on OFT analysis of complaints information provided by Citizens Advice, findings of the OFT's *Review of High Cost Credit* (OFT 1232), June 2010, the OFT's existing knowledge of the consumer credit sector, and information provided by stakeholders in the context of the super-complaint.

## Background on the debt management sector

- 2.18 Debt management products and services are supplied by commercial debt management firms and by free-to-client providers. These include organising Individual Voluntary Arrangements (IVAs),<sup>14</sup> setting up debt management plans (DMPs)<sup>15</sup> and negotiating settlements with creditors.
- 2.19 We have found that a number of characteristics are often prevalent among consumers who use debt management services and which may make them more vulnerable to detriment arising from unfair or improper business practices.<sup>16</sup> Such consumers often have high levels of unsecured debt and poor credit histories and many are under significant financial pressure, often resulting from an income shock or significant unplanned expenditure. Furthermore, as with consumers of sub-prime credit brokerage services, they often have low financial capability.
- 2.20 The OFT carried out an in-depth review of the debt management sector in 2010, which identified widespread problems. This led to the OFT setting out an action plan to be implemented immediately and to 129 firms being warned to take immediate action to change their practices or face losing their credit licences.<sup>17</sup> Full details of the findings of the

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<sup>14</sup> Individual Voluntary Arrangements (IVAs) are legally-binding agreements with creditors to repay an appropriate proportion of outstanding debts over a specified period of time.

<sup>15</sup> A Debt Management Plan (DMP) is an informal arrangement with creditors to repay debts over time at a rate that the individual should be able to afford.

<sup>16</sup> These findings are based on OFT analysis of complaints information provided by Citizens Advice, the OFT's existing knowledge of the consumer credit sector, and information provided by stakeholders in the context of the super-complaint.

<sup>17</sup> See OFT Press Release 101/10, *OFT takes action to address widespread problems in debt management industry*, available at [www.of.gov.uk/news-and-updates/press/2010/101-10](http://www.of.gov.uk/news-and-updates/press/2010/101-10).

review and the OFT's action plan are set out in the Debt Management Guidance Compliance Review published in September 2010.<sup>18</sup>

- 2.21 In September 2010, the OFT announced that it planned to update its Debt Management Guidance to take explicit account of new and emerging unfair business practices which the OFT had identified in tracking the sector.<sup>19</sup> The revised guidance will be published for consultation in June 2011.
- 2.22 Our evidence gathering in the context of the super-complaint has built on the findings of this in-depth review of the debt management sector and the OFT's subsequent, targeted follow-up work. We have gathered further evidence specifically in relation to the way in which debt management businesses charge upfront fees or 'initial arrangement fees'.

### **Information gathering**

- 2.23 We have gathered evidence from a wide range of sources and sought the views of a variety of stakeholders in the course of our evidence gathering in consideration of the super-complaint.
- 2.24 In particular, the OFT has reviewed the information in the super-complaint, as well as further information submitted by Citizens Advice in response to a request from the OFT, and has drawn on the considerable expertise that the OFT has generated in the course of performing its regulatory role in relation to the consumer credit sector.
- 2.25 Interested parties were also invited to comment on the super-complaint. The OFT sent specific information requests to credit brokerage businesses, debt management businesses, relevant trade associations and interested consumer groups. It also held a number of meetings with

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<sup>18</sup> *Debt Management Guidance Compliance Review* (OFT1274), September 2010, [www.of.gov.uk/shared\\_of/business\\_leaflets/credit\\_licences/OFT1274.pdf](http://www.of.gov.uk/shared_of/business_leaflets/credit_licences/OFT1274.pdf).

<sup>19</sup> See OFT press release at footnote 17 above.

these bodies and consulted with relevant government departments and regulators. A summary of the parties consulted can be found in Annexe D.

- 2.26 The OFT also reviewed complaints data gathered by both Consumer Direct and the Financial Ombudsman Service. In April 2011, the OFT placed a number of questions on a consumer omnibus survey in order to help assess the scale and prevalence of the issues identified in Citizens Advice's super-complaint. Further details of the omnibus survey and a summary of the results can be found in Annexe E.
- 2.27 We have also reviewed the regulations and legislation relevant to upfront fees and cold calling and other unexpected marketing contact in relation to credit brokerage and debt management services.

### **3 UPFRONT FEES**

3.1 In its super-complaint, Citizens Advice alleges that the upfront fees being charged by businesses in the consumer credit sector are leading to widespread consumer detriment. This chapter sets out our analysis of the evidence that we have gathered in the context of the super-complaint on upfront fees, our assessment of the impact on consumers, the related actions that the OFT plans to take and other relevant recommendations.

#### **Upfront fees in the credit brokerage sector**

3.2 Since the onset of the liquidity crisis in financial markets towards the end of 2007 the supply of sub-prime unsecured lending has reduced significantly by value.<sup>20</sup> According to stakeholders consulted during our consideration of the super-complaint, the lenders remaining in the sector have responded by either lowering the commission rates that they pay to brokers or by paying no commission at all.

3.3 The practice of sub-prime credit brokers charging upfront fees has become increasingly prevalent in recent years.<sup>21</sup> Some sub-prime credit brokers have responded to the increased risk that they will not be able to find consumers suitable loans by charging consumers an upfront fee, rather than taking a fee once a loan has been arranged.

3.4 We estimate that in the last 12 months around 270,000 UK consumers paid an upfront fee to a credit broker on the expectation that he or she would then be introduced to a lender who could provide a sub-prime

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<sup>20</sup> A snapshot of basic volume data provided by Experian indicates that the value of new unsecured loans to sub-prime borrowers was £2,039m in quarter 4 of 2007 and £1,375m in quarter 4 of 2010.

<sup>21</sup> According to evidence provided by businesses, trade associations and consumer groups during our consideration of the super-complaint and OFT experience of regulating the sector.

unsecured loan.<sup>22</sup> The upfront fee charged by such brokers is typically between £50 and £70 and is paid before the broker has performed any work on behalf of the consumer.

3.5 Under section 155 of the Consumer Credit Act 1974 ('the CCA74'), a borrower is, subject to limited exceptions, entitled to a refund (less £5) of the fee paid to a credit broker, if the borrower does not enter into a relevant agreement within six months of an introduction to a source of credit or hire.<sup>23</sup>

3.6 The evidence gathered during our consideration of the super-complaint suggests that there are some businesses in the credit brokerage market whose business models are based on taking upfront fees for a service which they are unlikely to be able to provide (given the reduction in the size of the sub-prime unsecured lending market as described above), and on ignoring or refusing to deal with consumers' requests for refunds. In particular, we have identified the following significant concerns in

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<sup>22</sup> This estimate is based on responses to the OFT's consumer omnibus survey (details at Annexe E) which found that, in the past 12 months, approximately 0.56 per cent of the 48 million UK consumers aged 18+, had dealings with a business other than a bank or building society with the intention of the business offering an unsecured loan or an introduction to such a loan and were charged an upfront fee.

<sup>23</sup> Section 155 only applies if (a) there has been an introduction by the broker to a source of credit, and (b) no relevant agreement has resulted within the following six months. If there has been no introduction to a source of credit, section 155 does not apply. It may nevertheless be open to the consumer, under general principles of contract law, to seek to recover all or part of the sums paid to the broker on the basis of a failure of consideration if no introduction is made within a reasonable period. Furthermore, section 66A of the CCA74 provides a borrower with the right to withdraw from a regulated consumer credit agreement without giving any reason, within 14 days. The borrower must pay the amount of the credit and any accrued interest. Under section 66A(7)(a), the effect of a debtor withdrawing from a credit agreement is that the agreement is treated as if it had never been entered into. Consequently, it would appear that under such circumstances section 155(1) of the CCA74 would again be 're-activated', and the borrower entitled to a refund. Borrowers may withdraw from financial services contracts such as brokerage contracts within 14 days where these are concluded at a distance, under the Financial Services (Distance Marketing) Regulations 2004, in which case the broker should provide a refund within 30 days.

relation to the use of upfront fees by sub-prime credit brokers which appear to be leading to consumer detriment:

- Sub-prime credit brokers often fail to introduce consumers to a lender that can offer them a loan in exchange for the upfront fee that they receive.
  - Some sub-prime credit brokers are charging consumers upfront fees on the understanding that they will be able to introduce the consumer to a lender that can offer them an unsecured personal loan. The scarce availability of the types of unsecured loans that consumers tend to be seeking means that some of these credit brokers cannot successfully introduce many of these consumers to lenders of such loans.
  - Based on the evidence gathered during our consideration of the super-complaint, we estimate that approximately 45 per cent of consumers who pay upfront fees for sub-prime credit brokerage services may not be offered a loan at all.<sup>24</sup>
- Where sub-prime credit brokers do introduce the consumer to a lender, it is common for the consumer to be offered a different type of unsecured loan than they were led to expect might be made available to them when they paid the fee.

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<sup>24</sup> This estimate is based on responses to the OFT's consumer omnibus survey (details at Annexe E). In instances where we have generated estimates based on omnibus results that are subject to large sampling errors, we have additionally computed lower bound estimates. These lower bound estimates represent figures we consider to be the minimum likely amount. Our lower bound estimate for the proportion of consumers who pay upfront fees for sub-prime credit brokerage and are not offered any service at all is 27 per cent. This is based on responses to the consumer omnibus survey which show that of 11 consumers identified as having been charged an upfront fee by a credit brokerage business, five consumers were not introduced to a lender or offered a loan. These findings are also broadly consistent with evidence gathered during investigations carried out by the OFT's Credit Group.

- Again due to the scarce availability of suitable loans, where sub-prime credit brokers do introduce the consumer to a lender, it is often to a lender of smaller, shorter-term loans, with higher APRs (for example 'payday loans') which may not be suited to the consumer's particular financial circumstances, rather than the type of unsecured loan that the consumer was seeking when the upfront fee was paid.
- Based on the evidence gathered during our consideration of the super-complaint, we estimate that approximately 36 per cent of consumers who pay upfront fees for credit brokerage services may subsequently be offered a different type of loan to that which they were seeking when they paid the fee.<sup>25</sup>
- Sub-prime credit brokers often do not provide refunds to those consumers who are entitled to them.
  - As set out at paragraph 3.5 above, under section 155 of the CCA74, a borrower is, subject to limited exceptions, entitled to a refund (less £5) of the fee paid to a credit broker if the borrower does not enter into a relevant agreement within six months of an introduction to a source of credit or hire.
  - The evidence gathered during our consideration of the super-complaint indicates that it is possible that as many as two-thirds of consumers who are entitled to a refund may not receive one.<sup>26</sup>

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<sup>25</sup> This estimate is based on responses to the OFT's consumer omnibus survey (details at Annexe E). Our lower bound estimate for this figure is 19 per cent. Responses to the consumer omnibus survey show that of 11 consumers that we identified as being charged an upfront fee by a credit brokerage business, four were offered a loan that was not of a similar amount and cost to that which they had been led to expect when they paid the upfront fee. These findings are also broadly consistent with evidence gathered during investigations carried out by the OFT's Credit Group

<sup>26</sup> These findings are based on evidence gathered during investigations carried out by the OFT's Credit Group.

There may be a number of reasons for a consumer not obtaining a refund where they are entitled to one, including the consumer not being aware of their right to recover the refund, and/or the business failing to provide a refund once it has been requested by the consumer.

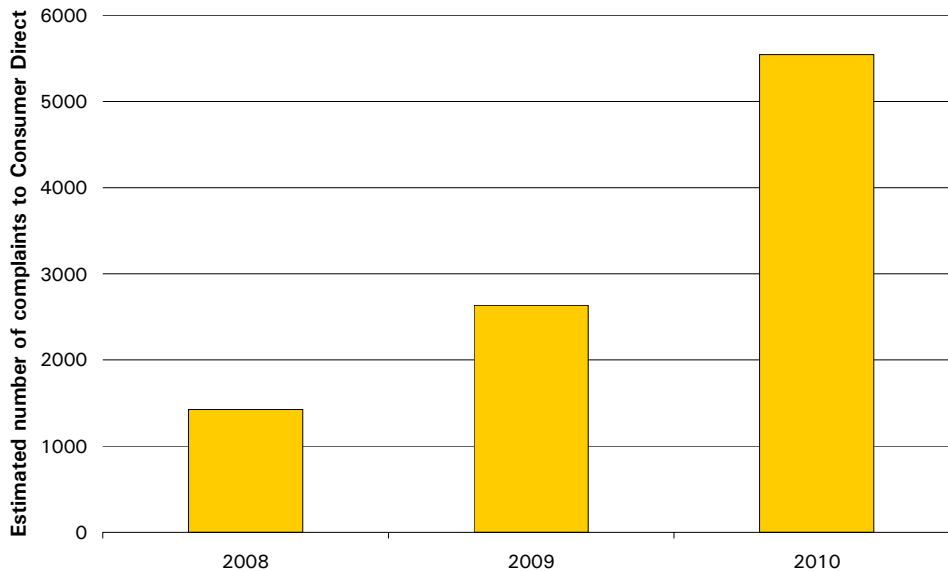
- 3.7 The evidence gathered in our omnibus survey and our review of complaints made by consumers to both Consumer Direct and the Financial Ombudsman Service indicate that some sub-prime credit brokers are taking upfront fees without the consumer's authorisation, having obtained the consumer's bank account or credit card details after telling the consumer that they are needed for verification or security purposes. Based on the evidence gathered during our consideration of the super-complaint, we estimate that around 18 per cent of consumers who are charged an upfront fee by a sub-prime credit broker do not think they authorised it.<sup>27</sup>
- 3.8 Our analysis of Consumer Direct complaints data shows that complaints regarding upfront fees charged by credit brokers have increased from between 944 and 1,906 in 2008 to between 4,823 and 6,267 in 2010.<sup>28</sup> See figure 3.1 below.

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<sup>27</sup> Our lower bound estimate for this figure is seven per cent. This estimate is based on responses to the OFT's consumer omnibus survey (details at Annexe E). Responses to the consumer omnibus survey show that of 11 consumers who were charged an upfront fee by a credit brokerage business, two stated that the business did not obtain their consent to take the fee before doing so.

<sup>28</sup> These estimates were derived from OFT analysis of Consumer Direct data that involved testing a random sample of 100 complaints that were categorised as being about 'credit brokerage', 100 complaints that were categorised as being about 'credit agreements/loans (linked)' and a further 100 complaints that were categorised as being about 'credit agreements/loans (not linked)' for the years 2008, 2009 and 2010. A 95 per cent confidence interval for the number of total complaints about upfront fees was created using the results of this analysis.

**Figure 3.1: Estimated numbers of complaints to Consumer Direct about upfront fees in the credit brokerage sector, for the years 2008 to 2010 (based on midpoints of estimated ranges).**



Source: Consumer Direct complaints data analysed by the OFT

### **Actions to be taken and other options considered**

3.9 In order to address the problem of brokers failing to introduce consumers to a lender and then not providing a refund, the OFT proposes the following actions:

- The OFT will publish for consultation, simultaneously with this response, new credit brokerage guidance which states that:
  - If there has been no introduction to a source of credit or hire, it may be open to the borrower, under general principles of contract law, to seek to recover all or part of the sums paid to the broker.
  - In the OFT's view, it might constitute an unfair or improper business practice for a broker not to make a borrower aware of his or her right to request a refund, and how to exercise that

right, if he or she has not entered into a relevant credit agreement within six months of being introduced by the broker to a (potential) source of credit, at or around<sup>29</sup> the expiry of the six month period.

- The OFT would consider it to be an unfair business practice for a broker not to respond to requests for refunds, where section 155 applies, or not to make such refunds promptly after having received a request. In addition, the OFT would be likely to regard it as an unfair business practice if brokers adopted a policy of making borrowers wait the full six months before providing a refund in cases where it is absolutely clear that no relevant agreement would be entered into.
- In the OFT's view, it might constitute an unfair or improper business practice for a broker to refer a borrower to a third party, who is a provider of consumer credit or ancillary credit services, or other services,<sup>30</sup> without obtaining the borrower's informed prior consent to do so.
- The OFT will continue to scrutinise sub-prime credit brokers' business models and, where the object or effect of a broker's business model appears to be based on taking an upfront fee, without providing a suitable service or a refund to consumers, the OFT will take robust and targeted enforcement action including, where appropriate, refusing or revoking a consumer credit licence.
- At the first available opportunity, the Government should carry out an impact assessment to establish whether a legislative change would effectively address the consumer detriment caused by upfront fees in the credit brokerage sector both in the immediate and longer

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<sup>29</sup> We would consider 'at or around' in this context to be within five working days of the expiry of the six month period.

<sup>30</sup> For example, a claims management company.

term, including considering a ban on credit brokers charging upfront fees for the brokerage of sub-prime unsecured loans. This will provide the opportunity to expand the evidence base that the OFT has so far had the opportunity to gather during the course of the super-complaint.

- 3.10 With regard to the issue of sub-prime credit brokers charging consumers upfront fees on the basis of misleading representations that they will introduce those consumers to an unsecured personal loan but subsequently introducing the consumer to a different type of loan, the OFT will, where it has evidence of brokers misleading consumers, take robust enforcement action including, where appropriate, refusing or revoking a consumer credit licence.
- 3.11 The production of new credit brokerage guidance, continued scrutiny of sub-prime credit brokers' business models and continued robust and targeted enforcement action should all help to reduce the levels of potential consumer detriment in the medium term. However, the OFT notes that a benefit associated with introducing a potential ban on upfront fees by credit brokers would be to prevent potential consumer detriment from occurring in the first place. It could also reduce the OFT resource required to tackle these unfair business practices, allowing the OFT to focus its finite resource on tackling other causes of consumer detriment across the consumer credit landscape. OFT enforcement action under the Consumer Credit Act can only address inappropriate business practices on a licence by licence basis and there is clearly potential for other firms that use similar practices to enter the sector or expand their operations as others are removed.
- 3.12 An impact assessment on possible legislative changes regarding the charging of upfront fees by sub-prime credit brokers, as recommended above, would allow the Government to give detailed consideration to the likely consequences of such legislative change. This is important because, for instance, a ban on upfront fees would prevent such charging practices from being used even if the supply of sub-prime unsecured lending were to recover and/or credible alternative models for charging upfront fees were to emerge. It will also be important for the

Government's impact assessment to consider whether, and how, any legislative change might affect brokers of types of loans other than sub-prime unsecured personal loans.

- 3.13 A range of views on whether the charging of upfront fees should be banned in the sub-prime credit brokerage sector were received from parties consulted by the OFT during the course of our evidence gathering. In general, credit brokerage businesses that responded did not consider a ban to be justified.<sup>31</sup> A number of other parties, including some business organisations and consumer groups considered that a ban was justified due to the potential detriment caused to consumers and the associated possible damage to the reputation of the wider consumer credit sector.
- 3.14 The OFT also considered other options for reducing the detriment arising from the use of upfront fees by credit brokers, including a potential campaign focused on increasing consumer awareness of the circumstances in which they are entitled to recover upfront fees and how they should go about doing so. We do not consider that this option should be actively pursued at the present time. The OFT has, and will continue to, use deterrence messages relating to its enforcement outcomes to raise awareness of these issues amongst consumers. However, previous research suggests that achieving widespread behavioural change takes considerable time owing to consumers often having firmly ingrained behaviours that may lead to poor decision making, and that financial capability initiatives which are designed to inform and educate consumers may only have a modest impact in the short to medium term.<sup>32</sup>

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<sup>31</sup> Of the 11 credit brokerage businesses that responded to an OFT questionnaire, eight said that they did not think a ban on upfront fee charging by consumer credit brokers was justified. The remaining three did not provide a response to this question.

<sup>32</sup> See, for example, de Meza, D., Irlenbusch, B., and Reyniers, D. for the FSA, *Financial Capability: A Behavioural Economics Perspective*, July 2008, available at [www.fsa.gov.uk/pubs/consumer-research/crpr69.pdf](http://www.fsa.gov.uk/pubs/consumer-research/crpr69.pdf), FSA Foreword and p.2.

## Upfront fees in the debt management sector

- 3.15 The practice of front loading fees for setting up debt management products is widespread among debt management businesses.<sup>33</sup> The OFT's Debt Management Guidance Compliance Review found that nearly 75 per cent of businesses inspected charge an 'initial arrangement fee'.<sup>34</sup>
- 3.16 An 'initial arrangement fee' is paid to a debt management business in return for arranging a debt management product on behalf of a consumer. It is paid after the debt management business has received a consumer's written agreement to purchase the product and to pay the debt management business's fees.<sup>35</sup> Upfront fees, equivalent to those charged by some credit brokers, where the fee is paid before any work has been carried out on behalf of the consumer are much less common.
- 3.17 The initial arrangement fee is typically one or two times the amount that consumers have available for monthly debt repayments, with the total initial arrangement fee being around £290 on average.<sup>36</sup> Fees are usually paid as the first one or two payments made under the debt management plan. As a result, during the period when these initial payments are being made to the debt management business, the consumer's creditors will

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<sup>33</sup> In addition to debt management businesses, there are some providers of free-to-the consumer debt management services. These include Citizens Advice and the Consumer Credit Counselling Service.

<sup>34</sup> *Debt Management Guidance Compliance Review* (OFT1274), September 2010, [www.of.gov.uk/shared\\_of/business\\_leaflets/credit\\_licences/OFT1274.pdf](http://www.of.gov.uk/shared_of/business_leaflets/credit_licences/OFT1274.pdf)

<sup>35</sup> Debt management fees should be clearly set out. In addition to the initial arrangement fee, debt management businesses typically charge the consumer a monthly management fee of around 15 - 18 per cent of the consumer's monthly repayments to creditors.

<sup>36</sup> Keynote Market Report: *'Debt Management (Commercial and Consumer)'*, published December 2010, states that, on average, initial arrangement fees are around £290 per person. Responses to an OFT questionnaire issued during our consideration of the super-complaint indicate that average levels of initial arrangement fees charged by debt management businesses that responded to the questionnaire ranged between £160 and £420 per consumer.

not usually receive any repayments, thus leading to an increase in the overall size of the consumer's debt.

- 3.18 The fact that this initial arrangement fee model ensures that debt management businesses obtain significant fees from the consumer at or near to the beginning of the debt management plan may, to an extent, act as a disincentive for debt management businesses to ensure that the debt management plan is successful in the long term. Some of the parties consulted during the OFT's evidence gathering considered that a ban on debt management businesses charging initial arrangement fees would have benefits for consumers as it would increase debt management businesses' incentives to ensure that debt management plans are successful over the long term.
- 3.19 Analysis of complaints made to Consumer Direct and the Financial Ombudsman Service indicate that some debt management business are engaging in a range of activities that are resulting in likely consumer detriment. These include providing poor quality advice, misrepresenting the service that they provide, failing to give consumers sufficient information on the arrangements that they have reached with creditors, taking fees without authorisation and not disclosing how and when fees are being charged sufficiently transparently.
- 3.20 However, in the context of this review, we have not seen evidence to suggest a direct, causal link between the use by debt management businesses of initial arrangement fees and the problems that consumers most commonly experience in this sector.
- 3.21 Unlike the upfront fees used by some businesses in the sub-prime credit brokerage sector, there appears to be some reasonable justification for debt management businesses charging consumers an initial arrangement fee, provided that the fee charged is proportionate to the debt management business's reasonable costs of arranging the service, and that the fee amount (and how it will be charged) are transparent to the consumer. Debt management businesses incur costs in arranging a debt management product for a consumer and there is a risk that, after they have done so, the consumer may default on his or her repayment plan

early in the lifetime of the agreement. Thus, charging an initial arrangement fee at the outset of a debt management agreement, rather than spreading the fees over the lifetime of an agreement, may assist the debt management business in reducing the risk of incurring losses in the event of an early default by a consumer.

### **Actions to be taken and other options considered**

- 3.22 In light of the findings set out above, the OFT will:
- Publish revised OFT Debt Management Guidance for consultation in June 2011. This will explicitly identify the types of behaviour the OFT considers to fall within the category of unfair or improper business practices and which, if engaged in, may call into question a person's fitness to hold, or be granted, a licence and to continue to engage in activities such as the provision of debt advice, debt management services and/or credit repair services either under a standard licence or under cover of a group licence.
  - Continue to take proportionate and targeted enforcement action against debt management businesses that employ unfair or improper business practices as identified in the guidance.
- 3.23 The revised Debt Management Guidance will provide businesses with clarity on the types of behaviour the OFT considers fall within the category of unfair or improper business practices and will help to facilitate greater voluntary business compliance and robust, targeted enforcement action against businesses that persistently fail to adhere to the standards set out.
- 3.24 Complaints evidence obtained from the Financial Ombudsman Service indicates that a limited number of debt management businesses are responsible for the majority of the complaints they receive about the debt management sector which result in a substantial change of

outcome.<sup>37</sup> As such, we consider that continued targeted enforcement against those firms that engage in unfair business practices is likely to be an effective and efficient means of tackling consumer harm in the sector.

3.25 We also considered whether to recommend that the Government consider whether there is a case for new legislation (or changes to existing legislation) regarding charging of initial arrangement fees by debt management businesses. We concluded that such a recommendation would not be appropriate or proportionate. As set out above, we consider that debt management businesses may have a reasonable business case for charging initial arrangement fees in certain circumstances.

3.26 Furthermore, any legislative changes that limit the ability of debt management businesses to charge initial arrangement fees may have a negative impact on the ability of reputable debt management businesses to manage the financial risks associated with arranging debt management products, as outlined at paragraph 3.21 above. Such legislative changes could lead to those debt management businesses exiting the market or charging consumers higher monthly arrangement fees instead.

3.27 In general, debt management businesses that responded to the OFT's questionnaire considered that a ban on the charging of initial arrangement fees was not justified since these respondents considered such fees to be a legitimate way for debt management businesses to cover the costs and risks of setting up debt management services. A number of such businesses stated that a ban on initial arrangement fees would result in debt management businesses exiting the sector, thereby reducing access to debt management services and choice for consumers. A number of respondents took the view that a ban on upfront fees, as

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<sup>37</sup> Substantial changes of outcome include, for example, where the ombudsman service upholds a complaint which a business had rejected, or makes a substantial change to the amount of compensation payable to the consumer.

opposed to initial arrangement fees, would have little practical impact due to the fact that such fees are rarely charged in the debt management sector.

## 4 COLD CALLING

4.1 This chapter sets out the OFT's analysis of the evidence that it has gathered on cold calling and other unexpected marketing contact received by consumers from credit brokerage and debt management businesses. It then sets out the OFT's conclusions on the impact of these practices and proposed recommendations.

### **Background on 'cold calling' and 'warm calling' in credit and debt markets**

4.2 In response to an OFT questionnaire issued to credit brokers and debt management businesses, most businesses told us that they do not use cold calling, but may instead use what they described as 'warm calling'. Such 'warm calling' involves calling consumers who these businesses say have, at some stage, either directly given their consent for that business to contact the consumer, or have indirectly given consent by agreeing that another business can pass their details to a third party.

4.3 The Information Commissioner's Office (ICO) has responsibility for upholding consumers' information rights in England, Scotland, Wales and Northern Ireland. It enforces and oversees the Data Protection Act 1998 (DPA) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR), which are the two pieces of legislation most relevant to cold and warm calling:<sup>38</sup>

- The DPA places obligations on those who record and use personal data. Under the DPA, consumers must be given information about how that data will be used by the business that collects it.<sup>39</sup> Under

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<sup>38</sup> It also enforces and oversees the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR).

<sup>39</sup> The first data protection principle (DPA Schedule 1, Part I, paragraph 1) requires that personal data is processed fairly and lawfully. In practice, this means that an organisation must be open and honest about how it intends to use the data it collects, and give individuals appropriate

section 11, individuals have the right to prevent their personal data being processed for direct marketing purposes by providing a written notice to stop (or not to begin) using their personal data for direct marketing and the data controller must then comply with this notice within a reasonable time.<sup>40</sup>

- The PECRs provide a legal regime for the protection of the privacy of individuals (and in certain cases, corporate subscribers) when using electronic communications equipment. They can be seen as being complementary to the general data protection provisions contained in the DPA. The PECRs place restrictions on how businesses can carry out unsolicited direct marketing by electronic mail, which includes email, text, picture, video, voicemail and answerphone messages.

4.4 Credit brokers and debt management businesses are not prevented from making telesales calls to individuals, unless those individuals have registered with the telephone preference service (TPS),<sup>41</sup> or have informed the business directly that they do not wish to receive such calls.<sup>42</sup> An individual can give consent to receiving marketing calls which overrides TPS registration but this is only valid where that overriding consent is given to the specific caller in question.<sup>43</sup> This means that a

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privacy notices when collecting their personal data (see Part II of Schedule 1 of the DPA and the ICO Guide to Data Protection, A1 at p.7)

<sup>40</sup> Data Protection Act 1998 (DPA), s11(1)

<sup>41</sup> The Telephone Preference Service (TPS) is the official central opt out register, established under PEC regulation 26, on which individuals can record their preference not to receive unsolicited sales or marketing calls. In the UK, the register is maintained by Telephone Preference Service Limited, a subsidiary of the Direct Marketing Association (DMA), under contract with Ofcom. Numbers must be entered at least 28 days prior to the date of the call for the call to be unlawful.

<sup>42</sup> PEC regulation 21(1)

<sup>43</sup> PEC regulation 21(4). See also ICO, *Guidance for marketers on the Privacy and Electronic Communications (EC Directive) Regulations 2003*, available at

business that purchases a list of telephone numbers for marketing purposes cannot rely on the overriding consent gained by the business that originally collected the information.

- 4.5 Different rules apply to the use of electronic mail (including text) for direct marketing purposes.<sup>44</sup> Under the general rule established by PEC regulation 22, a business cannot send unsolicited marketing material by email unless the individual has previously notified the sender that he consents, for the time being, to receiving such communications. In contrast to telephone marketing, an 'opt in' system therefore applies to email marketing.<sup>45</sup>
- 4.6 The ICO states that if a business wishes to buy or rent an electronic mailing list from a third party, the business can only use it if the list was obtained on a clear prior consent basis. That is, where the individual has actively consented to receiving unsolicited messages by electronic mail from third parties.<sup>46</sup>

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[www.ico.gov.uk/upload/documents/library/privacy\\_and\\_electronic/detailed\\_specialist\\_guides/guidance\\_part\\_1\\_for\\_marketers\\_v3.1\\_081007.pdf](http://www.ico.gov.uk/upload/documents/library/privacy_and_electronic/detailed_specialist_guides/guidance_part_1_for_marketers_v3.1_081007.pdf), p.10

<sup>44</sup> Under PEC regulation 2, 'electronic mail' means any text, voice, sound or image message sent over a public electronic communications network which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient and includes messages sent using a short message service. Electronic mail marketing therefore includes, amongst other things, email and text message marketing.

<sup>45</sup> Unless the so-called 'soft opt in' provisions set out in PEC Regulation 22(3) apply. These provide that an exception to the general rule so that companies would not need prior permission to send marketing electronic mail messages where: (i) the marketer has obtained the contact details of the consumer in the course of selling a product or service; (ii) the e-mail relates to marketing of similar products or services; and (iii) the consumer was given the opportunity to opt out of receiving e-mail marketing (both at the time of initial data collection and with each subsequent e-mail) but has not chosen to do so.

<sup>46</sup> ICO, *Guidance for marketers on the Privacy and Electronic Communications (EC Directive) Regulations 2003*, Op. Cit, p.20

4.7 We have found that a significant minority of UK consumers receive unexpected marketing calls, e-mails and texts from businesses operating in both the credit brokerage and debt management sectors every year. However, as set out in paragraph 4.2, it would appear that the majority of the unexpected marketing calls, e-mails and texts received by consumers are being made with consumers' consent. This contact is not, therefore, regarded by businesses as being cold calling.

### **Credit brokerage**

4.8 We estimate that, in the last year, around 12 per cent of UK consumers aged 18 and over were unexpectedly contacted by a business other than a bank or building society and offered help finding an unsecured loan; and around 18 per cent of UK consumers aged 18 and over were contacted by a business other than a bank or building society that purported to offer the consumer an unsecured loan.<sup>47</sup>

4.9 There appears to be indirect consumer detriment associated with unexpected marketing calls, e-mails and texts used by credit brokerage businesses. The use of either cold or warm calling enables some businesses to access consumers and then to carry out practices that may cause consumer detriment. We estimate that, in 2010, between 10 and 19 per cent of complaints made to Consumer Direct about credit brokerage involved a form of unexpected marketing contact.<sup>48</sup>

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<sup>47</sup> These estimates are based on responses to the OFT's consumer omnibus survey, which show that of 1,980 consumers surveyed: 231 had been unexpectedly contacted by a business other than a bank or building society and offered help finding a loan in the last 12 months; and, 355 had been unexpectedly contacted by a business other than a bank or building society that purported to offer them an unsecured loan in the last 12 months.

<sup>48</sup> This estimate is derived from OFT analysis of Consumer Direct data that involved testing a random sample of 100 complaints that were categorised as being about 'credit brokerage', 100 complaints that were categorised as being about 'credit agreements/loans (linked)' and a further 100 complaints that were categorised as being about 'credit agreements/loans (not linked)'.

Unexpected marketing contact was not, however, the main focus of those complaints and the OFT's analysis in considering the super-complaint indicates that there is little evidence that consumers of sub-prime unsecured brokerage suffered financial detriment as a direct result of such contact. The vast majority of complaints focused on the conduct of a business after the unexpected contact was made.

## **Debt management**

- 4.10 We also found that a significant minority of UK consumers receive unexpected marketing calls, e-mails and texts from businesses operating in the debt management sector every year. We estimate that, in the last year, around 26 per cent of UK consumers aged 18 and over were contacted by a business that offered them a debt management service.<sup>49</sup>
- 4.11 As with credit brokerage, there appears to be indirect consumer detriment associated with unexpected marketing calls, e-mails and texts used by debt management businesses. We estimate that, in 2010, between 25 and 44 per cent of complaints made to Consumer Direct about debt management involved a form of unexpected marketing contact.<sup>50</sup> Again, this unexpected marketing contact was not the main focus of those complaints and the OFT's analysis in considering the super-complaint indicates that there is little evidence that consumers of debt management services suffered financial detriment as a direct result of the contact. The vast majority of complaints focused on the conduct of the business after the unexpected contact was made.
- 4.12 Parties consulted with during the OFT's evidence gathering gave a mixed response to the question of whether cold calling should be banned in the

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<sup>49</sup> This estimate is based on responses to the OFT's consumer omnibus survey, which show that of 1,980 consumers surveyed, 508 had been unexpectedly contacted by a business other than a bank or building society and offered help in managing their debts in the last 12 months.

<sup>50</sup> This estimate is derived from OFT analysis of Consumer Direct data that involved testing a random sample of 121 complaints that were made about debt management businesses.

credit brokerage and debt management sectors. The majority of credit brokerage businesses<sup>51</sup> indicated that they did not consider a ban was justified whereas the majority of debt management businesses supported a ban,<sup>52</sup> albeit with many stating that warm calling should not be included in any ban. Consumer groups were in favour of a ban on cold calling whereas Government organisations and trade associations tended, albeit with some exceptions, not to support a ban.

### **Actions to be taken and other options considered**

4.13 At the present time, the OFT does not consider it appropriate to recommend that the Government considers legislation to ban cold or warm calling in the sub-prime credit brokerage or debt management sectors because:

- There are steps that consumers can take to avoid receiving unexpected calls if they are unsolicited, such as joining the TPS.
- The potential consumer detriment that is being caused by some consumer credit businesses can be addressed in a more targeted way by taking the actions set out at paragraphs 3.9 and 3.10, particularly given that many credit brokers do not use this type of direct marketing.
- Some cold or warm calls will not result in consumer detriment. Some consumers who were unaware of the existence of a service may, for

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<sup>51</sup> Six out of the 11 credit brokerage businesses that responded to an OFT questionnaire said they did not think a ban on cold-calling was justified. Two said they did think a ban was justified, while another three did not address this question or were unsure.

<sup>52</sup> Twenty-seven of the 49 debt management businesses that responded to the OFT's questionnaire said that they thought a ban on cold-calling was justified. Twelve said that they did not think a ban was justified, three indicated that they were unsure of the answer or it depended on various factors, while the remainder did not address this question.

instance, benefit from an unexpected call even if they did not remember consenting to receive it.<sup>53</sup>

- Further, it may be practically difficult to differentiate between the circumstances where consumers will have consented to having their contact details passed on to other businesses and those where they have not.

4.14 The OFT proposes to take the following actions in relation to cold calling:

- The OFT's draft Credit Brokerage Guidance, to be published for consultation on 1 June 2011, and revised Debt Management Guidance, which will be put out to consultation in June 2011, will set out a number of specific practices relating to cold calling of consumers that the OFT considers might constitute unfair or improper business practices for the purposes of the 'fitness test' under section 25 of the CCA74.
- The OFT will continue to take robust and targeted enforcement action against credit brokerage and debt management businesses that engage in specific practices relating to cold calling of consumers which the OFT considers might constitute unfair or improper business practices.<sup>54</sup>

4.15 In addition to the actions set out above, the OFT proposes to take the following actions relating to the issues identified around unexpected warm calling:

- The OFT's new Credit Brokerage Guidance and revised Debt Management Guidance will make it clear that the OFT expects any

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<sup>53</sup> For example, where a call from a debt management business prompts a consumer to take up a service that helps the consumer to more effectively manage his debt repayments.

<sup>54</sup> A summary of recent enforcement action taken by the OFT in relation to the practices identified in the super-complaint are set out in Annexe F.

privacy notice<sup>55</sup> to be clearly displayed in a sufficiently prominent position such that it is likely to come to the attention of the borrower. It will also state that such a notice should explain the way in which the licensee intends to use borrowers' personal information, and what it requires from borrowers in terms of consent prior to being able to do so, clearly, transparently and in plain and intelligible language.

- The OFT will discuss with Citizens Advice hosting a joint round-table discussion with relevant stakeholders, such as the Information Commissioner's Office, the Direct Marketing Association, the Ministry of Justice, the Department for Culture, Media and Sport, and Ofcom. The discussion would focus on lead generation, data sharing and warm calling by businesses in credit and debt markets in order to determine whether consumers' interests are being sufficiently protected by current legislation and whether current or emerging credit businesses' practices indicate that there is a case for additional action to be considered.

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<sup>55</sup> A privacy notice is the oral or written statement that individuals are given when information is collected about them. As a minimum, a privacy notice should state: the identity of the 'data controller' (the person who determines the purposes for which and the manner in which any personal data are to be processed), the purpose or purposes for which the data is intended to be processed, and any extra information that is necessary to enable the particular processing to be fair. Privacy notices should include a clear and easy way to 'opt-out' of (or 'opt-in' to) future marketing by that or other companies. A privacy notice is sometimes referred to as a 'fair processing notice'.

# ANNEXES

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## **A LOAN ADVANCE FEE FRAUD**

- A.1 The Citizens Advice super-complaint asked the OFT to consider loan advance fee fraud.
- A.2 Loan advance fee fraud is one type of advance fee fraud.<sup>56</sup> It involves fraudsters, without credit licences, contacting individuals, offering to find them a loan and then requesting an upfront fee to cover processing costs. Subsequently, consumers who pay this fee receive no service in exchange. This activity is carried out by unlicensed parties and should be distinguished from alleged unfair or improper practices that may be carried out by licensed traders.
- A.3 The National Fraud Intelligence Bureau (NFIB)<sup>57</sup> has told us that the advance fee paid by consumers can vary from £50 to £1,000. The NFIB has told us that its analysis of complaints from victims of loan advance fee fraud indicates that the fraud tends to occur after:
- the complainant has provided their details to a loan broker or provider that may have re-sold their details to the alleged fraudster, or
  - the complainant's contact details have been sourced directly from the internet.
- A.4 The NFIB believes that a significant number of the victims of loan advance fee fraud receive calls from overseas, although alleged fraudsters tend to have access to UK bank accounts.

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<sup>56</sup> An advance fee fraud involves the victim making an advance payment for goods, services and/or financial gains that are not subsequently supplied. Loan advance fee fraud is one type of advance fee fraud.

<sup>57</sup> The National Fraud Intelligence Bureau is a government-funded initiative run by the City of London Police. It collects and analyses reports of fraud and shares the findings with law enforcement agencies.

A.5 Between March 2010 and March 2011, the NFIB received approximately 520 complaints from members of the public regarding these activities. NFIB also noted an increase in the volume of these complaints from August 2010 onwards.

A.6 The NFIB is in the process of examining the scale of loan advance fee frauds and is working with the Serious Organised Crime Agency to try to bring offenders to justice by:

- identifying and pursuing options for the prevention, detection and disruption of crime associated with loan advance fee fraud within the UK or overseas
- removing emails and websites that have been set up by fraudsters, and
- providing crime prevention advice in relation to loan advance fee fraud, both via their website and by working with partners to raise awareness of this type of crime and how consumers can protect themselves.

## **B UPFRONT FEES AND COLD CALLING IN THE CLAIMS MANAGEMENT SECTOR**

- B.1 The Citizens Advice super-complaint asked the OFT to consider upfront fee charging and cold calling by claims management businesses.<sup>58</sup>
- B.2 The Ministry of Justice, in its capacity as the Claims Management Regulator (CMR), regulates claims management businesses by enforcing the Compensation Act 2006 and its underlying provisions.<sup>59</sup> The CMR has responsibility for regulating the way that claims management businesses treat their customers and the way those businesses market their services. Claims management businesses have to comply with, amongst other things, the Conduct of Authorised Persons Rules 2007 which is focused on consumer information and safeguards.

### **Upfront fees in the claims management sector**

- B.3 Under Rule 11 of the Conduct of Authorised Persons Rules 2007, claims management businesses are required to provide prospective clients with certain information in writing or electronically,<sup>60</sup> before a contract is

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<sup>58</sup> Claims management businesses offer advice or other services in relation to the making of a claim in a range of different areas such as personal injury, criminal injuries compensation, industrial injuries disablement benefit, employment, housing disrepair, and financial products and services. The financial products and services claims sector includes claims management businesses operating in areas such as bank charge claims, mis-sold Payment Protection Insurance (PPI) and challenging the enforceability of consumer credit agreements. In its super-complaint, Citizens Advice states that it is seeing problems with claims management companies contacting consumers about consumer credit debts.

<sup>59</sup> Only businesses authorised by the Claims Management Regulator (CMR) are able to provide claims management services unless they qualify as exempt.

<sup>60</sup> This information includes, amongst other things: information to help the client decide about the risks of claiming; information about the services that will be provided and the procedures that will be followed; contract documents and information on how to cancel the contract and the consequences of cancellation; any charge the business makes, and costs the client may have to pay; any referral fee paid to, or other financial arrangement with, any other person in

agreed. The CMR considers it unreasonable to provide the information and then request a fee at that point of contact, regardless of whether the consumer has been contacted by the claims management business or vice versa. Businesses are not permitted to take any fee before this pre-contract information is provided and the prospective client has had reasonable time to consider the information.<sup>61</sup>

B.4 Based on the evidence gathered in our consideration of the super-complaint, we estimate that, in the last year, approximately 10 per cent of consumers of claims management services paid an upfront fee for those services.<sup>62</sup> In the CMR's experience, where consumers are entitled to a refund of the upfront fees they have paid, they usually receive it. However, in the CMR's experience, consumers sometimes have to wait a number of months before they receive full refunds. The CMR told us that where a claims management business has had its licence cancelled or the business has otherwise ceased to trade and has failed to provide a service, consumers that have paid the fees using a credit card can seek a refund direct from the credit card company. The CMR therefore estimates that the overall financial detriment to claims management consumers

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respect of introducing the claim; documentation needed to pursue the claim; any relationship to a particular solicitor or panel of solicitors; procedures to follow in the event of a complaint; a statement that the business is 'regulated by the Ministry of Justice in respect of regulated claims management activities' and the authorisation number of the business.

<sup>61</sup> Conduct of Authorised Persons Rules 2007, Rule 1(a) and 11, General Rule 5 and The Provision of Services Regulations 2000, Regulation 11. See the Ministry of Justice warning notice at [www.justice.gov.uk/downloads/guidance/inspection-monitoring/claims-management-regulation/Regulators%20Warning%20-%20Upfront%20Fees%20and%20cold%20calling%20by%20telephone%20Revised%20August%202010.pdf](http://www.justice.gov.uk/downloads/guidance/inspection-monitoring/claims-management-regulation/Regulators%20Warning%20-%20Upfront%20Fees%20and%20cold%20calling%20by%20telephone%20Revised%20August%202010.pdf)

<sup>62</sup> Our lower bound estimate for the proportion of consumers of claims management services that paid an upfront fee for the service is five per cent. This estimate is based on responses to the OFT's consumer omnibus survey (details at Annexe E), which found that of 48 consumers who had dealings with a claims management business in the last 12 months, five were charged an upfront fee.

caused by upfront fees alone is relatively limited, although the CMR told us that there are some individual examples of large sums being paid.

B.5 The CMR considers that taking targeted enforcement action where appropriate is the most appropriate method of tackling any abuses of upfront fees. In June 2009 and August 2010, the Claims Management Regulator issued warnings to authorised claims management businesses, reminding them of legal requirements in relation to taking upfront fees and cold calling.<sup>63</sup> The CMR has also taken formal enforcement action against a number of claims management businesses, resulting in the suspension and/or cancellation of their authorisation.<sup>64</sup> Other businesses have surrendered their authorisation after investigations were launched into their conduct.

### **Cold calling in claims management**

B.6 We estimate that, in the last year, around 19 per cent of UK consumers aged 18 and over were unexpectedly contacted by a business that offered help in writing-off debts.<sup>65</sup> The CMR told us that these contacts were made by debt management companies and some claims management businesses.

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<sup>63</sup> The June 2009 warning can be accessed online at [www.claimsregulation.gov.uk/userfiles/file/Regulators%20Warning%20June%202009.pdf](http://www.claimsregulation.gov.uk/userfiles/file/Regulators%20Warning%20June%202009.pdf).

<sup>64</sup> The Claims Management Regulator draws a distinction between 'formal' and 'other' enforcement activity. In its 2009-10 Annual Report (at p.42), the CMR state that there had been 1,379 'other' enforcement actions recorded and 315 'formal' enforcement activities recorded against businesses including letters of warning or steps taken to commence suspension or cancellation of a business' authorisation. The Annual Report is available at [www.justice.gov.uk/downloads/guidance/inspection-monitoring/cmr-annual-report-2009-10.pdf](http://www.justice.gov.uk/downloads/guidance/inspection-monitoring/cmr-annual-report-2009-10.pdf).

<sup>65</sup> This estimate is based on responses to the OFT's consumer omnibus survey, which found that of 1,980 consumers surveyed, 369 had been unexpectedly contacted by a business other than a bank or building society and offered help in writing off their debts in the last 12 months.

- B.7 Contacting consumers to market claims management services by telephone, email, fax or text is generally permitted only if it's made in accordance with the DMA code.<sup>66</sup> Unsolicited electronic marketing is not permitted. Cold calling is specifically prohibited if a claim is to be referred to a solicitor.
- B.8 The CMR has told us that some of the particular rule breaches that it has become aware of involve the use of unexpected telephone, email, fax or text contact, including businesses:
- breaching the rules on the provision of pre-contract information
  - failure to comply with the DMA code, including the use of non-opted-in data
  - implying an association with the Ministry of Justice, and
  - using high pressure sales methods.
- B.9 Nevertheless, the CMR takes the view that if cold calling of consumers by claims management businesses alerts consumers to their rights to make a claim, this could arguably be in the consumer's interest. It therefore concludes that the most proportionate response is to apply the existing rules and regulations governing claims management companies.

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<sup>66</sup> Rule 4 of the Client Specific Rules of the Conduct of Authorised Persons Rules 2007 states that cold calling in person is prohibited. Any other cold calling (by telephone, email, fax or text) must be in accordance with the Direct Marketing Association's Code of Practice.

## **C USE OF PREMIUM RATE TELEPHONE NUMBERS BY SUB-PRIME CREDIT BROKERS**

C.1 The Citizens Advice super-complaint alleged that some credit brokerage and debt management businesses ask consumers to use premium rate telephone contact numbers without properly explaining the costs or offering an alternative.

C.2 PhonepayPlus regulates premium rate services (PRS) in the UK by enforcing a Code of Practice approved by Ofcom.<sup>67</sup> The Code requires that suppliers of consumer credit services must obtain prior permission from PhonepayPlus before providing, or offering advice relating to, consumer credit.<sup>68</sup> The PhonepayPlus prior permission regime defines the conditions that applicants are subject to in order to operate such services.<sup>69</sup>

C.3 The key requirements of the Code of Practice and conditions applied by PhonepayPlus when taken together are as follows:

- Key permission conditions:
  - impose a £5 maximum cost for callers who do not take out loans within six months of the call or who exercise their statutory right to cancel a loan agreement

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<sup>67</sup>At the time of writing, the Eleventh Edition of the Code of Practice was in force, but the Twelfth Edition is due to come into force on 1 September 2011.

<sup>68</sup> See the Eleventh PhonepayPlus Code of Practice, paragraph 7.7. In its Fact Sheet on Consumer Credit Services, PhonepayPlus defines 'consumer credit services' as services which appear to PhonepayPlus to offer one or more of the following facilities: consumer credit business, consumer hire business, credit brokerage, debt adjusting and debt counselling and credit repair services.

<sup>69</sup> In its Fact Sheet on Consumer Credit Services, available online at [www.phonepayplus.org.uk/For-Business/New-to-PhonepayPlus/Service-Types.aspx](http://www.phonepayplus.org.uk/For-Business/New-to-PhonepayPlus/Service-Types.aspx). The conditions set out reflect a number of the provisions contained in consumer credit legislation and OFT Guidance.

- impose a 15-minute maximum call duration, and
  - require businesses to call customers back if insufficient details have been provided by the caller in the first 15 minutes. Should customers still be on the line after 15 minutes, there is an automatic cut-off.
- Key Code requirements:
    - require service providers to ensure that there are customer service arrangements in place which include 'a non-premium rate UK customer service phone number and an effective mechanism for the consideration of claims for refunds and their payment where justified',<sup>70</sup> and
    - require service providers to 'ensure that all users of premium rate services are fully informed, clearly and straightforwardly, of the cost of using a service prior to incurring any charge'.<sup>71</sup>

C.4 Our consultation with stakeholders indicated that only a minority of credit brokerage and debt management businesses use premium rate numbers.<sup>72</sup> PhonepayPlus has told us that, in terms of consumer complaints and the enforcement of the rules governing PRS, the volume

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<sup>70</sup> Eleventh PhonepayPlus Code of Practice, paragraph 3.3.5. A similar provision can be found in the Twelfth Code of Practice, paragraph 2.2.1a) (not in force at the time of writing).

<sup>71</sup> Eleventh PhonepayPlus Code of Practice, paragraph 5.7.1, A similar provision can be found in the Twelfth Code of Practice, paragraph 2.2.1 (not in force at the time of writing).

<sup>72</sup> Of the 54 responses to our questionnaires from debt managers, credit brokers, lenders and lead generators, only 2 indicated that they used premium rate telephone numbers. Responses to the OFT's consumer omnibus survey suggest that, in the last 12 months, as many as 400,000 UK consumers contacted a sub-prime credit brokerage, debt management or claims management business using what they thought was a premium rate telephone number, after the business had made unexpected contact with them. However, it may be that many of these consumers are mistaken. They may have incurred higher than expected call charges by, for instance, using a mobile phone to contact the business.

of complaints associated with consumer credit services is typical, if not lower, than other services that require permission to operate. Further, Consumer Direct received very few complaints about the use of premium rate telephone numbers by credit businesses.

- C.5 PhonepayPlus has told us that where complaints volumes have indicated a problem with a particular supplier, it has taken enforcement action. PhonepayPlus can fine providers up to £250,000 per contravention of its Code. For example, last year, PhonepayPlus took action taken against a credit broker for Code breaches, which led to a decrease in complaints against the firm.
- C.6 PhonepayPlus has also told us that it is proposing to update its prior permission regime for consumer credit services, taking account of evidence supplied by Citizens Advice, the OFT and others.
- C.7 The OFT is making it clear in its new Draft Guidance for Credit Brokers and Intermediaries that inappropriately asking or instructing borrowers to make contact on telephone numbers that are premium rate numbers might be considered an unfair or improper business practice reflecting on fitness to hold a consumer credit licence.<sup>73</sup> The draft guidance also states that conducting telephone conversations with borrowers, who have called on premium rate service numbers, over an unreasonably protracted period might be regarded as an unfair or improper business practice.<sup>74</sup>
- C.8 PhonepayPlus told us that it has good communications with regulators. It said that, if a complaint went to a body such as Ofcom, the OFT or the FSA, it would be referred on to PhonepayPlus.

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<sup>73</sup> OFT, *'Draft Guidance for Consumer Credit Brokers and Intermediaries'*, June 2011, Chapter 3.

<sup>74</sup> See footnote 73 above.

## **D PARTIES CONSULTED**

D.1 The OFT's consideration of the super-complaint required extensive consultation with a wide range of stakeholders. The project team met with and received information, submissions, statistical and anecdotal evidence from various parties. Stakeholders consulted include, but are not limited to:

- businesses in both the credit brokerage and debt management sectors
- consumer bodies, such as Which? and Citizens Advice
- business organisations, such as the Finance & Leasing Association, Consumer Credit Trade Association, Association of Financial Brokers, Association of Independent Financial Advisors, Debt Managers Standards Association (DEMSA) and Debt Resolution Forum
- government departments, such as HM Treasury and the Department for Business, Innovation and Skills
- bodies such as the Information Commissioner's Office, the Insolvency Service, Financial Ombudsman Service, Financial Services Authority, Claims Management Regulator, Telephone Preference Service, Phonepay Plus, National Fraud Authority and National Fraud Investigation Bureau, and
- not-for-profit organisations, such as the Consumer Credit Counselling Service and Debt Advice Foundation.

## **E SUMMARY OF THE RESULTS OF THE CONSUMER OMNIBUS SURVEY**

### **Introduction**

- E.1. In April 2011 the OFT placed a number of questions in a consumer omnibus survey in order to help assess the scale and prevalence of the issues identified in Citizens Advice's super-complaint.

### **Methodology**

- E.2. Twenty-six questions were placed on the TNS telephone omnibus survey. This telephone survey interviewed 1,980 adults aged 18 and over, across the whole of the UK. The fieldwork was conducted over the weekends of 1-3 April and 8-10 April 2011.
- E.3. The sample was subject to quota controls designed to deliver a demographic profile close to that of the target population. Final results were **weighted** in order to ensure representativeness in terms of known population data on age, sex, social class, number of adults in household, working status and region.
- E.4. One important effect of weighting is that results cannot be relied upon to sum to integer values. One consequence of this is that, since the figures given below have been rounded to the nearest integer, some of the percentage calculations and total figures will not appear to match precisely the response figures. While this appears unusual it does not invalidate estimates and does not indicate analytical or computational errors. In any event, all results arising from the survey are estimates subject to sampling errors and in cases where evidence relies on small numbers of observations, the sampling errors are proportionately large or in some cases, very large.

## Questions and results

**Q.1 In the past year, have you been contacted by a business other than a high street bank or building society to offer you any of the following services? We would like to emphasise that we are only interested in cases in which the business contacted you without you asking it to do so, and the business was not a high street bank or building society. Please select all those that apply.**

	Responses	Per cent
(i) Help in managing your debts, for example, by negotiating with companies that you owe money to reduce the amount of your repayments	508	26%
(ii) Help in writing off your debts, for example because one or more of your loan agreements were not properly made and could therefore be cancelled	369	19%
(iii) An 'unsecured loan', that is a loan where you do not use property or possessions as a guarantee to the lender that you can pay it back	355	18%
(iv) Help in finding an 'unsecured loan'	231	12%
(v) Refused	9	< 1%
(vi) Don't know	19	1%
(vii) None of these	1283	65%

Base: All respondents aged 18+. Respondents were asked to select multiple answers if applicable.

**Q.2 In the past year, approximately how many times would you say you have been contacted by businesses offering you any of these services that is, an unsecured loan, help finding an unsecured loan, help managing your debts and help writing off your debts without you asking them to contact you?**

	Responses	Per cent
(i) 1 – 5	214	32%
(ii) 6 – 10	129	19%
(iii) 11 – 20	112	17%
(iv) 21 – 50	84	13%
(v) 51 – 100	55	8%
(vi) More than 100	62	9%
(vii) Don't know	12	2%
Total	669	100%

Base: All respondents aged 18+ who had been contacted.

**Q.3 Please think about the most recent occasion on which you were contacted. Which service was offered to you at that time? Please tick all that apply if more than one service was offered.**

	Responses	Per cent
(i) Help managing your debts	382	57%
(ii) Help in writing off your debts	307	46%
(iii) An 'unsecured loan'	235	35%
(iv) Help in finding an unsecured loan	121	18%
(v) Don't know	79	12%

Base: All respondents aged 18+ who had been contacted. Respondents were asked to select multiple answers if applicable.

**Q.4 And again thinking about the most recent occasion on which you were contacted how was the contact first made?**

	Response	Per cent
(i) A telephone call	459	69%
(ii) A letter	94	14%
(iii) An email	53	8%
(iv) A text message	51	8%
(v) A visitor to your property	4	1%
(vi) A leaflet	2	< 1%
(vii) Another method	4	< 1%
(viii) Cannot remember	3	< 1%
Total	669	100%

Base: All respondents aged 18+ who had been contacted.

**Q.5 In any of the contact material, did the businesses provide you with a telephone number that you could use to contact them further?**

	Responses	Per cent
(i) Yes	203	30%
(ii) No	335	50%
(iii) Don't know	131	20%
Total	669	100%

Base: All respondents aged 18+ who had been contacted.

**Q.6 And after their contact with you, did you in turn make contact with the business?**

	Responses	Per cent
(i) Yes, by telephone	22	3%
(ii) Yes, using email	5	1%
(iii) Yes, by letter	3	< 1%
(iv) Yes, by other means	4	1%
(v) No	644	96%
(vi) Yes	24	4%
(vii) Don't know	1	< 1%
Total	669	100%*

\* Figures do not sum due to rounding.

Base: All respondents aged 18+ who had been contacted.

**Q.7 Can you remember if the number was a premium rate number? Premium rate numbers may not be easy to recognise but are expensive to use and usually begin 08**

	Responses	Per cent
(i) Yes, I think it was a premium rate number	17	77%
(ii) No, I don't think it was a premium rate number	2	11%
(iii) Don't know	3	12%
Total	22	100%

Base: All respondents aged 18+ who had been contacted and in turn had made contact with the business by telephone.

**Q.8 Can you remember how much your calls to the premium rate number cost you in total? An approximate figure will be okay.**

	Responses	Per cent
(i) Under £5	4	24%
(ii) More than £5 but not more than £10	5	27%
(iii) More than £20 but not more than £50	1	4%
(iv) Don't know	8	45%
Total	17	100%

Base: All respondents aged 18+ who had been contacted and in turn had made contact with the business by telephone and remembered it being a premium rate number.

**Q.9 Even if you cannot remember even an appropriate amount, do you remember the effect on your regular phone bill?**

	Responses	Per cent
(i) Higher than usual	1	14%
(ii) Slightly higher than usual	2	32%
(iii) Same as usual	4	54%
Total	8	100%

Base: All respondents aged 18+ who could not remember how much the call cost.

**Q.10 You said earlier that the business contacted you by telephone. At the time, were you registered with the Telephone Preference Service also known as the TPS?**

	Responses	Per cent
(i) Yes	93	20%
(ii) No	276	60%
(iii) Don't know what the Telephone Preference Service is	79	17%
(iv) Don't know	11	2%
Total	459	100%*

\* Figures do not sum due to rounding.

Base: All respondents aged 18+ who had been contacted by telephone.

**Q.11 In the past year, have you had any dealings with a business other than a high street bank or building society, with the intention of the business giving you an unsecured loan or finding another provider who would supply you with an 'unsecured loan'? For this question it doesn't matter if they contacted you or you contacted them, we are only interested in the fact you had dealings with them.**

	Responses	Per cent
(i) Yes	85	4%
(ii) No	1885	95%
(iii) Refused	1	< 1%
(iv) Don't know	9	< 1%
Total	1980	100%

\* Figures do not sum due to rounding.

Base: All respondents aged 18+.

**Q.12 Did that business charge you any upfront fee in order to find you, or provide you with, an 'unsecured loan'?**

	Responses	Per cent
(i) Yes	11	13%
(ii) No	70	82%
(iii) Don't know	4	5%
Total	85	100%

Base: All respondents aged 18+ who had had dealings with a business other than a high street bank or building society, with the intention of the business giving them an unsecured loan or finding another provider who would supply them with an unsecured loan.

**Q.13 Did the business obtain your agreement to take the upfront fee before it did so?**

	Responses	Per cent
(i) Yes	8	69%
(ii) No	2	15%
(iii) Don't know	2	16%
Total	11	100%

Base: All respondents aged 18+ who had been charged an upfront fee.

**Q.14 After the business charged you the fee, did the business offer you a loan or introduce you to a loan provider that offered you a loan?**

	Responses	Per cent
(i) Yes	5	45.5%
(ii) No	5	45.5%
(iii) Don't know	1	9%
Total	11	100%

Base: All respondents aged 18+ who had been charged an upfront fee.

**Q.15 Was the loan that you were offered of a similar amount and cost to what you had been led to expect when you paid the upfront fee?**

	Responses	Per cent
(i) Yes	1	23%
(ii) No	4	77%
Total	5	100%

Base: All respondents 18+ who had been charged an upfront fee and were offered a loan or were introduced to a loan provider.

**Q.16 What was the final outcome?**

	Responses	Per cent
(i) You didn't take the loan and got no refund of the upfront fee	2	45%*
(ii) You didn't take the loan and didn't pay a fee	2	35%*
(iii) You took the loan	1	20%
Total	5	100%

Base: All respondents 18+ who had been charged an upfront fee and were offered a loan or were introduced to a loan provider.

\* Percentage figures differ due to weighting and rounding of figures.

**Q.17 In the past year, have you had any dealings with a business with the intention that the business provides help with managing your debts? For example, by negotiating with companies that you owe money to reduce the amount of your repayments.**

	Responses	Per cent
(i) Yes	78	4%
(ii) No	1892	96%
(iii) Refused	2	< 1%
(iv) Don't know	8	< 1%
Total	1980	100%

Base: All respondents aged 18+.

**Q.18 Did the business charge you an upfront fee for their help in managing your debts?**

	Responses	Per cent
(i) Yes	13	17%
(ii) No	56	73%
(iii) Don't know	8	11%
Total	78	100%*

\* Figures do not sum due to rounding.

Base: All respondents 18+ who had dealings with a business with the intention that the business provides help with managing debts.

**Q.19 Did the business obtain your agreement to take the upfront fee before it did so?**

	Responses	Per cent
(i) Yes	10	81%
(ii) No	2	19%
Total	13	100%

Base: All respondents 18+ who had dealings with a business with the intention that the business provide help with managing debts and who had paid an upfront fee.

**Q.20 After the business charged you the fee, did the business provide you with the service they had promised?**

	Responses	Per cent
(i) Yes	6	45%
(ii) No	5	35%
(iii) Don't know	3	20%
Total	13	100%

Base: All respondents 18+ who had dealings with a business with the intention that the business provide help with managing debts and who had paid an upfront fee.

**Q.21 What happened next?**

	Responses	Per cent
(i) You did not get a refund. The business kept the upfront fee	3	77%
(ii) You obtained a full refund of the fee	1	23%
Total	5	100%

Base: All respondents 18+ who had dealings with a business with the intention that the business provides help with managing debts and who did not receive the service promised.

**Q.22 In the past year, have you had any dealings with a business with the intention that the business help with you writing off your debts? For example, because your loan agreements were not properly made and were therefore unenforceable.**

	Responses	Per cent
(i) Yes	48	2%
(ii) No	1926	97%
(iii) Refused	2	< 1%
(iv) Don't know	5	< 1%
Total	1980	100%

Base: All respondents aged 18+.

**Q.23 Did the business charge you any upfront fee for their services in helping you write off your debts?**

	Responses	Per cent
(i) Yes	5	11%
(ii) No	39	82%
(iii) Don't know	3	7%
Total	48	100%

Base: All respondents 18+ who had dealings with a business with the intention that the business provides help writing off their debts.

**Q.24 Did the business obtain your agreement to take the upfront fee before it did so?**

	Responses	Per cent
(i) Yes	2	32%
(ii) No	1	23%
(iii) Don't know	2	45%
Total	5	100%

Base: All respondents 18+ who had dealings with a business with the intention that the business provides help writing off their debts and who had paid an upfront fee.

**Q.25 After the business charged you the fee, did the business provide you with the service they had promised?**

	Responses	Per cent
(i) Yes	2	40%*
(ii) No	2	32%*
(iii) Don't know	1	20%
Total	5	100%

Base: All respondents 18+ who had dealings with a business with the intention that the business provides help writing off their debts and who had paid an upfront fee.

\* Percentage figures differ due to weighting and rounding of figures.

### Q.26 What happened next?

	Responses	Per cent
(i) You did not get a refund. The business kept the upfront fee	0	0%
(ii) You obtained a full refund of the fee	2	100%
(iii) You obtained a refund but it was only for part of the fee	0	0%
(iv) Other: please specify	0	0%
<b>Total</b>	<b>2</b>	<b>100%</b>

Base: All respondents 18+ who had dealings with a business with the intention that the business provides help writing off their debts and who had paid an upfront fee and who didn't receive the service promised.

## **F SUMMARY OF RECENT OFT ENFORCEMENT ACTION IN RELATION TO THE PRACTICES IDENTIFIED IN THE SUPER-COMPLAINT**

### **Credit brokerage**

- F.1 Between May 2009 and May 2011, the OFT refused to renew or grant new applications and / or revoked the existing licences of 35 traders following investigations into their fitness. In February 2011 for example, the OFT took action to revoke the licence of NIZ Financial (UK) Limited and First Money Direct Limited, a large credit brokerage business and its associate, for engaging in unfair and improper business practices which included taking upfront brokerage fees when no loan was provided and not refunding brokerage fees when requested to do so.<sup>75</sup>
- F.2 The OFT has also made interventions to change the behaviour of some of the market leaders in the credit brokerage sector, imposing requirements on Yes Loans Ltd,<sup>76</sup> Post Net Ltd<sup>77</sup> and its associates and the credit brokerage lead generator website operator, Reset Finance Ltd.<sup>78</sup>
- F.3 The OFT is set to publish new draft Credit Brokerage Guidance simultaneously with this response which will set out the standards

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<sup>75</sup> OFT Press Notice, 15/11, 11 February 2011, available at [www.of.gov.uk/news-and-updates/press/2011/15-11](http://www.of.gov.uk/news-and-updates/press/2011/15-11).

<sup>76</sup> OFT Press Notice, 85/09, 16 July 2009, available at [www.of.gov.uk/news-and-updates/press/2009/85-09](http://www.of.gov.uk/news-and-updates/press/2009/85-09).

<sup>77</sup> OFT Press Notice 139/09, 4 December 2009, available at [www.of.gov.uk/news-and-updates/press/2009/139-09](http://www.of.gov.uk/news-and-updates/press/2009/139-09).

<sup>78</sup> OFT Press Notice 21/10, 26 February 2010, available at [www.of.gov.uk/news-and-updates/press/2010/21-10](http://www.of.gov.uk/news-and-updates/press/2010/21-10).

of behaviour that the OFT expects from those offering credit brokerage services more clearly.

## Debt Management

- F.4 In November 2009, the OFT launched an in-depth review of the debt management industry's compliance with the OFT Debt Management Guidance.<sup>79</sup>
- F.5 The review found evidence of widespread and systemic non-compliance with the Debt Management Guidance, including:
- the use of misleading advertising by debt management businesses, in relation to fees in particular
  - frontline staff within debt management businesses lacking the necessary competence and providing poor advice, and
  - low industry awareness of the Financial Ombudsman Service rules for resolving complaints.
- F.6 In response to the findings of the compliance review, the OFT warned 129 non-compliant debt management businesses that they faced losing their consumer credit licenses unless they took immediate action to comply with existing Debt Management Guidance.<sup>80</sup> The OFT's wider strategy for improving standards in this sector also included working closely with the two main industry bodies and improving the Debt Management Guidance, producing a revised version for consultation.

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<sup>79</sup> The findings of this review were published in September 2010 and are available on the OFT website: [www.oft.gov.uk/news-andupdates/press/2010/101-10](http://www.oft.gov.uk/news-andupdates/press/2010/101-10)

<sup>80</sup> OFT Press Notice 101/10, 28 September 2010, available at [www.oft.gov.uk/news-and-updates/press/2010/101-10](http://www.oft.gov.uk/news-and-updates/press/2010/101-10)

- F.7 Enforcement action taken following the compliance review led to 43 firms surrendering their licences and action so far being taken to revoke licences in 10 cases.
- F.8 Revised Debt Management Guidance will be issued for consultation in June 2011. The existing guidance has undergone significant amendment to take account of practices that have emerged since the guidance was first issued, and to be clearer about the types of business practices the OFT regards as potentially unfair or improper in order to assist both debt management businesses and our enforcement partners.