



CAB briefing
March 2011

Cashing in

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Introduction

Current economic conditions provide fertile ground for unscrupulous credit businesses and fraudsters. Rising unemployment and falling incomes make households more vulnerable to financial difficulties. Recent research estimates that between 5.5 and 6 million households are either in arrears with bills or credit commitments or are finding it a constant struggle to keep up.¹

For many of these consumers mainstream credit will be out of reach and alternative higher cost credit is becoming increasingly available through a proliferation of online lenders, credit brokers and the practice of unsolicited phone and text marketing.

This briefing highlights the experience of CAB clients in England, Wales and Scotland who have been ripped off by firms that offered to help them get an unsecured loan. The rip-off is based on two related business practices that are exposing consumers to serious bad practice and fraud:

- Firms are cold calling consumers by telephone or text and offering to help find them an unsecured loan.
- Firms are taking up front fees for a credit broking service, often by persuading consumers to give them their banking details. Consumers are then offered little or no service in return and are unable to get their money back.

Many of the problems seen by the CAB service involved seemingly legitimate licensed credit businesses breaching current consumer protection rules. Our evidence shows that firms are:

- failing to comply with distance selling rules on contractual information and refunds
- failing to comply with data protection law and guidance or complying in a way that was harmful to the interests of consumers

- engaging in unfair commercial practices
- breaching consumer credit law and guidance issued by the Office of Fair Trading (OFT)
- breaching rules about premium rate telephone services.

We have also seen people who have been the victims of advanced fee fraud, where criminals posing as credit brokers are using these same tactics of cold calling and asking for up-front fees to steal considerable sums from consumers who are often the least able to afford it. Crucially, we believe that this fraud only operates effectively because current consumer credit legislation gives consumers reason to believe that cold calling and charging up-front fees are acceptable and normal business practices.

Research indicates that both types of consumer detriment are widespread. The OFT in 2006 estimated that loan fee scams cost the UK public £190 million a year and affected 110,000 adults.² More recently the OFT announced that advance fee credit was one of the top scams reported to Consumer Direct.³ Press releases for Call Prevention Registry, an organisation that provides a telephone preference service, suggests that the recession has led to a growth in the proportion of unsolicited sales calls from loan and debt management companies – from five per cent of all three billion unwanted sales and nuisance calls before the recession to over 28 per cent of calls (840 million) in 2009.⁴

CAB evidence suggests that cold calling is concentrated among credit brokerage firms that appear to target people unable to get mainstream credit, perhaps because of a poor credit history, low income or current financial difficulties. Indeed in some cases the targeting has a predatory character with people being cold called by other brokers, lenders, debt management and claims management firms following a contact with one of these broker firms.

The OFT has recently taken enforcement action against a number of lead generation and credit

1. *The impact of Independent Debt Advice Services on the UK Credit Industry*, Wells J, Leston J, Gostelow M, Friends Provident Foundation (2010)

2. *Research on the impact of mass-marketed scams*, OFT, 2006

3. Money transfer scams revealed as leading consumer con as OFT launches nationwide 'Scamnesty', OFT press release, 1 February 2011

4. Christmas come early for debt and loan management companies targeting struggling UK families, press release

broker firms for the practices described in this report.⁵ This is welcome, but CAB evidence set out in this briefing suggests that a wider policy response is needed to prevent growing consumer detriment. Therefore Citizens Advice and Citizens Advice Scotland believe that the Government should urgently amend consumer credit legislation to address problems with cold calling and up-front fees directly.

We will start by looking at the problems and consequences arising from unsolicited phone marketing and then we will look at evidence of problems with up-front fees.

Cold calling and the problems it causes

Citizens Advice often sees cases where people have been cold called by lenders or credit intermediaries seeking business. In many of these the consumers had no prior relationship with the firm. The call came literally 'out of the blue' with harm following close behind. In other cases consumers that had a pre-existing relationship with a lender received an unsolicited phone call that resulted in an inappropriate offer of credit.

Cold calls with no prior customer relationship

People have told us how they were persuaded to pay over money to a lender or broker as a direct result of a cold call. In some cases money had been taken from their bank account without their express authorisation after firms had succeeded in getting them to reveal their bank details. In other cases they were eventually offered a loan that was different to that discussed on the phone, or received nothing at all in return for a fee.

A CAB on the Isle of Wight saw a man who was cold called by a loan finding firm but never directly agreed to the loan at the time

of the telephone call. The actual details of the APR or full details of the loan were not known or passed to him. Some time later the company contacted him with the full details of the loan. He said no due to a very high APR on the loan offered and he thought the loan had been cancelled. The first he knew of the brokerage fee of £69 was when he accessed his bank account. He tried to recover the fees but was refused. He was in receipt of employment and support allowance of £105 fortnightly so this loss of income put him into severe financial difficulty.

A CAB in London saw an unemployed 29 year old woman who was married with two dependent children. She had been cold called by a firm who offered her a loan of £3,000 on payment of £70 fee. She agreed and the fee was taken from her debit card, but the loan never materialised. Her requests for return of the fee have been unsuccessful. Paying £70 out of her benefits for this loan application had denied her that money for other essential household bills.

A CAB in Norfolk saw a man who was in receipt of incapacity benefit and living with his parents. He had been charged a £50 brokers fee after a cold call. The firm called him on spec and he gave them his bank details over the phone but did not take out a loan with them. He had to call the firm on a premium phone number to try and sort out this problem. He was told he would have to write and claim his money back.

A West of Scotland CAB reported that out of the blue, a man had received a text message informing him that his application for a £2,000 loan had been accepted and to contact the company to complete the transaction. As the client had never applied for a loan, he contacted the company to complain about their marketing practices and to find out how they obtained his mobile number. They said this had been done through another company whom the client had never contacted. The client, who

5. See OFT press releases on 22 February 2011, 11 February 2011, 2 November 2010, 5 July 2010 and 4 December 2009

was extremely angry at the aggressive and unscrupulous marketing practices of the firm wanted advice on how to stop these methods.

Firms passing consumer contact information round – sharing the spoils of harm

Recent CAB evidence also highlights the problems faced by consumers who have had their contact details passed on to firms, without their knowledge, after responding to an initial contact from one firm. In some of these cases people have either responded to a cold call by a credit broker or pro-actively contacted a credit broker, only to be bombarded by further unsolicited contacts by other brokerage firms.

A CAB in Cornwall saw a 61 year old disabled woman who had received unsolicited phone calls from various companies offering her loans. She had already given her bank details to one company that took £65 to find her a loan that never appeared. Since then she had received calls from other companies, up to 12 in a day, asking for her bank details. The woman also said that the companies would keep her talking before asking her to phone them back as they had important information for her. She phoned back but it was only when she received her telephone bill that she realised the phone calls were charged at premium rate. Companies had also been phoning her mobile and asking her to phone back. She had wondered why her bill was so high.

A CAB in Dorset saw a 19 year old man who was contacted by text by a company arranging loans. As he was desperate for some money at the time, he visited the company's website to apply for a loan. After he had given them details of his debit card, name and address, he realised that they might not be genuine. He cancelled the application and cancelled his debit card. Subsequently he kept getting phone calls and

texts from other loan companies and was frightened that someone would try to steal his identity.

A CAB in South East Wales saw a 25 year old man who had applied online for a £1,500 loan at a rate of 15 per cent. The firm took all his card and bank details and an arrangement fee of £70 was taken from his bank account. Then he received a letter from another loan brokerage firm who claimed to be arranging his loan. They took out a further arrangement fee of £69. He then got a letter from a lender who offered him the loan at a rate of 53 per cent. He was then contacted by another loan company wanting to know all his details. But he never received any loan. He felt that he was being passed from pillar to post and that money was going out of his bank account without his permission.

In other cases people who had either contacted or been cold called by a credit broker were then cold called by a debt management firm, a claims management firm or both. In some of these cases the successive firms were connected, a different brand of the same firm or a different part of the same group of companies. However there is no indication the consumers were told about these relationships. In other cases the connection was not clear and the successive contacts appeared to come from separate firms.

Either way, consumers were subjected to additional rounds of (often substantial) up-front fee charging by successive firms, but received little or no service in return.

A CAB in Hampshire saw a 59 year old woman who had applied to a credit broker for a loan to keep going and to service her debts. They refused to give her a loan, but soon afterwards she received a cold call from a debt management firm who made some claims about what they could do. They took her details and at the time of seeking advice had taken fees of £825 although the woman was clear she did not enter into a contract. The firm then sent her a letter referring to the

phone call and to 'confirm various points we have agreed'. She wanted her money back and to confirm there was no contract. The debt manager also introduced her to a claims management firm who wanted to charge her £705 to investigate whether her credit card agreements were valid. They gave her the impression that in 80 per cent of cases they were successful getting the credit agreements set aside.

A CAB in Cheshire saw a 28 year old woman who had spoken to a credit broker firm about her debt problems and paid them a fee. She then received a cold call from a debt management firm. They said they got her details from the credit broker. They talked her into giving them her bank details so that they could take an initial fee of £200 and £100 per month thereafter. They did not tell her about her right to cancel and when she received some paperwork from them, she changed her mind about the agreement and threw it away. Despite not receiving any written consent and not setting up anything for her, the debt management firm still took the £200 set up fee.

A CAB in Lincolnshire saw a 30 year old man who was employed in the armed forces. He had debts of around £24,000 and his home had been repossessed and sold at a considerable loss... His wife had left him nine months before, taking their two young children with her. In a vulnerable moment, he responded to an unsolicited text offer of a loan from a credit broker. He applied for the loan and then realised that something did not feel right so cancelled it and requested a refund of the original loan charge of £60. He was still waiting for this to be refunded despite numerous calls to a premium number. After the loan application, he received a text from a claims management firm offering to write off his debts for a one-off fee of £2,000. He paid £190 to them for the initial paperwork and then cancelled and is still waiting for his refund. He said he felt

embarrassed and deeply resented having been caught in a moment of weakness. He was also mistrustful of his bank as although there was no proof, he found it odd that he was only contacted by these companies after applying for a loan with them.

A South of Scotland CAB saw a woman who had applied online for a loan to pay off £14,000 of debt. She was called straight away by a company to say she had not qualified but her details had been passed to them as they could help. The company told her they could take the debt and freeze the interest, all she would have to pay would be one payment of £197. She would pay this for seven years and the debt would be cleared. When the client asked what they would get from this, they explained that the first month's payment of £197 went to them plus a one off fee of £100 making a total of £297. She thought this was too good to be true. After checking the firm's website with a CAB adviser she saw that the firm's fees were actually a first monthly payment of £197, then a one off fee of £100, then a monthly management fee of £100 while the agreement was in force. Over seven years this added up to around £8,400.

In this context, we note that the OFT has recently identified unsolicited and misleading and/or unlawful cold calling by debt management firms as an 'emerging unfair business practice'.⁶ This followed a 2009 warning to ten firms that the 'practice of illegal or misleading cold calling for debt management services must cease immediately'.⁷ CAB evidence suggests that cold calling has not stopped in the debt management sector.

More generally, the cases above show that firms are passing consumer contact information around, either to other brands or products in the same company or group of companies or to entirely different firms. There is also a clear suggestion that further rounds of unsolicited marketing are in some cases deliberately targeted at people in financial difficulties. The recent

6. Debt management guidance compliance review, Office of Fair Trading, September 2010

7. Office of Fair Trading press release 60/09, 25 May 2009

experience of one CAB client raises this question in a very explicit way.

A CAB in Lancashire saw a 33 year old lone parent with two dependent children whose part time wages were topped up with tax credits. She owed around £2,000 in council tax arrears and the debt was passed to a private bailiff firm. She tried to offer a monthly payment but the bailiff refused to accept it. Following the bailiff's contact she received a barrage of texts and phone calls to her mobile phone number, all offering loans at approximately the same amount as her council tax arrears. She told the bureau that she had received 50 texts in one day.

We do not currently have much evidence on either the extent of sharing information about consumer contacts for marketing purposes, or the machinery driving the practices described in the cases above. But we believe that there are strong clues about the role of credit broking firms in this, as the following case highlights.

A CAB in County Durham saw a 34 year old woman who was a lone parent, working part time and living in council accommodation. She applied for a loan online through a credit broker. The broker took her bank details and sent her a form, meanwhile removing £69.50 from her bank account. She heard nothing more and did not send in the completed form. Then another company contacted her also offering to act as a loan broker. They had the same address as the first company but a different name. Again the woman was asked for her bank details and £79.95 was removed from her bank account. A further company contacted her offering the same activity for a fee of £59.95 and again money was taken from her account. Despite the woman writing twice to each of the companies for refunds, no money was returned. On the reverse of the document provided by one of the firms was a statement saying that the company reserved the right to send the woman's details to anyone it thought fit. It also reserved the right to use any method

of contact and that the companies it passed information to could override any preference service registrations. As a result the woman faced both a shortage of money and a barrage of other loan companies contacting her.

A look at the websites of two credit brokerage firms quickly confirms what this CAB client is saying. Tucked away at the back of the (very) small print in the terms and conditions of both firms were statements that 'by agreeing to the terms and conditions' consumers were agreeing to their contact details being passed to any other companies who may then make contact by post, email, SMS or other means. Consumers were also told that agreeing to these terms and conditions would override any previous preference service registrations they might have made. Consumers would have to write to the firms to opt-out of these conditions.

Cold calls with a prior customer relationship

CAB evidence also highlights cases where people received unsolicited marketing calls from a credit business that they did have a prior customer relationship with. Although this is rather different to the issues set out above, the cold calls still resulted in mis-selling of credit or ancillary products such as payment protection insurance. The examples below show how people were pushed into further over-indebtedness as a result.

A CAB in Yorkshire saw a 56 year old man who lived with his partner in rented accommodation. He received disability living allowance and also income support, housing benefit and council tax benefit. Their benefits were paid into their bank account so their bank was aware of their total income and its sources. The bank made them an unsolicited offer of a £12,000 loan that they accepted and spent. They could not afford the repayments and got into other debt as a result of trying to pay the monthly instalments on this loan. Although they spent

the loan, they had not considered taking one out before their bank's unsolicited offer.

A CAB in Yorkshire saw a 36 year old woman who was given an £18,000 loan. The woman did not ask for the loan, but was called out of the blue by her bank. At the time she borrowed the money, she had very limited English language skills and was working as a temp. The bank told her that the payment protection insurance sold with the loan would protect her against loss of employment. When later on she lost her job and was unable to pay the loan she found that the PPI did not protect her. She did not fully understand the agreement she was signing.

A CAB in Sussex saw a 53 year old man who had learning difficulties. He worked part time and also received income support, incapacity benefit and disability living allowance. He had debts with three catalogue companies totaling around £3,000. This was from his own purchases and purchases friends and others asked him to make. He continued to receive unsolicited phone calls and marketing mail from the three catalogue companies with whom he had debts and as the companies recommended certain purchases, he felt obliged to make those purchases. He was aware he should ignore marketing telephone calls and mail but had difficulty doing so.

What are the current protections for consumers against unsolicited marketing and are they working?

Consumer credit rules do not currently have a clear and comprehensive prohibition on unsolicited marketing. Unsolicited canvassing of loans (more specifically debtor-creditor agreements) by a personal visit of trade premises is specifically prohibited by section 49 of the Consumer Credit Act 1974. Likewise section 154 of the Act prohibits canvassing of ancillary credit services such as brokerage, debt-adjusting and

debt counselling. So consumers are protected against unsolicited doorstep selling of credit and related services. But the consumer credit rules say nothing about unsolicited telephone calls or text messages. Similarly the Ministry of Justice's conduct of business rules for claims managers only bans cold calling in person: other types of cold calling must be in accordance with the Direct Marketing Association's Direct Marketing Code of Practice.⁸

This is in clear contrast to the current Financial Services Authority (FSA) *Mortgage Conduct of Business rules* (MCOB) that clearly and unambiguously prohibit unsolicited real time promotions.⁹ This means that firms may not make unsolicited personal visits, telephone calls or other 'interactive dialogue' with consumers to promote a mortgage product. Promotions containing very limited information, such as the name of the firm or brand are exempted from this rule. Also exempted are unsolicited calls where a consumer has an existing customer relationship with the firm and envisages receiving such promotions. We believe that the cases above suggest that such an exemption may not be appropriate for consumer credit.

Data protection legislation also exerts some control on both unsolicited phone and text marketing and on the way that firms can use consumer contact information for marketing purposes. The Privacy and Electronic Communications (EC Directive) Regulations 2003 (known as PECR), places restrictions on unsolicited marketing by phone and electronic mail (including text messages).¹⁰ So marketing by automated calling systems (that do not involve a 'live' sales person) is prohibited where the firm does not have prior consent from the consumer.

The regulations also require firms to obtain specific prior consent from a consumer before they can send unsolicited text marketing messages; unless they can rely on what is called a 'soft opt-in'¹¹. In contrast, unsolicited 'live' marketing phone calls by sales staff are not expressly prohibited unless a consumer opts out

8. Claims Management Regulation: conduct of authorised persons rules 2007, Ministry of Justice

9. MCOB 3.7.3R

10. SI 2003 / 2426

11. ICO guidance describes this as a situation where a firm has obtained the consumer's details in the course of previous contact about the sale of a product or service; the marketing material relates to that firm's similar products and services only; the consumer has been given a simple means of refusing (free of charge except for the cost of transmission) the use of their contact details for marketing purposes at the time these were initially collected and, where they did not refuse, at the time of each subsequent communication.

by either notifying a firm that they object to such calls or by registering with the telephone preference service (TPS).

Both PECR and the Data Protection Act 1998 give consumers some protection against more unsolicited phone and text marketing by subsequent firms.

Guidance from the Information Commissioner's Office (ICO) on PECR describes restrictions on when firms can use consumer contact information passed on to them by other firms. So where a consumer is registered to the Telephone Preference Service, a firm cannot rely on a consent passed on to them by another firm. Any consent to override their registration is only valid if it has been given to the specific caller in question.¹² For SMS text marketing the ICO states that 'It is difficult to see how third party lists can be compiled and used legitimately... Arguably consent could be given through a third party but a great deal will depend on the clarity and transparency of the information given to the [consumer] when their contact details were collected'.

It is hard to see how the terms and conditions described above could be said to create a consent that is in line with either of these requirements, except where a consumer is not registered with the Telephone Preference Service.

However the Data Protection Act 1998 (DPA) requires firms to act fairly in the way they process information about their customers. As ICO guidance on the Act points out, 'Passing details of customers and their interests to other companies for marketing is likely to be unfair unless they [consumers] have agreed to this'.¹⁴ The protection this offers is limited, as in this context the agreement does not necessarily mean explicit consent. A firm may assume that a consumer has effectively given their agreement by continuing with a transaction after reading a privacy notice setting out how the firm may use their information.

The form and content of privacy notices is left

largely up to firms to decide. The ICO has produced a code of practice that highlights good practice; for example giving consumers a clear opt-in to marketing (rather than an opt out) and seeking their active prior consent to having their information shared for marketing purposes. The guidance also describes some bad practices to be avoided; for example failing to seek consent where consumers may not expect data to be shared, or providing only a difficult means to opt-out, or burying the privacy policy in the terms and conditions.¹⁵ The privacy notices of credit brokers set out above exhibit all these bad practice points.

Consumers can complain to the ICO where they think that their personal data has been obtained or processed in contravention of the Data Protection Act, or where they believe a firm is in breach of PECR. Section 11 of the Data Protection Act also gives consumers the right to tell a firm to stop processing their personal details for direct marketing purposes.

While these are useful protections, the cases cited in this report suggests that they are unlikely to be used by poor and vulnerable consumers in particular; at least before detriment from multiple unsolicited marketing has already occurred. Rights for individual consumers to complain and seek redress are always important but may do little to challenge bad practice at a firm or market level.

As a result, Citizens Advice and Citizens Advice Scotland believe that the current regulatory approach is not protecting consumers from abusive unsolicited marketing by credit firms. We would therefore urge the Government to update data protection legislation to ensure that the Information Commissioner's Office is able to take a more prescriptive approach to the form and content of privacy notices and the conduct of firms using consumer's personal data for marketing purposes.

Otherwise consumers who are not registered with the TPS appear to have little protection against their contact details being passed on to

12. Guidance for marketers on the Privacy and Electronic Communications (EC Directive) Regulations 2003. Information Commissioner's Office (2006)

13. The Guide to Data Protection, Information Commissioner's Office. Downloaded from www.ico.gov.uk on 17 February 2011

14. The DPA only generally requires explicit consent where the information is classed as sensitive personal data and consumer contact details are not classed sensitive personal data.

15. Data Protection: Privacy notices code of practice. Information Commissioner's Office. Downloaded from www.ico.gov.uk on 17 February 2011

further firms for use in unsolicited phone marketing.

Up-front fees and the problems they cause

The CAB service is seeing a growing number of complaints about the up-front fees taken by firms offering to find people a loan. In some cases this followed an unsolicited phone or text contact, as several of the cases above highlight. In other cases people had contacted a credit broking firm by searching online or reading an advert. But once contact was made, consumers suffered loss because of one or more of the following related bad practices.

- People were told a loan was available, but after paying a fee they never got the loan.
- Firms persuaded people to give them their bank details and then took money from their accounts without authorisation.
- Firms refused to acknowledge consumer's efforts to cancel a brokerage agreement, or give a refund even where this has been explicitly promised in marketing material.
- Consumers were given premium rate phone numbers to contact firms, adding to the costs of disappointment and increasing barriers to complaining and asking for a refund.

A fee taken but no loan

A number of CAB clients said that a credit broker had told them that a loan was available for them but they would first have to pay an up front application fee or administration fee. But after paying out no loan ever appeared.

A CAB in London saw a 65 year old man. He told the CAB that he wanted a small loan and saw an advert for a £1,000 loan at a low APR. He rang the firm who offered him

a loan at an even lower rate and said the paperwork would be sent in three days on condition that he paid a small 'registration fee' which he thought would be deducted from the loan. But a £49.50 fee was debited from his bank account. No paperwork arrived so he rang again to be told that the fee had not been received. Finally the firm sent out a blank application form which he completed and returned. Two weeks later he received a letter from another firm saying he would soon receive an offer from a third firm who did indeed offer him a loan of £1,000 with an APR at more than double the rate offered by the first firm. The man said that the nature of the 'registration fee' was not made clear to him. He wanted the fee and the cost of his phone calls reimbursed due to the fact that the original low rate APR was obviously a 'hook'.

An East of Scotland CAB reported that a man had applied for a £1,000 loan from a company he found on a social networking website. The link took him directly to an application form for a lender. The client filled this in and was contacted by phone by a representative. He was told that he could get a loan for up to £2,500 (two years) for 7.9 per cent APR, and that he would have to pay an administration fee of £59.95. He gave the firm his debit card details. The client was sent documents to sign, and found out that the firm was, in fact, a credit broker. The client sought advice about getting his money back as he felt he was mis-sold the service.

A CAB in the West Midlands saw a 36 year old man who was working full time and living in private rented accommodation. He made applications for personal loans after reading adverts. One lender charged an upfront fee of £59 and another lender £69.50 for loan applications of £3,000. He was refused both loans and so he requested the return of his fees, but without result.

This last case shows how people have experienced this problem two or more times after

contacting different credit brokers while 'shopping around' for loans. For some CAB clients the accumulated fees taken by multiple firms added up to a significant loss.

A CAB in Yorkshire saw a 24 year old vulnerable disabled man who visited the websites of three loan finder firms. They each charged a fee for this, ranging from £33 to £69 and totaling £166.50. All the suggested lenders refused him a loan because he had no security or guarantor. When he tried to contact the loan finder companies about this, they did not respond to e-mails, phone calls or letters.

A CAB in Kent saw a lone parent aged 25. She had mental health problems, literacy problems and did not easily understand the process involved in getting and paying back a loan. She had been searching the internet for loan providers, hoping to pay off her debts and had given her details to at least five firms, each of which had taken a fee. One firm took £49.80 from her bank account and another took £55. She had no details of either of these two companies to contact them again as she found them and contacted them online. Another firm sent her a letter to say that they had found a home credit provider who would give her a loan if she passed a credit check and provided the necessary information. The firm took three payments from her account totaling over £50. The fourth firm took £55 from her account and promised to send her an application form for a loan. She applied to a fifth firm over the phone and was told she would be eligible for the loan even though she was unemployed. She paid them a broker's fee of £59. Then the firm told her that she wasn't eligible for the loan as she was unemployed. She also discovered that the firm had deducted the broker's fee twice. She complained and was told she should write to them for reimbursement. She was very confused and getting deeper into a financial mess. These companies had made

her problems worse. She had paid out money to at least five companies and had no loan to pay off her debts.

Unauthorised deductions from bank accounts

In other cases, people told us that a credit broking firm had taken money from their bank account without their express permission. They had been persuaded to give the firm their bank details, but had not yet agreed to use the firm's service or pay a fee when an unauthorised deduction was made from their account. Some said that they would suffer further detriment as the unauthorised deduction had triggered bank charges.

A CAB in Gloucestershire saw a woman who had four children, all aged under 10. The day before coming to the CAB she had made contact with a loan finding firm on the internet. She gave them her banking details and debit card number but decided not to take a loan through them. Nevertheless they took £70 from her account that day and the following day were trying to take a further £70 for 'administration charges'. The woman said she could not afford this and believed that she had certainly not intended to authorise such payments.

An East of Scotland CAB saw a man who had started to apply online for a loan. He had filled in his telephone number when he was called by the company and asked for all his personal and bank account details. He did say that he did not want any loan processed at present. But the company took £70 from his account anyway.

A South of Scotland CAB saw a woman who had applied for a loan online. The loan application was refused but her bank account was debited for £48 and she incurred bank charges because of this.

A CAB in Leicestershire saw a 21 year old Slovakian man who had applied online to a

credit broker firm for a personal loan of up to £700. He gave the firm his bank details and received an email acknowledging this. This did not say whether the loan had been approved or not. He subsequently found that he was overdrawn by £210 and subject to bank charges because the credit broker had taken three unauthorised payments from his bank account. He went into the bank who put a stop on payments to the credit brokerage firm.

Consumers who have experienced such unauthorised deductions from their bank may have a right to redress under the Payment Services Regulations 2009.¹⁶ Guidance from the Financial Services Authority explains that the bank will be required to refund the unauthorised transaction immediately and remove any consequent bank charges, unless it has evidence that the consumer did in fact authorise the payment or was at fault.¹⁷ The bank cannot simply say that the firm's use of the consumer's details proves that the payment was authorised.

The cases above suggest that these provisions are currently poorly understood by both consumers and some bank staff. Banks have helped consumers by taking action to stop further deductions, but there is no evidence that consumers were informed of possible redress under the Payment Services Regulations. Citizens Advice would welcome the opportunity to work with the FSA and the banking sector to raise consumer awareness about dealing with unauthorised deductions.

However the big picture problem here is not the banks, but credit businesses who abuse the payments system to take up-front fees unfairly. These actions are causing both detriment for consumers and potential costs for payment services providers.

A right to cancel?

The Financial Service (Distance Marketing) Regulations 2004 provide some important rights for consumers dealing with credit brokerage firms

over the telephone or online.¹⁸ Firms are required to give consumers information about the contract including information about their right to cancel. The regulations give consumers 14 days to cancel their agreement with the firm, starting from either the day when the contract was concluded or the day when the consumer received all the contractual terms and conditions of the agreement from the firm if this is later. Once a consumer has given the firm proper notice of cancellation, the broker should refund any upfront fee paid within 30 days.

So, in theory, consumers should be able to recover an up-front fee quite easily by telling the firm that they want to cancel. However CAB evidence shows how consumers trying to cancel have simply been ignored by firms.

A West of Scotland CAB saw a woman who was offered a £1,000 loan by a credit broker. An agreement was sent for her to sign, but she decided against the loan and phoned the company to cancel before she received the money and within the 14 day cancellation period. She did not sign or return the agreement. However she had had two £60 payments taken from her account which was even more than the payment suggested by the contract. This left her facing the prospect of bank charges.

A CAB in Tyneside saw a 58 year old man who was in receipt of disability living allowance and income support. He had applied for a loan of £25,000 through a credit broking company. He received a letter from them telling him that his loan had been approved and they would charge a one off administration fee of £99.99. After the admin fee had been taken from his bank account, the man changed his mind about the loan and asked for his money back. After many attempts to have the fee returned, he came to the CAB for help. The CAB also made many phone calls to the company, sent letters and received lots of promises about a refund to no avail.

16. SI 2009 / 209

17. *Bank accounts Know your rights*, Financial Services Authority, November 2010

18. SI 2004 / 2095

A CAB in Lincolnshire saw a 56 year old woman who had used the internet to apply for a £1,500 loan. She was charged two payments of £69.50, both of which were taken from her bank account without permission, but the promised loan did not materialise. She phoned to cancel several times without success. On one occasion she did get through but the company hung up when she said she wished to cancel. The fees were not refunded.

The regulations specify that consumers may give notice either in writing or another durable medium or orally, but only where the firm has said this may be given orally. This is in contrast to new withdrawal rights introduced by the European Consumer Credit Directive that allow consumers to withdraw from a credit agreement by giving oral or written notice.¹⁹ It may be possible that firms have tried to use this loophole to put off consumers calling them about cancellation rights. However we believe that firms engaging in such practices are likely to be committing the offence of either a misleading omission or an aggressive practice, as described in the Consumer Protection from Unfair Trading Regulations 2008.²⁰

However there is worse to come. CAB evidence highlights a number of cases where people have said that they chose a particular credit broking firm because they had specifically promised the right to a refund in their promotions. But when the consumers asked for a refund, none was given; the promise was hollow.

A North of Scotland CAB saw a woman who had a problem with a credit broker. She applied for a loan enclosing a cheque for their fee of £69.50. The following day she decided against proceeding and telephoned (confirmed in writing) requesting a refund. Despite four further telephone calls, chasing up the refund and being promised it would be sent the following day, she had still not received the money.

A CAB in Cheshire saw a couple in their mid

20's with a small child. They had applied via the internet for a loan and paid a processing fee, by credit card, of £79.95 up-front. They had understood that they were dealing with a loan company, but when the paperwork arrived, they realised they were dealing with a broker and cancelled the agreement – within the 14 days allowed. They did not receive any response to this cancellation or to the two subsequent letters they sent asking for a refund. The refund specifically promised by the company for those who cancelled within the 14 day period had not been paid.

An East of Scotland CAB reported that a client had contacted a credit broker for a loan. They provided paperwork advising the client to send a fee of £44.99 which was 'fully refundable' if no loan found. The company have not refunded the money.

Further rights for consumers to ask for the return of fees

In addition to the cancellation rights described above, section 155 of the Consumer Credit Act 1974 allows consumers to recover a broker's fee less an excess (currently £5.00) where they have not entered into an agreement within six months of their introduction to a lender by the broker. Guidance produced by the Office of Fair Trading also makes it clear that it was likely to be an unfair practice not to respond to a request for a refund where section 155 applies or to make a consumer wait the whole six months where it is clear that they would not enter into the relevant agreement.²¹

However section 155 only applies where the broker has actually effected an introduction. Where the broker does nothing at all in return for the fee, section 155 appears not to apply. The OFT guidance points out that consumers in this position could seek redress from the courts under general principles of contract law. Consumers might also seek redress from the Financial Ombudsman Service, but we do not believe it is appropriate to expect consumers, who may be

19. Section 66A (2) Consumer Credit Act introduced by the Consumer Credit (EU Directive) Regulations 2010, SI 2010/1010
20. SI 2008/1277

21. Consumer Credit Act 1974 – Section 155. Right to recover brokerage fees, Office of Fair Trading (2008)

poor and vulnerable, to make individual complaints as a policy response to widespread bad practice.

Furthermore, the European Consumer Credit Directive introduces a new requirement for credit intermediaries to ensure that any consideration payable to them is disclosed to the consumer and agreed in writing.²² Failure to do so will be an offence. However credit intermediaries are required to do this only before a consumer credit agreement is concluded. Therefore we do not believe that this new legislation will help to control the problems described in this briefing.

So, as was the case with cold calling, there is a framework of consumer protection around the up-front fees charged by credit brokers. But this framework is complex, partial and simply ignored by firms in too many cases.

Premium rate calls

The cases above show the frustration experienced by consumers trying to contact firms to get their money back. In other cases this has been aggravated further because some firms gave their consumers a contact phone number that was charged at a premium rate. This presented consumers with an explicit barrier to contacting the firm and the prospect of being left hanging on the telephone at a heavy cost.

A CAB in Yorkshire saw a 34 year old man who had applied for a £10,000 loan via an internet site. He had to pay a fee of £69.50 but then decided not to proceed and asked for his money back. The firm gave him a premium rate phone number to contact them on. He did not receive a refund and including the cost of phone calls was £100 out of pocket.

A CAB in London saw a 40 year-old unemployed man with mental health problems. He had applied to a company for a £500 loan. During the telephone conversation he was asked to pay administration costs, even though the firm's

website claimed that there were no up front fees. He gave the firm his debit card number and shortly afterwards his bank statement showed that the firm had taken a fee of £48. In addition, talking to the firm had cost him £70 in telephone charges at £1.50 a minute. He decided not to pursue the loan and wanted his money back.

A CAB in South East Wales saw a 26 year old woman who was living with her partner in his sisters property, homeless, eight weeks pregnant and employed. She applied to a firm about a consolidation loan of £15,000 to clear her existing debts. She received some application forms shortly afterwards and completed and returned them. She then received a telephone call from an advisor at the firm who informed her that she had been approved for the loan and that if she paid an administration fee of £45 she was guaranteed the money into her account within the next four days. However despite paying this fee she did not get the money. Then she received a letter stating that she had to telephone another loan company at a cost of £1.50 per minute for a 15 minute call to apply for the loan which was subject to status! She did not make this call as she thought she had already been approved for a loan and could not afford to make the phone call on her mobile phone. She never got the loan and had phoned the company on numerous occasions for a refund of the fee but this was not returned.

A CAB in Shropshire saw a 59 year old man who had phoned a firm about a loan in order to fix his motor-bike. His reason for choosing this firm was that they said they would give a full refund of the premium rate phone charges that would be incurred whether the loan application was successful or not. The firm constantly sent him text messages asking him to telephone them as they had some news on the status of his loan application and wanted to re-check his details and so on. As a result, the man built up call charges

22. These requirements are set out in a new Section 160A of the Consumer Credit Act 1974, as introduced by regulation 41 of the Consumer Credit (EU Directive) Regulations 2010 (SI 2010 / 1010)

amounting to £49.80. Despite this he never got a loan from this firm. He wrote to them asking for his phone charges to be repaid and provided them with a copy of his phone bill. He heard nothing from them. The man also had schizophrenia and became so upset over his dealings with this firm that he had to visit his doctor.

Premium rate telephone services are regulated by PhonepayPlus whose code of conduct sets out clear requirements for the business conduct of providers. For instance, firms must:

- not mislead consumers or take advantage of any vulnerability
- not subject consumers to a service that is unreasonably prolonged or delayed
- 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
- ensure that consumers have access to a non-premium rate UK customer service phone number and a mechanism for consumers to claim refunds
- seek prior permission from PhonepayPlus if offering credit or advice about credit through premium rate phone lines. This permission may be subject to additional conditions.²³

These code provisions appear fairly robust and PhonepayPlus can enforce them with powerful sanctions, including imposing fines of up to £250,000 for each breach upheld and ordering firms to provide refunds to consumers.²⁴ This is potentially much tougher than the current powers available for the OFT under the Consumer Credit Act 1974.

Yet despite this consumers are still reporting problems with the way credit firms are using premium rate phone lines. Perhaps this highlights the difficulty of gathering intelligence about bad practice by firms, as consumers often do not escalate complaints to the regulator. Citizens Advice and Citizens Advice Scotland would

welcome the opportunity to work with PhonepayPlus to raise consumer awareness about the rights and protections offered by the code of practice. We believe that this also highlights the need for further joint working by PhonepayPlus and the OFT. For instance the OFT should amend guidance for brokers to make it clear that any premium rate call charges should be refunded as an up-front fee. We would also urge the OFT to make it clear that non-compliance with the PhonepayPlus code by credit businesses will call into question their fitness to hold a consumer credit licence.

Cold calling and up-front fees together: an open goal for fraud!

Citizens Advice Bureaux are currently seeing another strand of problems where people are the victims of a fraud that uses cold calling and upfront fees for credit brokerage to trick people out of their money. The following cases give some examples.

A CAB in Cleveland saw a 23 year old woman who was living with her partner and two young children in rented accommodation. She worked part time and her partner was unemployed. They had fallen behind with some catalogue and credit card debts of around £3,000. Feeling very pressured the woman went online in search of a loan that could pay off these debts. She found an online company and applied for a £5,000 loan. The loan company requested an up front payment of £150 before any money was released. The woman paid this hoping her loan would follow shortly. The company then requested a further £300 for

23. PhonepayPlus code of practice, eleventh edition. Downloaded from www.phonepayplus.org.uk

24. The PhonepayPlus sanctions guide. Downloaded from www.phonepayplus.org.uk

their commission before the loan would be paid. She paid this amount and the company then asked for a further £350 as a transfer fee, telling her that this was refundable and the loan would follow when paid. She paid this amount and the company asked for a further £400 as she did not have a guarantor. The firm then requested a further £700, including a final transfer fee, before they would release the loan. In all she had handed over around £1,500 for nothing in return.

A CAB in Northumberland saw a 23 year old man who was living with his parents but who had a partner and a five month old baby. He was working and told the CAB that he was trying hard to 'sort his life'. He received an unsolicited phone call from a firm offering him a £1,500 loan. He thought that this would help him to repay some mobile phone debts and make some provision for his partner and baby. The firm gave him a phone number, an access code and an account number and told him to pay £111 and then £105 through a money transfer firm to 'prove his ability to meet repayments'. But he did not receive the loan and was £216 out of pocket, with little chance of recovering his money. He was frustrated but also very angry that such a scam could be done so easily and wanted to warn others of this.

A CAB in Oxfordshire saw a 21 woman who was a lone parent with a three year old son. She received an unsolicited phone call from a loan company based in Delhi, India. They offered her a loan of £2,500 which they said would be easy to set up. The woman agreed. This was the first loan she had ever had and she intended to use the money to pay off her small overdraft (the only debt she had prior to this) and decorate her house. In order to take out the loan she was asked to pay the first monthly payment of £75 which she did. She was then asked to pay another £100 in order to get the loan and was told this would be added to the amount of loan she received. In total she paid £365 to the company but

had not received the loan or any paperwork. When the client called them to ask for a refund, their response was that she would need to pay another £50 in order to get a refund or she could pay another £60 fee and get the loan money. The woman had spent all of her money on this and had nothing left for essentials like gas and electricity until she received her next benefit payment.

A CAB in Surrey saw a 30 year old man who was cold called and offered a loan of £10,000. The caller fraudulently used the name of a well known credit brand but the man did not know this. He was told that he had to pay £245 in order to access the £10,000. He paid the money through a money transfer service to India but the loan did not arrive. He had since paid further sums of £399, £499, £599, £200 and £240, but still received no money. He had borrowed £1,200 to pay for the contributions.

We believe that these cases should send a clear message to policy makers. The combination of cold calling and up-front fees that has become normalised in a section of the UK credit brokerage sector has also created a space for pure fraudsters to move into and prey on often vulnerable consumers. Regulators and consumer groups can work together to help consumers to better spot potential loan frauds. But this is always going to be a long and difficult battle with no guarantee that vulnerable consumers will hear this message when they need to. Instead we believe that the Government needs to act quickly to make sure that cold calling and charging upfront fees are widely seen by consumers as neither normal nor acceptable practices.

Conclusions and recommendations to stop practice harmful to consumers

This report sets out recent CAB evidence on two related practices, cold calling and charging up front fees. Systematic bad practice by credit brokers is causing consumer detriment and there seems to be predatory targeting of consumers who are likely to be vulnerable because of financial difficulties. The report has also highlighted ongoing problems with cold calling in the debt management sector. We have found that:

- Unsolicited real time promotions have led consumers into credit and debt management agreements without proper opportunity to understand the nature and terms of the products and services offered.
- Cold calling has resulted in unauthorized deductions from the bank accounts of consumers who have been persuaded to part with their payment details.
- Consumers are frustrated in their attempts to gain refunds and charged again through premium rate contact numbers when they try to complain about poor treatment.
- There is deliberate and significant non-compliance with distance selling regulations, data privacy rules and premium rate phone service regulation.
- The fact that current consumer credit legislation treats both cold calling by phone or text and asking for upfront fees as normal, acceptable business practices provides an opportunity for fraudsters to steal from often vulnerable consumers.

Citizens Advice and Citizens Advice Scotland believe that there is a compelling case for policy action now to stop the harm consumers are suffering as a result of cold calling by credit firms and charging upfront fees by credit brokers.

We recommend that the Consumer Credit Act 1974 is amended to prohibit:

- **Cold calling for consumer credit business (specifically credit broking, lending and debt management services).** This prohibition would mirror the FSA MCOB rule on unsolicited promotions for first charge mortgages. However we believe that the government should consider going further in limiting any existing customer relationship provision to cases where that existing relationship is a creditor-debtor relationship and where the credit product being promoted would not increase either the cost of borrowing, the debtor's overall debt payment burden repayments or their overall level of indebtedness.
- **Lenders, brokers and debt management firms from taking any payment in respect of arranging or setting up a loan or other agreement until that agreement has been concluded in accordance with consumer credit and other consumer protection law.**

Although the Government may be concerned that business should only be subjected to additional regulation as a matter of necessity, this report describes a series of wholly illegitimate business practices by firms that have no apparent fear of the consequences of breaching consumer protection law.

The Government, however, has recently introduced regulations to prohibit traders assisting consumers to buy or sell rights under a timeshare or long term holiday product from 'accepting any consideration before the withdrawal period in relation to the contact'.²⁵

25. The Timeshare, Holiday Products, Resale and Exchange contracts Regulation 2010 (SI 2010 / 2960)

We urge the Government to be equally firm in dealing with the problems described in this report, putting reforms into effect with the utmost urgency; perhaps as an outcome of the current Consumer Credit and Personal Insolvency review.

In the meantime we would also recommend the following:

- The OFT should revise their Debt Management Guidance to explicitly reference unfair practices connected to cold calling and make it clear to firms that these will not be tolerated in future.
- The OFT should amend their Irresponsible Lending Guidance to explicitly address the unfair marketing practices highlighted in this report.
- The OFT should amend the guidance on the right to recover brokerage fees to make it clear that a refusal to return a fee before any introduction has been made (cases outside of section 155) will be considered as an unfair practice.
- The OFT should work with PhonepayPlus to ensure that credit firms only use premium rate numbers where this is fair and not harmful to consumers. Where firms have given consumers premium rate numbers, OFT guidance should ensure that consumers can recover the charges along with any broker fee.
- The OFT should take prompt action to enforce breaches of this guidance by firms.
- The OFT and the Information Commissioner's Office should work together to investigate the way that consumer contact information is being used by credit firms. We are particularly concerned at evidence suggesting that information passed among firms is being used for predatory targeting of consumers in financial difficulty.
- The Government should amend the Data Protection Act to allow the Information Commissioner's Office to take a more prescriptive approach to the form and content of privacy notices and the conduct of firms using consumer's personal data for marketing purposes. We believe that credit firms should be required to seek explicit and active opt-in consent from consumers before their details being used for further unsolicited marketing.
- The OFT and the National Fraud Authority should work with consumer groups to deliver an ongoing consumer awareness campaign on avoiding loan scams and predatory marketing by consumer credit businesses.
- The FSA should work with banks and consumer groups to raise consumer awareness about dealing with unauthorised deductions and their rights under the Payment Services Regulations 2009.

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