Citizens Advice

Central Office
Myddelton House
115-123 Pentonville Road
London N1 9LZ

Tel: 020 7833 2181
Fax: 020 7833 4371
www.citizensadvice.org.uk

John Fingleton
Chief Executive
The Office of Fair Trading
Fleetbank House
2 – 6 Salisbury Square
London
EC4Y 8JX

Dear John

3 March 2011

Super-complaint - unsolicited real time marketing and up-front fee charging practices by consumer credit brokerage firms and other consumer credit businesses

I am writing to ask you to consider a super complaint within the meaning of section 11(1) of the Enterprise Act 2002 about marketing and charging practices in consumer credit and related markets that Citizens Advice and Citizens Advice Scotland believe are significantly harming the interests of consumers.

Citizens Advice is the operating name of the National Association of Citizens Advice Bureaux, a designated consumer body for the purpose of making super-complaints under section 11 of the 2002 Act, designated by the Enterprise Act 2002 (Bodies Designated to make super - complaints) Order 2004.

Detail of the complaint

On 3 March Citizens Advice and Citizens Advice Scotland are publishing an evidence briefing, *Cashing in, CAB evidence on cold calling for credit and up front fees charged by loan finding firms.*

As the title suggests, the central issue of the report and our super-complaint is the significant and we believe widespread consumer detriment flowing from two related business practices in the consumer credit market:

- Firms cold-calling consumers by telephone and text to promote consumer credit products and ancillary credit services.
- Firms taking upfront fees for credit services, often by persuading consumers to give them their banking details, sometimes by taking

unauthorised deductions. CAB clients report getting little or no service in return and are unable to get their money back.

Our evidence mainly highlights problems with credit brokerage firms offering to help people find (typically) non-mainstream, higher cost, unsecured loans. However we are also seeing problems with debt management companies and claims management companies contacting consumers about consumer credit debts.

How consumer interests are harmed

Many of the cases seen by the CAB service involved seemingly legitimate licensed firms whose unsolicited marketing and charging practices appear to breach consumer protection legislation or otherwise harm consumers. Key problem areas include:

- Consumers are being cold called and getting little information about products and firms. There was little evidence that these consumers were given the information required by the Financial Services (Distance Marketing) Regulations 2004 either during the phone call or subsequently.

- There was little evidence that consumers had received the information about cancellation rights required by Distance Selling Regulations either over the phone or in writing. CAB evidence highlights cases where consumers had tried to cancel a credit brokerage agreement but the firm has refused to acknowledge this.

- Firms were using consumer's bank details to take unauthorised payments from their bank accounts. There was little evidence of consumers getting redress using the Payment Services Regulations 2009 to recover unauthorised payments from the payment services provider.

- Consumers who had paid upfront fees for credit brokerage found that they received little or no service in return. Some consumers were subsequently a offered a more expensive or otherwise unsuitable loan than that promised in the initial contact. Others received no offer or a loan at all. The common experience was of firms refusing or simply ignoring requests for a refund of these upfront fees.

- In some cases firms had given consumers premium rate telephone contact numbers without properly explaining the potential costs or offering an alternative. This appeared to breach the PhonepayPlus code of practice.

- People in contact with a credit brokerage firm subsequently received further cold calls or texts from other credit brokers, lenders, debt management services or claims management services. As a result people paid multiple up-front fees for no service or a poor service in return.

In summary, the report highlights how the combination of unsolicited marketing and charging up-front fees is being used by firms in a way that is unfair and exploits consumers. Consumer credit, consumer protection and data privacy legislation do not appear to be protecting consumers adequately against firms that seem unconcerned with the consequences of flouting the law.

Opportunity for fraud

In some cases criminals posing as credit brokerage firms have cold called consumers and persuaded them that a loan will be made available after paying up-front application and administration fees, often by international money transfer to an overseas account. Some consumers have suffered significant loss as a result. This type of fraud can only succeed because consumers continue to believe that both cold-calling and charging up-front fees for credit broking are legitimate practices. But this belief is understandable, given that neither practice is currently prohibited by consumer credit law. These consumers are very unlikely to get their money back.

Limited redress from firms

Although these consumers may in theory have had a right to redress from a firm, a payment service provider or the Financial Ombudsman Service, we believe that these are unlikely to be used by poorer and financially vulnerable consumers in particular. While these rights are important, they are not acting as a sufficient deterrent to prevent detriment or challenge bad practice at a market level.

Consumers were vulnerable due to financial difficulties

The overwhelming majority of the problems cited in our report relate to consumer credit products and service services aimed at people who are either financially excluded or in financial difficulties. Credit brokers tended to offer higher cost credit to people who would find it difficult to access mainstream credit because of a poor credit record, low income or both. Many of the CAB clients who experienced detriment said that they were under financial pressure at the time they came into contact with the firm. Secondary cold-calling of debt management and claims management services tended to be explicitly targeted at people vulnerable because of financial difficulties.

Scale of consumer detriment

CAB evidence highlights the amounts lost by individual consumers as a result of being cold called and/or charged up-front fees in respect of consumer credit services.

In many of the cases we saw consumers were persuaded to pay an up-front fee of around £50 to £100. Some consumers experienced these practices on more than one occasion from more than one firm, multiplying the loss accordingly. In addition some consumers experienced further and consequential losses of similar scale as a result of premium rate call charges or bank charges incurred as a result of an unauthorised payment transaction from their account.

In cases where consumers had been persuaded to pay up-front fees to a debt management and/or a claims management company the scale of loss was typically rather larger, in the order of hundreds of pounds. People that were victims of fraud could suffer larger losses, in the order of £1,000 to £2,000 in some cases.

Citizens Advice and Citizens Advice Scotland do not collate detailed statistics on cold calling and up-front fee charging practices by credit brokers or other credit businesses. However we have seen evidence of problems experienced by CAB clients across Scotland, Wales and England, suggesting that these practices are both widespread and involve multiple firms.

The Citizens Advice service collects broad statistics on scams, with over 4,250 enquiries in 2009/10. This will include loan advance fee fraud but we are unable to separate these from other types of scam.

However we believe that this figure underestimate the prevalence of problems with both loan advance fee scams and cold calling by credit firms. For instance, Office of Fair Trading research in 2006 estimated loan fee scams affected 100,000 adults at a cost to the UK public of £190 million per year. Likewise Call Prevention Registry, a company operating a telephone preference service, have stated that some 28 per cent of the 3 billion unsolicited sales calls made each year came from loan and debt management companies. This suggests that firms are making around 840 million unsolicited marketing calls for consumer credit services each year.

As a result Citizens Advice believes that the detriment arising from the cold calling and up-front fee charging practices of credit brokers, other consumer credit businesses and organised criminals is so widespread as to harm the interest of consumers generally. Therefore we believe that a super-complaint under section 11 of the Enterprise Act 2002 is appropriate to escalate these problems to the Office of Fair Trading for further investigation.

What are we asking the OFT to do?

Citizens Advice is asking the Office of Fair Trading to investigate the use of both unsolicited phone and text marketing and up-front charging practices by credit brokers and other consumer credit businesses. In particular we would like the OFT to consider the following (non exhaustive) list of issues:

- to investigate the current scale of unsolicited phone and text marketing (real time and electronic promotions) by consumer credit brokers and other credit businesses.

- to investigate the scale of loan advance fee fraud perpetrated on consumers using cold calling and up-front fee charging.

- To consider whether the scale and scope of consumer detriment caused by these practices justifies a ban cold-calling by consumer credit businesses, particularly broking, lending and debt management services.

- to consider investigating the case for prohibiting cold calling and up-front fee charging by claims management companies; particularly in respect where this is in respect of consumer credit or ancillary agreements.

- to investigate the adequacy of current consumer protection to address the problems highlighted in our report, including the following issues:

  1. How to improve the deterrent quality of the consumer credit and other consumer protection regimes so that firms are less inclined to engage in the bad practices highlighted in our report
  2. How to ensure that firms cannot profit from practices causing widespread consumer detriment
  3. How to ensure that all consumers, including the most vulnerable, who have experienced detriment as a result of unsolicited marketing and up-front charging practices get effective redress from firms under consumer credit and other relevant credit protection legislation.
  4. How to ensure that consumers are made aware of rights under consumer protection legislation and better alerted to the dangers of loan advance fee fraud.

- to investigate whether current data protection and privacy laws need to be amended to give consumers adequate protection against harmful unsolicited phone and text marketing.

- to investigate what more can be done to protect consumers from loan advance fee scams perpetrated by oversees criminals using techniques such as unsolicited real time marketing and bogus websites to hook consumers into paying over up-front fees for non-existent credit services.

Desired outcomes

We are hopeful that our super-complaint will result in a package of measures to achieve the following four outcomes:

- Stop the consumer detriment flowing from cold calling and up-front fee charging by consumer credit licence holders and claims management firms.
- Effectively tackle and quickly close down loan advance fee frauds
- Raise awareness among consumers of both the rights available under consumer credit and consumer protection law
- Raise consumer awareness of loan scams and how to avoid them.

We have sent a copy of this report to relevant Ministers and officials at BIS, officials at the Financial Services Authority, National Fraud Authority, the Information Commissioners Office, PhonepayPlus, as well as to a wide range of financial services industry trade bodies and consumer organisations.

I would be happy to meet with you to discuss the issues raised in this report and our supercomplaint.

Yours sincerely

Gillian Guy
Chief Executive