

Paradise Lost

CAB clients' experience of timeshare and timeshare-like products

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The CAB Service operates as the UK's European Consumer Centre and European Extra-Judicial Network, helping consumers resolve cross border disputes.

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1 Introduction and summary

- 1.1 There are 440,000 timeshare owners in the UK, over three quarters of whom have a timeshare abroad. Across the European Union (EU) it is estimated that 1.14 million consumers own a timeshare. The value of this market is significant. Within the UK alone the timeshare market is worth over £108 million per annum.¹ And this does not include those consumers who are members of holiday clubs.
- 1.2 Consumers buy timeshares for the prospect of a cheaper holiday by purchasing in advance, coupled with the certainty of holiday accommodation for years to come. In some cases they might be expecting a return for their investment. For an average initial outlay of £6,500², plus annual fees for ongoing costs such as maintenance, consumers might buy the right to use specific self-catering accommodation in a holiday complex for a specified time period each year, commonly one week, for a period of years.
- 1.3 There are many consumers who enjoy and are fully satisfied with their timeshare. When the Office of Fair Trading (OFT) sought information from timeshare owners in 1990, they noted that over half (64%) of those who wrote in were entirely content.³
- 1.4 But hundreds of CABx have reported cases where consumers are far from happy, having lost thousands of pounds on a holiday club scam. And new types of scam seem to emerge all the time. Problems in the timeshare market are not new. For example, when the OFT investigated the market in 1990, some 13 years ago, they identified the following problems:
- misleading mail shots offering prizes;
 - aggressive and deceptive behaviour by sales canvassers;
 - sales staff trained in high pressure selling techniques which seek to control buyers' behaviour and suppress rational decision making; and
 - incomplete, misleading and untrue information.

The OFT concluded then that: '...the cost of timeshare does not appear to compare favourably with the cost of a series of annual self-catering holidays of similar standard.'³ Twelve years later in November 2002, the European Consumer Centres (ECC) reported evidence of the same problems with products resembling timeshare, brought to them by consumers they had advised on problems with cross-border purchases.⁵

¹ Department of Trade and Industry (Nov 2002) *Consultation on a proposal to amend The Timeshare Act 1992 in relation to the provision of information about the right to cancel no: CCP 007/02*

² Timeshare Consumers Association website www.timeshare.org.uk

³ Office of Fair Trading (Jun 1990) *Timeshare: A report under section 2 (3) of the Fair Trading Act 1973*

⁴ European Consumer Centres (Nov 2002) *Report: The Problems of Products Resembling Timeshare in Europe, The Experience of European Consumer Centres*

⁵ European Consumer Centres (Nov 2002) *Report: The Problems of Products Resembling Timeshare in Europe, The Experience of European Consumer Centres*

- 1.5 The Timeshare Act 1992 in the UK and the EU wide Timeshare Directive (94/47/EC) sought to address some of the problems through measures to combat pressure selling, lack of accurate information and difficulty in getting deposits refunded. The legislation defined timeshare and created:
- a cooling off period;
 - specific information requirements, including for timeshare contracts; and
 - a ban on requiring deposits at the point of sale.
- 1.6 Whilst this legislation has tackled some areas of consumer detriment in the timeshare market it does not deal with post sales problems. And the legislation has so far been a failure as a response to rogue trading which side-steps the law. The main problem is that timeshare is defined in very specific terms. The rogue element of the market had only to modify the product slightly to be outside the legislation. For example, timeshares lasting 36 months or more are caught by the legislation but 35 month contracts are not, a timeshare in a building is caught whilst timeshares in a boat are not. Consumers purchasing 35 month timeshares or boat timeshares have no cooling off rights or rights to mandatory information.
- 1.7 Since the early 1990's timeshare-like products, often referred to as holiday clubs, have come into this market. They are designed to avoid the existing consumer protection measures and seem to be sold by rogue traders who often disappear with consumers' money, having failed to deliver the product.
- 1.8 Timeshare-like products such as holiday clubs do not offer the consumer any certainty of being able to use specific accommodation, only access to an unidentified (and possibly non-existent) pool of accommodation that may or may not be available. Lump sum initial payment and periodic payments are demanded and the product is still sold as a means of accessing cheap holidays. However, the lump sums have been found by the OFT to be between £3,000 and £12,000.⁶ Exactly the same consumer problems as those identified in the OFT report of 1990 on timeshares are common. Misleading and deceptive information and aggressive pressure selling techniques in timeshare-like sales cause significant consumer detriment and cost consumers thousands of pounds every year. CABx and European Consumer Centres (ECCs) have reported many cases where consumers have found that the legislation on timeshare has failed to protect them, because what they have bought is not a timeshare.
- 1.9 The sale of timeshare and timeshare-like products has proved one of the largest areas of reported cross border enquiries for the European Consumer Centres (ECC), whose function is to advise and assist consumers to deal with problems arising where they buy outside their own European Union member state. In 2002 ECCs dealt with over 1,400 such cases.⁷ In the UK, trading standards departments reported over 4,400 complaints in 2002.

⁶ Office of Fair Trading (Jun 2003) *Fair Trading*, Issue 32

⁷ European Consumer Centres (Nov 2002) *Report: The Problems of Products Resembling Timeshare in Europe, the experience of European Consumer Centres*.

- 1.10 Timeshares and timeshare-like products, such as holiday clubs, have been associated with rogue selling practices for too long. There is a clear need for better legislation to protect consumers and honest traders. The failure to bring the timeshare legislation up to date has been excused by the need for a general fair trading duty to tackle all forms of rogue trading by businesses in their dealings with consumers, across the member states of the European Union (EU). Citizens Advice welcomes the European Commission's proposed Directive on Unfair Commercial Practices.⁸ Nevertheless there is a continuing need for sector specific legislation in our view, and for this to be kept fit for purpose.
- 1.11 This report looks at timeshare and timeshare-like products and at evidence submitted to Citizens Advice by over 150 CABx about problems in this market, over the period from January 2002 to July 2003. We look at how they are sold, why they can be a cause of consumer detriment and at how this detriment might be addressed in the future. We assess whether EU proposals for an Unfair Commercial Practices Directive are sufficient.

Key recommendations

- 1.12 In this report Citizens Advice makes a series of recommendations to remedy consumer detriment in the timeshare and timeshare-like market, and to improve EU proposals aimed at tackling practices of rogue traders. These recommendations include that:
- The UK Government should introduce legislation to amend the Timeshare Act 1992 at the earliest opportunity so as to bring more contracts within the scope of the law. The important consumer protection this Act provides to consumers purchasing timeshares in the UK should be extended to transactions which involve purchases of membership of holiday clubs and schemes of varying descriptions and timeshares in boats. The minimum 36 month contract duration, in order to benefit from the legislation, should be lifted.
 - The European Commission should undertake an urgent review of and come forward with amendments to the Timeshare Directive which as a minimum:
 - redefines timeshare to include transactions which involve purchases of membership of holiday clubs and schemes of varying descriptions and timeshares in boats;
 - removes the minimum 36 month contract duration in order for a contract to be covered by the legislation;
 - improves the minimum cooling off period from the present 10 days to at least 14 days;

⁸ Proposal for a Directive of the European Parliament and the Council concerning unfair business- to-consumer commercial practices in the internal market (the unfair commercial practices Directive) European Commission, Brussels, 17.6.2003 COM(2003)

- creates a requirement for all companies engaged in the timeshare market, including agents who offer to undertake resale of timeshares, to register in the member states in which they operate and to make suitable arrangements for the protection of consumer pre-payments (for example where a cash back scheme is in operation).
- The UK Government and the European Commission should both consider extending the scope of consumer protection obligations in timeshare legislation to give timeshare owners protection in relation to administration of management fees.
- The European Commission should ensure that the proposed Unfair Commercial Practices Directive, which will outlaw unfair and misleading trading practices, gives protection to all consumers. In particular it must enable enforcement action to be taken against those traders who act unfairly towards and take advantage of vulnerable consumers. As presently drafted it is not at all clear that this will be the case.
- Consumers should be able to take civil action against traders who have failed to comply with the provisions of the Unfair Commercial Practices Directive, when it is in place.
- Much CABx evidence points to the need for more proactive and energetic enforcement across the EU of a variety of consumer protection law, including that relating to unfair contract terms and the existing timeshare legislation. In the context of the introduction of the Unfair Commercial Practices Directive we would like to see all Member States:
 - commit sufficient resources to ensuring that action is taken against those traders who break the law;
 - take action to advertise widely when action is taken and positively encourage consumers to come forward with complaints and evidence, setting up simple systems for complaints to be made.
- Consumer protection and enforcement bodies in all EU member states should work together on sustained information campaigns to educate consumers about the perils of purchasing timeshares and timeshare-like products.

2 Timeshare and timeshare-like products

2.1 This chapter looks at:

- timeshare;
- timeshare legislation and the protection it provides for consumers; and
- timeshare-like products such as holiday clubs.

What is timeshare?

2.2 Timeshare is a holiday accommodation and facility package. It is thought to have first started in Switzerland in the mid 1960s by a company called Hapimag. The basic concept was that consumers could purchase a share in specific holiday accommodation in advance by buying a time period, usually one week per year. During this time the buyer has the right to use the accommodation. The number of years may be fixed or the timeshare may be sold in perpetuity.

2.3 The accommodation is normally part of a holiday complex where shared facilities are available. So, for example, a timeshare might offer swimming pools, saunas, restaurant, bar and shop. Other venues may offer golfing or skiing facilities. Costs of maintaining the accommodation and these other facilities are normally recovered via service charges each year.

2.4 The legal definition of a timeshare, under Directive 94/47/EC, includes that the contract gives the right to use holiday accommodation in a **building** or “pool of accommodation”, for **at least one week per year** for **at least three years**.

2.5 Timeshare-like products fall outside this legal definition by having no link to specific accommodation, being limited to less than 36 months or by providing accommodation that is not in a building, such as those using boats.

Types of timeshare

2.6 Two types of timeshare have been available, ‘fixed’ and ‘floating’ timeshares:

- The ‘fixed’ type provides a fixed unit of accommodation for the specific week(s) bought.
- The ‘floating’ type offers the timeshare week(s) in a seasonal time band such as ‘high season’ or ‘low season’. The specific dates are not fixed and must be booked by the consumer. This ‘floating’ timeshare may be in a specific accommodation unit or one of a number of units in the timeshare complex. Under some timeshare schemes points can be bought and then exchanged for the accommodation. The different types of accommodation unit in the complex have different values at different times in the year.

- 2.7 Holiday clubs are always 'floating' and may be offered in a number of different timeshare complexes. There is however no guarantee of availability of accommodation.

How do timeshares work?

- 2.8 There are often several elements to the purchase of a timeshare. Firstly, to buy timeshares, consumers pay a lump sum to buy the right to occupy a timeshare unit of accommodation. This is paid to the timeshare developer, or their agent. Consumers might use a credit agreement to fund the purchase. The cost varies but an average cash cost is £6,500⁹ making this a major purchase. Timeshare-like products also require a lump sum payment for membership of what is often termed a 'holiday club'. CABx evidence has included examples of lump sums of up to £15,000.
- 2.9 Secondly, there are annual maintenance fees for the ongoing costs of the timeshare unit such as cleaning, insurance, refurbishment, local taxes etc. Gas, electricity and water may be included or paid for separately. These annual fees are paid to the developer, their agent, a resort management company or to an owners committee. The cost of annual fees varies enormously and can be difficult for timeshare owners to predict. How much they are spent on depends on the way the timeshare has been set up. But failure to pay can result in the timeshare itself being repossessed. The Timeshare Consumers Association (TCA) have noted that annual fees for a single timeshare week are currently often between £200-£400⁵. For timeshare-like products there are also annual membership fees and failure to pay these can result in the membership lapsing. CABx often report cases of £250 in annual fees for holiday clubs.
- 2.10 Finally, for those consumers who want to exchange their timeshare week and holiday at another timeshare venue, there are exchange companies who charge an annual fee, plus a fee to carry out the exchange. The timeshare contract often stipulates which exchange company can be used. There may also be specified arrangements for renting the timeshare and/or for reselling it. Timeshare-like products, such as those on boats, may also require consumers to join an exchange company and require that the product be sold back to the original trader.

⁹ Timeshare Consumers Association website www.timeshare.org.uk

Who sells timeshare products?

2.11 Timeshare and timeshare-like purchases often involve lengthy contracts with complex information about the rights and duties of a number of businesses. They vary but commonly involve the following businesses:

- the developer who built the complex;
- trustees who hold the deeds to the timeshare property;
- promotion companies who deal with advertising and/or canvass consumers, through mail shots or cold calling by phone, to get consumers to attend presentations;
- a marketing company who sell the timeshares or timeshare-like product;
- a management company who run the complex;
- for timeshares, owners clubs who may also take on the role of management;
- exchange companies through which to exchange their timeshare;
- re-sale businesses who act as agents for consumers who want to sell a timeshare; and
- finance companies from whom consumers borrow the money for the initial purchase. This is commonly organised through the developer or marketing company.

The consumer often has no choice over suppliers dealing with resale or letting.

2.12 It can be difficult for consumers to know who is responsible for what when things go wrong or they wish to cancel a contract. And it can be difficult to track the company down. This is further complicated by the fact that timeshares and timeshare-like products are often bought whilst consumers are on holiday outside their own country. The legislation governing the purchase of timeshare is usually linked to the place where the purchase was made and/or the location of the accommodation. Although there is an EU Directive on timeshare some member states have added to the minimum and this means for example, rights on cooling off can vary. In addition many companies in this market are registered off shore, for example in Belize, the British Virgin Islands or Gibraltar and this can add to consumers' problems when they seek redress.

What are the problems?

2.13 UK consumers have long been attracted by timeshares both at home and abroad. In the UK the first timeshare resort was at Loch Rannoch, which opened in 1976. By the end of 1989 there were 77 UK timeshare resorts. According to the Timeshare Consumers Association (TCA), there are now about 130 timeshare 'resorts' in the UK, including boat marinas. UK consumers made up about half of all Europe's timeshare owners in the late 1980's and were raising their timeshare problems with their Members of Parliament (MPs).

2.14 In 1989 the Office of Fair Trading (OFT) was asked to investigate the timeshare market, under the Fair Trading Act 1973. A detailed report on timeshare was produced in 1990, '*Timeshare*' – June 1990. The report looked at the range of problems consumers reported to the OFT and specifically at the major problems

directly associated with the marketing methods being used. It examined what consumer protection was available in 1990 and made recommendations about what would be needed to protect consumers' economic interests.

2.15 The OFT report identified the problems for consumers as including:

- misleading mail shots offering prizes;
- the aggressive and deceptive behaviour of canvassers;
- sales staff trained in high pressure selling techniques which seek to control buyers' behaviour and suppress rational decision making; and
- incomplete, misleading and untrue statements by sales staff.

These problems are still evident in the timeshare-like market today.

2.16 In 1990 the OFT recommended as a minimum, consumers should:

- be provided with detailed and comprehensive information prior to signing an agreement, including details of all purchase prices and timeshare rental costs;
- have cancellation rights for the timeshare and any credit contracts used to buy the timeshare;
- have comprehensive protection for all monies paid, including deposits, management fees and rental and resale monies.

2.17 In addition the OFT recommended:

- the Trade Descriptions Act should be amended to cover misleading statements about the chance of receiving a prize or gift;
- that there should be new mechanisms to target unfit traders; and
- that further targeted legislation would be necessary if standards did not improve in this market.

The UK response to timeshare problems

2.18 In 1992 the UK government introduced the Timeshare Act. It applies to UK based and UK sold timeshare agreements and has provided some but not all of the consumer protection recommended by the OFT as a minimum. It provides:

- protection for timeshare agreements, but only where the timeshare is in a building and lasts for three years or more. This means that 35 month agreements are not caught and nor are timeshares on boats;
- for detailed information to be included in the contract. But there is no requirement that pre-contract information should be given to all prospective purchasers. Consumers have to be aware they can ask for this information pre-purchase;
- cancellation rights of 14 days. But this is only for contracts defined as timeshare, i.e. those in a building and lasting for over 3 years; and

- a ban on payment of deposits, for timeshares as defined, but no protection of other monies associated with the transaction such as management fees.
- 2.19 The wider issue of amending the Trade Descriptions Act was never addressed, so that misleading statements and award schemes have yet to be effectively tackled. Further, developing a mechanism for targeting unfit traders and revisiting the market where standards have not improved, as the OFT had suggested, were never taken forwards. The management fee and re-sale side of timeshare sales and all the activities of the timeshare-like products that have been developed since 1992 are not covered by timeshare legislation.

The EU response to timeshare problems

- 2.20 Timeshares have often, though not exclusively, been bought whilst the consumer was on holiday in another country and often within the EU. The need for legislation on an EU wide basis was recognised in the 1990 OFT report.
- 2.21 An EU Directive¹⁰, the Timeshare Directive, was adopted in 1994. It was designed to focus on what seemed to be the problems in the market at that time. It sought to provide consumer protection with timeshare sales because:
- consumers were subject to high pressure selling and needed time to change their mind so a cooling off period of at least 10 days was required;
 - consumers were paying deposits during the high pressure sale that they could not get back. Taking deposits at the point of sale was therefore banned; and
 - consumers were not being given essential information. There was often confusion about exactly where/what the timeshare accommodation was and what it comprised, the costs involved, and the terms of the agreement. These elements are a requirement in the written timeshare contract; and must be available in a language relevant to the consumer. Failure to include this information extends the cancellation period by up to three months. The fact this information is available has to be included in timeshare advertisements too.
- 2.22 In seeking to pinpoint the problems and provide a legislative answer it was necessary to define timeshare. But as soon as timeshare was defined in law it was a simple task for those keen to avoid the legislation that protected consumers to offer services that come outside the timeshare definition and thus outside the legislation. In the case of timeshare, the defining elements that allowed this were that the product was not only holiday accommodation in shared use but also:
- in a specific building or buildings;
 - that the period of the right of occupation was at least 3 years and

¹⁰ EU Directive 94/47/EC of the European Parliament and the Council (Oct 1994) – ‘*On the protection of purchases in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis*’

- that the right to use the accommodation was for a minimum of one week a year.
- 2.23 The Directive laid down the minimum requirements each member state must adopt but, importantly, it did not limit the scope of legislation. Article 11 of the Timeshare Directive made provision for more favourable protection to be adopted in member states.
- 2.24 When the EU Commission looked at the member states' approaches to the implementation of Directive 94/47/EC, as part of their working document of 27 March 1998 (SEC 1998, 527 final) they noted where national provisions had gone beyond the minimum the Directive required. Significant additional measures include that:
- in Portugal the legislation also regulates holiday clubs;
 - in the UK, Germany, Austria, Belgium, Denmark, Finland, France, Luxembourg and Sweden there is no minimum annual period of entitlement so that timeshares of less than a week a year are included;
 - the 10 day cooling off period is extended to 14 days in the UK and Austria and 15 days in Belgium; and
 - in France the written contract must be provided so the consumer can think about it during a seven day period and the 10 day cooling off period only begins once the consumer has signed and returned it.
- 2.25 In looking at how the Directive might be amended in the future, the Commission noted that "the vast majority of cases reported to the European Institutions concern a series of problems and situations which Directive 94/47/EC cannot resolve as it stands". Following the Commission's report, MEPs called for tough new legislation designed to give a high level of consumer protection and to address problems that currently fall outside the legislation¹¹. A proposed review and revision of the Timeshare Directive is included in the Commission's Consumer Policy Strategy 2002-2006 and was scheduled for 2003¹². There is no evidence of this review taking place.

Timeshare-like products

- 2.26 As soon as member states put the Timeshare Directive in place within their own legislation the rogue element of the timeshare market created products such as short term deals that fall outside the definition of timeshare and thus outside the legislation. These timeshare-like products avoid the ban on deposits, the cooling off period and the obligation to provide clear information on contract terms. Over time, new variant holiday clubs akin to timeshare have emerged,

¹¹ European Parliament (Jul 2002) *Resolution on the monitoring of Community policy on the protection of purchasers of the right to use immovable properties on a timeshare basis* (Directive 94/47/EC) (2000/2208(INI)), (Rapport Medina Ortega), (Doc.PE 298.410)

¹²Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of Regions, 'Consumer Policy Strategy 2002-2006' COM (2002) 208 final (2002/c137/02)

often using the same accommodation. These newer products avoid legislation designed to protect consumers.

2.27 The timeshare-like products that have emerged but which are outside the scope of timeshare legislation include:

- timeshares using boats such as narrow boats and canal boats that come outside the definition because the accommodation is not in a building;
- contracts of less than 36 months;
- holiday club membership allowing accommodation to be booked at an unspecified venue for a time period each year. But often these do not specify any building and may be for less than a week a year. There is no guarantee of the availability of any accommodation and, without the detailed information required in a timeshare contract, no way for consumers to check if there is any accommodation;
- sale of a number of points to be used as tokens in exchange for accommodation that may be at any one of a number of venues. These products are outside the 'fixed building' definition for this type of product to be a timeshare. Each accommodation has a points value but the number of points needed to access accommodation can be increased by the club operator, reducing the value of the original purchase. There is no guarantee of availability of any accommodation.

2.28 Timeshare-like products have in common:

- an initial financial outlay, which the OFT have found to be between £3,000 and £12,000 in cases consumers have reported, sometimes including the sale of a credit agreement¹³ and
- maintenance fees whenever accommodation is used, plus an annual membership renewal fee.

2.29 The market for timeshare-like products causes the same types of consumer detriment originally identified by OFT in the sale of timeshare:

- initial inducements, prizes, free holidays etc that may be of little value and disguise the purpose of the contact;
- pressure selling, long and/or hyped up presentations sometimes in remote venues;
- actively misleading verbal information, promises and half truths;
- substantial initial payments or deposits required at the time of the sale; and
- traders reluctant to accept cancellation.

Many of these are trading practices that the Timeshare Directive sought to rule out.

2.30 The sales techniques used have continued to allow businesses in this market to sell the idea of accessing cheap accommodation and/or travel in a variety of forms without actually providing it. It is not uncommon for internet sites to be

¹³ Office of Fair Trading (Jun 2003), *Fair Trading* Issue 35

used for booking holiday club accommodation that fails to materialise and for associated products such as travel and car hire which fail to deliver the cheap deals given as examples during sales presentations.

- 2.31 The new products, such as the holiday club, are sold on the basis that they give consumers more choice of places to stay on holiday. But there are no rights to any accommodation, at any time.
- 2.32 In the following chapters we examine the problems with timeshare and timeshare-like products Citizens Advice Bureaux (CABx) report to Citizens Advice, assess the nature of the current problems in this market and outline what action is needed to address the consumer detriment these cases illustrate. The majority of these problems involve timeshare-like products.

3 Problems experienced by timeshare owners

- 3.1 Consumer detriment affecting existing timeshare owners is most often reported by CABx when clients sell their timeshares. In some cases the client finds they have exchanged a timeshare for timeshare-like products and consequently have no rights concerning information, deposit taking and cancellation at point of sale. In others cases clients have experienced resale scams.

Timeshare trade-ins

- 3.2 Those who own and enjoy their timeshares may want to switch from one timeshare resort to another and to buy further time periods. These consumers are however, vulnerable to the rogue practices of companies offering timeshare-like products. In cases reported by CABx, clients have found out too late that the consumer protection they had for their timeshare purchase does not exist for the purchase of a holiday club product. There is no prohibition on deposits, no cooling off period and no requirement for specific information to be supplied in the contract.

A London CAB client found that £509 had been taken from her credit card account without her consent when she agreed to buy lifelong membership of a holiday club in exchange for the timeshare she wanted to sell. When she tried to cancel she found that the sale of her original timeshare was cancelled, so that she still had to pay for the annual maintenance fees. Instead of cancelling the holiday club membership, the company reduced it to a 35 month agreement with no cancellation rights.

A couple who contacted a Derbyshire CAB for advice estimated they had lost £5,750 in a deal that promised to improve their choice of holiday. Whilst on holiday they were persuaded to exchange their three weeks of timeshare time for points in a holiday club scheme. A selling point was the right to book 18 months in advance so that they would know they had their chosen accommodation. However they were not told that the points could be devalued. Their points were devalued to the extent that in two years, they had been unable to afford even one weeks holiday. Disclosure of information about the extent to which points can lose their value is crucial if consumers are to make an informed decision to buy into a points system. A contract that permits the scheme operator to change the value of points creates an unfair balance between the parties and should perhaps be regarded as an unfair contract.

A middle aged CAB client from Lancashire was distressed to receive threatening letters from a timeshare business when she tried to cancel a timeshare agreement. She had been persuaded to upgrade her existing timeshare for new accommodation being built at the resort but two years later there was still no sign of the new development.

All these consumers have suffered a substantial financial loss.

Timeshare resale scams

- 3.3 CABx also report cases where consumers have been contacted by businesses offering to sell their timeshares, who have charged fees for this service but failed to deliver the service. It is common for these firms to claim to have waiting buyers.

South Wales CAB clients lost £14,000 when a resale company disappeared having sold their timeshare for them but not handed over the money. The company changed its name and denied all liability for the money. The contract was made in another EU State and the clients are seeking legal advice about how to pursue a claim through the courts.

A Leicestershire CAB advised a client who lost £1,000 after she had been targeted by businesses who offered to sell her timeshares, following the death of her husband. In the course of a year she was contacted by three differently named businesses offering to sell her two timeshares. She paid £303 to the first to sell one timeshare and £295 and £396 to the second business to sell both timeshares. She sought advice when she was contacted by a third business and urged to cancel the arrangements with the first two. No sales have materialised and she is seeking a refund through the credit card she used.

The clients of a Kent CAB received an unsolicited telephone call from a business based in Tenerife who claimed they had American customers who were interested in buying their timeshare for £15,500. They were persuaded to join the company's travel concept scheme to enable them to access the sale, at a cost of £6,290. This appears to be similar to a holiday club, with no cancellation rights. They paid £1,000 deposit. No sale has materialised. They have asked their credit card company to refund their deposit. The bureau commented that these scams need to be exposed and publicised.

A Hampshire CAB advised a client when he was told the sum of 10,400 Euro was being held for him. The company claimed to have a buyer for his timeshare but required a fee of 16% of the sale price to be paid first. There was no evidence that any buyer existed and the bureau were concerned this was a scam.

A Wiltshire CAB reported their client had been cold-called by a company offering to sell the timeshare she had bought with her late husband. She had heard nothing from them following the payment of a £1,589 fee and was unclear as to exactly what the fee was for.

- 3.4 Resale companies often seem to require fees before undertaking the sale. In some cases the consumer is unable to successfully contact the company again once the fee has been paid. Many CAB clients have been embarrassed when they discover they have been duped into parting with large sums of money and have nothing to show for it. Resale companies may be aware that consumers have often been trying unsuccessfully to sell their timeshare and that their offers

represent a potential answer. Where it is claimed a buyer is already waiting to buy, consumers are likely to be keen not to delay if the sale would be lost.

- 3.5 When timeshare owners deal with a timeshare resale agent, there are no specific provisions in the UK or EU legislation protecting their interests. For example, there is no prohibition on deposit taking by these agents or any requirement for the agent to obtain the best price for the property, or provide a written contract detailing the fees and services charged. A proposed new code of practice from the Organisation for Timeshare in Europe (OTE) sets out a number of commitments on handling resales of timeshare. These include that subscribers to the code will not require upfront fees from vendors. However, the effectiveness and reach of this code has yet to be proven. We discuss the role of self regulation in this market more fully in chapter 6.

4 Problems with timeshare-like products

4.1 In this chapter we look at CAB clients' experiences of timeshare-like products that fall outside the Timeshare Act 1992 and EU Directive 94/47/EU. We look at:

- the incentives and prizes used to attract consumers to a presentation;
- the parties involved in the sale and companies that disappear;
- products with a life of under 36 months;
- sales that involve boats;
- money back 'guarantees'; and
- internet clubs.

4.2 Timeshare-like products account for 89% of the cases CABx report relating to the timeshare and timeshare-like market. Whilst timeshare legislation still fails to address timeshare problems that occur post-sale, such as those of escalating maintenance fees and resale scams, it does provide the point of sale protection of a cooling off period, during which deposits cannot be taken. And, there are requirements for specific details to be included in contracts. These protections in relation to timeshare products, combat the impact of pressure selling, verbal misrepresentation and problems reclaiming deposits, that are commonly reported by CABx in relation to **timeshare-like** sales. CAB evidence points to the need for timeshare legislation to be revised at UK and EU level, to include timeshare-like sales of holiday clubs, boats and timeshares of less than 36 months duration.

4.3 CABx report problems relating to a range of timeshare-like products, most of which use the term 'holiday, vacation or travel club' to describe the product. In most cases consumers do not seem to understand the difference between buying membership of such clubs and buying a conventional timeshare. The companies concerned are unlikely to explain that one key difference lies in whether the product is controlled by legislation designed to protect timeshare purchasers, and there is little information available to consumers at the time and place when it is needed. Consumers who try to cancel their membership of these clubs have found that they are unable to do so under the Timeshare Act (or the Timeshare Directive as implemented in other EU states' legislation) as it does not apply. Not surprisingly, the companies themselves do not normally include cancellation clauses in their contracts. Citizens Advice have received many reports of CAB clients who have tried to cancel these agreements but have been unable to do so.

False incentives and 'prizes'

- 4.4 Prizes and incentives to purchase are a common feature in the sale of timeshare-like products. They are often the first step in a sales process involving high pressure selling that lasts a number of hours. Offers of prizes imply the consumer will be given something for nothing. But for CABx clients they seem to have led to expensive purchases that fail to measure up to the verbal promises of sales staff and, in some cases, result in debts. And when there is no right to cancel the contract or 'cool off' consumers are left out of pocket.
- 4.5 As the 'prize' is the incentive to attend a presentation where the timeshare-like product is sold, getting the prize is always conditional on attendance. But it is not uncommon for CABx to report that, despite attending the presentation, clients have been required to pay sums of money to get the prize and, in many cases, no prizes materialise. In other cases the company disappears with consumers' money.

CAB clients from the West Midlands received an unsolicited phone call to say they had won a competition. To collect the prize they were asked to attend a special presentation. The presentation turned out to be a holiday club promotion. They were persuaded to leave a £2,950 deposit. When they had time to think they wanted to cancel, but this was refused and they are now being threatened with legal action.

A CAB client from Northern Ireland was offered a 'free' holiday for attending a promotion held at a local hotel. To obtain the free holiday she was required to pay £35 per person and an additional £12 each for insurance. After six months of trying unsuccessfully to contact the company she discovered they had gone into liquidation, having failed to provide the 'free' holiday.

- 4.6 CABx report that 'free' holidays are often a feature of telephone sales pitches aimed to attract consumers to a presentation. Where consumers take up the 'free' holidays they are often also required to attend a presentation at the holiday venue abroad. The European Consumer Centres refer to this practice¹⁴, as a mechanism for targeting the sale of timeshare-like products. Where CABx clients have been approached in the street whilst on holiday abroad, they are commonly given a scratch card that shows they have won a 'free' holiday but to obtain it they have to attend a presentation.

A CAB in Hertfordshire reported their clients were promised there would be no hidden charges for what was described as a 'free holiday', provided they attended a presentation. In fact they were required to pay a £197 registration fee, airport taxes of £27 per person and transfer fees of £12 per person. As the prize was for a family of four and they had three children

¹⁴ The Problem of Products Resembling Timeshare in Europe, The Experience of European Consumer Centres (Nov 2002)

there was an additional £400 charge. Their 'free' holiday was costing over £750.

CAB clients from North London were given scratch cards in the street during a holiday in Tenerife. The cards showed they had won a 'free' holiday which they went to collect. But the 'free' holiday proved very expensive. At what turned out to be a sales presentation they were persuaded to pay a £250 deposit on a £12,950 contract to join a vacation club. They later went to the company's offices and tried to cancel but were told the contract was binding. They have now received letters threatening legal action for non-payment, including the threat that a county court judgement will result in the withdrawal of all their credit and an attachment of earnings order.

A retired couple from Dorset were on holiday in Tenerife when they were given scratch cards in the street and told they had won a prize. When they went to collect it they were offered two free holidays instead. After six hours of hard selling one client was taken to their hotel to pick up a credit card, leaving their partner at the presentation thus ensuring the client would return. They paid a £2,000 deposit on a £3,900 holiday club agreement and were told to expect a brochure of holiday destinations in the next 28 days. Nothing came.

- 4.7 Consumers are deceived into thinking that they have genuinely won a prize. They are unprepared for the sales techniques employed to sell timeshare-like products. At the presentation they are subjected to sales tactics designed to achieve a binding sale. This approach was recognised as unfair in the sale of timeshares but since legislation was introduced which gives cancellation rights and makes deposit taking during the cooling off period illegal, there are far fewer reports about such practices being used to sell timeshares.

The company chain and businesses that disappear

- 4.8 CABx often report that the sales of timeshare-like products involve several different agreements and a chain of companies. What is being bought and from whom can be far from clear and several businesses can be involved. The nature of timeshare-like products includes that they often do not offer specific accommodation. Further, these agreements are not subject to any requirements that specific information should be included in the contract or available beforehand. For example, there is no requirement to identify how much of any accommodation is available to club members and how many members there are, so consumers cannot judge how likely they are to successfully obtain the bookings they request.
- 4.9 In addition, the sale may be made via a marketing company who act as agents. Where prizes are offered, a separate promotion company may be responsible for any prize that was promised. It can be difficult for consumers to determine who is legally responsible for delivery of the product.

An elderly CAB client from Cumbria was excited because she was told she had won a prize. She had attended a presentation whilst on holiday in Malta and been entered in a prize draw. She did not have the credit card the company asked for but they did take her name and address. After the holiday she received a letter from Spain saying she had won the 2003 Grand Prize Draw worth £6,000. The prize was:

- life membership of a holiday club guaranteeing four weeks holiday in luxury accommodation a year forever (but giving no details about the accommodation); plus
- 1000 free shares, which the company claimed could be worth £8-£12 each. Contradictory statements in the paperwork described the flotation of the company as an event in the future but then said the share certificates would be sent within 28 days if she agreed to the offer; and
- the benefits of membership also offered discounts on cruises, hotels, car hire and best possible flights prices, with reference to a web site. But no details or price comparisons were given.

In the separate purchase agreement, there were:

- fees to pay for administration and membership activation costing £450;
- £55 annual membership fees; and
- accommodation fees from £145. And since Malta is not within the EU, it may be more difficult for this client to know her rights.

There was no guarantee of obtaining chosen accommodation, resorts or holiday dates and bonus offers were, 'subject to promoters' terms' so there was no guarantee they would prove to be cheaper than those available from other providers. The contract seemed to be little more than a scam to attract consumers to part with £450.

4.10 There is no legal requirement for timeshare-like contracts to provide the key information that must be included in timeshare agreements such as:

- the name and address of contracting parties;
- an accurate description of the accommodation available and its location; and
- what services and facilities are included.

4.11 In some cases reported by CABx there are several businesses' names detailed in the paperwork and the relationship between them is far from clear. The consumer often does not know who has legal responsibility for delivering on the elements of the contract.

A CAB in Cambridgeshire reported a case where the consumer lost £950 in a scam involving three companies which, one by one, subjected him to misleading offers, high pressure selling and unfair contract terms. The first company offered him a cheap holiday and holiday vouchers to undertake a mystery shopping exercise. This proved to be nothing but a come-on to attend a holiday club presentation abroad given by yet another company. The second company was acting as a middle-man for the third company

supposedly running a holiday club which would give him discounts on holidays. Following very high pressure sales tactics, during which he was told that unless he signed up and paid that day the deal would be withdrawn, the man agreed to join the club and paid a £950 deposit towards the membership fee of £3950. The contract gives no commitments on the level of discounts he would get on holidays purchased through the club.

A Surrey CAB client had been passed around three separate companies all of whom denied liability for the 'free' holiday he was awarded for attending a presentation, or for refunding the £1,495 he paid to join a holiday club. He had originally paid by credit card but had sent a cheque instead when the company requested it, not realising that this would affect his rights to make a claim against the credit card provider, under the Consumer Credit Act 1974¹⁵, if the contract terms were not met.

- 4.12 The need for consumers to be provided with clear information about the businesses that they are dealing with and what they are buying is recognised in several EU Directives, including those on Timeshare, Distance Selling and Credit, all of which require specific details to be included in the contract. But there is no such requirement for holiday clubs that are not currently controlled by the Timeshare Directive.

Untraceable companies

- 4.13 Further, rogue traders in this market frequently disappear with consumers' money and are difficult to trace. In a number of CABx cases the sums lost by clients when they have paid for timeshare-like products run to thousands of pounds.

A Lancashire client lost £1,750 when she could get no response from a holiday club in Tenerife, having paid a deposit for a holiday club. When her friend went on holiday in the same area she found the police had ransacked the company's offices.

A CAB in Hampshire reported the case of a couple who paid £2,600 for a three year holiday club membership which was to include a free holiday in the first year but have not received anything.

A Lancashire client paid £3,900 to a holiday club that is now in liquidation. £1,900 was paid using a credit card cheque which, it was argued, did not attract the equal liability to redress from the creditor available in UK credit law. To attract equal liability the creditor and trader have to have an arrangement for the credit to be used. But because a credit card cheque

¹⁵ This gives protection if products which have been bought by credit (using a credit card or credit agreement) and cost £100 or more, turn out to be faulty or do not match what the consumer was told and relied on when buying them. The credit company is equally liable with the trader for breach of contract or misrepresentation where there is a pre-existing arrangement between the creditor and supplier.

can be made out to any business this link between the trader and the creditor was missing.

A London CAB reported their client had paid £4,000 for a timeshare-like product that did not exist. Her credit card company claimed the equal liability rights she has in UK law do not apply to goods or services bought abroad.

A Surrey CAB reported their client lost £1,200 when he swapped his timeshare and bought further points under a holiday club scheme that ceased trading.

- 4.14 The sums paid in these cases are substantial amounts. They raise the issue of whether there should be protection of lump sum deposits and payments where businesses fail, such as a bonding scheme. Consumers are usually at the bottom of the list of creditors when a limited company goes into liquidation and have little chance of getting their money back.
- 4.15 Where a business ceases to trade, changes its name or disappears, the process of locating who is liable to consumers is time consuming and costly for enforcement authorities. Consumers can often find it impossible to obtain refunds. Many rogue traders who disappear are not pursued and may well go on to repeat the process in other enterprises in the future. In markets where large sums of money are involved there is an argument for establishing a register of traders, and creating an obligation to protect, or bond, consumer pre-payments.
- 4.16 The need for protection of consumers' money that has been paid in advance for holidays is recognised under the provisions of the Package Holidays Directive. Deposits and pre-payments for holidays must be protected under a bonding scheme. Timeshare and timeshare-like agreements escape this legislation if they only concern the supply of accommodation and the package does not include travel or another 'tourist service' that is not ancillary to the accommodation.

Avoiding legislation – contracts lasting less than 3 years

- 4.17 The use of a contract time period of just less than three years is clearly an attempt by timeshare-like companies to avoid the provisions of timeshare legislation. In cases reported by CABx, a 35 month contract period often goes hand in hand with the contract description 'holiday club', with consumers signing agreements for 35 months membership of a club that provides potential access to accommodation and facilities, often from venues detailed on a web site.

A CAB in Dorset reported their client thought he was collecting a 'top prize' he had won on a scratch card, during a Spanish holiday. Instead he was subjected to an eight hour presentation and pressurised into buying a holiday club membership lasting only 35 months but costing the huge sum

of £12,000, which he could not afford. By the time he came to the CAB for help it was too late to use the 10 day cooling off period the bureau found hidden in the small print, and there was no right to a refund of the £600 deposit he found had been deducted from his credit card.

The client of a Kent CAB discovered he could not cancel a holiday club agreement when he found it was different from the verbal description given at the presentation he attended. He paid a £769 deposit and agreed to a credit contract for £2,200 in return for a 35 month club membership where he would have to accept last minute bookings and always take holidays in mid-winter.

After a gruelling six hour presentation, a CAB client in South Wales signed a 35 month holiday club membership agreement in Mijas, Spain. At the presentation he was promised holidays at a reduced price and paid a deposit. When he found no evidence that the holiday club prices would actually be cheaper he wanted to cancel. There is no cooling off period and no protection against the taking of deposits. Debt collectors were pursuing him for the balance of £5,700.

- 4.18 Despite their short term nature and the promise of cheaper holidays, these contracts require a significant outlay by consumers. The deal has to be hyped up to be sold at all. Consumers are not given the information they need to make a reasoned choice and have no opportunity to shop around and compare prices. Information that must be provided under timeshare legislation, such as the location and description of the accommodation, what facilities are available and any charges for them, is often withheld, as in the following case.

A Buckinghamshire CAB reported their client had attended an event offering a 'free' holiday. The company offered a 34 month holiday club membership. When the client asked for a written copy of the terms and conditions during the sales presentation she was asked to leave. Had the contract lasted 36 months and concerned specific accommodation, and thus been caught by timeshare legislation, she would have been entitled to this information and failing to provide it would have been a criminal offence.

- 4.19 For 35 month agreements to enjoy the protection of timeshare legislation it would be necessary to change the definition of timeshare currently used in the Timeshare Act. This would be permitted under the current Timeshare Directive. Article 11 of Directive 94/47/EC states that the Directive does not prevent member states from adopting more favourable provisions. In July 2002 MEPs, reporting on the timeshare and timeshare-like market, concluded that with a few exceptions member states had used a minimalist approach in transposing the Directive and most had failed to take advantage of the opportunity to provide more comprehensive consumer protection.¹⁶ One member state, Portugal, has introduced legislation that includes holiday clubs and some states have provided a larger cooling off period than the 10 day minimum. However, to be

¹⁶ European Parliament (Jul 2002) *Resolution on the monitoring of Community policy on the protection of purchasers of the right to use immovable properties on a timeshare basis* (Directive 94/47/EC) (2000/2208(INI)), (Rapport Medina Ortega), (Doc. PE 298.410)

fully effective, all member states would need to extend their timeshare legislation in such a way to improve consumer rights where they purchase holiday clubs abroad.

Boats

- 4.20 CABx report problems with a number of timeshare-like products where the accommodation is a boat, most commonly a narrow boat or canal boat. Some companies exploit the fact that boats are outside the scope of the current timeshare legislation. The cost of buying a timeshare-like agreement in a boat seems to be similar to the cost of buying a timeshare in a property, which costs an average of £6,500¹⁷. Companies use high-pressure sales techniques to market timeshares-like products in boats. CABx receive complaints from clients who have been misled during the sales presentation, induced to pay large deposits and enter into agreements, only to find that they are subsequently unable to cancel. Since contracts are made on trade premises, the Doorstep Selling legislation¹⁸ that covers contracts made away from business premises would not apply. So these clients would only have a cooling off period if the product was a timeshare. As only buildings can be timeshares within the definition of the Timeshare Act 1992, boat timeshares are outside this important law.

A CAB in East Sussex reported their 69 year old client, a recently widowed woman, had attended a presentation on the assurance that there would be no pressure to buy and that there was a prize to collect. She had no intention of buying and avoided doing so during the first 90 minutes. When the salesman was replaced by someone more forceful she was persuaded to sign an agreement and paid £1,000, using a credit card. The contract was for one week's use of the boat for 74 years, costing £7,495 plus annual maintenance of £249. This is a very long period for a narrow boat to continue in use. If she used this week for the next 10 years, which seems a more likely scenario, it would cost at least £1,000 a year, making it more expensive than hiring from many canal boat rental companies. Following advice she asked her credit card providers to give her a refund. Her ground for this request was that the purchase had been grossly mis-represented to her following a hard sell and that she had had no opportunity to read the paperwork where she later found hidden charges.

A CAB in Leicestershire was contacted for advice about false information given during a presentation for a narrow boat holiday scheme for one week's use of the boat per year for 27 years, at a cost of £8,000. They were pressured into signing there and then on the basis they would miss the special deal on offer but asked if their family members would be able to use the boat. At home they found the brochure does not allow use by people under 21 years old. They also signed up for an £8,000 credit agreement to fund the purchase. This was refused by creditors but the

¹⁷ Timeshare Consumers Association website www.timeshare.org.uk

¹⁸ Consumer Protection (Cancellation of Contracts Concluded Away from Business Premises) Regulations 1987; EU Directive 85/577/EEC

marketing company were undeterred and offered to accept £6,000, saying the £8,000 was, 'merely a formality', and that although the credit would be secured on their home, 'there would be no risk attached', which was clearly untrue. They were told they had no cancellation rights despite the paperwork clearly stating they had been given every opportunity to cancel and the refusal of the credit providing (in UK credit law) a right to withdraw from the whole contract.

Clients of a Kent CAB were subjected to several hours of intense sales promotion and signed an agreement for a holiday club offer comprising an entitlement to one week per year on a canal boat for 73 years. The cost was £6,495 with a £500 deposit and annual maintenance charges of £249. Clauses included that:

- they were bound by the agreement whether or not they had been able to inspect the boat;
- that failure to pay any charges within seven days of a written request would mean all sums paid so far were forfeit and the marketer would have no further liability;
- that if they wanted to sell this right to a week's holiday they would have to sell back to the company; and
- that they had had the opportunity to withdraw, which was not true.

The enticement to attend the presentation was that they had won a prize, an ex-showroom computer which, it transpired, required several additional items of software to be bought to make it usable.

4.21 There appears to be a clear imbalance between the rights of the consumer and those of the trader in many of these contracts, an issue addressed under the Unfair Terms in Consumer Contracts Regulations¹⁹ and Directive 03/13/EEC²⁰ on Unfair Terms. This legislation provides for such terms to be challenged, but only one Stop Now action has so far been recorded on the OFT's consumer regulation website in relation to timeshare.²¹

4.22 In all the cases CABx report about timeshare-like products involving boats there is an initial inducement to buy, such as a prize, and a high pressure sale. Our evidence is that the costs involved can be over £8,000 and seem to be similar to those of timeshares that **are** covered by the timeshare legislation. The types of consumer detriment experienced are those the Timeshare Directive²² sought to cover, for example by prohibiting the taking of deposits when the contract is made and by providing cancellation rights.

4.23 These agreements are different from those for other timeshare-like products because they do provide exclusive rights of occupation and specifically identify

¹⁹ HMSO (1999) '*Unfair Terms in Consumer Contracts Regulations*' (ref: SI 1999/2083)

²⁰ Directive 93/13/EEC (Jun 2000) *Unfair terms in consumer contracts*

²¹ Office of Fair Trading Consumer Regulation website www.crw.gov.uk

²² EU Directive 94/47/EC (Oct 1994) *On the protection of purchases in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis*

the accommodation, just as those covered by timeshare legislation do. It is only the definition of timeshares as 'immovable property', which means boats are outside the consumer protection in the Timeshare Act 1992. It is clear from cases reported by CABx that companies are able to exploit this to the detriment of consumers by not providing cooling off rights or returning deposits.

- 4.24 A further theme in CABx evidence about timeshare-like agreements for boats is that they are UK based. The Government need not wait for a revised EU Timeshare Directive to improve consumer protection in the UK. It would be a fairly simple amendment of the Timeshare Act to include them and we see no reason to exclude them from timeshare legislation.

Money back guarantees

- 4.25 CABx report that some timeshare-like products appear to be sold with offers of money back guarantees. Sometimes this is linked to an investment product, such as an insurance policy, or shares. Despite offering a product that can last for more than 36 months, they are usually holiday clubs that fall outside the legislative protection for timeshares because they do not provide accommodation in any particular buildings. They have all the same problems of high pressure selling and no rights for consumers to cancel. But because they are sold with the promise of financial return in the future, as well as providing holiday accommodation for many years, companies have induced consumers to pay some of the largest sums CABx report about timeshare-like agreements.

An Oxfordshire CAB reported the case of a client who signed up for membership of a holiday bond club whilst on holiday in Tenerife. The contract was for a 50 year membership costing £15,150. This was to be refunded after 51 months. The man would be charged between £76 and £250 maintenance fee for a holiday week wherever the company had accommodation available. The client described the presentation as being a hard sell. It appeared to offer cheap holidays but he had paid over £15,000 with no guarantee that the bond would pay out and no guarantee of the availability of any suitable accommodation. Finding he could not cancel he told the CAB he felt a complete idiot. He had been completely taken in by the presentation and had no time to consider the purchase or make any comparisons with other products.

CAB clients in their 50's from Wales thought they were collecting a prize won on a scratch card but ended up having a £2,000 deposit deducted from their credit card, without their consent, and signing a credit agreement to pay a further £8,000. The company was selling what was described as cheap holidays, funded through a 'with profits' insurance policy that the couple was told would be invested to provide thousands in profits. The bureau was able to get the credit agreement cancelled but the couple lost the £2,000 deposit. The police are investigating the company but this will not help the couple get their money back.

- 4.26 These cases illustrate how timeshare-like products are being sold to holidaymakers on the promise of earning a return on an investment. But they are unprepared for the hard selling techniques used to obtain a signature and deposit. Many bring with them future debts but no guarantee of any return on the 'investment' and no protection of a cooling off period during which deposits are prohibited, as required under timeshare legislation. This is because no specific accommodation is offered so the product does not come within the scope of the legal definition of timeshare. It is possible that sales of products which involve an insurance or investment product are or will be controlled by EU legislation on insurance and financial services. The Insurance Mediation Directive²³ will mean that from January 2005 there should be EU wide regulation and a means for consumers to access redress.
- 4.27 CABx report that some timeshare-like products are sold with the promise of a 'cash back' deal. The consumer is told they will be able to claim a full refund of the purchase price at a future date. These schemes rely on the consumer failing to remember to claim the money at the appointed time or contract terms so complex the company can claim that the correct process for claiming has not been followed.

An Essex CAB reported their client had joined a holiday club four and a half years earlier. He had paid £4,900 initially but the bureau could not identify from the paperwork what this had been for. He was also required to pay £55 a year for membership. The deal seemed to allow him to have four holidays a year. He still had to pay for flights and a fee for the accommodation so in practice the holidays were expensive, and he had only been able to use the club on two occasions. The agreement said the £4,900 could be reclaimed after 54 months if the client contacted a specified company within a 28 day time slot from the expiry of the 54 months, he tried to claim the refund but his letter was returned unopened. The holiday club company disclaimed all responsibility for the cash back offer.

A Nottinghamshire client signed up for a holiday club membership whilst on holiday in Spain, on the understanding the £5,475 fee was reclaimable after 50 months. He was sent a cash-back certificate which must be returned to register his claim. The terms state that 80% of the original fee will be placed in an investment account and the share the client will receive will depend on its performance. The bureau understands that there are at least 300 similar complaints.

A Lincolnshire CAB reported their client had tried to claim the 50% refund of the initial £16,000 investment made to join a holiday club. This had been described as a cash refund, which could be claimed on the third anniversary of membership. The offer was an incentive to take out life membership with the club. His claim was, however, refused on the grounds that the club was

²³ Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on Insurance Mediation (to be transposed by 15.1.2005)

no longer operating under the precise name or the exact address in his letter.

An elderly CAB client from Essex sought advice after paying a £300 deposit for a holiday club whilst on holiday in Spain. The incentive to attend the presentation was a free holiday anywhere in the world, the prize shown on the scratch card he was given. The membership costs £55 a year, service fees would need to be paid for the accommodation used, an average £195 a week, and he had to pay for his own flights and insurance. The initial charge of £4,800 was described as an 'investment'. He was told he could reclaim this after four years. However the CAB found there was an age restriction on the contract of 25–65 years and an income requirement of £15,000, neither of which he satisfied. The addresses on the paperwork were both accommodation addresses in England, used for mail but the business was not physically based in the UK.

- 4.28 Timeshares were originally based on the concept that the consumer purchased an interest in specific property and this was the justification for an initial lump sum outlay towards building costs. Holiday clubs have also frequently charged CAB clients an initial lump sum but do not provide an interest in specific property. As we have noted earlier this lack of any link to specific property allows them to fall outside the legal definition of timeshare under the Timeshare Directive and the Timeshare Act in the UK. By presenting the initial outlay demanded of consumers as an investment which might earn a return, companies seem to have been able to justify the large sums charged to consumers.
- 4.29 Cash back schemes have been shown to fail consumers in the furniture market in the UK because they offer payment far into the future and often have very specific requirements about what must be done to claim the money. Consumers can fail to remember exactly when they need to make the claim for the cash back or fail to follow the exact requirements to claim. These schemes rely on only a small percentage of consumers following the necessary steps and do not expect to make many cash back payments.
- 4.30 To ensure full cash back refunds are delivered would seem to require traders to have a bonding scheme where the money was deposited with a third party, as currently required for package holiday advance payments, or to have insurance.

The Insurance Mediation Directive 2002/92/EC and proposals for a new Directive on Investment Services, seek both to regulate businesses who sell financial services to consumers across the EU and to provide transparent information to EU consumers. Insurance intermediaries, for example will need to register. In the UK this will involve obtaining authorisation from the Financial Services Authority, which is creating detailed rules on sales of insurance. Proposals also include the setting up of alternative dispute resolution (ADR) mechanisms. These measures are welcome, but there is provision for the exemption of some businesses that do not deal with these financial products on a regular basis. It is too soon to say if the introduction of EU wide regulation of sales of insurance and other financial services products, will improve matters

for consumers purchasing timeshare-like products which promise a return of some kind on the investment made.

E - holidays

- 4.31 It is becoming more common for consumers to purchase their holiday over the internet. But purchases of holidays and timeshares are excluded from most of the provisions of the Distance Selling Directive, which would provide cancellation rights when holidays are purchased over the internet. CABx report that timeshare-like products in the form of holiday clubs are beginning to be sold on the internet as a means of accessing cheap and/or discounted holidays. In return for membership fees and other charges the consumer is given access to a 'private' web site. The internet site is then used to check accommodation availability and for booking.

An Oxfordshire CAB client paid £3,000 to join an on-line holiday club. He discovered the internet site to which he had bought access only had holidays he could not afford. He had been told it would give him access to lots of cheap holidays.

A CAB client in West Yorkshire attended a presentation where he was sold a package described as providing access to a website to book holidays cheaper than those provided by travel agents. He was told that the cruise he had just bought from a travel agent for £4,990 would have cost £2,000 less. But when he tried to book a similar cruise the only offer available was made without a price, so that he would have to commit to pay without this crucial information. The price for the password and pin number to the web site was £3,850, which was immediately taken from his card account. The company whose web site he accessed said they only received £270 of this, which they described as a lifetime fee with an additional annual fee of £69, in return for rights to make four weeks of bookings for holidays a year.

A Hertfordshire CAB reported their clients had signed a 10 year agreement costing £2,350 plus £69 annual membership fees. They had been invited to a presentation of a new holiday concept. They were told the web site offered up to 60% off market prices and that if they were dissatisfied after the first year they could have a refund. What they found was that the web site gave very little information, that the holiday they wanted was not available and that the holiday that could be provided was £200 dearer than prices offered by other companies. When they asked for the refund they were refused and told they had misunderstood the service.

- 4.32 These cases may highlight a new product used by rogue traders familiar to the timeshare and timeshare-like market. High pressure sales presentations promising cheap holidays and requiring an initial lump sum payment followed by annual fees are all in evidence.
- 4.33 In cases reported by CABx it is not clear whether holidays purchased via these club websites would be caught by the Directive on Package Holidays, which

includes protection for advance payments made by consumers. Package holiday legislation defines a package as involving the provision of any two or more of a list of elements of a holiday. These are transport, accommodation and other tourist services that account for a significant proportion of the package. Access to consumer protection under package holiday legislation will also depend on whether the elements of the holiday are bought from one company or many.

Conclusions

4.34 The CABx evidence detailed in this chapter illustrates a range of ways in which consumers are treated unfairly and which result in consumer detriment purchasing timeshare-like products. They include:

- the avoidance of existing legislation;
- high pressure selling;
- lack of cancellation rights;
- loss of deposits and pre-payments;
- a failure to protect deposits and other advance payments;
- unclear information about what is being sold;
- failure to provide clear information about the business involved and where to find them;
- misleading claims; and
- financial failure of the business.

4.35 Chapter 5 looks at how the proposed Unfair Commercial Practices Directive might tackle these issues and thus resolve the imbalance between consumers and business within the timeshare-like marketplace.

5 The Unfair Commercial Practices Directive

- 5.1 Much of the CAB evidence on consumer problems with timeshares and holiday clubs is that unfair trading practices are widespread. But many of such practices are not actually unlawful. The Timeshare Act 1992 and the Timeshare Directive sought to address the major problems in the timeshare market of pressure selling, lack of information and difficulty in getting deposits refunded. But the legislation has failed to prevent rogue trading. Timeshare-like products have been designed to be outside the legislation. The rogue trading practices have therefore continued.
- 5.2 The idea of legislating against unfair trading practices has been discussed in the UK and elsewhere for many years. In 1990 the Director General of Fair Trading set out the case for an overhaul of the Fair Trading Act and accompanying enforcement systems (Trading Malpractices, OFT, 1990) to provide flexible tools to tackle unfair trading practices. Proposals included the ability of Trading Standard Departments to take enforcement action against traders who exhibited unfair trading practices of a deceptive, misleading or unconscionable nature. In addition to breaches of specific legislation, such practices would be enforced through civil actions involving a caution, which would be appealable, and injunctive action. These ideas were carried through to the White Paper, *'Modern Markets – Confident Consumers'* – DTI 1999. When the UK Government failed to incorporate a fair trading duty in the Enterprise Act 2002, the role of providing the protection UK consumers have needed for so long fell to the European Commission.
- 5.3 The European Commission has come forward with proposals to prohibit unfair trading practices, in a draft Unfair Commercial Practices Directive.²⁴ This is warmly welcomed by Citizens Advice. It presents the means to ensure consumers can expect fair treatment. The objective is to outlaw those practices of businesses that are unfair, because they cause consumer detriment, but which are not presently illegal because existing consumer protection legislation does not cover them.
- 5.4 To tackle the consumer detriment that unfair trading practices cause, the new Directive will need to have a sufficiently wide scope to be 'future proof' and provide a framework of rules and powers which enable enforcement bodies to stop unfair practices quickly **and** provide consumers with easy means of obtaining redress.
- 5.5 For many years consumer organisations in the UK and across the EU have been lobbying for the law on timeshare to be changed to capture timeshare-like products and also to protect consumers financially during the life of the agreement. All these requirements were recognised by the UK government over three years ago when the then Consumer Affairs Minister called for a

²⁴ Proposal for a Directive of the European Parliament and the Council concerning unfair business-to-consumer commercial practices in the internal market (the unfair commercial practices Directive) European Commission, Brussels, 17.6.2003 COM(2003)

widening of the scope of timeshare legislation²⁵ to include timeshare-like agreements of under 3 years duration, holiday clubs, boats, timeshare resales and protection for monies paid post-sale, such as annual maintenance fees. The proposals received widespread support but, in May 2002 the Minister said only that the Government would “work with the European Commission in its review of the Timeshare Directive to ensure that the definition of timeshares covers all relevant products”.²⁶ The failure to act has also been excused by the need for a general fair trading duty to tackle all forms of rogue trading to consumers across the EU.

- 5.6 We look first at the Unfair Commercial Practices Directive, as currently proposed, and then at whether it is likely to provide the answer to CAB clients’ experiences in the timeshare and timeshare-like market.

Tackling rogue trading - EU proposals

- 5.7 The proposed Directive would prohibit unfair trading practices pre and post sale. The following is a summary of the draft Directive’s main provisions.

What is unfair?

- Misleading and/or aggressive trading practices are automatically deemed unfair. A business can be misleading consumers because of something that **is** done, such as misrepresenting the product, or because the trader **fails to do** something, such as not providing the information consumers need to make an informed choice;
- Some well known misleading and aggressive unfair practices are listed in the Directive. Although this list is not exhaustive, and it can only be added to by amending the legislation. It will not be updated by cases taken under the Directive;
- Practices are unfair if they are contrary to acceptable behaviour from a trader in the market concerned and are also capable of influencing the average consumer’s decision to buy;

The ‘average’ consumer

- Unfair practices are ones capable of influencing an ‘average’ consumer. An average consumer is defined as someone who is reasonably informed and cautious. If a particular group of consumers are being targeted in the use of an unfair practice the average consumer is someone typical of that group, so for the sale of holiday clubs made at holiday resorts this could be holidaymakers. Member states will not be able to give additional protection to vulnerable consumers, such as people with mental health problems or learning difficulties.

²⁵ DTI (July 2000) *Timeshare Sales – Improving the protection of consumers*

²⁶ DTI (May 2002) *Summary of responses to consultation of timeshare sales*

Scope of the directive

- Although the directive applies to sales of all goods and services, the requirements of any existing sector-specific consumer protection directives will take precedence when determining if a practice is unfair. This means, quite rightly, that a trader cannot be accused of unfairness if the specific practice is to comply with other legislation. Specific rules created by timeshare legislation will still apply. Ensuring the sector-specific directives provide appropriate consumer protection will, therefore, continue to be important if they are to work in conjunction with the Unfair Commercial Practices Directive and not function to provide lower levels of protection.
- All member states must adopt the same approach. There is no scope for adopting consumer protection measures over and above those in the Directive. In view of the wide ranging nature of the Directive, the effect this will have on both present and prospective UK consumer protection legislation is not clear. Citizens Advice would be very disappointed if this otherwise welcome measure resulted in either a reduction in current levels of consumer protection or acted as an obstacle to further change.
- Traders must comply with the Directive in the member state where they are established, even when they trade in another member state.

Enforcement

- When consumers are affected by an unfair trading practice the duty to enforce the Directive lies with the Member State in which the business is based. The success of this Directive will therefore depend on consistent standards of enforcement being available in all Member States;
- Enforcement powers will come largely from the Injunctions Directive²⁷. In the UK this enables Trading Standards Departments, the OFT and other enforcement bodies to react quickly by seeking an undertaking that business will stop the unfair practice and, where that fails, to seek an injunction ordering the trader to stop the practice. In the UK these injunctions in 2002 were introduced as Stop Now Orders.
- Regulations are also being proposed designed to develop co-operation between enforcement authorities and consistency of enforcement of consumer protection laws in all EU Member States and to allow for the exchange of evidence across borders. These provisions would apply to all consumer protection Directives, including the Timeshare Directive as well as the proposed Unfair Commercial Practices Directive.
- There is also scope for action jointly against a number of traders from the same sector, this could be a significant advantage in ensuring that rogue

²⁷ Directive 98/27/EC on Injunctions for the protection of consumers' interests

practices, such as the pressure selling of timeshare-like agreements, are tackled quickly.

Codes and Alternative Dispute Resolutions (ADR)

- Member states will still be able to allow and encourage additional measures to tackle unfair commercial practices through codes of practice. When codes of practice exist the commitments made in the code are to be taken into account in judging whether a trader has engaged in unfair practices. So-called 'code owners' can be pursued presumably when a number of members fail to comply with the code

The possible effect of the proposed Unfair Commercial Practices Directive on the timeshare and timeshare-like market

- 5.8 An important objective for the Unfair Commercial Practices Directive is that it will be a means to deal with rogue trading practices that have not been tackled by existing legislation. In the following table we look at how the proposed new Directive might tackle the consumer detriment CABx report in the timeshare and timeshare-like market that is not caught by the Timeshare Act 1992.

Table 5.1- The effect of an Unfair Commercial Practice Directive on sales of timeshare/timeshare-like products

Consumer detriment CABx identify in the timeshare/ timeshare-like market	Unfair Commercial Practices Directive proposals	Observations
<p>Misleading offers of incentives and prizes where the true purpose is not disclosed.</p> <p>No information about any costs or charges for collecting or using the prize.</p>	<p>Misleading omissions (article 7) includes hiding the purpose of a trade practice.</p> <p>Failing to provide details listed in the Sales Promotion Regulations is a misleading commercial practice (annex 1). This list includes any associated costs.</p>	
<p>Pressure selling designed to control behaviour and induce purchase</p> <p>Untrue or misleading statements</p> <p>Presentations lasting several hours</p> <p>Availability being restricted to that day</p>	<p>Harassment, coercion or undue influence to impair freedom of choice is prohibited. (article 9).</p> <p>Misleading pre-purchase information is prohibited (article 6)</p> <p>Giving the impression consumers cannot leave without signing a contract is listed as an 'aggressive' practice. (annex 1)</p> <p>Eliciting an immediate sale on the grounds of restricted availability is listed is a misleading practice. (annex 1)</p>	<p>To gain redress where pressure selling has been used to obtain a sale consumers will also need cancellation rights. Citizens Advice would also want to see a ban on deposits for timeshare-like agreements.</p>

Table 5.1- The effect of an Unfair Commercial Practice Directive on sales of timeshare/timeshare-like products (continued)

Consumer detriment CABx identify in the timeshare/ timeshare-like market	Unfair Commercial Practices Directive proposals	Observations
Lack of pre-purchase information	Misleading pre-purchase information is prohibited (article 6). But there is no obligation to provide any specific pre-purchase information. The Timeshare Act does require a range of specific information pre-purchase, about the accommodation and facilities but only where the consumer specifically asks for it.	Although misleading information including omissions will be unlawful there is no requirement to provide any specific information before the point when a timeshare or timeshare-like contract is signed. For timeshare-like agreements where there is no cooling off period consumers will therefore have no time to reflect or read and consider the contract.
Lack of contractual information about: The trader(s)	Misleading omissions (article 7) includes a general list of things a consumer needs to know when offered a product to buy. The trading name and the name of anyone he acts for is required to be included in contracts.	In the UK the company name or name of a sole trader or partners in a partnership and the address for service of documents are required to be given in contracts by the Companies Act and Business Names Act but they are not universally enforced. Without this information no civil claim can be pursued. It should be included in the basic list at article 7.

Table 5.1- The effect of an Unfair Commercial Practice Directive on sales of timeshare/timeshare-like products (continued)

Consumer detriment CABx identify in the timeshare/ timeshare-like market	Unfair Commercial Practices Directive proposals	Observations
<p>The product and its availability – including (for holiday clubs) how many accommodation units are available of what type, where and when and how many members there are, to ascertain the likelihood of a successful booking. Clear information explaining the possibility for points values to change, in relation to the cost (in points) of the accommodation.</p>	<p>Unlike the Timeshare Act, which specifies information to be included in the contract, the new Directive deals with ‘misleading omissions’ (article 7) – information consumers need in order to decide to buy. There is a general list for inclusion which includes the ‘main characteristics of the product’ and what these are is open to interpretation.</p>	<p>For timeshare-like products a specific list of information may be needed, to include the extent to which accommodation is likely to be available</p>
<p>Taking of deposits</p>	<p>No provisions are made to either prevent deposits being taken or require their return in the event of cancellation. This therefore seems to be a matter for sector specific legislation</p>	<p>For timeshare-like products a ban on deposits is needed to put these purchases on the same footing as timeshare. In addition, monies paid should be protected in a client account so that it can be repaid to consumers where the business fails or the contract is cancelled.</p> <p>The Unfair Commercial Practices Directive should include, ‘failure to return a deposit paid in the event of cancellation’, within Annex 1: Commercial practices, which are in all circumstances considered unfair.</p>

Table 5.1- The effect of an Unfair Commercial Practice Directive on sales timeshare/timeshare-like products (continued)

Consumer detriment CABx identify in the timeshare/ timeshare-like market	Unfair Commercial Practices Directive proposals.	Observations
		There remains the need for a mechanism for consumers to obtain a refund of monies paid to traders who have engaged in unfair practices or failed to deliver the products or services purchased
No cancellation rights	Cancellation rights are only available where the Timeshare Directive applies.	Without a right to cancel there is no civil right to consider the purchase. So individual consumers who suffer financial loss as a result of unfair pressure selling have no redress.
Lack of protection of deposits/pre-payments and maintenance charges	No provision is made to protect consumers' money, or to limit increases in ongoing charges, such as maintenance fees	Timeshare legislation needs to be broadened to include protection of monies paid by consumers and provide protection for maintenance charges.

- 5.9 The proposed directive will address many of the problems found within the timeshare and holiday club markets, where consumers are misled into attending a presentation and experience high pressure selling. Consumers should be given better information when they purchase, about what they are buying and from whom. Misleading them will be illegal. However the specific information needs of consumers in the timeshare and timeshare-like market are not addressed. For example the number of members of a holiday club, the number of accommodation units available for each week and details of their rental value is essential information but arguably goes beyond the directive's requirement for information about the 'main characteristics' of the product. There remains a need for sector specific requirements in the case of timeshare-like products such as holiday clubs, to protect consumers.
- 5.10 Further, consumers should be able to take civil action against traders who have failed to comply with the provisions of the Unfair Commercial Practices Directive, when it is in place. The Directive creates a basis for enforcement by trading standard departments where firms are found to be trading unfairly. But it does not give consumers new rights, which they can enforce themselves, such as a right to cancel holiday-club contracts or obtain a refund of any deposit paid. In addition, the draft Directive does not include:
- rights of redress for individual consumers when they lose money as a result of an unfair practice;
 - protection for vulnerable consumers;
 - the same level of consumer protection for timeshare and timeshare-like products, such as cooling off rights and a ban on deposits;
 - measures to protect consumers' money against business failures;
 - any mechanism for excluding rogue traders from the marketplace.
- 5.11 To meet these areas of consumer detriment other solutions will be required. In the next chapter we look at how this might be achieved.

6 Additional solutions

6.1 In this chapter we look at the other measures that are needed to protect consumers in the wider timeshare market. We focus on four areas for change:

- improving the legislation;
- improving regulation and enforcement;
- improving consumer redress; and
- improving consumers' knowledge of their rights.

6.2 The proposed Unfair Commercial Practices Directive will only be effective in dealing with new problems and filling gaps in consumer protection if it continues to be supported by sector specific legislation that is fit for purpose. If this is not recognised then there is a risk of a reduction in the level of consumer protection.

Improving legislation

6.3 CABx evidence about the timeshare and timeshare-like market highlight failures in existing consumer protection legislation relating to timeshare, credit and doorstep selling, which will need to be addressed if they are to adequately protect consumers and provide effective sector specific legislation that supports the proposed Unfair Commercial Practices Directive. And there are elements of the proposed Directive that need to be improved.

Improving timeshare legislation

6.4 As we have shown in this report CABx regularly come across problems with timeshare-like products and with timeshare resale that fall outside the scope of the EU and UK consumer protection legislation relating to timeshare.

6.5 When the OFT reported on timeshare in 1990²⁸ they recommended that more extensive legislation would be needed if the market failed to improve. Whilst the Timeshare Act has provided for consumers to be given information and cooling off rights, during which deposits cannot be taken, the development of the timeshare-like market has meant that all the original problems associated with timeshare have remained.

6.6 In 2000 the DTI recognised the need to review the Timeshare Act 1992²⁹, when they announced, 'more protection for timeshare buyers.' The Government proposed that the legislation should be amended so that holiday clubs, floating vessels and timeshares of fewer than 36 months duration should be included, as well as timeshare resales and the protection of consumers' money paid post-

²⁸ Office of Fair Trading (Jun 1990) *Timeshare: A report under section 2 (3) of the Fair Trading Act 1973*

²⁹ DTI Consultation Paper (Apr 2000) *Timeshare Sales, Improving the protection of consumers - Reviewing whether aspects of UK timeshare legislation need updating; Proposals to amend The Timeshare (Cancellation Notices) Order 1992 and The Timeshare (Repayment of Credit on Cancellation) Order 1992*

sale, such as maintenance fees. Whilst these proposals were warmly welcomed by consumer organisations there was no progress until the end of 2002 when the Government came forward with minor amendments to the regulations relating to information traders should give consumers about cancelling contracts. These came into effect in October 2003 as the Timeshare (Cancellation Information) Order 2003. The changes do nothing to address the main need to widen the scope of the legislation.

- 6.7 The Timeshare Directive sets out the **minimum** level of consumer protection member states should provide in their law. Article 11 of the Directive is clear that member states have the scope to provide more favourable protection. UK consumers account for over 440,000 timeshare owners, nearly half the total across the EU. Ideally this needs Europe-wide action. However, there is a significant UK market and the lack of progress at European level should not stop the UK Government improving the law at home. The Timeshare Consumers Association are aware of 130 timeshare resorts, including marinas, that are based in the UK. So for UK consumers purchasing in the UK there is a strong case for government to ensure that the Timeshare Act 1992 is brought up to date.
- 6.8 **Citizens Advice recommends that, as a minimum, the UK Government should introduce legislation to amend the Timeshare Act 1992 at the earliest opportunity so as to bring more contracts within the scope of the law. The important protection this Act provides to consumers purchasing timeshares in the UK, should be extended to include:**
- **holiday clubs, membership of schemes of varying descriptions, including those in boats; and**
 - **the minimum 36 month contract duration, in order to benefit from the legislation, should be lifted.**
- 6.9 EU proposals for a Directive on Unfair Commercial Practices have been designed to fill gaps in consumer protection, such as addressing the issue of pressure selling. But the new Directive does not give the level of specific consumer protection timeshare owners currently receive. The new Directive is designed to be complementary to existing consumer protection Directives. The continuing need for specific rules in specific markets is recognised.
- 6.10 Responses to the DTI consultation on timeshare sales and improving consumer protection in 2000 revealed widespread support for extending the legislation to cover new products, including holiday clubs, and highlighted an increasing number of problems in relation to timeshare resales. When the results of the consultation were published in, May 2002, the Government undertook to work with the European Commission in its review of the Timeshare Directive.³⁰
- 6.11 In July 2002 a group of MEPs reported that with some exceptions a minimal

³⁰ *Timeshare sales improving the protection of consumers, summary of responses to the consultation – DTI May 2002*

approach had been used by many member states in transposing the Timeshare Directive³¹. They proposed that the Directive be substantially strengthened, including that purchases of timeshare-like products should have the same consumer protection, that the cooling off period be extended to 28 days, that monies paid post-sale should be protected and that increases in maintenance fees should be restricted. No action has been taken to implement these recommendations. Revision of the Timeshare Directive is included in the Commission's Consumer Policy Strategy 2002-2006 where it is time tabled for 2003, but no action has yet been taken. This seems to have been postponed until the impact of the proposed Unfair Commercial Practices Directive is clear.

- 6.12 In the meantime, in many cases reported by CABx in this market, traders have proved impossible to trace and have disappeared with large sums of consumers' money. In some cases reported by CABx consumers have been persuaded to pay lump sums of as much as £16,000 in 'cash back' schemes, during high pressure sales presentations, that promise a return of some or all of the lump sum, as an incentive to join a holiday club. In these cases it has proved impossible to retrieve the promised 'cash back'. The often large sums paid by consumers are not protected by any bonding schemes, such as is required under package holidays legislation,³² to provide a level of certainty for consumers.
- 6.13 Further, as major owners in the timeshare market, UK consumers are often targeted by resale agents across the EU and lose money paid in advance fees when resale companies disappear or fail to deliver on promises. The activities of these timeshare businesses are not caught within current timeshare legislation and often prove difficult to find when consumers seek redress.
- 6.14 The wider timeshare market is one where there is clear evidence of rogue trading practices. Reliable information about the identity and legal address of businesses trading in the timeshare and timeshare-like market is essential if consumers are to access redress and if enforcement agencies across the EU are to exercise their consumer protection functions under both timeshare specific legislation and the proposed Unfair Commercial Practices Directive. At present there is no registration scheme for traders in the timeshare and timeshare-like market, as is found in Directive 2002/92/EC on insurance mediation³³.
- 6.15 The European Commission should undertake an urgent review and come forward with amendments to the Timeshare Directive which, as a minimum:**

³¹ EU Directive 94/47/EC of the European Parliament and the Council (Oct 1994) – '*On the protection of purchases in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis*'

³² Package Travel (1992) *Package Holidays and Package Tours Regulations*

³³ EU Directive 2002/92/EC (Dec 2002) *Insurance Mediation* – '*most businesses who sell insurance with the products they are selling to be registered in their member state*'

- **redefines timeshare to include transactions which involve purchases of membership of holiday clubs and schemes of varying descriptions and timeshares in boats;**
- **removes the minimum 36 month contract duration in order for a contract to be covered by the legislation;**
- **improves the minimum cooling off period across the EU from the present 10 days to at least 14 days;**
- **creates a requirement for all companies engaged in the timeshare market, including agents who offer to undertake resale of timeshares, to register in the member states in which they operate and to make suitable arrangements for the protection of consumer pre-payments (for example where a cash back scheme is in operation).**

6.16 Problems in the timeshare market are not restricted to those at the point of sale. In addition to the lump sum payment made in timeshare and timeshare-like sales there are obligations on consumers to pay fees for the maintenance of the accommodation. Consumers can find they are required to pay ever increasing fees and have little access to information about how these fees are spent. Respondents to the DTI consultation in 2000 agreed that transparency was essential.³⁴ And the European Consumer Centres, in their report on timeshare-like products,³⁵ noted that the contracts they see rarely contain information about the mechanism for the annual fees to be updated and consumers report alarming increases in fees are made, sometimes before they have had the opportunity to enjoy their first holiday. There is an opportunity, during revision of existing timeshare legislation to address this issue.

The UK Government and the European Commission should both consider extending the scope of consumer protection obligations in timeshare legislation to give timeshare owners protection in relation to administration of management fees.

Improving doorstep selling legislation

6.18 CABx evidence is that presentations for the sale of timeshare-like products are often conducted at venues such as hotels or on a boat. Doorstep selling regulations are the colloquial name for regulation of contracts concluded away from business premises³⁶. They cover sales made in consumers' homes but also sales at consumers' work places and on 'excursions' organised by a trader. Where timeshare and timeshare-like products are sold at presentations, the use of venues in remote areas has added to the problems consumers have had in deciding to leave a presentation as they have no transport to leave the premises, or cannot get off the boat.

³⁴ Department of Trade and Industry (May 2002) *Summary of responses to consultation of timeshare sales*

³⁵ European Consumer Centres (Nov 2002) Report: *'The Problems of Products Resembling Timeshare in Europe, The Experience of European Consumer Centres'*

³⁶ The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulation. (1988/1998)

- 6.19 In our report on doorstep selling, *'Door to Door'*,³⁷ we noted that sales which take place during excursions are only covered by Directive 85/577/EEC, on doorstep selling, if the excursion is away from premises on which the trader is carrying out any business, whether on a permanent or a temporary basis. Where an event is held in accommodation where the business is being conducted temporarily there is some doubt about whether the doorstep selling regulations apply. For consumers this means the difference between having a cooling off right or not. The trader can argue that they are using the venue as their trade premises. We would like to see clarification on this and appropriate changes to the legislation. We understand that this is currently being tested by the OFT through UK courts.
- 6.20 Citizens Advice recommends that EU Directive 85/577/ECC to protect the consumer in respect of contracts negotiated away from business premises is amended so as to ensure that cancellation rights clearly extend to sales in premises such as hotels and boats used for sales events.**

Improving EU legislation on consumer credit

- 6.21 The sale of timeshare and timeshare-like agreements reported by CABx, frequently involve credit. The credit is provided either through a linked credit agreement specifically for the timeshare or timeshare-like purchase, or through the use of the consumer's existing credit card. In both cases there is likely to be a pre-existing arrangement between the supplier and the creditor so the trader can offer consumers the linked credit, or accept the credit card.
- 6.22 In the UK the Consumer Credit Act 1974 provides, under Section 75, for joint liability so that where a claim is made for breach of contract in respect of the product bought, for example where the trader disappears, consumers can choose to claim against the credit provider or the supplier or both.
- 6.23 Under proposals for a new EU Directive on Credit published in 2002³⁸ joint and several liability (article 19) would only apply where the trader introduced the consumer to the credit. This would exclude cases where the consumer pays using their credit card. This would constitute a considerable reduction in consumer protection for consumers with UK credit card agreements. Further, EU aspirations for increasing consumer confidence in cross border purchasing may be harmed by such a reduction in protection. Credit card providers are in the best position to vet those businesses they allow to accept their cards and, arguably, have a responsibility to their consumer customers to do this. We have argued that article 19 should be strengthened to ensure no diminution in rights of UK consumers.

³⁷ Citizens Advice (Sept 2002) *Door to Door: CAB clients' experience of doorstep selling*

³⁸ Proposals for a Directive of the European Parliament and of the Council on the harmonisation of laws, regulations and administrative provisions of the Member States concerning credit for consumers (draft presented by the Commission) Sept 2002

6.24 Citizens Advice recommends that European Commission proposals for a new Consumer Credit Directive provides clear joint and several liability in all cases where consumers use credit cards to purchase products, whether the purchase is made in the member state where the card was issued or during a cross-border transaction.

Improving regulation and enforcement

6.25 CAB evidence points to the need for more proactive and energetic enforcement across the EU of a variety of consumer protection law. In the context of the introduction of the Unfair Commercial Practices Directive, we would like to see all member states commit sufficient resources to ensure that action is taken against those traders who break the law.

6.26 Within the cases reported by CABx and detailed in this report, are a number of issues that could be tackled through improved and consistent enforcement of existing consumer protection measures, notably those of the Unfair Terms in Consumer Contracts Regulations 1999, implementing Directive 93/13/EEC, and the Consumer Credit Act 1974, implementing Directives 87/120/EEC and 98/7/EEC.

6.27 Many of the timeshare-like contracts CAB clients receive include terms that create an imbalance between the parties, such as:

- the avoidance of all future liabilities and the retention of all monies paid where the consumer fails to make full payment within a limited period following their signing a contract;
- untrue declarations that the consumer has understood the contract terms. This frequently appears as a separate document where a list of issues that seek to limit consumers rights are required to be initialled at the close of a high pressured sales presentation; and
- terms that permit 'points', bought to exchange for accommodation, to be substantially devalued. CABx have reported cases where devaluation of 'points' has meant that consumers can no longer afford any of the accommodation on offer under their holiday club scheme.

6.28 In addition, CABx clients also frequently claim that:

- sales representatives have lied during the sales presentation for timeshare-like agreements;
- traders fail to provide the services for which they have contracted; and
- traders appear to have ceased to trade.

However, there is fairly limited evidence of action being taken against traders.

6.29 In cases of breach of contract and misrepresentation, the equal liability provisions under section 75 of the Consumer Credit Act 1974 often represent the only means for consumers to obtain a refund of monies paid. But CABx frequently report, that credit card providers refuse to honour their obligations

under this legislation. In these cases enforcement bodies could seek undertakings and/or take injunctive action.

- 6.30 Further, to ensure that consumers are aware of these undertakings and can report to enforcement agencies when traders breach them, Citizens Advice has argued that all injunctive investigations should be made public, and that consumers should be invited to report their experiences.
- 6.31 Citizens Advice recommends that enforcement agencies should make maximum use of their injunctive powers. All such action should be advertised widely and consumers should be positively encouraged to come forward with complaints and evidence through a simple systems for complaints to be made.**

Protection for vulnerable consumers

- 6.32 The draft Unfair Commercial Practices Directive defines consumers likely to be affected by unfair practices, for the purpose of taking enforcement action.
- 6.33 Practices will only be judged 'unfair' if they are sufficiently unfair to influence or take advantage of an 'average consumer'. This is defined as someone who is reasonably informed and cautious (observant and circumspect). It appears that member states will **not** be able to act against traders who take advantage of consumers who are not reasonably informed, or give additional protection to vulnerable consumers, for example people with learning difficulties.
- 6.34 The OFT recognised in its report on vulnerable consumers in 1999³⁹ that 70% of consumers are vulnerable in some way. Consumers may be vulnerable due to poor health, financial exclusion and debt, through language barriers and a range of other everyday issues. By setting the benchmark for judging unfairness at the level proposed, the Commission is in danger of failing to protect significant numbers of EU consumers. And these consumers are often least able to bear the financial impact of unfair trading practices.
- 6.35 We recommend that the EU Commission proposals for the Unfair Commercial Practices Directive are amended to ensure that enforcement action can be taken against those traders who act unfairly towards vulnerable consumers.**

Self Regulation

- 6.36 Government has often seen self-regulation as an alternative that might fill gaps in the legislative regime and that can respond more quickly to consumers' changing needs. And that has also been the case at European level, the Commission is understood to have welcomed the development of a consumer

³⁹ Office of Fair Trading (Jan 1999) *Vulnerable Consumers and Financial Services, The Report of the Director General's Inquiry*

code of practice by the Organisation for Timeshare in Europe (OTE). The most recent version of this Code was discussed with the Commission this summer. As we understand, it is still under development by OTE.

- 6.37 An effective code of practice for the timeshare and timeshare-like market could certainly fill gaps currently outside legislation and offer added value for consumers dealing with code members. A code could also provide a means for dispute resolution for consumers. This could act to increase consumer confidence and respond directly to the consumer detriment experienced in this market, a key element of the Office of Fair Trading's new Business to Consumers code regime, for which criteria has been published.⁴⁰
- 6.38 To achieve these ends a code of practice will need, in our view, to include as a minimum:
- a registration scheme for code members that includes clear and transparent code enforcement;
 - provision of a bonding scheme for investment products in this market, such as those in 'cash back schemes' and provision of a client account for monies paid by consumers;
 - a limitation in the revising of sums for maintenance fees;
 - the provision of a simple leaflet explaining what consumers can expect from code members and commitment to give this to all consumers approached by sales staff;
 - provision of an independent ADR scheme that can be included in Extra-Judicial Networks across the EU (EEJ-Net);
 - independent compliance monitoring and tough disciplinary action for breaches; and
 - the code should be kept under review.
- 6.39 Citizens Advice sees the provision of an efficient ADR scheme as a vital requirement for any code of practice in the timeshare and timeshare-like market. CABx have frequently reported that clients have lost significant sums because they have found the task of taking action against traders, for breach of contract, too daunting where they have purchased cross-border.
- 6.40 In addition any system of self regulation must gain wide coverage of the relevant market if it is to be effective, or make the case for leaving legislation at a minimal level.
- 6.41 The OTE code of practice makes some important and welcome commitments. If adopted by a significant proportion of the timeshare market these could make a real difference. For example cash back schemes are 'banned' (or will not be operated by OTE members); a minimum 15 day cooling off period is adopted for sales of timeshare interests; a variety of promises are made with respect to resale activities, particularly that vendors would not be charged any up-front fee for services. And it is understood that in response to comments from the

⁴⁰ Office of Fair Trading (May 2002) *Codes of Practice – guidance for those drawing up codes of practice*

European Consumer Centres the OTE is in the process of establishing the arrangements for an ADR scheme and is prepared to consider setting up an advisory panel of stakeholders and consumer groups.

- 6.42 However, there are some fundamental weaknesses with the OTE code arrangements and we have yet to see how it works in practice. First it is not clear how far the promise of a 15 day (or any) cooling off period, and other promises about providing consumers with prior information, applies to **all** products sold by the members. The code draws a distinction between 'timeshare-interest' products and 'new holiday products' and fewer commitments are given in relation to sales of the latter. Second, the Code of Ethics does not commit to any independent compliance monitoring activities, such as auditing or mystery shopping, as is expected in the UK if a code is to obtain approval from the Office of Fair Trading under the Enterprise Act. And the governance of the Code seems to be entirely from within the market. In the UK the OFT attaches importance to there being independent involvement in governance. Finally it remains to be seen what effect on the market the code will have. If it is to be an effective reason for not legislating, then it must be proven to control a significant proportion of the market and to work in practice.

Making it easier to obtain redress

- 6.43 If the new Unfair Commercial Practices Directive is to succeed, consumers should be able to gain financial redress easily if they have been a victim of illegal unfair practices.
- 6.44 Timeshare and timeshare-like products often involve large financial outlays for consumers. CABx report clients losing thousands of pounds as a result of unfair trading practices in this field. The OFT in the UK recently estimated consumers purchasing holiday clubs were paying between £200 and £1,000 as a deposit on fees of £3,000 to £12,000.⁴¹ Unfair practices in this market result in significant financial loss in individual cases.
- 6.45 The need for consumers to obtain redress is recognised in the fact that cancellation rights are provided by the Distance, Doorstep and Timeshare Directives. These either allow consumers to reclaim any money paid or ban deposits during the cooling off period. These provisions are aimed at preventing unfair sales practices. The Unfair Commercial Practices Directive will also need to provide consumers with access to redress where a trade practice is unfair and where consumers have suffered a financial loss as a result of that unfair practice, whether it arises pre or post sale. Article 13 of the proposal Unfair Commercial Practices Directive requires member states to put in place penalties for unfair trading practices that are effective, proportionate and which constitute a deterrent. Access to civil redress for consumers who experience unfair commercial practices where action is taken by an enforcement body should, in our view, form part of these penalties. But this will

⁴¹ Office of Fair Trading (Jun 2003), '*Fair Trading*' Issue 35,

need to be clearly spelt out in the Directive if it is to take hold in all member states' legislation.

- 6.46 Citizens Advice considers that where successful injunctive action has been taken against a trader because they have acted unfairly, individual consumers should be able to make a claim for compensation. Those consumers who have suffered the detriment that has resulted in the injunctive action should at least be able to take their own civil action and ask the courts to make an order for compensation. They should be able to use the fact that enforcement action has been taken as evidence in support of their claim. Without measures to facilitate consumer redress traders will benefit financially from unfair trading practices up until the point when action is taken under the provisions of the Injunctions Directive and this cannot be just.
- 6.47 Citizens Advice recommends that the proposed Unfair Commercial Practices Directive is amended so that consumers who have experienced the unfair practices detailed in an undertaking and/or injunction are entitled to make a civil claim for compensation and to use the injunction or undertaking as evidence in support of their claim.**
- 6.48 In order for consumers to be able to seek redress, it will also be essential that they are provided with correct information as to the legal name and address of a business. Article 7 of the proposed new directive on Unfair Commercial Practices includes the name of the trader as information that must be included when an invitation is made for consumers to buy. It does not include that failing to give an address for service of documents would be unfair.
- 6.49 Citizens Advice suggests that the Unfair Commercial Practices Directive be amended to include that failure to provide the full legal name and address of a business be included in the list of misleading omissions at article 7.
- 6.50 In many of the cases CABx report, consumers have lost substantial sums of money paid as deposits to rogue traders in the timeshare and timeshare-like market. When the promises made in these cases prove to be false it has often proved difficult to recover these sums.
- 6.51 Annex 1 of the Unfair Commercial Practices Directive lists practices which will always be considered unfair under the Directive. In our view this list should include the failure to return deposits in the event of cancellation.

Citizens Advice suggests the list of Unfair Practices in annex 1 of the Unfair Commercial Practices Directive should include the failure to return deposits paid by consumers in the event of cancellation.

Improving consumers' knowledge of their rights

- 6.52 The timeshare and timeshare-like market has often demonstrated, in cases reported by CABx, that consumers are not familiar with their existing rights and do not understand, for example, where cancellation rights do and do not apply.

This is clear from a wide range of advice available on websites including the Office of Fair Trading, the Department of Trade and Industry, Timeshare Consumers Association, European Consumer Centres and many others that warn consumers against timeshare-like presentations and appeal to those attending presentations to avoid taking any money and credit cards with them. In their report on timeshare⁴² ECC detail a range of actions used to publicise problems in this market. Whilst these initiatives are welcome and serve to illustrate the need for better consumer protection, it is unlikely to be available at the time when it is needed.

6.53 To address this, the Office of Fair Trading has undertaken a campaign to educate consumers before they go on holiday. Their campaign included a video, press release for use in media programmes, printed leaflets inside travel ticket wallets and information in an airline's in-flight magazine. But it will be necessary to continue with this level of campaigning to reach consumers over a longer time period and across the EU to tackle the consumer detriment currently evident in this market. And it seems likely that this level of communication will continue to be needed until:

- consumer protection in the wider timeshare market is improved;
- the proposed Unfair Commercial Practices Directive is in place; and
- well resourced enforcement action is available across the EU.

6.54 In our view, this work should be linked directly with a simple system for consumers to report complaints and evidence that will help facilitate enforcement actions

6.55 **Consumer protection and enforcement bodies in all EU member states should work together on sustained information campaigns to educate consumers about the perils of purchasing timeshares and timeshare-like products.**

⁴² European Consumer Centres (Nov 2002) Report: *'The Problems of Products Resembling Timeshare in Europe, The Experience of European Consumer Centres'*

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Appendix 1: Citizens Advice Bureaux that submitted evidence on timeshares between January 2002 and July 2003

East Region

Basildon
Bedford
Billericay
Bury St Edmunds
Bushey
Cambridge and District
Dacorum
Dunstable
Ely
Great Yarmouth
Huntingdon
Ipswich
Oxhey and District
Rayleigh

London Region

Enfield
Havering – Hornchurch
Hillingdon / Ruislip
Orpington
Peckham
Twickenham

Midlands Region

Biddulph
Brierley Hill
Boston
Bromsgrove
Burntwood
Cannock
Charnwood
Derby
East Northants
Kettering
Lichfield
Lincoln and District
Low Hill
Lutterworth and District
Melton Mowbray
North Warwickshire
Nottingham

Sleaford and District
Stamford
Stourbridge

Stratford upon Avon
Walsall
Warwick District
Wellingborough

North Region

Batley
Bradford
Calderdale
Derwentside
Doncaster
East Yorkshire
Hull City Centre
Leeds – Otley
Redcar and Cleveland
South Kirklees
Sydenham
York

North West Region

Ashton-In-Makerfield
Birchwood
Crosby
Eden
Hulme
Manchester Central
Royton
Southport
Swinton
Walkden
Walton
Warrington
West Lancs
Workington

North East Region

Stockton Advice and Information
Service

South West Region

Bath
Carrick (Truro)
Cheltenham
North Cornwall
Plymouth
Woking

South Region

Abingdon
Alton
Andover
Ash
Banbury
Bicester
Buckingham, Winslow and District
Bracknell
Canterbury District
Caterham and Warlingham
Cranleigh
Crawley
Crowborough
Deal
Dover and District
Esher
Farnborough
Gosport
Hailsham
Haslemere
High Wycombe
Isle of Wight
Leatherhead
Maidstone
Malling
Medway
Oxford
Petersfield & District
Ringwood and Fordingbridge
Romsey and District
Runnymede
Southampton
Tadley
Tunbridge Wells
Waterside
West Berkshire
Witney and District
Woking
Wokingham

West Region

Bournemouth
Cheltenham
Cirencester
Dorchester and District
East Dorset
Exmouth
Frome and District
Mid Devon
North East Somerset
Plymouth
Purbeck
Salisbury and District
South Somerset
Stroud and District
Torbay
West Dorset

Wales

Abergavenny
Bargoed and District
Bridgend
Caerphilly and District
Carmarthen
Chepstow
Colwyn Bay
Flintshire
Gwynedd District
Merthyr Tydfil
Neath
Newport
Penarth
Prestatyn
Pwllheli
Rhyl
Ynys Mon

Northern Ireland

Antrim

