

The Consumer Credit Bill- a wolf in sheep's clothing for the car trade

I usually curse my computer for crashing on me, but occasionally some of its functions come in handy. Take the word count facility. I usually use this to make sure the articles the Editor gets are of the right length.

I was in a hurry and used the word count facility to see what the big themes were in the new Consumer Credit Bill. The OFT is mentioned more often than consumer credit (178 to 153), licence has 161 mentions, power is there 61 times, and penalties or fines are in there a whopping 35 times!

The Bill was published on 16th December 2004 and by the time this piece is published will be well on its way to being law.

OFT Statistics

The OFT issues an Annual Report every year after the end of its financial year on 31st March. In its last Annual Report for 2003-4, the OFT says that it has issued nearly 530,000 Consumer Credit Licences since it started granting them back in 1976. It also helpfully sets out the complaints figures for the year ending 31st December 2003. The total number of complaints referred to either the OFT or Trading Standards departments in the 2003 were over 850,000.

These complaints statistics are collected and published quarterly. The figures tend not to vary widely from one quarter to another. For this feature I have analysed the complaints for the 3rd quarter of 2003. In Figure 1 is the breakdown of complaints by sector. Both Banking and Transport have a substantial number - but are by no means the worst offenders.

In Figure 2 the complaints received by the OFT are analyzed. The soar away leader is complaints about defective goods and substandard service. However, there are

significant complaints about selling techniques and difficulties in getting faults sorted out.

In Figure 3 the transport complaints are broken down by sector. The biggest offender by a large margin is 2nd hand cars, but there are major complaints relating to new cars there as well as repairs and servicing. With these figures in mind, it is not surprising that the OFT lobbied the DTI heavily prior to the laying of the Bill for greater powers - if only out of a selfish motivation to lessen its own complaint workload.

For those in either the car trade or the motor finance business, there are around 10 big areas in the Bill which will hit hard.

If car dealers thought getting FSA authorization to be able to continue to sell general insurance was tough, then this is going to seem like a teddy bear's picnic when this is through.

Consumer Credit Licences

Car dealers will be paying a lot more for their Consumer Credit Licence - it won't be £175 every 5 years as now. The DTI won't say how much - but it is likely to be a substantial 4 or 5 figure sum every year and may have a component relating to turnover.

The OFT won't grant a licence in the future until it is satisfied that the applicant is a proper person to run that sort of business taking into account their track record. So just like the FSA it is going to want to see the Business Plan, Accounts & Balance Sheets, Disaster Recovery Plans, details of Outsourcing arrangements, to vet the call & contact centres as well as all the customer facing documentation.

If the OFT is not happy, it will demand

changes in the business before it issues or renews a Licence.

OFT Monitoring & OFT Reporting

When the Bill is in force, the OFT will be monitoring all licence holders - be they finance companies or car dealerships - just like the FSA monitors financial institutions now. Any matter - not matter how trivial - will then need to be reported to the OFT. Before the OFT issues or renews a licence, it will vet and approve all customer facing documentation - not merely leave it to Trading Standards to ensure adverts are compliant.

Fines and Dawn Raids

The OFT will also have the power to conduct random dawn raids to collect the information & evidence it needs. This is before it gets round to fining licence holders up to £50,000 every time it finds something wrong - oh and the DTI have given themselves a power in the Bill as well to increase the fine at any time if the OFT find themselves strapped for cash in the future.

Faulty Cars

Disputes about faulty cars will no longer be dealt with in small claims arbitrations or trials in the County Court. In the future these disputes will be dealt with by the Financial

Figure 1

OFT Consumer complaints quarter 3 of 2003

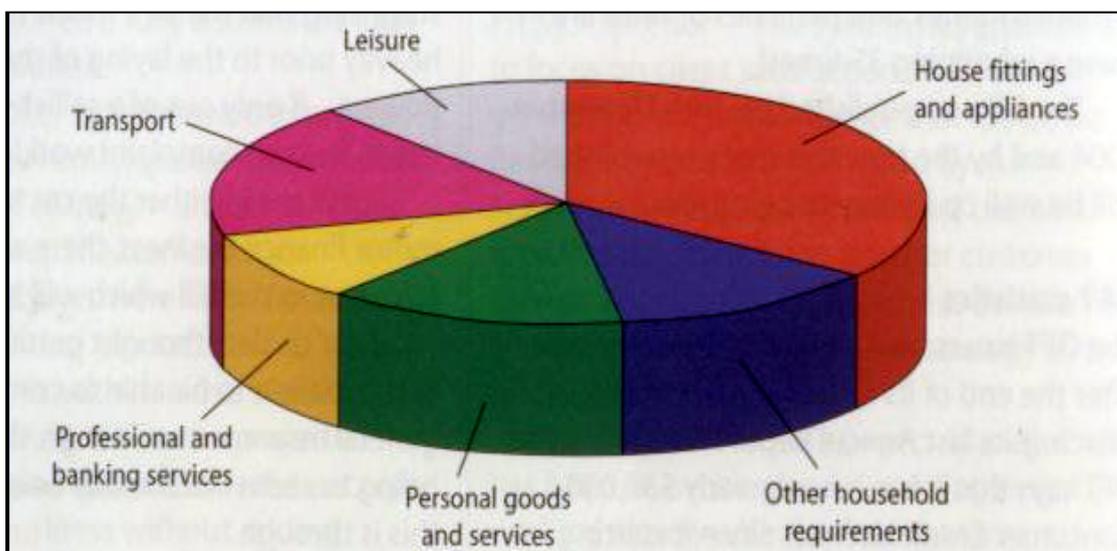


Figure 1

Transport complaints by category

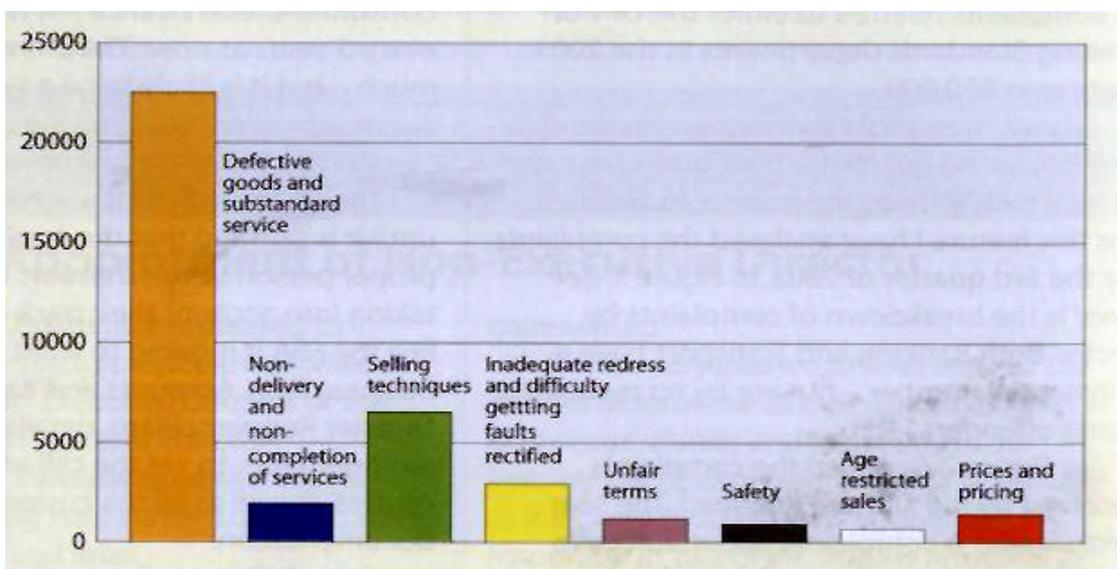
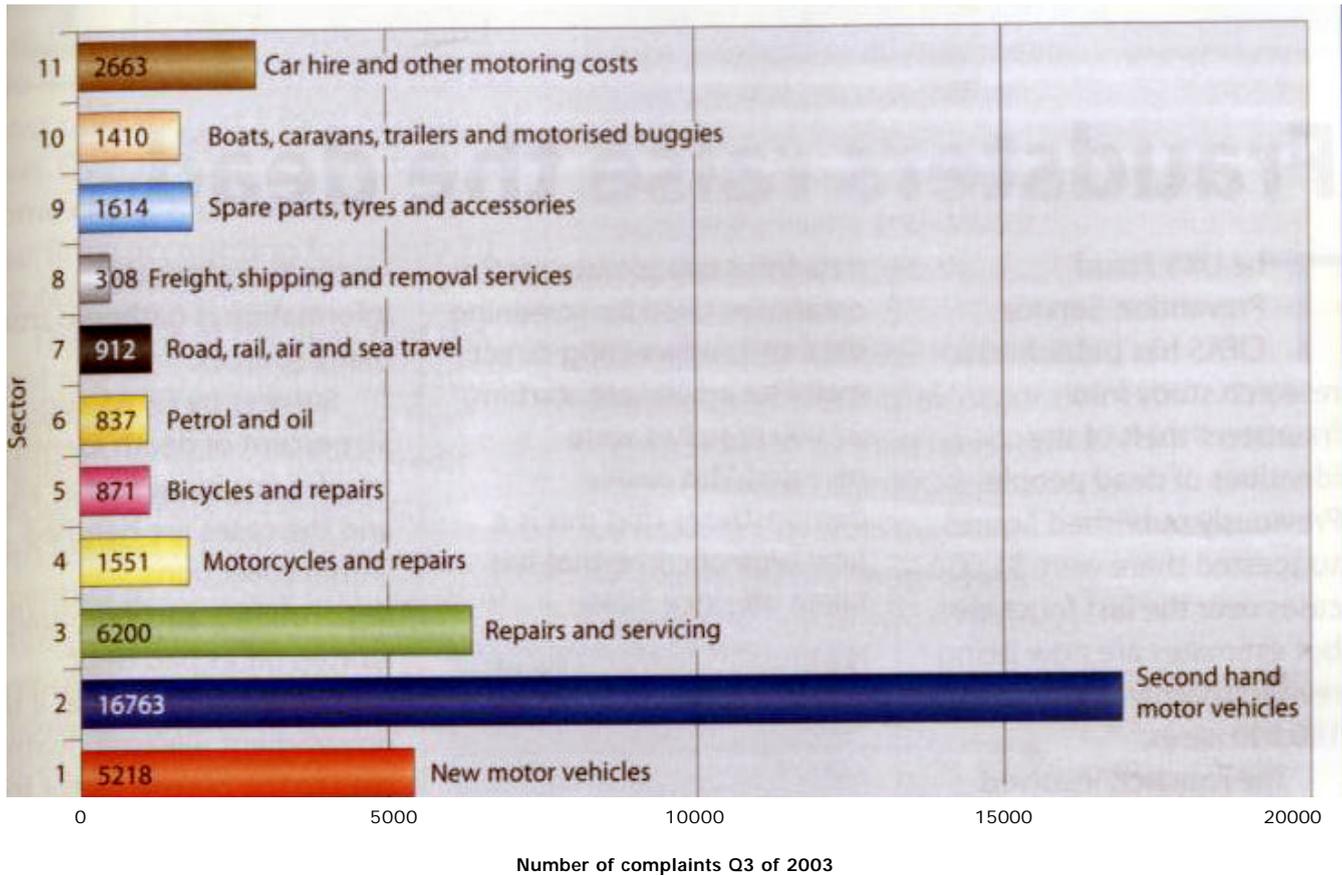


Figure 3 **Transport complaints by sector**



Ombudsman Service. Even if the consumer loses his case before FOS, both the finance company and the car dealer will be footing the bill for costs. FOS is gearing up for at least another 13,000 consumer credit complaints a year - just as soon as it can clear its backlog of endowment mis-selling complaints that is.

The OFT and FOS have signed a "Memorandum of Understanding" as well. One of the nasty surprises lurking in there is that there will be full data sharing between these 2 public bodies. So an isolated complaint going to FOS -even if it is groundless - could trigger a major investigation into a car dealer where the OFT comes in to have the drains up.

Whilst most in the car trade will be horrified by the new regime, this view is not shared by all. One Labour MP has urged the Government that the OFT "put the boot in" because it has been "mealy mouthed" and a "soft-touch regulator".

Action Plan

So what's to be done?

It's not too late to try and change the Bill - but it is going to be a tough fight. If a concerted cross-industry lobbying campaign is mounted in the House of Lords (where Labour does not have a majority) some changes can be made to the Bill to improve it - but it will not go away.

A key Labour manifesto commitment in May 2001 was to "tackle loan sharks". Labour does not want to go into a 2005 General Election campaign without having been seen to have done something.

Larger car dealers will have formed NGI compliance teams (or at least one person will have had this role either on its own or as well as their day job). This team or person is going to have to taken on this role for OFT Compliance next.

A lot of detail will be left to further detailed Regulations & Guidance from the DTI and OFT. The motor trade will need assistance in the future in navigating through this for their business.