

# BCCA

british cheque cashers association

# newsletter

Issue 37 – Spring 2006

## The Quarterly Newsletter of the British Cheque Cashers Association

### *A Fraudster's Paradise?*

You may be forgiven for thinking that the UK has all of a sudden become European Capital of Fraud. After all, there seems so much of it about in all walks of life. One can hardly open a newspaper these days without coming across a report about yet another scam. Not only that, it's not just "vulnerable consumers" who are being targeted. In February, the OFT published the results of some research into "scams", in other words frauds, aimed at consumers. The results on the face of it were surprising.

The research revealed that younger, more affluent consumers were just as likely as older consumers to be targeted by scammers. Early results from a major research project commissioned by the OFT showed the scale of the problem. Nearly half of the UK population - or 20 million consumers over the age of 15 have been targeted by a scam. The proportion targeted is highest in the middle age ranges, with 54 per cent of those in the range 35 to 44 years and 58 per cent of those in the range 45 to 54 years having been targeted by a mass-marketed scam in the last two to three years.

Working people were more likely to have been targeted than those who were not working. Nearly one in ten of those targeted in these age groups had actually fallen victim to the scammer, and parted with money. The results run counter to expectations that the main focus for scammers would be the most obviously vulnerable consumer groups - older people, or those isolated from social networks such as the work place.

However, apply a little logic and the results make sense. After all, if you're a fraudster, there's little point in trying to con money out of people who haven't got any, is there? You're far more likely to succeed by going after potential victims who do have what you want to get your hands on, usually lots of cash, or those who have the means to raise it.

Entirely coincidentally, as we were writing this, yet another example came through from the OFT:

*"The OFT is warning UK householders to beware of a group of Dutch salesmen who are denying consumers their rights in their sales of kitchenware on consumers' doorsteps.*

*The salesmen target consumers at their homes or places of business. They claim that they are passing through the local area having attended a trade fair, and are trying to sell the remains of their unsold stock of allegedly 'high quality' knives and saucepans to avoid paying duty or because of problems with border security. In fact, the OFT has obtained evidence that well presented salesmen are visiting the UK for weeks*

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at a time, renting out space in caravan parks to use as a base then driving out to target consumers in affluent and rural areas across the country.

The OFT is concerned that these traders may be misleading consumers and breaching consumer legislation because:

- consumers are told that they are getting a bargain due to the trader's need to sell in a hurry when this is not the case
- whilst the marketing materials used by the salesmen state that the goods are usually sold for a much higher price than the salesmen offer, the OFT can find no evidence that they are ever sold at the higher price

Consumers who have complained to the OFT have paid out an average of more than £750 each, with losses ranging from £65 to £3500. There have been reports of what the OFT believes to be the same group of salesmen operating across Europe and in Canada and New Zealand."

This rather proves our point, although anyone who parts with £3500 for a set of kitchen knives perhaps needs protecting from themselves. The *modus operandi* in this case is tried and tested. You may well have been approached at a motorway service station by well-dressed Italians selling "leather" coats which turn out to be pvc or gentlemen with Germanic-sounding accents offering bargain priced Swiss watches which are high quality counterfeits. They are invariably on their way home from trade fairs. Except that they're not and don't speak a word of English when arrested.

Then, of course, there's the matter of identity fraud, which, if you believe the Home Office, is becoming a major issue. In February, the Home Office published some alarming figures. "*Identity Fraud puts £1.7bn Hole in Britain's Pocket*" screamed the headline in the press release. However, dig a little deeper and you will find that the biggest hole is in the Home Office figures. From the press release, there is a link to a website, [identitytheft.org.uk](http://identitytheft.org.uk) and a further link to a breakdown of the figures (have a look for yourselves). These are full of assumptions, estimates and disclaimers which render the headline figure meaningless.

Most media reports followed the Home Office line but at least one, produced in the excellent e-mail newsletter published by [silicon.com](http://silicon.com), investigated the figures in greater depth. We have been given permission by [silicon.com](http://silicon.com) to reproduce extracts, for which we are grateful.

For example, "the first misleading calculation is the inclusion of figures from card payments body APACS totaling £504.8m. The number equates to the simple theft of a credit or debit card as well as genuine ID fraud. APACS spokesman Mark Bowerman told [silicon.com](http://silicon.com) that ID fraud actually cost the payments industry just £36.9m in 2004 and that for the first six months of 2005 it has actually dropped by 16 per cent, mainly due to the introduction of chip and PIN.

He said APACS classes ID fraud as when someone's account is actually taken over by a criminal or a new account is opened up using someone else's name. "The Home Office's definition of ID fraud doesn't match our definition. We class it as a more serious crime that involves a great deal more hassle than just having your card stolen and having to phone up the bank to cancel it," he said.

The Home Office's total of £1.7 bn includes £395m for "money laundering" despite the Home Office report admitting the overall size of money laundered in the UK is not known and that "no figures are available currently on the proportion of money laundering that relies on identity fraud".

The cost of administering security and ID checks and combating fraud on passport applicants by the UK Passport Service (£62.8m) is also included by the Home Office, despite that being a preventative measure and not ID fraud in itself."

You can read the full article here:

<http://www.silicon.com/publicsector/0,3800010403,39156140,00.htm>

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And so it goes on. [silicon.com](http://silicon.com) concludes that, after stripping out the spurious amounts, the actual total cost of what is commonly considered to be identity theft is £494m, which admittedly is still a pretty alarming figure.

So why the difference? Well, the Home Office figure is its estimate (perhaps guesstimate would be a more appropriate word) of the "total cost to the economy". In other words, it has thrown in the kitchen sink. But isn't the Home Office sometimes accused of *minimising* figures to prove that crime isn't really as big a problem as commonly perceived? Well, we enjoy a good conspiracy theory here at the BCCA so here's ours. Any good salesman with a product that's proving difficult to shift will tell you that the answer is to persuade potential customers that they've got a problem they didn't know they had, and then sell them the solution. We should point out that the Home Office is currently having difficulties selling the idea of identity cards.....

(You can subscribe to [silicon.com](http://silicon.com)'s business technology newsletters at [www.silicon.com](http://www.silicon.com))

## **Major Cheque Fraud Ring Detected by Transax**

Whilst on the subject of fraud, BCCA Affiliate Member and Conference co-sponsor, Transax, has helped police in the north of England to detect and smash a major cheque fraud ring which was trying to cheat shops and stores out of £270,000 of electronic goods. Just after our last edition went to press, Derek Sharp, 39-year-old Stockport man, was sentenced at Manchester Crown Court on 28<sup>th</sup> November with a 3 year 9 months prison term after police were able to secure a conviction for conspiracy to defraud. Sharp pleaded guilty to the fraud after police were first alerted to the scam by Birmingham based Transax.

Back in April 2004, Transax detected the fraudulent use of cheques at a number of High Street electronic retailers in an area that stretched from Liverpool to Leeds and Sheffield in the north down to Stoke, Leicester and Nottingham in the Midlands, with the majority of the crimes being committed on retail parks in the Manchester area. The company wrote to 700 retailers in the north of England and the north Midlands area who it predicted were most at risk and alerted them of the

types of cheques that were being used in the scam. As a result of the Transax alert, several traders were able to call Transax as and when the suspicious cheques were being used for payment. In one case, the company was able to alert police who arrested the fraudsters in store. In another case, a store was able to pass on a getaway vehicle's registration number, which led the police to an illegal cheque-printing factory.

Dennis Daly, who heads up the Cheque Fraud team at Transax, explained: "Just like a credit card fraud can be detected, we have developed a computer model that can detect many types of cheque fraud whilst the purchase is taking place. This helps us to alert a trader and stop the theft from going ahead. In this case, we were able to identify cheques by the sort code and account numbers that were being used. We were even able to predict the value of the purchases and what types of goods the gang were trying to purchase".

As a result of the information from the company, Greater Manchester Police launched Operation Bregwin to track down the gang. Detective Inspector Alan Sheppard from the Economic Crime section of GMP said: "This was a complex case that involved

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Derek Sharp working with a team of people to forge cheques which were used to purchase high value items which were then sold to make money. I hope that this conviction will act as a warning to anyone thinking of trying to make money in this way. This sort of behaviour will not go unnoticed and we will take every possible action to ensure that the offenders are brought to justice”.

This is an excellent result for all concerned and undoubtedly for BCCA members also, who may well have been the next target for the fraudsters.

### **Consumer Credit Bill – Update**

Who said this? *“My mind rebels at stagnation. Give me problems, give me work, give me the most abstruse cryptogram or the most intricate analysis and I am in my own proper atmosphere.”* No, not the BCCA’s Chief Executive but Sherlock Holmes, that well-known fictional Class A drug user.

Taking this quotation into account, Mr Holmes would, we feel, definitely be in his “own proper atmosphere” if he were given the responsibility of implementing the Consumer Credit Bill. Actually, this will be the last time we will write about the C C Bill because in April, possibly by the time you read this, it will receive royal assent and become an Act, unless there are last minute problems.

So complex is the exercise that the DTI, along with the OFT, has had to feed all the issues into Microsoft

Project and produce a project plan. The copy we have covers eight sheets of A3 taped together. In fact, here at the BCCA, we don’t have an empty wall big enough to pin it to. We’re not criticising the DTI – in fact we welcome the initiative and don’t see what else they could have done. The good news is that both the DTI and the OFT are genuinely keen to work with the industry to get the implementation right but the bad news is that they have identified thirty-six issues which will need to be subject to formal consultation. That means that there will also be thirty-six “pre-consultation” exercises.

Whilst we welcome the opportunity to comment on proposals, this is a massive task for all concerned, particularly small organisations such as the BCCA, especially as it coincides with various other initiatives, of which more later. In addition, the DTI is forming two groups to advise and assist on specific areas of implementation – an IT Group to deal with the IT side of the exercise, comprising eight members, and a Technical Group to deal with the technical and practical aspects of information disclosure, comprising 10 members. We are pleased to report that the BCCA has been invited to partake in the Technical Group and to submit a name for the IT Group, which we have done. Hopefully, the BCCA will therefore be represented on both. Although this will really stretch our resources, we feel that it is important that we are involved in this exercise.

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The exact timetable for implementation has not yet been decided but we will keep you informed.

## **Proposed EU Consumer Credit Directive**

We are simple souls here at the BCCA, almost bordering on naïve at times. For example, we always thought that a “durable medium” was a superannuated fortune teller – you know the sort of thing, octogenarian, toothless female wearing a spotted headscarf ensconced in a tent, who made a living out of gazing into a crystal ball and reading tealeaves, that is until some inconsiderate individual invented the teabag.

However, the proposed Consumer Credit Directive has put us right. In it, a “durable medium” is defined as *“any instrument which enables the consumer to store information addressed personally to him in a way which makes it accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored”*. So there. How wrong could we be? And no, we haven’t missed out the punctuation.

Back to the politics. There’s still no enthusiasm for this Directive and it’s still drifting. No-one seems to know what will happen or when and the expression “making haste slowly” springs to mind. However, we think that there’s an outside chance that it will be quietly dropped but only after an appropriate period. Meanwhile, we will be keeping an eye on it.

Interestingly, if the Directive did come into force it would probably be deregulatory as it is less onerous overall than the UK’s current legislation. We say “probably” because the provisions are very vague and open to interpretation. There is also the principle of “blended” harmonisation, which gives member states a degree of flexibility as to how they implement certain aspects to suit local markets and practices. Other matters are subject to “maximum harmonisation” which means they should not be exceeded, so no gold plating.

However, the current draft contains a provision for “mutual recognition”. This means that each state must recognise the legality of a credit agreement made under the law applying in the state where the lender is based. This raises the interesting possibility of finance companies upping sticks and basing themselves in a state with a more benign legislative and enforcement regime and trading

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across borders. Just think of those Liberian-registered supertankers – it's the same principle, but we don't recommend that you start looking for offices in obscure eastern European states just yet. To be continued.

## **Payments Systems Task Force**

The Payments Systems Task Force, chaired by the OFT, is continuing its enquiry into the UK's cheque clearing system and is on course to publish its final report by the end of September this year. The Task Force is quite emphatic that it is NOT looking at abolishing cheques but acknowledges that there may be an acceleration in the decline in cheque usage following the implementation of faster electronic payments in late 2007. The Task Force also feels that more retailers will in future refuse to accept cheques, a trend started by petrol stations.

The Task Force has also formed a group called the Cheque Heavy Users Forum, inevitably and unfortunately known as "CHUF" and the BCCA is a member. The first meeting was in February and was, surprisingly, rather enjoyable. Other members represent big businesses which either issue or receive a large number of cheques, whereas the BCCA represents small and medium enterprises which handle a large number of cheques as part of their business. This is a subtle difference but it meant that the BCCA was the only member representing the interests of SMEs.

This meant that we were able to feed in the advantages of cheques to SMEs and also for ad hoc payments. The OFT genuinely seem to be taking a balanced approach to this enquiry, as the resulting notes of the meeting have shown. Here are some of the "pro-cheque" arguments which were noted:

### **Why pay by Cheque?:**

- IT systems not set up for BACS payments.
- Liquidity of funds - paying by cheque allows the payee a guaranteed period of time to elapse before funds are withdrawn from their account.
- Payee refuses to supply bank details (e.g. supplier payments, settling customer complaints)
- Lack of payment alternatives for certain documentation (e.g. birth certificates)
- Problems with BACS (such as remittance fields and lack of all preferred information not being transferable with the payment).

### **Pros of cheque payment:**

- (Perceived) Certainty of payment.
- Ease of making one off ad hoc payments (e.g. dealing with a complaint).
- Opportunity to include remittance details with the payment.
- Cheques still popular with SMEs, despite not being the most efficient payment method available

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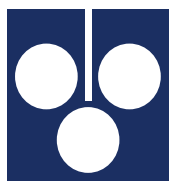
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- Speeding up the clearing cycle: useful but would benefit some types of users more than others
- It was important to recognise that people take advantage of the longer clearing times for cheques, especially towards the end of the month.

The notes of the meeting also record that “It was widely agreed that any future investment [by the banks] should be concentrated on improving electronic payment methods rather than cheque clearing.....”. We have said all along that we cannot see the banks ploughing huge amounts of money into an obsolescent system which, at the end of the day, is tried and tested and works. We maintain this view.

## **IMLPO Conference**

The Institute of Money Laundering Prevention Officers is holding its annual conference on 8th and 9th May at the Midland Hotel, Manchester. The membership of IMLPO continues to increase and the annual conference “provides delegates with an invaluable opportunity to network and to discuss with their anti-money laundering and compliance counterparts the key issues and problems facing them on a day-to-day basis”.

The Institute again brought together a pretty impressive panel of expert speakers - including representatives of the FSA and SOCA, and from the financial, accountancy and legal sectors - and the

programme also features two breakout sessions, with a more informal, workshop-type approach.

Full information on the programme and how to register are available at [www.imlpo.com](http://www.imlpo.com), by calling **020 8847 4074**, or by emailing [info@imlpo.com](mailto:info@imlpo.com) but be warned, it isn't cheap.

## **!!! IMPORTANT!!! BCCA Conference and AGM 2006**

Talking about conferences, here's a date for your diary – Wednesday 29<sup>th</sup> November 2006, when the BCCA's 2006 conference and AGM will take place. Once again, it will be at the Marriott Forest of Arden, near the NEC in Warwickshire, which has proved a popular venue. We've taken note of your feedback and this year we will be changing the format and theme so there will be more time for networking. We will continue with some compliance issues but the overall theme will be “Business Development”. This reflects a comment made last year by one delegate – “Tell us how we can make more money!” so that's exactly what we're aiming to do.

**We are hoping to expand the Trade Exhibition so if any readers may be interested in promoting their products, please contact us at Chester.**

Once again, APS with their “cashplus” product and Transax have expressed an interest in being joint



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sponsors and we thank them for their continuing support. We are also pleased that Speedloan Finance Ltd has kindly agreed to sponsor the conference lunch. We will also be continuing our policy of low pricing for delegates and exhibitors as, unlike many conferences, we organise it all in-house and aim simply to break even. We'll give more details in the next edition.

## Shark Attack

We are pleased to report that the Birmingham Loan Shark Team, which covers the West Midlands, has had another successful conviction. A loan shark who admitted nine counts of illegal activity, including blackmail and intimidation, has been sent to prison following his arrest by the Team.

Kim Cornfield, who operated an unlicensed money trading operation in the Churchill area of Redditch, Worcestershire, targeted vulnerable people, particularly young women on benefits. He used threats of violence, sexual intimidation and aggression to try to get them to pay up, with many threats delivered by text message. The interest

rates and payment schedules were so severe his customers struggled to get out of debt.

Cornfield had about 75 clients, many of whom had taken out more than one loan. He claimed he was owed £70,000 in repayments. Typically he demanded £5 a week in repayments for every £100 borrowed, seeking in total a sum one and a half times or double the amount originally lent.

Cornfield's intimidating tactics included threats to break a client's legs, to burn down their house or beat them up. He physically assaulted a visibly pregnant woman. Cornfield was sentenced to two years in prison. His wife Lynne Cornfield also worked on the loan business and was sentenced to a 12-month community rehabilitation order after admitting to unlicensed trading.

Commenting after the sentencing, Consumer Minister Gerry Sutcliffe said: "Cornfield used violence and aggression to intimidate his victims during a sustained campaign. He shamelessly targeted vulnerable young women. The Government is committed to shutting down villainous loan sharks, like Cornfield, and protecting the vulnerable in society."

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These cases are notoriously difficult to get to court, mainly because of the threat to witnesses, so the Team is to be congratulated on this success and another one last year. There is a second Loan Shark Team which covers Scotland and which is based in Glasgow. Although the Scottish team has not yet been successful in court, we believe it has at least one prosecution in the pipeline and, like the Birmingham team, has amassed a huge amount of intelligence on individuals and gangs engaged in illegal money lending activities. It can therefore be only a matter of time before more of these unscrupulous people are brought to court.

The Birmingham and Glasgow Loan Shark Teams were set up by the Government in 2004 with £2 million in funding. It was to be a two year project, due to end this Summer but has now had its funding extended to the end of March 2007. There is more to this type of work than successful prosecutions and we would hope that the Government looks at other measures, such as the deterrent effect, when considering the future of this initiative.

However, we should point out that heaping greater compliance costs and regulatory burdens on legitimate businesses simply encourages the unlicensed sector. As we keep saying, ALL regulatory costs are passed down and are eventually paid for by the customer. We would therefore suggest that enforcement authorities put

more emphasis on unlicensed lending rather than concentrating on easy targets.

### ***Dodgy Passports***

We have learned that the UK Passport Service has been trialing a telephone based scheme which enables the verification of UK passports. We believe that this has been tested in conjunction with Abbey (the old Abbey National) and that the trial has been successful. We are not aware exactly how it operates but have been told that the UKPS is hoping to introduce some sort of national verification service some time later this year. That's the good news. The bad news is that it will involve a premium rate phone call costing £1.20 per minute, with calls lasting about 1 minute 20 seconds. We apologise for being rather vague on the details but we will keep up with developments and give further details in later editions.

### ***Declining Branch Networks***

We have drawn attention on a number of occasions in the past to the rapid decline of bank and building society branch networks, which creates particular problems for the elderly and those without ready access to transport. This, of course, has been exacerbated by the Government's failure to support the Post Office network, once its ill-considered

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POCA (Post Office Card Account) had failed to deliver, despite the commercial banks being strong-armed into wasting £180 million of their shareholders' and customers' funds to support it.

The University of Nottingham has provided a valuable service by charting changes in bank and building society networks over the period 1995 to 2003, up-dating earlier work, which had mapped changes between 1989 and 1995. The headline figures are a 36% decline in bank branches between 1989 and 2003, with converted building societies closing 22% of their branches and building society branches declining by 17%. Nor is the pace of closure declining noticeably. The equivalent figures for the period 1995-2003 are 22%, 19% and 5%.

The pattern of decline is also of interest. The highest rate, lumping all three kinds of institution together, is in multicultural metropolitan areas, being some 24% for the 1995-2003 period. Middle class areas, by contrast, experienced significantly lower than average rates of closure.

If the Nottingham figures are combined with those for Post Office branch closures, the position of deprived urban areas looks even more precarious, although because of the high rate of rural Post Office closures, the countryside picture also looks more perilous than is evident from the Nottingham researchers' figures. (GC)

*Copies of The Changing Geography of British Bank and Building Society Branch Networks, 1995-2003, by Andrew Leyshon, Paola Signoretta and Shaun French, are obtainable in electronic form from Emma Thorne, at emma.thorne@nottingham.ac.uk.*

## **What Future for the Third Sector?**

The Government is pinning most of its hopes for improving the supply of credit to the financially disadvantaged on "third sector" organisations; be they credit unions, community reinvest trusts or any of a growing range of types of institution. However, to date there is little or no evidence that these bodies will be able to deliver the goods, or, indeed in many cases, stay in business without continued support from the public coffers. This they have been receiving in spades over the last couple of years, with money being thrown at them by an ever expanding range of central government departments, local authorities and other tax payer-funded organisations. Banks, of course, have also been leaned on heavily to input funds, resources and expertise.

Two recent reports throw some useful light on what the future may hold. The first, by Karl Dyson of Salford University and Pat Conaty of the New Economics Foundation, makes it abundantly clear that there is no single universal panacea, but sets

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out some useful conceptual thinking about how “a community banking partnership” approach may best be developed. The second, by Peter Goth and Donal McKillop of Queen’s University Belfast and Charles Ferguson of Volunteer Development Scotland, is based on extensive research funded by the Joseph Rowntree Foundation. It makes it abundantly clear what a mountain all these institutions, and credit unions in particular, have to climb. They make some sensible points about what is needed for credit unions to develop effectively, but place a question mark over the long-term survival of at least half of those currently in existence.

Both reports provide additional valuable insights, which make them worthy of study in depth. The pity is that the Treasury, DTI and others did not study them before deciding to throw money at the problem. Unfortunately, much of what has been set up, with the best of motives, is not economically viable. Given that the high street banks are neither ready nor willing to enter the market for short-term, low value, high risk lending for this market sector, it looks as though the Government, if it wishes to achieve its “inclusion” objectives, will have to ditch the political dogma which has characterised much of its approach to date and look instead at how the resources of existing commercial organisations could be harnessed. It could also address seriously the question of reducing the risk of lending by giving lenders more effective means of obtaining repayment. That, however, would be a hard nettle to grasp, so we are not holding our breath. (GC)

*Tackling Financial Exclusion: The Case for a Community Banking Partnership Approach*, by Karl

*Dyson and Pat Conaty*, is available from Community Finance Solutions at the University of Salford (0161 295 4454). *Building Better Credit Unions*, by Peter Goth, Donal McKillop and Charles Ferguson, is published by The Policy Press. It is available, price £9.95 plus £2.75 p&p, from Marston Book Services, PO Box 269, Abingdon Oxon OX14 4YN (01235 465500). It can also be downloaded from the Joseph Rowntree website at [www.jrf.org.uk](http://www.jrf.org.uk).

## **BCCA Code of Practice Project**

The BCCA has for some years had a Code of Practice relating to the encashment of third party cheques and also a Best Practice document for the delayed presentation of personal cheques. Members are required to comply with the provisions of both. Although these documents are reviewed annually and each member has to complete a compliance report, the BCCA Executive has agreed that now is the time to conduct a fundamental review.

In addition, the Executive has agreed that we should give serious consideration to submitting the Code for possible approval under the OFT’s Consumer Codes Approval Scheme (“CCAS”). So, on 1 April, we will be joined by Jim Appleton, who will spend the following twelve months on this project. Jim has wide experience in quality assurance, industry Codes of Practice, the OFT’s Approved Codes regime and of compliance auditing. He designed and ran Cheshire County Council’s successful Motor Trade Approval Scheme – see [www.goldenspanner.com](http://www.goldenspanner.com). Jim is

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Jim's brief will include;

- assessing the relevance of the Code and BPD to the current market and trade practice.
- Redrafting the documents in an appropriate form which will also satisfy OFT's CCAS Part 1 Approval criteria.
- Assessing the internal audit arrangements of the BCCA's members.
- Carrying out an agreed programme of approximately 180 pre-notified audits at members' premises and checking that necessary remedial action is taken where appropriate (most likely to be by correspondence except in the most serious cases).
- Liaising with the OFT over possible submission for Part 1 Approval.
- Producing a six month and a final report at the end of the project.

So what is the OFT scheme all about? According to the OFT, "The aim of the Consumer Codes Approval Scheme is to promote and safeguard consumers' interests by helping consumers identify better businesses and to encourage businesses to raise their standards of customer service."

The scheme consists of two co-dependent stages. Code sponsors, the BCCA in this case, complete Stage One by making a promise that their code meets the OFT scheme's core criteria in principle. They can then move on to Stage Two where they have to demonstrate, with evidence, that their codes deliver on that initial promise. OFT endorsement and promotion to the consumer kicks in once the burden of proof has been met by the code sponsor.

There are benefits for the BCCA and its members if we do successfully gain OFT approval. For example,

- OFT approval is only awarded to businesses which have a proven high level of customer service.
- The OFT will give publicity to the Code and advertise the benefits for consumers in dealing with businesses which operate to an approved code.
- Members will be able to use the OFT's "Approved Code" logo on advertising and promotional material.

- Members operating to the standards laid down in the Code should be subjected to a much lower level of scrutiny (a "light touch") by regulatory authorities.

However, there is a long way to go and could take three years to achieve full approval. Apart from that, there is no guarantee that we will go down the Approved Code route. Only five organisations have gained CCAS approval so far and at considerable expense. One of the problems is that the CCAS works in favour of trade associations which have a small number of large member companies, whereas the BCCA has the exact opposite. If the OFT's scheme turns out not to be appropriate for us then we will not proceed down that route.

Having said that, preliminary discussions with the OFT's Approved Codes team have been very positive and we have been assured of full support. We will keep you informed of progress in future editions. Meanwhile, as with any other topic in the Newsletter, please contact us at Chester for further information. Our details are on the back page.

## ***Freedom of Information Act and MPs Expenses***

It's a funny thing. Traditionally, all political parties are in favour of freedom of information – until they actually get into power. Then the enthusiasm

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wanes and there are far more pressing issues to deal with. However, this administration forgot about tradition and passed the Freedom of Information Act, which came into effect on 1 January 2005. It's cost an absolute fortune to administer ever since, particularly as it was retrospective.

Now, anyone on the planet can demand any information that is held within the public domain in the UK. So, if someone living in Patagonia wants to know how many toilet rolls were purchased by Leicester City Council in 2005 and at what cost, he has the right to ask. He doesn't even have to give a reason and the Council will either have to give him the details or come up with a reason not to do so – and there are very few of these. Even if the Council does so, our man in South America can appeal to the Information Commissioner.

One reason to refuse is cost and in February, the Lord Chancellor, Lord Falconer, put forward proposals to tighten up this exemption. Currently, a request can be rejected if the cost to the state is more than £600. He said that he was tightening up the rule because the civil service was being bothered by vexatious claims such as how many lavatories there are in the Department of Education and how much each Department spends on makeup. Well, everybody knew this was going to happen and indeed said so when the Bill was going through Parliament but MPs chose to ignore the warnings.

So it is somewhat ironic that the Information Commissioner, Richard Thomas (who coincidentally

worked at the OFT many years ago) has determined by way of a "decision notice" that there has been a breach of section 1(1) of the FoIA by, of all institutions, the House of Commons itself. Not only that, but the breach related to a request for information about, er, MPs travelling expenses. We give below a summary of the IC's decision.

The complainant requested a breakdown of the travel expenses claimed by individual MPs for the most recent year for which figures are available into the following four categories: rail travel, road travel, air travel and bicycle. An aggregate figure for travel expenses for each MP is already published but this figure is not broken down into different categories of transport, as the complaint requested. The House of Commons withheld the information on the basis that it was exempt under section 40(2) of the Act, which exempts any disclosure of personal information which would contravene the Data Protection Principles specified in the Data Protection Act.

The Commissioner found that the requested information is personal information which can be disclosed without contravening any of the principles of the Data Protection Act 1998 and, consequently, that the exemption provided by section 40(2) of the Act does not apply. Therefore the Commissioner's decision is that the House has breached section 1(1) of the Act in that it incorrectly withheld the requested information on the basis that it was exempt under section 40(2).

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There's a touch of schadenfreude in all this – Parliament itself being bogged down by the bureaucracy it created and the MPs, who are ultimately responsible, having their expenses subjected to the most intimate scrutiny. We have not sent a letter of sympathy.

## **The Financial Ombudsman Cometh**

Well he will do when the Consumer Credit Act 2006 comes into force. Then, any complaint a customer has about a regulated consumer credit agreement could end up in the hands of the Financial Ombudsman Service, or "FOS". However, this is highly unlikely as any complaint from a customer will firstly have to go through the BCCA's own internal complaints resolution system first and we have a 100% record of settling the very few complaints that we do receive.

In reality, BCCA members are subjected to the FOS rules indirectly because the banks will apply these principles when dealing with problematic cheques, including those cashed by members over which there is a dispute. If the bank doesn't resolve the dispute with its customer over the cheque, then the customer can refer the matter to FOS.

Actually, we have a lot of time for the Financial Ombudsman Service which seems to operate using the principle of fairness combined with common sense. In fact, there will be a speaker from FOS at our next annual conference and they will also have a stand at the trade exhibition. We therefore thought that we'd reprint their policy on forged signatures on cheques, which will be of interest to members, and in the next edition, print some case studies.

### **forged signatures on cheques**

*In general terms, if someone forges a signature on a cheque, the person whose signature was forged is not then bound to honour the cheque, and their bank does not have to pay it. A cheque with a forged signature is simply a worthless piece of paper – a 'nullity'.*

*If a bank pays out on the basis of a forged signature on a cheque, it does so without its customer's mandate and is generally required to make good any loss that the payment causes the customer. It does not matter how good the forgery is; a skilful forgery is no more valid than a crude one. That may seem unfair to a banking firm that acts in good faith on the basis of a skilful forgery – but if it were otherwise, a person could be bound by anyone who was able to make a good copy of their signature.*

*If a customer becomes aware that someone has forged*

*their signature on a cheque or cheques, they have a duty to tell their bank without delay. If they do not do so, and the bank pays the cheques in good faith, then the customer will probably not be able to recover the value of the cheque or cheques from their bank.*

### **our general approach**

*The complaints that we see cover a variety of circumstances. In a simple case, the cheque book may have been stolen by a stranger who then used it to write cheques with forged signatures. That seems a straightforward situation, where it is obvious that the banking firm must refund the amount of the forged cheques. But if the customer knew that the cheque book had been stolen and just never bothered to tell the firm, we might decide the firm should reduce any compensation for cheques that went through after the customer had a reasonable opportunity to contact the firm.*

*We see an increasing number of cases where the firm accepts that it has paid out on a cheque with a forged signature, but argues that the forgery was made possible by the collusion of the account holder – whose cheque book (often accompanied by credit and bank cards) was stolen 'by arrangement' in exchange for money. If that is proved to be the case, then because of their involvement in the fraud, the customer would not be able to make a successful claim on the firm.*

*In other cases it is alleged that cheques were forged by someone close to the customer – perhaps a spouse or a carer – where the signatures may be skilful, because the forger has had the advantage of access to examples of the true signature, together with time to perfect their forgery. In such cases there may be a dispute about whether the signatures are forgeries or true signatures, made – but then subsequently forgotten about – by the customer (who may be elderly or otherwise vulnerable).*

*Where the forgeries have continued over a period of time, there is likely to be a dispute about whether (and when) the customer should have realised what was happening and alerted the firm. These cases can be complicated still further where the account holder has died and the claim is brought on behalf of their estate, some time after the date of the alleged forgery. In such instances we obviously have no way of questioning the one person who could have shed light on the matter.*

*We are required to decide cases on the basis of what is fair and reasonable, and we assess each individual case on its own merits, reaching a decision based on the evidence and information provided by the customer and the firm. So it is in the interests of both parties to be as open with us as possible and to give us all the information they have.*

### **handwriting experts**

*Some people assume that a specialist report from a handwriting expert will decide the matter conclusively.*

Unfortunately, this is rarely the case. And if the disputed signature is very like the true signature, it is almost impossible for a handwriting expert to make a conclusive decision on the basis of a photocopy of a signature – which is often all that is available.

### **compensating the customer**

Often, compensating the customer for payment of a cheque with a forged signature will simply be a matter of refunding the account with the amount of the cheque, together with a sum to cover any lost interest or charges incurred as a result of the forgery.

But the customer may also suffer a knock-on effect from the payment of the cheque (for example, where genuine cheques are then 'bounced' because of lack of funds). We would normally expect the firm to compensate its customer for any such additional loss or damage.

Sometimes the firm and the customer both accept that a signature was forged and that the cheque should not have been paid. However, they cannot agree about:

- the extent to which the loss claimed was caused by the payment of the forged cheque; or
- whether the loss was one that might reasonably, or usually, be expected to happen.

We can help the parties to reach an appropriate settlement, applying the relevant legal principles within the overall context of our 'fair and reasonable' remit.

### **establishing loss**

The fact that a cheque with a forged signature has been paid does not, by itself, mean that we will always award compensation – we must be satisfied that the payment of the cheque has caused the customer some loss, damage or inconvenience.

In certain cases, that may be difficult for us to establish – for instance, where the forger was the customer's business partner, who claims that the cheques were used to discharge the liabilities of the business. We have no power to compel third parties

to answer our questions, so we may be unable to get to the bottom of how the money was used. In such circumstances we might conclude that the dispute is primarily between the business partners – and more suitable for the civil courts, where both partners can be questioned and made to disclose their respective finances.

Similar difficulties can arise where the forgery was carried out by a spouse and there have been subsequent matrimonial proceedings, including a financial settlement that appears to take into account the effect of the forgery.

The important points to note are that this is an assessment we make on a case by case basis, and that we – rather than the firm or the customer – have the final say about whether a particular case is one that we can fairly decide.

### **signing a blank cheque**

Sometimes customers sign a blank cheque – a very risky thing to do. If a third party then fills in the details, even if those details were not what the customer expected, the firm is usually entitled to pay the cheque – even if this takes the customer's account overdrawn, or beyond its agreed overdraft limit.

Exceptionally, there may be surrounding circumstances that we consider should have put the firm on notice of some wrongdoing. In that case, we may decide that the firm must bear some or all of the loss – though that is not because we regard the signature on the cheque as a 'forgery'.

So, as we said above, a lot of common sense is apparent and in the next edition we'll detail some case studies.

# SPRING<sup>2006</sup>