

Consumer Focus Board

Paper 8.1

Title: Consumers at a Disadvantage
Purpose: For discussion
Date of meeting: 20 January 2010
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Attachment: None

1 Overview

- 1.1 One of the six development priorities in the Corporate Plan is to develop a common vocabulary and definition for disadvantaged and vulnerable consumers. Consumer Focus will use this definition consistently across our work to measure the value of individual campaigns.
- 1.2 Both energywatch and the National Consumer Council commissioned work to define vulnerability and disadvantage prior to the creation of Consumer Focus, but we have arguably lost some ground since then in terms of our shared vocabulary and meaning of these important but complex terms. Remedying this is important because it underpins our aim of embedding themes of disadvantage and sustainability across all aspects of our work.
- 1.3 This paper sets out our current approach on vulnerability and disadvantage, building on a discussion at an internal GB policy forum, and pulls together definitions used by other organisations. It suggests that further work should be done to develop principles and proposals to embed and influence our work, with a view to taking this issue to the joint Boards meeting in June.

2 Action for the Board

- 2.1 The Board is asked to **DISCUSS** the definition of disadvantage and vulnerability that should underpin our work and **AGREE** that further work is undertaken prior to a discussion at the all-Boards meeting in June.

3 The key issues

3.1 Who is at a disadvantage or vulnerable?

- 3.1.1 Four groups are mentioned in the Consumers, Estate Agents and Redress (CEAR) Act 2007 that established Consumer Focus. Consumer Focus must have regard to:

- (a) Disabled or chronically sick individuals
- (b) Individuals of pensionable age
- (c) Individuals with low incomes
- (d) Individuals residing in rural areas.

3.1.2 The Act does not describe this group as 'vulnerable' but the notes that accompany the Act do. The Act, however also emphasises that Consumer Focus' ability to consider consumers' interests is not limited to these groups.

3.1.3 The Act also states that Consumer Focus may investigate a complaint made by a 'vulnerable designated consumer' against a gas, electricity, postal services and, in future, water supplier. The Act provides that a designated consumer is 'vulnerable' if Consumer Focus is satisfied it is not reasonable to expect the consumer to pursue the complaint on his or her own behalf. The examples given in the notes to the Act suggest this might apply to persons who are unable to pursue a complaint by reason of a mental or physical disability, a lack of basic skills (such as literacy) or their personal circumstances (such as a recent bereavement).

3.1.4 Consumer Focus' Extra Help Unit delivers Consumer Focus' statutory duty to investigate cases where a vulnerable consumer has been disconnected, is threatened with disconnection or has experienced a failure in a prepayment meter system. Consumers are defined as vulnerable when they are unable to resolve a complaint for themselves due to their personal circumstances, the urgency of the situation or the complexity of the case.

3.1.5 So, Consumer Focus has various definitions or at least pointers to consumers that are at least risk of vulnerability derived from the CEAR Act.

3.1.6 Under the Act consumers can be at risk of vulnerability because of:

- age
- income
- disability or sickness
- rural location
- inability to pursue a complaint against gas, electricity, postal services and, in future, water supplier

by reason of:

- a mental or physical disability,
- a lack of basic skills (such as literacy) or
- personal circumstances (such as a recent bereavement).
- disconnection or threatened disconnection and inability to pursue due to:
 - their personal circumstances,
 - the urgency of the situation or
 - the complexity of the case

3.2 This paper explores the concepts of consumer vulnerability and disadvantage. The aim is for the Board to agree a working definition of the groups likely to be at a disadvantage or vulnerable to exploitation or other detriment.

3.3 **Disadvantaged and vulnerable consumers**

3.4 Definitions or indications of disadvantage and vulnerability tend to work from a personal dimension.

3.5 In the follow up to the World Summit for Social Development, a UN Commission expert group produced a report in 1998 'The ways and means to enhance social protection and reduce vulnerability'. According to the UN experts:

'Vulnerability is a part of the human condition; some might say it is our vulnerabilities that make us human. No one is without vulnerability and even those who live in physical and material security live in fear of what might afflict them or those closest to them.'

But the UN group does go on to recognise that there are degrees of vulnerability and specific circumstances, which need to be addressed.

3.5.1 The experts observe that risks in any society are not evenly distributed among the general population and people are not equally exposed. They develop the following definition:

'Vulnerability is a state of high exposure to certain risks, combined with reduced ability to protect or to defend oneself against those risks and to cope with the negative consequences that ensue when the risks occur.'

3.5.2 They observe that:

- Certain individuals and groups have a much higher exposure to risk than others, because of '*socio-demographic characteristics, economic status, physical or mental condition, lifestyle, and so forth*'.
- The degree of exposure to risks and the ability to cope with their negative consequences do not remain constant throughout the life span but vary from one stage of life to another and types of risk can change according to situations and circumstances.

3.5.3 So, the risk of vulnerability is seen a dynamic and relative concept, varying over time and across space.

3.5.4 It is important not to stereotype or not take account of people's perception of themselves. George and Lennard Associates in a 2008 paper for Consumer Focus, *Vulnerable Consumers and Advice*, underline the importance of looking at issues that may put consumers at a disadvantage as risk factors.

'It is important not to make assumptions, nor to stereotype nor categorise people into specific groups. Whilst specific circumstances in people's lives – such as living in poverty or having severe sensory impairment – are likely to increase the risk of vulnerability or disadvantage, care must be taken not to simply equate certain 'categories' of people or households with vulnerability or disadvantage.'

3.5.5 A similar point is made by the BSI:

'An approach that is based on looking at 'risk factors' can help in understanding and addressing the needs of consumers in vulnerable circumstances. This approach acknowledges that factors such as physical disability or low income may well put a consumer at a disadvantage in relation to many markets. But it also recognises that consumers whose circumstances give rise to particular risk factors may not have identical needs or levels of resilience.'

3.5.6 The UN experts recognise that certain individuals and groups can suffer from multiple or cumulative vulnerabilities. They try to distinguish between:

- ecological vulnerability (living in high risk areas)
- structural (including status) vulnerability (arising from such attributes as sex, race, occupation, or social class), and
- role vulnerability (stemming from relationships from which the individual cannot readily or easily withdraw, such as marriage and tenancy).

3.5.7 The UN experts also try to separate vulnerability from disadvantage. By disadvantaged, they refer to all groups that encounter 'structural obstacles' (i.e., obstacles created by society) to access to resources, benefits and opportunities. 'Those obstacles derive from the relationships of power which exist in all societies and the relative value which society gives to each group.'

3.5.8 They suggest that the structural causes that underlie disadvantage include:

- race
- ethnicity
- gender
- religion
- indigenous or national origin, and
- socio-economic status.

3.5.9 According to the UN experts the result of this disadvantage leads to increased vulnerability to poverty, oppression and exploitation. Although the UN report recognises that the risk of vulnerability can be linked to different stages in life, age does not appear in the list (above) of those potentially at a disadvantage, neither does illness or disability or indeed where people live - all three of which are in the CEAR Act.

3.5.10 The list developed in Australia by Consumers Affairs Victoria does. Its list of those at risk of disadvantage includes:

- mental capacity
- physical capacity
- race or ethnicity
- age

- gender and sexual preference
- health status
- educational attainment
- labour force status (employed or unemployed)
- income status, and
- geographical location (remoteness from urban based services).

3.5.11 Consumers Affairs Victoria tries to separate out vulnerability from disadvantage by asking if an issue is ongoing. It suggests that disadvantage arising from 'innate capabilities' of the individual or the distribution of power is almost certainly means the person is vulnerable as a consumer. Whereas vulnerability arising from temporary circumstances (a 'life event' such as bereavement) would not necessarily be regarded as making someone disadvantaged. So people who are at a disadvantage are vulnerable but not everyone who is vulnerable is a disadvantaged consumer.

3.5.12 In a draft paper from the British Standards Institution (BSI) with the working title *Inclusive Service provision – Requirements for identifying and responding to consumer vulnerability*, the BSI takes the opposite view:

'Not all vulnerable consumers are disadvantaged consumers. A disadvantaged consumer is someone who, due to certain circumstances, is at risk from detriment in accessing or using products or services. The way that society, markets, organisations and transactions work can put people who are in vulnerable circumstances at a disadvantage.'

3.5.13 In 2003 the DTI looked at some of the legislation surrounding vulnerability and finds little in the way of clear definitions. In its report *Comparative Report on Consumer Policy Regimes* it notes:

'Although consumer policies recognised the issue of protecting vulnerable consumers the team found little in the way of explicit definitions of who constituted the vulnerable at a policy level. At one level they have been defined in terms of case law (as in the 1983 Amadio judgement in Australia which concerned a bank exploiting the ignorance of an elderly couple and what was permissible within the law); at another it was possible to find legislation that had been enacted which covered all consumers but the benefit of which was really aimed at the vulnerable, for example laws about cooling off periods for agreements concluded in the home. Concepts such as unconscionability in US and Australian law operated to provide greater protection to the vulnerable. In Denmark the Consumer Ombudsman aims to protect consumers on the basis of an "average norm". This means protecting consumers on the basis of the experience and knowledge of the average consumer.'

3.5.14 In the Amadio judgement (mentioned above) there was a reference back to a much earlier case. Fullagar J in *Blomley v Ryan* (1956) where the judge listed examples of 'circumstances adversely affecting a party...poverty or need of any kind, sickness, age, sex, infirmity of body or mind, drunkenness, illiteracy or lack of education, lack of assistance or explanation where assistance or explanation is necessary. The common characteristic seems to be that they have the effect of placing one party at a serious disadvantage vis-à-vis the other.'

3.5.15 In April 2008, the European Unfair Commercial Practices Directive came into force in UK law through the Consumer Protection from Unfair Trading Regulations 2007 to protect 'vulnerable consumers'. It is the first time that provision for 'vulnerable consumers' has been included in the structure of UK consumer protection legislation but it appears that it will rely on case law to develop more clarity over the notion of vulnerability.

3.5.16 A report to the Department for Trade and Industry, *An Analysis of the Application and Scope of the Unfair Commercial Practices Directive*, noted:

'The concept of the vulnerable consumer is limited to vulnerabilities resulting from mental or physical infirmity, age or credulity. However, there is an underlying tension between the desire to liberalise marketing and yet, at the same time, protect vulnerable consumers that is resolved neither by this provision nor the provision that looks to the average member of a particular group of consumers that have been targeted...'

3.5.17 In its Prioritisation Principles the OFT says that:

'Disadvantaged consumers may be particularly vulnerable to exploitation within markets or may simply not share in the benefits of greater competition. For example, some consumers may have a higher propensity to be misled by rogue traders. Disadvantaged consumers may be served less well by markets because, for example, they may be more expensive to serve, they have less market access, they are in debt, and they cannot afford the higher risk that often accompanies better value. While the OFT has no legal or other mandate to redistribute wealth or power to intervene in individual disputes, we may sometimes favour projects that would benefit disadvantaged consumers, in order to build overall consumer confidence in markets.'

4 So where does this leave Consumer Focus?

4.1 The above analysis suggests that we must ensure that we do not simply equate certain 'categories' of people or households with vulnerability or disadvantage and should instead take a more sophisticated approach. This should involve looking not only at individuals' characteristics and other risk factors which might put consumers at a disadvantage but also the nature of markets and situations in which consumers find themselves, and the extent to which some services are more essential than others. We also need to consider the effects of multiple disadvantage.

4.2 For example, we might well want examine the additional challenges faced by consumers in rural areas. This is a risk factor placing consumers potentially at a disadvantage; though the fact of living in a rural area does not in itself mean that a consumer is actually suffering disadvantage. A consumer living in a rural location with a high income, private transport and a warm home is much harder to construe as being at a disadvantage or at risk of vulnerability – unless in a market such as pensions where the nature of the market and the complexity of the decisions involved leave most people vulnerable. Whereas someone with a disability living in a rural area on a low income with no car and living in a damp home with no mains gas is clearly likely to face acute disadvantage in many, perhaps most, markets.

5 Proposal

- 5.1 That further work should be developed on this topic with a view to taking the issues to the Joint Boards meeting in June. The work should cover not only the philosophy and the need to attempt to reach a common terminology but also communications, training and development of staff and empowerment dimensions.

6 Resources

- 6.1 This will initially use existing staff resources but there may need to be some research support. We would make the most of the expertise of main and national Board members; those Board members wishing to be particularly closely involved should indicate this during the discussion of this paper.

7 Next steps

- Work starts January 2010
- Discussions with Boards and staff - ongoing
- Discussion paper by end April
- Progress report to May Board
- Joint Boards Meeting in June