

Mobility aids

An OFT market study

OFT1374

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1 EXECUTIVE SUMMARY

Introduction

- 1.1 Mobility aids¹ can play a vital role in supporting the ways in which millions of elderly and disabled people live their lives by enabling them to live more independently, safely and healthily. For example, they can assist elderly and disabled people in carrying out daily living activities, accessing their place of employment and a wider range of social and leisure activities. Mobility aids can also enable some users to continue living in their own homes rather than having to move into residential care. In addition, mobility aids can reduce the risk of accidents or injuries related to restricted mobility.
- 1.2 Users of mobility aids have a wide range of needs. Some are entirely dependent on a mobility aid for their mobility and independence whilst others may be occasional users. Some will be lifelong users because of a condition they were born with; some will suffer a traumatic injury during their lifetime or contract a progressive disease that increasingly affects their mobility; and some become increasingly frail and encounter mobility difficulties as a result of age-related conditions.
- 1.3 We estimate that the current value of the UK sector for mobility aids is between £430m and £510m, and that there are potentially over 4.3 million mobility aids users in the UK. As the average age of the population increases, the use of mobility aids will also increase. We therefore expect the sector to grow for the foreseeable future.
- 1.4 In early 2010, key interested parties raised concerns with the Office of Fair Trading (OFT) that the mobility aids sector may not be working well for consumers. We consulted publicly and

¹ Our market study and this report cover the following mobility aids: wheelchairs, scooters, stair lifts, bath aids, hoists, adjustable beds and specialist seating.

received comments from a wide range of key interested parties on the proposed scope of a market study into the UK sector for mobility aids. As a result of that consultation, we focused the market study on the following three areas of potential concern in order to examine whether the sector is working well for consumers:

- whether consumers are treated fairly
- whether consumers can access, assess and act on information which enables them to make informed purchasing decisions and to drive vigorous competition amongst firms, and
- whether competition in the supply of wheelchairs in the UK is working well for consumers.

Key findings, actions and recommendations

- 1.5 We have outlined below our key findings in relation to each of the three issues we examined in the market study. Where we have identified areas in which the sector may not be working well for consumers, we outline what action the OFT will take, or has already taken, and propose recommendations to address the problems identified.

1. Are consumers being treated fairly by traders?

Summary of key findings

We have found unfair sales practices targeted at elderly and vulnerable consumers which are particularly prevalent in doorstep sales. Users of mobility aids may be more likely to be vulnerable when making purchasing decisions, for example due to their limited mobility and age-related conditions.

- More than **4,000 complaints** in respect of mobility aids sales have been made to Consumer Direct in each of the last three years. In addition, we have found that complaints about unfair sales practices in this sector are **highest for doorstep sales**.
- We have found that a small minority of firms engage in **unfair sales practices, such as high pressure and misleading sales practices**. Although these practices are **not endemic** in this sector, the **harm to consumers is potentially high** where they occur. Harm includes financial and non-financial harm. For example, we have found that consumers who reported high pressure selling or misleading claims or omissions were paying significantly higher prices or were being sold products that were unsuitable to their needs. In these instances, consumers are also likely to experience distress and inconvenience which can impact on their health and wellbeing. In addition, there is evidence of elderly and vulnerable consumers being systematically targeted with these practices.
- It appears that such experiences are often **under-reported** by consumers.

Summary of actions and recommendations

- The OFT and TSS are currently taking action against firms in this sector. The OFT **commenced investigations into two national firms**, one suspected of engaging in unfair sales practices on the doorstep, and another in respect of its terms and conditions and service quality issues, and it is investigating other similar behaviour. Further to our early intervention, one of these cases has led to the introduction of new, fairer, terms and conditions, and outstanding issues regarding improved sales and after-sales care are in the process of being resolved. The second investigation is continuing. The OFT has also started action which could lead to the removal of the credit licences from a number of traders.
- The OFT has **launched a doorstep selling consumer awareness campaign**, with specific emphasis on mobility aids to empower consumers against unfair sales practices. The campaign provides consumers with practical tips and informs them of their rights.
- We are warning **traders to ensure that their practices are compliant with the law** or face possible legal action by the OFT or TSS. In addition, we recommend that traders ensure their incentive schemes for sales people **do not encourage the use of high pressure or misleading selling practices**. We encourage TSS to promote best practice in sales incentive schemes with traders.
- The OFT will hold an enforcement summit later this year and subsequently produce enforcement **Guidance for TSS** in March 2012, bringing together best practice and experience to support TSS' work in this sector.
- The OFT will **continue to prioritise complaints** in this sector in respect of national firms, particularly complaints concerning high pressure and misleading sales practices. We will also be coordinating enforcement activity with TSS. In addition, we recommend to TSS that complaints in this sector should be prioritised as far as possible within their existing portfolio of work.

- In addition, we recommend the continuation and further development of **coordinated efforts and partnership work** between the OFT, Citizens Advice, TSS, Adult Social Services, charities and other interested parties in order to tackle unfair practices in this sector effectively and to support elderly and vulnerable consumers in making complaints.
- We make recommendations to consumers which are aimed at reducing unwanted cold-calling and marketing in order to address concerns raised about the targeting of vulnerable consumers by some traders.

2. Can consumers in this sector access, assess and act on information which enables them to make informed purchasing decisions?

Summary of key findings

Although consumers are in the main satisfied with their purchasing experience, many do not shop around (for example by searching for alternative offers using the internet, telephone or by visiting other retailers), and a significant proportion of consumers base their purchasing decisions on limited information. As a result, and because prices vary significantly, consumers can end up paying very high prices and risk purchasing products that may be inappropriate to their needs.

- Since most consumers in this sector are **first-time buyers**, it is all the more important that they equip themselves with appropriate information in order to enable them better to identify products that represent good value and which suit their needs. However, our research has found that a significant proportion of consumers base their purchasing decisions on **limited information**.
- Moreover, we have found that a significant proportion of **consumers do not shop around** and can end up paying very high prices. Poor mobility, lack of access to the internet by some consumers and being under time pressure to make a purchase (for example, where an urgent need arises) also, in part, account for lower levels of shopping around.
- In addition, there is a **lack of price advertising** on the internet and in marketing materials which inhibits consumers' ability to shop around in order to identify products that represent good value for money.
- We have observed a **significant variation in prices of identical products**. For example, prices for the same brand and model of scooter can vary by over £1,000, and we have even seen price differences of £3,000.

Summary of actions and recommendations

- We recommend that **suppliers should disclose actual prices** or price ranges (where an exact quote cannot be given) on websites and in marketing material. We are working together with the British Healthcare Trades Association, whose Code of Practice the OFT sponsors, and it has **agreed to amend its Code of Practice** in order to require its members to display actual prices and price ranges.
- We urge consumers to seek out better value by **shopping around**, for example by obtaining more than one quote before making a purchase as prices for the same product can vary significantly.
- We make a range of recommendations, including to local authorities, designed to **increase consumers' ability to make good purchasing decisions**.
- In addition, the OFT is currently considering whether to take any action following information received recently that some companies in one segment of the mobility aids sector may be imposing restrictions on retailers of mobility aids which may prevent consumers from identifying the products that offer good value.²

² There are over 900 firms (including manufacturers, retailers and individual traders) in the mobility aids sector as a whole, and the issue relates only to a few of them. In line with the OFT's policy, we cannot name the businesses in question at this time.

3. Is competition in the wheelchair sector working well for consumers?

Summary of key findings

- We have found that the provision of wheelchairs in the UK is highly concentrated with one supplier currently accounting for a majority of sales to the public sector. However, despite this concentration, the following suggests that the sector is subject to some competitive constraints:
 - Although one firm accounts for a majority of sales to the public sector, the competing suppliers present in the UK are not all small firms. Some have a strong presence in wheelchair sectors outside of the UK and actively tender for contracts in the UK.
 - The lack of growth in sales from the other players in this sector does not appear to result from structural barriers to expansion to supply wheelchairs in the UK. Low margins in supply to the public sector may indicate that the sector is competitive. However, although suppliers may be able to expand, the low margins in the public sector may mean that the potential return would not justify the level of investment needed to expand significantly.
 - We received no substantiated complaints from customers or competitors to the large suppliers that competition is restricted or distorted due to firms' behaviour. Dealers and suppliers reported that dealers are free to set prices independently, and we observed some, although limited, variation in retail prices. We were not provided with any information to suggest that there are contractual terms which breach competition law by restricting dealers' sales or product offerings.
 - Furthermore, the public sector is collectively the largest purchaser of wheelchairs in the UK with the potential buyer power to constrain suppliers. Public sector purchasing bodies consider that they typically obtain good prices and levels of service from the larger suppliers in particular.

- However, although the sector appears to be subject to some competitive constraints, certain aspects of the fragmented purchasing structure and patterns of public sector purchasing may be deterring significant scale entry and expansion. They may also present difficulties for public sector purchasing bodies in exercising their potential buyer power. For example, improved whole-life costing across public sector purchasing bodies could provide increased incentives for firms to compete on prices. The OFT considers that these factors may be affecting the ability of purchasing bodies to achieve fully buyer power efficiencies in order to drive further competition and good outcomes for consumers.

Summary of recommendations

We make recommendations to NHS Supply Chain and to the community of individual public sector purchasing bodies across the UK, with a view to increasing their ability to drive vigorous competition in the wheelchair sector.

- 1.6 A possible outcome from a market study is a market investigation reference to the Competition Commission. Although we have not reached a provisional view based on the findings in our report as to whether the statutory test for reference is met, our view is that this is not a case in which we would exercise our discretion to make such a reference. We invite views on our proposed decision to that effect– see Annexe C for further details. Interested parties are invited to submit their views by 4pm on Thursday 20 October 2011, either by e-mail to mobilityaids@oft.gsi.gov.uk, or in writing to:

Mobility Aids Market Study Team
Goods and Consumer Group
The Office of Fair Trading
Fleetbank House
2-6 Salisbury Square
London
EC4Y 8JX

Thank you

- 1.7 During this study we have consulted a wide range of interested parties including charities, TSS, consumer organisations, public sector commissioning and purchasing bodies, healthcare specialists, companies operating in this sector and mobility aids users. Key contributors are listed in Annexe B of this report. We are grateful for their contributions and willingness to assist the OFT in its work.

2 INTRODUCTION

2.1 This chapter describes the OFT's mission and powers in the context of its market study work. It sets out the motivation for the present study and outlines the issues that we have examined and the research and analysis we conducted.

The OFT's mission and powers

2.2 The OFT's mission is to make markets work well for consumers. In this report, the OFT interprets the term 'consumer' broadly so as to include public sector purchasing organisations and businesses as well as final consumers or end-users.

2.3 A market study comprises an examination of a particular market or sector, or practices across a variety of goods and services, with the aim of identifying aspects of market failure and considering how they might be best addressed. Such aspects could include competition issues, consumer protection issues, consumer detriment and the effect of government regulations. In some cases, they can also cover the role of Government as a purchaser or supplier in a market.

2.4 There is a range of possible outcomes of a market study. Outcomes include (but are not limited to):

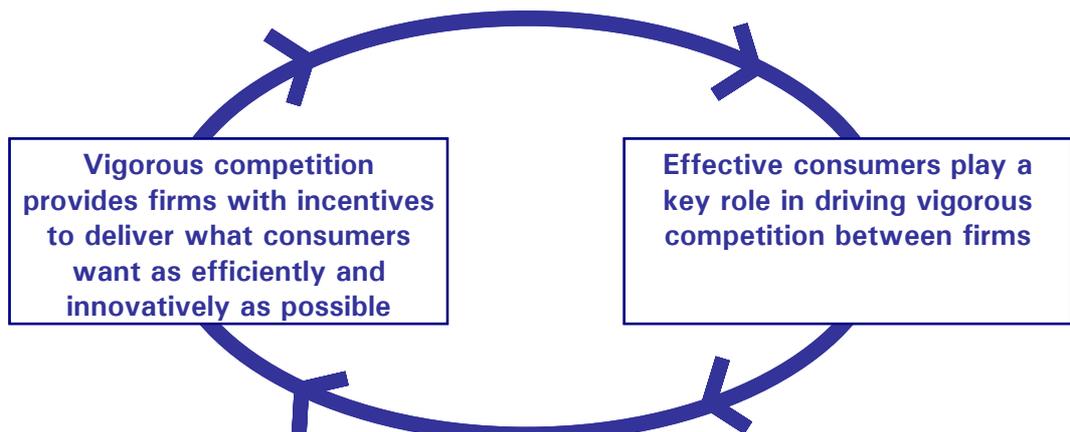
- enforcement action by the OFT
- a reference of a market or markets to the Competition Commission
- recommendations to Government or regulators for changes in laws, regulations or policy
- voluntary action by industry players to address any problems found
- campaigns to promote consumer awareness

- a finding of a clean bill of health
- no grounds for further enforcement action.

Motivation for the market study

- 2.5 This study has examined whether the mobility aids sector in the UK is working well for consumers.
- 2.6 Well-functioning markets depend both on competition working well and on consumers making good choices. Firms compete to win business by, among other matters, achieving the lowest level of cost and prices and developing better products to meet consumers' needs more effectively than their competitors. Consumers drive competition where they are empowered to shop around through access to readily available and accurate information about the products they are seeking and the various offers available in the market. For example, well-informed consumers are able to identify goods and services that represent value for money, thereby encouraging businesses to compete keenly on price and quality. This is further illustrated by Figure 2.1.

Figure 2.1: Virtuous circle between consumers and competition



- 2.7 Well-functioning markets also depend on consumers knowing their rights when buying goods and services, to recognise when these have been breached and if so, complain and seek redress when

necessary. Moreover, consumer empowerment also depends on consumers being supported by effective enforcement of relevant legislation, and strong advocacy by public authorities.

- 2.8 In early 2010, concerns were raised with the OFT by organisations including charities and consumer bodies that the mobility aids sector may not be working well for consumers. Concerns were raised about matters such as: the difficulties faced by consumers searching for better quality and prices and identifying products that suit their needs; potentially vulnerable consumers being targeted with unfair sales practices; and potential distortions of competition in the wheelchair sector resulting from a range of factors (for example, public sector purchasing patterns).

The scope of the market study

- 2.9 We consulted publicly on the proposed scope of our study in light of the concerns that had been raised.² As a result of that consultation, we launched this market study in February 2011 and focused on the following three areas of potential concern in examining whether the UK sectors for certain mobility aids is working well for consumers:

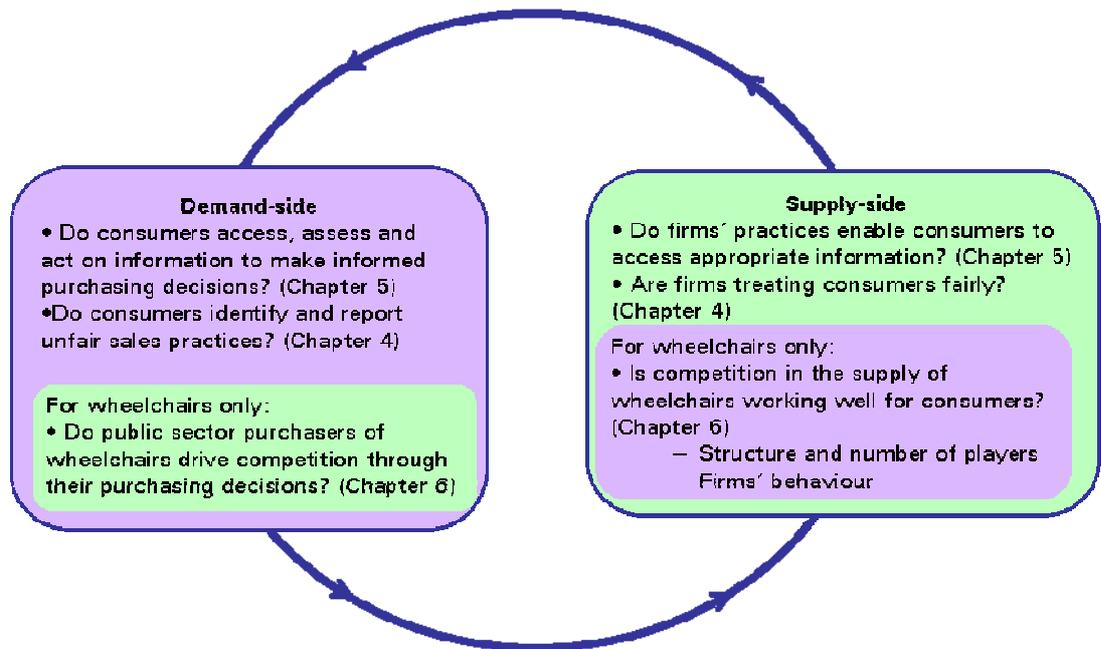
- whether consumers are being treated fairly
- whether consumers can access, assess and act on information which enables them to make informed purchasing decisions and to drive vigorous competition amongst firms, and

² The OFT document entitled 'Proposed market study into mobility aids: Proposed Statement of Scope' is available at: www.of.gov.uk/shared_of/market-studies/Mobility-aids-scoping.pdf

- whether competition in the supply of wheelchairs in the UK is working well for consumers.³

2.10 Figure 2.2 illustrates the interaction between the above issues in the context of this market study.

Figure 2.2: Interaction between the issues we examined



Research and analysis

2.11 In carrying out this study we obtained information from a wide range of interested parties⁴ in the following categories:

- suppliers, retailers and their trade association(s)
- consumer groups

³ The OFT's Statement of Scope and Invitation to Contribute is available at: www.of.gov.uk/OFTwork/markets-work/current/mobility-aids/.

⁴ See Annexe B for a list of key contributors.

- charities with an interest in this sector
- central and local government departments
- regulatory bodies
- users of mobility aids, carers and other members of the public.

2.12 Our analysis included:

- **a survey of consumers** in order to understand their experiences of purchasing a mobility aid⁵
- analysis of **consumer complaints** made to Consumer Direct (see Chapter 4)
- **a mystery shopping exercise** to gauge how easy it is to obtain information on products and prices, and to investigate the retail prices for some products (see Chapters 5 and 6)
- **a review of mobility aids advertisements** contained in local and regional newspapers to examine how easy it is to obtain information on prices (see Chapters 5).

2.13 We publicly consulted on our emerging key findings in May 2011. Interested parties broadly agreed with those emerging key findings and also provided further information which informed the development of the findings and recommendations set out in this report.

Report structure

2.14 This report is structured as follows:

- Chapter 3 provides an overview of the mobility aids sector.

⁵ See SPA Mobility aids research report, August 2011, available at www.oft.gov.uk/OFTwork/markets-work/current/mobility-aids/

- Chapter 4 assesses whether consumers are being treated fairly.
- Chapter 5 assesses whether consumers can access, assess and act on information which enables them to make informed purchasing decisions and to drive vigorous competition amongst firms, and
- Chapter 6 assesses whether competition in the supply of wheelchairs in the UK is working well for consumers.

2.15 This report also contains the following Annexes:

- Annexe A provides examples of, and high level guidance on, best practice in public sector purchasing of wheelchairs.
- Annexe B outlines the steps we took to gather information for this market study and lists the key contributors.
- Annexe C sets out the OFT's provisional decision not to make a market investigation reference.

3 OVERVIEW OF THE MOBILITY AIDS SECTOR

What are mobility aids and who uses them?

- 3.1 Mobility aids can play a vital role in supporting the ways in which millions of elderly and disabled people live their lives by enabling them to live more independently, safely and healthily. For example, they can assist elderly and disabled people in carrying out daily living activities, accessing their place of employment and a wider range of social and leisure activities. Mobility aids can also enable some users to continue living in their own homes rather than having to move into residential care. In addition, mobility aids can reduce the risk of accidents or injuries related to restricted mobility.
- 3.2 Users of mobility aids have a wide range of needs. Some are entirely dependent on a mobility aid for their mobility and independence whilst others may be occasional users. Some are lifelong users because of a condition they were born with; some have suffered a traumatic injury during their lifetime or contracted a progressive disease that increasingly affects their mobility; and some become increasingly frail and encounter mobility difficulties as a result of age-related conditions.
- 3.3 Users of mobility aids may exhibit certain characteristics that are likely to contribute to the vulnerability they may experience when purchasing mobility aids. They include, in addition to the mobility issue for which the aid is needed, age-related conditions (including visual or hearing problems, and cognitive difficulties), lack of access to the internet, or that the user is under time pressure to make a purchase due to a medical condition. We note that these characteristics do not apply to all users of mobility aids and even where any of them are present, that would not necessarily mean that the consumer will experience exploitative sales practices. However, if such sales practices exist then vulnerable consumers are much more likely to experience harm. Chapters 4 and 5 below describe in further detail the factors that can contribute to consumers' vulnerability in the mobility aids sector.

Size and growth of the sector

- 3.4 Information on the number of mobility aids users in the UK is limited. In 2004, the Audit Commission estimated that 35 per cent of people above the age of 65 have a mobility problem and could benefit from using a mobility aid.⁶ Using that figure, we estimate that there are potentially 4.3 million⁷ mobility aids users over the age of 65 in the UK. However, the number of all mobility aids users is likely to be significantly higher given that the Department for Work and Pensions estimates that 10 million people have a limiting long term illness, impairment or disability in the UK.⁸
- 3.5 There is little reliable data available on the size of the UK mobility aids sector. We estimate that the current value of the sector is between £430 million and £510 million.⁹ Interested parties from the industry reported that the sector is growing and we expect such growth to continue as the average age of the population increases.

The mobility aids covered by this study

- 3.6 Following a public consultation on the scope of this market study, the mobility aids products covered are: wheelchairs, mobility scooters, stair lifts, hoists (that is, equipment for assisting in

⁶ Audit Commission (2004) *Assistive technology*, page 8.

⁷ We have calculated this with reference to the Office of National Statistics data on the UK population and percentage who are 65 and over for 2010 and the Audit Commission's estimate that 35 per cent of those 65 and over have a mobility problem.

⁸ Department for Work and Pensions (2010) *Family Resources Survey 2008/09*.

⁹ Our estimate draws on data from two market reports and estimates from interested parties. We have adjusted figures for estimated growth and expressed them in 2010 prices. See: Key Note (2009) *Equipment for the Disabled* and Global Industry Analysts, Inc. (2011) *Wheelchairs (powered and manual): A Global Strategic Business Report*, page 137.

lifting and raising the user), bath aids (for example, a bath lift, shower cradle or bath seat), adjustable beds, and specialist seating (for example, a riser and recliner chair, a chair with tilt-in facility or specialist seating for wheelchairs).

Providers of mobility aids to end-users

- 3.7 End-users can purchase a mobility aid using their own funds, or they can obtain it from public sector organisations or charities.

Public sector provision

- 3.8 Public sector bodies, for example NHS Wheelchair Services in England,¹⁰ social services departments of local councils, and Government departments such as the Department for Work and Pensions all provide mobility aids to users.
- 3.9 The eligibility criteria and availability of equipment varies from area to area. To take wheelchair provision as an example, there is variation across the UK in the way the service is provided due to differences in factors such as location, numbers of users, staffing levels, budgets, and eligibility criteria. Box 3.1 provides an outline of the standard process.

¹⁰ And equivalent bodies in Wales, Scotland and Northern Ireland.

Box 3.1: Standard process for public sector provision of wheelchairs

- Individuals are referred to their local Wheelchair Service by a clinician or healthcare professional. Some Wheelchair Services also operate a self-referral system.
- Referrals are assessed by the Wheelchair Service according to its eligibility criteria.
- An in-depth assessment of the applicant's needs is carried out, usually at a Wheelchair Services clinic, by a qualified professional such as an occupational therapist. The assessment may also involve an engineer and/or representative of the wheelchair manufacturer and in some cases, particularly for children, professionals across health, education and social services, and parents and carers. Re-assessments may take place in the event that a user's needs change.
- The Wheelchair Service then discusses timescales and funding options with the user. Such options may include voucher and top-up schemes.
- A wheelchair is provided along with training and information on how to use it, safety issues, future points of contact, insurance and details of arrangements for maintenance and repairs.

3.10 In a number of areas in England, users may be offered vouchers in order to obtain a mobility aid from accredited retailers or to obtain equipment which is of a higher specification than that which would be provided to meet their clinical needs. For example, in relation to wheelchairs, the voucher is for the value of the equipment that would have been supplied and may also include an amount to cover the predicted maintenance costs for that equipment. Under this system, the mobility aid may belong to the user rather than being on loan. 'Top up' schemes are also used whereby users can contribute to the cost of upgrading the specification of the equipment supplied to them beyond that required to meet their basic clinical need. Under top-up schemes, the equipment remains the property of the public sector provider.

- 3.11 In addition, it is becoming increasingly common for local authorities to provide individuals with 'personal budgets', which allows the individual to purchase a mobility aid themselves, rather than be given a mobility aid by their local authority.

Charities

- 3.12 There are several charities that provide equipment directly to users, loan equipment, or provide users with grants to allow them to purchase equipment of their choice. Charities have an important role in instances where potential users do not meet local public sector bodies' eligibility criteria.

Self-funding

- 3.13 Consumers may also purchase a mobility aid privately. For example, if they are not eligible for public sector provision, they do not wish to wait for equipment to be provided by the public sector, or if they wish to purchase specialist equipment or equipment of a higher specification than is available from the public sector.

Mobility aids sales channels

- 3.14 Mobility aids are sold through a range of sales channels including: direct from suppliers; specialist independent 'bricks and mortar'¹¹ retailers; distance selling (for example, internet retailers or catalogue sales); and doorstep sales.¹² Several national retailers, for example, Tesco, Argos and Halfords, have started selling a

¹¹ These are retailers who use a traditional sales channel such as retail premises.

¹² In this report the terms 'doorstep sales' and 'on the doorstep' refer to transactions which take place when a consumer is visited by a trader in their home. Doorstep sales take place in two ways: invited, where the consumer actively initiates the visit by the salesperson, for example by specifically requesting a visit in response to an advert or mail shot; and uninvited, where the consumer has not actively requested a visit by the sales person. Doorstep sales are discussed in greater detail in Chapter 4 below.

limited range of mobility aids products. It is estimated that there are over 900 traders, including retailers, of mobility aids in the UK.¹³

3.15 In the mobility aids sector, some consumers may consider that a doorstep sales transaction provides a number of advantages over other sales channels, such as:

- It avoids the need for the consumer to travel, which may be a particular benefit if the consumer has significant mobility problems.
- If the product is complex and requires a time consuming discussion with the supplier, it may be easier for the consumer for that to take place in their home.
- For some products, a home demonstration may be more suitable than testing a product in a shop or viewing information about it online. For example, users may wish to test the manoeuvrability of wheelchairs in their home.
- For certain products (for example, stair lifts) a home visit may be essential for the product to be supplied.

British Healthcare Trades Association (BHTA)

3.16 The BHTA's¹⁴ members comprise manufacturers and suppliers of assistive technology products, aids and equipment designed for disabled people. The BHTA has adopted a Code of Practice, which has been approved by the OFT under the Consumer Codes Approval Scheme. The BHTA Code requires members to agree to

¹³ Estimate from British Healthcare Trades Association.

¹⁴ The BHTA was established in 1917 (as the Surgical Instrument Makers Association) in response to the increase in surgical procedures and the introduction of new techniques and equipment during the First World War. It has evolved and changed its name over the years as the sector has changed.

provide consumers with a higher standard of customer service than is required by law. Paragraphs 4.60 to 4.61 below describe the BHTA Code in more detail.

4 ARE CONSUMERS BEING TREATED FAIRLY?

Summary of key findings

We have found unfair sales practices targeted at elderly and vulnerable consumers which are particularly prevalent in doorstep sales. Users of mobility aids may be more likely to be vulnerable when making purchasing decisions, for example due to their limited mobility and age-related conditions.

- More than **4,000 complaints** in respect of mobility aid sales have been made to Consumer Direct in each of the last three years. In addition, we have found that complaints about unfair sales practices in this sector are **highest for doorstep sales**.
- We have found that a small minority of firms engage in **unfair sales practices, such as high pressure and misleading sales practices**. Although these practices are **not endemic** in this sector, the **harm to consumers is potentially high** where they occur. Harm includes financial and non-financial harm. For example, we have found that consumers who reported high pressure selling or misleading claims or omissions were paying significantly higher prices or were being sold products that were unsuitable to their needs. In these instances, consumers are also likely to experience distress and inconvenience which can impact on their health and wellbeing. In addition, there is evidence of elderly and vulnerable consumers being systematically targeted with these practices.
- It appears that such experiences are often **under-reported** by consumers.

Summary of actions and recommendations

- The OFT and TSS are currently taking action against firms in this sector. The OFT **commenced investigations into two national firms**, one suspected of engaging in unfair sales practices on the doorstep, and another in respect of its terms and conditions and service quality issues, and it is investigating other similar behaviour. Further to our early intervention, we expect one of these cases to lead to the introduction of new, more fair, terms and conditions, and outstanding issues regarding improved sales and after-sales care are in the process of being resolved. The second investigation is continuing. The OFT has also started action which could lead to the removal of the credit licences from a number of traders.
- The OFT has **launched a doorstep selling consumer awareness campaign**, with specific emphasis on mobility aids to empower consumers against unfair sales practices. The campaign provides consumers with practical tips and informs them of their rights.
- We are warning **traders to ensure that their practices are compliant with the law** or face possible legal action by the OFT or TSS. In addition, we recommend that traders ensure their incentive schemes for salespeople **do not encourage the use of high pressure or misleading selling practices**. We encourage TSS to promote best practice in sales incentive schemes with traders.
- The OFT will hold an enforcement summit later this year and subsequently produce enforcement **Guidance for TSS** in March 2012, bringing together best practice and experience to support TSS' work in this sector.
- The OFT will **continue to prioritise complaints** in this sector in respect of national firms, particularly complaints concerning high pressure and misleading sales practices. We will also be coordinating enforcement activity with TSS. In addition, we recommend to TSS that complaints in this sector should be prioritised as far as possible within their existing portfolio of work.

- We recommend the continuation and further development of **coordinated efforts and partnership work** between the OFT, Citizens Advice, TSS, Adult Social Services, charities and other interested parties in order to tackle unfair practices in this sector effectively, for example through the dissemination of information regarding consumers' rights, and to support elderly and vulnerable consumers in making complaints.
- We make recommendations to consumers which are aimed at reducing unwanted cold-calling and marketing in order to address concerns raised about the targeting of vulnerable consumers by some traders.

Introduction

4.1 Prior to the launch of the market study, interested parties raised concerns that potentially vulnerable consumers were being targeted and subjected to unfair sales practices in the mobility aids sector. We examined whether mobility aids consumers were being exposed to unfair sales practices and found that:

- a minority of firms engage in **high pressure and misleading sales practices**. Although these practices are not endemic in the mobility aids sector, where they do occur consumers often pay very high prices and may purchase products which they do not need or which are unsuitable to their needs
- complaints of unfair sales practices are **highest for sales that take place in consumers' homes**. Compared to the number of sales that take place in consumers' homes in this sector, the level of consumer complaints for such sales is disproportionately high
- consumers often **do not report** unfair sales practices.

4.2 In this chapter we outline several factors that can contribute to consumers' vulnerability in the mobility aids sector. We provide an overview of the nature of unfair sales practices which we have found in the mobility aids sector and present our findings on the

proportion of consumers experiencing an unfair sales practice. In addition, we examine the harm caused by those unfair sales practices. We conclude with a summary of actions being taken by the OFT and other bodies in relation to unfair sales practices and our recommendations for further action by other organisations.

Vulnerability of consumers in the mobility aids sector

- 4.3 The OFT plays an active role in addressing aspects of consumer exploitation which stem from consumer vulnerability.
- 4.4 There is no single definition of consumer vulnerability,¹⁵ however an inherent feature of vulnerability is that it places people at greater risk and makes them more susceptible to suffering harm in a given situation. There are several factors that can contribute to consumers' vulnerability in the mobility aids sector as outlined in Box 4.1.
- 4.5 Although not all of these factors will apply to all mobility aids consumers, we have found that many do apply to some of them. As a result, we consider that consumers in this sector may be particularly vulnerable to harm caused by unfair sales practices.
- 4.6 For example, they may be vulnerable because it is more difficult for them to access certain sales channels or information tools which can facilitate shopping around, and that may result in vulnerable consumers paying higher prices. In addition, they may be more likely to be misled by traders who use unfair sales practices if they also have age-related cognitive difficulties.

¹⁵ In the context of the Consumer Protection from Unfair Trading Regulations 2008, vulnerability is described in terms of individuals who are limited by virtue of physical or mental infirmity, credulity or age.

Box 4.1: Factors that can contribute to consumers' vulnerability in the mobility aids sector¹

For many consumers in this sector mobility aids are a necessity given their limited mobility. Therefore, the consequences of a poor transaction could significantly impact their wellbeing, for example by leaving them housebound.

- **Mobility problems:** Consumers in this sector have a range of mobility problems that can limit the extent to which they are able to shop around in order to get a better deal, thereby potentially having less choice or paying higher prices for their purchases. For example, some consumers with significant mobility problems may be unable to visit retail stores. They may also be dependent, or heavily dependent, on certain sales channels, such as doorstep sales.
- **Age-related conditions:** Consumers in this sector may have certain age-related conditions which can limit the extent to which they are able to access and assess information. For example, consumers who have hearing impairments may be limited in the extent to which they can use a telephone in order to shop around. In addition, they may also experience cognitive difficulties associated with suffering from pain, fatigue or conditions such as dementia. That may potentially make them more susceptible to unfair sales practices. They may also experience greater difficulty in seeking redress where they are treated unfairly.
- **Lack of access to the internet:** Aspects of vulnerability may be exacerbated by lack of access to the internet as that limits consumers' ability to obtain information to find the best deals, and to find information regarding methods of redress if things go wrong.
- **Time pressure:** When consumers are under time pressure to make a purchase (for example, due to an urgent need for a mobility aid), they are less likely to seek or consider the various offers available in the market, thereby potentially paying higher prices for their purchases.

¹ This is an illustrative, non-exhaustive list.

4.7 Consumers in the mobility aids sector can suffer significant harm and reduction in the quality of life as a consequence of poor purchasing decisions. For example, an inappropriate purchase could impact on a consumer's wellbeing by leaving them housebound, as well as potentially causing significant distress and inconvenience. In addition, it can be more difficult for some consumers, particularly the elderly and those with cognitive difficulties, to deal with potentially lengthy legal processes involving court proceedings. For such consumers, their vulnerability to being exploited is increased.

Unfair sales practices in this sector

4.8 This section considers the types of unfair sales practices that we have found in the mobility aids sector. Examples of unfair sales practices have been drawn from a variety of sources, including consultation with local authority TSS¹⁶ about complaints they received in the course of their local enforcement work, an examination of complaints received by Consumer Direct¹⁷ and our consumer research.

4.9 There are numerous concerns relating to unfair sales practices in the mobility aids sector:

- **High pressure sales practices:** some consumers are subject to high pressure selling in their home. This may include extended sales pitches that last for a number of hours, traders refusing to terminate the sales visit when requested by the consumer, and offering time-limited discounts whereby the consumer must make an immediate purchase in order to receive a discount. These practices can exert pressure on the consumer

¹⁶ TSS safeguard the interests of consumers and businesses by enforcing legislation, responding to enquiries and complaints, investigating offences, prosecuting offenders and providing advice and guidance.

¹⁷ Consumer Direct is the government-funded consumer advice service. It offers information and advice on problems with goods and services, energy and post.

to purchase a product that either does not represent value for money or is not suitable for their needs.

- **Misleading claims or omissions regarding the nature of the sales visit:** some consumers have reported that they have received unsolicited telephone calls informing them that they are 'due for an assessment', which led them to believe that the caller was from Adult Social Services, when in fact the caller was a trader seeking to make a sales visit to their home. Once the trader is invited into the home, some consumers are pressurised into purchasing a product that either does not represent value for money or is not suitable for their needs. Other examples include traders misrepresenting their connection to NHS, charities, TSS or trade associations.
- **Misleading claims or omissions regarding prices:** some consumers are quoted inflated starting prices or shown unrealistically high Recommended Retail Prices (RRPs), which are then reduced in order to create the impression of a significant discount. These discounts create a bias in consumers' perceptions and tend to alter their behaviour. In particular, unless they shop around, consumers in such a situation would likely assess the offer by comparing the so-called 'discounted' price to the inflated price or RRP, rather than assess whether it genuinely represents value for money.¹⁸ In addition, some traders claim these 'discounts' to be available for a 'limited time only', putting the consumer under additional pressure to purchase quickly. Some consumers also reported receiving misleading information on the product's final price.
- **Misleading claims or omissions regarding product characteristics:** some consumers reported receiving misleading

¹⁸ For further discussion of Recommended Retail Prices in the context of reference pricing see OFT1291 (2010) *Advertising of Prices*, page 36 available at: www.offt.gov.uk/shared_offt/market-studies/AoP/OFT1291.pdf

information on the product's suitability or the product not being as advertised.

- **Products falsely claimed as being bespoke:** TSS reported that in a number of cases where products are claimed to be 'bespoke' or custom made, they are in fact prefabricated products made from a range of off-the-shelf parts. The claim that a product is bespoke is then used by the traders in question in order to avoid giving an indication of prices upfront before a doorstep sales visit and to mislead the consumer into believing they have foregone their cancellation rights when purchasing on the doorstep.¹⁹
- **Products falsely claimed as being new:** some consumers reported cases where a product was claimed to be new when it was second-hand.
- **Pressure to visit:** some traders refuse to give any indication of prices over the phone for standard products without a visit to the consumer's home, making it extremely difficult for consumers to shop around before deciding who to invite to their home. Once in the home, some traders can then engage in a variety of unfair sales practices, as illustrated above.
- **False advertising:** TSS have reported that some advertisements in local newspapers offer consumers a free 'assessment', which turns out to be a sales visit to the consumer's home or entice the consumer to enter a competition, thereby obtaining consumers' personal details for consequential marketing purposes.

4.10 In addition, some consumers reported a variety of difficulties enforcing their cancellation rights when purchasing on the

¹⁹ In cases where a product is bespoke a consumer does not forfeit their cancellation rights, but may be expected to pay reasonable costs for work already carried out on the product before the purchase is cancelled.

doorstep.²⁰ Problems included very limited time occurring between the contract being agreed and the installation of the product, thereby effectively negating any opportunity for the consumer to cancel an unwanted product, and traders not responding to consumers' attempts to exercise their cancellation rights. In addition, it appears that some traders do not inform consumers of their cancellation rights.

4.11 Boxes 4.2, 4.3 and 4.4 below contain illustrative examples²¹ of how certain consumers in this sector are being targeted and exploited by some traders.²²

²⁰ Consumers who spend over £35 for a product purchased on the doorstep usually have the right to cancel their purchase within seven days. Consumers should be notified of their right to cancel in writing by the trader, and where this has not been done the consumer cannot be held to anything in the contract. (See the OFT consumer leaflet *Buying on the doorstep: Your guide to buying mobility aids on the doorstep or from a salesperson in your home* available at www.of.gov.uk)

²¹ The names of the individuals in each case have been redacted in order to protect the confidentiality of their identity.

²² These illustrative examples have been taken from complaints received from 2009 onwards.

Box 4.2: Example of misleading consumers about the nature of the sales visit

Mr A received an unsolicited call from a person he was led to believe was from Social Services. In fact the caller was a trader posing as being from Social Services, who then arranged to meet him in his home.

Once invited into his home, the trader continued to pretend to be from Social Services, for example, by asking him personal questions about his medication, other mobility aids and living allowances he received. The trader then presented him with an assessment form to fill in which appeared very similar to a Social Services form.

After Mr A filled in the assessment form, the trader told Mr A he would need a stair lift and would have to contribute £3,500 towards one. It was then that Mr A realised the trader was not from Social Services. Mr A refused to purchase any products and asked the trader to leave his home.

Box 4.3: Example of high pressure selling practices

Mrs B, who is disabled, elderly and lives alone, received a phone call from a trader who already knew her personal details and the fact that she was on a mobility scheme. The trader arranged an appointment to visit. Two sales people then visited Mrs B's home and used high pressure sales practices to try to convince Mrs B to purchase a mobility aid for £2,000. For example, when Mrs B told the sales people that the purchase was too expensive and that she simply did not have the money to pay for the mobility aid, they continued to put pressure on Mrs B to buy, and told her she could afford it if she used her savings or released money that was tied up in her will.

The sales people left Mrs B's home after they had received a cash deposit of £40 for the purchase of a memory-foam mattress costing £240.

Box 4.4: Example of high pressure selling practices

Mrs C was looking to purchase a stair lift and sought a quote and assessment from three companies. The first two companies provided a satisfactory assessment and quote. The third company offered a product which seemed much more appealing to Mrs C. Unfortunately, Mrs C's experience was ruined by the trader using a number of high pressure sales practices to force a sale. For example, the trader offered a discount from a high starting price after apparently calling the 'boss' and claimed the discount was only available 'for a limited time'. Eventually, after two hours, Mrs C agreed to purchase the stair lift from the third company in order to get the trader to leave.

Quantitative findings of our research

4.12 This section summarises our research to quantify how prevalent the unfair sales practices are in the mobility aids sector.

Proportion of traders engaging in unfair sales practices

4.13 Our analysis of the complaints data held on Consumer Direct for the year 2010 found that around 220 traders were the subject of complaints relating to high pressure selling or misleading claims or omissions. Further analysis of the data revealed that a small minority of traders (12) received repeated complaints, rather than only one or two complaints in that year. As mentioned previously, there are reported to be over 900 mobility aids traders, including retailers, in the UK. Our analysis of Consumer Direct complaints data therefore suggests that a small minority of all UK mobility aids traders may be engaging in unfair sales practices.

The proportion of consumers experiencing an unfair sales practice

4.14 The vast majority (91 per cent) of respondents in our consumer research considered that the sales process was fair.²³ However, we found differences in the proportion of reported unfair sales practices, depending on whether the mobility aid was purchased on the doorstep²⁴ or elsewhere:

- **Pressure to purchase:** Six per cent of respondents reported that they felt pressure to purchase their mobility aid by the sales person or supplier. However, the number of respondents reporting that they felt pressured to purchase their mobility aid was significantly higher for respondents who purchased on the doorstep (18 per cent) compared to respondents who bought at a trader's premises²⁵ (four per cent), or who bought via the internet, telephone or by post (six per cent).
- **Misleading information:** Six per cent of respondents reported that they had been given information that turned out to be inaccurate. However, the number of respondents reporting that they had been given inaccurate information was significantly higher for respondents who had bought on the doorstep (15 per cent) compared to respondents who had bought at a trader's premises (three per cent), or who had bought via the internet, telephone or by post (nine per cent).

²³ Five per cent took the opposite view and four per cent said they did not know or considered the question was not applicable to them.

²⁴ The consumer research defined doorstep sales as purchases made 'from a doorstep seller' and where it had been 'arranged for a sales person/company representative to visit the home'.

²⁵The consumer research defined traders' premises to include a sale where the consumer 'visited a shop in person', 'visited a manufacturer's premises in person' or where the following applied: 'a relative/friend went to the shop for me/collected it for me'.

- **Unfair sales practices:** the number of respondents reporting that they considered that the sales process was unfair was significantly higher for respondents who purchased on the doorstep (13 per cent) compared with respondents who bought at a trader's premises (two per cent), or who bought via the internet, telephone or by post (five per cent).²⁶

4.15 In addition, our consumer research found that five per cent of respondents who said they had experienced an unfair sales process had contacted Consumer Direct, TSS or other bodies to report the problem. This low figure suggests that unfair sales practices may be underreported. In addition, TSS have informed us that consumers are often underreporting unfair sales as a result of a lack of awareness that they have been treated unfairly. TSS have also noted that consumers are often embarrassed that they have been the subject of an unfair sales practice, and do not report it for fear of being considered to have diminished competence due to their age.

4.16 In conclusion, the consumer research shows that the issues of inaccurate information and/or pressure to purchase do occur in the mobility aids sector, and significantly more so for consumers buying on the doorstep. However, while there are pockets of unfair sales practices, those practices do not appear to be endemic to the sector as a whole, and, even within doorstep sales, unfair sales practices appear to affect only a minority of consumers.

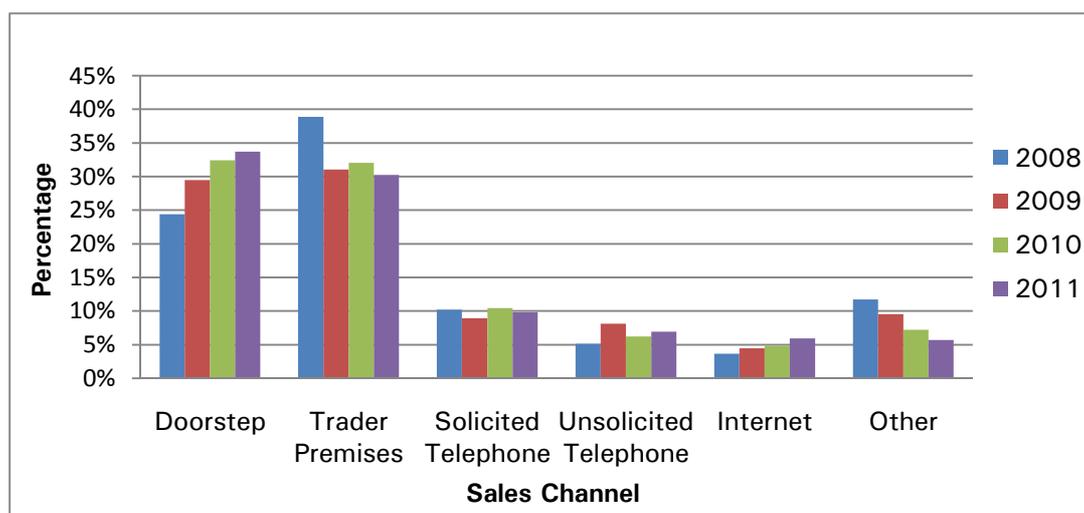
²⁶ Not all respondents who reported experiencing pressure to purchase or obtaining misleading information reported that the sales process was unfair. That may suggest that they did not consider the matter sufficiently serious in order to report the sales practice as an unfair sales practice in their circumstances.

Incidence of unfair sales practices in different sales channels

- 4.17 We examined complaints to Consumer Direct²⁷ to test whether they corroborated the findings of our consumer research that unfair sales practices are more likely to occur in doorstep sales.
- 4.18 Figure 4.1 below shows the percentage of complaints received by Consumer Direct relating to each sales channel.
- 4.19 We found that since 2010, complaints relating to doorstep sales account for the highest proportion of complaints. For example, up to April 2011, just under 35 per cent of complaints to Consumer Direct related to doorstep sales. Compared to the proportion of sales that take place in consumers' homes in this sector (10 per cent of purchases in the last three years, according to our consumer research), this level of consumer complaints is disproportionately high.
- 4.20 Moreover, since 2008, the proportion of complaints that related to doorstep sales rose from approximately 25 per cent in 2008 to just under 35 per cent up to April 2011.

²⁷ Data from 2008-2010 show over 4,000 calls are made each year. 2011 data up to April are consistent with that. Calls asking for advice and calls that Consumer Direct judged not to be a potential civil or criminal breach of the law were excluded for this analysis. This approach was adopted to ensure we focused on complaints most likely to relate to the most serious unfair sales practices. We found that there were between 3,300 and 4,000 complaint calls for each full year of data (excluding 2011). Of these approximately 12 per cent related to unfair sales practices including misleading claims or omissions and high pressure sales practices.

Figure 4.1 – Percentage of complaints to Consumer Direct by sales channel



Source: Consumer Direct January 2008 – April 2011

4.21 We have also found that the problems encountered with doorstep sales are not limited to uninvited visits ('cold calling'). In particular, we found that the majority of doorstep sales complaints related to 'invited' doorstep sales (approximately 80 per cent) rather than 'uninvited' sales or cold calls (approximately 20 per cent).

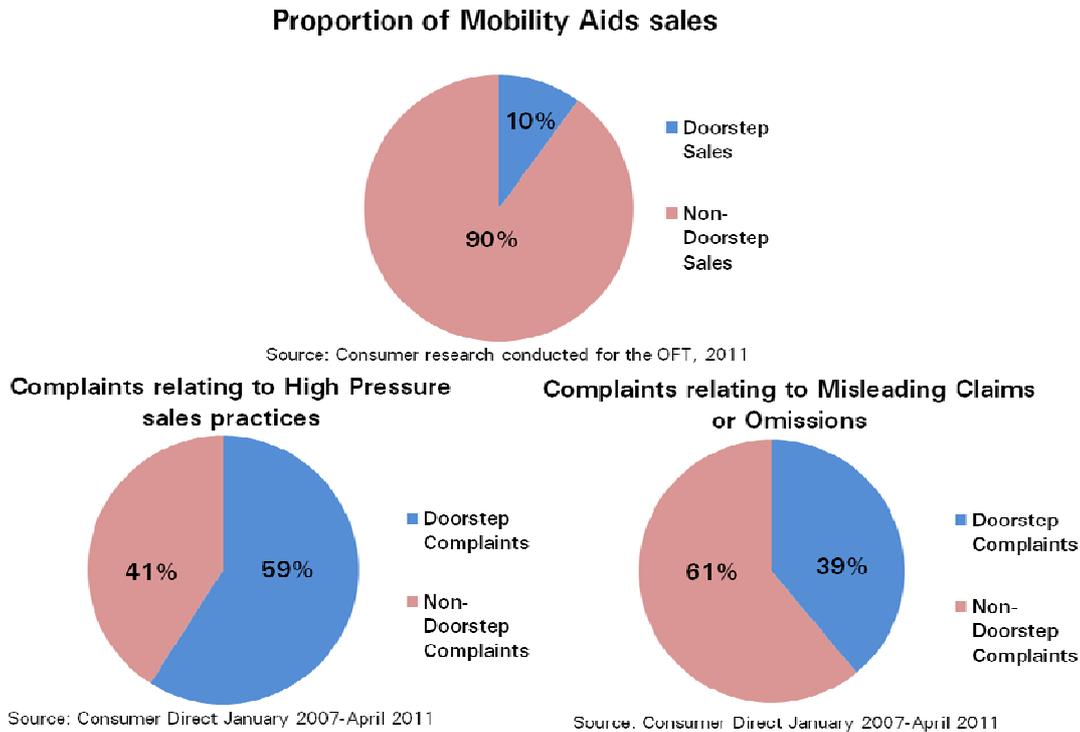
4.22 We looked separately at the total number of complaints²⁸ in the mobility aids sector that related specifically to the most serious types of unfair sales practices that had been reported, namely complaints of high pressure sales and of misleading sales practices. Figure 3.2 shows that complaints of such practices in relation to doorstep sales are disproportionately high.²⁹ Complaints relating to high pressure sales on the doorstep account for the majority (approximately 60 per cent) of the total of such

²⁸ Complaints received by Consumer Direct from January 2008 to April 2011.

²⁹ It is worth noting that the number of complaints related to doorstep sales is disproportionate across all complaint types including defective goods, substandard services and others.

complaints received. Moreover, a large minority (40 per cent) of complaints concerning misleading claims or omissions related to doorstep sales.³⁰

Figure 4.2 – Proportion of mobility aids sales on the doorstep and proportion of doorstep sales-related complaints



4.23 A number of TSS raised concerns that many of the unfair sales practices outlined in paragraph 4.9 are most common on the doorstep.

4.24 In addition, there is evidence from the complaints data that a majority (51 per cent) of complaints specifically concerning

³⁰ We consider these numbers to be conservative. Consumer Direct only categorises each complaint into one complaint type. For example, a complaint relating to defective goods and high pressure selling would only be categorised as one or the other. We examined complaints from January – February 2011 and allowed for multiple categories. The result suggests that doorstep related complaints are even higher. Doorstep related high pressure complaints are approximately 80 per cent of the total and doorstep related misleading claims or omissions are approximately 55 per cent of the total.

vulnerable consumers relate to doorstep sales. This level of consumer complaints is disproportionately high.

- 4.25 In addition, we have been informed of certain practices whereby consumers are specifically being targeted by certain traders (see Box 4.5 below). TSS have also reported that the use of unfair sales practices is exacerbated by commission-based incentive schemes which provide high rewards for sales above a certain value. Box 4.6 below provides further details on this type of practice.

Box 4.5: Methods of obtaining 'leads' on consumers to target

TSS reported that certain traders purchase marketing lists which can be used to target potential consumers of mobility aids, such as consumers above a certain age, recipients of disability living allowances or consumers suffering from particular health-related problems, such as back pain. We note that a number of websites selling these marketing lists have been referred to the Information Commissioner's Office (ICO)¹ for investigation.

Consumers may not always be aware that if they provide personal information by filling out lifestyle surveys or enter their details into certain price comparison websites, their details may be used for marketing purposes by mobility aids companies. If consumers receive an unsolicited call they should verify the caller's identity in order to avoid unwanted marketing.

In order to reduce unwanted cold-calling and marketing, we advise that consumers:

- when giving out personal details to any organisation, request that this information is not passed on to other organisations or companies
- contact the ICO if they believe their personal details are being inappropriately used or processed.

¹ The ICO's remit is to determine whether data protection legislation has been breached (for example, where personal data is passed on without the consent of the individual to whom that information relates).

Box 4.6: Sales incentives which encourage the use of unfair sales practices

We were informed by TSS that some sales people are paid entirely on commission and that the level of commission received can increase significantly as the selling price rises. In one example provided to us by TSS, the following payment structure was in place in order to incentivise sales people:

- no payment, if a sale was not achieved
- a flat rate of £50, if a 'minimum price' was achieved (£1,500-£3,300 for the trader's range of mobility scooters)
- 10 to 12.5 per cent commission on the sale price, if a 'target price' was achieved (£2,400-£4,440 for their range of mobility scooters)
- an additional 50 per cent commission of any amount above 'target price' in addition to a 10 to 12.5 per cent commission on the sale price, if a price above the 'target price' was achieved (£2,400-£4,440 for their range of mobility scooters).

We were further informed that in this particular example, sales people were instructed to quote a high RRP (£3,700-£5,900 for their range of mobility scooters) and then to phone head office before quoting a much lower figure. This could give the impression of an exclusive 'good deal' in the form of a discount from the RRP whilst still achieving a high price, and thereby encourage consumers to make a hasty purchase without shopping around or asking for a better price.

This demonstrates the use of discounts in order to suggest to the consumer that they are getting an apparent 'bargain' whilst still achieving a high price and therefore a high commission. An incentive structure of this kind provides strong personal incentives for sales people to achieve a sale (even where the consumer may not really want that product at all) and to achieve it at the highest possible price. This therefore increases the risk that high pressure sales practices are applied.

4.26 In conclusion, our findings suggest that, while doorstep sales account for only around a tenth of purchases in the mobility aids

sector, consumers who purchase on the doorstep are more likely to experience an unfair sales practice than consumers purchasing through other sales channels.

Harm caused by unfair sales practices

- 4.27 We have found that the most common types of unfair sales practices relating to mobility aids recorded in the Consumer Direct database are: high pressure sales practices and misleading claims or omissions.
- 4.28 The main types of harm that consumers can experience as a result of these practices are: paying a price that is too high, and/or being sold a product which is unsuitable for their needs.
- 4.29 As noted above, a disproportionate level of unfair sales practices, in particular high pressure sales practices, occur in doorstep sales. We have therefore considered the extent to which high pressure sales practices alone are associated with harm and also the extent to which the doorstep sales channel is associated with consumer harm, both in itself and when combined with the use of high pressure sales practices.

Harm: consumers being charged too much

High pricing as a result of high pressure sales practices

- 4.30 Our analysis of Consumer Direct complaints data³¹ shows that consumers who reported a high pressure sale typically paid more for the product than consumers who reported any other issue to Consumer Direct.

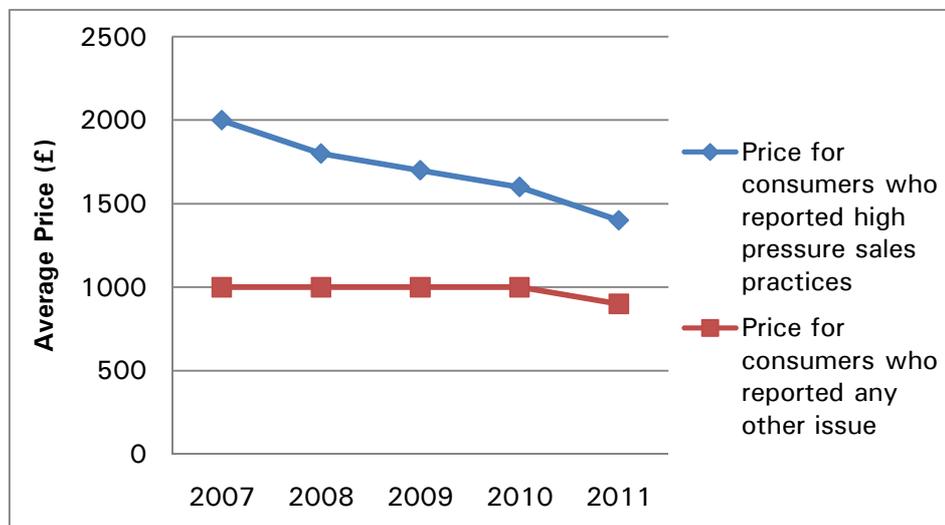
³¹ We used all data for the period January 2007 – April 2011.

4.31 Figure 4.3 shows the average³² prices paid by consumers who purchased a mobility aid and reported high pressure sales practices and the average price paid by those whose complaint related to any other issue.³³ It demonstrates that there is a significant disparity in average prices paid between the two categories of complaints. In particular, our analysis found that consumers who reported high pressure selling paid £500-£1,000 more on average for a mobility aid than consumers who reported other issues. This represents an increase of approximately 50 to 100 per cent.

³² All references to 'average' in this and subsequent sections on harm refer to the median average. We have used the median in all price analysis rather than the mean as the data contains several extreme price points (such as £50 and £15,000). Using the median takes the middle value (when all the prices are arranged in numerical order) and is therefore less sensitive to the effects of any extreme values.

³³ The analysis includes all mobility aids products, and potentially includes a small sample of products that are not within the scope of this market study, such as walking sticks. Some of the differences in average prices may therefore be due to different compositions of products in each sample. For example, complaints relating to high pressure sales tactics and purchasing on the doorstep might relate to a larger proportion of high value products and consequently the average price would be higher. Our analysis of product composition suggests there are some differences, but the price differences and levels are significantly different and in line with similar findings of individual product (for example mobility scooters) price disparities discussed later in this chapter.

Figure 4.3 – Average price paid for any mobility aid by consumers who reported high pressure sales and consumers who reported any other issue



Source: Consumer Direct, January 2007 – April 2011

4.32 Consumer Direct complaints relating to all mobility aids cover a significant diversity of products and prices. In order to ensure that the price differentials referred to in paragraph 4.31 were not a consequence of the different types of products being purchased, we analysed the complaints data relating to one product category, namely mobility scooters, to determine whether there was in fact a trend concerning prices paid by consumers who reported high pressure sales.³⁴ We found that purchasers of mobility scooters who reported high pressure sales practices paid £500 (or 50 per cent) more on average than those who reported other issues.³⁵

³⁴ For this analysis we combined the Consumer Direct data for January 2007- April 2011 as there were a relatively small number of entries for each year.

³⁵ The average price for complaints of high pressure selling of mobility scooters was £1,500, as compared with an average price of £1,000 for complaints relating to other issues.

4.33 In summary, we conclude that consumers who reported high pressure sales practices are more likely to suffer harm through paying a higher price for a product than consumers who are not subject to this type of unfair sales practice.

Highest prices in doorstep sales when combined with high pressure sales practices

4.34 As described at paragraph 4.22 above, we have found that complaints of unfair sales practices in relation to doorstep sales are disproportionately high. This is particularly true of complaints relating to high pressure sales. We have therefore analysed Consumer Direct complaints data on:

- the average prices paid by consumers who reported **high pressure sales practices in doorstep sales**
- the average prices paid by consumers who reported **high pressure sales practices in other sales channels**
- the average prices paid by consumers who reported **complaints other than high pressure sales practices in doorstep sales** and
- the average prices paid by consumers who reported **neither high pressure sales practices nor purchased on the doorstep**.

4.35 This analysis, combined with information received during the course of our market study from interested parties such as TSS, indicates that consumers who experience high pressure sales in doorstep sales often pay significantly more than other consumers who are not subject to high pressure sales practices and do not purchase on the doorstep.

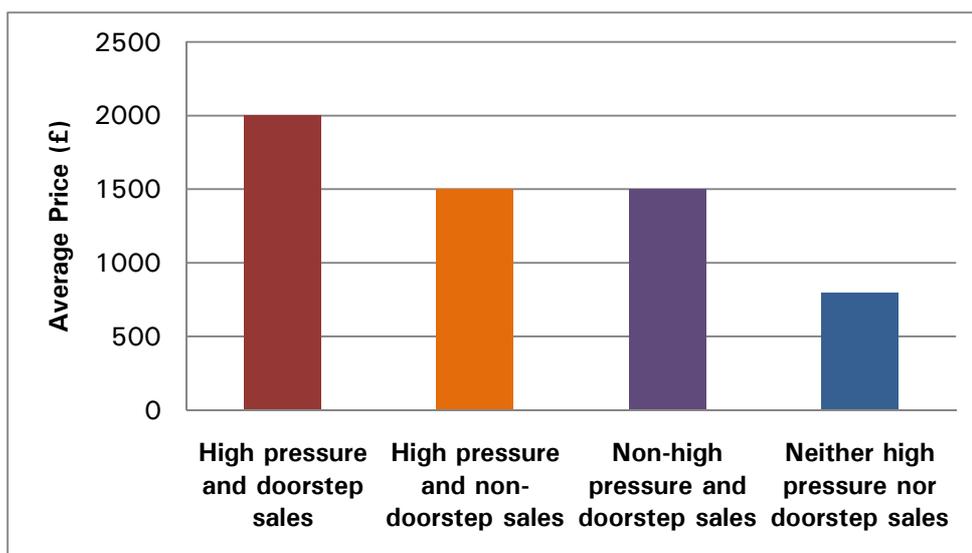
4.36 Our analysis of the prices paid identified in Consumer Direct complaints data, as illustrated in Figure 4.4, indicates that:

- the highest prices were paid by consumers who purchased **on the doorstep and** who experienced high pressure sales

practices, potentially paying 100 per cent more than consumers who reported neither element

- consumers who purchased on the doorstep but did **not** experience high pressure sales practices typically paid similar prices to those who reported high pressure sales practices in **non-doorstep** sales channels. However, both of these categories of consumer paid less than consumers who experienced high pressure sales practices during doorstep sales
- consumers who did **not** purchase on the doorstep **and** did **not** experience high pressure sales practices typically paid significantly less than the other groups above.

Figure 4.4 – Average price paid for a mobility aid³⁶ by consumers reporting high pressure sales and/or purchasing on the doorstep



Source: Consumer Direct, January 2007 – April 2011

³⁶ The analysis includes all mobility aids products, and potentially includes a small sample of products that are not within the scope of this market study, such as walking sticks (see footnote 33 above for further details).

4.37 TSS have informed us that high pressure sales practices are prevalent in doorstep sales because consumers are often on their own and that some sales representatives are even encouraged to try to be alone with the consumer. In particular, some traders are also reported to adapt their sales pitch depending on whether the consumer is on their own or not, for example by applying more pressure when a consumer is alone. TSS also informed us that some traders are reported to train their sales people to use high pressure selling techniques in order to secure a sale.

High prices in doorstep sales compared to other sales channels

4.38 As set out at paragraphs 4.3 to 4.6 above, some consumers of mobility aids are particularly vulnerable when purchasing on the doorstep because doorstep sales are their only feasible means of purchasing mobility aids. In view of that, we have considered the extent to which the doorstep sales channel in itself is a factor which may lead to consumer harm through high prices.

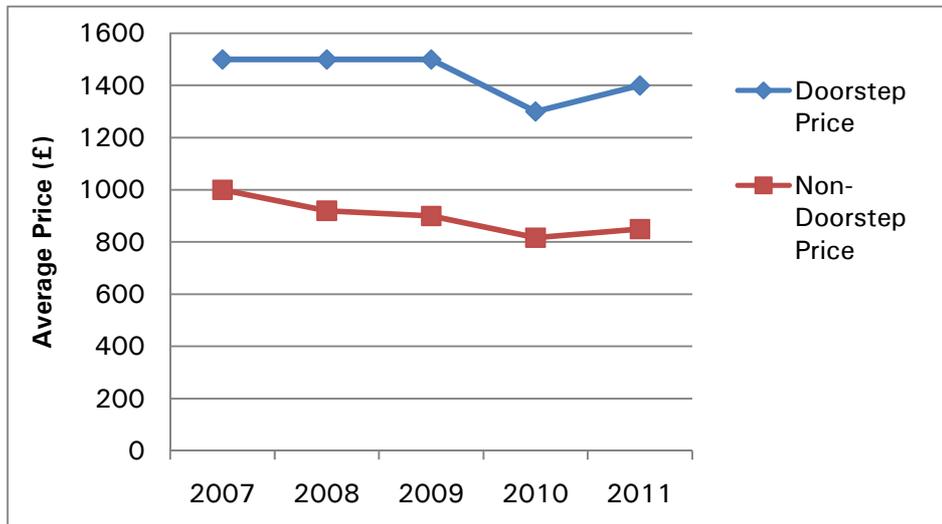
4.39 We analysed doorstep sales in relation to two specific product categories, mobility scooters and adjustable beds.³⁷ We found that significantly higher prices are paid on the doorstep for both products than when other sales channels are used.

4.40 As shown in Figure 4.5, over the period January 2007-April 2011 consumers who purchased a mobility scooter on the doorstep

³⁷ Mobility scooters were chosen because they have the largest number of entries in the Consumer Direct database and the results are therefore more likely to be a reliable indicator of price differences. Adjustable beds were chosen because they comprise a category of products about which concerns have been raised over price differences among sales channels in a previous OFT report on doorstep selling (OFT716 (2004) *Doorstep selling*) and we wanted to determine whether such concerns continue to exist. Adjustable beds, along with adjustable seating, have also been highlighted as a concern by TSS with particular problems in relation to misleading sales tactics (such as claiming a product is bespoke in order to avoid giving pricing information) that may lead to consumer harm.

paid, on average, £475 to £600 more than those who purchased in other sales channels. This represents a difference of more than 50 per cent when buying on the doorstep.

Figure 4.5 – Average Prices for Mobility Scooters from Doorstep and Non-Doorstep Sales

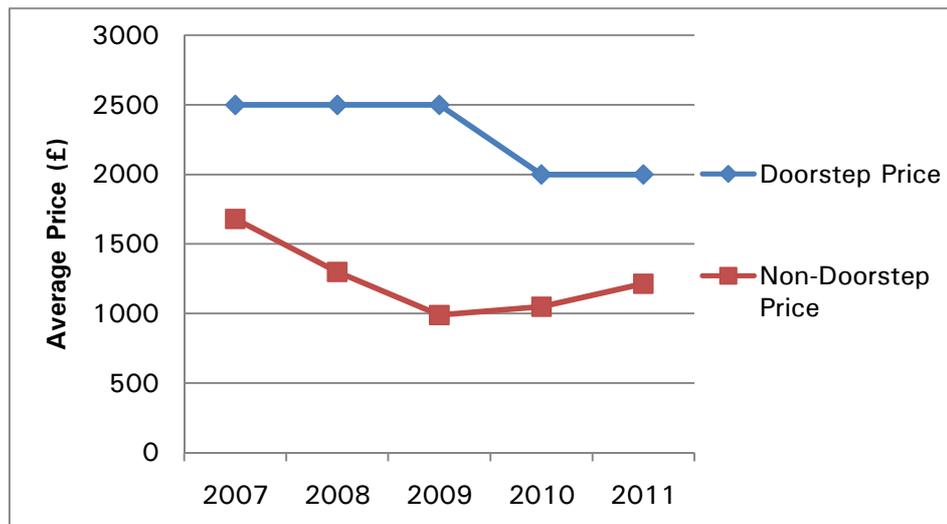


Source: Consumer Direct, January 2007 – April 2011

4.41 As shown in Figure 4.6, the trend for adjustable beds from 2007-2011³⁸ is similar but more concerning, with a clear picture emerging of complainants who purchased on the doorstep paying from 40 per cent to more than 100 per cent more than in other sales channels.

³⁸ The complaints data for January to April 2011 comprises 28 complaints relating to doorstep sales and 17 relating to non-doorstep sales. All other years comprise at least 60-80 complaints relating to doorstep and non-doorstep sales respectively.

Figure 4.6 – Average Prices for Adjustable Beds from Doorstep and Non-Doorstep Sales



Source: Consumer Direct, January 2007- April 2011

- 4.42 Our analysis of Consumer Direct data indicates that there is a significant difference in the average price paid by consumers who have purchased on the doorstep when compared with the average price paid by consumers who purchased from another sales channel.
- 4.43 We note that this difference could be explained in part by higher costs of visiting a consumer at the home or the nature of the products purchased through different sales channels. For example, a customer may have greater mobility issues such that purchasing on the doorstep is the most viable means of doing so and they may have more sophisticated needs that can be served only by a more expensive product. However, we consider it unlikely that those factors entirely explain the large price differences we have observed between doorstep and non-doorstep sales.
- 4.44 In summary, our analysis strongly suggests that unfair sales practices lead to harm for consumers, who are likely to pay significantly more for any products they purchase.

4.45 The OFT and TSS are committed to taking enforcement action against traders who have been found to have used unfair sales practices. We also encourage consumers to consider the advice we have provided in the consumer leaflet accompanying the publication of this market study report and to take action which reduces the risk of being charged a high price when purchasing on the doorstep. Our action and recommendations in relation to unfair sales practices in this sector are presented in more detail at paragraphs 4.53 to 4.67 below.

Harm relating to misleading claims or omissions

4.46 Additional analysis of Consumer Direct complaints data suggests that consumers who reported being subject to misleading claims or omissions made by traders³⁹ were not charged high prices.⁴⁰ However, they often consequently purchased unsuitable products for their needs.

4.47 Illustrative examples of the type of harm likely to be experienced for a range of misleading claims or omissions are set out below:

- **Misleading claims or omissions regarding the product characteristics:** in instances in which consumers reported having been misled about the suitability of products or that the product had been found to be not as advertised, consumers subsequently incurred additional costs in order to have the product adjusted or were left with an unsuitable and

³⁹ We analysed Consumer Direct data from January – February 2011 which contained over 650 complaints and reclassified those relating to misleading claims or omissions (approximately 90 complaints) into a number of sub-categories.

⁴⁰ We analysed misleading claims or omissions complaints for price differences with other complaints but found no significant differences. This suggests that misleading claims or omissions may not lead to significantly higher prices, but this cannot be fully ascertained without a comparison to the average price paid by all mobility aid users. We have not acquired sufficient information on prices from the consumer research to conduct such analysis.

sometimes unusable product where the trader had refused to offer a refund.

- **Misleading claims that the product is bespoke:** interested parties informed us that some traders falsely claim that a product is bespoke in an attempt to mislead them into believing that they cannot cancel their purchase.⁴¹ Consumers who are misled in this way can incur higher costs where they subsequently decide that they do not need or want the product purchased. Interested parties further informed us that traders may falsely claim a product to be bespoke in order to avoid providing an initial indication of prices. This may be combined with the use of inflated starting prices which are then apparently 'discounted' and offered on a time-limited basis in order to lead the consumer to believe that they are getting a good price and induce them to purchase without shopping around.
- **Misleading claims or omissions as to the nature of the sales visit:** many Consumer Direct complainants who reported that a trader had misleadingly claimed or implied an association or affiliation with bodies such as the NHS, charities, TSS, Social Services or trade associations had also been subject to high pressure sales practices. Misrepresentation of this kind, particularly in combination with other unfair sales practices, may result in consumers falsely believing that they require a product, which they subsequently purchase, although they do not have a clear need for it.
- **Misleading omissions regarding consumers' cancellation rights:** some consumers reported that they had not been informed of their cancellation rights by the trader when buying at the doorstep. In such circumstances, consumers may be misled into

⁴¹ In cases where a product is bespoke a consumer does not forfeit their cancellation rights, but may be expected to pay reasonable costs for work already carried out on the product before the purchase is cancelled.

believing that they do not have the right to cancel their purchase and can incur higher costs where they subsequently decide that they do not need or want the product purchased.⁴²

Harm: consumers experiencing distress and inconvenience

4.48 Our analysis of consumer complaints made to Consumer Direct highlights that consumers who experience unfair sales practices often suffer emotional distress, for example because of the pressure they were under to make a purchase. In addition, they may experience stress and inconvenience where they have been misled into making an inappropriate purchase, for example because they subsequently need to purchase another, more suitable, product and in the meantime have to cope with an unsuitable product.

4.49 This can impact on their health and wellbeing as the distress and inconvenience that some consumers suffer can be significant.

Conclusions on unfair sales practices identified

4.50 We have found that a small minority of consumers have experienced unfair sales practices in this sector. The most common complaints regarding unfair sales practices relate to high pressure selling and misleading claims or omissions. However, due to some consumers' lack of awareness that they had been subject to unfair sales practices, and given the low levels of reporting of such experiences to Consumer Direct or TSS, the total number of consumers experiencing unfair sales practices is likely to be higher.

⁴² Consumers who spend over £35 for a product purchased on the doorstep usually have the right to cancel their purchase within seven days. Consumers should be notified of their right to cancel in writing by the trader, and where this has not been done the consumer cannot be held to anything in the contract. (See the OFT consumer leaflet *Buying on the doorstep: Your guide to buying mobility aids on the doorstep or from a salesperson in your home* available at www.of.gov.uk)

- 4.51 Compared to the number of sales that take place in consumers' homes, the level of consumer complaints about unfair sales practices is disproportionately high. Consumers for whom doorstep sales are the only feasible means of purchasing mobility aids may be especially vulnerable to unfair sales practices that take place in the home.⁴³
- 4.52 We have further found that whilst these practices are not endemic in the mobility aids sector, where they do occur consumers often pay very high prices and may purchase products that they do not need or that are unsuitable to their needs.

Actions and recommendations

- 4.53 This section sets out the actions that the OFT and other bodies such as the BHTA and TSS are taking, and intend to take, in order to address the issues that we have identified in this chapter. It also presents our recommendations for further action by other organisations.⁴⁴
- 4.54 Although we have found strong indications of potential harm from unfair sales practices, particularly in doorstep sales, we have not found these practices to be endemic. Moreover, TSS do not consider that there are any apparent gaps in current legislation that would prevent them taking effective enforcement action to address the problems we have found. We are therefore not recommending additional regulation of the sector as that would be disproportionate to the incidence of apparent unfair sales practices

⁴³ However, we also acknowledge (as outlined above), that the doorstep sales channel can also have a number of advantages for consumers when unfair sales practices are not used.

⁴⁴ We note that lack of consumer information or empowerment occurs in many circumstances in which unfair sales practices are used. Chapter 5 below sets out our findings and recommendations in relation to consumers' ability to access, assess and act on information in order to make informed choices and to drive competition.

in the sector at this time, and we believe the problems can be tackled by using existing tools and legislation.

Action by the OFT

- 4.55 **Action 1:** The OFT has **commenced investigations into two national firms**, one suspected of engaging in unfair sales practices on the doorstep, and another in respect of its terms and conditions and service quality issues, and it is investigating other similar behaviour. Further to our early intervention, one of these cases has led to the introduction of new, fairer, terms and conditions, and outstanding issues regarding improved sales and after-sales care are in the process of being resolved. The second investigation is continuing. Box 4.7 below provides further details.
- 4.56 **Action 2:** The OFT has also started action which could lead to the removal of the credit licences from a number of traders.
- 4.57 **Action 3:** The OFT has **launched a doorstep selling consumer awareness campaign** with specific emphasis on mobility aids. We are running this campaign in partnership with consumer groups, including TSS, and charities in this sector and the campaign will encourage consumers to shop around and understand their rights when buying mobility aids from doorstep traders.
- 4.58 **Action 4:** The OFT **will hold an enforcement summit** later this year and subsequently **produce guidance for TSS in March 2012**, bringing together best practice and experience to support TSS' work in this sector.

Box 4.7: Current OFT consumer enforcement action

The OFT received information which prompted it to investigate the practices of two national companies operating in the mobility aids sector (further details are outlined below). In addition, the OFT is investigating other similar behaviour and it has started action which could result in the removal of the credit licences from a number of traders in the mobility aids sector.

In the course of the OFT's enquiries, the first company has worked closely with the OFT to improve both its terms and conditions, in line with unfair contract terms legislation, and its internal processes to improve its standards of customer care. We have appreciated the company's willingness to engage with us. The contact has been extremely positive and the company has implemented revised terms and conditions, resulting in improvements for consumers. Outstanding issues regarding improved sales and after-sales care are in the process of being resolved. Once finalised, these will be monitored regularly by local TSS. We anticipate that this intervention is likely to represent significant improvements for consumers both in relation to purchases and service agreements and will consequently also drive up competitive standards across the market.

The second company has a national reach and operates in the doorstep sales channel. Its practices that raised concerns related to potentially misleading techniques used by its sales representatives, which included some of the sales practices highlighted by this study. We continue to investigate this case under the Consumer Protection from Unfair Trading Regulations.

We note that TSS enforcement staff have, or have recently been, engaged in enforcement actions against other companies using the same or similar unfair sales practices highlighted by this study, and several such cases have been brought to court. See, for example, Box 4.8 below.

Action by Trading Standards Services

4.59 TSS use various forms of action to tackle problems in the mobility aids sector, depending on the organisation and issues that they face. Typical work that has been highlighted to the OFT includes:

- Assured trader schemes such as Buy With Confidence, which are operated by members of the Local Authority Assured Trader Scheme Network and require local businesses who register to comply with all trading standards legislation and civil law obligations, not to use high pressure selling and to have an effective complaints procedure.
- Information campaigns including leaflets, websites, telephone advice lines and events. These have targeted a range of interested parties including consumers, carers and medical professionals and are designed to raise awareness of the risks of unfair sales practices to which consumers may be exposed.
- Rapid response units to help consumers while the trader is still in their home.
- Civil and criminal enforcement action against some doorstep traders. An example is provided in Box 4.8 below.

Box 4.8: Example of TSS enforcement action

The Yorkshire and the Humber Scambuster team investigated Compass Mobility, against which over 300 complaints had been made to Consumer Direct. Complaints included mis-selling practices such as selling consumers a product they did not need and/or could not use at inflated prices. The company operated throughout England and Scotland and many TSS assisted the investigation by obtaining evidence from elderly and vulnerable victims. The court proceedings are ongoing, however three company directors have pleaded guilty to a range of offences under the Consumer Protection from Unfair Trading Regulations 2008. The company is in administration.

Ongoing action by the BHTA

- 4.60 As set out at paragraph 3.16 above, the BHTA has adopted a Code of Practice, which has been approved by the OFT under the Consumer Codes Approval Scheme. Voluntary codes of practice have the potential to deliver real benefits to consumers, reduce consumer detriment and can provide an effective but lighter touch alternative to statutory regulation. The BHTA Code requires members to agree to provide consumers with a higher standard of customer service than is required by law. Box 4.9 below provides further details about the BHTA Code of Practice.
- 4.61 The OFT welcomes the use of the BHTA Code in this sector and the extra protection it provides, which is especially important for vulnerable consumers. We also welcome the BHTA's willingness to engage with us on ways to improve the Code and its application.

Box 4.9: The BHTA Code of Practice

Among other things, BHTA members have agreed pursuant to the BHTA Code of Practice **not** to use sales practices such as:

- a sales visit to a consumer's home which exceeds three hours, unless there are exceptional circumstances
- offering an artificially high initial price followed by an excessively short time-limited 'exclusive' discount
- withholding price information until the end of the sales discussion/visit.

In addition, BHTA members will encourage consumers to have another person with them during a sale.

The BHTA Code also provides a means of redress for the consumer in the event that something goes wrong. Consumers have the right to take complaints to the BHTA's independent arbitrator who, in some circumstances, has the power to order the BHTA member in breach of the Code to repay all money paid by the complainant and provide compensation to them. Other sanctions provided for under the Code include formal warnings, suspension for a stated period and termination of membership.

Membership of the BHTA is voluntary and the OFT recognises that consequently the ability of the BHTA Code to remedy the problems set out in this chapter may be limited.

Recommendations

- 4.62 **Recommendation 1:** We are warning **traders to ensure that their practices are compliant with the law** or face possible legal action by the OFT or TSS.
- 4.63 **Recommendation 2:** We recommend that traders ensure their incentive schemes for sales people **do not encourage the use of high pressure or misleading selling practices.**
- 4.64 **Recommendation 3:** Following from Recommendation 2, we **encourage TSS to promote best practice in sales incentive schemes** with traders.
- 4.65 **Recommendation 4:** The OFT will **continue to prioritise complaints** in this sector in respect of national firms, particularly complaints concerning high pressure and misleading sales practices. We will also be coordinating enforcement activity with TSS. In addition, **we recommend to TSS that complaints in this sector should be prioritised** as far as possible within their existing portfolio of work.
- 4.66 **Recommendation 5:** We recommend the continuation and further development of **coordinated efforts and partnership work** between the OFT, Citizens Advice, TSS, Adult Social Services, charities and other interested parties in order to tackle unfair practices effectively, for example through the dissemination of information regarding consumers' rights, and to support elderly and vulnerable consumers in making complaints.
- 4.67 **Recommendation 6:** In relation to the targeting of vulnerable consumers, in order to reduce unwanted cold-calling and marketing we make the following recommendations to consumers:
- when giving out personal details to any organisation, the consumer should request that the information is not passed on to other organisations or companies, and

- if consumers believe that their personal details are being inappropriately used or processed they should contact the Information Commissioner's Office.⁴⁵

⁴⁵ www.ico.gov.uk

5 CAN CONSUMERS ACCESS, ASSESS AND ACT ON INFORMATION WHICH ENABLES THEM TO MAKE INFORMED PURCHASING DECISIONS?

Summary of key findings

Although consumers are in the main satisfied with their purchasing experience, many do not shop around (for example by searching for alternative offers using the internet, telephone or by visiting other retailers), and a significant proportion of consumers base their purchasing decisions on limited information. As a result, and because prices vary significantly, consumers can end up paying very high prices and risk purchasing products that may be inappropriate to their needs.

- Since most consumers in this sector are **first-time buyers**, it is all the more important that they equip themselves with appropriate information in order to enable them better to identify products that represent good value and which suit their needs. However, our research has found that some consumers base their purchasing decisions on **limited information**.
- Moreover, we have found that a significant proportion of **consumers do not shop around** and can end up paying very high prices. Poor mobility, lack of access to the internet by some consumers and needing to make an immediate purchase (for example, where an urgent need arises) also, in part, account for lower levels of shopping around.
- In addition, there is a **lack of price advertising** on the internet and in marketing materials which inhibits consumers' ability to shop around in order to identify products that represent good value and to enable them to better assess what the average prices for mobility aids are.
- We have observed a **significant variation in prices of identical products**. For example, prices for the same brand and model of scooter can vary by over £1,000, and we have even seen price differences of £3,000.

Summary of actions and recommendations

- We recommend that **suppliers should disclose actual prices** or price ranges (where an exact quote cannot be given) on websites and in marketing material. We are working together with members of the British Healthcare Trades Association, whose Code of Practice the OFT sponsors, and they have **agreed to amend their Code of Practice** in order to require their members to display such price information.
- We urge consumers to seek out better value by **shopping around**, for example by obtaining more than one quote before making a purchase, as prices for the same product can vary significantly. In addition, we would **advise consumers to proceed carefully where a trader is not transparent about their prices**.
- We recommend that existing information providers including charities in this sector should **collect consumer feedback**, for example by using customer testimonials. This type of information is particularly important in this sector, as most consumers are first-time buyers who would benefit from the experiences or recommendations of others.

- In the light of recent developments whereby individuals are to be provided with a 'personal budget' to purchase a mobility aid rather than be given a mobility aid by their local authority, we recommend that appropriate information tools be made available to assist consumers in their purchasing decision, in particular as to:
 - what type of product they need (including the functionality of the product)
 - the price they might be expected to pay (including the price of the mobility aid and the price of spare parts so that they can determine the price of the mobility aid over its lifetime)
 - where they can purchase products.

At the same time, consumers should also be informed of their consumer rights and what to do in case they wish to raise a complaint about a trader.

- We understand that much of the above information is currently being made available free of charge by charities such as the Disabled Living Foundation, which has established an online self-assessment tool for consumers and an advice line. However, many consumers appear to be unaware that this type of help is available through the voluntary sector. We therefore **recommend that local authorities work together with charities** in this sector in order to provide consumers with **independent information and advice** as appropriate. Proactive, informed and empowered consumers will be able to make better informed purchasing decisions.
- In addition, the OFT is currently considering whether to take any action following information received recently that some companies in one segment of the mobility aids sector may be imposing restrictions on retailers of mobility aids which may prevent consumers from identifying the products that offer good value.¹

¹ There are over 900 firms (including manufacturers, retailers and individual traders) in the mobility aids sector as a whole, and the issue relates only to a few of them. In line with the OFT's policy, we cannot name the businesses in question at this time.

Introduction

- 5.1 Well-functioning markets depend both on competition working well and on consumers making informed choices. Firms compete to win business by, among other matters, achieving the lowest level of cost and prices and developing better products to meet consumers' needs more effectively than their competitors. Consumers drive competition where they are empowered to shop around through access to readily available and accurate information about the products they are seeking and the various offers available in the market. For example, well-informed consumers are able to identify goods and services that represent value for money, thereby encouraging businesses to compete keenly on price and quality.
- 5.2 Prior to the launch of this market study, interested parties had raised concerns that the mobility aids sector may not be working well for consumers, in particular due to consumers' difficulties assessing their needs, identifying suitable products and achieving value for money.
- 5.3 Following a consultation on the proposed scope of our study, we examined whether consumers can:
- **access information** to enable them to search for products that suit their needs and represent value for money
 - **assess and act on information** that enables them to make an informed purchasing decision
- 5.4 In examining those issues, we have drawn on evidence obtained from:

- a quantitative survey of 458 consumers who had purchased a mobility aid for themselves (303) or who had made a purchase on somebody else's behalf (155)⁴⁶
- a series of 25 follow-up in-depth interviews that asked about consumers' experiences in purchasing a mobility aid
- our own desk research in order to determine whether firms provide, or provide access to, information which can enable consumers to make an informed purchasing decision.

Overview

Profile of consumers- first-time buyers

5.5 Our consumer research found that a clear majority of consumers in this sector are first-time buyers.⁴⁷ First-time buyers are likely to have a limited frame of reference on which to base their purchasing decision. It is therefore particularly important that they equip themselves with good information, and advice as appropriate, in order to assess their needs effectively, identify suitable products that achieve value for money.

Issues to consider before making a purchase

5.6 In order for consumers to be able to make informed purchasing decisions when buying a mobility aid, it is important that consumers:

- understand **their needs**

⁴⁶ Most purchasers of mobility aids are in late middle-age or elderly. Our research programme did not provide a strong evidence base for those aged under 45. Therefore, the results from the consumer survey relate to consumers aged 45 and over.

⁴⁷ Seventy-eight per cent of consumers who made a purchase for themselves and 83 per cent of consumers who made a purchase on somebody else's behalf had not purchased the same type of mobility aid previously.

- understand the relevant product **information** in order to determine whether a product suits their needs
- understand **how different product offerings compare with one another** (for example, by reference to the products' functionalities and price) in order to determine which of the product offerings is the most suitable, and
- are **able to act on the information** provided or obtained.

5.7 Where consumers are unable to make informed purchasing decisions when buying a mobility aid, this can have the following outcomes:

- consumers may end up **paying more than necessary** because they were unable to identify products that represent value for money
- consumers may purchase a mobility aid that **falls short of their needs**. Interested parties reported that this can result in the user experiencing discomfort or sustaining an injury, depending on how ill-suited the product is in meeting their needs. It can also result in the user being unable to use the product purchased and being required to make a new purchase
- consumers may purchase a product that **exceeds their needs** and may therefore end up paying more than necessary.

Access to information tools and to sales channels

5.8 Some consumers in this sector may not be able to access information tools and sales channels in order to help them make an informed purchasing decision.

- **Limited mobility:** some consumers in this sector have limited mobility which can limit the extent to which they are able to seek out the various offers available in the market by shopping

around.⁴⁸ For example, some consumers with significant mobility restrictions may be dependent on certain sales channels, such as doorstep sales where the trader visits them in their home. Others may experience varying degrees of difficulty in visiting retail stores, as was highlighted in some of the in-depth interviews.

- **Internet access:** Access to the internet can assist consumers to obtain initial information on the types of products available. Our research found that just over a half (52 per cent) of respondents who were making a purchase for themselves and 22 per cent of respondents who were making a purchase on somebody else's behalf did not have access to the internet. Respondents who did have access to the internet were less likely to state in the interview that they had 'no choice' or 'not very much choice' of suppliers. In addition, a clear minority of respondents used the internet in order to purchase a mobility aid (10 per cent) and were more likely to have compared alternative suppliers,⁴⁹ than consumers who had bought their product through other sales channels.
- **Choice of local retailers:** Approximately 42 per cent of respondents purchased a mobility aid by visiting a retail outlet. We have observed that there is often only a limited choice of mobility aid retailers at a local level, and consumers' ability to shop around may therefore be limited. In our consumer survey,

⁴⁸ Consumers purchasing on somebody else's behalf may not have limited mobility. Our research found that around half of consumers made the purchase on somebody else's behalf.

⁴⁹ Seventy-seven per cent of respondents who made a purchase for themselves and 70 per cent of respondents who made a purchase on somebody else's behalf compared alternative suppliers.

one in four respondents stated that they had 'no choice' or 'not very much choice' of suppliers.⁵⁰

- **Choice of brands and models:** We have observed that many retailers will have limited retail space, and as some mobility aids are large items some retailers therefore carry a small range of brands and models. This can make it more difficult for consumers when shopping around.
- **Time pressure:** When consumers are under time pressure to make a purchase (for example, due to an urgent need), they may be less able to seek or consider various offers available in the market and their choice of products and suppliers may be limited. Our research found that 63 per cent of consumers needed to make a purchase within a short space of time: 45 per cent of respondents stated that they needed to make an 'immediate' purchase and a further 18 per cent stated that they needed to make the purchase over a few days.

Accessing, assessing and acting on price information

5.9 We examined the issues of accessing, assessing and acting on price information by reference to consumers' and firms' behaviour (in particular, whether they facilitate or impede access to price information).

Overview- prices in this sector

5.10 We have observed a significant variation in prices in this sector which cannot be accounted for by differences in quality or functionality. For example, when we looked at a range of retailers' prices for mobility scooters we found that the same brand and

⁵⁰ Approximately 42 per cent of respondents stated that they had 'a lot of choice'; 19 per cent stated that they had 'a little choice'; 15 per cent stated they 'did not have very much choice' and 11 per cent stated that they had 'no choice' (14 per cent stated that they did not know or could not remember).

model can cost from £1,295 to upwards of £4,000 (see Figure 5.1 below).

Figure 5.1 – Prices of mobility scooters across the UK

Mobility scooter prices (excluding VAT)									
Retailer	Brand A	Brand B		Brand C		Brand D			
	Class 2 ⁵¹ scooter	Class 2 scooter	Class 3 ⁵² scooter	Class 2 scooter	Class 2 scooter	Class 2 scooter	Class 3 scooter		
	Model 1	Model 3	Model 4	Model 5	Model 6	Model 7	Model 8	Model 9	Model 10
1			£4,695						
2						£2,200	£3,000	£3,500	
3							£2,495	£3,495	
4						£1,500	£2,200		
5									£2,785
6			£4,695			£4,295			
7						£1,295	£1,949		
8		£700	£4,000				£2,300		
9							£1,499	£2,199	£2,785
10				£2,050	£1,895				
11									£2,875
12		£925	£4,150	£2,450	£1,950				
13						£1,895	£3,450	£4,195	£4,995
14		£635							
15			£3,195						
16		£1,645	£4,695						
17		£749	£4,166	£1,450	£1,230	£3,750	£4,295	£4,995	£3,635
18	£1,250								£3,999
19		£895		£2,750	£1,850		£1,995		£2,650
20	£1,095	£790	£3,595						
21		£1,200	£3,999			£1,895	£3,495		£5,515
22	£1,395	£845		£1,895	£1,595	£1,595	£2,295		
23						£3,750	£4,295		
24				£2,300	£2,100	£1,500	£2,300		
25	£1,100	£799	£4,695	£1,995	£1,495				
26				£1,850	£1,600				
Variation in price (%)	27%	159%	47%	90%	71%	232%	187%	127%	108%

⁵¹ Class 2 mobility scooters can travel up to four miles per hour. They can only be used on pavements.

⁵² Class 3 mobility scooters tend to be larger than Class 2 mobility scooters. They can travel up to eight miles per hour and can be used on the road.

Key:

Highest Price Offered for Model



Lowest Price Offered for Model



- 5.11 As a result of this price variation, consumers who do not shop around in this sector using the means available to them (for example, by using the internet, telephone or by visiting other retailers, with assistance from others where appropriate), can end up paying very high prices and risk obtaining poor value.
- 5.12 In light of these variations in prices, the following sections examine the extent to which consumers accessed price information and shopped around. In addition, we examine whether firms' behaviour facilitates or impedes access to price information that enables consumers to shop around more easily.

Accessing, assessing and acting on price information and shopping around

- 5.13 Since most consumers in this sector are first-time buyers, they are likely to have a limited frame of reference in order to judge whether the products on offer represent good value, unless they shop around and compare prices being offered by alternative suppliers.⁵³
- 5.14 However, in our consumer research, one third of consumers did not state that price was a factor they had taken into account when purchasing their mobility aid, and around half of respondents stated that they had not shopped around before making their purchase. Given the significant variation in prices we

⁵³ As noted above, 78 per cent of consumers who made a purchase for themselves and 83 per cent of consumers who made a purchase on somebody else's behalf had not purchased the same type of mobility aid previously. However, 47 per cent of consumers had in fact had previous experience of buying a mobility aid of some type and therefore will have had prior experience of retailers in this sector and their product offerings.

have observed in this sector, consumers who do not take account of prices, and who do not shop around, significantly reduce their chances of obtaining the products that represent good value for money.

- 5.15 This high proportion of consumers who did not shop around and who did not take account of prices may explain why several participants in the in-depth interviews stated that they did not have any expectation of prices before they made their purchase. In particular, these participants appeared to assume that at the time they had made their purchase, a better price could not be obtained by investigating alternative suppliers. This indicates that some consumers in this sector do not shop around as they misjudge prices or place more importance on their need for a product and less importance on its price. This may be particularly true for consumers who are making an urgent purchase. However, as set out in paragraph 5.8 above, poor mobility and lack of access to the internet may also, in part, account for lower levels of shopping around.
- 5.16 In addition, some participants in the in-depth interviews mentioned that they had paid more than necessary as a result of not shopping around and regretted it. However, others showed little sensitivity to price. By way of example, when it was pointed out they had paid significantly more for their mobility aid than most other consumers, their view was that the mobility aid had been affordable for them and that it had greatly enhanced their life.
- 5.17 Some participants in the in-depth interviews stated that they had initially been quoted a high price which was subsequently significantly discounted. Consumers' perception of value for money is likely to be influenced by the use of reference pricing⁵⁴ and discounts, in particular where they have no expectation of the

⁵⁴ Reference pricing refers to those offers which aim to demonstrate that they offer good value by including a reference to another, typically higher, price. The following are examples of reference pricing: 'Was £4,000, now £3,000' and 'Recommended Retail Price is £4,000, our price is £3,600'.

prices they should be expected to pay. Previous research conducted on behalf of the OFT shows that consumers use the reference price when estimating the value of the offer, and that reference pricing reduces the extent to which consumers shop around and compare prices.

- 5.18 In addition, the use of misleading or fictitious reference prices can prevent consumers from acting on the information provided in order to make an informed choice and can result in them paying higher prices or purchasing products that they may not have bought if they had fully understood the offer. It can constitute a breach of the Consumer Protection from Unfair Trading Regulations 2008 and may lead to action by the OFT.⁵⁵ Due to the historic nature of the participants' purchases, we were unable to verify whether those participants had been provided with an accurate reference price. Nonetheless, we would advise that consumers ensure that they compare the various offers available in the market so as to help them to act on the information and understand better whether they are receiving value for money.

⁵⁵ The OFT has previously stated that a reference price may mislead and harm consumers where the reference price is fictitious or not easily verifiable or where consumers' expectations regarding the reference price, for example the price establishment period, are not in line with the reality of the offer. For further details see OFT1291 (2010) *Advertising of Prices* available at: www.offt.gov.uk/shared_offt/market-studies/AoP/OFT1291.pdf.

Box 5.1: Consumer research in-depth interviews

Our research indicates that some participants assumed that better prices and quality could not be obtained by investigating alternative suppliers, which influenced their decision not to shop around. For example:

- When asked how the participant had selected the product purchased, one participant replied: 'I just sort of decided, 'yes, we'll have to have it. There's the advert; that's the one; that sounds right'. I phoned them up and it just went straight through.'
- When the researcher prompted the participant to explain why they had not shopped around, they replied: 'Probably basically laziness. No, I liked the look of it. They gave me a quote and I thought: 'Gosh that's a lot of money, but never mind.' [...] I just wasn't really bothered. It looked suitable and I think probably they're all much of a muchness pricewise.'
- Upon further probing, when asked if the given price was what the participant was expecting to pay, they replied: 'I don't know that I expected any price really. It ate up my holiday money.'

Comparing brands and models

- 5.19 Our consumer research also found that 43 per cent of respondents had not searched for alternative brands and models to the one that they purchased (which may have better suited their needs).
- 5.20 In addition, the consumer research found that the likelihood of comparing other brands and models varied depending on the sales channel through which consumers made their purchase. For example, while over 60 per cent of respondents who bought a mobility aid for themselves through the internet or by visiting a shop stated that they had compared other brands or models, that figure was much lower where consumers had made a purchase on the doorstep (24 per cent).

- 5.21 However, of those consumers who made such comparisons, around one third made the comparison based on the products of a single supplier and therefore did not search whether those products were priced more competitively elsewhere, or whether there was a greater choice of alternative products available elsewhere which may have better suited their needs. The in-depth interviews further indicated that participants often relied on what the sales person told them they needed, and that they did not pursue matters further by obtaining alternative advice or by shopping around.
- 5.22 The consumer research found that respondents who compared different brands or models took into account a wider range of factors⁵⁶ in their purchasing decision than those who did not. That was likely to have enabled them to assess the value of the products that they compared more efficiently.
- 5.23 We also found that just under half of respondents (47 per cent) were not aware, or made aware, of the ongoing repair and maintenance costs of the mobility aid they purchased. They therefore did not compare alternative products in order to determine which product represented the best value by reference to the products' whole-life costs.⁵⁷

⁵⁶ Such factors include functionality, price and quality.

⁵⁷ Whole-life costs include repair and maintenance costs during the lifetime of a product, and can represent a significant cost relative to the sales price.

Box 5.2: 'Life's too short for shopping around'...or is it?

During the course of the market study, a number of consumers who contacted us expressed the view that 'life's too short to shop around'.

This approach is understandable in view of the fact that:

- Once the need for a mobility aid arises, there may be limited time available to shop around particularly where that need is urgent.
- Some users may place greater emphasis on high quality (particularly where they rely heavily on the mobility aid), and may be willing to spend 'whatever it costs'. They may therefore place less priority on finding a better priced product of equal quality, particularly where 'shopping around' involves time and effort.
- Some consumers believe that they would not save much by shopping around.

However, there are significant cost savings to be made from shopping around. For example, we found the same model and brand of scooter on sale for prices between £1,500 and £4,500. Consumers who do not shop around when buying that product could therefore end up spending £3,000 more than those who do compare prices.

Transparency of prices on the internet and in marketing material

- 5.24 Where consumers do not engage in shopping around using the means available to them, there is limited pressure on firms to display price information and to compete with one another on price in order to achieve greater volumes of sales.
- 5.25 However, suppliers' behaviour can also influence the ease or difficulty of shopping around and thereby consumers' ability to assess whether the products on offer represent good value. In particular, where suppliers do not display prices that can make it more difficult for consumers to assess what the average sales

prices for products (and thereby determine what their expectation should be as regards price), and consequently to search for products that represent good value.

- 5.26 During the course of this market study, we received some complaints on behalf of consumers who had difficulties accessing price information. For example, we received complaints that consumers were required to leave their personal details on websites in order to receive a quote, which prolonged their search process. In addition, in the in-depth interviews several participants indicated that they were unable to obtain prices from traders they had contacted.

Box 5.3: Consumer research in-depth interviews – price information

In the in-depth interviews several participants indicated that they experienced difficulties accessing price information:

- For example, one participant mentioned: 'I've been on the web this morning and I was trying to get a price and you can't without leaving your name and your email, your home address, your telephone number'.
- In addition, another participant said: 'I telephoned two or three [suppliers] and in each case I wasn't given any price. I just couldn't get them to quote me [...]. In each case I was offered a free demonstration so I couldn't get any comparison price in any way although I rang three or four [suppliers], I couldn't compare [them] on price unless I actually had a live demonstration by the salesman'.

- 5.27 We conducted our own desk research and found that 50 per cent of the retailer websites⁵⁸ we visited did not advertise any prices, or even any starting prices or price ranges.⁵⁹

⁵⁸ During the course of our desk research we visited 130 retailer websites.

- 5.28 In relation to certain products, such as stair lifts, we found that the advertising of starting prices or price ranges was even less frequent. Only one out of five manufacturer/supplier websites we visited (all of which sell direct to consumers) advertised the starting price of stair lifts. In addition, eight out of 12 retailer websites we visited included a starting price for some but not all of the stair lifts they sell.
- 5.29 In addition, we also found that 50 per cent of newspaper advertisements⁶⁰ and a majority of brochures did not advertise any starting prices or price ranges.
- 5.30 Where prices were not displayed on websites, our researcher was required to leave their details through the websites in order to request a 'call back', or to telephone the retailer directly in order to obtain a quote, significantly increasing the search costs (including the time commitment required), which limited the ability to shop around easily. Moreover, of those suppliers who did not advertise their prices online approximately five per cent did not disclose prices over the telephone and stated that they needed to conduct an assessment of the consumer's needs in order to quote a price.
- 5.31 In addition, more complex information such as information on the whole-life cost of mobility aids (including the costs of essential spare parts, and repair and maintenance) was not provided to our

⁵⁹ Some mobility aids are complex and require individual customisation or modification. It is therefore difficult for suppliers to provide consumers with a final quote before obtaining their exact specification. However, starting prices and prices ranges could provide consumers with a broad indication of the amount they might expect to pay. We have observed that some traders do provide such price indications in respect of products such as stair lifts, which can require modification and customisation, however many do not.

⁶⁰ During the course of our desk research we reviewed 40 newspaper advertisements in the period of July to August 2011.

researcher over the telephone by a large majority of retailers, even when our researcher asked for such information.

Accessing, assessing and acting on information and advice on the suitability of products

- 5.32 Submissions received from manufacturers, retailers and charities during the market study all stated that consumers have a very limited understanding of what mobility aids suit their needs. This is particularly likely to be the case as many consumers are first-time buyers.
- 5.33 In order to illustrate this point, one manufacturer shared its market research with the OFT, which indicated that consumers' lack of product knowledge generally allows the retailer to steer them in the direction they think is best for them and results in the consumer '[buying] the first [scooter] they have sat on and tried'.
- 5.34 We therefore examined this issue in our consumer research, and asked consumers:
- whether they had a good understanding of their needs before making their purchase
 - whether they had accessed information or advice which helped them understand whether the product they would purchase was suitable to their needs.
- 5.35 Almost all consumers considered that they had a good understanding of their needs and that they had purchased products suitable to their needs.⁶¹
- 5.36 However, there is some evidence from the in-depth interviews which contradicts this. During the course of this market study we

⁶¹ Ninety-six per cent of respondents considered that they were clear about what they needed from their mobility aid. In addition, 77 per cent of respondents considered that their mobility aid was highly suitable and 18 per cent considered it was fairly suitable.

were informed by an occupational therapist that consumers should consider whether the stair lift they are buying has a swivel chair in order to enable the user to get on and off the stair lift easily, or whether it has folding options in order to ensure that the stair lift does not obstruct the stair case. Similarly, we were informed that consumers purchasing a mobility scooter should consider the speed and distance that the scooter can travel and the weight of the scooter.⁶² However, when asked how the product they had purchased met their needs, participants from the in-depth interviews were often only able to state the purpose of the product (for example, 'it takes me up the stairs' or 'it allows me to visit the shops'), but were unable to explain further whether the product was suitable to their personal needs, for example by reference to any product features.⁶³

5.37 While it was therefore not possible to ascertain to what extent the products consumers had purchased were suitable to their needs, there is some evidence which suggests that even where consumers consider that they purchased equipment that suits their needs, they may lack the necessary knowledge or experience to evaluate this properly. Consequently, there is a risk of purchasing products that either exceed or fall short of their needs.

5.38 Our research also explored to what extent consumers accessed such information and advice.

⁶² The speed of a scooter determines whether a scooter is suitable for pavement or road travel. In addition, faster models can be more difficult to drive and may therefore be inappropriate for some users. The distance indicates how far the scooter can travel on a single battery charge, and therefore whether it is suitable to reaching the user's intended destinations of travel. Consumers should also consider the weight of the heaviest component part of the scooter in order to determine whether the dismantled component parts of any Class 2 scooter they intend to purchase can be lifted easily into the boot of a car.

⁶³ Moreover, while most respondents stated that they had taken the functionality of the product into account before making their purchase, a clear minority stated that they had not.

5.39 Our research found that a clear majority of respondents mentioned one or more information sources which they considered helped them reach their decisions as to what to purchase.⁶⁴ However, even though most respondents were first-time buyers a significant proportion of respondents further stated that:

- they did not obtain advice from a healthcare professional
- they did not compare different brands or models
- they did not compare the offers of different retailers/suppliers.

5.40 Figures 5.2 and 5.3 below illustrate the extent to which respondents had accessed advice and information before making their purchase. Figure 5.2 covers respondents who had purchased a mobility aid for themselves, and Figure 5.3 covers respondents who had purchased a mobility aid on somebody else's behalf.

5.41 Our findings are further explained from paragraph 5.43 onwards.

⁶⁴ Eighty-four per cent of respondents named one or more information sources. The three sources noted most frequently by respondents were: retailers (19 per cent), the internet (17 per cent) and brochures (11 per cent).

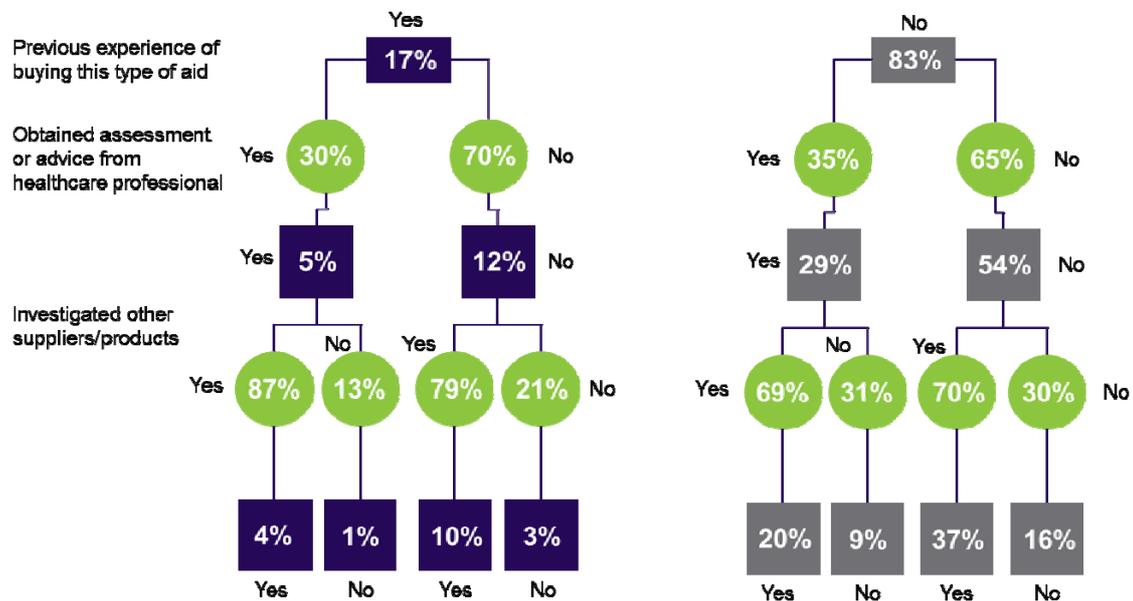
Figure 5.2: How well-informed are people buying for themselves?



Key: The figures in the boxes refer to the **proportion** of total respondents who answered 'yes'/'no' to the relevant question(s). The figures in the circles refer to the **proportion of respondents who answered 'yes'/'no'** to the previous question(s). So, 23 per cent of those consumers who had previous experience of purchasing a particular type of aid also obtained advice from a healthcare professional and these consumers represented five per cent of all our survey respondents.

5.42 As illustrated in Figure 5.2 above, three per cent of purchases were made by respondents benefitting from previous experience, obtaining advice from a healthcare professional and comparing alternative suppliers or products. By contrast, 21 per cent of respondents were first-time buyers who did not obtain advice or an assessment from a healthcare professional and who did not compare alternative suppliers or products.

Figure 5.3 How well-informed are people buying on behalf of somebody else?



Key: The figures in the boxes refer to the **proportion** of total respondents who answered 'yes'/'no' to the relevant question(s). The figures in the circles refer to the **proportion of respondents who answered 'yes'/'no'** to the previous question(s). So, 35 per cent of respondents with no previous experience of buying a particular mobility aid sought advice from a healthcare professional. These respondents represented 29 per cent of all our survey respondents.

Accessing advice

5.43 In our consumer research, we asked respondents whether they had obtained expert advice or an assessment from a healthcare professional as to the suitability of a mobility aid to their needs, which would have assisted them in identifying suitable products. Around two-thirds of consumers (68 per cent) stated that they had not obtained such advice or had an assessment before making their purchase.

- 5.44 While consumers generally did not report that this had led to the purchase of an inappropriate product, experts in this sector state that consumers may not always be aware that they have purchased an inappropriate product. For example, experts have stated that this may only be evident to an expert who can identify that the user's condition has deteriorated due to the purchase of inappropriate equipment. During the course of this study, charities in this sector, the College of Occupational Therapists and industry players therefore emphasised the need for expert specialist advice or an independent assessment of the consumer's needs in order to ensure that consumers purchase suitable products.
- 5.45 Our consumer research did not seek to examine the extent to which the absence of such advice led to the purchase of a product that was unsuitable to the consumer's condition, as that is a matter that would have required specialist input specific to each consumer. We note that in general there was widespread satisfaction with the products purchased but would nonetheless urge consumers to consider obtaining expert healthcare advice in order to ensure that they purchase products that are suitable to their condition and needs.

Accessing and acting on information about the suitability of products

- 5.46 As set out above, our research found that a clear majority of respondents mentioned one or more information sources which helped them reach their decision as to what to purchase. However, 12 per cent of consumers stated that prior to buying their mobility aid they did not obtain any information (four per cent stated that they could not remember). In the absence of any prior knowledge or experience, this may have significantly reduced their ability to identify products that suit their needs and that represent good value for money.
- 5.47 Where participants were probed within the in-depth interviews on why they had obtained limited or no pre-purchase information, they expressed difficulties in accessing information. For example,

one respondent mentioned that they would not know where to obtain relevant information while another stated that they had never come across any product information relevant to their condition.

- 5.48 The in-depth interviews highlight that while most consumers receive accurate information, some do not receive important information regarding the suitability of the product to the consumer's needs. For example, one participant highlighted that while the information she had been provided was not inaccurate, important information on whether the product could be used on public transport had not been provided to her, and as a result of her inexperience this was not a question she had specifically asked the sales person at the time of purchase.
- 5.49 In addition, consumers who received inaccurate information regarding the suitability of a mobility aid to their needs would not have been able to act on that information in order to make an informed purchasing decision. We found that the vast majority of consumers did not state that the information they had received was inaccurate. However, around six per cent of consumers stated that they were either not provided with accurate information on the quality, functionality and price of the product, or that some of the information they had been provided turned out to be inaccurate.

Lack of easily accessible information from suppliers

- 5.50 Our desk research further found that retailers do not provide information on basic product features on their websites or over the telephone. By way of example, our desk research found that basic product information such as the speed, distance and the heaviest component part of a mobility scooter is often not provided to consumers over the internet.
- 5.51 Further, the majority of retailers were not able or willing to provide our researcher with the above product information over the

telephone and requested that they visit their retail outlet in order to obtain further information.

Conclusion

- 5.52 While the consumer research conducted on behalf of the OFT reports high levels of satisfaction by respondents, many respondents were first-time buyers who did not access, or have access to, some key information that would enable them to make better informed purchasing decisions. We have observed that a significant proportion of respondents had needed to make an 'immediate' purchase and may not have had access to certain sales channels or information tools to assist them in making an informed purchasing decision.
- 5.53 In addition, we have found that about a half of retailers can make it more difficult for consumers to make better informed purchasing decisions by not disclosing actual prices or price ranges on their websites and marketing material, and by providing limited product information on their websites. Moreover, we have observed a significant variation in prices in this sector for identical products. For example, prices for the same brand and model of scooter varied by over £1,000 from some retailers, and we have even seen price differences of £3,000.
- 5.54 Moreover, consumers may not have the requisite knowledge or experience in order to 'assess' whether a product is suitable for them. This may lead to consumers purchasing products that fall short of or exceed their needs (thereby paying more than necessary). However, given their limited research and in the likely absence of repeat purchasing, they may not be aware of their limited ability to make good assessments.
- 5.55 It is also instructive to note that whereas interested parties such as charities place great importance on the cost consumers pay in this sector, some consumers appear to be price-insensitive. The in-depth interviews suggest that consumers decide whether they can afford the mobility aid they are offered rather than whether it

represents good value in comparison to other products. This may, in part, be due to consumers placing a much greater emphasis on improving their mobility than on searching for a product that represents good value.

Actions and recommendations

- 5.56 This section sets out the actions that the OFT and other bodies such as the BHTA are taking, and intend to take, in order to address the issues that we have identified in this chapter. It also presents our recommendations for further action by other organisations.
- 5.57 **Recommendation 1:** We recommend that **suppliers should disclose prices** on their websites, marketing material, and over the phone. We are working together with the BHTA, which has an OFT-approved Code of Practice, and it has **agreed to amend its Code of Practice** in order to require its members to provide consumers with actual prices or price ranges. We consider that this will enable consumers to make better informed purchasing decisions.
- 5.58 **Recommendation 2:** In light of the significant variation in prices we have observed in this sector, we urge consumers to get better value by **shopping around**, such as by obtaining more than one quote before making a purchase (for example, by using the internet, telephone or by visiting other retailers, with assistance from others where appropriate).
- 5.59 **Recommendation 3:** Even though the majority of consumers are likely to be first-time buyers, they can use the experiences of other consumers in order to assist them to make a similar purchase. We therefore recommend that existing information providers including charities in this sector collect consumer feedback, for example by using customer testimonials. This can be particularly helpful to consumers who may experience difficulties in assessing the quality or value of mobility aids prior to purchase.
- 5.60 **Recommendation 4:** As previously set out in Chapter 3, some local authorities are now providing individuals with 'personal

budgets', which allow the individual to purchase a mobility aid themselves, rather than be given a mobility aid by their local authority. In light of the potential difficulties consumers in this sector may experience in making informed purchasing decisions, we think it is vital that local authorities ensure money is spent wisely by providing consumers with easy access to information about:

- where they can obtain products and how they can obtain them through public or private routes
- what type of product they need (including the functionality of the product)
- the price of the product they are purchasing (including the price of the mobility aid and the price of spare parts so that they can determine the price of the mobility aid over its lifetime), and the prices of products of the same functionality
- a shopper's guide of key issues to consider before making a purchase
- their essential consumer rights, advocacy schemes and how to make a complaint.

5.61 We have observed that much of the above information is currently being made available free of charge by certain charities such as the Disabled Living Foundation, which has established an online self-assessment tool for consumers and an advice line. We therefore **recommend to local authorities that they work together with charities** in this sector in order to provide consumers with **independent** information and advice as appropriate, for example through the use of one-stop-shop information sites. Proactive, informed and empowered consumers will be able to make better informed purchasing decisions. This can also ensure that public money is spent wisely.

5.62 **Recommendation 5:** although in general there was widespread satisfaction with the products purchased, we would nonetheless

urge consumers to consider obtaining expert healthcare advice in order to ensure that they purchase products that are suitable to their needs.

- 5.63 In addition, the OFT is currently considering whether to take any action following information received recently that some companies in one segment of the mobility aids sector may be imposing restrictions on retailers of mobility aids which may prevent consumers from identifying the products that offer good value.⁶⁵

Provisional decision not to make a market investigation reference to the Competition Commission

- 5.64 A possible outcome from a market study is a market investigation reference to the Competition Commission. Although we found that about half of retailers across the sector do not display prices online or in adverts and about half of consumers in the sector do not shop around, the scale of any problem does not currently appear to be such as to warrant making a market investigation reference, and we consider that it would be more appropriate to deal with any competition issues using our alternative powers, for example by making recommendations for voluntary change. Therefore we are minded to conclude that, whether or not the test for reference is met, this is not a case in which the OFT would exercise its discretion to refer. We are consulting on this provisional decision – see Annexe C below for further details.

⁶⁵ There are over 900 firms (including manufacturers, retailers and individual traders) in the mobility aids sector as a whole, and the allegation relates only to a few of them. In line with the OFT's policy, we cannot name the businesses in question at this time.

6 IS COMPETITION IN THE WHEELCHAIR SECTOR WORKING WELL FOR CONSUMERS?

Summary of key findings

We have found that the provision of wheelchairs in the UK is highly concentrated with one supplier currently accounting for a majority of sales to the public sector. However, despite this concentration, the following suggests that the sector is subject to some competitive constraints.

- Although one firm accounts for a majority of sales to the public sector, the competing suppliers present in the UK are not all small firms. Some have a strong presence in wheelchair sectors outside of the UK and actively tender for contracts in the UK.
- The lack of growth in sales from the other players in this sector does not appear to result from structural barriers to expansion to supply wheelchairs in the UK. Low margins in supply to the public sector may indicate that the sector is competitive. However, although suppliers may be able to expand, the low margins in the public sector may mean that the potential return would not justify the level of investment needed to expand significantly.
- We received no substantiated complaints from customers or competitors to the large suppliers that competition is restricted or distorted due to firms' behaviour. Dealers and suppliers reported that dealers are free to set prices independently, and we observed some, although limited, variation in retail prices. We were not provided with any information to suggest that there are contractual terms which breach competition law by restricting dealers' sales or product offerings.
- Furthermore, the public sector is collectively the largest purchaser of wheelchairs in the UK with the potential buyer power to constrain suppliers. Public sector purchasing bodies consider that they typically obtain good prices and levels of service from the larger suppliers in particular.

Summary of key findings (continued)

Although the sector appears to be subject to some competitive constraints, certain aspects of the fragmented purchasing structure and patterns of public sector purchasing may be deterring significant scale entry and expansion. They may also present difficulties for public sector purchasing bodies in exercising their potential buyer power. For example, improved whole-life costing across public sector purchasing bodies could provide increased incentives for firms to compete. The OFT considers that these factors may be affecting the ability of public sector purchasing bodies to achieve fully buyer power efficiencies in order to drive further competition and good outcomes for consumers and end-users.

Summary of recommendations

The OFT makes recommendations for steps that can be taken by public sector purchasing organisations with a view to increasing their ability to drive competition and to maintain a high level of choice of products and suppliers. These recommendations have been developed following consultation with key interested parties, in particular the Department of Health (DH), NHS Supply Chain and the National Wheelchair Managers' Forum. The first three recommendations below have been endorsed in principle by DH and by NHS Supply Chain (subject to ratification by its task force):

- We recommend that future wheelchair national framework agreements set up by NHS Supply Chain include a basket of commonly used spare parts (including spare parts of third-party generic suppliers). This would help public sector purchasers better to predict, evaluate and achieve whole-life value for money and consequently to increase their buyer power and ability to drive vigorous competition.
- We recommend that NHS Supply Chain sets up a national framework agreement for repair and maintenance contracts, which can then be used by individual local public sector purchasing organisations in order to drive competition in both the secondary market and in the primary market through an enhanced ability to whole-life cost.
- We recommend that public sector purchasers seek feedback from end-users, engineers, clinicians and repairs/maintenance contractors (where applicable) on qualitative and quantitative information which would enable them to calculate more accurately the whole-life cost of equipment to be purchased. We consider that it would be particularly beneficial for NHS Supply Chain to put in place a simple feedback mechanism whereby such information could be disseminated more widely in relation to equipment which is available through its national framework agreement.

Further recommendations

In addition to the recommendations outlined above, our discussions with key interested parties indicated that they broadly consider the following recommendations to be effective and practicable:

- We recommend wider use of national framework and non-national framework wheelchair supply contracts which:
 - use information provided by suppliers on whole-life costing as one of the tender award criteria, and
 - give weight to supplier tenders which provide for opportunities for the purchaser to input into product research and development (for example, informed by end-user feedback).

These measures may increase the buyer power of public sector purchasing bodies and enhance their confidence and ability to drive competition, increasing the choice of products and suppliers.

- Although concerns were raised about difficulties that some public sector purchasing bodies face in driving vigorous competition, we have found that purchasers rely on their expertise and experience to seek effective outcomes for users. Examples of good purchasing practice and forums for sharing of expertise were brought to our attention in the course of this market study (see Annexe A). The OFT would recommend that public sector purchasers consider implementing those examples of good practice more widely and that such expertise be shared among public sector purchasing organisations. In addition, we suggest that the high level guidance and examples of good purchasing practice provided in this report be developed further by the future NHS Commissioning Board in the form of detailed guidance on pro-competitive purchasing practice.

Introduction

6.1 Prior to the launch of this market study, interested parties had raised concerns that competition in the wheelchair sector may not be working well. Following our consultation on the proposed scope of the study, we examined whether distortions of competition may be occurring as a result of:

- **The structure of the wheelchair market(s).** We examined the number of players, market shares and the nature of barriers to entry and expansion in order to determine the strength of any competitive constraints on players with potential market power.⁶⁶
- **Buyer power.** In particular, we considered the ability of public sector purchasing organisations⁶⁷ (which collectively constitute the largest purchaser of wheelchairs in the UK) to harness their buyer power in order to drive competition between suppliers.
- **Firms' behaviour.** We examined, for example, whether there were contractual terms that restrict retailers' ability to compete on price, restrict the number of retailers or that limit retailers' product offerings.

6.2 We found that although the supply of wheelchairs is highly concentrated, the sector appears to be subject to some competitive constraints from rivalry with existing players in the

⁶⁶ For a detailed explanation of market power, see OFT415 (2004) *Assessment of market power* .

⁶⁷ Due to the variation in purchasing models and responsibilities across the UK, where this report refers to 'public sector purchasers' or 'public sector purchasing organisations' unless stated otherwise this should be read as applying also to any public sector organisation in the UK which has responsibility for purchasing wheelchairs and delivering wheelchair services to users (for example, including Wheelchair Services or Primary Care Trusts in England, Wheelchair Centres in Scotland and Artificial Limb and Appliance Services in Wales).

sector, the threat of expansion and potential buyer power from public sector purchasing. Suppliers are broadly considered to offer competitive price and service levels. We received no substantiated complaints from customers or competitors to the large suppliers that competition is restricted or distorted due to firms' behaviour. However, we found that some features and patterns of public sector purchasing practices could deter large-scale entry and expansion, and may also present challenges to those purchasing organisations' ability to exercise their potential buyer power. The OFT considers that these factors may be affecting the ability of public sector purchasing bodies to achieve fully buyer power efficiencies in order to drive further competition and good outcomes for consumers and end-users.

- 6.3 In this chapter we provide an overview of the wheelchair sector followed by our findings on the areas we examined, namely, the structure of the wheelchair market(s), buyer power and the conduct of firms. We conclude with our recommendations in relation to the wheelchair sector.

Overview of the wheelchair sector

- 6.4 Wheelchairs can be broadly categorised as either manual or powered. Both manual wheelchairs and powered wheelchairs vary in complexity from basic 'entry level' models through to more complex, bespoke, high-end models.⁶⁸ Wheelchairs are available in a wide range of product specifications. A wheelchair can often be tailored to meet individual consumer needs by being offered in a range of sizes and with a choice of accessories or adaptations. Wheelchairs that are purchased privately tend to be either simpler, lower-specification (for example, manual or electric wheelchairs for occasional users) or highly specialised chairs to meet specific

⁶⁸ For example, high-end models tend to be lightweight, highly adaptable and, in the case of powered wheelchairs, the more sophisticated models can incorporate features that move the user to a standing-up position, or electric risers that, for example, enable users to access items in the home that would otherwise be out of reach.

lifestyle needs (for example, electric chairs with an electric riser function or specially designed chairs to allow the user to participate in a particular sport). Approximately three quarters of wheelchairs are purchased and supplied to wheelchair users by the public sector.⁶⁹

6.5 In the UK the two largest suppliers of wheelchairs are Invacare UK Limited (a subsidiary of Invacare Corporation) and Sunrise Medical Limited (a subsidiary of Sunrise Medical Inc). Other multinational companies that supply in the UK include Handicare Limited, RGK Wheelchairs Limited, Otto Bock Healthcare plc, Etac UK Limited, Van OS Medical UK Limited, Pride Mobility Products Limited, Drive Medical Limited and Days Healthcare Limited. There is also a number of UK-based suppliers, for example Remploy Limited, Electric Mobility Euro Limited, Greencare Mobility Limited, Roma Medical Aids Limited, Karma Mobility Limited, Sumed International (UK) Limited, Dan Medica North Limited and Newton Products Limited.

6.6 Publicly available information on the value or volume of sales of wheelchairs in the UK is very limited. Market reports suggest the current value of the UK sector for wheelchairs is within the range of £75m⁷⁰ to £155m.⁷¹ Based on information received, we estimate annual unit sales in the UK of manual wheelchairs to be within the range of 125,000 to 175,000 and powered wheelchairs to be 11,000 to 14,000.

⁶⁹ This is an approximate figure based on the limited information provided to us during the market study.

⁷⁰ Global Industry Analysts, Inc. (2011) *Wheelchairs (powered and manual): A Global Strategic Business Report*, page 137.

⁷¹ Key Note (2009) *Equipment for the Disabled*, page 16. The figure of £140m from the report has been adjusted for estimated growth and expressed in 2010 prices.

6.7 From a market report⁷² (cross-checked against data provided by some respondents to our information request), we roughly estimate the following shares of supply in the UK for the wheelchair sector: Invacare: 55-65 per cent; Sunrise Medical: 15-25 per cent; Remploy: five - 15 per cent; with other suppliers collectively accounting for the remaining five - 15 per cent. We note (and suppliers reported) that there is currently a lack of publicly available data in the UK in order to assess accurately market size to determine the split of shares between supply to the public sector, supply to dealers or retail sales to consumers.

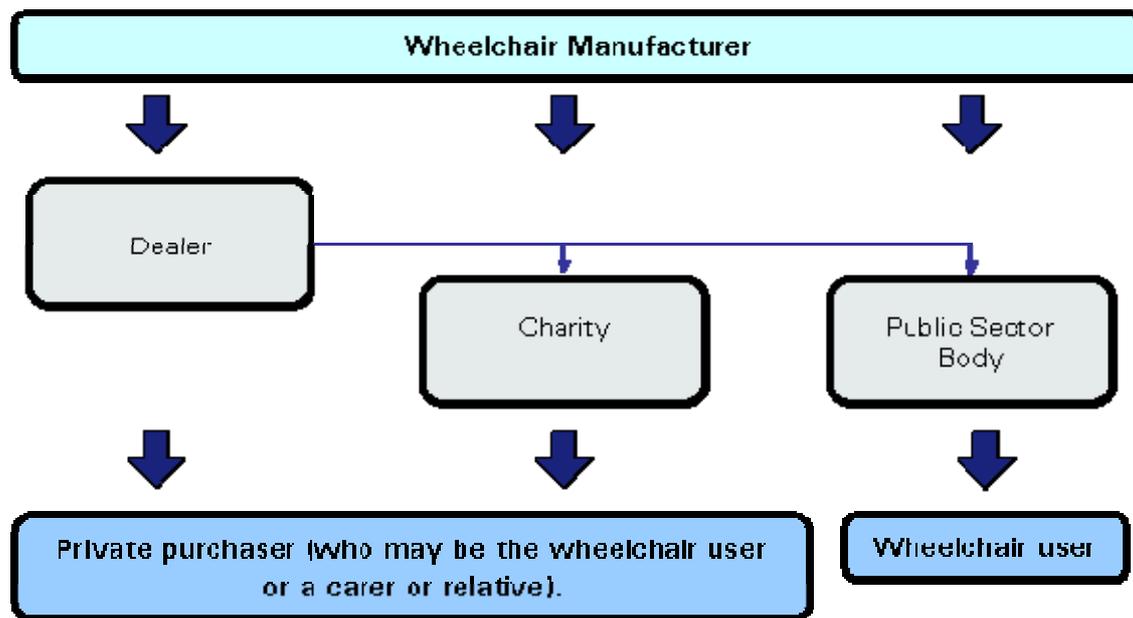
Supply routes to the consumer

6.8 There are around 1.4 million wheelchair users in the UK.⁷³ This equates to around two per cent of the population. The vast majority of supply of wheelchairs in the UK is to the public sector. We were informed that public sector purchasing accounts for approximately three-quarters of wheelchair purchases in the UK. Figure 6.1 below illustrates the supply routes of wheelchairs to consumers.

⁷² Global Industry Analysts, Inc. (2011) *Wheelchairs (powered and manual): A Global Strategic Business Report*, page 136. We used data relating to the manual wheelchairs and powered wheelchairs segments from the report, but we note that the report contained additional data relating to powered scooters.

⁷³ This figure can be broken down to approximately 1.2 million wheelchair users in England (source: DH, 2006 figures), 96,000 in Scotland (source: NHS Scotland review of wheelchair and seating services, 2006), 70,000 in Wales (source: NWALAS, 2011) and 27,000 in Northern Ireland (source: HSCNI, 2011).

Figure 6.1: Supply routes of wheelchairs to consumers⁷⁴



Public sector

- 6.9 Wheelchairs are provided to users by a variety of different public bodies, for example the NHS, local education and employment services. However, the majority of users are provided with wheelchairs through NHS services. There is variation across the UK in the way the service is provided due to differences in factors such as location, numbers of users, staffing levels, budgets, and eligibility criteria.
- 6.10 There is also variation across the UK in terms of roles and responsibility for purchasing wheelchairs and supplying the equipment and associated services to users. For example, this

⁷⁴ The OFT understands 'dealer' to be a term used in the industry to refer to companies that may be suppliers or retailers or both. A dealer could supply both to the public sector and also retail wheelchairs to end consumers. Dealers also tend to offer repairs and servicing, either in-house or by outsourcing to engineers. In general, manufacturers do not tend to supply directly to the end consumer but use a dealer network. In that connection, references to 'dealers' in this report do not include manufacturers. However, we note for completeness that manufacturers of specialised bespoke wheelchairs may supply direct to the end consumer.

may be carried out by procurement specialists or by wheelchair managers on behalf of individual public sector purchasing bodies or groups of such bodies. In some cases, a particular public sector purchasing body may act as a 'hub' service provider to other local public sector purchasers.

Sales outside the public sector

- 6.11 A wheelchair may be purchased from the private sector, for example, if a person does not meet the applicable local eligibility criteria for public sector provision and/or consider that the public sector cannot fully meet their expectations or full range of non-clinical needs. In some instances, the purchase may be made using a voucher or top-up scheme provided by a relevant public body or with financial or other support from charities, for example, Whizz-Kidz.
- 6.12 It is estimated that there are around 900 dealers of mobility aids in the UK, including wheelchairs. Of those, only approximately 100 to 150 sell specialised powered wheelchairs. The majority of dealers are independent specialists, which operate from 'bricks and mortar' stores on a regional basis,⁷⁵ and sell wheelchairs together with a range of other mobility aid products. Dealers tend to stock entry-level manual wheelchairs or electric wheelchairs/scooters for occasional users. Several national retail chains also supply a limited range of wheelchairs, for example, Halfords, Argos and Tesco.
- 6.13 Dealers reported that, due to the general increase in consumers shopping online for products in the UK and the internet having the potential to facilitate shopping around, dealers in the mobility aids sector are increasingly supplying products online and some are able to do so on a national basis. However, the ability to offer services locally is often important as consumers may request or need an assessment or aftercare. The majority of dealers who

⁷⁵ Typically with a radius of approximately 50 miles.

offer online sales reported that they retain a 'bricks and mortar' presence rather than being solely an online retailer.

Structure of the wheelchair market(s)

Introduction

- 6.14 In this section we consider the number of players, trends in market shares, recent examples of entry and examples of consolidation in the wheelchair sector. We then consider whether the threat of entry or expansion imposes a competitive constraint on the behaviour of firms.

Number of suppliers and market shares

Manufacturer level

- 6.15 As noted above at paragraph 6.5, there are at least four to five multi-national players present in the UK as well as several smaller UK-based suppliers. The estimated shares of supply, as noted at paragraph 6.7 above, suggest the sector is highly concentrated in the UK. Respondents informed us that there is choice for entry-level wheelchairs but all responses noted that where products are more specialised and are prescribed to meet specific clinical needs (for example, in the case of wheelchairs for children) the product choice is more limited. There may only be two or three suppliers in each case that offer a product capable of meeting a given set of specific clinical needs.
- 6.16 As noted earlier in this report, the public sector is collectively the largest buyer of wheelchairs in the UK, obtaining products by way of competitive tendering processes. We were informed that two or three suppliers tend to be consistently awarded public sector contracts, but we note that there are active alternative suppliers (for example, the national framework agreement operated by NHS Supply Chain, discussed below, currently lists 17 suppliers that have been approved to supply to the NHS). We consider the effect

of public sector purchasing practices on competition in detail below.

Trends in market shares

- 6.17 Due to a lack of data we were unable to analyse whether there have been any significant fluctuations in market shares over time that could indicate whether suppliers are competing successfully to gain market share.
- 6.18 Although only limited information on market shares has been provided to us, all respondents to our information request and the parties we had discussions with reported that Invacare and Sunrise Medical have consistently remained the main suppliers in the UK for at least the last five years. A few smaller suppliers reported that they had increased sales over time. Others reported that their market shares had been relatively static or declining. The changes to market shares were mainly attributed to the wider economic climate, for example, pressures on budgets. Suppliers also attributed changes to increased competition from lower specification products sourced cheaply from the Far East.
- 6.19 Suppliers and dealers submitted that market shares are more evenly distributed between suppliers when sales to the public sector are excluded, with increased price competition and choice for entry level wheelchairs, which are the products most frequently sold at the retail level. For example, interested parties reported that there is ready availability of cheap entry level wheelchairs for import, and a significant amount of them are imported from the Far East. While this was the consistent view expressed in submissions, we were unable to obtain sufficient data to assess this quantitatively.
- 6.20 The level of concentration of the UK market for the supply of wheelchairs is comparable with that of other member states of the EU. All of the major wheelchair companies who have a large

presence internationally also have a presence in the UK.⁷⁶ While each supplier has a presence in the UK, the scale to which they supply in the UK varies in relation to that to which they supply in other EU countries. We consider the potential constraint imposed from the threat of entry and expansion further at 6.28 to 6.42 below.

Recent examples of entry

- 6.21 We were provided with some examples of new entry from suppliers who began supplying wheelchairs in the UK within the last five years, namely, Greencare Mobility Limited, Van Os Medical UK Limited, Medline Industries Inc., Bischoff & Bischoff GmbH and Ugo Limited, an online supplier.

Examples of consolidation in the wheelchair sector

- 6.22 Mergers may alter the structure of the market, potentially impacting on competition between existing players. There have been some mergers and acquisitions in the wheelchair sector over the last five years. For example, Swedish based Etac acquired Balder UK in 2008, and Patterson Medical Limited (previously known as Homecraft Rolyan) acquired Days Healthcare in 2010. In 2005, Sunrise Medical acquired Lomax Medical Limited.⁷⁷ These acquisitions were announced as acquisitions of complementary products to widen a supplier's product offerings across a range of wheelchairs, mobility and daily living aids rather than mergers involving directly competing products. Suppliers, retailers and purchasers commented during our study that there has been consolidation in the mobility aids sector, but they did not raise any

⁷⁶ We identified companies with a major presence internationally using a range of market reports.

⁷⁷ OFT (2005) *Completed acquisition by Sunrise Medical Inc. and its subsidiaries of Lomax Mobility Limited*.

particular concerns about the impact of merger activity on competition.

- 6.23 In conclusion, we have found that the sector is highly concentrated with one supplier accounting for a majority of sales to the public sector. Although there may have been some limited change in market shares and some new entry, the current market structure has persisted for some time. We examine below the potential for competitive constraints from the threat of entry or expansion and/or the existence of potential buyer power.

Dealer level

- 6.24 As noted above, it is estimated that there are around 900 dealers of mobility aids in the UK, including wheelchairs. Of those, only approximately 100 to 150 sell specialised powered wheelchairs. At the dealer level, distribution and sales channels are highly fragmented. We were informed that the number of small independent high street retailers or online retailers of mobility aids has grown in the last five years, although there has been some exit from the market due to increased competition. There are fewer dealers of specialised wheelchairs as a result of the low volumes of sales of such wheelchairs and the need to offer a specialist assessment and aftercare.
- 6.25 We considered in broad terms whether dealers compete with each other on a local or national level, and found the responses to be mixed. Some dealers sell nationally, and the growth of internet retailing could facilitate that. However, if consumers require an assessment or follow-up maintenance and repair services then the consumer may consider it important to obtain services locally and as such the geographic market that dealers serve may be more limited.
- 6.26 Supply at the retail level is less concentrated than supply to the public sector. In general, suppliers, dealers and consumers reported that there is a choice of suppliers and products for entry level manual or powered wheelchairs and that retail sales of those

products are competitive. This reflects the fact that the vast majority of private purchases are of wheelchairs for the occasional user. These tend to be less complex or specialised products and consequently dealers and end consumers focus on price rather than specific functionality or a specific brand.

- 6.27 For the more specialised wheelchair models, there are fewer products capable of meeting a consumer's clinical needs resulting in less competition and choice.

Market entry and expansion

Introduction

- 6.28 Some features of a market may make new entry or expansion less likely or less rapid, for example regulatory or legal barriers, well-established or strong incumbent suppliers. If there are no, or low, entry barriers such that a competitive threat exists, then it is unlikely that an incumbent company could maintain any market power if it were to use it to harm the process of competition, even if that company had a large market share and/or did not face existing competition. For example, it would not be able to raise prices above competitive levels, as other companies would be likely to enter the market or expand to gain market share. The impact of market entry and expansion, as competitive constraints in the wheelchair sector, is addressed below in relation first to manufacturers and then to dealers.

Manufacturer level

Entry

- 6.29 Manufacturers reported that if a potential entrant wished to supply wheelchairs on a small scale then it would be relatively easy to do so: regulatory requirements are not considered to be prohibitive;⁷⁸

⁷⁸ Wheelchairs are classified as Class I medical devices under the Medical Devices Directive 93/42/EEC, which came into force in 1998, has been implemented in the UK

intellectual property is accessible for product design as some patents on many standard wheelchair models have expired; components to meet the wheelchair design can be sourced globally; and it is relatively cheap and easy to access a distribution network in the UK.

- 6.30 Many manufacturers tend to supply wheelchairs in multiple geographic regions, often including the US and Europe. One reason provided for this is that the manufacturers who supply to multiple geographic regions are able to access large customer volumes. That enables them to produce sufficient wheelchairs in order to recoup their development investments and to obtain economies of scale. That, in turn, enables them to offer the lowest prices to attract further sales and to expand. The manufacturers that supply mainly in the UK, and which do not benefit from large economies of scale, submitted that they have still been able to enter the UK sector to compete on a smaller scale by differentiating their product offering. For example, they may offer, to the public sector or privately, a specialised product or they may focus on quality of service and aftercare to meet the individual needs of some wheelchair users.
- 6.31 Contributors to our study raised concerns over barriers to entry in relation to two matters. First, we were informed that the supply of specialised wheelchair products may not be susceptible to new entry in the short-term.⁷⁹ Second, it was noted that in some cases public sector purchasing practices could impact on new entrants.

by the Medical Devices Regulations 2002, and is enforced in the UK by the Medicines and Healthcare products Regulatory Agency (MHRA). Additional administrative requirements include 'CE' marking and implementing a procedure for post market surveillance. For further information see www.mhra.gov.uk. Interested parties informed us that they did not consider regulatory barriers to entry to be high.

⁷⁹ For example, we were informed that due to the complexity of more specialised wheelchairs, it may take two years on average to produce a new product and could cost in the region of £500,000 to develop a new powered wheelchair model.

- 6.32 Suppliers reported that the cost of bidding for public contracts is not high such that they would be dissuaded from bidding. The requirements for bidding for national frameworks,⁸⁰ while time consuming and costly, were not considered by suppliers to be so onerous as to dissuade them from bidding.
- 6.33 However, interested parties did consider that the fact that orders are not guaranteed under the national framework, and that in England it is not actually used in many instances,⁸¹ represents a disincentive for bidding and also provides decreased incentives for suppliers to invest in service levels.⁸² A corollary of this is that, even when suppliers have succeeded in joining a national framework, they may have to also incur the cost of investing in relationships with individual local public sector purchasing organisations in order to compete for non-framework contracts.⁸³

⁸⁰ National framework agreements set out the terms and conditions (including the price) under which specific wheelchair purchases can be made throughout the duration of the agreement's term from a named list of suppliers. For example, in England the national framework agreement for wheelchairs is set up and managed by Exel Europe Ltd, under the trading name NHS Supply Chain, under an agency agreement with the NHS Business Services Authority. The majority of suppliers are on the national framework. Its duration is two years, and there is an option to extend for up to a further two years. The current national framework is due to terminate in March 2012. There is one purchasing contract for the whole of Wales, negotiated by NHS Wales Shared Services Partnership.

⁸¹ The national framework agreement operated by NHS Supply Chain accounts for approximately half of public sector purchasing of wheelchairs in England.

⁸² We note that not all of the suppliers who are on the NHS Supply Chain national framework agreement have actually made sales under that framework agreement.

⁸³ In instances where the national framework is not used in England there are various alternative approaches. These include: independent procurement exercises run by public sector purchasers; combining purchasing using the national framework with off-framework purchasing when the need arises; partnership purchasing, whereby several public sector purchasers group together to run joint purchasing processes; employing a private agency to carry out some or all aspects of purchasing, repairs, maintenance, and adjustments (in combination with in-house facilities where appropriate); and a fully

- 6.34 Interested parties provided information to the OFT which indicated that public sector purchasers typically repeatedly select the same few suppliers, despite the presence of a much wider choice of suppliers on the national frameworks. Whilst it was reported that this is largely due to broad satisfaction with the price and service levels offered by those incumbent suppliers, a behavioural pattern of this kind is likely to deter potential new entrants to the market.
- 6.35 In addition, although most suppliers are on the national framework operated by NHS Supply Chain, and therefore are technically not excluded (barring purchasers' selection patterns), interested parties reported that new suppliers are not typically added to the framework during its two- to four-year term. It was also reported that some non- national framework supply contracts also have a long duration (in some cases up to seven years).
- 6.36 There are potential benefits from longer contracts with limited scope for adding suppliers mid-term. For example, they may enable streamlining of administrative costs. However, we would encourage public sector purchasing organisations to consider the trade-off of any perceived benefits against the potential impact on longer-term costs and competition if there are limitations on the ability of new entrants to enter the market until the national framework or non-framework contract is re-tendered.
- 6.37 In conclusion, the information we have received suggests that there are no significant structural barriers to entry to supply wheelchairs in the UK. However, certain aspects of public sector purchasing patterns may deter entry.

Expansion

- 6.38 Even though many suppliers choose to focus on one product category, such as manual or powered, they reported an ability to

integrated approach which also includes administration and inventory management in addition to the above.

switch production between these categories and they also reported that they have excess capacity such that they could expand their output if there was sufficient demand.

- 6.39 In addition, suppliers reported that they could expand or focus on additional product offerings or increase sales relatively quickly (within two to three years) if they chose to make additional investment to follow such a commercial strategy.
- 6.40 As noted above, there are several multi-national suppliers present in the UK who are reported to be the leading suppliers in other EU countries and who are likely to have access to substantial resources. Such competitors impose a degree of competitive constraint on the large suppliers in the UK. Interested parties reported that the margins available from sales of wheelchairs to the public sector in the UK are low. Low margins in supply to the public sector may indicate that the sector is competitive and that the public sector is getting good value for money. However, although suppliers may be able to expand, the low margins in the public sector may mean that the potential return would not justify the level of investment needed to expand significantly. We were not provided with sufficient financial information during our market study to analyse whether or not margins available from sales of wheelchairs are low.
- 6.41 Suppliers also reported that some public sector purchasing patterns may reinforce incumbency advantages for existing large suppliers. That may deter suppliers from making the level of investment required to expand in the sector even if they have the capacity to do so and may make it difficult for existing suppliers to increase their market share. We consider that this may limit the ability of purchasers and end users to realise the benefits of vigorous competition in the long term. Relevant factors reported by contributors to our study include:
- **Raised expansion costs:** In the UK the public sector does not constitute one single buyer as each local public sector purchasing body is responsible for its own purchasing strategy

and negotiates separately with suppliers. Fragmented purchasing may increase competition as it may enable a wider range of suppliers to obtain contracts, but it can also present a challenge to suppliers in terms of raised costs. For example, interested parties reported that there is divergence and inconsistency of approach to purchasing across the UK, particularly in the form, content and application of non-national framework contracts.⁸⁴ Fragmented purchasing also increases the levels of investment required for marketing, training, maintaining continuity and speed of delivery and 'back-office' support to many local purchasers. It is easier for large suppliers with established networks and infrastructure to meet and invest in these costs than it is for smaller suppliers or new entrants.

- **Established relationships:** We were informed that in many instances commissioning is typically modelled on historic custom and practice, whereby the same supplier is repeatedly selected on the basis that they have been selected before,⁸⁵ rather than forecasting future purchasing decisions based on the requirements of users and the consequential development of a purchasing strategy. Strong and well-established relationships exist between the larger suppliers and public sector purchasers, primarily due to the level of investment which those suppliers have put in establishing and building those relationships. We were informed that purchasers are broadly satisfied with, and have confidence in, the ability of the larger suppliers to offer a good price and enhanced service quality, for example the ability to deliver products quickly and

⁸⁴ In relation to off-framework contracts, some concerns were expressed relating to instances where contract requirements are not clearly specified. If there is uncertainty as to the nature of the contract this raises suppliers' bidding costs, may lead to more cautious bids and may impact on suppliers' ability to operate efficiently.

⁸⁵ This also extends in some cases to a pattern of adapting standard wheelchair models in order to meet specific user requirements, as opposed to buying models of a higher specification from niche suppliers.

to make minor modifications to products to better suit users' needs.⁸⁶ However, this may in time have resulted in a degree of reliance on those suppliers and a perception that untested suppliers represent a greater risk, or that switching costs are high, in particular where purchasers hold large stocks of products. As a result, smaller suppliers may be deterred from making the level of investment required to compete with the larger suppliers, particularly on service levels, in order to expand in the market even if they have the capacity to do so.

- **Stocks of spare parts:** Where public sector purchasers hold large existing stocks of spare parts for certain wheelchairs, the cost of switching suppliers would increase. In addition, where 'fleets' of particular wheelchair models are used, there are also costs associated with learning how to use and maintain the models of other manufacturers. This may have the consequence that public sector purchasers are less inclined to switch manufacturers even if they are able to establish that a better offer is available.

6.42 In conclusion, the information we received suggests that there are no structural barriers to expansion. However, some purchasing patterns of the public sector and the low margins that are reported to be available on sales of wheelchairs to the public sector in the UK, may deter even those suppliers with large scale potential and multi-national presence from investing in expansion in the UK market.

Dealer level

6.43 At the dealer level, there are low barriers to entry to supply entry-level manual wheelchairs aimed at the occasional user. Several

⁸⁶ We note that this may not always work to the advantage of larger suppliers; we were informed that in some situations smaller suppliers may have greater flexibility to meet unusual requirements within a short timeframe.

national retailers, such as Halfords, Tesco, Asda, Lloyds Pharmacy and Argos have commenced stocking some wheelchairs.

6.44 For more bespoke or complex products for both wheelchairs and other mobility aids, retailers considered that additional investment was required. For example, the need to have trained staff to conduct an assessment for certain products.

6.45 Expansion beyond a certain scale may also require warehousing to hold stock to meet customer demand as there may otherwise be unpredictable waiting periods from the supplier. Although those elements involve additional investment, they were not considered by respondents to be high barriers to entry or expansion.

Buyer power

6.46 In view of the level of concentration which we have observed in the supply of wheelchairs, we have considered the extent to which any market power which may exist could be offset by countervailing buyer power. Where buyer power exists this may constrain any market power of a supplier, for example, to prevent the supplier from raising prices above competitive levels.

Public sector purchasers

6.47 As noted earlier in this report, the public sector is collectively the largest buyer of wheelchairs in the UK. As a result, the way in which the public sector commissions and procures wheelchairs, in particular its negotiating power, can influence the structure and nature of competition in this sector.

6.48 Interested parties raised concerns relating to public sector purchasing prior to the launch of the market study and during the formal fact-finding phase. Those concerns related to a range of

factors about the extent to which the public sector harnesses its potential buyer power⁸⁷ and included:

- the fragmented nature of public sector purchasing
- challenges that public sector purchasing organisations face in whole-life costing, and
- the ability of public sector purchasing organisations to drive innovation through competition.

Fragmented purchasing

6.49 Despite the existence of a national framework agreement operated by NHS Supply Chain and the development of collaborative purchasing groups, we were informed by interested parties that, where public sector purchasers in the UK are locally funded and responsible for their own purchasing, there are significant challenges to individual public sector purchasing organisations to exercise buyer power. For example, low volume purchases reduce the ability of purchasers to achieve better prices through volume

⁸⁷ We note that this issue has also been considered in previous reviews of public sector wheelchair purchasing. For example, Department of Health (2010) *Local innovations in wheelchair and seating services*; Welsh Assembly Government (2010) *Community Equipment Services, the introduction of national minimum standards*; The Scottish Government (2009) *Wheelchair and Seating Services Action Plan*; Care Services Improvement Partnership (2006) *Out and About: Wheelchairs as part of a whole-systems approach to independence*; Scottish Executive (2006) *Moving Forward: Review of NHS wheelchair and seating services in Scotland*; Whizz Kidz (2006) *Don't Push Me Around! Disabled children's experiences of wheelchair services in the UK*; Audit Commission (2003) *Services for disabled children: a review of services for disabled children and their families*; Audit Commission (2002) *Fully equipped 2002: assisting independence*; Audit Commission (2000) *Fully equipped: the provision of equipment to older or disabled people by the NHS and social services in England and Wales*.

discounts or through reduced supplier costs being passed on to them.⁸⁸

6.50 It was also reported that, in addition to the existence of many individual public sector purchasing organisations across the UK, each with their own budgets and approach to purchasing, there is also fragmentation of responsibilities, budgets and in some cases communication channels between professionals within individual public sector purchasing bodies. It was reported that those factors may dilute buyer power further.⁸⁹

6.51 The OFT notes that there are various initiatives aimed at mitigating this problem. For example, the use of national purchasing strategies in Wales and Scotland, and the development of collective purchasing groups in England.⁹⁰ Some of these initiatives are outlined further at paragraph 6.92 and Box 6.1 below.

Whole-life costing

6.52 The ability to evaluate the whole-life cost of products is a key factor in a buyer's ability to harness its buyer power in order to

⁸⁸ The OFT notes that similar issues were considered by the National Audit Office (NAO) in its report on the comparable sector of hospital purchasing of consumables. See NAO (2011) *The procurement of consumables by NHS acute and Foundation trusts*.

⁸⁹ This concern is also reflected in previous work that has been carried out by the OFT and other public sector organisations where communication between different organisations and professionals involved in providing wheelchair, and other comparable, healthcare services to users has been identified as an issue. See, for example, OFT1314 (2011) *Commissioning and Competition in the Public Sector*; NAO (2011) *The procurement of consumables by NHS acute and Foundation trusts*; Department of Health (2010) *Local innovations in wheelchair and seating services*; Care Services Improvement Partnership (2006) *Out and About: Wheelchairs as part of a whole-systems approach to independence*.

⁹⁰ See also Care Services Improvement Partnership (2006) *Out and About: wheelchairs as part of a whole system approach to independence*.

drive competition.⁹¹ Information provided by interested parties indicates that challenges faced by public sector purchasing organisations in their ability to whole-life cost may present a limitation on their ability to harness a level of buyer power which sufficiently promotes vigorous competition.

- 6.53 In relation to the purchasing of primary products, we encountered divergent views on whether prices of wheelchairs (to the public sector) have increased or decreased, whether they represent value for money, and whether that has been accompanied by changes in product and/or service quality. In the main, interested parties broadly considered that public purchasers obtain good value for money on the initial purchase of standard equipment within the budget constraints that they face.
- 6.54 A large proportion of public sector purchasing organisations' costs appear to be attributed to refurbishment, maintenance, repairs, spare parts and accessories. Some contributors were able to estimate that average spend on repairs and maintenance (including spare parts and refurbishing wheelchairs for new users) is approximately equivalent to the cost of the initial wheelchair. Those costs are substantial because a significant proportion of standard NHS equipment is refurbished a number of times during its lifetime, both to carry out maintenance or repairs and to adapt existing stock to the specific needs of each new user to whom it is issued.
- 6.55 Interested parties reported that some public sector purchasing organisations typically face challenges in their ability to evaluate and predict value for money across the whole life of the products they purchase. For example, in relation to:

⁹¹ A buyer's bargaining strength can be enhanced where, among other factors, the buyer is well informed about alternative sources of supply and could readily, and at little cost to itself, switch substantial purchases from one supplier to another while continuing to meet its needs (OFT415 (2004) *Assessment of Market Power*, paragraph 6.2).

- **Budgets:** It was reported that public sector purchasing organisations' focus is often on up-front prices in the short-run. This occurs as a result of the budgetary pressures that these organisations face, and the fact that budgets are allocated on an annual basis. Together, this can mean that purchasing a lower priced model may be more favourable than a higher priced model which has lower maintenance costs over its lifetime, because the higher-priced product is unaffordable in the current year's budget.
- **Data:** Purchasers stated that they have limited access to, or ability to generate, reliable and consistent data or information which would enable them effectively to determine whole-life value for money of equipment and to spread some of the whole-life cost. This is largely due to factors such as inconsistent definitions for different items of equipment or aspects of the service, the limited analytical capability of IT systems, and limited data capture. In some cases, purchasing organisations may not be requesting or obtaining relevant data from third-party repair and servicing contractors. Public sector purchasing organisations therefore often have to rely on experience of their staff (for example of the average lifetime and costs of products bought periodically) and expertise to inform their decisions. Whilst they do have considerable experience and expertise to draw upon, there is a risk that purchasing decisions over time may become disproportionately affected by factors such as staff turnover, inertia and unfamiliarity with new products.
- **Complexity:** The complexity of the whole-life costing calculation is increased by individual user-related factors. For example, the number and type of maintenance incidents or refurbishments that a given wheelchair needs may vary considerably between individuals, depending on factors such as the user's condition, the frequency of use, the nature of the activities for which it is used and the kind of terrain on which it is used.

- 6.56 Some interested parties have expressed concerns that some prices for secondary products (spare parts and accessories) appear relatively very high. This is supported by the fact that suppliers also reported that the supply of standard or basic wheelchairs to public purchasers was not profitable and that they made much greater returns on those secondary products. A key factor in this is the budget constraints faced by public sector purchasing organisations and the consequent focus on the part of some to obtain the cheapest headline price for wheelchairs in the current financial year. Whereas the price of initial wheelchairs may be driven down through such factors, the price of secondary products may not be subject to the same pressure. In this context, we would encourage public sector purchasing organisations to obtain information on the whole-life costs of equipment and to use that to inform their initial purchases in order to obtain the best long-term value for money.⁹²
- 6.57 In addition, spare parts and accessories are not currently available for purchase from the national framework agreement operated by NHS Supply Chain. Public sector purchasing organisations consequently do not currently benefit from the associated advantages such as reduced administrative costs and the greater negotiating power of the NHS Supply Chain in relation to the price of spare parts.
- 6.58 Finally, spare parts are often purchased from the manufacturer of the initial wheelchair, in preference to purchasing from third party suppliers, who may provide equivalent products at cheaper prices.

⁹² We note that not all spare parts and accessories that are purchased directly by NHS organisations. Many public sector purchasing organisations contract for repairs and maintenance services, which cover the purchasing of any spare parts and accessories to carry out those services, from third party providers. It may be expected that third-party repairers source spare parts and accessories to obtain the best prices in order to be able to win repairs contracts. However, we did not find that competition for repairs contracts exerts the degree of competitive pressure on spare parts prices that may be expected. This is because such contracts often specify that the manufacturer's own spare parts must be used, limiting repairers' choice of where to purchase spare parts.

Where public sector purchasing organisations have increased choice of secondary products suppliers, it is easier and less costly to switch between suppliers of primary products and hence their ability to drive competition for primary products is improved. Public sector purchasers have reported the following difficulties in shopping for spare parts from a range of suppliers:

- **Interchangeability:** Spare parts and accessories are often specific to a particular wheelchair design, and are not interchangeable between types. This is increasingly the case as more innovative wheelchair designs are being introduced.⁹³ However, we have been informed that generic spares are available for some of the most commonly used parts, and that cost savings could be made if those were purchased.
- **Perception of regulatory restrictions on the use of generic parts:** Information provided to us by public sector purchasers indicates that there appears to be a lack of clarity about guidance issued by the Medicines and Healthcare products Regulatory Agency (MHRA) on the use of generic spare parts. In particular, there appears to be a misconception that the MHRA bans the use of third party or generic spare parts. The MHRA informed us that this is not the case.⁹⁴

⁹³ For example, a concern was raised that an increase in modular designs combined with limited compatibility between brands and pre-existing purchases of spare parts and accessories may have the effect of committing purchasers to continuing to buy from a specific supplier. Furthermore, lighter weight designs are considered by some interested parties to present durability issues in some cases which raise the cost of repairs and maintenance.

⁹⁴ MHRA (2006) *Device Bulletin: Managing Medical Devices - Guidance for healthcare and social services*, section 8.5. However, we note that sourcing spare parts directly from wheelchair manufacturers remains the lowest risk option for public sector purchasing organisations. A further concern among public sector purchasers is that a manufacturer's warranty on wheelchairs may be invalidated by using spare parts from a third party supplier. In practice, the liability for checking that spare parts are suitable often rests with the purchaser.

Driving innovation through competition

- 6.59 We encountered divergent views on the extent to which public sector purchasing organisations are able to drive innovation through competition in the wheelchair sector.
- 6.60 On the one hand, the standard equipment offered by the NHS is largely considered to be of a basic specification and design that has remained unchanged for many years.
- 6.61 In addition, suppliers observed that they have introduced new products in the last five years but there has been limited uptake of innovative products by public sector purchasing organisations.⁹⁵
- 6.62 However, we have been informed that this picture is changing, particularly in some parts of the UK. For example, recent initiatives such as the 2006 Review of Wheelchair and Seating Services in Scotland have identified the need to take into account wider lifestyle requirements of users and the needs of carers, in addition to the periodic review and updating of their stock.⁹⁶ NHS Scotland, in addition to NHS Wales and other larger public sector purchasing bodies throughout the UK, also work collaboratively with suppliers in order to develop new models and incremental improvements to existing models in order to meet users' needs. We were informed that one of the key competitive advantages displayed by the larger suppliers is their ability to develop and adopt minor changes to standard models reasonably quickly in order better to meet users' needs.

⁹⁵ There may be a number of factors which contribute to this. For example: budget constraints; the benefits of maintaining a fleet of basic models; in some cases, limited awareness of the range of models available on the part of clinicians; and the fact that not all chairs are suitable for NHS use, which typically entails heavy use and repeated reconditioning or refurbishment.

⁹⁶ Scottish Executive (2006) *Moving Forward: Review of NHS wheelchair and seating services in Scotland*.

6.63 Several interested parties also expressed a view that there is a wide choice of wheelchairs available⁹⁷ and that there has been significant innovation in recent years, particularly in relation to incremental improvements to the standard wheelchair design. Public sector purchasers also reported that, subject to eligibility criteria, the NHS will meet the clinical needs of users regardless of how complex those needs are.⁹⁸ We were also informed, as noted above, that there is an increasing move toward more innovative products such as lighter-weight models and modular designs⁹⁹ (for example, NHS Wales almost universally purchases lightweight and modular designs).

6.64 Several national and local public sector purchasing organisations throughout the UK also make a practice of inviting suppliers to demonstrate new products to panels comprised of clinicians, technicians, users and purchasers. Selected models are then trialled in small numbers in order to test and evaluate them, in some cases in consultation with a repairs/maintenance contractor, before large volumes are purchased. NHS Scotland has also set up user groups to generate feedback in order to improve the products it provides. The OFT considers that there would be significant benefits to more public sector purchasing organisations engaging in similar processes to these, or if the findings of those who do could be shared more widely among the community of purchasers and clinicians.

⁹⁷ We note, however, that interested parties reported that much of this choice is supplied by the two largest suppliers. In fact, we were informed that the wide range of products available was one reason why purchasers prefer to use those suppliers.

⁹⁸ There is currently an increase in complex clinical needs. This is a result of factors such as: an increase in survival rates of users with complex needs; and a trend toward an emphasis on user choice. The OFT was informed, however, that some public sector purchasers may contain costs by adjusting eligibility criteria (see also Audit Commission (2003) *Guidance on the commissioning of wheelchair services*, page 5).

⁹⁹ Modular designs are comprised of a range of component options which are compatible with a particular model and which can be configured to a given specification.

Dealers

- 6.65 A dealer's bargaining strength is enhanced when it is well informed about alternative sources of supply and could readily, at little cost to itself, switch substantial purchases from one supplier to another. Suppliers informed us that dealers in the UK are able to exert an element of pressure on the supplier in negotiations. However, in general dealers are fragmented and purchase in small volumes, so do not exert significant buyer power in their dealings with suppliers.
- 6.66 Suppliers and dealers reported that dealers are not subject to any purchasing commitments from any particular supplier. This means that dealers could switch to alternative suppliers. Our findings indicate that the costs of switching suppliers are limited with the main cost being a need for dealers to familiarise themselves with alternative products in order to be able to sell them effectively.
- 6.67 For entry level wheelchairs, dealers tend to source and stock products from a range of suppliers. Suppliers reported that a dealer could cease to promote a supplier's products and promote the products of rival suppliers if that dealer considered that it was not receiving competitive prices or quality products and/or service. It was submitted by the suppliers that this could reduce purchases from a given supplier by a substantial amount and therefore imposed a degree of competitive constraint on that supplier.
- 6.68 One additional relevant factor is that the number of specialist 'bricks-and-mortar' dealers is limited, and each of those dealers has limited display space at its premises. As suppliers view 'bricks and mortar outlets' as important distribution channels, this scarcity may increase the competitive pressure that dealers are able to exert for entry level wheelchairs.
- 6.69 Several national retailers, for example, Halfords, Argos and Tesco have begun to sell wheelchairs. However, national retailers do not appear to be an important outlet for suppliers at this time such that they have countervailing buyer power. Several suppliers

expressed the view that they consider that specialist dealers are more appropriate to meet a consumer's needs as wheelchairs are seen as medical devices.

- 6.70 In conclusion, we do not consider that dealers exert any significant buyer power in their dealings with suppliers as dealers are highly fragmented and often purchase in small volumes. However, the public sector is collectively the largest purchaser of wheelchairs in the UK and we would expect it to be able to harness its purchasing ability to drive competition. Nevertheless, some aspects of the fragmented purchasing structure and patterns of public purchasing may present challenges to public sector purchasing organisations' ability to exercise buyer power in order to drive more vigorous competition. In view of the foregoing, we make a series of recommendations, which are set out below, to NHS Supply Chain and to the community of individual public sector purchasing organisations across the UK, with a view to increasing their ability to drive price competition and to maintain a high level of choice of products and suppliers in the wheelchair sector.

Firms' behaviour

- 6.71 On the question of whether there are distortions of competition due to firms' behaviour in the wheelchair market(s), we examined whether there were contractual terms which restrict dealers' ability to compete on price, restrict the number of dealers or which limit dealers' product offerings.

Pricing

- 6.72 Dealers and suppliers that responded to our information request reported that dealers are free to set retail prices independently. We found that in general suppliers use standard terms and conditions of supply rather than individually negotiated supply contracts. The price paid by the dealer is based on a discount from the supplier's recommended retail price. The level of

discount available to the dealer varies, for example, based on the volume that the dealer purchases from the supplier.

- 6.73 We conducted a desk research (online and telephone) mystery shopping exercise to consider whether there was price variation at the retail level. We selected (a) a range of suppliers' lightweight aluminium manual wheelchairs; and (b) a range of suppliers' complex manual wheelchairs. For the latter we note that, order forms are provided by the manufacturers to the dealers with detailed pricing information on the base price and price for each of the components. In relation to (b) we conducted the exercise in two stages. The first stage involved requesting a discount from the base price. We then obtained quotes for a fully developed specification for a wheelchair model including measurements for bespoke adjustments.
- 6.74 The first stage¹⁰⁰ delivered mixed results. The base prices of some suppliers' lightweight aluminium products varied across retailers: the difference between lowest and highest price¹⁰¹ ranged from 12 to 25 per cent. However, there were some products for which we did not observe any variation in the base prices quoted by retailers. In the second stage, the price variation between the lowest and the highest quoted price was smaller (approximately five per cent).
- 6.75 From the mystery shopping exercise, we found that when we were able to obtain a quote¹⁰² the prices did vary between

¹⁰⁰ Based on a limited sample, from which outlier observations have been excluded.

¹⁰¹ Calculated as the difference between the highest and lowest price, divided by the average price.

¹⁰² Many retailers we contacted requested that our 'shopper' visit their store for an assessment before they would provide a quote. As such we found it could be difficult to obtain even indicative prices or a price range without physically visiting a retailer's store. The impact on competition from consumers not having access to pricing information is considered in more detail in Chapter 5.

retailers to a limited extent. The prices quoted were often identical to the prices quoted on the manufacturer's order form which accounts for the limited variation in the prices we observed.

Choice of retailers

- 6.76 We were informed that there are no 'formal' written supply contracts in place. In general, supply is on the basis of the supplier's standard terms and conditions. Even though we were not provided with details of formal selection criteria, in effect, the majority of suppliers who responded to our study operate a form of selective distribution, whereby the supplier will consider an application from a dealer for an account against criteria before agreeing to supply. A factor commonly considered by suppliers was the suitability of a dealer to provide appropriate assessment and advice on the product to meet the consumer's clinical needs and after-sales services.
- 6.77 We examined whether there are exclusive distribution agreements in place whereby the supplier would only appoint one dealer for a particular area to sell its products. Exclusive distribution agreements could have negative or positive effects on competition.¹⁰³ One example of a potential restriction of competition resulting from exclusive distribution is the foreclosure of dealers (that is, consumers having access to fewer dealers in an area) which could lead to less price competition and/or less choice for the consumer. However, exclusive distribution agreements could also have positive effects on competition. For example, to enable retailers to improve their quality of service without the risk of a consumer using that retailer's enhanced service for free advice, but subsequently purchasing from a rival retailer who does not invest in service and so has reduced costs and therefore lower prices.

¹⁰³ For further details, see the European Commission Notice (C(2010)2365) *Guidelines on vertical restraints*. See also OFT419 (2004) *Vertical agreements*.

6.78 In general, suppliers reported that they do not operate exclusive distribution arrangements with their dealers. However, one manufacturer informed us that its general practice is not to supply a new dealer in an area that is already served by an existing dealer. At this time we have not found any evidence to suggest that this manufacturer's practice amounts to a breach of competition law and we do not propose to take any further action at this stage. However, as exclusive distribution agreements have the potential to infringe competition law we referred the supplier to the OFT's guidance on competition law compliance for businesses.¹⁰⁴ The supplier confirmed its willingness to keep its policy under review for competition law compliance.

Retailers' product offerings

6.79 Suppliers and dealers reported that they do not have exclusive purchasing arrangements whereby a dealer would only stock one supplier's products. Suppliers reported that seeking such arrangements would not be commercially viable as dealers would not accept such terms. Dealers are free to, and do, stock a range of different suppliers' products to meet the wide variety of needs of consumers.

Conclusions on competition in the wheelchair sector

6.80 Based on the information received, we have found that the provision of wheelchairs in the UK is highly concentrated with one supplier currently accounting for a majority of sales to the public sector. However, despite that concentration, the following factors suggest that the sector is subject to competitive constraints:

- Although one firm accounts for a majority of sales to the public sector, the other competing suppliers present in the UK are not all small firms. Some have a strong presence in

¹⁰⁴ OFT (2011) *Quick Guide to Competition Law Compliance* (www.oft.gov.uk/OFTwork/competition-act-and-cartels/competition-law-compliance).

wheelchair sectors outside of the UK and actively tender for contracts in the UK.

- The lack of growth in sales from the other players in this sector does not appear to result from structural barriers to expansion to supply wheelchairs in the UK. Low margins in supply to the public sector may indicate that the sector is competitive. However, although suppliers may be able to expand, the low margins in the public sector may mean that the potential return would not justify the level of investment needed to expand significantly.
- We received no substantiated complaints from customers or competitors to the large suppliers that competition is restricted or distorted due to firms' behaviour. Dealers and suppliers reported that dealers are free to set prices independently, and we observed some, although limited, variation in retail prices. We were not provided with any information to suggest that there are contractual terms which breach competition law by restricting dealers' sales or product offerings.
- Furthermore, the public sector is collectively the largest purchaser of wheelchairs in the UK with the potential buyer power to constrain suppliers. Public sector purchasing bodies consider that they typically obtain good prices and levels of service from the larger suppliers in particular.

6.81 However, although the sector appears to be subject to some competitive constraints, certain aspects of the fragmented purchasing structure and patterns of public sector purchasing may be deterring significant scale entry and expansion. They may also present difficulties for public sector purchasing bodies in exercising their potential buyer power. For example, improved whole-life costing across public sector purchasing bodies could provide increased incentives for firms to compete on prices. We consider that these factors may be affecting the ability of purchasing bodies to achieve fully buyer power efficiencies in

order to drive further competition and good outcomes for consumers and end-users.

Wheelchair Sector: Recommendations

- 6.82 This section sets out our recommendations for steps that can be taken to address the issues that it has identified in this market study with a view to increasing public sector purchasing organisations' ability to drive price competition and to maintain a high level of choice of products and suppliers for the benefit of consumers and end-users.
- 6.83 We note that there are various initiatives already underway within government and local public sector purchasing organisations across the UK to enhance wheelchair procurement practices within the NHS.¹⁰⁵ We note also the Department of Health announcement in July 2011 that 'Any Qualified Provider' (AQP) schemes will be put in place, for example for children's wheelchair services in England.¹⁰⁶ Our recommendations are intended to be

¹⁰⁵ These include the work of bodies such as DH Wheelchair and Specialised Seating Services Programme and its associated Wheelchair Advisory Group; NHS Scotland Wheelchair and Seating Services Programme; and the National Wheelchair Managers' Forum. A number of pilot projects for purchasing hubs and other alternative approaches to purchasing are also being carried out, for example in the South West, South East, North-east Lincolnshire and East of England, in addition to established collective purchasing groups such as West Midlands and North East of England. In addition, there are several publications which provide helpful recommendations, for example: DH (2010) *Local innovations in wheelchair and seating services*; Care Services Partnership (2006) *Out and About: wheelchairs as part of a whole system approach to independence*; Audit Commission (2002) *Assisting Independence – Fully Equipped*; and Whizz Kidz and Barnados (2006) *Don't Push Me Around*.

¹⁰⁶ Under AQP, when patients are referred (usually by their GP) for a particular service, they are able to choose from a list of qualified providers who meet NHS service quality requirements, prices and normal contractual obligations. This is a means to enable increased choice and personalisation in NHS-funded services. Choice for patients can be about the way care is provided, or the ability to control budgets and self-manage conditions. Extending patient choice of provider in this way is intended to empower patients and carers, improve their outcomes and experience, enable service innovation

complementary to those initiatives and developments. We envisage also that our recommendations would be implemented through incremental changes to established processes and with ongoing evaluation to ensure that the desired outcome is being achieved. This is particularly pertinent given the current environment of change within the NHS and the need to ensure that changes are compatible with the reforms which take place.

- 6.84 In addition, our recommendations do not preclude public sector purchasing organisations from developing further methods and initiatives to increase their ability to drive competition in the wheelchair sector.
- 6.85 Although our study has focused on public sector purchasing of wheelchairs, we consider that some of the following recommendations may also be relevant to purchasing of other products where whole-life costing is a significant aspect of managing costs. We therefore encourage public sector purchasing organisations in general to consider how these recommendations, or the principles that they embody, may be applied to other comparable areas.
- 6.86 Our recommendations have been developed following consultation with key interested parties, in particular DH, NHS Supply Chain and the National Wheelchair Managers' Forum. The first three recommendations below have been endorsed in principle by DH and by NHS Supply Chain (subject to ratification by its task force).
- 6.87 **Recommendation 1:** We recommend that **future wheelchair national framework agreements set up by NHS Supply Chain include a basket of commonly used spare parts** (including spare parts of third-party generic suppliers). That would help public sector purchasing organisations better to predict, evaluate and

and free up clinicians to drive change and improve practice. For more information on AQP see: <http://healthandcare.dh.gov.uk/any-qualified-provider>

achieve whole-life value for money and consequently to increase their buyer power and ability to drive vigorous competition.¹⁰⁷

- 6.88 **Recommendation 2:** We recommend that **NHS Supply Chain sets up a national framework agreement for repair and maintenance contracts**, which can then be used by individual local public sector purchasers in order to drive competition both in the secondary market and in the primary market through an enhanced ability to whole-life cost.¹⁰⁸
- 6.89 **Recommendation 3:** We recommend that **public sector purchasing organisations seek feedback from end users, engineers, clinicians and repairs/maintenance contractors (where applicable) on qualitative and quantitative information which would enable them to calculate more accurately the whole-life cost of equipment to be purchased**. That would in turn facilitate public sector purchasing organisations' ability to harness their buyer power to drive competition.¹⁰⁹ We consider that it would be particularly beneficial for NHS Supply Chain to put in place a simple feedback mechanism whereby such information could be disseminated more widely in relation to equipment which is available through the national framework agreement.
- 6.90 In addition to the recommendations outlined above, our discussions with key interested parties indicated that they broadly considered the recommendations set out below to be effective and practicable.
- 6.91 **Recommendation 4:** Following examples of best practice brought to our attention, we recommend **wider use of national framework and non-national framework wheelchair supply contracts which:**

¹⁰⁷ See paragraphs 6.52 to 6.58 above.

¹⁰⁸ See paragraphs 6.52 to 6.58 above.

¹⁰⁹ See paragraphs 6.52 to 6.58 above.

- **use information provided by suppliers on whole-life costing as one of the tender award criteria¹¹⁰ and**
- **give weight to supplier tenders which provide for opportunities for the purchaser to input into product research and development** (for example, informed by user feedback).¹¹¹

These measures may increase the buyer power of public sector purchasing organisations and enhance their ability to drive competition, increasing the choice of products and suppliers.

6.92 **Recommendation 5:** Although concerns were raised about difficulties that some public sector purchasing organisations face in driving vigorous competition, this market study found that public sector purchasing organisations often rely on the expertise and experience of their staff to seek effective outcomes for users.¹¹² We recommend that **such expertise be shared more widely among public sector purchasing organisations.**

Organisations which could have a valuable role in this are, for example, the National Wheelchair Managers' Forum, NHS Scotland, NHS Wales, Health and Social Care in Northern Ireland, and the future NHS Commissioning Board. Greater consistency in purchasing practices would also have benefits in reducing suppliers' costs, which could then be passed back to purchasers in lower prices.¹¹³ **Examples of good purchasing practice and forums for the sharing of expertise were brought to our attention in the course of this market study.** Some of these examples are briefly listed in Box 6.1 below and are outlined in more detail in Annexe A to this report, along with examples of some organisations which use each practice. Annexe A also provides

¹¹⁰ See paragraphs 6.52 to 6.58 above.

¹¹¹ See paragraphs 6.59 to 6.64 above

¹¹² See paragraph 6.55 above.

¹¹³ See paragraph 6.41 above

further high-level principles of good purchasing practice. We recommend that **public sector purchasing organisations consider implementing those examples of good practice more widely** and approach the relevant organisations for further details as they consider appropriate.¹¹⁴ In addition, we suggest that the high level guidance and examples of good purchasing practice provided at Annexe A be developed further by the future NHS Commissioning Board in the form of detailed guidance on pro-competitive purchasing practice.

Provisional decision not to make a market investigation reference to the Competition Commission

6.93 A possible outcome from a market study is a market investigation reference to the Competition Commission. Although we found that the sector is concentrated there is at least a credible threat of expansion from other multi-national players that supply in the UK, and public sector purchasers have the potential to drive competition, both of which impose a degree of competitive constraints on the sector. Therefore, the scale of any problem does not currently appear to be such as to warrant making a market investigation reference, and we consider that it would be more appropriate to deal with any competition issues using our alternative powers, by making recommendations for voluntary change. Therefore we are minded to conclude that, whether or not the test for reference is met, this is not a case in which the OFT would exercise its discretion to refer. We are consulting on this provisional decision – see Annexe C for further details.

¹¹⁴ A list of key contributors to this market study is provided in Annexe B.

Box 6.1: Examples of good purchasing practice (see Annexe A for details)

Public sector purchasers provided examples of good practice which enables them to share expertise, drive innovation and to determine whole-life costs of equipment.

- Making use of organisations and events where **experience and expertise can be shared** between purchasers, Wheelchair Managers, engineers, clinicians and users.
- **Establishing collective purchasing groups of public sector purchasing bodies** can generate efficiencies, for example an increased ability to achieve volume discounts, sharing expertise and reducing the costs of purchasers and suppliers.
- **Working collaboratively with suppliers to drive innovation** and develop new models and designs that meet more effectively users' needs.
- Inviting potential suppliers to **demonstrate products** to purchasers, clinicians, engineers and users.
- Developing **initiatives to facilitate communication** between purchasers, clinicians and other professionals within an individual Wheelchair Service, and across different services within a local area.
- Setting up **user feedback groups**.
- Using robust and tested methodology for **calculating the whole-life cost** associated with different wheelchair models.

A BEST PRACTICE IN PUBLIC SECTOR PURCHASING OF WHEELCHAIRS

Examples of good practice

A.1 This market study found that public sector purchasers of wheelchairs often rely on their expertise and experience to seek effective outcomes for users. Feedback from interested parties to us suggested that a desirable outcome of this market study would be greater sharing of that expertise. There are examples of good purchasing practice and forums for sharing of expertise which were brought to our attention in the course of this market study. Some of these examples are briefly listed below. We encourage public sector purchasers to approach the relevant organisations for further details and to discuss how they may benefit from their experience and expertise.¹¹⁵

- We were informed of several organisations and events where experience and expertise can be shared between purchasers, Wheelchair Managers, engineers, clinicians and end-users. Examples include, the National Wheelchair Managers' Forum, the DH Wheelchair Advisory Group, West Midlands collaborative purchasing group, the Rehabilitation Engineering Facilities Manager Group, the Institute of Clinical Engineering in Medicine and the Posture Mobility Group.
- Collective purchasing groups of public sector purchasing bodies can generate efficiencies, for example an increased ability to achieve volume discounts, sharing expertise and reducing administrative costs. They can also decrease suppliers' costs, which may then be passed on to purchasers in reduced prices. Examples include, NHS Scotland, NHS Wales, West Midlands collaborative purchasing group and South London PCTs.

¹¹⁵ A list of key contributors to this market study is provided in Annexe B.

- Some public sector purchasers work collaboratively with suppliers to drive innovation and develop new models and designs that meet more effectively end-users' needs. Examples include, Greater Glasgow and Clyde, South Wales ALAS and Devon PCT.
- Inviting potential suppliers to demonstrate products to purchasers, clinicians, engineers and end-users, and to allow products to be tested, when tendering for a contract can be a useful method of predicting the whole-life cost of equipment before it is purchased. Examples include, NHS Scotland, NHS Wales, South Manchester, Mid-Essex PTC and Devon PCT.
- Initiatives to facilitate communication between purchasers, clinicians and other professionals within an individual Wheelchair Service, and across different services within a local area, may help to enable whole-life value for money to be achieved and may drive innovation. Examples include, Preston Specialist Mobility Rehabilitation Centres and NHS Telford and Wrekin.¹¹⁶
- Setting up end-user feedback groups is a valuable way of gauging the whole-life cost of equipment which has been provided. An example is NHS Scotland.
- Some public sector purchasers have reported that bringing repairs and maintenance in-house can, in some circumstances, lead to better control of expenditure. Examples include, Doncaster Wheelchair Service¹¹⁷ and South Wales ALAS. We note that it may also be beneficial in some circumstances to appoint a repairs and maintenance contractor, particularly if that is done by a collective purchasing group.

¹¹⁶ Cited in Department of Health (2010) *Local innovations in wheelchair and seating services*

¹¹⁷ See Department of Health (2010) *Local innovations in wheelchair and seating services*

- Using robust and tested methodology is valuable for calculating the whole-life cost associated with different wheelchair models, for example in the following three steps recommended by NHS Lothian:
 - i. Decide what level of refurbishments will take place (for example, decontamination only, replacing seat covers and arm rests, replacing tyres, re-spraying the wheelchair).
 - ii. Calculate the cost of parts and labour for the chosen level of refurbishments (either using an in-house repairer or an activity-based repair contract).
 - iii. Predict the frequency and levels of refurbishment. This can be estimated based on existing data, including service histories for the wheelchair model, number of referrals being made and number of that model of wheelchair being issued.

Further high level guidance for good purchasing practice

A.2 Whilst there is a considerable level of experience and expertise to be found among public sector purchasing organisations, interested parties reported that some aspects of the fragmented purchasing structure and patterns of public sector purchasing may be deterring significant scale entry and expansion in the supply of wheelchairs.¹¹⁸ For example, the existence of inconsistent approaches and instances of over-reliance on large incumbent suppliers and conservative approaches to switching suppliers. The following sub-section therefore sets out some high level principles which may assist public sector purchasing organisations to increase the extent to which they drive further competition and to achieve greater value for money throughout the whole life of equipment purchased. We recommend that public sector purchasing organisations consider implementing, to the extent that

¹¹⁸ See paragraphs 6.28 to 6.45 above

they do not already do so, this high level guidance in conjunction with the examples of good practice set out above.

- A.3 The following guidance is drawn from applicable material in a joint OFT and Office of Government Commerce (OGC)¹¹⁹ publication, entitled *Making Competition Work for You*, which was produced for public sector procurers of construction work.¹²⁰ That publication provides further detailed information which may also be helpful to those involved in public sector purchasing. In addition, public sector purchasers may also find helpful guidance in the OFT market study report entitled *Assessing the Impact of Public Sector Procurement on Competition*.¹²¹
- A.4 In order to improve competition in the procurement process to secure value for money, we recommend that those involved in public sector procurement of wheelchairs should consider two key areas: first, facilitating efficient entry and exit of suppliers; and secondly, promoting increased competition through end-user choice.

Facilitating efficient entry and exit of suppliers

- A.5 Where suppliers are discouraged from entering the bidding process, and/or if inefficient suppliers are not able, or encouraged, to exit the market, competition may be limited as a result. Where there is effective entry and exit, public sector purchasing organisations would benefit from greater value for money in the long-term as the most efficient suppliers would be selected and

¹¹⁹ The OGC is now part of the Efficiency and Reform Group within the Cabinet Office.

¹²⁰ OFT892 (2007) *Making competition work for you*.
(www.ofg.gov.uk/shared_ofg/reports/comp_policy/oft892.pdf).

¹²¹ OFT742 (2004) *Assessing the impact of public sector procurement on competition*.
(www.ofg.gov.uk/OFTwork/markets-work/completed/procurement).

suppliers would not face the increased costs associated with uncertainty.¹²²

- A.6 Suppliers reported in this market study that their costs are raised where the requirements of tenders are not defined specifically enough or where they change significantly during the course of a contract. In some instances, suppliers consider the level of investment necessary to meet the purchasing organisation's requirements to be too high. These factors, especially in combination with lack of certainty about the ongoing costs of providing a service in the event that a contract is won, may act as a disincentive to bid for the contract. In order to reduce the cost to suppliers in bidding for contracts, which may in turn be passed on to purchasers, it is therefore important to ensure that requirements are defined clearly. It is particularly useful to provide clear a definition of selection criteria relating to 'quality', along with clarity on how those criteria will be measured and what the relevant weightings will be. In addition, the cost of bidding is reduced where quantitative criteria such as financial information about the bidder are focused on requiring only information that is necessary and sufficient to judge whether a contract should be awarded and does not require large amounts of extraneous information to be provided.
- A.7 The performance of suppliers to whom contracts have been awarded is also easier to monitor and to reward where requirements are well defined, are converted into desired outcomes and remain constant throughout the contract period. In addition to enabling suppliers to gauge their own performance more easily, this also has the benefit of increasing purchasers' ability to identify where performance has been unsatisfactory and to terminate, or not renew, contracts accordingly. Consequently, inefficient suppliers would be allowed to exit and the market

¹²² In addition, greater clarity on the costs of bidding (and supplying if a contract is won) on the part of potential suppliers reduces the likelihood of potential supplier cost increases being built into bid prices over time.

would become more competitive as a result. Moreover, providing feedback to suppliers who were not awarded the contract is a useful way of enabling them to benchmark their bid and to recalibrate future bids accordingly.

Increased competition through end-user choice

A.8 One of the central themes of the current NHS reform agenda is an increased focus on personalisation (that is, increased end-user choice of equipment and supplier or provider through, for example, Any Qualified Provider¹²³ or voucher and top-up schemes¹²⁴). In particular, wheelchair users are being given increasing control over the goods and services that they receive.

A.9 Provision of good quality information to end-users will therefore become increasingly important in future years as consumers become more involved in purchasing decisions and therefore individual consumer choice becomes a key driver of competition.¹²⁵

Useful contacts and sources of information

A.10 In addition to the OFT publications cited above, the following sources may be helpful to public sector purchasing organisations in increasing their use of good purchasing practice.

- Efficiency and Reform Group in the Cabinet Office (ex-OGC).¹²⁶

¹²³ See paragraph 6.83.

¹²⁴ See paragraph 3.10.

¹²⁵ See also paragraph 5.60.

¹²⁶ From 1 October 2011 the OGC website will cease to exist. Historic information from the OGC website is now available at <http://webarchive.nationalarchives.gov.uk/20100503135839/www.ogc.gov.uk/index.asp>. New information is available at www.cabinetoffice.gov.uk.

- Local Partnerships (www.localpartnerships.org.uk).
- Partnerships UK (www.partnershipsuk.org.uk).¹²⁷
- Electronic Service Delivery toolkit (www.esd-toolkit.org).
- Department for Communities and Local Government, guidance on strategic partnering (www.communities.gov.uk).
- Enterprise and Business Support, part of the Department for Business, Innovation and Skills (www.bis.gov.uk/Policies/enterprise-and-business-support).
- Local Government Improvement and Development (www.idea.gov.uk).

¹²⁷ Note that Partnerships UK is being closed down in 2011. Its website content is therefore not being updated, however it remains available.

B KEY CONTRIBUTORS TO THE MARKET STUDY

B.1 In the course of this market study we have engaged widely with companies, charities, public sector organisations and members of the public, and have sought contributions at the following key stages:

- **November 2010 – January 2011:** We conducted a public consultation on the proposed scope of the market study.
- **February – April 2011:** We formally commenced the market study, sought information and invited contributions. Meetings were held with interested parties. OFT team members attended the NAIDEX trade fair and relevant public sector conferences. We analysed Consumer Direct data and commissioned consumer research to identify and explore consumer issues in this sector.
- **May – July 2011:** We published our emerging key findings on the OFT website and circulated them directly to key interested parties, along with an invitation to provide further information and contributions. We set up a TSS Working Group to explore issues relating to enforcement work into unfair sales practices and we also held further meetings with key interested parties to seek their views on our emerging key findings and to obtain further information. OFT team members attended a meeting of the National Wheelchair Managers' Forum and a TSS conference.
- **July – September 2011:** We sought views from key interested parties on our proposed recommendations.

B.2 In addition to contributions from individual consumers, we received submissions and information from the following key interested parties. We are grateful for contributions from all of them and their willingness to assist the OFT in its work.

Manufacturers, dealers, repairs contractors and trade associations

Ability Matters

British Healthcare Trades Association

Dan Medica North Limited

Etac UK Limited

Golden Age Mobility Limited

Greencare Mobility

Handicare Limited

Invacare UK Limited

Karma Mobility Limited

Millbrook Industries Limited

Milton Keynes Mobility Limited

MT Mobility Limited

Newton Products Limited

Nottingham Rehab Supplies

Opt4Mobility Limited

Otto Bock Healthcare plc

Sumed International (UK) Limited

Sunrise Medical Limited

TGA Electric Leisure Limited

Charities

Age UK

Assist UK

British Association of Occupational Therapists

British Limbless Ex Service Men's Association

Community Equipment Solutions

Disability Action

Disabled Living Foundation

Leonard Cheshire Disability

Parkinsons UK

Ricability

Scope

Spinal Injuries Association

The Royal British Legion

Whizz Kidz

Public sector organisations

Barnet PCT

Betsi Cadwaladr University Health Board (North Wales Artificial Limb and Appliance Service)

Cardiff & Vale University Health Board (South Wales Artificial Limb and Appliance Service)

Croydon PCT

Department for Transport

Department for Work and Pensions

Department of Health

Devon County Council / Devon PCT

Ealing PCT

Greater Glasgow & Clyde NHS Scotland

Health and Social Care in Northern Ireland, Business Services Organisation

Medicines and Healthcare products Regulatory Agency

National Wheelchair Managers' Forum

Nederlandse Mededingingsautoriteit (Netherlands competition authority)

NHS Lothian

NHS National Services Scotland
NHS Scotland
NHS South West Pilot
NHS Supply Chain
NHS Wales Shared Services Partnership
North East Lincolnshire Care Trust Plus
Nottingham PCT
Royal Devon & Exeter NHS Trust
Telford PCT
Trading Standards Services (TSS)
University Hospital of South Manchester NHS Foundation Trust
West Kent PCT

OFT/TSS Working Group members

Birmingham City Council
Cardiff Council
Carmarthenshire County Council
City of London Corporation
Coventry City Council
Department of Enterprise, Trade and Investment (Northern Ireland)
Derbyshire County Council
Dudley Metropolitan Borough Council
East Sussex County Council
Hampshire County Council

Hertfordshire County Council

Kent County Council

Knowsley Metropolitan Borough Council

London Borough of Richmond upon Thames Council

Luton Borough Council

Norfolk County Council

Solihull Metropolitan Borough Council

Staffordshire County Council

Stoke-on-Trent City Council

West Yorkshire Joint Services

Worcestershire County Council

C PROVISIONAL DECISION NOT TO MAKE A MARKET INVESTIGATION REFERENCE TO THE COMPETITION COMMISSION

- C.1 A possible outcome from a market study is a market investigation reference (MIR) to the Competition Commission (CC). The OFT has the discretion to make a reference if it has reasonable grounds for suspecting that any feature, or combination of features, of a market in the UK for goods or services prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the UK, or a part of the UK.¹²⁸
- C.2 If this test for reference is met, the decision on whether or not to make a reference rests on the exercise of the OFT's discretion. The OFT's guidance on MIRs¹²⁹ sets out that the OFT will only make references to the CC when the reference test (as described above) is met and in its view each of the following criteria has been met:
- **alternative powers** – it would not be more appropriate to deal with the competition issues identified by applying the Competition Act 1998 or using other powers available to the OFT¹³⁰ or, where appropriate, to sectoral regulators
 - **undertakings in lieu** – it would not be more appropriate to address the problem identified by means of undertakings in lieu of a reference

¹²⁸ Section 131 of the Enterprise Act 2002.

¹²⁹ See OFT511 (2006) *Market investigation references*.

¹³⁰ The OFT interprets this reference to its 'other powers' as including (among other things) steps it can take in exercise of its functions under sections 6 to 8 of the Enterprise Act 2002, to provide information to the public (section 6), provide information and advice to Ministers and other public authorities (section 7), and promote good consumer practice (section 8).

- **scale** – the scale of the suspected problem, in terms of its adverse effect on competition, is such that a reference would be an appropriate response to it
- **availability of remedies** – there is a reasonable chance that appropriate remedies will be available.

C.3 Based on the evidence we have found in this market study **our view is that this is not a case in which we would exercise our discretion to refer:**

- in the **mobility aids sector** as a whole, we found that around half of retailers across the sector do not display prices online or in adverts and around half of consumers in the sector do not shop around. However, we also found that there is some transparency in the sector: retailers display prices in their stores, and around half of websites display prices. In addition, around half of consumers shop around. It is worth noting that the British Healthcare Trades Association has recently agreed to amend its Code of Practice so as to make it a requirement for its members to display price information online, for example by way of price ranges. We consider that such changes, if followed by industry, will make a useful contribution to addressing the issue of price transparency. **Therefore, we are minded to conclude that, whether or not the test for reference is met, this is not a case in which the OFT would exercise its discretion to refer. Rather, it would be more appropriate to deal with any competition issues using our alternative powers, by making recommendations for voluntary change. In addition the scale of any problem does not currently appear to be such as to warrant making an MIR¹³¹**
- in relation to **competition in the wheelchair sector** specifically, we found that the sector is concentrated. However, we found

¹³¹ Given our provisional view on the use of alternative powers and scale, we have not considered the availability of remedies and/or undertakings in lieu of a reference.

that there is at least a credible threat of expansion from other multi-national players that supply in the UK, and public sector purchasers have the potential to drive competition, both of which impose a degree of competitive constraint on the largest suppliers in the UK. **Therefore, we are minded to conclude that, whether or not the test for reference is met, this is not a case in which the OFT would exercise its discretion to refer. Rather, it would be more appropriate to deal with any competition issues using our alternative powers, by making recommendations for voluntary change. In addition, the scale of any problem does not currently appear to be such as to warrant making an MIR.**¹³²

- C.4 Accordingly, for the reasons set out above, although we have not reached a provisional view based on the findings in our report as to whether the statutory test for reference is met, we have provisionally concluded (based on those findings) that, even if the reference test were met, we would not exercise our discretion to refer any feature or features of one or more markets in the mobility aids sector.
- C.5 We invite views on our proposed decision not to make an MIR to the CC. Interested parties are invited to submit responses by 4pm on Thursday 20 October 2011, either by e-mail to mobilityaids@oft.gsi.gov.uk, or in writing to:

Mobility Aids Market Study Team
Goods and Consumer Group
The Office of Fair Trading
Fleetbank House
2-6 Salisbury Square
London
EC4Y 8JX

¹³² Given our provisional view on the use of alternative powers and scale, we have not considered the availability of remedies and/or undertakings in lieu of a reference.