Richard Mawrey QC's consumer credit column: December 2011

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Limiting credit: Spaghetti Junction

For a perpetually hungry schoolboy at a tough Northern boarding school in the fifties one of the dubious culinary delights was "tinned spaghetti", as produced by the likes of Heinz or Crosse & Blackwell. As this delicacy must surely have passed long ago into a well-merited oblivion, some description is needed. Tinned spaghetti bore no relation to spaghetti as practised in Italy or indeed in any reputable Italian restaurant in England, even in the fifties. It consisted of a number of tiny pieces of a pasta-like substance, each about one inch long, from which all semblance of flavour had been ruthlessly banished, swimming in what was always assumed to be the same "tomato sauce" in which the same manufacturers dunked their "baked beans". In appearance, it resembled that much-loved journalistic cliché the "can of worms".

Memories of this treat always surface, with the persistence evoked by Proust's madeleine, whenever one hears the phrase "joined-up government", a slogan much on the lips of Mr Blair and his ministers during the late Administration. Perhaps Mr Blair invented it. Who knows? The gulf between the slogan and reality was always as great as that between "tinned spaghetti" and what you would get in a Michelin-starred restaurant in Rome.

Nowhere is this chasm wider than in the field of credit. Nearly 80 years ago President Hoover said, "Let me remind you that credit is the lifeblood of business, the lifeblood of prices and jobs". Though it didn't get him re-elected in 1932 (FDR slaughtered him, winning 44 of the then 48 states), it remains one of the great truths. What we now call "consumer credit" has been the lifeblood of British business since at least the time of Hoover. Popular perception of the 1930s is one of misery, depression and fear of dictators but, for most people in Britain, it was a time of sharply rising living standards. There was an explosion of ownership of consumer durables that we now take for granted but had previously been considered luxuries for the rich – fridges, washing machines, vacuum cleaners and, above all, motor cars. What fuelled this was credit, in those days largely hire-purchase.

Naturally the governing classes regarded this with alarm. Whereas it was always acceptable to buy real property on credit by means of a mortgage – the aristocracy and upper middle classes had done this for centuries – buying chattels on credit was something that nicely brought up people did not do. It gave the lower orders ideas above their station. This feeling that consumer credit

was down-market led to suppliers assuring their customers that goods acquired on hire-purchase would be "delivered to their door in a plain van", so that the neighbours would not suspect that the three-piece suite had been bought on the "never-never".

This governmental disapproval led to the first set of credit controls, culminating in the Hire-Purchase Act 1938, the ultimate grand-daddy of the *Consumer Credit Act 1974* (CCA). During the War, controls on all forms of credit were (understandably) strict but, after the War was well and truly over and we were desperately trying to rebuild our shattered economy, these controls continued in place. As I mentioned in my October column (see *Article, Richard Mawrey QC's consumer credit column: October 2011*) "terms control" stifled credit by insisting on minimum hire-purchase deposits and maximum periods for agreements until into the 1980s.

So, even in those early days, governments (of all political persuasions) were simultaneously pursuing mutually inconsistent objects. One side of this bi-polar brain was urging economic growth by increased consumer spending on goods and services, while the other side was equally determined to deny the ordinary citizen the access to the credit which would enable him to buy these goods and services in the first place.

In pursuing the second of these objectives, government was fully supported by a new breed of activist that came into being round about the heyday of tinned spaghetti, the consumerist. Consumerists have traditionally been drawn from the comfortably-off middle classes and have, largely unconsciously, inherited from the thirties the well-bred disapproval reserved for members of the lower orders who might have a taste for bettering their living standards, coupled with a strong liberal urge to save the lower orders from themselves. This manifested itself in the Crowther Report which, in turn, begat the CCA. Since 1974, therefore, consumer credit has been almost the most heavily regulated part of the economy. Though perhaps not in the same league as narcotics or firearms, the feeling was definitely that credit was not something that should be allowed to get into the wrong hands.

The whole thrust of the CCA and its multifarious satellite regulations was to make credit difficult to obtain and to dissuade people from obtaining it. Hence the Byzantine rules for drafting agreements, with horrendous sanctions visited on miniscule errors, and the plethora of warning boxes. It is a nice thought that consumer credit agreements were statutorily obliged to contain warnings to the user before cigarette packets.

Fortunately for the UK economy, the British credit industry and the British public were impervious to all this careworn concern being displayed on their behalf by consumerist-led governments. They acquired credit cards: they took out loans: they ran up overdrafts. And you know what? The economy boomed.

But the consumerists fought back. Shortly after the Millennium they were able to persuade the Government that there were appalling levels of Consumer Debt. "Debt" is the giveaway word. If you don't approve of credit and think there should be much less of it around, the word you use is "debt". This carries with it all the Victorian prejudice against improvidence: "he got into debt" they would say with horror. From that it is a short trip to ruin and the bench on the Thames Embankment. But, of course, credit **is** debt. People who cannot afford to pay cash for goods and services borrow the money to do so. Buying things on credit inevitably involves you in debt: that is why those who obtain credit are referred to as "debtors". Unless, however, you are a well-off, liberally-minded, upper-middle-class consumerist, able to buy whatever you need by paying cash (or giving a cheque – much more genteel), you must obtain credit or go without. Naturally, the

stern moralist would say: "go without" but what would happen to the economy if we all did "go without" the fruits of credit?

The result of this concern was, in December 2003, the publication of a White Paper, *Fair, Clear and Competitive - The Consumer Credit Market in the 21st Century*, which recommended far more stringent controls on credit – more elaborate paperwork, more pre-contract information and, above all, a much stricter licensing régime. The underlying belief was that, if these silly people only realised how much credit costs and how bad it was for them, they would kick the habit and reform. The consequence was the disastrous over-complication of the new rules introduced by savagely amending the *Consumer Credit (Agreements) Regulations 1983 (SI 1983/1553)*, by the *Consumer Credit (Disclosure of Information) Regulations 2004 (SI 2004/1481)* with its requirement to provide the customer with a pre-agreement in advance of the real thing and, eventually, by the *Consumer Credit Act 2006*, which revolutionised credit licensing, to make it harder than ever to obtain a licence or to carry on business once you had one.

In short, credit was to be reined in. Inevitably, of course, this reining-in just happened to coincide with a global financial crisis. It is the invariable habit of governments to hit the brakes suddenly and dramatically at the very moment that the vehicle encounters the sheet of black ice. In a sense, it worked. If you are troubled with mice in your kitchen, you can put down a trap or engage the services of a cat, but you can also choose to dynamite the house to rubble. This last will undoubtedly cure the mouse problem but it is not most people's preferred solution.

And what happened? All as the weird women promised, credit became more difficult to obtain. In September 2011 we learned that credit card use was significantly down. Government, however, continued to agonise about the level of Consumer Debt. At his party conference, the Prime Minister actually urged everyone to pay off their credit card debts.

And in the real world? Consumers stopped buying. High Street stores went to the wall: Woolworths and Whittard, Borders and Blockbuster, Allied Carpets and Dewhursts, MFI and Oddbins. What, will the line stretch out to the crack of doom? Another yet! Turn on the news and what do you hear? "Retail sales have fallen again for the third month running. Consumer confidence is at an all-time low". And what do the politicians say? All three parties cry: "we must have growth – we must grow our way out of this recession".

So there you have it. One, the Government slams the brakes hard on consumer credit: two, the retail economy goes into serious decline, imperilling the chances of recovery. Yet nobody in the governing classes imagines that there might be – indeed there **could** be - any connection between the two. So, as the lights dim over Europe (though this may simply be the low-energy bulbs Government has forced on us in a desire to save the planet), don't forget to lay in a stock of Heinz spaghetti. Joined-up government? Pass the tin-opener.

And a happy Christmas to you, too.

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References

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