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BRIEFING PAPER

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Timeshares

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Summary

The *Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010* (the 'Timeshare Regulations') came into force on 23 February 2011 and apply across the UK. The Regulations transpose into UK law EU Directive 2008/122/EC on the "protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts." The ultimate aim of the Regulations is to enhance consumer confidence in the UK timeshare industry and eliminate the operations of rogue traders.

In brief, the Timeshare Regulations apply to the sale and marketing of the following types of contract:

- a timeshare contract – a contract of a duration of more than one year;
- a long term holiday product (LTHP) contract – a contract of a duration of more than one year;
- a resale contract – a contract under which a trader, for consideration, assists a consumer to sell or buy a timeshare or a LTHP; and
- an exchange contract – a contract under which a consumer, for consideration, joins an exchange system which allows that consumer access to overnight accommodation or other services, in exchange for granting to other persons temporary access to the benefits of the rights deriving from that consumer's timeshare contract.

The Regulations replace entirely the old regime in the UK by repealing the *Timeshare Act 1992* and revoking the *Timeshare Regulations 1997*.

During the 1980s and 1990s, many timeshares were sold aggressively to British tourists who were on holiday and without access to independent legal advice. Some contracts were not written in English and included an obligation to pay expensive annual management and maintenance fees. Often timeshare agreements are made 'in-perpetuity' (i.e. as everlasting contracts). In effect, the contracts 'lock' the timeshare owner and – it now transpires – their children in for life. Some owners would ideally like to sell their timeshare, but there may be little demand.

Offloading unwanted timeshares and the problems surrounding the inheritance of them are concerns usually compounded by the need to pay yearly maintenance costs on the property. In some cases, this makes a big dent in the dwindling savings of elderly owners and is a worry looming for relatives who stand to inherit the timeshare.

This Commons briefing paper provides an overview of EU and UK regulation of timeshares and LTHPs. It also considers the exit problems associated with timeshares, focusing in particular on 'in-perpetuity' clauses. Finally, this paper suggests organisations that might be able to help timeshare owners.

1. Introduction

1.1 Definition of timeshare and LTHP

For the purposes of the *Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010* (the 'Timeshare Regulations'), the term 'timeshare' means any consumer product that enables the purchaser to use one or more places of overnight accommodation for more than one occupational period under a contract that lasts for more than one year.[1] The product does not have to be called a 'timeshare' to come within this statutory definition.

A 'long-term holiday product' (LTHP) gives the purchaser certain discounts or benefits in respect of accommodation under a contract that lasts for more than one year. A holiday club, for example, may give its members access to reduced price holidays at the resorts which participate in its scheme.

1.2 The basic timeshare model

Timeshare may be legally structured in different ways and governed by the law of different jurisdictions. However, the UK's Competition and Markets Authority (CMA) has identified the following basic structure of a timeshare model in a typical resort:[2]

- A professional developer makes the initial investment to build the resort and makes the initial sales of timeshare products to consumers.
- A professional trustee is appointed to hold the real estate on trust for the owners, so to ensure that the occupation rights are adequately protected for the life of the product.
- An owners' association/committee is formed, comprising representatives from the owners and the developer. The committee assumes ultimate responsibility for running the resort, setting management fees, determining future investments and making further sales and resales.
- The committee employs a management company to assist it. This management company may be a subsidiary of the original developer. The management company will also be represented on the owners' committee.
- The terms or rules of timeshare ownership are found in the original contract and, if applicable, in an associated constitution of the resort or club which is intended to be binding on the consumer.

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[1] In respect of timeshare ownership, an important distinction needs to be made between 'deeded ownership' and 'right to use'. **'Deeded ownership**' is where legal ownership of real property is conveyed from vendor to buyer via deed. With **'right to use'**, the purchaser acquires the right to use property in accordance with the contract, but gains no legal title to that property.

[2] Disposal of Timeshares and Other Long-term Holiday Products – A Report for BIS and the European Commission", Competition and Markets Authority (CMA), July 2014, p. 15-16, [online] (accessed 16 May 2016)

As part of this basic timeshare model, consumers may purchase the use of their timeshare in the form of:

- 'Weeks', for example a fixed week at the same unit or resort every year or for a floating week within a certain time band each year (the actual week being booked in advance subject to availability); or
- 'Points', which are used as a currency to book holidays; the more points a consumer has, the greater the choice of resorts, accommodation, length and time of stay.

1.3 The market for timeshares and LTHPs

The CMA has made the following observations about the state of the market for timeshares and LTHPs:[3]

- There are between 500,000 and 600,000 UK timeshare owners: almost a half of them have timeshares in Spain, 20% in the UK and 25% outside of Europe.
- The average age of these owners is around 50 to 60 years old and likely to be rising each year. Many of these owners bought their timeshares in the 1980s or 1990s.
- As time passes, some of these owners may no longer be able to enjoy their timeshare and/or find it less affordable to keep paying management fees. For some, the difficulty is that their contracts make little or no provision for them to exit their timeshare. Specifically, many old agreements contain **'in-perpetuity' clauses**, with the 'fear' that the owner's liabilities may pass on to their children when they die. To exit their timeshare, owners often need to find someone who is willing to acquire it.
- The popularity of different resorts and hence the marketability and value of different timeshares, varies. However, overall, timeshare supply far exceeds demand: the number of weeks for sale is much greater than the number of weeks being bought each year. According to the CMA, it is this difficulty exiting timeshare that presents the opportunity for 'resale scams'.[4]
- The CMA highlights the fact that some owners have stopped paying their management fees. As a result, some of these owners have been threatened with, or have faced, legal action for non-payment pursuant to the terms of their contract.
- The CMA acknowledges that the economic conditions since 2008 (in particular, the general collapse in the Spanish property market) have had an adverse impact on the industry. However, the CMA

[3] Disposal of Timeshares and Other Long-term Holiday Products – A Report for BIS and the European Commission", Competition and Markets Authority (CMA), July 2014, p. 6, [online] (accessed 16 May 2017)

[4] The CMA has identified two main types of resale scam. In the first, the scammers (acting as resellers) claim to have interested buyers for the timeshare rights. In the second, they claim to be able to get the owner out of the timeshare agreement. In both cases, the owner pays a fee for the 'service'. However, there are no buyers and the owner is not freed from the agreement. The fee is not refunded: the owner has effectively been scammed.

makes the point that issues around perpetuity clauses and timeshare exit pre-date the economic downturn and will likely persist regardless of improvements in the economy.

- The CMA also recognises that helping owners to exit timeshares may create difficulties for the owners who remain: unless new owns are brought in, there will be a smaller pool of owners left to pay the management fees. For this reason, it suggests that possible remedies need to balance the interests both of owners who wish to exit and those who want to stay in.

2. EU regulation of timeshares and LTHPs

The EU regulates aspects of timeshare, LTHPS, resale and exchange contracts. In 2011, Directive 2008/122/EC replaced the timeshare Directive 94/47/EC with clearer and simpler rules.[5] The EU Directive has been adopted by all members of the EU, and has equal applicability and enforcement.

Box 1: Timeshare Directive 2008/122/EC

The new timeshare Directive extends consumer protection to new timeshare products appearing on the market. Specifically, the Directive extends the scope of previous rules to cover:

- LTHPs (e.g. holiday clubs)
- Shorter term contracts – all purchases for a year or more, including tacit renewal of shorter periods
- Timeshare-like products e.g. timeshare in canal boats, cruise-ships and caravans or timeshare contracts for less than three years (previous legislation only covered periods of three years or more)
- Resale and exchange of timeshare schemes

However, the termination of timeshare contracts falls outside the scope of the Directive.

The Directive aimed to enhance consumer rights, especially through stronger rules on the information that companies have to provide to consumers. Under the new rules, a private individual considering the purchase of a timeshare must be made aware of key information in their own language and in the standardised form. Buyers are also given rights of withdrawal, so that they can cancel a contract during a 14-day cooling-off period.

However, the Timeshare Directive only deals with problems with certain aspects of timeshare agreements (for example, consumer rights when entering the contract).[6] Timeshare and LTHP issues relating to the termination of contracts and inheritance rights and obligations, remain regulated by national laws of EU states (see **Section 4** of this paper below).

The EU Commission reviewed the operation of the Directive in December 2015 and reported to the European Parliament and the European Council (see **Section 5.2** of this paper).[7]

5 Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts, L 33/10 OJ, 3.2. 2009
6 HC Deb 3 June 2013 c1353
7 "Report on the evaluation of Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts", COM(2015) 644final, 16.12.2015, [online] (accessed 16 May 2017)

The Timeshare Directive was transposed into UK law by the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the Regulations) which came into force on 23 February 2011.[8] Although the Regulations provide consumer protection to timeshares and to LTHPs, there is an important distinction:

- the Regulations provide consumers with the right to withdraw from a LTHP contract when payment of each annual instalment becomes due;
- whereas in respect of timeshares, the Regulations deal with the resale and exchange of timeshares – but not the termination of timeshare contracts

Detailed information about the main provisions of the Regulations is set-out in **Section 3** below.

8 SI 2010/2960 – The Timeshare Regulations 1997 were repealed

3. UK regulation of timeshares and LTHPs

It is important to note that the terms and conditions of individual timeshare and LTHP agreements will vary, and as a result, there may be unique legal complexities and jurisdictional issues in seeking to exit a timeshare or LTHP (see **Box 2** below).

Box 2: Important caveat:

- There may be complications surrounding applicable governing law and court jurisdiction in relation to agreements.
- For example, standard terms may state that the law of another country, rather than UK law, applies to the agreement.
- However, in relation to consumer contracts, EU law provides some protection, for example, allowing consumers to exercise and enforce their legal rights against businesses in their own local courts.

3.1 At contract and common law

All legal rights and obligations which bind the purchaser and the seller of a timeshare should be detailed in the original timeshare agreement. Under common law principles of contract law, a timeshare or LTHP owner will be bound by those terms and conditions he/she agreed when they entered into the contract.

However, businesses cannot argue that their obligations to consumers are dictated solely by what it says in the contract. In particular, there may be scope for challenging an unfair contract term, particularly where the term would place an onerous restriction on the consumer. For example, terms that purport to be estate-binding, require excessive notice periods from owners, place unduly high barriers to exit, or unfairly penalise owners of existing timeshare. See below to **sections 3.3 and 3.4** of this paper.

Given that the business and consumer may reside in different countries, and the resort may even be located in a third country, there may be difficulty in determining which law governs the contract and which courts have jurisdiction to hear disputes arising from it.

A further difficulty is that the legal structures of different products may vary from country to country, as a result there may be questions around how the law treats the underlying product. For example, it may be that a timeshare or LTHP is in fact a tenancy agreement, an unincorporated association, a purpose trust, or a purely contractual arrangement. In each case, the law may treat the timeshare or LTHP differently.

3.2 Timeshare Regulations 2010

The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations (known as 'the Timeshare Regulations') apply primarily to timeshare and LTHP contracts made in the UK, but (depending on the circumstances) may still apply if the business is selling timeshare to consumers in the UK.

The Regulations apply to contracts entered into on or after **23 February 2011** and do not have retrospective effect. The Regulations cover the marketing and sale of four types of contract: a timeshare contract; a LTHP contract; resale contracts; and a timeshare exchange contract.

In brief, the Regulations require:

- Pre-contractual information to be provided to consumers about how the contract can be terminated, the methods by which future costs (such as maintenance charges) will be calculated, the degree to which timeshare owners have a role in decisions about future costs and detailed information about precisely what rights are provided under the contract. All that information is considered to be part of the contract.
- Information to be provided to the consumer about a mandatory 14-day cooling-off period, beginning on the later of the date the contract is concluded or the date on which the consumer receives a copy of the contract.
- During the cooling-off period, the consumer can consider the decision and withdraw from the contract if they decide it is not for them after all. No money can be taken from the consumer until that 14 days has elapsed. If the trader fails to inform the buyer about the cooling-off period, then the 'cooling-off' period can be extended to one year and 14 days.[9]
- In cases where, in lieu of an outright exit, a consumer is instead offered a new timeshare product, the consumer must be provided with specific statutory pre-contract information, including the existence of the mandatory 14 day withdrawal period (which may be extended in certain circumstances).
- Should the business fail to provide the consumer with the specified information or draw the attention of the consumer to their right of withdrawal before entering the contract, the agreement may be unenforceable against the consumer;
- outside the cooling-off period, where the agreement is for a LTHP, these Regulations allow the consumer to terminate by giving notice no later than 14-days after the date on which they receive a request for payment of an instalment towards the cost of the holiday product.[10]
- The Regulations deal with the resale and exchange of timeshares, but not the termination of timeshare contracts.

Trading Standards officers are responsible for enforcing the Regulations.

9 Previously, there was a cooling-off period only if the timeshare agreement was for at least three years.

10 Regulations 24 and 26

3.3 Consumer Rights Act 2015

The Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs) were replaced by the Consumer Rights Act 2015 (CRA 2015) on **1 October 2015**, however, any contracts entered into before this date will still be governed by the UTCCRs.

Contractual terms which place onerous restrictions on the consumer may be challenged by both the UTCCRs and the CRA 2015. Both are likely to apply the statutory test of fairness to terms that: purport to be estate-binding, require excessive notice periods from owners, place unduly high barriers to exit, or unfairly penalise owners for exiting timeshare.

3.4 Consumer Protection Regulations 2008

The Consumer Protection from Unfair Trading Regulations 2008 ('CPRs') also known as the Consumer Protection Regulations, prohibit businesses from engaging in unfair commercial practices before, during and after a contract is made with the consumer (see **Box 3** above).

Box 3: Consumer Protection from Unfair Trading regulations 2008 (CPRs)

In the context of timeshare, the CPRs may be applicable where, for example, businesses:

- Mislead consumers – a business will mislead a consumer if it gives false or inaccurate information, or omits information the average consumer needs to take an informed decision, or provides that information in a manner which is unclear, unintelligible, ambiguous or untimely, where this causes or would be likely to cause the average consumer to take a decision that they would not have taken otherwise. It is important to note that consumers' decisions are not limited to decisions about whether or not to purchase a product or service; they cover a range of decisions that may be taken in relation to the product, including decisions concerning disposal of a timeshare.

  An example of a consumer being misled would be where a timeshare business provides a potential beneficiary with inaccurate information as to the benefits and obligations associated with timeshare or a LTHP when that person is considering whether or not to accept a bequest, or where that fail to provide the required information altogether.
- Adopt aggressive practices – that is, practices that, through harassment, coercion or undue influence, significantly restrict, or would be likely to significantly restrict, the average consumer's ability to make free or informed choices, where this causes or would be likely to cause the average consumer to take a decision that they would not have taken otherwise.

  An example of an aggressive practice would be where a timeshare business applies pressure on a timeshare owner by threatening court action for outstanding maintenance fees and force that owner to accept liabilities connected with timeshare that they did not lawfully incur or that they dispute.
- Use, recommend or enforce unfair contract terms as against consumers, contravening the general prohibition on unfair commercial practices. These practices may also be misleading. Businesses must exercise the reasonable standard of care and skill that is in accordance with honest market practice and in good faith, so as not to materially distort or be likely to materially distort the economic behaviour of the average consumer.

The CPRs apply to commercial practices occurring after the CPRs came into force on **26 May 2008**. In other words, there is no retrospective application (although the CPRs will apply to conduct occurring after that date, regardless of when any underlying contract was entered into).

It is important to note that the UTCCRs, the CRA 2015 and the CPRs are principles based, meaning that it will ultimately be for the court to decide whether a rule or a practice is unfair, taking into account all the relevant circumstances.

4. Consumer detriment: exit issues

This Section focuses on the difficulties some consumers experience when they try to divest themselves of a timeshare ['exit issues']. Particular attention will be given to in-perpetuity clauses.

4.1 Potential exit routes

As already mentioned, the overriding aim of the Timeshare Directive and the UK Timeshare Regulations is to improve consumer confidence by ensuring that important information is provided to individuals before they commit to timeshare purchases or resales.

However, neither EU nor UK legislation can assist owners who:

- wish to exit a timeshare after their cancellation rights have expired; or
- are burdened by contracts that contain 'in-perpetuity' clauses (i.e. 'everlasting contracts')

Exit from a timeshare or LTHP can be extremely difficult. Often, consumers have to rely on contract law and property rights under overseas jurisdictions. Some businesses rely on potentially 'unfair' contractual terms, and many consumers have to grapple with 'in-perpetuity' clauses.

In practice, there are many different and complex exit routes, for instance:

- Exit options may be specifically written into the contract, and form a contractual right. For example, there may be an express clause in the contract which requires the timeshare management company to 'buy back' the timeshare. Alternatively, it may require resale via costly middlemen, who take a fee, or require a private resale (where the owner finds a buyer themselves).
- Some companies may allow timeshare owners to terminate agreements on request, others will only provide this option only to the sick, elderly or bankrupt (i.e. those aged 75 or over).
- Exit options may be wholly dependent on the discretion of the developer or owners committee.
- Owners who wish to exit a timeshare may instead be offered exchange, transfer or 'upgrade' products, but they are not cost-free and may only provide for exit many years down the line (if at all).

4.2 In-perpetuity clauses

Box 4: What are 'in-perpetuity contracts'?

- Many timeshares agreements are made in perpetuity (i.e. as everlasting contracts).
- This means that the right to the property and all associated costs lasts for the owner's life time and, in some cases, can extend beyond the owner's death.
- In perpetuity clauses make timeshare contracts very difficult to break.
- There is no EU regulation allowing people over the age of 75 to relinquish their timeshare without penalty. However, it should be noted that there is existing UK legislation that might assist the constituent.

Some timeshare agreements purport to last 'in-perpetuity' (that is, forever), for an indefinite period, or far into the future (for example, 70 years) with little or no provision for the owner or member to end the agreement.

The difficulty is that as time passes, consumers may find that they can no longer use their timeshare (perhaps due to old age or ill health) or cannot afford to keep it (due to escalating maintenance charges). It is usually at this point that they discover that their contract makes little or no provision for withdrawal and that they remain liable to pay maintenance fees for the duration of the agreement (which, in some cases, may seem to be forever).

In some timeshare or LTHP contracts, in-perpetuity clauses have the effect of 'binding the estate'. In other words, after the death of the timeshare owner or LTHP member, their estate continues to be liable for management fees. This can have detrimental consequences for settling the estate and dividing its assets amongst beneficiaries.

Although the owner could try to sell their timeshare, the secondary market may be dormant. According to the CMA, some owners have spent years trying to sell their timeshare without success.[11] The CMA also makes the point that since the timeshare owner or LTHP member cannot leave without finding a replacement, incentives for developers/owner committees to offer market resale opportunities to new customers, to diversify into the rental market, or to reduce the number of units at the resort, are not as strong as they might be.[12]

11 Disposal of Timeshares and Other Long-term Holiday Products – A Report for BIS and the European Commission", Competition and Markets Authority (CMA), July 2014, [online] (accessed 16 May 2017)
12 Ibid, p. 10

4.3 Consumer detriment

The CMA has identified significant consumer detriment caused by difficulties associated with timeshares and exit issues (see **Box 5 below**).

Box 5: Consumer detriment caused by difficulties associated with timeshares and exit issues:

According to the CMA, the resulting harms for the timeshare owner may include:

- Financial harm – struggling to pay escalating annual maintenance fees on a property that they may no longer use;
- Frustration and anxiety – in particular, trying to see the timeshare on the open market or hand back to the resort without success, or worrying that their children might inherit the problem;
- An inability to exercise choice – either because the timeshare contract does not allow withdrawal or because exit is solely at the developer's or owner committee's discretion;
- Susceptibility to scams – there are scams that purport to assist timeshare owners to divest themselves of their timeshare, leading to further financial loss and distress

5. UK & EC reports on timeshares and LTHPs

5.1 CMA report on disposal of timeshares

In the UK, the Competition and Markets Authority (CMA) published a report in July 2014 on the "Disposal of Timeshares and Other Long-term Holiday Products".[13] In this report, the CMA acknowledged that in many cases there seem to be restrictions on who can exit a timeshare contract. The CMA expressed concern that some businesses may be continuing to use contractual terms that the CMA would consider potentially unfair to consumers.[14] The CMA made the following recommendations:

- The Department for Business Innovation and Skills (BIS) and the European Commission (EC) should consider commissioning research, ideally at European-wide level. According to the CMA, further research would help to inform a decision on the appropriate and proportionate remedy and its expected impact. [15]

  Subject to the findings of that research, BIS and the EC should give further consideration to the idea of introducing for consumers some form of legal right to exit a timeshare contract. This should take into account Israel's experience in introducing a legal right to exit that is open to all existing timeshare and LTHP owners (see **Box 6 below**).

- To introduce a prohibition on 'estate binding' - either as part of a new 'legal right to exit' or as a new standalone measure, no UK estate should be bound by an ongoing liability for a timeshare or other LTHP beyond death, where all beneficiaries have disclaimed the property. In these circumstances, the CMA recommends that the executor of the will or administrator of the estate should be able to disclaim the liability and distribute the remaining estate without restriction or challenge.

- The EC should consider providing detailed guidance on its position on whether the Timeshare Directive's cancellation and other rights apply (a) when a consumer inherits and agrees to accept a timeshare following the death of the original owner and (b) when an owner agrees with a business to surrender their existing timeshare in favour of taking on a new, replacement product.

13 'Disposal of Timeshares and Other Long-term Holiday Products – A Report for BIS and the European Commission", Competition and Markets Authority (CMA), July 2014 , [online] (accessed 16 May 2017)
14 Ibid, page 21
15 Disposal of Timeshares and Other Long-term Holiday Products – A Report for BIS and the European Commission" Competition and Markets Authority (CMA), July 2014, p. 13, [online] (accessed 16 May 2017)

Box 6: Possible introduction of a new 'legal right to exit' a timeshare or LTHP

- The CMA's general conclusion is that, in certain important regards, "existing UK law appears to be, at best, unclear as to how it may be of assistance to owners who no longer wish to keep their timeshare or LTHP." In particular, there is no mandatory, legal right to exit a timeshare or LTHP.
- The legal complexities, jurisdictional issues, and the need to take court action mean that there is little scope for consumers to help themselves, in addition to creating a significant degree of uncertainty as to the protection consumers have when trying to exit timeshare.
- The CMA has suggested that the introduction of such a remedy might provide a solution to the exit problems found in the timeshare/LTHP industry. However, to be effective, it would need to have retrospective effect, applying to all existing agreements (not just new ones). Preferably, due to the cross-border and multi-jurisdictional nature of the product, it should apply EU-wide. This would be a 'tall order' for any legislation.
- The CMA accepts that further consideration would have to be given to the detail of what a legal right to exit would look like, in what circumstances it could be exercised and whom it is intended to benefit. Specifically, there would be a need to strike the right balance between the interests of different owners or members (and businesses) and "ensure that a legal change did not, inadvertently, bring about a net reduction in total consumer welfare."[16] The CMA highlights the Israeli model.
- **The Israeli model** - In September 2014, Israel brought into force a law giving timeshare owners the legal right to exit a timeshare contract – this right applying to all existing as well as new timeshare owners. The law prohibits the charging of a cancellation fee but requires the timeshare owner to pay the next year's management fee.

Overall, the CMA formed the provisional view that the introduction of some form of legal right to exit has potential to address the harms in this sector caused by various exit issues. Its conclusion, however, was qualified in two respects:

- First, within the limits of its project, the CMA stated that it had not gathered data that would enable it to quantify the exit problems and their harms. Such data would help to establish the extent to which this potential remedy is appropriate and proportionate.
- Second, the CMA stated that it had not explored the detail of what a legal right to exit would look like in practice. According to the CMA, getting these details right would be essential in order to strike the right balance between the interests of different owners or members (and businesses) and ensure that a legal change did not, inadvertently, bring about a net reduction in total consumer welfare.[17]

16 "Disposal of Timeshares and Other Long-term Holiday Products – A Report for BIS and the European Commission", Competition and Markets Authority (CMA), July 2014, p.12 [online] (accessed 16 May 2017)
17 Ibid

According to the CMA, the response of the industry has been largely positive; it appears to recognise that timeshare exit has become a major issue. Changes have been made and initiatives are underway. For example:

- In-perpetuity clauses are rare in timeshare contracts being drawn-up today
- The Timeshare Association for Timeshare Owners and Committees (TATOC) has committed in its five-year strategic plan 2013-2017, to discuss the issue of timeshare exit with committees and resorts and to work with them to develop solutions; it has had some success negotiating exit solutions with a few owner-run resorts
- The Resort Development Organisation (RDO) now requires all of its members to have an exit policy/strategy that ensures that cases in which factors such as age or ill-health are an issue are dealt with sympathetically. In June 2013, RDO introduced a further amendment to ensure that an individual inheriting a timeshare will be able to surrender it without facing a financial penalty and that an owner can relinquish their ownership on proof of bankruptcy.

Nevertheless, the CMA remains concerned that many timeshare owners are still locked into contracts where the available exit routes may come with restrictions.

5.2 EC report on the operation of the Timeshare Directive

The CMA report helped to inform a European Commission (EC) report on the operation of the Timeshare Directive (2008/122/EC), published on 16 December 2015. [18]

In this report, the EC agreed that the termination of timeshare contracts (which falls outside the scope of the Directive) remain a problem for many consumers. However, it disagreed with the CMA on the need for a specific, EU-wide legislative intervention.[19] Instead, the EC suggested that these exit problems could be better addressed through:

- targeted interventions at national level,
- efficient self-regulatory measures, and
- better enforcement of other relevant EU consumer law

18 "Report on the evaluation of Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts", COM(2015) 644final, 16.12.2015, [online] (accessed 16 May 2017)

19 Ibid, Page 8

The relevant extract from the EC report is reproduced below:

> Research has shown that terminating the timeshare contract is one of the most problematic issues for consumers.[20] The procedures and conditions for terminating timeshare contracts vary across Member States. In particular, problems have been reported relating to perpetuity or very long-term clauses attached to timeshare contracts, which have a particular bearing when the timeshare owner dies and the beneficiary wishes to terminate the contract. Such clauses could and should be challenged under the Directive 93/13/EEC on Unfair Contract Terms. However, most timeshare owners are seemingly unaware of this legal possibility.
>
> This can be changed through a more proactive attitude from the national enforcement authorities, increased awareness-raising activities at national level and, where appropriate, targeted legal actions by timeshare owners' associations or consumer organisations. The situation is more complex in certain countries (such as Italy, Spain, Portugal and France) where a timeshare right is regarded as a right on a real estate property (and hence timeshare owners have to be registered in the national land registers). Since they are then seen as intrinsically linked to the real estate property at stake, such contracts are automatically inherited with almost no possibility for the beneficiary to terminate them, unless they succeed in selling them to someone else. Recent legislative developments in some of these countries (in particular France) aim to resolve the situation by allowing the beneficiary to exit the contract within a certain timeframe.
>
> The impossibility of terminating existing timeshare contracts was addressed in an interesting way by a non-EU country, where timeshare owners were facing these problems.[21] Industry has also taken self-regulatory steps to address this problem; for example, the Resort Development Organisation [RDO][22] requested all of its members to put an exit programme in place for timeshare owners who wished to terminate their timeshare contracts by the end of 2012.[23]
>
> Such developments show that this issue could be addressed without any need for a specific, EU-wide legislative intervention. Such intervention could pose a number of challenges in light of the general principles of non-retroactivity of new EU legislation and of proportionality.[24]

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20 Disposal of Timeshares and Other Long-term Holiday Products – A Report for BIS and the European Commission", Competition and Markets Authority (CMA), July 2014, [online] (accessed 16 May 2017)

21 In Israel, a recent amendment to the consumer protection law enables consumers to cancel timeshares agreed before 24 March 2014 by simply sending a written notice. The cancellation will come into effect at the end of the following annual period and the trader is not allowed to charge any cancellation fees. This law came into force on 24 September 2014 and applies to timeshares located in Israel.

22 The Resort Development Organisation is the EU-wide trade association for vacation ownership across Europe.

23 Such exit routes include offering owners the option to move to a short-term product that terminates after a set number of years, or directing owners to a so called 'exit club' that gives members the option to leave without penalty after a minimum time period (typically ranging from 2 to 5 years).

24 Report on the evaluation of Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts", COM(2015) 644final, 16.12.2015, Page 8, [online] (accessed 16 May 2017)

6. Other development: Spanish Supreme Court judgment

In May 2015, the Spanish Supreme Court ruled that an 'in-perpetuity' clause included in a timeshare contract (between a Norwegian individual and the Gran Canaria based Anfi Group) was illegal under Spanish law. Spanish law states that timeshare contracts signed after 15 January 1999 cannot last more than 50 years. Anfi argued that it was within its rights to sell timeshares in-perpetuity after this date, as the units were built before the Spanish law was introduced and as such, the legislation did not apply. However, the court disagreed; it ruled the whole timeshare contract to be invalid.

There has been press speculation that the ruling could have significant repercussions for timeshare operators, and might help UK consumers looking to exit costly timeshare arrangements. However, it is important to note that this ruling covers the specific facts of just the one case, governed by Spanish law. What has yet to be clarified, is whether this decision can be applied to timeshare resorts which specify an alternative choice of law and/or jurisdiction.[25]

[25] 'Timeshare horrors: fresh hope for 100,000 people locked in costly contracts', Telegraph, 30 May 2015, [online] (accessed 16 May 2017)

7. Where to go for help

7.1 Government warning

A number of traders offer so-called 'buy-out' schemes to enable people to terminate their timeshare ownership. The Department for Business Innovation and Skills (BIS) (now the Department for Business, Energy and Industrial Strategy (BEIS)) has warned against using these schemes. Specifically, BIS has stated that UK consumers experiencing problems with their timeshare should be extremely cautious before committing to selling their property to, or with the help of, any company without first seeking legal advice.[26]

BIS (and now BEIS) regularly receives reports and complaints about the trading activities of some timeshare resale companies who approach timeshare owners (often by cold calling) and offer them a marketing service for an upfront fee. This can then lead to requests for 'add on fees' to allegedly cover lawyers, land registry, tax arrears etc. These companies often claim to have potential purchasers wishing to buy at good prices but once the fees are paid sales rarely take place and, where they do, it is often at a selling price that barely covers the fees. According to the BIS website, timeshare sellers may also try to persuade the timeshare owner to buy a better property on the understanding that he or she will sell the current property.[27] The sale never happens and the owner is left with two timeshares.

However, an affiliation scheme run by the Association of Timeshare Owners (TATOC) and a membership scheme run by the Resort Development Organisation (RDO) both try to help consumers identify trustworthy resale companies.[28]

7.2 Consumer advice

A good starting point is Citizens Advice. Legal advice can be sought free of charge from Citizens Advice; Citizens Advice Scotland; or Citizens Advice Northern Ireland.

The Citizens Advice website also provides information and guidance about timeshares, including specific advice for those who "want to sell their timeshare." The Citizens Advice website also provides contact details for other organisations which may be able to help, including:

- Resort Development Organisation (RDO), the timeshare trade body. It may be possible to make a complaint through its internal reconciliation process. Contact details are available on the RDO website.
- The Association of Timeshare Owners (TATOC), a non-profit organisation offering independent information and advice to

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[26] Department of Business, Innovation and Skills (BIS), '*Timeshare, long-term holiday products, resale and timeshare exchange*', 11 December 2010, [not online]

[27] Ibid

[28] "Disposal of Timeshares and Other Long-term Holiday Products – A Report for BIS and the European Commission", Competition and Markets Authority (CMA), July 2014, [online] (accessed 16 May 2017)

timeshare owners and consumers. Contact details are available from its website.

The Commons Library briefing paper, Legal help: where to go and how to pay (CBP 3207) may also be of interest.

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