

A review supported by the  
Better Regulation Executive  
and National Audit Office

# Effective inspection and enforcement:

implementing the Hampton vision in the Office of Fair Trading

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## Foreword

Philip Hampton's report: *Reducing administrative burdens: effective inspection and enforcement*, published in 2005, is one of the cornerstones of the Government's better regulation agenda. The principles of effective inspection and enforcement set out in the report, putting risk assessment at the heart of regulatory activity, are designed to encourage a modern regulatory system which properly balances protection and prosperity. Since 2005, the Government has established an expectation that regulators will embed these principles in their approach to regulation.

In November 2006, the Chancellor of the Exchequer invited the National Audit Office and the Better Regulation Executive to develop a process of external review to assess how much progress regulators had made in implementing the principles of Hampton.

The first five regulators assessed under the process of 'Hampton Implementation Reviews' are amongst the most significant in this country. The Environment Agency, Financial Services Authority, Food Standards Agency, Health and Safety Executive and Office of Fair Trading regulate millions of businesses, covering some key areas of economic activity, whilst protecting the interests of us all. How they carry out their regulatory activities matters.

Full implementation of Philip Hampton's recommendations is a journey that could take several years. This review is a 'snapshot' in time of the progress of each regulator towards his vision.

Each of the reviews found examples of innovation and initiative by regulators who continue to move the regulatory agenda forward, as well as areas for further improvement.

The assessments were carried out by teams of reviewers with wide-ranging experience and expertise in the field of regulation. Talking to a wide range of stakeholders, to staff at all levels within the regulator's organisation, through visits to business sites and analysis of data and papers, the review teams, supported by staff from the Better Regulation Executive and the National Audit Office, have reached the findings and conclusions set out in this report. The final reports reflect the judgement of these review teams on the basis of the evidence put before them.

We would like to thank all of those who contributed to making these reviews a success. In particular, we are grateful to the regulators and their staff for providing support and making evidence available to the review teams, and to all the organisations that generously gave their time to offer evidence to the reviews.

Finally, we are extremely grateful to all our reviewers, and their employers, for their involvement, enthusiasm and commitment to this project. We hope that, like us, they found it valuable and rewarding.



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## Summary and conclusions

This review is one of a series of reviews of regulatory bodies undertaken at the invitation of HM Treasury and focusing on the assessment of regulatory performance against the Hampton principles and Macrory characteristics of effective inspection and enforcement. It was carried out by a team drawn from the Better Regulation Executive, the National Audit Office (NAO), the Financial Services Authority and the Chartered Institute of Environmental Health, supported by staff from the Better Regulation Executive and NAO (see Appendix 1 for review team membership). The review team's conclusions are based on the OFT's non-competition work.<sup>1</sup>

The Hampton report<sup>2</sup>, published in 2005, is one of the cornerstones of the Government's better regulation agenda and regulators have been working since to embed his principles in their approach to regulation. This review process is designed to identify where a regulator is on the road to full implementation and the issues each needs to address to become Hampton-compliant.

### What we found

The review team concluded that the Office of Fair Trading (OFT) is engaging with the Hampton principles and Macrory characteristics (as they apply to the OFT). In many areas the OFT is still developing or bedding in changes to the organisation and the way it works. It is, for example, moving towards a more risk-based approach both at a strategic level (and is currently consulting on principles to prioritise its activities), as well as in one of the main areas covered in this review – its role as the UK's consumer credit licensing authority. The OFT is also focusing increasingly on achieving high impact outcomes in its aim to make markets work well. This is supported by senior

management's clear vision of where they wish to be and the actions agreed with Treasury in the Comprehensive Spending Review 2008-11 which, taken together, and if fully implemented, should transform the OFT once they have bedded in. The increasing co-ordination of intelligence from various sources is still work in progress, but a positive development.

OFT is preparing for some significant changes to its legal powers including the biggest change to the consumer credit regime since 1974 and a major overhaul in consumer protection law through the implementation of the Unfair Commercial Practices Directive. From December 2007, it has also assumed new responsibilities for the supervision of anti-money laundering in relation to estate agents and consumer credit businesses. It has also undergone a major internal reorganisation over the last year. We realise that this review has come during a transitional period for OFT and we are grateful for the co-operation shown to the review team and support team during this process. The results of this review should therefore be seen in this context, and as an encouragement to OFT's senior management to continue with their programme of change.

In the activities we looked at, the areas to develop further include engaging openly and meaningfully with stakeholders, clarifying and effectively communicating what its role as 'champion' of Trading Standards means, and being more transparent about timescales in its dealings with business and Trading Standards. The following is a list of key messages from the review:

- **OFT is moving to a more risk-based approach to resource allocation across its activities** and also adopting such an approach to its revised consumer credit

<sup>1</sup> The scope of the review is contained in Appendix 3.

<sup>2</sup> Reducing administrative burdens: effective inspection and enforcement, Philip Hampton, HM Treasury, March 2005

responsibilities and new anti-money laundering responsibilities.

- **OFT and Trading Standards are starting to share intelligence in a more co-ordinated fashion despite** facing challenges, including funding issues, in building an effective intelligence sharing network.
- **There is a strong focus on outcomes and their evaluation amongst OFT's senior management. OFT has agreed a new performance framework with Treasury which will be much more outcome-focussed,** and includes new reporting requirements which should improve accountability and transparency.
- **OFT's work to tackle scams is a particularly good example of an effective intervention against seriously harmful behaviour** that targets high-profile cases which can serve to improve compliance and deter illegal behaviour at a national level.
- **OFT has undertaken innovative work on post implementation evaluation of its interventions, and undertakes a form of internal assessment of impact before commencing projects. It would benefit from using this approach externally** to communicate and consult early with external parties where there are likely to be impacts

from proposed approaches to regulate or implement regulation.

- **OFT has responded to criticism of its engagement with stakeholders by adopting a new stakeholder strategy, which seeks to address issues including the need to engage early in the preparation of guidance, and on a regular basis with key stakeholders.** It recognises there is further room for improvement.
- **OFT has been mindful of considering burdens on business in implementing changes to the credit licensing process** and it is also seeking to minimise the burden of record-keeping in implementing its new anti-money laundering responsibilities.
- **The role of champion of Trading Standards requires OFT to establish an effective partnership with all those involved, including key stakeholders, in the provision of this service, but OFT does not have powers of direction or additional funding to support this role. OFT and Trading Standards need to agree, articulate and communicate a clear vision of what they are seeking to achieve** including outcomes from their Programme of Joint Action and the objectives for their Plan for Partnership.

## Issues for follow-up

The following table sets out the key issues that the review team believes OFT needs to address to meet the Hampton criteria more fully,

measured against some of the symptoms<sup>3</sup> we were looking for to provide evidence of Hampton compliance.

Issue to be addressed	Hampton symptom
<p><b>Increasing transparency and external communication</b></p> <p>That OFT make more frequent use of external Impact Assessment and through that process seek to communicate the organisation's thinking externally, to allow early and informal consultation with all relevant stakeholders, and to enable external ideas and concerns to be given proper consideration. Also, in line with Better Regulation Executive guidance, continue to undertake post-implementation reviews in these areas and make the results of these available externally.</p>	<ul style="list-style-type: none"> <li>• Impact Assessments are carried out to design regulations that are easier to enforce and easier to understand</li> <li>• The regulator considers the cost burdens of implementation and enforcement when developing new regulations across all sizes of business</li> </ul>
<p><b>Dialogue with stakeholders</b></p> <p>That OFT takes further its developing stakeholder engagement, so as to engage in a more meaningful, regular and open dialogue with business stakeholders and other interested parties.</p>	<ul style="list-style-type: none"> <li>• There is dialogue between the regulator and businesses</li> </ul>
<p><b>Sharing intelligence</b></p> <p>That OFT continue to work with stakeholders and partners, including Trading Standards, to develop a strategic approach to addressing a number of significant issues:</p> <ul style="list-style-type: none"> <li>• uncertainties on the future funding of the regional intelligence network and Consumer Direct;</li> <li>• the business case for developing an integrated IT-based knowledge management system for intelligence-sharing;</li> <li>• uncertainties as to whether Trading Standards will commit to deliver actions and, who within Trading Standards will take the lead on regional priorities; and</li> <li>• uncertainties as regards the Consumer Direct business model in certain regions, and the need to further build on its capability and capacity to aid its development as an analysis tool.</li> </ul>	<ul style="list-style-type: none"> <li>• The regulator shares information on businesses with other regulators, where appropriate and subject to data protection considerations</li> <li>• The regulator shows optimum levels of data-sharing with other organisations through established gateways</li> </ul>

<sup>3</sup> From Hampton Implementation Reviews: Guidance for Review Teams. National Audit Office and Better Regulation Executive, May 2007

Issue to be addressed	Hampton symptom
<p><b>Guidance</b></p> <p>That OFT makes clearer to stakeholders when it will issue guidance likely to be relevant to them, and ensure it issues initial guidance on new legislation in advance of implementation to avoid business uncertainty and potential additional cost.</p>	<ul style="list-style-type: none"> <li>• With new regulations, guidance is issued an appropriate period prior to implementation (except where statutory or other mandatory external requirements prevent this approach)</li> </ul>
<p><b>Review of Trading Standards risk-rating system</b></p> <p>That OFT takes early steps to deliver on its commitment to lead a review, in consultation with LACORS<sup>4</sup> and Trading Standards, of the Trading Standards risk rating schemes.</p>	<ul style="list-style-type: none"> <li>• The principles of risk-assessment models are published, where appropriate</li> </ul>
<p><b>Sharing information on application and enforcement of powers</b></p> <p>That OFT explores the feasibility of developing the Consumer Regulations Website, so as to fulfil its potential as a mechanism for sharing knowledge and good practice with Trading Standards, including extending its coverage to include the new CPRs<sup>5</sup> that come into force in April 2008.</p> <p>That OFT improves transparency with Trading Standards by clarifying early on which cases it will be taking and which require locally-led action.</p> <p>That in line with their championing role<sup>6</sup>, the OFT works with Trading Standards, and other key stakeholders such as TSI<sup>7</sup> and LACORS, to identify areas key to Trading Standards which would benefit from award of Macrory powers and sanctions, and to agree a strategy for working with other departments and regulators responsible for the relevant legislation, to encourage them to apply for Macrory powers.</p>	<ul style="list-style-type: none"> <li>• The regulator shares sanctions intelligence and best practice with peers</li> </ul>

<sup>4</sup> LACORS is the Local Authorities Coordinators of Regulatory Services

<sup>5</sup> Consumer Protection from Unfair Trading Regulations 2008.

<sup>6</sup> Office of Fair Trading and Local Authority Trading Standards Services – Programme of Joint Action, June 2006 refers to OFT giving the following commitment: the OFT will champion Trading Standards Services in all aspects of their work, while respecting the lead responsibility that other agencies and departments have for matters such as animal health (etc); and the OFT will champion TSS at national level and within central government.

<sup>7</sup> TSI = Trading Standards Institute



Issue to be addressed	Hampton symptom
<p><b>Developing the OFT-Trading Standards relationship</b></p> <p>That OFT and Trading Standards need to continue working together to articulate and communicate a clear vision of what they are seeking to achieve and to identify ways in which they can work together, for example:</p> <ul style="list-style-type: none"> <li>• in the application and enforcement of the new CPRs, and</li> <li>• developing OFT’s capacity to take criminal cases using these new powers.</li> </ul> <p>That OFT works with other interested bodies (Trading Standards, TSI, LACORS, LBRO<sup>8</sup> etc) to develop a real leadership role with a focus on clear communications and managing expectations, and with clarity on where OFT can add real value. We recommend particularly that OFT:</p> <ul style="list-style-type: none"> <li>• be clearer as to what support and advice they can feasibly provide to enforcement partners in a reasonable timescale and, by the same token, be explicit about what they cannot provide;</li> <li>• be proactive in raising issues relevant to their shared agenda with Trading Standards and seeking to ensure they are reflected in departmental impact assessments.</li> </ul>	<ul style="list-style-type: none"> <li>• Outcome measures are communicated throughout the organisation, including to front-line enforcers</li> <li>• The regulator engages and co-ordinates with other regulators operating in the same sector</li> </ul>
<p><b>Developing the Consumer Codes Approval Scheme</b></p> <p>That OFT articulates the usefulness of the Consumer Codes Approval Scheme in its range of tools more widely to the outside world and takes further steps proactively to encourage codes to be developed in the markets in which a code is likely to deliver economic progress. In the longer term, OFT evaluates whether the Scheme as currently operated is delivering the intended added value.</p>	<ul style="list-style-type: none"> <li>• Regulatory activity can be linked to the achievement of outcomes</li> </ul>

<sup>8</sup> LBRO = Local Better Regulation Office

## Introduction

**1** This review of the Office of Fair Trading (OFT) aims to provide a structured check on performance against the principles and characteristics set out in the Hampton<sup>9</sup> and Macrory<sup>10</sup> reports (see Appendix 2). The team reviewed OFT against a performance framework<sup>11</sup> developed by the Better Regulation Executive and the NAO which provides a guide for reviewers on the kind of evidence to look for and questions to consider. However, the process is not the same in scope or depth as a full value for money audit of economy, efficiency and effectiveness and the review team's conclusions are based on a combination of evidence and judgement. A brief description of the scope of the review and methods employed is at Appendix 3. Broadly this covered the OFT's consumer protection enforcement work, as it applies to the Hampton agenda, and in particular its roles as licensing authority for consumer credit and as the champion of Trading Standards.

**2** OFT is the UK's competition and consumer protection authority and its aim is to make markets work well for consumers. Its approach is founded on the principle that consumer welfare is optimised through effective competition in well-functioning markets which it seeks to maintain by monitoring, addressing and remedying market failure. This review did not look at OFT's competition and market studies work which, in 2006-07, accounted for about one third of its £74.5 million budget.

**3** OFT also addresses consumer welfare through direct consumer protection and enforcement activity. It has statutory responsibility for the administration of the

consumer credit licensing regime but also has enforcement powers under a range of other consumer protection laws, notably:

- The Consumer Credit Act 1974;
- The Estate Agents Act 1979;
- The Unfair Terms in Consumer Contracts Regulations 1999;
- The Control of Misleading Advertisements Regulations 1988;
- The Distance Selling Regulations 2000, and
- The Enterprise Act 2002 (Part 8)

In addition, new consumer protection legislation is due to be implemented by April 2008, including:

- Consumer Credit Act 2006;
- Consumer Protection from Unfair Trading Regulations 2008 (known as the Consumer Protection Regulations, or CPRs)<sup>12</sup>.

**4** OFT does not make rules or regulations, nor does it have a direct field force of inspectors under its control or influence. Legislation originates typically with the Department for Business, Enterprise and Regulatory Reform (BERR, formerly the Department for Trade and Industry) often following European directives, though OFT is in some cases required to issue guidance (and does so voluntarily in many other cases). The majority of direct regulatory and enforcement work in the consumer area is undertaken at a local level by Trading Standards Services

**5** In December 2005, in response to a Government decision following the

<sup>9</sup> Reducing administrative burdens: effective inspection and enforcement, Philip Hampton, HM Treasury, March 2005

<sup>10</sup> Regulatory Justice: making sanctions effective, Final report, Professor Richard B Macrory, November 2006

<sup>11</sup> Hampton Implementation Reviews: Guidance for Review Teams, National Audit Office and Better Regulation Executive, May 2007

<sup>12</sup> The CPRs will replace key elements of the Trade Descriptions Act 1968, the Consumer Protection Act 1987 and various other mainstream consumer protection laws.

recommendations of the Hampton Review, the OFT took on responsibility for championing and providing regulatory leadership to Trading Standards Services<sup>13</sup>. This is a new and unique role for OFT not based on express powers or the availability of additional resource. It is distinct from the statutory role which will be performed by the Local Better Regulation Office (LBRO). Development of this role necessarily relies on jointly building a partnership with Trading Standards and other stakeholders, and identifying key priorities on which progress can be made by agreement.

- 6** There are some 200 separate Trading Standards Services. They have a broad remit, covering areas such as animal health and metrology which are outside the scope of OFT. They are funded by and accountable to local authorities<sup>14</sup> and are required to work to national priorities set by a variety of government departments and agencies,

as well as local priorities set by elected councillors. They are the OFT's key partners in implementing the consumer law regime in the UK and have the same powers of enforcement in a number of areas. OFT and Trading Standards are currently nearing completion of a programme of joint action that is designed to identify and address relevant issues on which they could work together (paragraphs 103-104 and Appendix 4). They are also currently working on a follow-up "programme for partnership" that will build on the Programme of Joint Action (paragraph 106).

- 7** The sections that follow set out the review team's findings against the different elements of the performance framework: the Hampton vision; design of regulations; advice and guidance; data requests; inspections; sanctions; focus on outcomes.

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<sup>13</sup> The OFT website states that the OFT has committed to champion Trading Standards in all aspects of their work and to ensure that the voice of Trading Standards is heard on key issues.

<sup>14</sup> Other than in Northern Ireland

## The Hampton vision

- 8** Both the Hampton and Macrory reports are concerned with effective regulation – achieving regulatory outcomes in a way that minimises the burdens imposed on business. Key to this is the notion that regulators should be risk-based and proportionate in their decision-making, transparent and accountable for their actions and should recognise their role in encouraging economic progress.
- 11** A risk-based approach requires robust and reliable intelligence. The OFT is developing a system to inform its prioritisation of enforcement work by drawing on intelligence gathered from various sources including complaints to the OFT, Consumer Direct and regional intelligence assessments to target higher risk activities, for example mass-marketed scams.

## Risk-based

- 9** Risk assessment is an essential means of directing regulatory resources where they can have maximum impact on outcomes. The OFT has adopted a risk-based approach and is currently consulting on the priorities to guide its work; these include assessing the likely effect on consumer welfare and the likelihood of a successful outcome. The OFT has designed a high-quality system for risk-based allocation of resources and prioritisation of activities. The system is in set-up mode and will need to be driven forward energetically across the piece, including in areas where the OFT has legal duties that give it an element of discretion.
- 10** The OFT's focus is on encouraging compliance by businesses through advice and education backed up by enforcement action where necessary to achieve compliance. Its objective is to take a risk-based approach and target interventions which deliver high impact results. For example in working with Trading Standards, the OFT advises on cases brought under the Enterprise Act and the UTCCRs<sup>15</sup>. With the move to a more prioritised approach and the advent of the CPRs, the OFT is reviewing the level of support and advice it can give in future on these areas.
- 12** The OFT and Trading Standards are sharing intelligence in a more co-ordinated fashion than in the past and a strategic assessment has been drawn up that identifies areas of high detriment, which enables a discussion between the OFT and the LACORS<sup>16</sup> Policy Forum as to who is best placed to act. This is a positive development that has yet to translate fully into achievements on the ground and across authorities.
- 13** One of the challenges for the OFT and Trading Standards is to build an effective, dynamic network for intelligence sharing, analysis and co-ordination of action. Currently this system is developing and in order to make further progress **OFT together with stakeholders and partners, including Trading Standards, needs to develop a strategic approach that addresses a number of significant issues:**
- **uncertainties on the future funding of the regional intelligence network and Consumer Direct;**
  - **the business case for developing an integrated IT-based knowledge management system for intelligence-sharing;**
  - **uncertainties as to whether Trading Standards will commit to deliver the actions in the strategy and who within**

<sup>15</sup> Unfair Terms in Consumer Contracts Regulations

<sup>16</sup> Local Authority Co-ordinators of Regulatory Services.

**Trading Standards will be responsible for taking the lead on regional priorities; and**

- **uncertainties over the future structure of Consumer Direct and building on its capability and capacity to aid its development as an analysis tool.**<sup>17</sup>

**Transparency and accountability**

- 14 Regulators can take various steps to help stakeholders scrutinise their on-going regulatory activities and adherence to Hampton principles. For example, measuring and reporting on outcomes provides an indication of the effectiveness of regulators in discharging their duties, thereby holding them to account. The OFT is increasing its transparency and accountability in a number of ways including:
- it has agreed with the Treasury actions which will increase its accountability, in particular reporting on the impact and effectiveness of its activities, expected timescales for the completion of projects, and reporting on all enforcement and non-enforcement outcomes.<sup>18</sup>
  - it proposes introducing published service standards for the first time relating to credit licence processing and fitness investigations. We encourage this and expect the OFT to publish and report these annually.<sup>19</sup>
  - in late November 2007, OFT published its statement of consumer protection enforcement principles to help clarify its enforcement policy.<sup>20</sup>

- 15 As a national enforcement authority, we welcome the OFT using its position to take cases that help clarify the law and improve compliance by publicising the results of these cases. A recent example of this is the Section 75 case (see box below) that the OFT won in the House of Lords. However from a Trading Standards perspective, there is a lack of transparency in OFT's selection of cases, and there would be real benefits from having clarity early on as to which cases the OFT will be taking and which require locally-led action. Work is already being undertaken on the application of the National Intelligence Model through the regional intelligence network. We recommend that clarification of the basis on which OFT selects cases is taken forward as a matter of priority.

**Case example  
– Section 75 appeal in the  
House of Lords**

UK consumers spent £12.5 billion on overseas credit card transactions in 2004. OFT initiated proceedings in the High Court seeking clarification on whether important consumer safeguards on credit card purchases<sup>21</sup> apply to purchases made abroad as well as in the UK. At the end of the legal process in October 2007 in a landmark ruling the House of Lords confirmed that section 75 of the Consumer Credit Act 1974 applies to overseas as well as domestic transactions. This ruling brought to an end a legal process initiated by the OFT in 2004 (and a dispute which had been running on and off for many years) and clarifies the law.

<sup>17</sup> OFT informed us that some Consumer Direct contact centres have high overheads and staff attrition essentially due to their location. OFT has been advised there are legal and financial constraints, which do not allow them to address the problems of a centre by simply awarding its contract back to it with more favourable terms.

<sup>18</sup> Comprehensive Spending Review 07 Performance Framework Agreement (for 2008-11)

<sup>19</sup> OFT's Annual Plan 2008-09 Consultation Document

<sup>20</sup> It plans to review its policy in the light of further proposed work on the detail of the enforcement policy, involving Trading Standards. Reviews are planned in early 2008, and in early 2009.

<sup>21</sup> It also applies to other "connected lending", where there are arrangements between the creditor and the supplier of goods or services.

- 16** Overall, from our interviews we formed the view that there needs to be more clarity about what OFT's championing role for Trading Standards means in practice (and equally being clear what it excludes), and about what the OFT and what Trading Standards are accountable for. We recommend that OFT and Trading Standards agree and communicate a clear vision of what they seek to achieve as a whole through their relationship. They are in the process of addressing this via a "programme for partnership" (paragraph 106).
- 17** We recognise that OFT has limited resources to help Trading Standards. OFT needs to be clear and transparent on this point and Trading Standards need to understand the limited resources available to provide advice and guidance to them, and the potential impact this has on both what guidance can be provided and timescales. Some Trading Standards departments informed us that, other than for Enterprise Act<sup>22</sup> cases, OFT advice on individual cases had frequently not been produced quickly enough to be of use to them in their dealings with businesses. OFT should clarify what they can feasibly provide in a reasonable timescale and, by the same token, be explicit about what they cannot provide.
- 18** Last year, the OFT implemented a new stakeholder engagement strategy designed to provide consistency in approach to partners and to embed awareness of stakeholder interests at all stages of their work. Senior level stakeholder relationship managers have been appointed to develop relationships with individual organisations. Whilst, a range of stakeholders we spoke to recognised OFT are trying to improve in this area, the views of most reflect recent past experience of finding the OFT quite insular. They are keen for OFT to adopt a more inclusive approach to working with partners.
- Key stakeholders believe that a more regular, day-to-day dialogue would be useful to both parties and would further assist OFT's efforts to effectively prioritise its work and target its resources.
- 19** The OFT recognises that building relationships takes time and they could still get better at engaging with stakeholders. To help them further develop an effective stakeholder relationship strategy, the OFT is commissioning a research project among key stakeholders and other government departments, and trying to identify best practice from peer organisations. Furthermore, the OFT's organisational restructuring should help business and stakeholders know better who they need to deal with.
- 20** OFT's senior management is clear about the benefits of the re-organisation and has set out its strategic vision and objectives in OFT's Annual Plan. Our enquires indicate that there is still work to do in ensuring all staff on the ground are internalising the vision, but this is work OFT is undertaking. To review its overall strategy and ensure that it links to and informs all areas of the OFT's work, nearly 200 members of staff have been consulted on how they view the overall direction of the OFT. As part of its regular staff surveys, OFT expects to continue surveying its staff to monitor views on integration, stakeholder engagement and what the new vision and objectives mean for them.
- 21** **Overall, we found that the OFT is setting in place measures to become a more transparent and accountable organisation going forward. This is work in progress, and certain challenges remain for OFT to communicate and engage with external stakeholders in a more open and transparent way, including with Trading Standards, and to**

<sup>22</sup> Under Part 8 of the Enterprise Act 2002.



**ensure its own staff fully understand and embrace the OFT's vision, and deliver on commitments that are made.**

### **Encouraging economic progress**

- 22** The Hampton Report stated that “regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection”. This requires that regulations and their enforcement should be proportionate to the potential for harm and that regulators should be aware of their influence on economic progress.<sup>23</sup>
- 23** The OFT's raison d'être is to contribute to the health of the wider economy by making markets work well for consumers. Its approach is founded on the principle that consumer welfare is optimised through vibrant competition in open and well-functioning markets. The OFT is, for example, doing research on productivity drivers that identifies sectors with lower than expected growth, and is using this to inform prioritisation of work that can help to deliver economic progress.
- 24** In line with its prioritisation principles, the OFT targets high-profile cases which can serve to improve compliance and deter illegal behaviour at a national level, with the aim of making markets work better. Recent examples of this include a case the OFT brought against certain airlines for misleading advertising of charges, and the national web sweep of leading online retailers in conjunction with Trading Standards to ensure they are complying with distance selling regulations, launched in November 2007.
- 25** Economic progress can also be affected by the regulatory landscape. Currently there is a separation of regulation: consumer lending is the responsibility of the OFT, whilst other retail financial services are regulated by the Financial Services Authority. Some larger consumer credit trade associations consider that this system of “dual regulation” impedes efficient business and causes additional costs, and does not make sense other than for administrative convenience.<sup>24</sup> They acknowledge that the OFT and the FSA have been making efforts to work together more closely through a Joint Action Plan and that some improvements have been made.<sup>25</sup> There are written agreements between the agencies, and recently there has been close communication on for instance the issue of litigation regarding banking charges on overdrawn accounts, and on the implementation of the new Consumer Credit Act. They would like to see pressure maintained for more joined-up thinking and consistency between the OFT and the FSA which inevitably approach things differently because of their different statutory powers and different ways of regulating.<sup>26</sup>
- 26 Overall, we found that making markets work better lies at the heart of the OFT's vision. At the strategic level, this gives the OFT a strong focus on economic progress in its prioritisation and its knowledge of the impact of its work will increase as a result of its systematic evaluation of outcomes. Two areas within the remit of the review to which we would encourage OFT to give further consideration are the further development of self-regulatory schemes and joint working with the FSA.**

<sup>23</sup> The design of regulations and their enforcement is covered in later sections.

<sup>24</sup> The Hampton Report proposed in a footnote that Government should consider whether consumer credit regulation should be transferred from OFT to the FSA. The Government subsequently decided that the OFT's and FSA's responsibilities would remain unchanged.

<sup>25</sup> Recent examples include, OFT and FSA are finalising a Memorandum of Understanding on the application of the Unfair Terms in Consumer Contracts Regulations, building on the Concordat they updated in 2006. A programme of exchanges between twenty or more case officers from the two organisations is due to start in December 2007.

<sup>26</sup> British Bankers' Association's and Finance and Leasing Association's submissions to the Trade & Industry Select Committee Inquiry into OFT, April 2007.

## Design of regulations

### Hampton principles

*“All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all parties should be consulted when they are being drafted.”*

*“When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed.”*

## Key findings

- In formulating regulatory proposals, there is evidence that OFT takes account of burdens on business
- OFT undertakes a form of internal assessment of impact and would benefit from using this approach externally to communicate and consult early with external parties where there are likely to be impacts from proposed approaches to regulate or implement regulation
- In its role as champion of Trading Standards, OFT is in a position to input to departmental impact assessments on matters relevant to Trading Standards
- OFT has developed alternative regulatory approaches but these depend on voluntary participation and take-up has been slower than expected

## Background

- 27 The OFT draws its legal mandate from the Enterprise Act 2002, which defines its governance. This is supplemented for credit matters by the Consumer Credit Act 1974 (as amended by the Consumer Credit Act 2006). Under these Acts the OFT’s direct regulatory role is restricted to the credit area, in which it is a licensing and enforcement authority for firms subject to its Consumer Credit Act jurisdiction.
- 28 As the UK’s primary competition and consumer authority, the OFT is a key stakeholder and influences the Department of Business Enterprise and Regulatory Reform (BERR) when it is developing consumer protection and consumer credit legislation, but as such the OFT does not develop legislation or regulations itself.

During the development of the Consumer Credit Bill, the Department drew heavily on the OFT’s experience and consulted it extensively (as well as other stakeholders).

- 29 From April 2008, the OFT assumes significant new responsibilities for enhanced credit ‘fitness’<sup>27</sup> inspections, and for supervision of anti-money laundering for estate agents and credit firms. This will be the first time that the OFT has had any on-going inspection responsibilities.

## Review Findings

**In formulating regulatory proposals, there is evidence that OFT takes account of burdens on business**

- 30 In areas where the OFT has an opportunity to influence such as on credit licensing, it

<sup>27</sup> ‘Fitness’ refers to the suitability of a person or business to hold a consumer credit licence.



has shown it is aware of burdens on business. It supported the removal of the requirement to renew credit licences every five years. In addition, in formulating its proposed approach to its new inspection powers under the Consumer Credit Act 2006, it has developed a risk model to assess initial and on-going fitness that will take account of likely risk of detriment and potential impact. The intention is to focus resources on problem sectors and licensees and target visits to higher risk activities such as debt collection, and where there is evidence of past misconduct.

- 31** The OFT has worked with BERR on the development of the new Consumers, Estate Agents and Redress Bill. The Bill seeks to implement recommendations made by the OFT in its study of the estate agency market in 2004 which should strengthen the regulation of estate agents, including requiring them to belong to an independent redress scheme, and extending the range of circumstances in which the OFT can take action against them. The OFT's market study however, did not find evidence to support the introduction of a positive licensing regime. Estate Agency trade associations have commissioned their own independent review of the sector.

**OFT undertakes a form of internal assessment of impact and would benefit from using this approach externally to communicate and consult early with external parties where there are likely to be impacts from proposed approaches to regulate or implement regulation**

- 32** The OFT considers burdens on business when deciding what work to undertake. The box below illustrates a typical project to protect consumers. Its new project management framework, rolled out in August 2007, requires project managers to

provide a qualitative assessment of the burden on fair dealing businesses. OFT also monitors the impact on business through its post-project completion evaluations which are performed on a sample of projects.

### **Case example – Credit Advertising Project**

A two year project was undertaken by OFT, in conjunction with Trading Standards, involving sweeps of newspapers and consultation with newspaper editors. It resulted in significant improvements in the compliance of credit adverts with Consumer Credit (Advertising) Regulations. There was a 32 per cent reduction in non-compliant adverts in regional newspapers, and an 80 per cent decrease in the proportion of adverts in national newspapers that did not include the typical APR.

In addition, the project also saw a 35 per cent improvement in the compliance of credit card advertising following consultation between the OFT and representatives of credit card issuers.

- 33** The review team considered that whilst an internal assessment of impact is appropriate for many purposes, particularly the prioritisation of projects initiated by OFT, it is insufficient where the development of regulatory-type approaches and proposals for the implementation of regulation, would benefit from early contact with external parties who may be affected. An instance would be the development of major pieces of guidance aimed at businesses. Often OFT guidance is simply a clarification of issues which have already been subject to a formal Impact Assessment, but in some cases it embodies decisions by OFT as to how it will act which are of considerable significance

for affected businesses (for example, OFT's draft licensing guidance)<sup>28</sup>. We consider that the OFT should more often undertake impact assessments (and post-implementation reviews) in accordance with Better Regulation Executive guidance, in those areas where there is potentially a significant impact on business.

- 34** In developing its proposed approach to its new supervisory duties on anti-money laundering, we believe that the OFT has rightly given emphasis in its thinking to tailoring guidance to smaller firms, and inspecting riskier businesses more frequently. We also noted that the OFT had drawn on the experience of other supervisory authorities and consulted industry working groups throughout. OFT did not undertake an impact assessment, which it explains by reference to factors including timing constraints and the fact that an impact assessment had recently been undertaken by the Treasury as sponsors of the legislation<sup>29</sup>. Going forward, we believe that OFT should assess the impact of its developing supervisory model.

**In its role as champion of Trading Standards, OFT is in a position to input to departmental impact assessments on matters relevant to Trading Standards**

- 35** OFT engages proactively with other government departments to challenge their impact assessments on competition grounds. The OFT, in its role of champion of Trading Standards, should now also be proactive in raising issues with departments and regulators relevant to

Trading Standards and seeking to ensure they are reflected in departmental impact assessments. This would also fit in with the performance objective in the Comprehensive Spending Review (for the period 2008-11) which requires OFT to have an increasing impact on government policy through impact assessments, regulatory reviews and wider advocacy work.<sup>30</sup>

**OFT has developed alternative regulatory approaches but these depend on voluntary participation and take-up has been slower than expected**

- 36** The OFT's Consumer Codes Approval Scheme (CCAS) is designed to raise standards for consumers by robust, voluntary agreements with industry.<sup>31</sup> The aim of the codes is to go beyond the basic legal requirements, and the stringent nature of the codes is seen as a selling point by many of the sponsors. The Scheme promotes self-regulatory codes which, being non-legislative, can be adapted more quickly to market changes than statutory codes.
- 37** The OFT targets the Scheme at sectors with known elements of bad practice and it has also had successes in negotiating codes in areas of known detriment (such as direct selling, and car repair). It is also seeking to use the Scheme in a more strategic way by identifying detriment and assessing whether the market conditions are right, particularly in relation to emerging markets<sup>32</sup>. It also does not now commence a market-wide investigation without considering use of the CCAS as a tool.

<sup>28</sup> For example, the Financial Ombudsman Service can refer to OFT guidance in determining their decision when a complaint is lodged against a business.

<sup>29</sup> The Impact Assessment went through three stages of development: a preliminary draft, a more evolved version, and a final impact assessment in July 2007.

<sup>30</sup> CSR07 performance objective 17.

<sup>31</sup> The Enterprise Act 2002 gives the OFT powers to approve and promote consumer codes of practice that meet the OFT's core criteria.

<sup>32</sup> An example is the renewable energy market where consumer information and knowledge is weak. The OFT are seeking to encourage codes in this area and one has recently reached Stage One of the approval process.

However, we recommend that the OFT articulates the benefits of the Scheme more widely to the outside world, especially in order to proactively encourage codes to be developed in the markets in which a code is likely to deliver economic progress.

- 38** An initial review of the Scheme for the OFT in October 2006 showed many member businesses were positive about the likely future benefits although it concluded that it was still too early to prove clearly a positive impact on consumers. We recommend that the OFT continues to evaluate the benefits of the scheme as it develops.
- 39** The challenge of the Codes scheme for OFT is that business participation is entirely voluntary, yet also needs to entail acceptance of requirements that confer real benefit on consumers. This inherent tension helps explain why, launched several years ago, progress in encouraging take up of the Scheme has been slow; there are 5 approved codes, 7 at stage one and a number of other schemes have submitted applications.<sup>33</sup> However, OFT's view is that it is important not to dilute code standards simply to ease acceptance by individual applicants as this would reduce the value of the Scheme to participating businesses as well as consumers. Although the pace of

progress largely depends on the code sponsors commitment and their speed of response, some stakeholders consider that the OFT has been too inflexible in its approach and that, overall, the process takes too long. OFT is considering adopting a more risk-based approach than in the past that will allow greater flexibility to speed up the process of code approval. It will also keep under review the level of monitoring required for code approval by sponsors. We welcome this, and also suggest OFT considers setting indicative timescales for different stages in the process to give the process more momentum.

- 40** Encouraging responsible self-regulation is an approach the OFT has also adopted more recently with the launch last year of an initiative aimed at creating a framework of national standards and support to develop a network of local authority assured trader schemes (LAATSN), to complement CCAS at a local level. The OFT plans to work with Trading Standards to evaluate this scheme during 2008-09.

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<sup>33</sup> One trade association withdrew from the Scheme as owing to industry changes they wished to alter the rules in their code on customers' financial compensation.

## Advice and guidance

### Hampton principle

*“Regulators should provide authoritative, accessible advice easily and cheaply.”*

## Key findings

- **OFT aims to satisfy a wide range of needs through its published advice and guidance and requires more information as to whether it is meeting those needs – it is planning to evaluate its guidance for that purpose**
- **Early engagement by OFT with business stakeholders is important for the production of valuable guidance. OFT recognises room for improvement still exists**
- **The status of OFT guidance is not always clear to those to whom it is addressed**
- **OFT guidance on new legislation has sometimes been published after it has come into force when it would have helped business prepare for compliance had it been published earlier**
- **Consumer Direct has delivered benefits for consumers in terms of consumer advice and has benefited Trading Standards’ dealings with businesses. Its continued success depends on establishing its future structure and sustainable funding**
- **OFT does not routinely communicate its plans early to Trading Standards for producing campaign materials so as to maximise the scope within planning cycles for coordinated use of such materials and campaigns**

## Background

- 41** OFT provides advice and guidance to business in a number of ways, including.
- a. An **‘Advice for business’** section on its **website** – which provides advice and guidance on specific legislation enforced by OFT as well as a guide to competition and consumer protection laws that affect business and information on the Consumer Codes Approval scheme; the website also includes a ‘legal powers’ section and a link to Business Link;
  - b. **Leaflets** or web-based guidance on specific legislative requirements for all businesses and for particular industry sectors; and
  - c. **Events around the country**, aimed at raising awareness of the OFT’s work and promoting an understanding of consumer and competition law.
- 42** OFT also provides advice and guidance to business indirectly through its role as champion of Trading Standards. For example, it works with Trading Standards (often businesses’ first port of call for advice and guidance on trading issues) on producing materials for National Consumer Week which are partly aimed at small businesses and it provides advice to Trading Standards on specific cases.
- 43** OFT also provides consumer advice through its **Consumer Direct** telephone helpline and email service. Consumer Direct is delivered through 11 regional call centres which have close links to Trading Standards services in these areas. Most calls involve complaints about poor quality goods and services but calls also include requests for information on specific consumer rights.

## Review Findings

**OFT aims to satisfy a wide range of needs through its published advice and guidance and requires more information as to whether it is meeting those needs – it is planning to evaluate its guidance for that purpose.**

- 44 OFT, as the lead national authority on both competition and consumer issues, has to satisfy a wide range of needs for advice and guidance and to strike the right balance on advice provision within its resources. Some business stakeholders we spoke to felt that OFT does not put enough emphasis on providing advice and guidance to smaller businesses to help them comply and others characterised some (but not all) of OFT's guidance on consumer credit as too detailed, complex and overly-prescriptive. However, feedback received by OFT from small business suggests there is demand for more detailed guidance, particularly in advance of new legislation OFT needs to take account of all relevant interests, and we note that in drawing up guidance on the Consumer Protection from Unfair Trading Regulations with BERR, OFT consulted stakeholder working groups including representatives of businesses of all kinds – at the pre-consultation phase, as well as via formal consultation.

- 45 The OFT is developing collaborative relationships with intermediaries to deliver its message. It has also identified a need to evaluate its guidance to business to ascertain whether it is meeting its needs. We agree that such a review should be undertaken.

**Early engagement by OFT with business stakeholders is important for the production of valuable guidance. OFT recognises room for improvement still exists**

- 46 Most consumer credit trade bodies we spoke to did not consider the OFT listened to

their views before guidance was produced, and would like to engage with OFT in a more meaningful, early informal dialogue when preparing guidance for industry. On the other hand, OFT reported that trade bodies had been reluctant to engage when they had been asked and some had conflicting objectives – for instance, seeking clear guidance, yet at the same time seeking to ensure that guidance did not constrain their business flexibility. We concluded that lack of effective engagement in the past has created a degree of wariness of OFT which it now needs to find a way around. For example, some business stakeholders felt that OFT has failed to get the message across to smaller businesses that it wishes to help businesses comply rather than take enforcement action. OFT's plans for improved stakeholder engagement are outlined above (paragraphs 18-19).

**The status of OFT guidance is not always clear to those to whom it is addressed**

- 47 Where OFT has direct regulatory powers over individual businesses, such as consumer credit, it seeks to encourage compliance and make enforcement easier through setting out a detailed interpretation of the regulations in its guidance. To some businesses this appears overly prescriptive and not always easy, or appropriate, to follow, though others value detailed guidance. Consumer credit trade bodies felt that the OFT was using the guidance as 'soft law'. And as such, setting out not simply what the law says but its own interpretation of how it should be complied with (which can be very influential as an interpretation of the law and can be read and applied as such by Trading Standards, and the Financial Ombudsman Service to inform the outcome of cases lodged against lenders).<sup>34</sup> This is why guidance design and the process by which that design is achieved has some considerable significance.

<sup>34</sup> FOS rules (3.8) state that "The Ombudsman will determine a complaint by reference to what is, in his opinion, fair and reasonable".... and "the Ombudsman will take into account the relevant law, regulations, regulators' rules and guidance and standards".

**48** Some trade bodies would prefer to see more principles-based guidance which would give them some choice in how to interpret the regulations. As already noted, other businesses are keen to have as much certainty as possible as to how legislation will affect them. It is a symptom of certain trade bodies' wariness of OFT that consultation on the wording of new guidance on the Consumer Credit Act 2006 encountered difficulties arising from the trade bodies' doubts as to whether OFT will apply sensible discretion in its interpretation of its own guidance.<sup>35</sup> The OFT has to steer a path between being overly prescriptive and being uninformative, and can only achieve this through stakeholder engagement. It has discussed one particularly sensitive element of guidance on the Consumer Credit Act 2006 in some detail with stakeholders following on from the public consultation and is committed to a major exercise – including further dialogue with stakeholders – to establish an OFT position on the key issues at stake.

**OFT guidance on new legislation has sometimes been published after it has come into force when it would have helped business prepare for compliance had it been published earlier**

**49** Guidance on new legislation needs to be published before it comes into force if it is to help business prepare for compliance. The OFT's guidance on the Consumer Credit (Advertising) Regulations 2004 was published after the regulations came into force. It was a detailed follow up to initial DTI guidance published in advance of enforcement. However, some lenders incurred costs in taking external legal advice on the Regulations on points covered in the OFT guidance, and took a different view ahead of the OFT guidance

and organised their business models accordingly so they could be compliant when the new regulations came into force. These differences remain unresolved.<sup>36</sup> We note that this situation arose before publication of the Hampton report and have already mentioned that OFT is taking steps to improve its engagement with major stakeholders.

**Consumer Direct has delivered benefits for consumers in terms of consumer advice and has benefited Trading Standards' dealings with businesses. Its continued success depends on establishing its future structure and sustainable funding**

**50** Consumer Direct is seen by consumer bodies as a valuable source of data and is praised for being run in a very open manner; a view corroborated by some business representatives and Trading Standards. The OFT's evaluation of the service in early 2007 found that it had benefited businesses as well as consumers. There was evidence that both OFT's and Trading Standards' analysis of data enabled them to identify businesses whose trading practices were causing consumer problems. Trading Standards reported that by targeting those businesses with advice and guidance this had led to the building of positive relationships with businesses who wished to comply. Trading Standards also found the data enabled them to identify more readily the rogue traders in their area and therefore provide benefits not only to local consumers but also to fair-dealing businesses.

**51** The OFT inherited a complicated contractual framework underpinning provision of Consumer Direct in each region. There have been some significant problems with that

<sup>35</sup> In particular, the attempt by OFT to set down what is and what is not irresponsible lending was highlighted by most consumer credit trade bodies as too prescriptive with possibly significant unintended consequences.

<sup>36</sup> The British Bankers' Association submission to the Trade and Industry Select Committee into the Work of the OFT, April 2007.



inherited structure that have led to concerns amongst stakeholders regarding the sustainability of Consumer Direct. These include issues around forecast call volumes and funding. The current contracts are due to end in 2010, and OFT is already working on developing a clear strategy for the service beyond that date.

- 52 The review team found that these issues are also causing significant current problems in a small number of regions which is leading to some local authorities considering withdrawing from Consumer Direct. The team was told by some Trading Standards heads of service that they had had to subsidise Consumer Direct funding, which was not sustainable and others had contractual issues with their supplier because of funding problems. The OFT is acting to address these issues with the individual centres to the extent that is possible within the inherited structure.
- 53 The review team was informed by OFT that these issues will be addressed in the longer term via creation of a new structure post-2010, subject always to the Government providing the necessary funding to run an efficient and sustainable service.

**OFT does not routinely communicate its plans early to Trading Standards for producing educational materials so as to maximise the scope within planning cycles for coordinated use of such materials and campaigns**

- 54 Some Trading Standards professionals told the review team that OFT could do much more to provide advice and guidance for

businesses in a co-ordinated fashion through the Trading Standards route. They said that OFT did not seem to take account of the local authority planning cycle as it often informed Trading Standards of its plans for campaigns or educational materials after Trading Standards had already decided their own priorities for the year. As a result Trading Standards tend to produce their own campaign material for local consumers and businesses, as they don't know when or whether OFT might be producing guidance on a particular issue. They highlighted examples of summer or Christmas campaigns that may cover subjects such as scams awareness or making the most of money. If Trading Standards were aware of the OFT planned campaigns when they were creating local service plans, they would utilise OFT materials and promote these locally, avoiding unnecessary duplication. We recognise that OFT has its own planning cycle constraints – the need is to engage and achieve as much coordination as possible.

- 55 By contrast, the OFT's contribution to TSI's National Consumer Week campaign was cited as an example of how OFT did engage with Trading Standards in an open manner with lots of advance notice and relevant materials. Similarly, the OFT has worked with Trading Standards to plan and deliver training and guidance ahead of the implementation of the Consumer Protection from Unfair Trading Regulations. We consider that OFT should seek to use similar processes for its education campaigns aimed at businesses through the Trading Standards route. The OFT accepts that it needs to clarify what advice it will provide.

## Data requests

### Hampton principle

*“Businesses should not have to give unnecessary information or give the same piece of information twice.”*

## Key findings

- **OFT has improved the design of its credit licensing forms**
- **OFT’s ICT system improvements will enable both online applications and more efficient processing by OFT and Trading Standards. OFT needs to keep the pressure on delivery of these improvements**
- **Consumer credit businesses face dual regulation by both OFT and the Financial Services Authority**
- **OFT is aiming to minimise the burden of record-keeping in developing its approach to its anti-money laundering supervisory role**

## Background

**56** OFT makes data requests in relation to its consumer credit regime. Currently, the Consumer Credit Act requires businesses who wish to offer consumer credit products or services to apply to the OFT for a licence. This affects businesses wishing to lend money or offer credit, hire businesses, credit brokers, businesses offering debt advice, management and collection, and credit reference agencies. From 2008, debt administration and credit information services will also be included. There are 130,000 current licences of which 14,000 were issued for the first time in 2006/07.

**57** In March 2007, OFT’s new consumer credit licensing ICT system, PROMOD, went live. The system is designed to enable online applications and more effective data sharing with Trading Standards services and other agencies. The key benefits are:

- Applicants will be able to access a Frequently Asked Questions document

before applying for a licence;

- Applications can be made directly online or the form can be downloaded and then completed; (the forms went on-line in late 2007);
- Online applications may attract a lower fee than paper applications;
- Public information about all applicants and licensees will be available online; (hitherto, licensee information has only been available to the public over the telephone or through correspondence);
- Online access will also provide consumers access to the convictions register;
- It will also interface with the Companies House and Insolvency Service databases to help with the identification of companies;
- It will facilitate more effective notifications to Trading Standards.

**58** Building on OFT’s existing role on consumer credit and estate agency it will, under the Money Laundering Regulations 2007, be required for the first time to take on a supervisory role for approximately 10-



14,500 estate agency firms and approximately 22,000 consumer credit financial institutions. Both OFT and Trading Standards have compliance monitoring and enforcement powers in relation to the new regulations.<sup>37</sup>

## Review Findings

### **OFT has improved the design of its credit licensing forms**

- 59** In late 2005, OFT introduced new consumer credit licensing forms following a trial, as the existing forms were considered out-dated and no longer fully fit for purpose. The new application form, for example, requires more information on the identity of individuals but is also more tailored to the type of business and activity i.e. sole trader, partnership etc, and type of licence applied for. Despite being longer, the forms appear easier to complete as guidance notes are incorporated into them, the questions are clearer and there is space for free text and checklists. The results of OFT's trial exercise showed that error rates on applications and renewals fell by 35 per cent. However, this still means that business and OFT staff time is being wasted correcting mistakes, so OFT will continue to monitor error rates and keep the new forms under review.

### **OFT's ICT system improvements will enable both online applications and more efficient processing by OFT and Trading Standards. OFT needs to keep the pressure on delivery of these improvements**

- 60** Since March 2007, OFT has encountered technical difficulties in implementing the new PROMOD system causing problems in the processing of licence applications. In response, OFT has prioritised the processing of new applications over renewals although in Autumn 2007 consumer credit bodies reported delays

were still being experienced by their members. This impacted on some businesses wishing to hold a licence in that period. The OFT is in the process of dealing with the backlog and has considerably reduced the processing delays. There are concerns that the new fitness checks required under the Consumer Credit Act 2006 could add further delays. OFT informed us that it is now dealing with 90 per cent of applications within 25 days. It accepts that the fitness checks may well take longer for applications from businesses carrying out higher risk activities, but this increased scrutiny at the application stage is necessary to give effect to Government's desired reforms of the consumer credit licensing system. OFT also believes that once the new ICT licensing system has bedded in the application process should be quicker.

- 61** The ICT issues associated with the PROMOD system have prevented the OFT from launching an automatic email notification process which will speed up the process, provide Trading Standards with more information and make it easier for them to respond direct to the consumer credit case worker. It has meant that OFT has continued to write letters to Trading Standards requesting information about potential consumer credit licence applicants. This imposes what is expected to be a short-term burden on Trading Standards and makes tracking responses more difficult.

### **Consumer credit businesses face dual regulation by both OFT and the Financial Services Authority**

- 62** Consumer credit trade bodies, some of whose members undertake activities regulated by the Financial Services Authority and also hold a credit licence, consider that the OFT should fast-track or introduce a streamlined process for

<sup>37</sup> The OFT has the power to require firms to register and pay fees to OFT to cover OFT and Trading Standards reasonable costs.

businesses which are already FSA- authorised as a way of reducing the burden of dual regulation. We support this suggestion in principle, but are aware that it has been looked at carefully by OFT and FSA as part of their Joint Action Plan and that current legal requirements were found to represent a major obstacle to taking it forward.

**OFT is aiming to minimise the burden of record-keeping in developing its approach to its anti-money laundering supervisory role**

- 63** The Money Laundering Regulations 2007 require businesses to keep certain records. The OFT is developing its approach and has issued core guidance<sup>38</sup>. It intends to apply a risk-based approach, for example based upon the risks posed by the business model. We welcome this approach and would encourage OFT to continue to follow Hampton principles in developing its thinking on what information it might require from firms it supervises to inform its risk assessment and enforcement approach.

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<sup>38</sup> Money Laundering Regulations 2007: Core Guidance, November 2007, OFT 954.

## Inspections

### Hampton principle

*“No inspection should take place without a reason.”*

## Key findings

- **OFT is intending to take a risk-based approach to inspections under the new Consumer Credit Act and anti-money laundering regimes**
- **Intelligence gained through Consumer Direct could be used more effectively to help OFT and Trading Standards prioritise their work**
- **OFT is committed to working with LACORS and Trading Standards to review the Trading Standards risk assessment schemes to ensure a consistent and proportionate approach to inspections. This work is now planned for 2008-09.**

## Background

- 64** Under its existing powers, OFT is the licensing authority for firms engaged in regulated consumer credit activity for the purposes of the Consumer Credit Act. However, it does not currently inspect licensees and is not required to interact routinely with firms it licences.
- 65.** OFT will take on new powers to carry out fitness checks of licence applicants under the Consumer Credit Act 2006. OFT is planning to contract with Trading Standards national and regional groups to provide an inspection service to carry out the competency and fitness checks. Since 15 December 2007 OFT has a new supervisory role under the Anti-Money Laundering Regulations 2007. That also envisages OFT and Trading Standards sharing monitoring and enforcement work under agreements.
- 66** OFT agreed to take over responsibility from April 2007 for the Trading Standards risk assessment scheme for the inspection of premises by Trading Standards professionals.

## Review Findings

- OFT is intending to take a risk-based approach to inspections under the new Consumer Credit Act and anti-money laundering regimes**
- 67** From 15 December 2007, the OFT has a supervisory role for consumer credit providers and estate agents under the Money Laundering Regulations 2007. This will require inspection of business records and has the potential to add considerable burden on affected businesses. However, the OFT is developing its approach and favours a risk-based regime of inspections based on intelligence (and including a small number of random visits), rather than a planned programme of inspections. We also understand that such visits will be used to provide guidance, especially to smaller firms. We support this proposed approach which appears to be in line with Hampton Principles.
- 68** Under the new legislation the fitness requirement to hold a credit licence has changed to include a forward-looking

assessment of the applicant's competence. To undertake this new responsibility, the OFT has now developed a risk model to assess fitness to hold a licence, and only intends subjecting higher risk businesses and sectors to inspections. The OFT intends to publish its risk models in due course.

- 69 Some Trading Standards we spoke to are concerned that the need to carry out inspections/ supervision visits for OFT could skew their resources away from their other local priorities. Contracting with Trading Standards to undertake this work will require a clear inspection and enforcement policy to be agreed between OFT and Trading Standards to ensure a consistent and proportionate approach. OFT recognises this and will be giving financial assistance to allow them to recruit additional resource to undertake this work.

**Intelligence gained through Consumer Direct could be used more effectively to help OFT and Trading Standards prioritise their work**

- 70 Trading Standards can use the Consumer Direct database of calls, with other tools, to help plan and prioritise their investigations, identify rogue traders and gather evidence for potential enforcement action.
- 71 However, the database was originally built as a device for capturing calls to the advice line rather than as a tool for search and analysis of trends in consumer detriment and there are some problems associated with using it for this purpose. As a result the OFT has committed to carry out quantitative and technical investigations to

develop the full potential of the database and its application.<sup>39</sup> The ability to take forward this work is affected by issues concerning the future structure and funding of Consumer Direct. The review team believes that the OFT should commit to a project plan and delivery timetable for this exercise as early as possible, taking account of these factors.

**OFT is committed to working with LACORS and Trading Standards to review the Trading Standards risk assessment schemes, so as to ensure a consistent and proportionate approach to inspections. This work is now planned for 2008-09.**

- 72 As OFT is the regulatory leader<sup>40</sup> of Trading Standards, OFT agreed to take over responsibility from April 2007 for the Trading Standards risk assessment scheme.<sup>41</sup> This was in response to recommendations following the Hampton report about ensuring that the various risk assessment schemes are delivered and operated in a consistent and coherent way. The current risk rating system relies on a risk assessment based on the premises type, but Trading Standards professionals expressed the view that local factors within the risk assessment are not given sufficient weight.
- 73 The risk rating system is key to ensuring that Trading Standards inspections are targeted appropriately at high risk businesses. OFT had intended to undertake the review (with support from LACORS) in Autumn 2007 but this has now been delayed until 2008. We consider that this is an important project. The OFT has started meetings with key stakeholders with a view

<sup>39</sup> Usage and efficacy of the CD database for Trading Standards - A case study analysis of the usage and efficacy of the Consumer Direct database for Local Authority Trading Standards Services, February 2007, OFT871.

<sup>40</sup> OFT Annual Report 2006-07.

<sup>41</sup> Announcement on LACORS website.

to developing a scoping document and project plan for the review of the trading standards risk assessment scheme. As part of the review, OFT will need to consult with relevant stakeholders including the Food Standards Agency, DEFRA, BERR, Trading Standards Institute and the Local Better Regulation Office. The review team notes that the OFT is developing a project plan and delivery timetable for this work.

## Sanctions

### Hampton & Macrory principles

*“The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions.”*

*“Regulators should be transparent in the way in which they apply and determine administrative penalties.”*

*“Regulators should avoid perverse incentives that might influence the choice of sanctioning response.”*

*“Regulators should follow-up enforcement actions where appropriate.”*

## Key findings

- Existing powers in relation to consumer credit and estate agency had become increasingly ineffective over time and needed updating. New legislation gives OFT strengthened powers for dealing with misconduct more effectively
- OFT promotes the use of civil injunctions by Trading Standards and provides highly regarded advice, but there are inherent limitations to the effectiveness of these powers which may deter their more widespread use by Trading Standards
- OFT has proposals to develop a coordinated enforcement policy with Trading Standards to ensure a consistent approach to their use of their new powers under the Consumer Protection from Unfair Trading Regulations (CPRs).
- OFT has the opportunity to draw on Trading Standards detailed experience of the criminal enforcement route when developing its capacity to take criminal cases under its new CPR powers
- OFT is considering its role in relation to Macrory powers for Trading Standards
- The Consumer Regulations Website is a valuable tool for spreading good practice, sharing advice and information on enforcement including for the new CPRs. OFT should explore the feasibility of developing the website further so as to better realise its potential.

## Background

**74** The OFT has a range of enforcement powers and duties derived from consumer protection legislation. In addition, new consumer protection legislation is due to be implemented by April 2008.<sup>42</sup>

**75** The OFT has been predominantly a civil enforcement authority and it has not had primary criminal enforcement powers in the consumer area. However, the implementation of the CPRs and of the core reforms of the Consumer Credit Act 2006 make significant changes to the body

<sup>42</sup> See paragraph 3.

of UK consumer protection law. Together with the Unfair Terms in Consumer Contracts Regulations 1999, they mark a move towards a more principles-based regime and extend the scope for the OFT and other enforcers (such as Trading Standards) to ask the courts to consider the behaviour of a business and whether or not it is fair.

- 76** At the same time, these new powers also increase the range of enforcement tools available to the OFT, including taking criminal proceedings and imposing financial penalties. These sit alongside its existing civil enforcement tools ranging from “soft” remedies such as the provision of advice and guidance, to “hard” sanctions such as injunctive remedies, and licence removal. In the light of these changes, the OFT is reviewing its enforcement methods and has drawn up and published an overall statement of its enforcement principles.<sup>43</sup>

## Review Findings

**Existing powers in relation to consumer credit and estate agency had become increasingly ineffective over time and needed updating. New legislation gives OFT strengthened powers for dealing with misconduct more effectively**

- 77** In 2006-07, the OFT investigated approximately 600 licensed traders, based on the most serious complaints it had received. Following investigation, it refused or revoked 54 credit licences, issued 94 Notices<sup>44</sup> and issued over 270 informal warning letters. In a typical year, OFT

informed us that it warns or bans approximately 12 estate agents, and sends advisory and informal warning letters to between 160 and 200 agents every year. Estate Agency stakeholders we spoke to considered that the OFT’s existing powers do not allow OFT to tackle effectively bad practice and to protect consumers. However, the new legislation in relation to consumer credit and estate agency will provide OFT with an opportunity to use wider powers to tackle cases of serious non-compliance. For example, in relation to estate agents, new powers will allow OFT to more effectively gather information about alleged misconduct as estate agents will be required to keep records of dealings with clients for 6 years and give OFT (and Trading Standards) the power to inspect transaction files.

- 78** The OFT has supported the modernising of the UK’s consumer credit legislation to enhance its powers. Under the revised Consumer Credit Act 1974, OFT will have the power to impose additional sanctions, giving it more flexible and proportionate tools for dealing with misconduct. Its existing powers allow OFT to revoke or refuse a licence. The new Act introduces intermediate measures that will allow OFT to impose requirements on existing and new licensees. OFT will exercise this power when they are not satisfied with the licensee’s conduct, and require the licensee to start or stop doing something to remedy the dissatisfaction. The new Act also allows for OFT to impose financial penalties (of up to £50,000) where the requirements are not met.

<sup>43</sup> Statement of consumer protection enforcement principles, November 2007.

<sup>44</sup> The Notices indicate OFT are minded to refuse or revoke a licence.



**OFT promotes the use of civil injunctions by Trading Standards and provides highly regarded advice, but there are inherent limitations to the effectiveness of these powers which may deter their more widespread use by Trading Standards**

- 79** The primary consumer protection tool that is used by the OFT is Part 8 of the Enterprise Act which built on pre-existing legislation to give enforcers greater powers (known as injunctions) to intervene quickly to stop illegal trading practices that are causing consumer and business detriment. The OFT considers these powers provide an effective back-stop to protect consumers where a particular type of unfair behaviour is not caught by other consumer law or where prosecution has not proved effective, for instance because the fines that can be imposed do not represent an effective deterrent.
- 80** The OFT is responsible for promoting these powers to Trading Standards officers (who have primarily a criminal enforcement background), and supporting them in their use. OFT has provided training to Trading Standards on the use of civil undertakings and also gives advice to Trading Standards on using these powers which we found was highly regarded. However, whilst nearly half of Trading Standards Departments have used civil undertakings under these powers, very few authorities have used them more than a few times (Figure 1). An evaluation of the OFT's training in 2006 found that the actual frequency of handling this type of case by Trading Standards remains low and varies considerably by individual and by local authority. It also found there were differing perceptions as to the purpose of the powers and it found that some Trading Standards officers did not appear convinced of the effectiveness of these sanctions.
- 81** All consumer enforcement actions taken under this Act by OFT other than in urgent cases have to start with consultation, and normally this takes the form of requests for undertakings. It would be neither consistent with Hampton principles, nor a proper use of resources to seek formal injunctions through court proceedings where this was avoidable. Undertakings can in most cases be effective in achieving the desired outcome. But these measures are less effective where the business ultimately refuses to give an undertaking or breaches it as they are not enforceable and court action is required.<sup>45</sup> Ideally, OFT would like its existing powers under the Act to be enhanced to allow court orders to be sought for breach of undertakings<sup>46</sup> and also to allow financial penalties that provide redress for victims.<sup>47</sup> The Regulatory Enforcement and Sanctions (RES) Bill will, when it comes into force, take forward the proposals of the Macrory Review to give enhanced and flexible sanctioning alternatives to prosecution. The OFT was not successful in arguing for these alternative sanctions to be made available for civil enforcement powers.
- 82** In view of these factors – the limited take up of these powers and the limitations OFT has identified, which may become more significant when the Macrory proposals are brought into force – we consider that, in line with Hampton principles, the OFT could usefully evaluate the outcomes from using these powers to provide assurance (or otherwise) as to their relative value. This would need to take place when the implications of the introduction of new legislation, including the RES Bill and the CPRs, are clear, since it will only then be

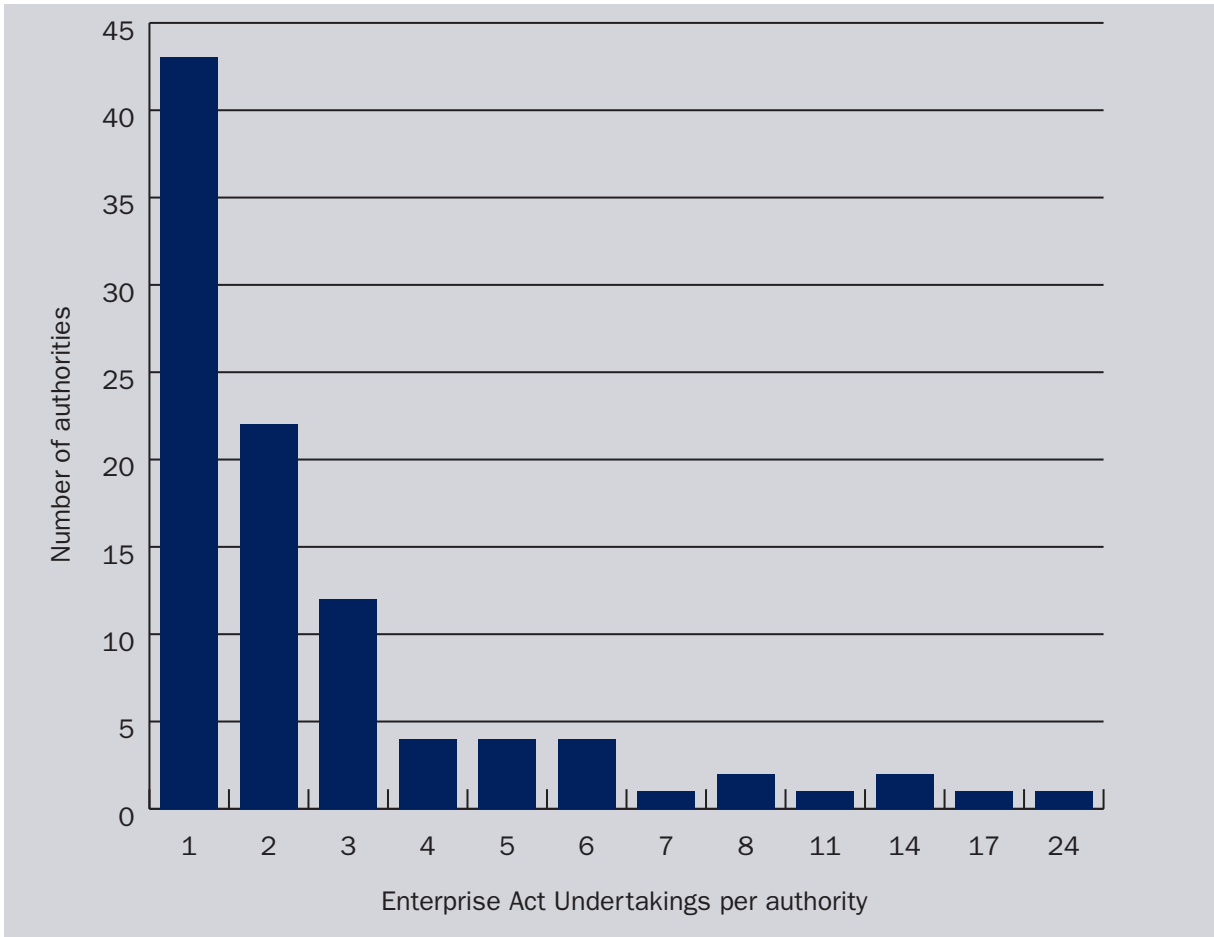
<sup>45</sup> In the OFT's response to the Macrory Review consultation, they raised the issue that there is no swift remedy for the breach as the case has to be proved 'ab initio' (from first principles) if a court order is to be obtained.

<sup>46</sup> OFT highlighted the existence of this type of sanction under Australian consumer protection legislation.

<sup>47</sup> OFT response to Regulatory Justice: Sanctioning in a post-Hampton World, Professor Richard B Macrory, May 2005



**Figure 1:** Enforcement Actions by Trading Standards under Part 8 of the Enterprise Act



Source: NAO/Better Regulation Executive analysis of OFT data

possible to compare them with the available alternatives.

**OFT has proposals to develop a coordinated enforcement policy with Trading Standards to ensure a consistent approach to their use of their new powers under the Consumer Protection from Unfair Trading Regulations (CPRs).**

**83** With the implementation of the CPRs from 1 April 2008, the OFT has launched a training programme for Trading Standards on the new powers coming into force. In its statement on enforcement principles, the OFT undertakes to seek actively to

promote consistency in enforcement between itself and other enforcement bodies, and liaise with them to this end. Since the OFT and the Trading Standards will have identical powers under the CPRs, there is a need for OFT and Trading Standards to develop a coordinated enforcement policy to ensure a consistent approach in areas of joint responsibility. The OFT has proposals to do this, and is committed to the objective of ensuring coordinated and consistent enforcement. It will also consult with LACORS, LBRO and others. We recommend that early steps are taken to progress these proposals.

**OFT has the opportunity to draw on Trading Standards detailed experience of the criminal enforcement route when developing its capacity to take criminal cases under its new CPR powers**

- 84** The CPRs will be enforceable by the civil injunctive route and also by criminal prosecution. Criminal enforcement is intensive and specialised work, and developing the capacity to do it will be a major task for a relatively small enforcer such as the OFT. It is currently considering how much resource it wishes to divert from current enforcement and other work to developing a criminal enforcement capability, but envisages putting in place the capacity to handle a small number of high impact cases at any one time.
- 85** Trading Standards has expertise in criminal enforcement of consumer protection law, as Trading Standards are experienced in this enforcement route. With the OFT's lack of expertise in the use of criminal powers on the consumer side, it is essential the OFT works closely with Trading Standards to develop its capacity and capability to take criminal cases. OFT recognises this and is planning accordingly.

**OFT is considering its role in relation to Macrory powers for Trading Standards**

- 86** OFT is currently considering its position regarding its leadership role in relation to Macrory powers for Trading Standards. We recommend that OFT works with Trading Standards partners and BERR to identify alternative sanctioning powers that will be useful to Trading Standards, and to ensure that Trading Standards authorities gain access to these. We also consider that OFT needs to reach some early conclusions on the potential implications of the new

sanctions for coordinated enforcement policies.

**The Consumer Regulations Website is a valuable tool for spreading good practice, sharing advice and information on enforcement including for the new CPRs. OFT should explore the feasibility of developing the website further so as to better realise its potential**

- 87** The Consumer Regulations Website (CRW) database was set up to share advice and information between OFT and Trading Standards on the application and enforcement of powers under Part 8 of the Enterprise Act 2002. Trading Standards professionals can look up the past history of a trader, any undertakings obtained, model cases, and outcomes of other similar cases. There is also a training function on the website and it can be used to share best practice. Regulators have a statutory duty to inform the OFT if they are contemplating enforcement action and this can be uploaded onto the site.
- 88** Some Trading Standards professionals said that they found the CRW useful as a source of advice and for example used the template letters. However, most we spoke to reported that they found it difficult to use and incomplete. An OFT evaluation found that some Trading Standards personnel felt the functionality of the CRW to be poor, with limited or difficult access to the password-protected areas of the website also acting as a deterrent to Trading Standards personnel.<sup>48</sup>
- 89** The website has the potential to prevent duplication of action and inconsistency with enforcement partners, but not all authorities are registered on the site and those that are do not consistently update

<sup>48</sup> Evaluation of Enterprise Act training for Trading Standards, Report prepared for the OFT by IFF research, December 2006.

the case information on it. The OFT's evaluation reported that the "extent of CRW use is driven by the attitudes of Trading Standards managers with some viewing entering data on to the website as a time consuming process that duplicates internal processes and hence not actively encouraging their staff to do this".<sup>49</sup> This means not only that the website is not being used to its full potential, but also that the site is not fully comprehensive and so businesses could be at risk of having multiple actions taken against them by local authorities.

- 90** The OFT recognises that there are technical issues with the CRW, which was established some years ago and prior to the creation of its championing role. These can only be addressed by significant investment and any decision on further investment would need to be taken in the

context of its over-arching ICT strategy. The OFT acknowledges that in taking decisions on ICT investment, it will need to have regard to the potential value of an improved CRW in furthering partnership working between OFT and Trading Standards, but there are other major calls on its resource for this purpose. OFT also stress that it is for Trading Standards to play their part in making use of the CRW, as some authorities already do, to help fulfil its potential. Going forward, OFT and Trading Standards will share significant new enforcement powers under the CPRs from April 2008 and coordination and consultation will be required between enforcers to avoid duplicative action. We consider that the CRW is a resource that could be usefully developed by OFT and its partners (and in consultation with LBRO) to share information on the application and enforcement of these new shared powers.

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<sup>49</sup> Ibid

## Focus on Outcomes

### Hampton principle

*“Regulators should measure outcomes and not just outputs.”*

### Key findings

- **There is a strong focus on outcomes amongst OFT’s senior management**
- **OFT has recently agreed with Treasury a measured outcomes target**
- **OFT has a major programme of evaluation which informs decisions into future policy and project selection**
- **The OFT-Trading Standards Programme of Joint Action gave their relationship a new focus and the next step, Plan for Partnership, aims to build on this. OFT and Trading Standards recognise the need for and are working to achieve clarity as to the future direction of the relationship**

### Background

- 91** The OFT’s Annual Plan sets out its vision:
- To deliver high-impact outcomes
  - To be a centre of excellence
  - To be a centre of intelligence
  - To achieve our objectives in partnership
  - To develop, promote and attract the best talent.
- 92** The OFT’s vision includes delivering high impact outcomes that have significant benefits for consumers and the economy, improving legal certainty, supporting wider compliance and deterrence and fostering efficient, competitive and pro-consumer market conduct using the entire range of policy instruments.
- 93** The OFT agreed a new performance framework with HM Treasury for the period 2008-11. The agreement includes targets that differ from OFT’s previous goals in that they focus on market outcomes rather than outputs. In addition, for the first time they commit OFT to delivering measurable benefits to the UK economy.

### Review Findings

- There is a strong focus on outcomes amongst OFT’s senior management**
- 94** The OFT is currently consulting on the principles to guide the prioritisation of their work. They will generally prioritise according to the impact of work on consumers and according to the work’s strategic significance, balanced against the risks and resources involved. There are however, a number of areas where the OFT does not have complete discretion for example it has a statutory duty to operate a consumer credit licensing system.
- 95** In 2006-07, the OFT made radical changes to its internal structure in order to be better able to meet the challenges of the new vision, and to ensure OFT is more strategic, focused and coherent as an organisation.

### **OFT has recently agreed with Treasury a measured outcomes target**

- 96** Under the previous performance framework agreement with HM Treasury, OFT's performance targets were reported primarily as outputs, such as the number of cases brought. The new agreement (for the period 2008-11) puts in place a more outcome-focused performance framework. It requires OFT to deliver measured financial benefits, including achieving direct benefits of at least five times that of its cost over the spending review period across its work, and to estimate the wider benefits of its work. In addition, more specifically on the consumer protection side, the agreement includes a requirement on OFT to demonstrate that Consumer Direct is generating benefits of at least three and a half times its operating costs, and to evaluate the impact of consumer campaigns on at least two markets per year and report the results.
- 97** The OFT has published consultations recently into the methods for measuring direct consumer benefits and measuring deterrence effects. The box below is an example of how a recent consumer protection project led to direct benefits to consumers.

#### **Case example – Direct benefits to consumers from action against misleading advertising**

A US-based company advertising slimming capsules, made false and misleading claims on weight loss. More than fifty-six thousand consumers had responded, each spending an average of £7.50. OFT stepped in and gained assurances from the company that it would no longer distribute its mailings. OFT estimates its action against the company prevented further consumer losses of £450,000.

- 98** We welcome the OFT's target for direct financial benefits, and would expect the OFT and HM Treasury to review this target in the light of experience given the huge size of the markets OFT covers, and the development of its methodology for measuring indirect benefits.

### **OFT has a major programme of evaluation which informs decisions into future policy and project selection**

- 99** Evaluation is important for reasons of external accountability: to evaluate whether the OFT delivers its objectives and does so cost-effectively. Evaluation is also important as a mechanism for helping OFT prioritise, conduct, and follow up their work to ensure it maximises its impact. The OFT has an on-going commitment to evaluate its work, and is also required to evaluate the impact of specific elements of its work in the performance framework agreement with HM Treasury for 2008-11.
- 100** The evaluation team conducts in-depth evaluations of discrete projects, develops frameworks to help project teams estimate impact at both the prioritisation and evaluation stages, and commissions research into wider issues related to the impact of the OFT. Over time the team aims to embed the majority of the project specific impact estimation work within project teams.
- 101** Major evaluations of OFT's work are undertaken. On the consumer-side recent evaluations have included: the usage and efficacy of the Consumer Direct Database for Trading Standards; the Consumer Codes Approval Scheme; and the Enterprise Act training for Trading Standards and the impact of OFT's scams prevention work (box below). Under the Annual Plan 2008-09, OFT is to evaluate and publish the impact of at least three market interventions and evaluate the specific impact of a consumer campaign.

### **Case example – The impact of OFT’s scams prevention work**

The OFT estimated that consumers have saved £18 million from the direct interventions of the Scambusters team, in roughly the first two years of its existence.

The OFT considers that this is very likely to be a conservative estimate of consumer savings as it excludes the impact of its Scams consumer warnings and coordination with other key service providers (such as postal operators) to disrupt scammers’ route-to-market. It is continuing to develop their methodology for measuring its scams work.

### **The OFT-Trading Standards Programme of Joint Action gave their relationship a new focus and the next step, Plan for Partnership, aims to build on this. OFT and Trading Standards recognise the need for, and are working to achieve, clarity as to the future direction of the relationship**

- 102** The OFT’s relationship with Trading Standards is important from a Hampton perspective because, whilst they share the aim of protecting consumers, the OFT does not have a field force of inspectors as such, and it must work in partnership with Trading Standards to achieve its aims.
- 103** In December 2005, the OFT took on a new role of champion and regulatory leader of Trading Standards as outlined in the Government’s December 2005 Pre-Budget Report.<sup>50</sup> The OFT conducted an extensive consultation with Trading Standards and launched a Programme of Joint Action (PJA) in June 2006 for delivery by March 2008, and led by a joint board of interested

parties. OFT also appointed 5 partnership managers to liaise with the 11 Trading Standards nations and regions. A progress report on delivery against the PJA as at October 2007 is set out at Appendix 4.

- 104** The programme has had successes, for example in helping to raise the profile of Trading Standards within local authorities, and providing evidence to persuade the Rogers Review<sup>51</sup> to include “fair trading” as a national enforcement priority for local authority regulatory services. OFT considers these have given a clear indication of what OFT’s championing role will involve. Nonetheless, OFT accepts there is much work still to do.
- 105** From several meetings the review team had with Trading Standards heads of service and officers, we gained a clear impression that expectations across the Trading Standards had been raised early on, in part due to extensive consultation by OFT and significant senior level engagement with Trading Standards. However, they subsequently perceive that OFT has lost some of that initial interest and are critical of an apparent lack of leadership, and do not feel that OFT is acting as an effective champion of Trading Standards. Although OFT does not accept this, it does agree that it could do more to discuss and agree with key stakeholders what the role of ‘champion’ actually means. OFT also accepts that it could do more to communicate the work it is doing with and on behalf of Trading Standards, both to clarify the role and to manage expectations about what is achievable with limited resources. The need to enhance the profile of the OFT-Trading Standards relationship within OFT’s strategic thinking has been recognised and will be addressed through moving OFT’s Trading Standards

<sup>50</sup> OFT Annual Report 2006-07, (page 33).

<sup>51</sup> The Rogers Review recommendations – to set the national enforcement priorities for local regulatory services – were accepted in full by the Government on publication as part of the March 2007 budget.

partnership team to the group within OFT which is responsible for the overall direction and planning.

- 106** The OFT also accepts that it and Trading Standards have not yet agreed and communicated a clear vision of what they seek to achieve as a whole through this relationship. They are in the process of addressing this. The joint board provides a mechanism not only to oversee the programme itself but also to consider the future direction of the OFT's relationship with Trading Standards. OFT is now in the early stages of developing a "programme for partnership" building on the PJA. Under this the OFT has committed in its Annual Plan 2008-09 to:
- agree a partnership framework with Trading Standards;
  - devise a robust methodology for assessing the impact of the work of Trading Standards and complete the first national assessment of their economic impact; and
  - continue to establish the joint OFT-Trading Standards regional intelligence network and support it with an IT-based intelligence system, subject to a robust evaluation of the benefits of doing so.

- 107** However, OFT considers that its role of leading and championing Trading Standards needs to be seen in context. It is mentioned in one of 20 performance indicators supporting the agreed objectives in OFT's performance framework agreement with the Treasury:

*"Deliver and extend the joint implementation plan with LA TSS (Trading Standards). Demonstrate a more consistent, better-coordinated service delivery, and a more risk-based approach, leading to reduction in the administrative burdens placed on businesses, promotion of the well-being of local communities, and improved economic productivity and efficiency."*

- 108** OFT has a wide range of statutory functions and OFT points out that these functions do not include any duty to lead and champion the Trading Standards, or even an express power to do so. OFT is seeking to achieve the right balance between taking forward this important new policy objective and achieving maximum impact through targeted use of the whole range of its powers.



## Appendix 1: Review team membership

**Peter Andrews**, Head of Economics of Financial Regulation Department, Financial Services Authority. Peter studied law and economics and is a chartered accountant. He worked in banking before becoming a regulator. He has been involved in the economics of financial regulation since 1995.

**Karen Hill**, Director Regulatory Services, Better Regulation Executive, Department for Business, Enterprise and Regulatory Reform. Karen is responsible for implementing the Government's agenda to rationalise enforcement and inspection, by both national and local government regulators. She has worked on regulatory reform for 5 years, including leading the measurement of administrative burdens of regulation and embedding the use of Impact Assessments in the policy-making process. Prior to that, Karen has worked in a number of public service areas, including business and financial planning, operational delivery and improving government's commercial activities through, for example, promoting good practice in procurement and effective project management.

**Graham Jukes**, Chief Executive, Chartered Institute of Environmental Health (CIEH).

Graham is a Chartered Environmental Health Practitioner, a fellow of the Institute and of the faculty of public health and leads the governing, educational and professional body in England, Wales and Northern Ireland, for environmental health practitioners. Over the past 20 years he has worked closely with national and international governmental organisations on the development of policies that impact on health. Prior to his appointment to the CIEH he was the Assistant Chief Environmental Health Officer for the London Borough of Tower Hamlets, responsible for Environmental Health Policy delivery for a population of 350,000 people.

**Peter Langham**, National Audit Office regulation and competition practice specialist. Peter has undertaken value for money reviews of most of the UK's economic and financial regulators. He was project manager on the NAO's 2005 report on the OFT: "Enforcing competition in markets" and will also be leading the NAO's forthcoming study on OFT in 2008. Last year he was a principal member of the NAO team that was invited by HM Treasury for the first time to review the Financial Services Authority. He is a qualified accountant.



## Appendix 2: Conclusions of the Hampton and Macrory reviews

### Hampton principles of inspection and enforcement

- Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most
- No inspection should take place without a reason
- Regulators should provide authoritative, accessible advice easily and cheaply
- All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all interested parties should be consulted when they are being drafted
- Businesses should not have to give unnecessary information, nor give the same piece of information twice
- The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions
- Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection
- Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take
- Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work
- When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed

Source: Hampton Report, Box E2 page 7

## Macrory's principles and characteristics of an appropriate sanctioning regime

### A sanction should:

1. Aim to change the behaviour of the offender;
2. Aim to eliminate any financial gain or benefit from non-compliance;
3. Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
4. Be proportionate to the nature of the offence and the harm caused;
5. Aim to restore the harm caused by regulatory non-compliance, where appropriate; and
6. Aim to deter future non-compliance.

### Regulators should:

1. Publish an enforcement policy;
2. Measure outcomes not just outputs;
3. Justify their choice of enforcement actions year on year to stakeholders, Ministers and Parliament;
4. Follow up enforcement actions where appropriate;
5. Enforce in a transparent manner;
6. Be transparent in the way in which they apply and determine administrative penalties; and
7. Avoid perverse incentives that might influence the choice of sanctioning response.

Source: Macrory Report, Box E1 page 10

## Appendix 3: Review scope and methodology

The OFT is both a competition authority and a consumer protection agency. These are distinct roles although ones that can be reconciled in the OFT's aim which is to make markets work well for consumers.

The National Audit Office (NAO) did a value for money study two years ago on the OFT's enforcement of competition law which looked in depth at this area of their work. The study looked at most, if not all, of the aspects that are covered by the Hampton guidance and vision. At the hearing on the NAO's report, the Chair of the Public Accounts Committee asked that the NAO do a follow up study of the OFT's competition work in 2-3 years. The NAO's future programme of value for money studies includes an OFT follow up. In view of the NAO's significant past and on-going interest in the competition side of the OFT's work, the review team decided that the Hampton Review of the OFT should concentrate on their other functions.

Following discussions with OFT on the scope of the review, we identified several areas that we proposed the review should cover which had a Hampton dimension(s). In some cases these are not discrete topics and overlap with more than one of the other topic areas. The topics covered include:

- Consumer credit licensing;
- Consumer codes approval scheme;
- OFT's role and relationship with Trading Standards;
- Consumer protection enforcement (in particular in relation to Macrory powers);
- Strategic prioritisation approach;
- Evaluation and impacts measurement;
- Local Authority Approved Trading Standards Network;
- Estate agents 'negative' licensing regime;
- Anti-Money Laundering (estate agents & consumer credit);

- Consumer Direct (in particular the OFT's use of the collection of intelligence);
- Business communication.

Our methods included:

- interviews with a wide range of OFT staff including senior managers;
- interviews with other stakeholders including consumer credit trade bodies, BERR officials, CBI Consumer Panel, consumer bodies and Trading Standards professionals;
- focus groups of local authority heads of trading standards service, trade bodies and businesses, and OFT credit licensing officials; and
- document review – as well as looking at the OFT's high-level strategies, corporate documents and website, we considered a range of more detailed policy and procedural documents, published research, guidance documents etc.

The review process is described in Hampton Implementation Reviews: Guidance for Review Teams document (May 2007). It is not the same as a full value-for-money audit of economy, efficiency and effectiveness and the review team's conclusions are both evidence- and judgement-based. These judgements, however, have been made drawing on a range of evidence from different sources, including those described above. Judgements have not been based on evidence from a single source – the review team has sought evidence from a number of different businesses or organisations, and from OFT front-line staff, policy officials and senior managers.

The organisations that we spoke to included:

- ABTA The Travel Association
- Association of British Insurers
- British Association of Removers

- British Bankers Association
- British Cheque Cashers Association
- Citizens Advice
- Confederation of British Industry
- Consumer Credit Association UK
- Consumer Credit Trade Association
- Consumer Direct, Ealing
- Council of Mortgage Lenders
- Direct Selling Association
- Finance Industry Standards Association
- Finance & Leasing Association
- Local Authorities Coordinators of Regulatory Services
- Local Better Regulation Office
- Manchester Chamber of Commerce
- National Association of Estate Agents
- National Consumer Council
- Ombudsman for Estate Agents
- Royal Institution of Chartered Surveyors
- Safebuy
- The Society of Motor Manufacturers and Traders Limited
- Trading Standards Institute

A focus group discussion with a number of Trading Standards heads of service was held including:

- Barking & Dagenham
- Birmingham
- Cardiff
- Dundee
- Hammersmith and Fulham
- Hertfordshire
- Plymouth
- Powys
- West Yorkshire

We also spoke to the following local authorities:

- Cambridgeshire
- City of London
- Kent
- Oldham
- Northamptonshire
- Surrey
- Westminster

## Appendix 4: Programme of Joint Action

### Background

The OFT conducted an extensive consultation with Trading Standards to identify issues and needs of Trading Standards bringing together representatives of all affected parties – including almost 200 locally accountable Trading Standards. They set out a draft vision for the future of Trading Standards and OFT's role as champion and regulatory leader and launched a Programme of Joint Action (PJA) in June 2006 for delivery by March 2008. It is led by a board encompassing local authority elected members, Trading Standards heads of service, the TSI, LACORS, BERR and the Better Regulation Executive. The LBRO have also been involved in recent meetings. OFT also appointed 5 partnership managers to liaise with the 11 Trading Standards regions. A Baseline Survey was completed in February 2007.

A progress report on delivery against each of the PJA workstreams as at October 2007 is outlined below:

#### **Workstreams 1 & 3 – Raising the Profile of Trading Standards**

Work largely completed with the production of the local councillor's handbook, the toolkit for Trading Standards and a number of regional awareness-raising events with local councillors.

#### **Workstream 2 – Sustainability of Trading Standards**

This workstream covered recruitment, retention and career development of Trading Standards. Although initially wide-ranging, this workstream evolved to focus on the most important and achievable issues surrounding recruitment, development and training. Most of the work has involved working with other bodies to take a more proactive approach in addressing these issues. This workstream is nearing completion.

#### **Workstream 4 – Knowledge management and Regional Intelligence Network**

Originally separate from the PJA, the Regional Intelligence Network has been developing slowly, because of lack of an effective IT system and uncertainty over future funding. A knowledge management strategy is a key output due in December 2007.

#### **Workstream 5 – Consumer Intervention Services**

Through consultation a Trading Standards vision for the provision of second tier advice and intervention services has been agreed. Further work on options for delivery has been postponed as the underlying problem is a resourcing one. Emphasis instead has been placed upon raising awareness among local councillors of the benefits of providing these services.

#### **Workstream 6 – Good Practice**

OFT has worked with LACORS to develop their website as a mechanism for establishing what constitutes good practice and disseminating it to Trading Standards.

#### **Workstream 7 – Funding**

This workstream is intended to develop basic tools and guidance for Trading Standards on how to go about bidding for funds. Work has been deferred until 2008-09 due to resource constraints.







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