

The Office of Fair Trading: Protecting the Consumer from Unfair Trading Practices



Report by the
Comptroller and Auditor General

**The Office of Fair
Trading:
Protecting the
Consumer from
Unfair Trading
Practices**

Ordered by the
House of Commons
to be printed 2 December 1999

This report has been prepared under Section 6 of the National Audit Act 1983 for presentation to the House of Commons in accordance with Section 9 of the Act.

John Bourn
Comptroller and Auditor General

National Audit Office
25 November 1999

The Comptroller and Auditor General is the head of the National Audit Office employing some 750 staff. He, and the National Audit Office, are totally independent of Government. He certifies the accounts of all Government departments and a wide range of other public sector bodies; and he has statutory authority to report to Parliament on the economy, efficiency and effectiveness with which departments and other bodies have used their resources.

For further information about the National Audit Office please contact:

National Audit Office
Press Office
157-197 Buckingham Palace Road
Victoria
London
SW1W 9SP

Tel: 0171-798 7400

email: nao@gtnet.gov.uk

Web site address: <http://www.open.gov.uk/nao/home.htm>

Contents

Executive summary	1
<hr/>	
Part 1: The Office of Fair Trading are responsible for protecting the consumer from unfair trading practices	12
Local authority trading standards services provide most of the evidence on which the OFT act to combat unfair trading	14
The Government plan to change the responsibilities of the OFT and the trading standards service	17
We examined how successful the OFT are at protecting the consumer	19
<hr/>	
Part 2: The OFT are doing more to help consumers to look after their own interests and to encourage traders to act responsibly	22
The OFT publish high quality information for consumers	23
The OFT are seeking to target their information more accurately, but because of the scale of their information campaigns the impact has so far been limited	26
The OFT aim to do more to encourage and help traders to behave responsibly through improving trade associations' codes of practice	28
The OFT have combated specific unfair practices by issuing guidelines backed by the threat of revoking traders' consumer credit licences	29
The OFT need to do more to ensure that consumer credit licence holders are aware of the standards of behaviour expected of them	31
<hr/>	
Part 3: The OFT could do more to combat unfair trading practices	35
The OFT need to do more to ensure that consumer credit licences are held only by those fit to do so	36
Refusing or revoking a trader's consumer credit licence is a powerful sanction	38
Few consumer credit licences are refused or revoked, but many more traders withdraw their applications following queries from the OFT	41
The OFT do not always obtain in good time information relevant to traders' fitness to hold a licence	43
The OFT are not working as effectively as they could with trading standards services	45
The OFT are considering doing more to ensure that consumer credit licences are held only by those fit to do so	49
The OFT's action to combat unfair consumer contracts has secured large savings for consumers but greater savings are possible	51

Action against traders under Part III of the Fair Trading Act 1973 takes too long and is ineffective	57
--	----

Appendices

Appendix 1: Study Methods	62
Appendix 2: Key issues for Central Government identified by the Audit Commission	66
Appendix 3: The OFT's Consumer Advice Leaflets	68
Appendix 4: Codes of Practice Supported by the OFT	69

Recommendations to the Office of Fair Trading

- (1) The OFT should continue to develop closer working relations with trading standards services and other regulators to encourage a consistent approach and foster a greater understanding of each other's roles and priorities.**
- (2) The OFT should continue to experiment with and evaluate different approaches to delivering information to consumers.**
- (3) The OFT need to continue to work closely with the business community to foster improved codes of behaviour and to make clear to traders what practices the OFT regard as unacceptable.**
- (4) The OFT should pursue opportunities provided by modern technology to gather better and more timely information to ensure that consumer credit licences are held only by those fit to do so.**
- (5) The OFT need to monitor how quickly they take regulatory action and take measures to speed this up wherever possible.**

Executive summary

This Report examines how well the Office of Fair Trading (OFT) protect consumers from unfair trading practices

1 There are 25 million households in the United Kingdom and domestic consumer spending runs at over £400 billion a year. Competition provides powerful incentives for businesses to offer the consumer a good service at a keen price. But even in the most competitive markets the consumer can suffer harm, through lacking the information needed to make informed decisions, lacking the ability to assimilate such information, or through falling victim to negligent or dishonest traders or unfair selling practices.

The OFT aim to enforce competition policy and protect the consumer from unfair trading practices.

2 The Office of Fair Trading (OFT) are a regulatory body responsible for:

- enforcing United Kingdom competition policy;
- enforcing certain aspects of consumer legislation, such as licensing traders who wish to offer credit, combating unfair terms in consumer contracts and acting against traders who persistently infringe consumers' statutory rights.

They work in concert with local authority trading standards services and other bodies.

3 The OFT work closely with 200 local authority trading standards services, other regulators, other government departments and consumer organisations. The OFT employ around 180 staff on consumer protection work and overall costs are £7 million a year. Of this, £5 million is spent on consumer credit licensing, which is recovered from businesses through licence fees. The 200 trading standards services employ some 4,400 staff and running costs are £140 million (Figure 1 overleaf).

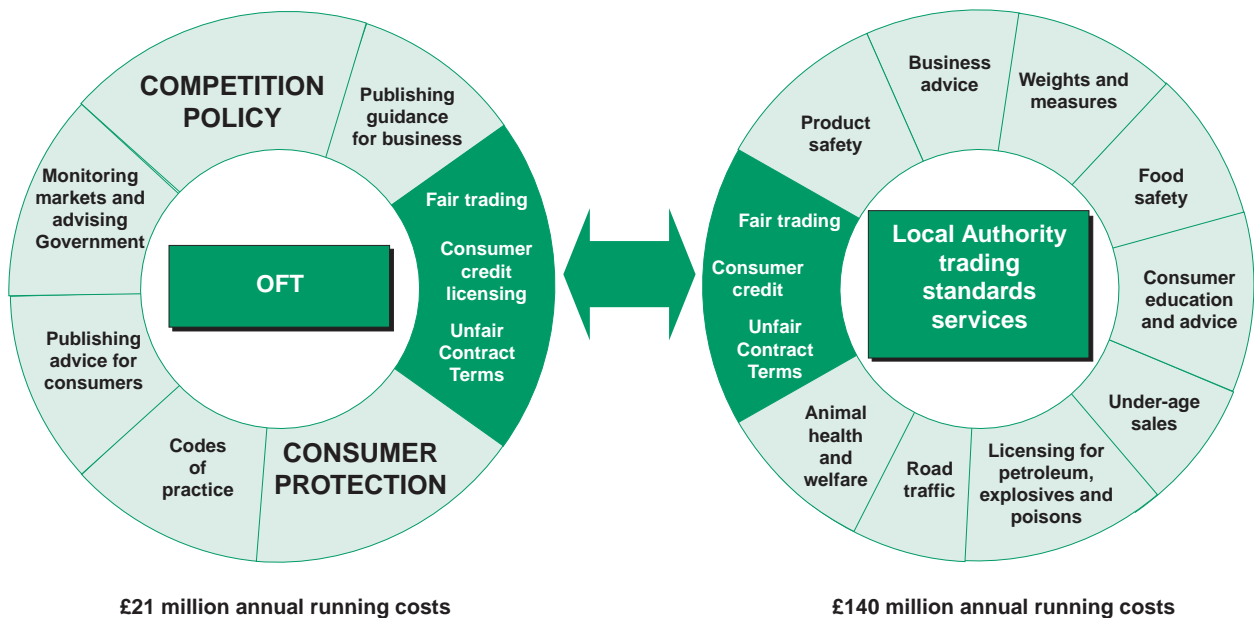
We examined how successful the OFT are at protecting the consumer.

4 In this Report we examine how successful the OFT are at protecting the consumer, drawing out recommendations designed to assist them in further developing their effectiveness. We looked at the OFT's work in publishing advice for consumers and business, and their work on consumer credit licensing, on unfair contract terms, and under Part III of the Fair Trading Act 1973. We also looked at how the OFT and trading standards services have worked together, and with what results. Our recommendations are informed by surveys we have commissioned of consumers and their representative bodies, used car dealers,

and trading standards services. We have worked closely with the Audit Commission on this study and they are publishing a separate report focusing on the complementary role of trading standards services¹.

Figure 1 The work of the OFT and local authority trading standards services

This Figure shows that the OFT and local authorities need to work together to combat unfair trading practices and regulate consumer credit. The OFT also work closely with other regulators, other government departments and consumer organisations.



Note: The OFT's annual running costs are for their activities in the United Kingdom. The costs of the trading standards services are for Great Britain.

Improving regulation and enforcement is an important element of the Modernising Government agenda.

- 5** Our examination was conducted against the background of:
 - the White Paper, *Modernising government*, published in March 1999 (Cm 4310), which emphasised that “regulations should be necessary, fair, effective, balanced and enjoy a broad degree of public support. The primary function of central and local government enforcement work is to protect the public, the environment and groups such as workers. But at the same time, we need to ensure that enforcement functions are carried out in an equitable, practical and consistent manner in order to promote a thriving national and local economy.”

¹ *Measure for Measure: The Best Value Agenda for Trading Standards Services* (Audit Commission, December 1999).

- the annual report of the Better Regulation Task Force, published in September 1999, which stressed that: “As far as possible, enforcers should help people to comply, as opposed to penalising them for non-compliance. Businesses perceive that, too often, those who want to comply are subjected to excessive scrutiny, whilst those who ignore their obligations avoid inspection altogether.”

We carried out our work and sought to frame our recommendations within this spirit.

The OFT aim to help consumers to look after their own interests and to encourage traders to act responsibly

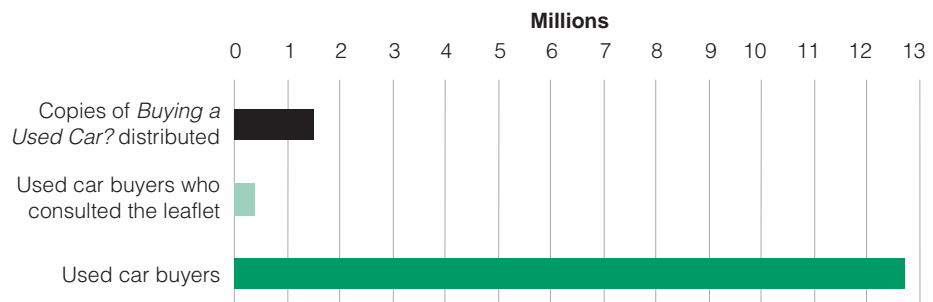
The OFT publish high quality information for consumers.

6 The OFT publish high quality leaflets for consumers. Some 95 per cent of respondents to our survey found the OFT’s *Buying A Used Car?* leaflet relevant and 97 per cent said that it was easy to understand. But the OFT recognise that getting information to people who want it and will use it when they need it poses an enormous challenge. Their *Buying A Used Car?* leaflet reached 380,000 people who bought a used car, equivalent to 25 per cent of the leaflets distributed, but only 3 per cent of the estimated 12.7 million people who bought a used car over the 18 months since the leaflet was published (Figure 2) (paragraphs 2.5 to 2.13).

A quarter of the OFT’s *Buying A Used Car?* leaflets reached people who had bought a used car in the 18 months to March 1999

Figure 2

This Figure shows that of 1.5 million copies of the leaflet distributed in the 18 months to March 1999, 0.38 million reached used car buyers. The figure also shows that this was a small proportion of the nearly 13 million people who bought a used car during the period.



Source: OFT and NAO/MORI survey

The OFT aim to encourage and help traders to behave responsibly through improving trade associations' codes of practice.

7 The OFT have a duty under the Fair Trading Act 1973 to encourage trade associations to adopt codes of practice and have given formal support to over 30 codes. The OFT believe, however, that these voluntary codes could be improved and extended to set higher standards and improve compliance and redress arrangements. The Government have announced that they intend to give the OFT new powers to approve and monitor codes of practice which give consumers more effective protection based on core principles set out by the Government (paragraphs 2.14 to 2.16).

Many businesses require a consumer credit licence, the loss of which would usually put the trader out of business.

8 The OFT are the sole body entitled to issue traders with a consumer credit licence. Anyone who runs a consumer credit or hire business as defined in the Consumer Credit Act 1974 must hold a consumer credit licence. Many retailers, most motor traders, and all high street banks, mortgage brokers, debt collectors if they collect consumer credit debts need a licence, and there are currently some 150,000 active licences. The licensing system is intended to protect consumers and maintain their confidence in the industry, and the system continues to enjoy wide industry support. Revoking a trader's consumer credit licence is a serious sanction: for many traders, losing their consumer credit licence would put them out of business (paragraphs 3.3, 3.5 and 3.11).

The OFT have combated specific unfair practices by issuing guidelines backed by the threat of revoking traders' consumer credit licences...

9 The OFT have published tailored guidelines designed to combat specific unfair practices, backed by the threat that traders may lose their credit licence if they do not comply. In 1997, the OFT used this approach to address problems in that section of the credit market that lend to borrowers with poor credit ratings. The OFT intend to take a similar approach to combat unfair business practices in the used car market. As a first step, they published in March 1999 an illustrative list of unfair practices that might cost used car traders their consumer credit licence (paragraphs 2.17 and 2.18).

...but they need to do more to ensure that consumer credit licence holders are aware of the standards of behaviour expected of them.

10 We found, however, that some used car traders still believe, incorrectly, that they can lose their licence only if they are convicted of an offence. The OFT issue general guidance on the Consumer Credit Act to all those who request a licence application form. The guidance does not, however, set out the basic standards of behaviour expected of licence holders (paragraph 2.20).

The OFT could do more to combat unfair trading practices

The OFT need to do more to ensure that consumer credit licences are held only by those fit to do so.

11 In deciding whether a trader is fit to hold a consumer credit licence, the Director General of Fair Trading, the head of the OFT, can consider any factors appearing to him to be relevant, and in particular any evidence that the applicant or their present or past associates have (i) committed any offence involving fraud or other dishonesty, or violence; (ii) contravened any legislation regulating the provision of credit to individuals or other transactions with individuals; (iii) engaged in deceitful, oppressive, unfair or improper business practices, whether unlawful or not, or (iv) practised sexual or racial discrimination in the course of business. The OFT carry out various checks against the first three criteria but did not undertake any checks as to whether or not applicants have a history of sexual or racial discrimination in the course of business. The OFT are now introducing such checks (paragraphs 3.6 and 3.14).

12 In practice few consumer credit licences are refused or revoked. In 1998–99 the OFT refused 15 of 21,200 applications for a licence (Figure 3 overleaf) and one of 10,000 renewal applications. They revoked 18 of an estimated 150,000 active licences. Nearly 800 traders who applied for a licence withdrew their applications or allowed them to lapse after queries from the OFT. In addition, the OFT warned over 300 applicants and licensees about their conduct, and some traders were required to sign undertakings about their future conduct (paragraph 3.12).

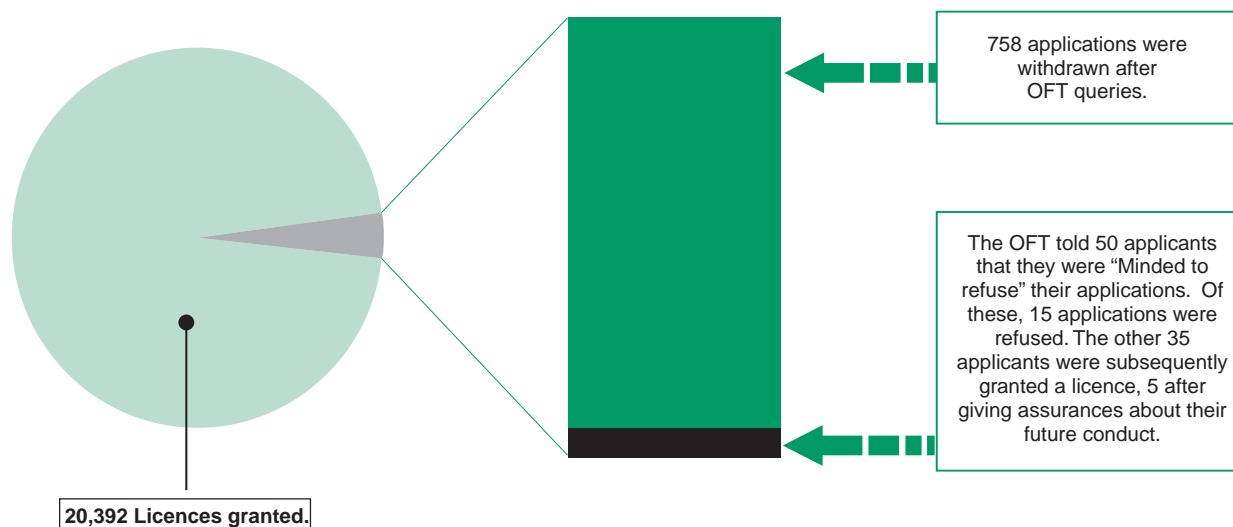
13 The OFT do not always have complete or timely information on behaviour that could cast doubt on traders' fitness to hold a licence. As a result, some traders obtain or continue to hold a consumer credit licence despite behaviour that could call their fitness to hold a licence into question. The OFT have particular problems in obtaining complete and timely information on convictions for fraud or other dishonesty, or violence, since there is no mechanism which ensures that details of all convictions will be passed to the OFT (paragraphs 3.16 to 3.19).

14 Local authority trading standards services are the most important source of evidence casting doubt on whether a trader is fit to hold a consumer credit licence, although information also comes from other sources. Most trading standards services told us that they would always refer evidence of trader unfitness to the OFT. Nevertheless, the number of cases referred to the OFT by trading standards services fell from 469 cases in 1995–96 to 325 in 1998–99. This has led to a fall in the number of licensees investigated by the OFT, the number of warnings the OFT have issued, and the number of licences revoked. These trends have occurred against a background of rising complaints by consumers and local government re-organisation (paragraphs 3.20 to 3.21).

Figure 3

The results of the OFT's action on the 21,200 new applications for a Consumer Credit Licence in 1998–99

This Figure shows that only a few new applications for a consumer credit licence were refused, but many more were withdrawn, sometimes following queries from the OFT.



Note: In 1998–99, the OFT also processed 10,000 renewals applications and 6,500 applications to vary the conditions of existing licences. During the year, they also warned 327 applicants and licence holders.

Source: OFT

15 Forty-eight trading standards services told us they do not automatically refer their suspicions about licence holders to the OFT. Forty-three of these said that this was because it takes too long to secure a satisfactory outcome. Action by the OFT to refuse or revoke a licence can indeed be a lengthy process. The OFT often need to work with trading standards services to obtain further evidence, and seek evidence from other sources including the courts. In considering traders' fitness to hold a licence, the OFT's adjudicators have to work to strict procedural standards and are subject to the supervision of the Council of Tribunals. The OFT are seeking to work more effectively with trading standards services by fostering closer working relations and making service level agreements with individual authorities (paragraphs 3.22 to 3.25).

16 The OFT would like to make better use of information technology to improve their checking of traders' fitness to hold a licence. The computer system they use to handle applications is outdated and this restricts the checks that they can carry out cost effectively. They had planned to replace their computer system, but implementing a new system was suspended in 1998, mainly on cost grounds. The OFT have also identified a number of other measures that could deliver cost-effective improvements in checking (paragraphs 3.27 to 3.33).

The OFT's action to combat unfair consumer contracts has secured savings for consumers at least fourteen times the cost of OFT's consumer protection work but greater savings are possible.

17 After consumer credit licensing, the OFT's second largest area of consumer affairs work is enforcing the Unfair Terms in Consumer Contracts Regulations. A standard contract term is unfair if it unduly favours the seller or supplier over the consumer and has the potential to harm consumers. The OFT can obtain a court injunction to stop the use of unfair contract terms. In practice the OFT work with businesses and trade associations to secure compliance with the Regulations. Persuasion has been successful: consumers benefited by over £100 million from the OFT's work in 1998 to combat unfair contracts (paragraphs 3.34 to 3.39).

18 Most businesses want to comply with their obligations and, since the Unfair Contracts Regulations came into force in 1995, the OFT have concentrated on explaining to businesses how the Regulations apply and helping them to comply. For example, they publish regular Bulletins that include examples of terms they consider unfair alongside revised versions they have negotiated with businesses. This is intended to help businesses and their legal advisers understand how the OFT view and interpret the law (paragraph 3.37).

19 Negotiations with companies to bring contracts into line with the Regulations can, however, be a lengthy process. Cases typically take around nine months to complete, although some take much longer. Of the 788 unfair contracts cases that the OFT had on hand at the end of May 1999, 96 (12 per cent) had been open for two years or more. Some of these cases, however, related to similar terms in use across whole business sectors, and the OFT had delayed action on individual complaints to deal with as many traders as possible together, often working closely with trade associations. For example, 48 of the 96 cases related to package holiday contracts, and in most cases negotiations with the company concerned had been active for less than a year. The OFT have increased the number of staff on this work to deal with a growing number of complaints about contracts and a mounting number of cases on hand (paragraphs 3.41 to 3.46).

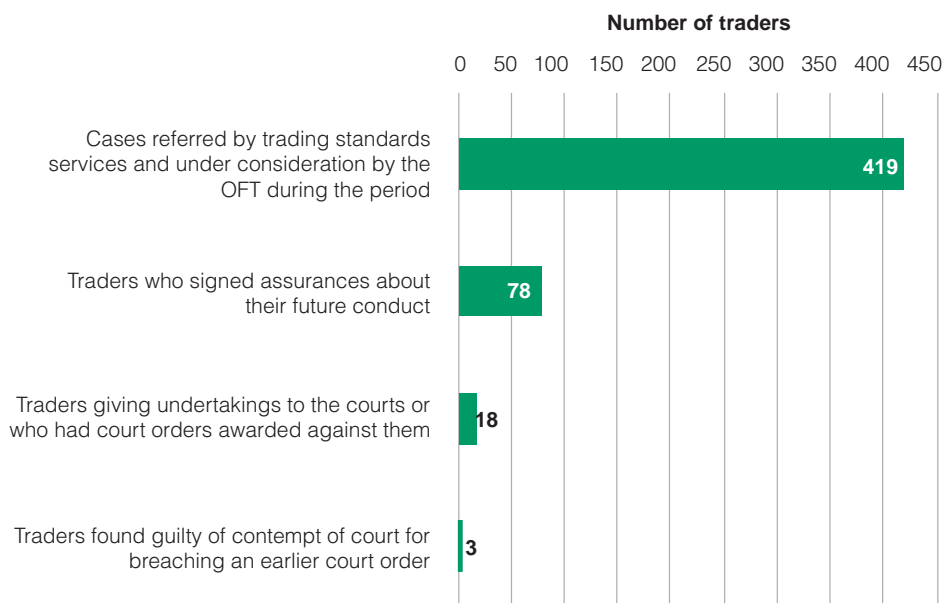
Action against traders with a history of flouting consumers' statutory rights takes too long and is ineffective.

20 Part III of the Fair Trading Act 1973 is intended to stop traders who persist in breaching consumers' statutory rights. Over the last five years the OFT have acted against 96 traders under the Act (Figure 4 overleaf). Such actions usually take well over a year. Some take much longer. Legal requirements make action under the Act a lengthy process: the OFT must be able to prove to the courts that traders have *persisted* in breaching the law; and the OFT must show to the courts that they have used their *best endeavours* to obtain signed assurances from traders that they will stop infringing consumers' statutory rights. Some traders take advantage of the latter by stalling for time, dragging out correspondence, delaying replies or even not replying at all (paragraphs 3.47 to 3.51).

The OFT's action under Part III of the Fair Trading Act 1973, during 1994 to 1998

Figure 4

This Figure shows that between 1994 and 1998 the OFT considered 419 cases under Part III of the Fair Trading Act.



Note: During 1994 to 1998 the OFT acted against 96 traders under Part III of the Fair Trading Act. Of the 18 traders giving undertakings to the court or who had a court order awarded against them, one had breached an assurance signed in 1994. Of three traders found guilty of contempt, two had court orders awarded against them since 1994, which are also included in the figure.

Source: OFT

21 Local authority trading standards services gather the necessary evidence for the OFT to act under the legislation. Forty-eight trading standards services who responded to our questionnaire told us that they did not notify the OFT about the *last* trader they identified where they believed action by the OFT under the Fair Trading Act might have been appropriate. Of these, 39 said that this was because it takes too long to secure a satisfactory outcome (paragraphs 3.53 and 3.54).

The Government plan new legislation to allow faster and more effective action to combat unfair trading practices.

22 Since 1986, the OFT have argued for reform of Part III of the Fair Trading Act 1973 (for example, see Figure 5 opposite).

The OFT have argued that the law intended to stop traders who persistently flout their legal obligations is not working well.

Figure 5

“Despite its laudable objective, the present law is inadequate and does not deal with those who continuously deceive consumers or take advantage of ignorance, inexperience or trust.”

“There is a pressing need for radical reform to make the provisions effective and meet the need for rapid action and effective enforcement.”

From *Consumer Affairs: The Way Forward – A Consumer Strategy for the Office of Fair Trading* (OFT, September 1998).

The OFT are working with other enforcement bodies to ensure a consistent approach.

23 The Government have accepted the arguments of the OFT and others that the legislation should be replaced. The Government intend to legislate to give powers to both the OFT and the trading standards service to seek injunctions from the courts to stop specific practices by specified traders, and to ban from trading for a stated period traders with a history of disregarding their legal obligations. This is intended to allow faster and more effective action against such traders (paragraphs 3.57 and 3.58).

24 From October 1999 local authorities, statutory regulators and the Consumers’ Association were given concurrent powers with the OFT to seek injunctions to prevent businesses using unfair terms in consumer contracts. In addition to their enforcement role, the OFT have taken on an advisory role and are working with the other bodies to foster a consistent approach. Furthermore, in July 1999, the Government announced a fundamental review of the OFT’s consumer affairs functions. The review, which is being led by the Director General of Fair Trading, should be completed early in 2000. The Government has also announced a review, to be led by the Department of Trade and Industry, of the consumer credit licensing system (paragraphs 1.10 to 1.12).

Recommendations

Continued development of closer working relationships with trading standards services and other regulators

- (1) The OFT should continue to develop closer working relations with trading standards services and other regulators to encourage a consistent approach and foster a greater understanding of each other’s roles and priorities**

An important theme arising from our examination is the joined-up working necessary between the OFT and trading standards services in acting against traders who engage in unfair trading practices. The OFT work closely with trading standards services and other regulators to share good practice and foster a consistent approach, for example through their Excellence in Trading Standards Awards Scheme. The OFT are looking further at how they work with trading

standards services and other regulators in the fundamental review of their consumer affairs functions. But local practice in referring information to the OFT varies. The OFT need to consider giving – through extending their guidance and service level agreements – a stronger steer to local authority trading standards services on what the OFT expect from them and what they can expect from the OFT in return. We note that the Audit Commission, in their review of trading standards services, have similarly recommended that the Government could assist local authorities by providing consolidated advice and guidance that set out their expectations of trading standards services.

Better evaluation of the impact of consumer information

(2) The OFT should continue to experiment with and evaluate different approaches to delivering information to consumers

The OFT recognise that, to be effective, information should reach those consumers who need it when they need it. The OFT produce a range of useful leaflets informing consumers of their rights and how to avoid common problems. But they need to do more to evaluate the impact of their information campaigns to concentrate on making the limited resources at their disposal go further. They should continue to use the latest marketing techniques – involving the appropriate use of the various media available – to ensure that they reach consumers at the right time.

Better information and advice for businesses

(3) The OFT need to continue to work closely with the business community to foster improved codes of behaviour and to make clear to traders what practices the OFT regard as unacceptable

The Government intend to give the OFT new powers to approve industry codes of practice. The OFT have produced guidelines for some sectors on the standards of behaviour expected of licence holders. On the evidence of the used car trade, however, there are likely to be widespread misconceptions among businesses as to the trading practices that the OFT regard as unfair to the consumer. The OFT need to increase awareness among traders of their responsibilities and the factors that might lead the OFT to act against them. In particular, they should consider giving traders who apply for a consumer credit licence a clear statement of the standards of behaviour expected of them. They should also consider providing this information to existing licence holders.

Improved checking of traders' fitness to hold a consumer credit licence

(4) The OFT should pursue opportunities provided by modern technology to gather better and more timely information to ensure that consumer credit licences are held only by those fit to do so

To become more effective the OFT need to gather better and more timely information on traders' fitness to hold a consumer credit licence. The OFT are reviewing how far the law restricts their access to information on individual traders held by other public bodies and whether the latest information technology could enable them to obtain better and speedier information on traders' fitness to hold a consumer credit licence.

*Speedier action to
combat unfair practices*

(5) The OFT need to monitor how quickly they take regulatory action and take measures to speed this up wherever possible

It is essential that the OFT handle casework expeditiously. This is necessary to command the confidence of consumers and ensure that practices that are unfair to them are quickly stopped; to deter the minority of traders who are dishonest; and to encourage trading standards services to refer evidence to the OFT. The Government plan new legislation to enable faster action to combat unfair practices. The OFT lack regular, up to date information on how long they take to act, although such information can be extracted manually. They aim to update their management information systems early in 2000 to provide this information, which would enable them to pinpoint more readily areas where regulatory action could be speeded up.

Part 1: The Office of Fair Trading are responsible for protecting the consumer from unfair trading practices

The OFT have some 400 staff and running costs of £21 million.

1.1 The post of Director General of Fair Trading was established in 1973 to protect the economic welfare of consumers and to enforce United Kingdom competition policy. The Director General has a large measure of autonomy and heads the Office of Fair Trading (OFT), a non-ministerial Government Department. The Office is made up of a Consumer Affairs Division that helps the Director General discharge his consumer protection responsibilities, a Competition Policy Division, and legal, publicity and administrative support services.

We examined how successful the OFT are at protecting the consumer.

1.2 This part of the Report sets out:

- a) how the OFT seek to protect the consumer from unfair trading practices;
- b) the role of local authority trading standards services in providing most of the evidence on which the OFT act to combat unfair trading;
- c) the Government's plans to change the responsibilities of the OFT and the trading standards service;
- d) our approach to examining how successful the OFT are at protecting the consumer.

The OFT seek to protect the consumer from unfair trading practices

As a consumer protection authority, the OFT are a publisher of information and a regulator.

1.3 The OFT's role in protecting consumers is set out principally in the Consumer Credit Act 1974, the Unfair Terms in Consumer Contracts Regulations 1999, and the Fair Trading Act 1973 (Figure 6 opposite). Under this legislation, the OFT seek to protect consumers by:

- publishing advice for consumers;
- publishing guidance for business and publicising regulatory action;

- licensing traders who wish to carry on a consumer credit, consumer hire or ancillary business;
- enforcing consumer laws, notably those to combat unfair contract terms and stop traders who persist in flouting their legal obligations.

Figure 6

How the OFT seek to protect consumers

The OFT aim to	The OFT seek to protect the consumer by	The OFT's costs in 1998–99
Empower consumers through information and redress	Publishing advice on how to avoid problems when buying goods and services and information on consumers' statutory rights.	} £1m
	Encouraging trade associations to develop codes of practice to include arrangements whereby consumers can obtain redress.	
Promote competitive and responsive supply	Publishing guidelines for problem markets backed by warnings that traders may lose their consumer credit licences if they do not comply.	
	Publicising the results of their regulatory action to help to deter others from treating consumers unfairly.	
	Publishing information to help businesses comply with the Consumer Credit Act 1974 and Unfair Terms in Consumer Contracts Regulations 1994 and 1999 .	
Protect consumers by preventing abuse	Ensuring consumer credit licences are held only by those who are fit to do so under the Consumer Credit Act 1974 .	→ £5m
	Acting under the Unfair Terms in Consumer Contracts Regulations 1994 and 1999 to secure the removal of unfair standard terms from consumer contracts.	} £1m
	Acting under Part III of the Fair Trading Act 1973 to stop traders who persistently infringe consumers' rights.	
	Acting under the Control of Misleading Advertisements Regulations 1988 to stop the publication of misleading advertisements, where the Advertising Standards Authority does not do this.	
	Acting under the Estate Agents Act 1979 to stop people who are not fit to do so from acting as estate agents.	

The OFT spent £7 million on their consumer protection objectives in 1998–99, of which the cost of operating the consumer credit licensing system (£5 million) is recovered from licence applicants through fees and paid into the Consolidated Fund. The OFT also spent a further £2 million on keeping under review the provision of all goods and services, investigating areas of concern with a view to making recommendations to Government and industry, advising consumers directly or assisting regulatory intervention through the use of the OFT's own powers.

Source: OFT

The OFT employed around 180 staff, and spent some £7 million on this work in 1998–99. Of this, some £5 million was spent on consumer credit licensing, which is recovered through licence fees² and paid over to the Consolidated Fund. The OFT also enforces provisions of the Control of Misleading Advertisements Regulations 1988 and the Estate Agents Act 1979. This work is on a smaller scale and we did not examine the OFT's performance in these areas during our examination.

1.4 The OFT do not have powers to assist individual consumers who have disputes with traders. The OFT are legally required to consider complaints about unfair terms in consumer contracts but only where the contract is between a trader and a consumer. In their other areas of responsibility the OFT usually advise consumers who complain to them to contact their local authority trading standards service.

Local authority trading standards services provide most of the evidence on which the OFT act to combat unfair trading

Like the OFT, trading standards services have an important role in protecting consumers.

1.5 Local authority trading standards services have wide ranging responsibilities for consumer protection (Figure 7 opposite). They advise businesses, inspect markets and retail premises, and if necessary prosecute traders who endanger health, deceive the public or sell goods that put consumers' safety at risk. In England, County Councils, London Boroughs, Metropolitan Districts and Unitary Councils are responsible for providing trading standards services. In Scotland and Wales, this responsibility rests with Unitary Councils. There are almost 200 trading standards services in Great Britain with some 4,400 staff. Running costs in 1998–99 were some £140 million.

² Licence fees are £80 for an individual trader and £175 for companies.

Examples illustrating the range of local trading standards services' statutory responsibilities

Figure 7

Consumer credit ensuring that consumer credit is offered only by those licensed to do so by the OFT, and checking that credit advertisements are not misleading, and acting against other breaches of the Consumer Credit Act 1974.

Fair Trading preventing traders making false claims about products or services and ensuring a fair trading environment.

Weights and measures ensuring weighing and measuring equipment used for trade is accurate and preventing the sale of goods by short measure or weight.

Product safety ensuring goods are safe to prevent consumers from harm.

Food safety ensuring food is accurately labelled and described.

Animal health and welfare ensuring that livestock movements are recorded, to help prevent the spread of disease among farm animals, ensuring that animals are humanely treated during transport and sale and that their food is safe and properly labelled.

Licensing regulating the storage and sale of petroleum and explosives (though this may be dealt with by local fire authorities) and licensing retailers who sell poisons.

Under-age sales preventing the sale of age restricted products to under-age children.

Road traffic checking for overloaded vehicles and enforcing weight restrictions on bridges and roads.

Although not required to by statute, many authorities offer additional services including:

Business advice assisting businesses seeking information about their legislative duties and promoting compliance with trade regulations.

Consumer education educating consumers about their statutory rights.

Consumer advice assisting consumers who have bought substandard goods or services.

Source: Audit Commission

The OFT draw mainly upon evidence from trading standards services when licensing traders who wish to offer credit.

1.6 Trading standards services are an important source of evidence that the OFT draw upon when considering whether traders are fit to hold a consumer credit licence. The Fair Trading Act requires trading standards services to notify the OFT if they intend to prosecute traders under specific consumer protection legislation³. Under the Unfair Terms in Consumer Contracts Regulations 1999, trading standards services are obliged to give the Director General of Fair Trading 14 days' notice of an intention to seek an injunction against an unfair contract

3 The specific pieces of legislation are: the Trades Descriptions Act 1968, the Fair Trading Act 1973, the Consumer Credit Act 1974, the Estate Agents Act 1979, the Hallmarking Act 1973, the Consumer Protection Act 1987, the Property Misdescriptions Act 1991, the Package Travel Regulations 1992, and the Timeshare Act 1992.

term, and also to inform him of any court orders made. The OFT also ask that trading standards services notify them of any other evidence, such as complaints from consumers, that might be relevant to the OFT's consideration of a trader's fitness to hold a licence. Trading standards services are not, however, obliged to provide the OFT with such information.

The OFT's action to stop traders who persistently flout their legal obligations begins when trading standards services contact the OFT.

1.7 Part III of the Fair Trading Act 1973 enables the OFT to take to court traders who persistently infringe consumers' rights under civil or criminal law. Their involvement begins when trading standards services notify the OFT that they have evidence of concerns about a trader's behaviour. The law requires that proceedings under the 1973 Act can be brought only by the OFT. The OFT's officials work closely with trading standards services who, because they operate locally, are usually in the best position to obtain the necessary witness statements.

Local authority action is discretionary in important areas relevant to the OFT.

1.8 Local authorities set priorities in the light of local circumstances, and it is up to them to decide how far they pursue complaints from the public and whether they refer evidence to the OFT. Central government specifies the amount of enforcement work local authorities should carry out only in respect of food safety. The level of resources devoted to combating unfair trading varies greatly from one local authority to another (Figure 8 opposite).

1.9 The way that consumer legislation is framed divides the responsibility for enforcement between the OFT and local authority trading standard services. It is therefore important that the OFT should:

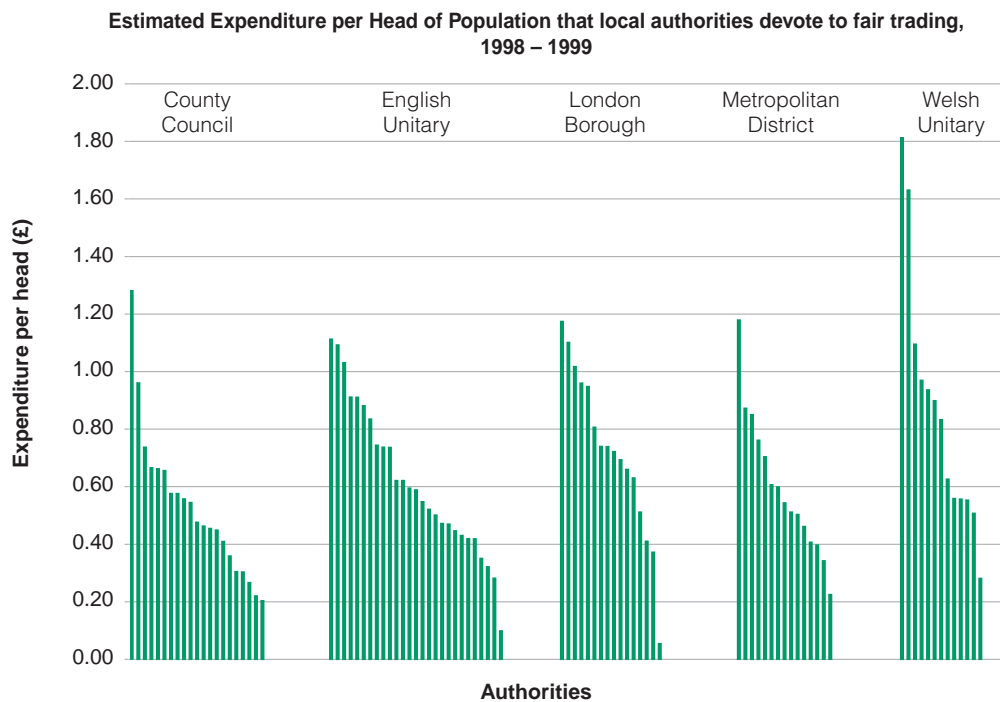
- liaise closely with trading standard services;
- do all they can to explain their work;
- seek to engender a common approach;
- regularly update trading standards services on the OFT's progress on cases referred to them.

But the OFT can only encourage and explain. They do not have powers to command trading standards services to undertake work on their behalf.

There are great variations in the resources local authorities devote to fair trading

Figure 8

This Figure shows that 1998–99 expenditure per head of population on fair trading varied greatly among local authorities. For example, among London Boroughs it varied between £0.05 and £1.18 per head.



Source: Audit Commission survey of trading standards services, 1999

Note: The Audit Commission sent questionnaires to 166 authorities in England and Wales in May 1999; 126 authorities responded. Not all authorities provided this data.

The Government plan to change the responsibilities of the OFT and the trading standards service

Trading standards services are to be given powers to act against traders who persist in flouting their legal obligations.

1.10 The Government’s White Paper *Modern Markets: Confident Consumers* (Cm 4410, 22 July 1999) noted that:

- “rogue traders” tend to operate at a local level, and powers to act against them should therefore be available to the trading standards service as well as the OFT;
- it takes too long to act against such traders under existing legislative provisions.

The Government intend to legislate to give powers to both the OFT and the trading standards service to seek injunctions from the courts to stop specific practices by specified traders, and to ban from trading for a stated period traders with a history of disregarding their legal obligations.

The Government are planning to review the objectives and powers of the OFT.

1.11 The White Paper announced a fundamental review of the OFT's consumer affairs work. This is being led by the Director General, and will cover the OFT's objectives and powers, resources, and liaison and co-ordination with other Government Departments, local authority trading standards services and regulators. The White Paper also announced that the Government will:

- a) review whether the resources the OFT devote to consumer credit licensing (which are recovered through licence fees and paid into the Consolidated Fund) could be targeted more effectively on dealing with abuse;
- b) give the OFT new powers to approve and monitor codes of practice that include arrangements for ensuring compliance by member companies and easy access to redress for consumers who experience problems.

Trading standards services and others have been given the same powers as the OFT to combat unfair contracts.

1.12 Under Regulations, which came into effect in October 1999, the trading standards service was given powers to combat unfair terms in consumer contracts. The Regulations also gave similar powers to a number of other bodies, including the statutory regulators of the utilities and the Consumers' Association⁴.

4 The full list of the bodies given powers under the 1999 Regulations are: the Data Protection Registrar, the Rail Regulator, the Department of Economic Development in Northern Ireland, the Directors General of Electricity Supply, Gas Supply, Electricity Supply in Northern Ireland, Gas Supply in Northern Ireland, Telecommunications, and Water Services, and the Consumers' Association.

We examined how successful the OFT are at protecting the consumer

1.13 Against this background, we examined how successfully the OFT:

- a)** facilitate action by others (Part 2):
 - i)** by informing consumers of how to avoid problems and about their rights, so that they may look after their own interests; and
 - ii)** by encouraging traders to act responsibly.
- b)** act directly to combat unfair trading and protect the public (Part 3)⁵:
 - i)** by regulating consumer credit;
 - ii)** by securing the removal of unfair terms in consumer contracts; and
 - iii)** by stopping those traders who persist in flouting their legal obligations.

1.14 During the examination we paid particular attention to the used car trade because:

- a)** the used car market is typical of those markets where consumers are most likely to be disadvantaged, for example, where consumers make large one-off purchases and have little or no chance to learn from experience;
- b)** the used car market attracted over 90,000 complaints from consumers in 1998, more than any other market sector;
- c)** 95 per cent of used car traders hold a consumer credit licence and each year car dealers top the list of traders whose licences are revoked by the OFT; and

⁵ We did not examine the OFT's enforcement of the Control of Misleading Advertisements Regulations 1988 or the Estate Agents Act 1979 as this forms only a small part of their consumer protection work. We also did not look at the OFT's work in monitoring markets, investigating areas of concern and advising government.

- d) in 1997 the OFT published new advice to consumers on buying a used car, and are now seeking to raise the awareness of used car traders on their obligations as consumer credit licensees.

1.15 Appendix A describes our study methods in detail. The main features were:

We evaluated information from the OFT relating to their consumer protection work.

- a) We analysed public information on the OFT's decisions to refuse or revoke consumer credit licences from 1996–97 to 1998–99.
- b) We examined an illustrative sample of 12 cases of the OFT's action under the Unfair Terms in Consumer Contracts Regulations 1994.

We sought the views of businesses and trade associations.

- c) We commissioned MORI to survey by telephone a nationally representative sample of 600 used car dealers.
- d) We obtained the views of 11 businesses against whom the OFT had acted under the Unfair Terms in Consumer Contracts Regulations 1994.

We sought the views of consumers and consumer representatives.

- e) We commissioned MORI to interview a nationally representative sample of 1,500 consumers who had bought a used car in the previous 18 months.
- f) We surveyed the views of 700 consumers who had requested a copy of the OFT's *Buying A Used Car?* leaflet.
- g) We obtained the views of consumer bodies and consumer journalists.

We sought the views of local trading standards services.

- h) We surveyed by post the practices of trading standards services in dealing with the OFT.
- i) We visited four trading standard services with the Audit Commission.

We worked with the Audit Commission.

1.16 We worked with the Audit Commission, who during 1999 carried out a separate study of local authority trading standards services in England and Wales. The Audit Commission study looked at how local authorities are currently delivering trading standards services and how they can respond to the challenges ahead, including the consumer protection agenda introduced in the White Paper, *Modern Markets: Confident Consumers*, and the requirements of the Government's new *best value* framework for improving local services. The Local

Government Act 1999 establishes this framework and places new obligations upon local authorities and the Audit Commission. The key issues for Central Government identified by the Audit Commission are set out in Appendix 2.

Part 2: The OFT are doing more to help consumers to look after their own interests and to encourage traders to act responsibly

2.1 In 1998-99 the OFT spent £0.8 million on information and advice for consumers and businesses (Figure 9). They plan to spend £1.2 million in 1999-2000. Well-informed consumers who are ready to complain when their rights are violated reinforce the pressures on business to improve customer service and performance. Most businesses would wish to comply with regulations and to treat their customers fairly, and regulators need to educate traders to help and encourage them to comply. This part of the report examines how successful the OFT are at informing consumers of their rights and how to avoid problems, and encouraging traders to behave responsibly.

The OFT's information and advice for consumers and traders, 1998-99

Source: OFT

Figure 9

- £800,000 spent
- 2.5 million leaflets distributed to consumers
- 130,000 leaflets distributed to businesses

The OFT publish high quality information for consumers, but the impact is limited.

The OFT aim to do more to encourage and help traders to behave responsibly.

2.2 Our main findings were:

- The OFT rely mainly on publishing leaflets to inform consumers of their rights. We found that these leaflets are of high quality. The OFT have begun to experiment with new ways of targeting their information for consumers more accurately, but because of the relatively small scale of their consumer information campaigns they are unlikely to have had a great impact so far.
- The OFT support the development of codes of practice by trade organisations. Their 1998 consultation paper *Raising Standards of Consumer Care* identified significant weaknesses in industry codes of practice and suggested how they could be improved and extended. The Government intend to give the OFT new powers to approve and monitor codes of practice which give consumers more effective protection based on core principles set out in the White Paper *Modern Markets: Confident Consumers* (July 1999).

The OFT have issued guidelines to combat specific unfair practices, but more needs to be done to ensure that licence holders are aware of the standards of behaviour expected of them.

- The OFT's power to revoke a trader's consumer credit licence is a powerful sanction. There are about 150,000 active licensees, many of whom operate in markets which give rise to a large number of consumer complaints, including the used car market. The OFT have published tailored guidelines designed to combat specific unfair practices, backed by the threat that traders may lose their consumer credit licence if they do not comply. This approach has helped the OFT to combat unfair practices in the credit industry. The OFT do not, however, provide general guidance to licence holders on the standards of behaviour expected of them. Our survey of used car traders suggests that some licence holders have misconceptions.

The OFT publish high quality information for consumers

The OFT seek to inform consumers mainly by publishing leaflets.

2.3 Consumers are more likely to look after their own economic interests when they buy goods and services if they have good quality information and are willing and able to act on it. The OFT's main method of disseminating information is through leaflets⁶, but they also use a range of other media to advise consumers, including newspapers, radio, television and the internet. In 1998–99 the OFT published five new leaflets, issued eight news releases highlighting successful regulatory action and provided 18 new tapes for radio stations giving consumer advice on matters such as personal finance and buying goods and services.

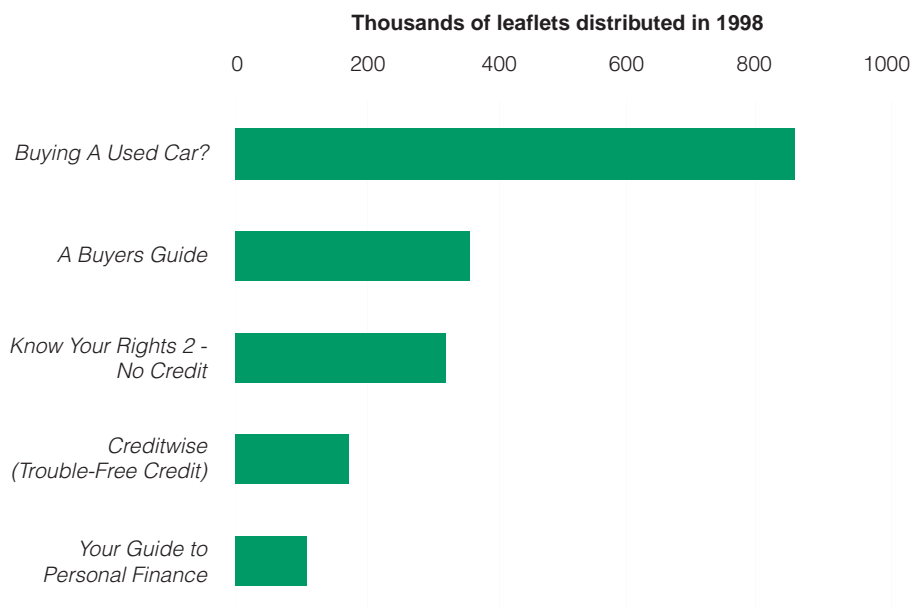
2.4 The OFT's top five publications in 1998 in terms of numbers distributed are shown in Figure 10 overleaf. The OFT's main publication is *A Buyer's Guide*. This gives general advice about shopping and service problems, information about legal rights and how to complain. They also publish a series of more detailed leaflets about particular markets or problem areas. For example, *Buying A Used Car?* includes advice on the risks when buying privately and at auction, how to inspect a used car and what to do if the deal goes wrong.

6 Appendix 3 lists all the OFT's consumer advice leaflets that are currently available.

The OFT's top five consumer advice leaflets distributed in 1998

Figure 10

*The Figure shows that the OFT's leaflet *Buying A Used Car?* had the highest circulation of OFT consumer leaflets in 1998 at over 850,000.*



Source: OFT

Surveys suggest that the OFT publish information that is relevant...

2.5 We examined whether the information contained in the OFT's leaflets is relevant to consumers' needs:

- a) The OFT's evaluation of *A Buyer's Guide* in 1993 found that, of 1,195 interviewees who had read the booklet, 76 per cent said that it covered most of what they needed, 34 per cent said that they learned something new and 91 per cent said that it was very or fairly helpful.
- b) We sent a questionnaire to those people who had requested the OFT's *Buying A Used Car?* leaflet. We found that 94 per cent of the 750 people who responded found it relevant to their needs and 55 per cent said it contained information that was new to them, such as the risks of buying a stolen car or buying a car with outstanding credit on it.

2.6 We also sought to assess whether the OFT's leaflets are generally well understood by consumers:

... is easy to understand...

- a) In the OFT's 1993 evaluation of *A Buyer's Guide*, 54 per cent of those interviewed said that it was easy to understand and a further 32 per cent said it was fairly easy to understand. Of those that found it easy or fairly easy to understand, half said that this was because it was written in plain English, a third because it was well presented and a quarter because the subject matter was not difficult.
- b) Our survey of people who had requested the *Buying A Used Car?* leaflet showed that nearly all (97 per cent) considered it generally easy to understand.

... is valued by trading standards services...

2.7 Some trading standards services publish their own information and advice for consumers. In our questionnaire to trading standards services we asked them to make general comments on the OFT. A quarter of respondents volunteered that they valued the OFT's leaflets highly. Figure 11 gives examples of their comments.

Trading standards services value the OFT's consumer leaflets

Figure 11

"On the information side, we would seriously struggle to provide the range and quality of information at our disposal via the OFT if we had to resource this internally".

"Information leaflets produced by the OFT for distribution by trading standards departments are generally useful both for consumers and traders".

"The Scottish editions of the OFT's booklets have proven to be very successful".

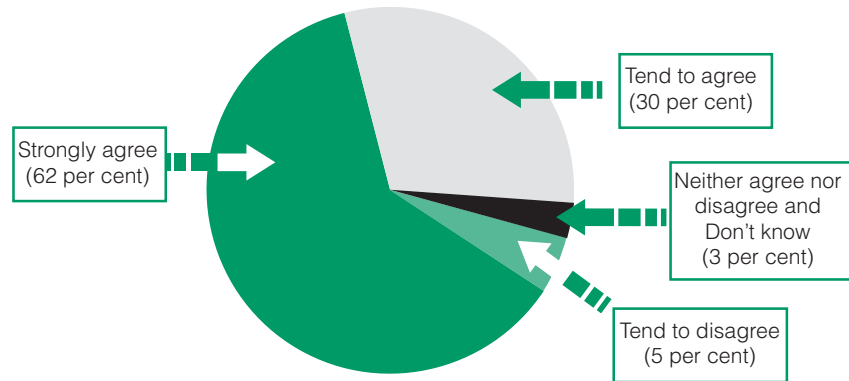
Source: NAO Survey of Trading Standards Services

Used car traders believe consumers have become better informed.

2.8 MORI asked used car traders whether they considered that customers are now better informed of their rights as consumers than they used to be. Nearly all those interviewed agreed that consumers have become better informed (Figure 12 overleaf).

Whether used car traders agree with the statement that “Customers are now better informed about their rights”

Figure 12



Source: NAO/MORI Survey

The OFT are seeking to target their information more accurately, but because of the scale of their information campaigns the impact has so far been limited

The OFT recognise that leaflets distributed through advice services may reach consumers after the event.

2.9 It is a major challenge for the OFT to ensure that information for consumers reaches those people who need it at the time that they can make use of it. The OFT's leaflets are distributed mainly through trading standards services, Citizens Advice Bureaux and public libraries. The OFT recognise that this is not ideal since there is a risk that advice may reach consumers after they may have encountered a problem.

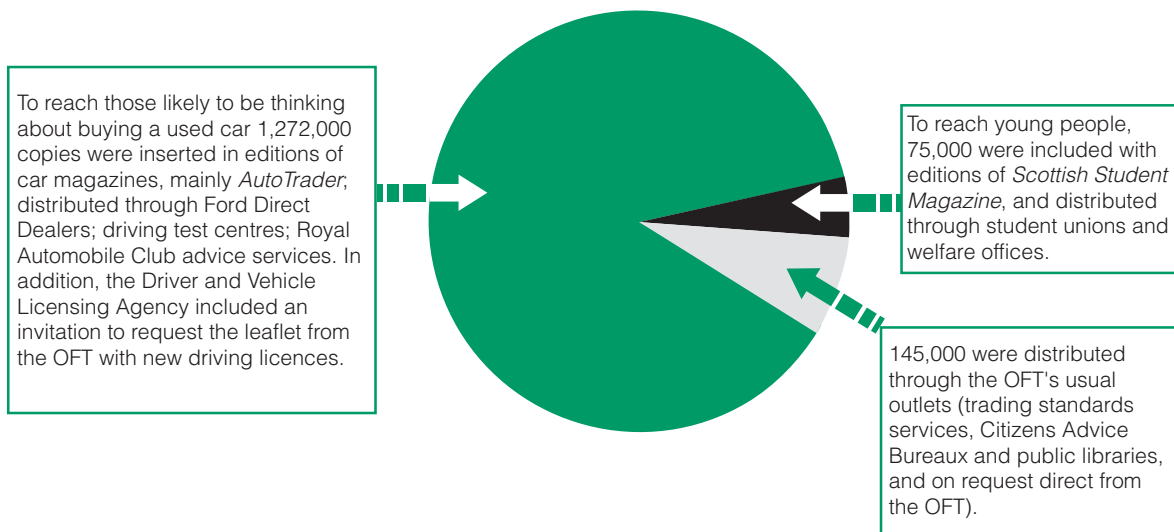
The OFT are therefore seeking to target information more effectively.

2.10 In 1997 and 1998, the OFT sought to address their *Buying A Used Car?* leaflet to those people thinking about making such a purchase, especially young people, whom they believed were particularly at risk (Figure 13 opposite).

Figure 13

How the OFT's *Buying A Used Car?* leaflet was distributed during its first 18 months (October 1997 to March 1999)

*The OFT distributed 1,492,000 copies of their *Buying A Used Car?* leaflet from October 1997 to March 1999.*



Source: OFT

Twenty-five per cent of the *Buying A Used Car?* leaflets the OFT distributed reached the target audience.

2.11 The OFT did not evaluate systematically how far their *Buying A Used Car?* marketing campaign had succeeded in reaching the target audiences. We therefore commissioned MORI to ask people who had bought or considered buying a used car during 1998 whether they could remember having consulted the leaflet. The survey suggested that the leaflet reached about 380,000 people who bought a used car in the past 18 months. This is equivalent to 25 per cent of the 1,492,000 leaflets the OFT distributed, suggesting that the OFT's efforts to target the leaflet more accurately were successful. The survey also showed, however, that some 12.7 million people had purchased a used car over the same period, and that the leaflet reached only 3 per cent of this group. A number of newspapers and magazines have also published advice for consumers about buying a used car. It is, however, impossible at this stage to identify how far this material arose from the OFT information campaign.

2.12 The OFT monitored broadcast media coverage during the morning of 22 October 1997, when they launched their *Buying A Used Car?* leaflet. They recorded 48 minutes of television coverage watched by 32.4 million people and calculated that national and local radio coverage totalled just over 2 hours.

The OFT aim to assess the impact of their information campaigns in future.

2.13 The OFT followed good practice in planning and carrying out their *Buying A Used Car?* information campaign. In 1997, they commissioned a survey of consumers' current level knowledge of how to avoid problems in buying a used car, and focus groups to test consumers' reaction to the leaflet. They also published a report in October 1997 that made a number of recommendations to the Government and others on how consumers could be more effectively protected in this area⁷. They have started to conduct cost-benefit studies and post-implementation reviews of their information campaigns to identify areas where the greatest impact can be achieved and, where necessary, refocus their efforts in the light of this work⁸. They also intend to continue to experiment with alternative approaches to getting their messages across to consumers and are increasing their use of the internet.

The OFT aim to do more to encourage and help traders to behave responsibly through improving trade associations' codes of practice

The OFT have a duty under the Fair Trading Act 1973 to promote industry codes of practice.

2.14 Many trade associations have issued codes of practice specifying minimum standards of behaviour expected of member firms. The OFT assist trade associations in preparing codes of practice and have in the past agreed to support about 30 that they believe benefit consumers. These include the codes of practice of the Association of British Travel Agents, the Society of Motor Manufacturers and Traders and the Mail Order Traders' Association. A full list is in Appendix 4.

⁷ *Selling Second-Hand Cars* (OFT, 1997).

⁸ The OFT's Public Service Agreement, 1999-2000, stated that they aimed to do this by March 2002 (*Public Services for the Future: Modernisation, Reform, Accountability* (Cm 4315)).

2.15 A 1998 consultation paper by the OFT⁹ identified significant weaknesses in industry codes of conduct. The codes often did not set very high standards, compliance was sometimes patchy and redress arrangements were inadequate (Figure 14).

There are serious defects in industry codes of conduct

Figure 14

They often do not set very high standards – some merely confirm minimum statutory requirements.

Levels of compliance are patchy – often there is no mechanism to ensure that members comply. There is widespread ignorance and apathy among traders, and members of trade associations who follow the provisions feel at a disadvantage compared with non-members.

Redress arrangements are inadequate – in some codes, the machinery for handling complaints from consumers and providing independent redress is inadequate.

Source: OFT

The OFT are likely to be given new powers to approve codes of practice.

2.16 As noted in paragraph 1.11 the Government intend to give the OFT new powers to approve and monitor codes of practice, which give consumers effective protection based on the core principles set out in the White Paper *Modern Markets: Confident Consumers*. This would include arrangements for ensuring compliance by member companies and easy access to redress for consumers who experience problems. The OFT would provide and market a seal of approval for approved codes so that consumers would be able to see whether a trader is committed to code standards.

The OFT have combated specific unfair practices by issuing guidelines backed by the threat of revoking traders' consumer credit licences

The OFT have raised standards in the credit industry by warning traders that their consumer credit licences may be revoked if they do not comply with published guidelines.

2.17 The OFT have warned traders that they risk losing their consumer credit licences if they do not comply with published guidelines tailored to combat specific unfair practices. This approach has helped to counter problems arising from the automatic charging of credit protection insurance (Figure 15 overleaf) and in the non-status lending market (Figure 16 overleaf). The OFT do not evaluate systematically the financial benefits consumers realise, although they plan to do so in future. They found, however, that one business had included a £65.2 million provision in their accounts which represented the reduction in revenues they expected in 1998 resulting from complying with the OFT's non-status lending guidelines.

9 Raising Standards of Consumer Care - Progressing beyond codes of practice (OFT, February 1998).

The OFT's action to end negative option selling of credit protection insurance

Figure 15

The OFT acted to eliminate the sale of credit protection insurance by the negative option method in which the consumer has to take positive action to avoid being charged a premium. The OFT consider this an unfair business practice because consumers do not have a genuinely free and informed choice about the product.

In 1992, following complaints by consumers to trading standards services, the OFT notified two mail order companies that they were considering revoking their credit licences because of this practice. The OFT then warned the mail order industry as a whole so that other companies could take steps to avoid similar proceedings. In 1994, the OFT wrote to the banking and consumer credit trade associations and asked them to ensure that those of their members who used negative option selling would cease to do so. All the associations undertook to eliminate the practice.

Source: OFT

The OFT's action against unfair practices in the non-status lending market

Figure 16

Non-status borrowers are those with a poor credit rating who often find it difficult to obtain finance from traditional sources on normal terms and conditions. In 1996, the OFT received many complaints about the treatment of non-status borrowers, including:

- consumers being persuaded to take out loans beyond their ability to repay;
- high up-front fees and commissions which were not properly disclosed or explained;
- dual interest rates – a mortgage or loan is often sold at a “concessionary” rate but a much higher “standard” rate becomes payable in cases of default.

In **February 1997** an OFT news release warned of unfair practices in the non-status lending market. Complaints continued and in **July 1997** the OFT published guidance warning of unfair practices which, if they continued, would put brokers' and lenders' credit licences at risk. They also warned that dual interest rates would be open to challenge under the 1994 Unfair Terms in Consumer Contracts Regulations, and that they should be discontinued.

Following requests for clarification, the OFT published revised guidelines in **November 1997**. They also wrote to lenders and brokers repeating their earlier warning and enclosing a questionnaire asking them to report how far they now complied with the OFT's guidance. Some 93 per cent of the 244 lenders and 99 per cent of the 914 brokers who replied confirmed compliance.

Source: OFT

The OFT aim to use their licensing powers to raise standards in the used car trade.

2.18 The OFT are now seeking to raise standards in the used car trade by adopting a similar approach to the one they used in the credit industry. As a first step, they published in March 1999 an illustrative list of unfair practices that the OFT may take into account in deciding whether used car traders are fit to hold a consumer credit licence (Figure 17 opposite). They aim to address used car traders' misconceptions, for example, that the OFT would revoke a credit licence only for offences related to offering credit and that traders could lose their licence only if they broke the law.

Unfair practices in the motor trade that might lead the OFT to revoke a trader's consumer credit licence

Figure 17

Misleading advertising and information, for example, claiming to be a private seller.

Clocking, for example, selling or offering to sell clocked vehicles, and using disclaimers routinely without checking on mileage.

Unroadworthiness, for example, selling unroadworthy vehicles and failing to point out faults.

False guarantees, warranties and redress, for example, claiming that vehicles are sold with extended warranties where none exist.

Financial irregularities, for example, asking customers to sign incomplete credit forms, and making false statements as to deposits paid by customers to increase the amount of a loan.

Source: OFT News Release, 8 March 1999

The OFT need to do more to ensure that consumer credit licence holders are aware of the standards of behaviour expected of them

The consumer credit licensing system can have a strong deterrent effect.

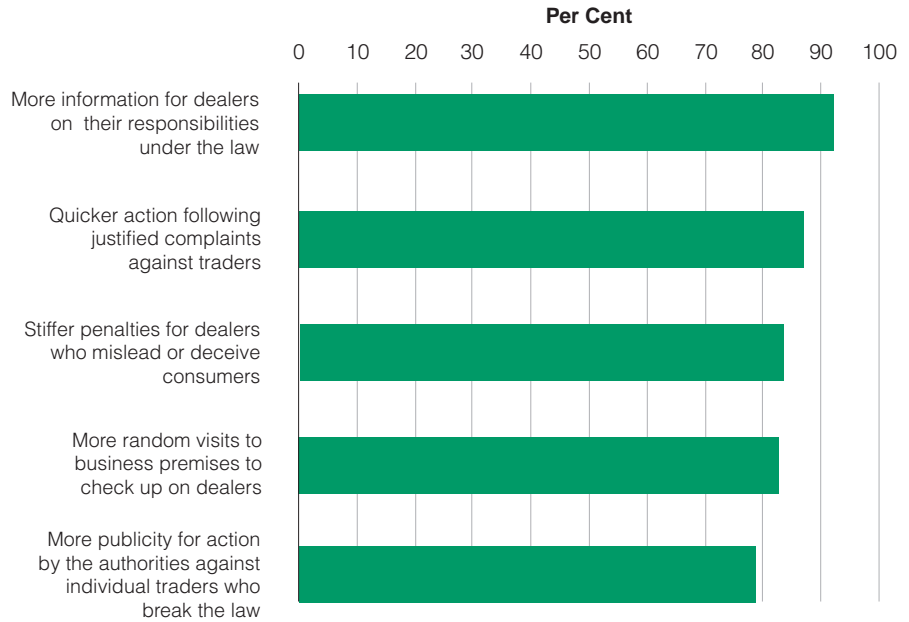
2.19 We commissioned MORI to undertake a survey in July 1999 of 600 used car dealers. Nine out of ten used car traders interviewed by MORI who held a consumer credit licence agreed with the statement *“There is a great risk that an employer could lose their consumer credit licence for misleading or deceiving consumers”*. The MORI survey also asked used car traders how consumer protection might be strengthened. Ninety-one per cent thought that there should be more information for dealers, 87 per cent advocated quicker action following justified complaints and 85 per cent suggested stiffer penalties (Figure 18 overleaf).

Used car traders see themselves as well informed about their responsibilities, but many have misconceptions.

2.20 The great majority of used car traders interviewed by MORI said that they were well informed about their responsibilities as consumer credit licence holders (Figure 19 overleaf). The OFT's view that some used car traders have misconceptions about the circumstances in which they can lose their consumer credit licence was, however, borne out by the survey. For example, some 39 per cent of the used car traders interviewed by MORI believed, incorrectly, that traders can lose their licence only if they are convicted of an offence. This may be because, although the OFT issue guidance on the Consumer Credit Act to all those who request a licence application form, this does not set out the basic standards of behaviour expected of licence holders.

Used car traders believe that more information for traders affords the best opportunity to strengthen consumer protection

Figure 18

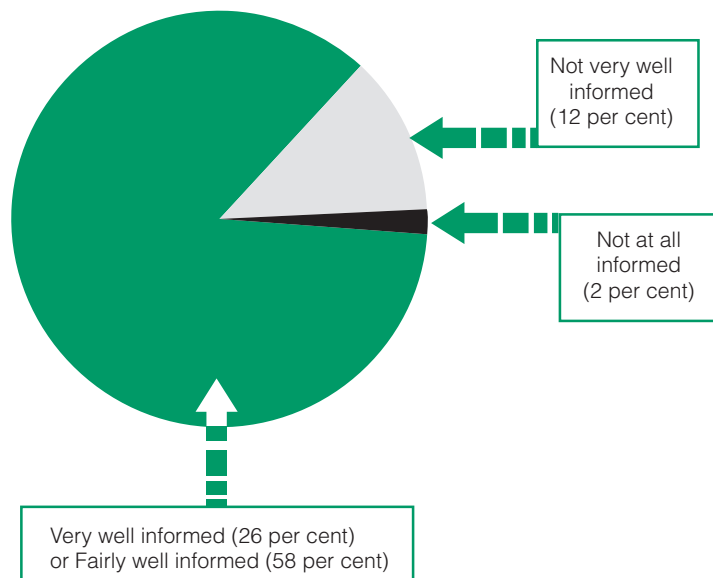


Note: MORI asked "From this list, please could you tell me which, if any, of the following measures you think should be in place to strengthen consumer protection?" The list included eight options, including "none of these".

Source: NAO/MORI Survey

The great majority of used car traders feel that they are well informed about their responsibilities as consumer credit licence holders

Figure 19



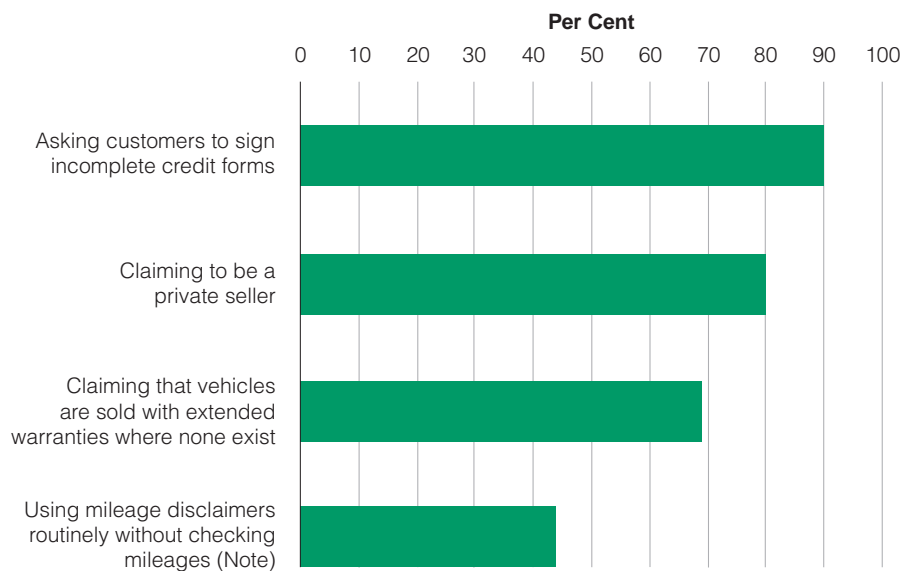
Note: Used car traders interviewed by MORI who said that they or their employer had a consumer credit licence were asked "How well informed do you feel about your responsibilities ... as a consumer credit licence holder?" or "...as a result of your employer being a consumer credit licence holder?", as applicable.

Source: NAO/MORI Survey

2.21 MORI asked used car traders which of a number of business practices could lead to the loss of their or their employer’s consumer credit licence. These included business practices that the OFT had announced in March 1999 could lead to the loss of a licence. The awareness of used car traders interviewed by MORI varied. For example, 90 per cent were aware that asking consumers to sign incomplete credit forms could put their credit licence at risk. Only 44 per cent were aware that routine use of mileage disclaimers could lead to the loss of their licence (Figure 20).

Used car traders are aware to a varying degree of business practices that might lead to the loss of their consumer credit licence

Figure 20



Note: To avoid the risk of prosecution under the Trades Descriptions Act, used car traders should attempt to confirm the mileage reading of cars they wish to sell, for example, by checking with previous owners. If they remain unsure about whether the mileage reading is correct, they can reduce the risk of prosecution by placing a notice on the car’s dashboard stating that the mileage reading may not be accurate.

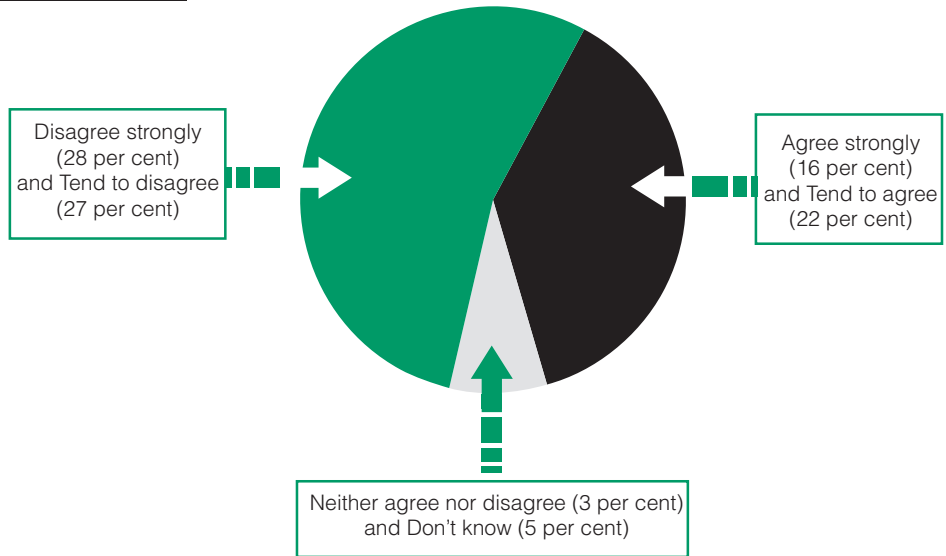
Source: NAO/MORI Survey

Most used car traders believe that not enough is done to deter dishonest traders from infringing consumers’ rights.

2.22 The views of used car traders suggest that they believe that providing more information for traders would not be enough to dissuade dishonest traders from infringing consumers’ rights. Over half of the used car traders MORI interviewed did not believe that consumer laws generally are enforced rigorously enough to deter dishonest dealers from breaking the law (Figure 21 overleaf). Fifty-one per cent of used car traders believed that penalties were not stiff enough to deter dishonest traders.

More than half of used car dealers disagreed with the statement *“The laws against misleading or deceiving consumers are enforced rigorously enough to deter dishonest dealers from breaking the law”*

Figure 21

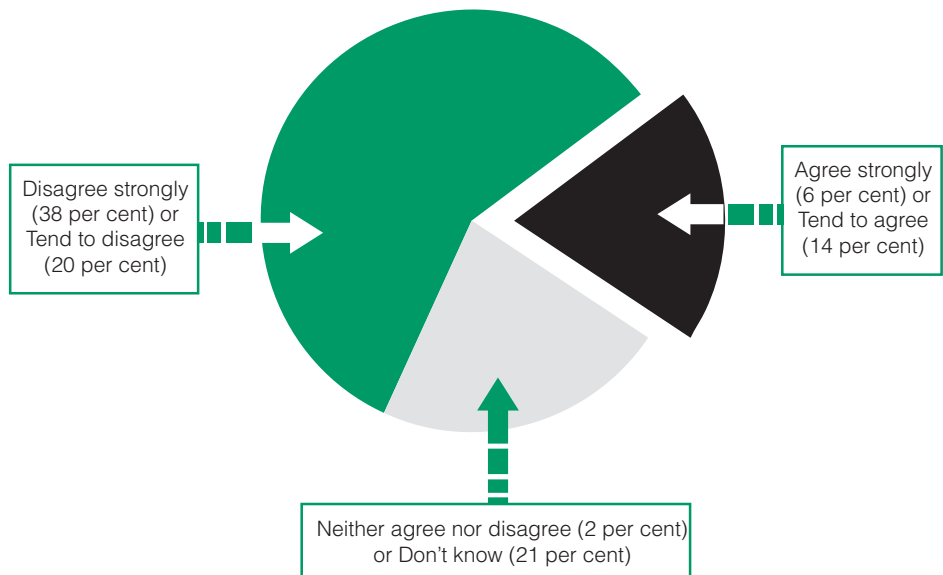


Source: NAO/MORI Survey

2.23 The deterrent value of consumer credit licensing is likely to be undercut because one in five used car traders interviewed believe that if you cannot get a licence yourself you can easily get a licence in another name (Figure 22). Local trading standards services also told us that they were aware of several instances where used car traders continued to operate by the simple expedient of taking out a licence in their spouse’s name. The OFT said that this was a relatively common problem which, when detected, would lead to the refusal of a licence or withdrawal of the application.

One in five used car traders agreed with the statement *“If you cannot get a consumer credit licence you can easily get one in the name of a friend or relative”*

Figure 22



Source: NAO/MORI Survey

Part 3: The OFT could do more to combat unfair trading practices

3.1 Effective enforcement against traders who engage in unfair trading practices is essential to maintain the confidence of consumers and to ensure a level playing field for business. The OFT's enforcement work has three main aims:

- to protect consumers by ensuring that traders who carry on a consumer credit, consumer hire or ancillary business are fit to do so;
- to secure the removal of unfair terms in consumer contracts; and
- to stop those traders who persistently flout their legal obligations.

This part of the report examines how successful the OFT are at achieving these aims.

3.2 Our main findings were:

The OFT need to do more to ensure that consumer credit licences are held only by those fit to do so.

- The consumer credit licensing system is intended to protect consumers and maintain their confidence in the industry, and the licensing system continues to enjoy wide industry support. Few consumer credit licences are refused or revoked, however, and arrangements for gathering information relevant to traders' fitness to hold a licence could be improved. The OFT have identified a number of remedial measures which they are committed to taking forward, subject to any data protection and confidentiality constraints.

The OFT's action to combat unfair consumer contracts secured savings for consumers of over £100 million in 1998 but greater savings are possible.

- The OFT have worked with businesses to secure compliance with the Unfair Terms In Consumer Contracts Regulations 1994¹⁰. Persuasion has been successful: consumers benefited by over £100 million in 1998 from the OFT's work to combat unfair contracts. Negotiations with businesses can, however, take a long time to complete, and there may be scope for the OFT to act more quickly.

10 Revised Regulations came into force in October 1999.

Action under Part III of the Fair Trading Act 1973 takes too long and is ineffective.

- Action under Part III of the Fair Trading Act 1973 against traders who persistently flout their legal obligations takes too long and is sometimes ineffective. The Government plan to replace the legislation, but in the interim the OFT need to make best use of the law as it stands.

The OFT need to do more to ensure that consumer credit licences are held only by those fit to do so

Many businesses require a consumer credit licence.

3.3 Under the Consumer Credit Act 1974, anyone who carries on a “consumer credit, consumer hire or ancillary business” as defined in the Act must hold a consumer credit licence. The OFT estimate that there are some 150,000 consumer credit licence holders currently trading, many of whom operate in markets which give rise to a large number of complaints from consumers, including the motor trade and electrical goods retailing. In 1998–99, the OFT spent £5 million operating the consumer credit licensing system. They issued, renewed or agreed to vary consumer credit licences for 37,000 traders (Figure 23 opposite). The cost of consumer credit licensing is met by businesses through licence fees, which are paid to the Consolidated Fund.

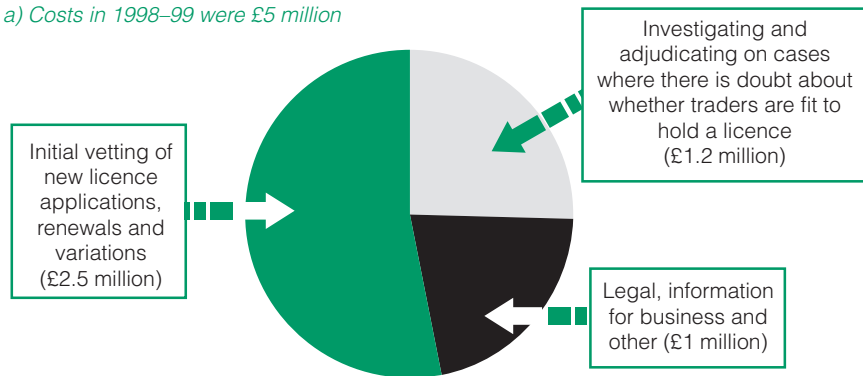
3.4 Our examination of the consumer credit licensing system operated by the OFT showed that:

- a) refusing or revoking a trader’s consumer credit licence is a powerful sanction;
- b) few consumer credit licences are refused or revoked, but many more traders withdraw their applications following queries from the OFT;
- c) the OFT do not always obtain in good time information relevant to traders’ fitness to hold a licence;
- d) the OFT are not working as effectively as they could with trading standards services;
- e) the OFT are considering doing more to ensure that consumer credit licences are held only by those fit to do so.

Key facts about the consumer credit licensing system

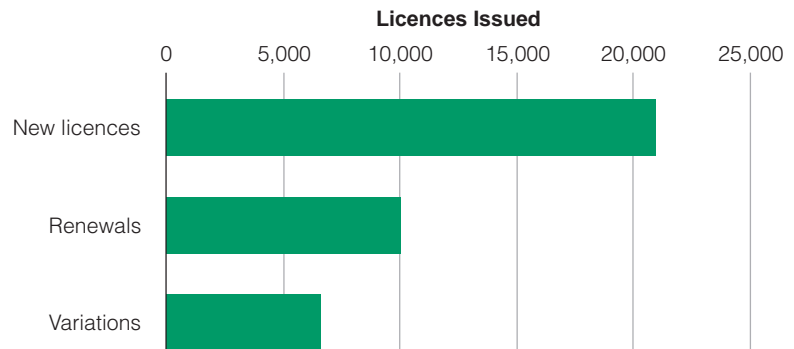
Figure 23

a) Costs in 1998–99 were £5 million



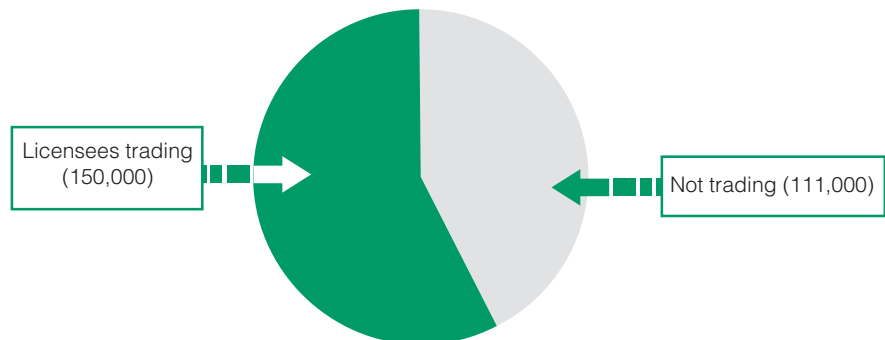
Note: Licence fees, which meet the operating costs, are £80 for an individual trader and £175 for companies.

b) The OFT issued 37,000 new licences, renewals and variations in 1998–99



Note: Applicants must apply for licences covering specific categories of credit business. If licence holders subsequently wish to engage in new categories of credit business they must apply to the OFT for a variation.

c) Of 261,000 extant licences, the OFT estimate that 150,000 are still trading



The OFT maintain a public register which records details of licences issued, licensees and applicants whose fitness to hold a licence is under consideration, licences refused and revoked and a summary of the reasons for their decisions. They also maintain a central register of convictions that can be accessed by trading standards services but is not open to the public.

Source: OFT

Refusing or revoking a trader's consumer credit licence is a powerful sanction

The loss of a consumer credit licence could put a trader out of business.

3.5 Many retailers, most motor traders, and all high street banks, mortgage brokers and debt collectors need a consumer credit licence. The Consumer Credit Act 1974 empowers the Director General to refuse or revoke a trader's consumer credit licence. This is a serious sanction: in many industries the loss of a consumer credit licence would put the trader out of business.

The OFT carry out various checks to determine whether a trader is fit to hold a licence.

3.6 To obtain a consumer credit licence, traders must apply to the OFT, who grant licences for five years. Applicants are required to disclose previous convictions. The Consumer Credit Act does not require applicants to demonstrate that they are competent to run a credit business. The OFT can refuse or revoke a licence when they consider the holder or a business associate has a history of fraud, other dishonesty, violence or treating consumers unfairly, whether or not the behaviour is unlawful or directly related to offering credit. There is a requirement that applicants show fitness. For licence holders, the burden is on the OFT to show that they are not fit. Figure 24 opposite shows all the factors that the OFT can take into account in deciding whether a trader is fit to hold a licence and the checks the OFT carry out.

3.7 The Consumer Credit Act 1974 prevents the OFT from releasing information supplied to them by businesses except to those specified in the Act. We are not among those specified. We were therefore unable to examine whether the OFT carry out these checks in all cases or assess the thoroughness of the OFT's checks on individual applications.

Figure 24

The OFT's checks to ensure that licences are held only by those fit to do so

The Figure shows that the OFT rely mainly on trading standards services to alert them of behaviour by licence holders that might cast doubt on whether a trader is fit to hold a licence.

The Director General can take into account any factor appearing to him to be relevant in considering whether a trader is fit to hold a licence, and in particular any evidence that they or a business associate have	The OFT's checks
Committed any offence involving fraud or other dishonesty, or violence	<p>Check the applicant's licence history, including any association with other licence holders.</p> <p>Examine the OFT's Central Register of Convictions (information supplied by local trading standards services).</p> <p>Contact the local trading standards service for latest information.</p> <p>Contact the courts if trading standards services have doubts about the trader or if the OFT believe the trader has an undeclared conviction.</p>
Contravened any provision of the Consumer Credit Act, or any other Act regulating the provision of credit to individuals, or other transactions with individuals	As above.
Practised discrimination on grounds of sex, colour, race, ethnic or national origin in, or in connection with, the carrying on of any business	None (although if a trading standards service finds out about such practices and notifies the OFT, the OFT will follow up the case).
Engaged in business practices appearing to the Director to be deceitful or oppressive, or otherwise unfair and improper, whether unlawful or not	<p>Notify the local trading standards service of new applications, applications to vary and renewals from traders in their area, and ask that they inform the OFT if they have any reason to doubt whether the trader is fit to hold a licence.</p> <p>Ask trading standards services to notify them of complaints about licence holders.</p> <p>Follow up complaints from trade associations with the help of local trading standards services.</p> <p>Respond to notification of expulsions by professional and financial regulatory bodies.</p> <p>Consult the Registry Trust if the OFT believe the trader has county court judgements against them.</p> <p>Check the lists of disqualified directors regularly notified to the OFT by the Insolvency Service.</p> <p>Consult the Insolvency Service's Register of Bankrupts if the OFT believe the trader has a history of bankruptcy.</p>

Note: The Director General also considers whether applicant's trading names are misleading or otherwise undesirable. The OFT compares the names on the application form with existing licensees' names (those used nearby and those used by major businesses); and checks that names on the application form are not misleading.

Source: OFT

3.8 The OFT are also responsible for monitoring that traders remain fit to hold a consumer credit licence. The OFT rely mainly on trading standards services notifying them whenever they have evidence casting doubt on whether traders are fit to hold a licence. They also receive information from consumers, the media, trade bodies and other regulators, including the Insolvency Service who notify them of disqualified directors.

3.9 The OFT's investigations staff put evidence to adjudicating officers when they consider a licence should be refused or revoked. The OFT's adjudicating officers operate independently of investigations staff. Where the adjudicating officer considers that the evidence is sufficient, the OFT send the trader a "minded to refuse" or "minded to revoke" notice. The trader has a legal right to make representations before the OFT decides whether to refuse or revoke the licence. The trader also has the right to appeal to the Secretary of State for Trade and Industry, and to the High Court on a point of law.

3.10 In some cases the OFT can require traders to sign undertakings as to their future behaviour or that a named individual would not be involved in the business. Trading standards services may monitor compliance with these undertakings. The OFT can also take informal action. For example they can:

- a) issue a warning letter to the applicant or licensee, setting out their concerns and reminding the applicant or licensee of their powers to refuse or revoke licences;
- b) invite the applicant or licensee to meet the OFT's officials to discuss their responsibilities as a licence holder.

Few consumer credit licences are refused or revoked, but many more traders withdraw their applications following queries from the OFT

The consumer credit licensing system is valued by the credit industry and has many benefits.

3.11 We sought the views of trade bodies and consumer groups on the licensing system. The Consumer Credit Association¹¹ told us that it helped protect their industry. The Consumers' Association and the Finance & Leasing Association¹² supported this view but considered it was too easy to get a consumer credit licence.

3.12 In 1998–99, the OFT refused 15 of 21,200 applications for a consumer credit licence and one of 10,000 renewal applications. They revoked 18 of an estimated 150,000 active licences. Nearly 800 traders (3.5 per cent) who applied for a licence, however, withdrew their applications or allowed them to lapse after queries from the OFT. In addition, the OFT issued warnings to 327 applicants and licensees, and 15 traders were granted a licence or allowed to keep one only after they had signed undertakings about their future conduct. The threat of refusing or revoking a licence, occasionally in concert with the threat of action against unfair contracts, can sometimes be sufficient to secure changes in trading practices in a business or throughout whole industries. There is also an unquantifiable deterrent effect from the existence of the licensing system:

- a) traders not applying for a licence because they know it will be refused;
- b) traders being careful about their choice of business associates to avoid the refusal or revocation of a licence.

3.13 The OFT require applicants to change their business name where they believe names may be misleading, such as names implying that the business is substantial in size or linked with a reputable organisation. The OFT do not monitor, however, the number of traders who change a misleading business name because of the OFT's action.

11 The Consumer Credit Association represents over 800 of the 1,200 businesses in the "home credit industry", who make small loans to people on below average incomes. These businesses are mainly small – many are sole traders.

12 The Finance & Leasing Association is the major organisation representing the UK Finance & Leasing industry. They have 100 full members, including banks, building societies, finance & leasing companies and the finance sections of manufacturing & retail companies. They represent £100 billion of business, 30 per cent of all consumer credit and 70 per cent of motor finance.

3.14 The OFT have not, as a matter of course, checked whether applicants have a history of discrimination in the course of business. The OFT told us that this was because of difficulties they faced in obtaining relevant information. We noted, however, that *Harvey’s Employment Law*, a legal journal, lists recent legal cases involving discrimination. In addition, the Commission for Racial Equality hold records of complaints and tribunal and court findings of racial discrimination. The OFT told us that they have agreed with the Commission for Racial Equality that the Commission will regularly forward relevant information to the OFT. The OFT also told us that they intended to negotiate a similar arrangement with the Equal Opportunities Commission.

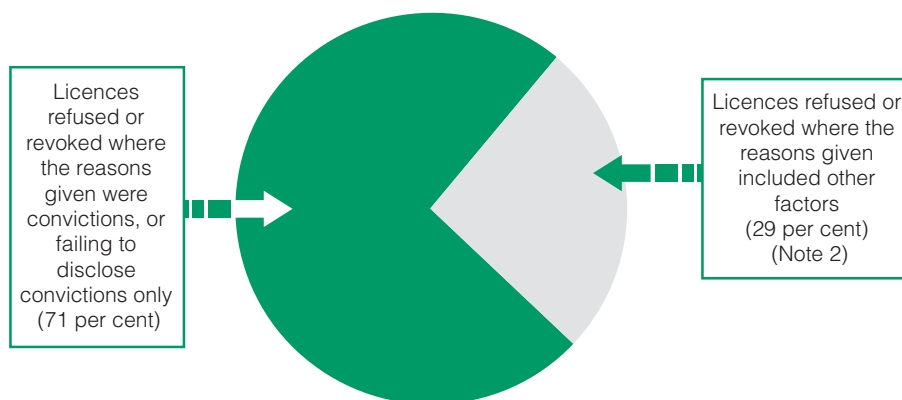
The OFT often deny traders a consumer credit licence because they have a criminal record.

3.15 Where a trader has a criminal record, this can have a bearing on their fitness to hold a consumer credit licence, although it is not the only factor the OFT take into account. We examined the OFT’s Public Register, which records the OFT’s reasons for concluding that traders are unfit to hold a consumer credit licence, for the three years 1996–97 to 1998–99. The OFT refused or revoked 150 consumer credit licences during the period. In 71 per cent of the cases, the reasons given were solely criminal convictions, or traders failing to disclose such convictions on their licence application form (Figure 25). Convictions were mainly for fraud, other dishonesty, violence or breaches of consumer protection legislation such as the Trades Descriptions Act.

Reasons for refusing and revoking consumer credit licences 1996–97 to 1998–99

Figure 25

The Figure shows that the OFT do not rely solely on whether traders have a criminal record when they decide to refuse or revoke a credit licence. It also shows, however, that criminal records, or traders’ failure to disclose a criminal record on their application form, are often the reason for refusing or revoking a licence.



- Notes: 1. We analysed the OFT’s reasons for refusing or revoking 150 consumer credit licences from 1996–97 to 1998–99.
2. In many of these cases, the OFT’s reasons for deciding to refuse or revoke licences included criminal convictions alongside other evidence that the trader was unfit to hold a licence.

Source: OFT’s Public Register & NAO analysis

The OFT do not always obtain in good time information relevant to traders' fitness to hold a licence

3.16 The applicant is required to provide details of all convictions on the licence application form. Not every applicant discloses his or her convictions, however. We examined the OFT's Public Register for each of the years 1996–97 to 1998–99. In 24 of the 87 licences revoked in the period for which information was available, the applicant had originally provided inaccurate or incomplete information on the application form, usually omitting to disclose previous convictions¹³.

3.17 There is at present no comprehensive database that includes details of all criminal convictions which the OFT are able to access to verify the information traders give on their application forms. The Fair Trading Act 1973 requires trading standards services to notify the OFT if they intend to prosecute traders under specific consumer protection laws. The Act does not require trading standards services to notify the OFT of the outcome of proceedings, although some do so. The OFT and trading standards services would not normally be notified of convictions by other bodies, such as for fraud or handling stolen goods. The OFT seek criminal records from the courts where a trading standards service doubts whether a trader is fit to hold a licence or if the OFT believe the trader has an undeclared conviction. But the OFT consider that it would not be cost-effective to verify information supplied by every applicant in this way.

Some traders obtain or continue to hold a consumer credit licence despite behaviour rendering them unfit to hold one.

3.18 Our analysis of the OFT's reasons for revoking consumer credit licences for each of the years 1996–97 to 1998–99 suggests that the lack of timely information reduces the protection the licensing scheme gives the public. For 73 of the licences revoked during the period we were able to establish when the last event the OFT took into account had occurred. In nine of these cases, the last event occurred before the licence was issued. In 13 out of the remaining 64 cases, the last event occurred at least two years before the licence was revoked. Figure 26 overleaf gives examples of licences revoked by the OFT where more timely information would have helped the OFT to protect the public and the industry more effectively.

13 This breaches section 7 of the Consumer Credit Act 1974.

Examples of licences revoked where more timely information would have helped the OFT protect the public more effectively

Figure 26

Case 1: a trader whose licence was revoked for behaviour which occurred before the licence was issued

In May 1996 the Personal Investment Authority expelled a partnership from membership because it misled wholesale lenders in attempting to secure mortgages for clients where an offer of a mortgage would not normally have been made. A former partner subsequently obtained a consumer credit licence in July 1996.

In August 1998 the OFT revoked his licence because his former partnership had engaged in business practices appearing to be deceitful, or otherwise unfair or improper.

Case 2: a trader who obtained and continued to hold a licence despite a series of convictions

In 1990, the trader was convicted of false accounting. In 1991 the OFT issued a licence to the trader for 15 years. In 1993, the licensee was convicted of two offences of assault occasioning actual bodily harm and of damaging property. The OFT also found that the licensee had given false or misleading information on the application form. In December 1996 the OFT revoked the consumer credit licence.

Case 3: a motor dealer who obtained a licence despite having a number of convictions

In 1991 the OFT issued a licence to the trader. The OFT subsequently found out that the licensee had been convicted of:

- 12 offences under the Theft Act and one under the Forgery and Counterfeiting Act in 1983, and
- two offences under the Fair Trading Act and three under the Trades Descriptions Act in 1987.

In 1992 the trader was convicted of a further 17 offences under the Theft Act and one under the Criminal Attempts Act, with another 95 offences taken into account. The OFT also found that the licensee had given false or misleading information on their application form. In April 1996 the OFT revoked the trader's consumer credit licence.

Case 4: a trader who was convicted of offences over a number of years before losing their licence

In 1991 the OFT issued a licence to the trader for 15 years. The OFT subsequently found out that the licensee had been convicted of five offences during the period 1984 to 1990, including two offences of assault occasioning actual bodily harm. After the licence was issued, he was convicted for 13 offences during the period 1991 to 1994. These included theft, obtaining property by deception, and applying a false trade description to a motor vehicle. In August 1998 the OFT revoked the trader's consumer credit licence.

Note: Before June 1991 licences were issued for 15 years.

Source: OFT

3.19 More complete and timely information, particularly on convictions for fraud or other dishonesty, or violence, would enable the OFT to stop more of those unfit to offer credit from setting up in business and enable them to act more promptly to combat abuse. This would protect the public and the reputation of the industry more effectively.

The OFT are not working as effectively as they could with trading standards services

3.20 The OFT ask trading standards services to tell them as soon as possible if they have evidence casting doubt on whether a trader is fit to hold a consumer credit licence. How far trading standards services examine and report their concerns about local traders' fitness to hold a licence depends on local priorities.

Trading standards services are referring fewer cases to the OFT for investigation.

3.21 These arrangements are not working well. The number of cases referred to the OFT by trading standards services fell by 30 per cent between 1995–96 and 1998–99. This has led to a fall in the number of licensees investigated by the OFT, and in the number of licences revoked (Figure 27). These trends have occurred against the background of rising complaints by consumers. The OFT told us that the fall in the number of licences revoked may be because trading standards services are relying more on warnings and are taking fewer traders to court. For example, prosecutions under the Trades Descriptions Act in 1998 were nearly 40 per cent fewer than in 1995. The OFT consider that these changes may also reflect the impact of local authority re-organisation and fragmentation of the trading standards service.

Figure 27

Trends in the number of cases referred to the OFT by trading standards services, 1995–96 to 1998–99

This Figure shows that the number of consumer credit licence cases referred by trading standards services to the OFT for investigation fell from 469 in 1995–96 to 325 in 1998–99, a 30 per cent reduction. The Figure also shows that the number of cases investigated, minded to revoke notices issued, and licences revoked, also fell over the period.

Year	Referrals from trading standards services	Cases investigated by the OFT	Warning letters issued by the OFT	Minded to revoke notices issued by the OFT	Licences revoked
1998–99	325	520	327	45	18
1997–98	354	681	335	68	31
1996–97	421	824	337	73	40
1995–96	469	Not available	418	89	62

Note: Some of the warning letters shown above were sent to applicants. The OFT's management information does not identify separately warning letters sent to existing licence holders.

Source: OFT

Most trading standards services said that they would always refer evidence of trader unfitness to the OFT.

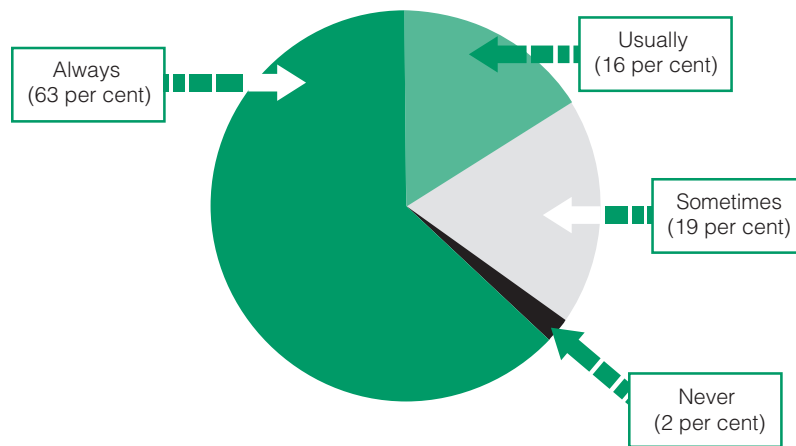
3.22 In our survey of trading standards services we asked how far they referred evidence to the OFT that could, in their opinion, warrant action by the OFT to revoke a consumer credit licence. More than six out of ten trading standards

services that had identified such evidence said that they would always refer the evidence to the OFT. One in five, however, reported that they would only do this sometimes or never at all (Figure 28).

Some trading standards services do not refer details of problem licence holders to the OFT

Figure 28

The Figure shows that most trading standards services would always or usually refer evidence to the OFT that they felt could call into question a licence holder's fitness to hold a licence. One in five, however, would refer evidence to the OFT "sometimes" or "never".



Notes: 1. We asked: "To what extent does your authority refer to the OFT details of consumer credit licence holders where, in your opinion, evidence *could* warrant action by the OFT to revoke their consumer credit licence?" This concerned cases since April 1998 and information other than that notified to the Central Register of Convictions.

2. One hundred and sixty trading standards services answered the question, of which 129 reported that they had identified such cases in 1998–99.

Source: NAO Survey

3.23 Forty-three of the 48 trading standards services who did not automatically refer their suspicions about licence holders to the OFT said this was due, wholly or in part, to the length of time it takes to secure a satisfactory outcome (Figure 29 opposite). Thirty-two said that local action would be more effective.

Why 48 trading standards services would not always notify the OFT when they have evidence that a licence holder could be unfit to hold a licence

Figure 29



Comments by trading standards services

“The threat of losing their credit licence is possibly the greatest threat some traders face, but the process is too difficult and too long to have any relevant effect”

“Quite often the threat of taking away a licence is sufficient to make a company look at its training record and attempt to improve it – we can help the company to improve its systems at the same time”

Note: The figure shows the reasons given by trading standards services to the question “Why don’t you always notify the OFT in such cases?” The figure gives responses of trading standards services who would not always notify the OFT if they believed that they had evidence that a licence holder could be unfit to hold a licence. Trading Standards Services often gave more than one reason.

Source: NAO Survey

Action by the OFT to refuse or revoke a licence can be a lengthy process.

3.24 The OFT keep records of how quickly they handle investigations where there is doubt about whether a trader is fit to hold a licence. Their management information does not, however, allow the OFT to monitor easily their performance on those investigations that lead to regulatory action, such as issuing a “minded to revoke” notice, although such information can be extracted manually. As part of a special exercise the OFT calculated that it took them, on average, a little under seven months to issue a “minded to refuse” or “minded to revoke” notice during the year to September 1998. We could not assess whether they could act more quickly because we are not able to examine individual case files.

The OFT are seeking to work more effectively with trading standards services.

3.25 The OFT's officials are in day to day contact with trading standards services about individual cases and also visit them to foster mutual understanding, and organise training courses for trading standards staff. The OFT also work closely with LACOTS, the Local Authorities Co-ordinating Body on Food and Trading Standards¹⁴. The OFT have sought to improve their communications with trading standards services in the following ways:

- a) The OFT launched the Excellence in Trading Standards Awards scheme in June 1996 to reward trading standards services that provide services of the highest quality, to encourage good practice and to raise the profile of the trading standards service across the full range of their work. Each year, they publish examples of good practice they identify from the work of trading standards services who apply for the award.
- b) In 1998, the OFT issued new guidance for trading standards services on the evidence needed from them to refuse or revoke credit licences and the processes involved.
- c) In May 1999, the OFT reorganised officials into teams dealing with applications for consumer credit licences on a regional basis. All Investigations staff had been so organised since 1991. This was done to foster closer working relations within the OFT and with individual trading standards services, and to encourage staff to develop local knowledge.
- d) The OFT have signed service level agreements with 25 trading standards services since 1996, and aim to have agreements with all 198 by the year 2000. The agreements specify how quickly trading standards services should respond to enquiries from the OFT, and the standards of service that the OFT will deliver to trading standards services.

3.26 The OFT's guidance and service level agreements do not specify what the OFT expect trading standards services to do in response to the OFT's automatic requests for information about licence applicants. Our survey showed that practice varies. For example, following a request for information on a licence

14 LACOTS, the Local Authorities Co-ordinating Body on Food and Trading Standards, were set up in 1978 by the local authority associations to help co-ordinate the work of local food and trading standards enforcement authorities in the United Kingdom. They aim to promote public protection through effective regulation, enforcement and good practice in local authority food and trading standards services.

applicant, some trading standards services visit the applicant at their trade premises to introduce themselves and discuss licence holders' responsibilities. Most trading standards services, however, check only whether they have recorded any complaints against the trader.

The OFT are considering doing more to ensure that consumer credit licences are held only by those fit to do so

Shortcomings in the OFT's computer system have restricted their checks on consumer credit licensees.

3.27 The OFT would like to make better use of information technology to improve their checking of whether traders are fit to hold a licence. Before they can do so, however, the following shortcomings in their supporting computer system need to be addressed:

- a) the system does not allow information to be exchanged electronically with other public bodies, thereby limiting the checks the OFT can carry out on all licence applications;
- b) the system – which was installed in 1985 – is becoming increasingly difficult and expensive to maintain;
- c) the system would not have been able to cope with the Year 2000 date change.

In 1997–98 the OFT considered replacing their computer system with a new system ...

3.28 The OFT have considered whether a new system could be linked electronically with those of other public bodies and whether this would facilitate more rigorous checks. They identified several public bodies with information that could help them check whether traders are fit to hold a licence. The most important bodies are trading standards services. Electronic links with these bodies' systems would enable the OFT to:

- a) verify the accuracy of the information that traders provide on their application forms;
- b) monitor continuously whether traders remain fit to hold a licence;
- c) issue licences more quickly.

... but decided that it would be more cost-effective to upgrade their existing system.

3.29 About half the OFT's expenditure of £5 million on consumer credit licensing is spent on processing applications for new licences, renewals and to vary existing licence conditions. A new computer system would enable the OFT to reduce the cost of processing applications.

3.30 At the end of 1998, after spending £800,000 on development work, the OFT decided after careful consideration to postpone implementing the new computer system design. This was because the cost of building the new system (£3.3 million) would have been nearly three times the original budget (£1.2 million), and there was a risk that the new computer system would not be in place in time to prevent the Year 2000 date change disrupting operations. They decided instead to upgrade their existing system to cope with the Year 2000 date change at a cost of £355,000.

3.31 The OFT told us that they planned in the year 2000 to prepare a business case for a new computer system for consumer credit licensing based on the development work they carried out in 1998. They would, however, first need to consider the results of the reviews of the OFT's consumer affairs work, and of the consumer credit licensing system announced by the Government in July 1999 (see paragraph 1.11). They would also be taking into account the results of a review, currently underway, of how far laws such as the Data Protection Act 1998 could limit their access to publicly held information.

3.32 The Government intend that 25 per cent of government services will be accessible electronically by 2002¹⁵. To help to achieve this goal, the OFT plan to make greater use of the internet as part of their new computer system, and to make it easier to apply for a licence and access the Public Register, which records details of licence holders. They also aim to make greater use of internet e-mail to communicate with trading standards services, consumers and businesses.

The OFT are considering how to address other weaknesses in their checks on consumer credit licensees.

3.33 The OFT are planning a number of improvements in the checks they carry out on new licence applications, although they have not yet decided to go ahead:

- a) The OFT do not require applicants to give their private address or provide proof of their name or date of birth, for example, by asking the applicant to supply their birth certificate and recent utility bills. The usefulness of checks by the OFT of their Central Register of Convictions and by trading standards services may be reduced if applicants do not give correct personal details and those details are not verified. The OFT are considering asking applicants for their

15 *Modernising government*, Cm 4310, March 1999.

private address and National Insurance Number, if they can obtain an agreement to use personal information held by the Contributions Agency. This may be incorporated in a revised application form in 2000.

- b) The OFT may also ask applicants to provide a Criminal Conviction Certificate listing an individual's convictions. These should be available from around the year 2001 or 2002 from the new Criminal Records Bureau, for a fee likely to be less than £10. This would enable the OFT to verify the accuracy of information supplied by applicants on convictions.
- c) The OFT intend to review their guidance on the criteria their staff should use to decide when an application should be referred for further investigation.

The OFT's action to combat unfair consumer contracts has secured large savings for consumers but greater savings are possible

A contract term is unfair if it unduly favours the seller or supplier.

3.34 The Unfair Terms in Consumer Contracts Regulations, which came into force on 1 July 1995, stipulate that a consumer is not bound by a standard term in a contract with a seller or supplier if that term is unfair. A standard contract term is unfair if it unduly favours the seller or supplier and could cause consumer detriment. For example, contract terms that allow a supplier to vary prices may be unfair unless the consumer also has the right to cancel without penalty. Revised Regulations came into effect in October 1999 giving trading standards services and other bodies powers to combat unfair terms in consumer contracts (see paragraph 1.12).

The OFT can obtain a court injunction to stop the use of unfair contract terms.

3.35 The Regulations require the OFT to consider complaints about standard contract terms drawn up for general use. The Regulations also give the OFT the power to obtain a court injunction to stop the use of unfair standard terms by businesses and to prevent anyone recommending such terms. Consumers do not need a ruling from the OFT, however, to challenge such terms or to seek redress through the courts if they feel they have suffered loss.

3.36 The OFT have established a specialist team to handle their work under the Regulations. Their work is geared to dealing with complaints from consumers, trading standards services and others. Under the 1994 Regulations the OFT were legally prevented from dealing with unfair terms unless they had first received a complaint about them or similar terms. The new Regulations, which came into effect in October 1999, give the OFT powers to combat unfair terms whether or not

they have received a complaint about them. In 1998-99, the OFT considered nearly 900 complaints about contract terms. The OFT's operating costs, including in-house legal advice, amounted to £800,000.

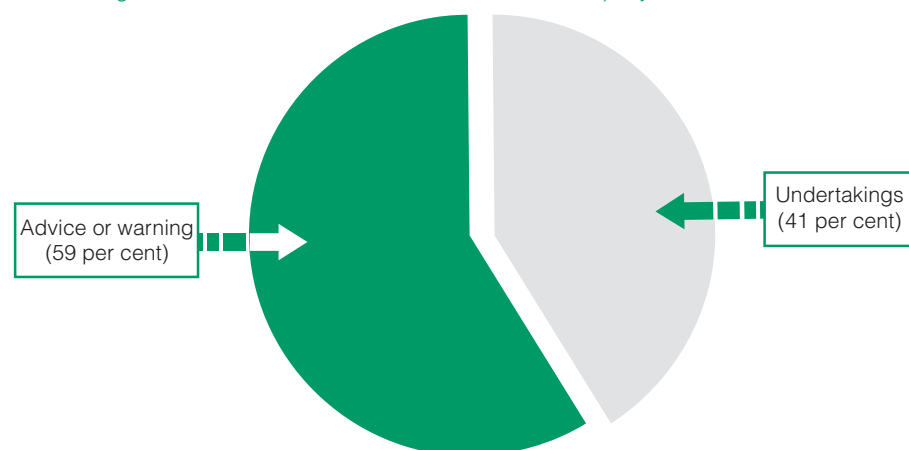
The OFT work with business to secure compliance with the Regulations.

3.37 The OFT seek to persuade businesses to comply with the Regulations and use their powers to seek an injunction only where negotiations are unsuccessful. They seek to help businesses to comply by explaining fully their reasons where they believe terms are unfair, and by publishing regular Bulletins which include examples of terms they consider unfair alongside revised versions they have negotiated with businesses. Almost all of the cases requiring action by the OFT have been settled through advice or undertakings (Figure 30) although the OFT usually warn businesses that they will be taken to court if they do not comply with the Regulations. The OFT have found it necessary to take only one company to court (in July 1999). The OFT lost this case and their appeal should be heard in early 2000.

Results of the OFT's action to secure the removal of unfair terms in consumer contracts, July 1995 to March 1999

Figure 30

The Figure shows that all of the 954 cases the OFT had acted upon from July 1995 to March 1999 were settled through advice or businesses giving undertakings to seek to comply with the Regulations. Since then, the OFT have taken one company to court.



Note: Between July 1995 and March 1999 the OFT completed their consideration of 2,999 cases of alleged unfair contract terms. The OFT did not take full enforcement action under the Regulations in 1,873 cases (62 per cent). Of these, 683 duplicated other complaints. In the remaining 1190 cases the OFT did not take full enforcement action because the terms complained of were not covered by the Regulations, their enquiries led them to conclude the term was not unfair, or action was overtaken by events, for example where the company using the contract term had gone into liquidation or the complaint was otherwise defective. In a number of these cases the OFT undertook initial enforcement action and analysis. In 172 cases (6 per cent) the OFT decided action should be taken under other legislation, such as the Consumer Credit Act 1974. By March 1999, they had completed action on 954 cases (32 per cent).

Source: OFT

3.38 Where similar terms are used across whole business sectors, the OFT sometimes group less urgent cases and work with trade associations to deal with as many traders as possible together. For example, the British Vehicle Rental and

Leasing Association, which represents 85 per cent of car rental companies, introduced a model car-hire contract in line with the Regulations in November 1998 at the instigation of the OFT.

Consumers benefited by over £100 million from the OFT's work to combat unfair contracts in 1998.

3.39 The OFT have secured substantial financial benefits for consumers by acting under the Unfair Terms in Consumer Contracts Regulations. They identified two cases in 1998 where the financial benefits for consumers secured through changes in contract terms amounted to over £100 million a year (Figure 31). The financial benefits realised by consumers from the OFT's unfair contracts work are likely to be greater than this, however, since the OFT do not routinely seek this information from the businesses they negotiate with on unfair contracts.

Examples of action under the Unfair Terms in Consumer Contracts Regulations

Figure 31

- **A mortgage company** agreed to remove unfair penalties in their loan agreements in February 1998. These penalties included enforcing a higher rate of 18 per cent on any borrower whose account became overdue or remained overdue. The estimated saving to consumers is £65.2 million a year.
- During the period October 1996 to February 1998, **eight mobile phone companies** agreed to amend mobile telephone contracts to reduce the notice period from three months to one month. The changes were made only after the OFT threatened one company with legal action. The estimated saving to consumers is between £60 million and £80 million a year.

The OFT's intervention has led to contracts that are easier to read and understand.

3.40 We talked to 11 businesses who had amended their contracts following action by the OFT. They told us that the OFT's intervention had led to revised contracts that are easier for consumers to read and understand. One mobile phone company told us that they expected the revised contract to make their services more attractive to consumers (Figure 32).

Example of action under the Regulations that resulted in a clearer consumer contract

Figure 32

- **A mobile phone company** agreed to revise their mobile telephone contracts in March 1999 following extensive negotiations with the OFT. They changed their three-month notice period to one month and revised a term that gave them the right to increase prices. The company told us the work of the OFT had led to a better deal for customers and changes to mobile telephone industry contracts earlier than would have occurred due to market forces alone. The company also said that the changes in contracts had made them easier to understand and that this might attract consumers to their services.

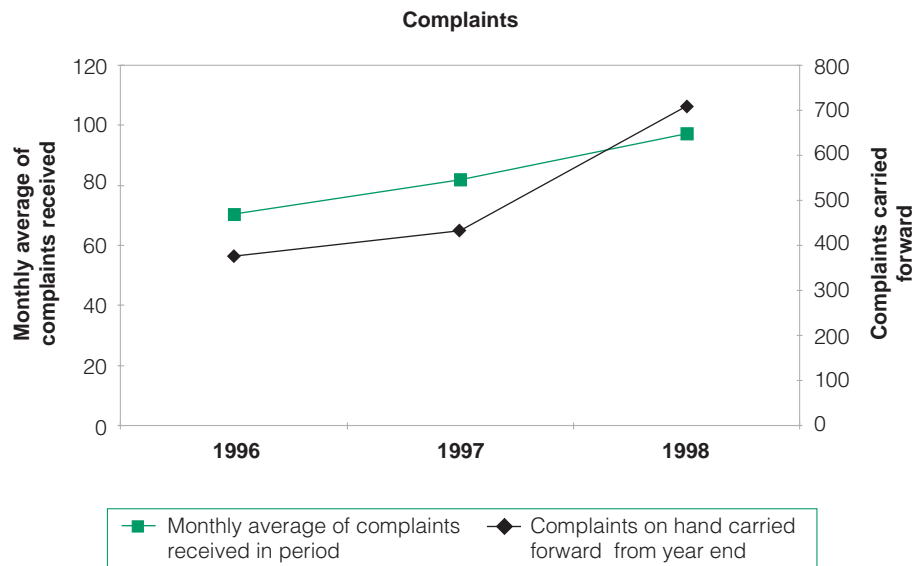
The OFT have increased the number of staff on unfair contracts work to deal with a growing number of complaints from consumers.

3.41 The number of unfair contracts cases dealt with by the OFT has not kept pace with the number of complaints which are increasing at an annual rate of some 17 per cent (Figure 33). In an attempt to keep up with their workload, the OFT have increased the staff devoted to unfair contracts work, from the equivalent of 12.5 staff years in 1998–99 to 17.7 staff years in 1999–2000.

The number of unfair contracts cases dealt with by the OFT has not kept pace with the number of complaints

Figure 33

The Figure shows the number of complaints received regarding unfair contract terms rising at a steady rate between 1996 and 1998. By 1998, however, the number of complaints on hand, where the OFT were considering action but had not completed negotiations with the businesses concerned, was rising at a faster rate.



Source: OFT

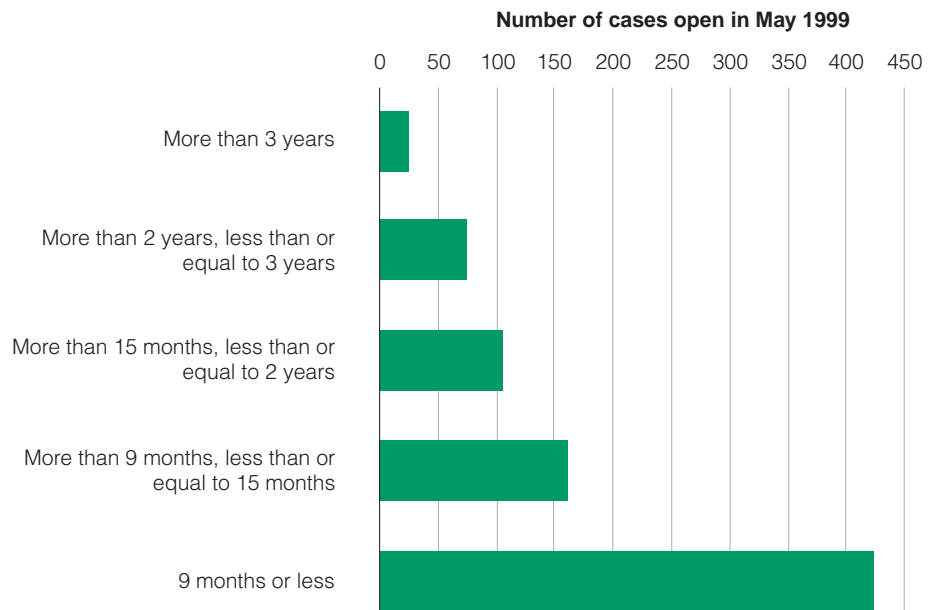
Unfair contract cases typically take around nine months to complete, but some take much longer.

3.42 The OFT completed 85 per cent of cases within nine months in 1998–99 (against a target of 80 per cent), and 91 per cent of cases within 15 months (against a target of 95 per cent). At the end of May 1999, the OFT were considering 788 unfair contract cases. Some 72 of these cases (nine per cent) had been open for between two and three years and 24 cases (three per cent) had been open for more than three years (Figure 34 opposite). Forty-eight of the total of 96 complaints which had been with the OFT for more than two years were package holiday contracts. Negotiations were not opened with the companies until the OFT had received complaints about all the major players in the industry and had sufficient resources to mount concerted sectoral action. In most cases the negotiations with these companies had been active for less than a year.

Some cases the OFT were considering in May 1999 had been open for a number of years

Figure 34

The Figure shows how long the OFT had been considering the 788 unfair contracts cases that were open in May 1999. It shows that in 72 of these cases (nine per cent) negotiations had been underway with businesses for between two and three years and in 24 cases (three per cent) negotiations had been underway for more than three years.



Source: OFT

3.43 We examined an illustrative sample of 12 cases where the OFT acted to secure amendments to contracts between 1997 and 1999. We identified how long the OFT had taken to negotiate amendments to contracts, and calculated how much of the elapsed time was attributable to the business, and how much was attributable to the OFT. We did not find a consistent pattern. For example, in one case, which took nearly two and a half years to complete, three-quarters of this time the OFT were waiting for the company to respond to their letters. In another case, which took four and a half months to complete, a fifth of the elapsed time was attributable to the company.

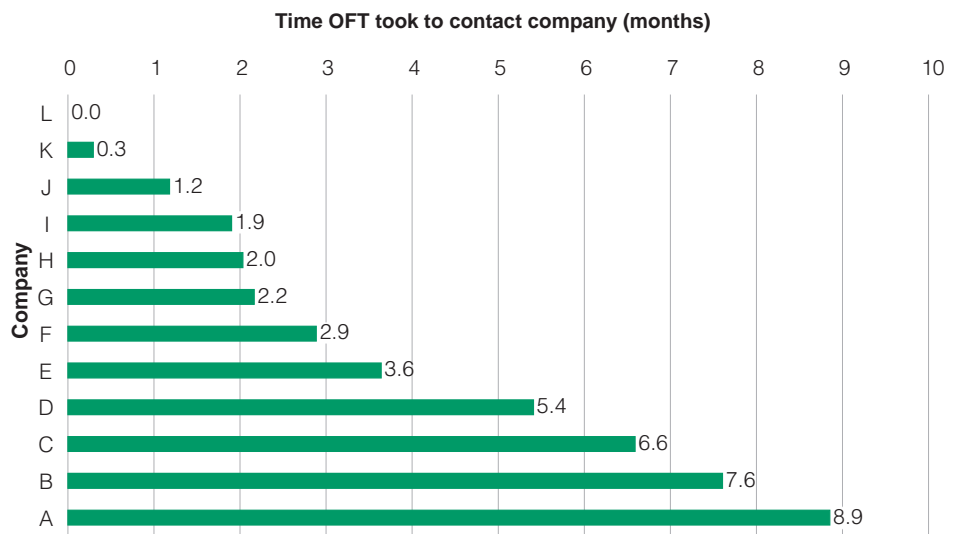
It is sometimes several months before the OFT approach businesses about complaints of unfair contract terms.

3.44 We found that in four cases the OFT had not contacted the businesses concerned until more than five months after they had received the first complaint (Figure 35 overleaf). This delay was partly due to the difficulty the OFT have experienced in keeping up with the growing number of complaints. The OFT told us that where complaints do not pose an immediate threat to consumers they are accorded a lower priority and dealt with when resources allow, and that they always advise consumers who complain to them how they can help themselves. Weaknesses in the OFT's case management system may also have contributed to delays. The OFT's essentially paper-based system makes it hard for them to

monitor the progress on individual cases. The OFT are seeking to improve their case controls and performance measures and plan to implement a new computerised case management system for all of their regulatory work in 2000.

The time elapsed between receiving complaints from consumers and contacting the businesses concerned in twelve cases considered by the OFT between 1997 and 1999

Figure 35



Source: OFT and NAO Analysis

Businesses have a financial incentive to prolong negotiations.

3.45 In the 12 cases we examined in detail, we also talked to the businesses concerned. Nine of the 11 businesses who responded¹⁶ told us that they felt that the OFT had handled negotiations well; and all said that they had taken the approach from the OFT seriously.

3.46 Most businesses want to comply with their obligations and, since the Unfair Contracts Regulations came into force in 1995, the OFT have focused on explaining to businesses how the Regulations apply and helping them to comply. In their negotiations with businesses the OFT rely on their interpretation of the Regulations, which have been tested in the Courts only once¹⁷ and are therefore open to challenge by businesses' legal advisers.

16 In one case, the member of staff who had dealt with the OFT was no longer available.

17 In July 1999. Although the OFT lost this case, their appeal should be heard early in 2000.

Action against traders under Part III of the Fair Trading Act 1973 takes too long and is ineffective

The OFT have powers to take traders who persist in flouting their legal obligations to court under Part III of the Fair Trading Act 1973.

Trading standards services gather the necessary evidence for the OFT to act.

Examples of the OFT's action under Part III of the Fair Trading Act

3.47 Part III of the Fair Trading Act enables the OFT to act against traders who persistently infringe consumers' statutory rights. The OFT must initially ask such traders to sign assurances that they will stop. If the trader refuses to sign or breaks these assurances, the OFT can bring proceedings in the county court. The court may either accept undertakings from the trader to stop infringing consumers' rights, or make an order to this effect. If the trader disobeys the undertaking or court order they may be found in contempt and can be fined or imprisoned.

3.48 The OFT's action begins when the trading standards service notifies them of concerns about a trader and provides the necessary witness statements. Examples of OFT action under Part III of the Fair Trading Act are set out in Figure 36.

Figure 36

Case 1: Traders giving written assurances to the OFT

- In October 1997, three officers of a **removal firm** agreed to give written assurances to the OFT. Fifteen well-documented complaints were made over two years concerning failure to deliver goods to customers' homes throughout the world, in the agreed time, or within a reasonable time, or on one occasion at all. In some cases, the company had not taken reasonable care of customers' goods, and failed to provide details of the terms and conditions under which goods were insured.

Case 2: Traders found in contempt of court for breaching undertakings to the court having previously breached assurances they had given to the OFT

- In August 1997, partners in a **plumbing, heating and electrical repair service** gave undertakings to Bromley County Court following complaints of overcharging and poor workmanship. The partners were ordered to pay costs. The partners had breached the written assurances they gave the OFT in September 1994. In September 1999, the partners were found in contempt of court for breaches of their 1997 undertakings. Each was fined £1,500 and ordered to pay the OFT's costs.

continued...

**Examples of the OFT's
action under Part III of the
Fair Trading Act
continued**

Figure 36

Case 3: A trader found in contempt of court on three occasions having previously received a court order

■ In the early 1980s, trading standards services received a number of complaints from consumers about a **trader who supplied and fitted motor vehicles with second-hand and reconditioned engines**. The engines he fitted often failed soon after repair, he failed to complete repairs in good time or at all, and car owners were often unable to retrieve their vehicles because they did not know where he could be contacted. The OFT began action in 1983:

1983	The Director General of Fair Trading requests written assurances from the trader.
1984	The trader returns signed assurances to the OFT, but complaints continue.
1985	The OFT begin court proceedings.
1986	A court order is granted, but complaints continue.
1993	The OFT bring proceedings for contempt of the 1986 court order.
1994	The trader is found in contempt of court and is fined £500. Complaints continue.
1996	The OFT begin further contempt proceedings.
1997	The trader is found in contempt and is sentenced to nine and a half months in prison, suspended for two years. Complaints continue.
1999	The OFT take further contempt proceedings and the trader is sentenced to 15 ½ months in prison.

Source: OFT

*The OFT have acted
against 96 traders
under Part III of the
Fair Trading Act in the
last five years.*

3.49 Between 1994 and 1998 the OFT acted against 96 traders under Part III of the Fair Trading Act. In two-thirds of the cases the trader signed an assurance about their future conduct. In the remaining cases the OFT instituted court proceedings against the trader. The Fair Trading Act prevents the OFT from releasing information supplied to them by traders except to those specified in the Act. We are not among those specified. We were therefore unable to examine how well the OFT had handled these cases.

3.50 The OFT's management information does not allow them to monitor easily how quickly they are able to act against traders under Part III of the 1973 Act, although such information can be extracted manually. As part of a special exercise the OFT calculated that it took them, on average, a little over nine months after being notified by a trading standards service to approach the trader to ask for assurances about their future conduct¹⁸. This does not include the time the OFT take to obtain assurances from traders.

It can take a very long time to stop traders who infringe consumers' statutory rights.

Evidence must be gathered over a period of at least a year.

Dishonest traders can prolong the process.

The OFT therefore use Part III of the Fair Trading Act 1973 as a last resort.

Trading standards services do not always notify the OFT about traders who persist in flouting their legal obligations, even when they believe action under the Fair Trading Act may be appropriate.

3.51 In practice, almost all cases where the OFT take action under Part III of the Fair Trading Act take well over a year to complete and some take much longer (for example, Case 3 in Figure 36). Features of the law make the process lengthy:

- a) The OFT must be able to prove to the courts that traders have *persisted* in breaching the criminal or civil law. The OFT work on the basis that, for small traders, a minimum of six well-documented complaints about a similar kind of misconduct over about a year are needed before the OFT can act. For a large firm, where six complaints would be a fraction of total business transactions, more complaints are needed.
- b) The OFT must show to the courts that they have used their *best endeavours* to obtain voluntary assurances from traders that they will stop infringing consumers' statutory rights. Dishonest traders can take advantage of this requirement by stalling for time, dragging out correspondence, delaying replies or even not replying at all.

3.52 Because of these difficulties, whenever they have sufficient evidence the OFT will use their powers under other legislation to act against traders who persist in flouting their legal obligations. For example, if the trader has a consumer credit licence, the OFT may in the first instance warn the trader that they risk losing their licence. In some cases, however, action under the 1973 Act is the only option.

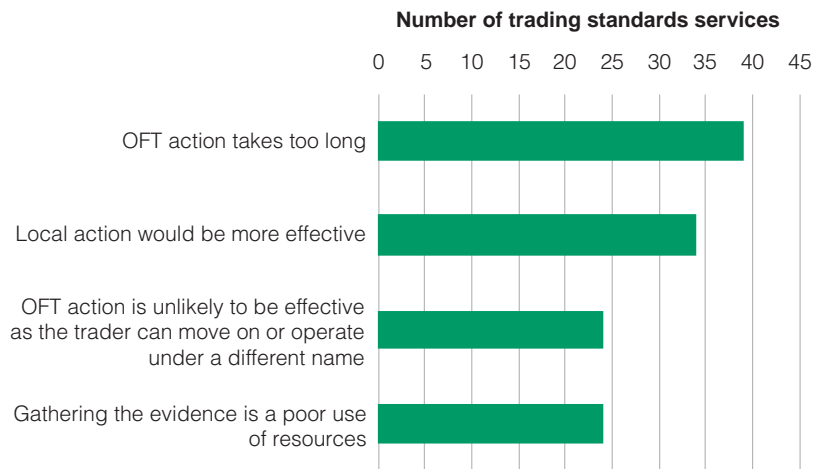
3.53 We asked trading standards services how many cases they had identified in 1998–99 where evidence had come to their attention that *could* warrant action by the OFT under Part III of the Fair Trading Act. We estimate that in total there were 180 cases in Great Britain in 1998–99 where trading standards services felt action under Part III might be appropriate. Only 46 cases were referred to the OFT, however.

18 This represented performance on all cases where a trader was approached in the year to September 1998.

3.54 We also asked trading standards services whether they had referred the *last* case they had identified to the OFT. Forty-eight out of the 111 trading standards services who had identified such cases had not done so. Of the 48, 39 said that this was because it takes too long to secure a satisfactory outcome and 34 said that local action would be more effective (Figure 37).

Many trading standards services believe that action under Part III of the Fair Trading Act takes too long

Figure 37



Note: This reflects the views of 48 trading standards services who had not referred the last trader they had identified to the OFT where, in their opinion, they had evidence that could have warranted action by the OFT under Part III of the Fair Trading Act 1973.

Source: NAO Survey

The action trading standards services take instead is only partly effective.

3.55 Nearly 90 per cent of the trading standards services who had not referred their last case to the OFT took other action themselves. Twenty warned traders or issued formal cautions, while 15 sought to educate or warn consumers. We asked trading standards services whether they believed their action had been successful. Excluding those who said it was too soon to say, five out of 34 trading standards services said that in their opinion their action had been completely successful. A further 26 said that their action had been partly successful.

Trading standards services can speed action by the OFT if they warn traders at an early stage.

3.56 The OFT can act more quickly where trading standards services have at an early stage warned a trader in writing that the OFT may require assurances from them under Part III of the Fair Trading Act if they persist in infringing their customers' statutory rights. Such a warning makes it less likely that, should the case reach the courts, the trader can argue successfully that they were not aware of the law or of their customers' dissatisfaction. In 1993 the OFT suggested to trading standards services that they adopt this approach and the suggestion was repeated in guidance for trading standards services the OFT published in 1997¹⁹. Our survey of trading standards services suggests, however, that it may now be appropriate for the OFT to remind trading standards services that warning traders at an early stage can enable the OFT to act more quickly.

3.57 Since 1986, the OFT have argued strongly for reform of Part III of the Fair Trading Act 1973 (for example, see Figure 38).

The OFT have argued that the law intended to stop traders who persistently flout their legal obligations is not working well.

Figure 38

"Despite its laudable objective, the present law is inadequate and does not deal with those who continuously deceive consumers or take advantage of ignorance, inexperience or trust."

"There is a pressing need for radical reform to make the provisions effective and meet the need for rapid action and effective enforcement."

From *Consumer Affairs: The Way Forward – A Consumer Strategy for the Office of Fair Trading*, (OFT, September 1998).

3.58 The Government have accepted the arguments of the OFT and others that Part III of the Fair Trading Act 1973 should be replaced. As noted in paragraph 1.10, the Government intend to legislate to give powers to both the OFT and the trading standards service to seek injunctions from the courts to stop specific practices by specified traders, and to ban from trading for a stated period traders with a history of disregarding their legal obligations.

19 *Part III Assurances: How Trading Standards Departments and the Office of Fair Trading can work together in the administration of Part III of the Fair Trading Act 1973* (OFT, 1997).

Appendix 1: Study Methods

1 In brief:

- a) we evaluated information from the OFT relating to their consumer protection work;
- b) we sought the views of business and trade associations;
- c) we sought the views of consumers, consumer representatives and consumer journalists;
- d) we sought the views of local trading standards services;
- e) we worked with the Audit Commission.

We evaluated information from the OFT relating to their consumer protection work

2 We analysed public information on the OFT's decisions to revoke or refuse consumer credit licences during the years 1996–97 to 1998–99 to identify the OFT's grounds for refusing or revoking licences²⁰. We also identified the time elapsed between the first and last reasons which led to the revocation of the trader's licence, the issuing of the licence and when the OFT revoked the licence.

3 We examined in detail 12 of the cases the OFT acted upon under the Unfair Terms in Consumer Contracts Regulations 1994²¹ during 1997 to 1999. This enabled us to identify how long the OFT took to handle cases and the steps taken to pursue negotiations.

20 By law we needed the permission of the businesses concerned to examine information they supplied to the OFT regarding their consumer credit licence so we restricted our examination to publicly available information.

21 We have a legal right of access to information businesses give the OFT under the Unfair Terms in Consumer Contracts Regulations 1994.

We sought the views of business and trade associations

4 We commissioned MORI to interview by telephone a nationally representative sample of 600 used car traders. The sample was drawn from Yellow Pages and trade directories. The survey questionnaire was finalised after a series of six 20 minute qualitative interviews with car dealers from different parts of Great Britain. The interviews were conducted in July 1999. The aim of the survey was to obtain information on the knowledge of used car dealers of their obligations under consumer laws, and their views on the effectiveness of the enforcement of consumer laws and of the consumer credit licensing system.

5 As part of our detailed examination of 12 of the cases the OFT acted upon under the Unfair Terms in Consumer Contracts Regulations 1994 (paragraph 3), we sought the views of the 12 businesses on how well the OFT had handled negotiations. We obtained the views of 11 of these businesses (in one case the member of staff who had dealt with the OFT was no longer available). Figure 39 lists 10 of the bodies we consulted. One preferred not to be named.

**Businesses and
trade associations
consulted
by the National Audit
Office**

Figure 39

Martin Dawes Telecommunications Ltd	Kitchen Specialists Association
BSkyB Ltd	Northern Rock plc
Budget Rent-a-Car (UK) Ltd	Hertz Europe Limited
Intercell Limited	Cornwall Eclipse 1999 Ltd
Federation of Recruitment & Employment Services	MDM "The Crown Collections" Ltd

6 We sought the views of trade associations and industry bodies on the effectiveness of the OFT. Figure 40 lists the bodies we consulted.

**Trade associations
and industry bodies
consulted by the
National Audit Office**

Figure 40

Abbey National plc	Finance and Leasing Association
The Automobile Association	Halfords
Barclaycard	Lex Service plc
Barclays plc	National Westminster Bank plc
British Retail Consortium	RAC Technicare
British Standards Institution	Retail Motor Industry Federation
Confederation of British Industry	Rover Approved
Consumer Credit Association (UK)	Society of Motor Manufacturers and Traders Ltd

We sought the views of consumers, consumer representatives and consumer journalists

7 We commissioned MORI to conduct face to face interviews in March and April 1999 with a nationally representative sample of 2,133 consumers who had bought or considered buying a used car in the last 18 months. The aim of the survey was to discover how many had seen the OFT’s consumer information leaflet *Buying A Used Car?* Data was weighted to reflect the national population profile.

8 In June 1999 we sent questionnaires to all 2,200 consumers who had contacted the OFT to request a copy of the *Buying A Used Car?* leaflet during October 1998 to March 1999. The questionnaire included questions on what they thought about the leaflet and how their next car purchase went. Seven hundred and thirty (33 per cent) had responded by the end of July. The response rate was reasonable for a postal survey of the public.

9 We obtained the views of four consumer representative bodies with an interest in this area, the Consumers’ Association, the National Association of Citizen’s Advice Bureaux, the National Consumer Council and the Scottish Consumer Council. We also obtained the views of consumer journalists from the *Daily Mail*, the *Daily Mirror* and *The Sun*.

We sought the views of local trading standards services

10 We surveyed by post the practices of trading standards services in responding to enquiries from the OFT, and referring cases to the OFT for possible action. The survey covered mainly practices in relation to consumer credit and the Fair Trading Act Part III. We worked closely with LACOTS, the Local Authorities Co-ordinating Body on Food and Trading Standards, in developing the questionnaire. We wrote to all 198 trading standards services in Great Britain in March 1999.

11 We visited four trading standards services with the Audit Commission. These were Devon County Council, Cardiff City Council, Bristol City Council and West Yorkshire.

We worked with the Audit Commission

12 We worked with the Audit Commission who during 1999 carried out a separate study of local authority trading standards services.

Appendix 2: Key issues for Central Government identified by the Audit Commission

1 The Audit Commission study examined:

- the level and quality of service currently provided by trading standards authorities;
- the reasons for inconsistencies in the services provided, authorities' arrangements for identifying needs and priorities and their approaches to risk assessment and the allocation of resources;
- how authorities should address these weaknesses while responding to the challenges ahead, including the consumer protection agenda introduced in the White Paper, *Modern Markets: Confident Consumers*, and the requirements of the Government's new *best value* framework for improving local services.

2 The Audit Commission made some recommendations directed at Central Government, as set out opposite:

The Government could assist authorities by:

- simplifying its own arrangements for oversight of the work of trading standards services, for example, by identifying a lead minister and department to develop policy and guidance;
- providing consolidated advice and guidance that sets out its expectations of trading standards services; this could include setting minimum national standards and targets for achieving these;
- developing core best value performance indicators that will allow meaningful measurement and benchmarking between authorities. These indicators should be linked to any core standards and targets. The Audit Commission already sets some performance indicators for trading standards services and would be happy to work with central and local government and the trading standards profession to help develop a more comprehensive suite;
- providing more seed funding for new, innovative cross-border initiatives;
- working with local government and the trading standards profession to develop ways of evaluating effectiveness and of choosing the approaches to enforcement that are most appropriate to an authority's circumstances;
- working with local government and the trading standards profession to continue to update and develop the profession's skill base; for example, by following up the discussion, in the consultation paper, *A Fairer Measure*, about changing qualification requirements to allow more flexible use of staff;
- intervening if authorities are not responding to the *best value* agenda or are failing to co-operate effectively.

Source: *Measure for Measure: The Best Value Agenda for Trading Standards Services* (Audit Commission, December 1999)

Appendix 3: The OFT's Consumer Advice Leaflets

The OFT's consumer education leaflets provide advice and information on the public's consumer rights and on aspects of personal finance. The OFT especially recommend them to teachers and advisers. The OFT's consumer advice leaflets are available free from: OFT, PO Box 366, Hayes UB3 1XB.

OFT002	A Buyer's Guide	A pocket-size book full of information on your legal rights as a consumer, how to complain and where to get help. A Buyer's Guide is also available in translation on the OFT's website (www.of.gov.uk). This is not available as a printed copy.
OFT164	Canllaw'r Prynwr	A Welsh language version of A Buyer's Guide. This publication can also be downloaded from the OFT's website.
OFT118	Home Improvement	A guide to planning and managing work on your home.
OFT196	Buying a Used Car?	A guide and checklist to buying second-hand cars from dealers and private sellers.
OFT197	Prynwr car ail law?	A Welsh language version of Buying a Used Car?
OFGT009	Shoes	How to solve problems with faulty shoes.
OFT015	No Credit?	How to find out what information credit reference agencies hold on you, and how to correct that information.
OFT010	Buying by Post	Consumer protection when you purchase by mail order, direct mail or through newspapers and magazines.
OFT127	Prepayments	How to minimise risk when you pay in advance.
OFT120–122	Buying goods	A basic guide to consumer rights. Available in English/Welsh, Scottish and Northern Ireland versions.
OFT128–130	Buying services	A basic guide to consumer rights. Available in English/Welsh, Scottish and Northern Ireland versions.
OFT146	Using a pawnbroker	Procedures and protections.
OFT157	Using an estate agent	For consumers in England, Wales and Northern Ireland.
OFT167	Using an estate agent	Scotland version.
OFT012	Debt	A practical way out of debt.
OFT011	Creditwise	An introduction to trouble-free credit. Age 14–22.
OFT233	Doeth–gredyd	A Welsh language version of Creditwise.

Appendix 4: Codes of Practice supported by the OFT

Code	Trade association
Credit (these codes are separately negotiated with each trade body shown)	Finance and Leasing Association The Consumer Credit Trade Association The Consumer Credit Association of the United Kingdom The National Consumer Credit Federation London Personal Finance Association Ltd Credit Services Association
Double glazing	Glass and Glazing Federation
Domestic electrical appliance servicing	The Association of Manufacturers of Domestic Electrical Appliances
Selling and servicing of electrical and electronic appliances	The Radio, Electrical and Television Retailers' Association (RETRA) Ltd
Extended warranties on electrical goods	British Retail Consortium
Domestic laundry and cleaning services	Textile Services Association Ltd
Residential estate agents	National Association of Estate Agents Incorporated Society of Valuers and Auctioneers Royal Institution of Chartered Surveyors Ombudsman for Estate Agents
Footwear	The Independent Footwear Retailers' Association Instock Footwear Suppliers' Association The British Footwear Association
Footwear repairs	The Society of Master Shoe Repairers
Holiday caravans (letting code, and selling and siting code)	British Holiday and Home Parks Association Ltd National Caravan Council
Introduction agencies	Association of British Introduction Agencies
Direct marketing	The Direct Marketing Association (UK) Ltd
Mail order trading	The Mail Order Traders' Association
Direct selling	The Direct Selling Association Ltd
Mechanical breakdown insurance	Society of Motor Manufacturers and Traders Ltd
Motorcycles	Motor Cycle Industry Association

continued...

Code	Trade association
Motor industry	Retail Motor Industry Federation Ltd Society of Motor Manufacturers and Traders Ltd Scottish Motor Trade Association Ltd
Tyre and fast-fit industry	The National Tyre Distributors Association
Vehicle body repair	The Vehicle Builders and Repairers Association Ltd
Vehicle rental and leasing	British Vehicle Rental and Leasing Association
Tickets (resale for all forms of entertainment)	The Society of Ticket Agents and Retailers
Travel agents	Association of British Travel Agents Ltd
Tour operators	Association of British Travel Agents Ltd
Photography	The National Pharmaceutical Association Photo Marketing Association International (UK) Ltd The British Institute of Professional Photography Master Photographers Association Professional Photographic Laboratories Association The British Photographic and Imaging Association The British Imaging and Photographic Association

Reports by the Comptroller and Auditor General, Session 1999-2000

The Comptroller and Auditor General has to date, in Session 1999-00, presented to the House of Commons the following reports under Section 9 of the National Audit Act, 1983:

Improving VAT Assurance.....	HC 15
The Newcastle Estate Development Project.....	HC 16
Criminal Justice: Working Together	HC 29
The Office of Fair Trading: Protecting the Consumer from Unfair Trading Practices	HC 57