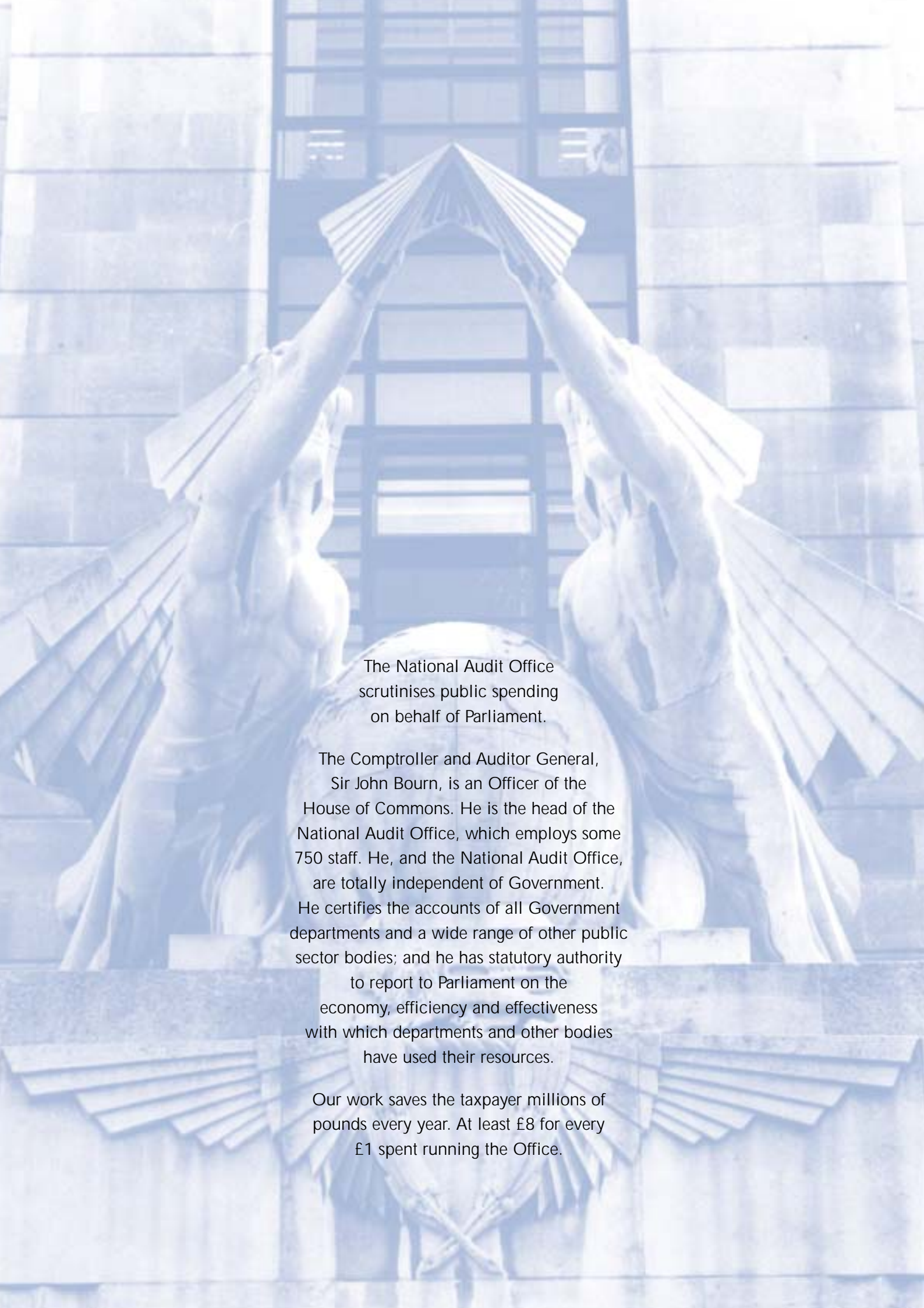


The Office of Fair Trading  
**Progress in Protecting Consumers' Interests**

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL  
HC 430 Session 2002-2003: 6 March 2003







The National Audit Office  
scrutinises public spending  
on behalf of Parliament.

The Comptroller and Auditor General,  
Sir John Bourn, is an Officer of the  
House of Commons. He is the head of the  
National Audit Office, which employs 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.

Our work saves the taxpayer millions of  
pounds every year. At least £8 for every  
£1 spent running the Office.

The Office of Fair Trading  
Progress in Protecting Consumers' Interests



REPORT BY THE COMPTROLLER AND AUDITOR GENERAL  
HC 430 Session 2002-2003: 6 March 2003

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* National Audit Office  
Comptroller and Auditor General 28 February 2003

The National Audit Office study team consisted of John Ashcroft, Jerry Cant and Phil Jones.

This report can be found on the National Audit Office web site at [www.nao.gov.uk](http://www.nao.gov.uk)

**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: 020 7798 7400

Email: [enquiries@nao.gsi.gov.uk](mailto:enquiries@nao.gsi.gov.uk)





# Contents

<b>Executive summary</b>	<b>1</b>	<b>Part 3</b>	
<b>Part 1</b>		<b>Management of consumer credit licensing</b>	<b>25</b>
<b>Introduction</b>	<b>7</b>	Checking the identity of applicants for consumer credit licences	25
The Office of Fair Trading	7	Processing data on convictions and sharing conviction information	26
The report on the OFT by the Committee of Public Accounts	8	Dealing with applicants submitting false or misleading information	27
Key developments since the Committee of Public Accounts reported	8	Taking account of a history of discrimination	28
Scope of this report	11	Increasing the rate of referrals from trading standards departments	28
<b>Part 2</b>		<b>Part 4</b>	
<b>Ensuring fair trading</b>	<b>13</b>	<b>Investigating unfair contract terms</b>	<b>31</b>
Encouraging good practice through self-regulation	13	Setting targets for resolving unfair contract terms cases	31
Enforcing fair trading legislation	15	Taking unfair contract terms cases to court	34
Co-ordinating cases that cross local authority boundaries	18		
Being more proactive in identifying sectors with widespread abuse	19	<b>Appendices</b>	
Publishing warnings to traders	20	1. Treasury Minute on the Thirty Seventh Report from the Committee of Public Accounts 1999-2000 - The Office of Fair Trading - Protecting the Consumer from Unfair Trading Practices, CM 4901, 16 November 2000	36
Obtaining value for money from the OFT's information campaigns	20	2. Stakeholders consulted by the National Audit Office	43
Developing guidance on the standards expected of local authority trading standards services	22		

# executive summary

- 1 This report is about the work of the Office of Fair Trading (OFT) in protecting consumers from unfair trading practices. This work contributes to the OFT's goal of making markets work well for consumers. The OFT's activities in support of this goal include:
  - **Enforcement** - of competition and consumer protection rules
  - **Investigation** - into how well markets are working
  - **Communication** - to explain and improve awareness and understanding
- 2 The OFT is a non-ministerial Government department, headed by the Director General of Fair Trading, with a remit across the United Kingdom. It has expanded substantially in the last three years and as at February 2003 employed some 630 staff, of which 200 are in the division responsible for the enforcement of consumer protection legislation<sup>1</sup>. The OFT is funded by the Government and its budget for 2002-03 is £51.2 million, of which it has allocated £9.5 million for consumer protection enforcement. The OFT collects, and pays into the Consolidated Fund, consumer credit licence fees from businesses (£3.8 million in 2001-02). The OFT works closely with the 205 local authority trading standards services which employ some 3,700 staff and have gross running costs of some £152 million (2001-02 estimates<sup>2</sup>).

## In 2000 the Committee of Public Accounts made recommendations to help the OFT improve its effectiveness

- 3 In August 2000 the House of Commons Committee of Public Accounts reported on the OFT's work in protecting consumers from unfair trading practices<sup>3</sup>, on the basis of an earlier report by the Comptroller and Auditor General<sup>4</sup>. The Committee's report focused on how the OFT sought to protect consumers by:
  - using its powers under **Part III of the Fair Trading Act 1973** to stop traders who persist in flouting their legal obligations, to promote trade associations' codes of practice and to publish information and advice to customers;
  - checking that consumer credit licences are held only by those who are fit to do so, under the **Consumer Credit Act 1974**, and publishing information to help businesses comply with the Act;
  - acting under the **Unfair Terms in Consumer Contracts Regulations 1999** to secure the removal of unfair terms in consumer contracts.

1 *The OFT's five other divisions are responsible for enforcing competition law, market investigations, communications, legal advice and resources and services.*

2 *Trading Standards Statistics 2001, Statistical Information Service, SIS Ref:67.02.*

3 *'The Office of Fair Trading: Protecting the Consumer from Unfair Trading Practices', Committee of Public Accounts, 37th Report 1999-2000, HC501, 30 August 2000.*

4 *National Audit Office Report 'The Office of Fair Trading: Protecting the Consumer from Unfair Trading Practices', HC57, 8 December 1999.*

- 4 The Committee concluded in particular that:
- the OFT found it difficult to use the **Fair Trading Act** to stop traders who persist in flouting consumers' legal rights and it can take many years to secure a satisfactory outcome;
  - the OFT's powers to revoke traders' **consumer credit licences** can be an effective sanction in many industries because losing a licence can put a trader out of business. The OFT had, however, refused few applications and revoked few existing licences;
  - the OFT had received more complaints about **unfair contract terms** than it expected and cases were taking several years to resolve. But in only one case had the OFT applied to the courts to require a trader to revise unfair terms.
- 5 The Committee's report made 16 specific recommendations. In its response for the Government<sup>5</sup>, the OFT welcomed the Committee's report. The OFT was pleased by the Committee's recognition that it was hampered by weak legislation and by its highlighting of ways in which the OFT could use its existing powers in a more effective and targeted manner. It said that in taking the Committee's recommendations forward it would work in partnership with other key players, notably local authority trading standards services and the Department of Trade and Industry (the Department), which is responsible for the Government's policy on the regulatory framework. The OFT considered that the report provided the opportunity to reinvigorate its mission and duties under its new Director General. This report considers what progress the OFT has made.

## The OFT's consumer protection legislation is changing

- 6 The Government recognised the drawbacks of existing consumer protection legislation, in particular the difficulties the OFT experienced in using it to secure compliance by traders. The Government's 1999 Consumer White Paper<sup>6</sup> had already made a commitment to change the law. Progress in this direction was made with the coming into force in June 2001 of the Stop Now Orders (EC Directive) Regulations which implemented the provisions of an EC Directive relating to specific areas of trading activity. This has given stronger enforcement powers to the OFT, trading standards services and others. In particular, the Regulations replaced the requirement that a trader had to be "persistent in a course of conduct" before a court could apply sanctions, which had proved very difficult to demonstrate, with a broader requirement that a trader "has engaged or is likely to engage" in specified conduct.
- 7 The Enterprise Act, which received Royal Assent in November 2002, will, among other things, replace Part III of the Fair Trading Act and potentially extend Stop Now powers to all areas of trading activity of interest to the OFT. This represents a significant strengthening of the consumer protection framework. In addition, the Department is currently reviewing the working of the Consumer Credit Act and may bring forward legislation once this is complete.

<sup>5</sup> *Treasury Minute on the Thirty Seventh Report from the Committee of Public Accounts 1999-2000 - The Office of Fair Trading - Protecting the Consumer from Unfair Trading Practices, CM 4901, 16 November 2000.*

<sup>6</sup> *Modern Markets, Confident Consumers, Command 4410, 22 July 1999.*





## The OFT has acted on most of the Committee's conclusions and recommendations

- 8 The OFT has sought to improve its performance in most of the areas subject to the Committee's specific recommendations. In doing so it has been helped by the allocation of increased resources (up by some 32 per cent in real terms since financial year 1998-1999). In some cases tangible achievements are already evident, while in others further progress still needs to be made. In a few cases the OFT, having considered the options, has been unable to act.

## The OFT has made some improvements to the way it protects consumer rights

- 9 The OFT has delivered tangible achievements in the following areas:

### On ensuring fair trading

- The OFT has applied Stop Now Orders Regulations to trading activities where the previous enforcement power under the Fair Trading Act had in many cases proved ineffective. Since June 2001 this new power has resulted in 58 businesses giving undertakings or assurances to desist from unlawful trading and has in at least one case put out of business a company that had seriously abused consumer rights (paragraph 2.17).
- The OFT published detailed guidance on how it intended to use its powers under the Stop Now Orders Regulations in April 2002, 10 months after they came into force, raising concerns from businesses about the lack of transparency in regulation. The OFT, however, considered that protecting consumer interests was too important to delay its use of the Regulations until full consultation had been completed. The OFT is currently consulting with businesses and consumers on its new powers under the Enterprise Act (paragraph 2.14).
- The OFT has sought to enhance the deterrent effect of its enforcement activity by publicising details of completed Stop Now investigations. When the Enterprise Act comes into force, and Stop Now powers are extended to other types of trading, the OFT intends to follow this approach for all aspects of its enforcement work (paragraphs 2.31 to 2.33).
- The OFT re-launched its website in February 2002 and expects, in due course, to evaluate its effectiveness in raising consumer awareness (paragraphs 2.41 to 2.42).

### On managing consumer credit licensing

- There has been an increase in the number of consumer protection cases referred to the OFT by trading standards services where the suitability of persons to hold consumer credit licences has come into question. This appears to reflect an increasing confidence in the OFT's ability to deal effectively with cases (paragraph 3.18).

### On investigating unfair contract terms

- The OFT has issued guidelines for businesses and consumers on the suitability of contract terms in tenancy and health and fitness club membership agreements (paragraphs 4.6 to 4.7).



## At the end of 2002 the OFT was still working on other improvements

10 The OFT was still working to achieve improvements in the following areas:

### On ensuring fair trading

- The OFT is implementing a more rigorous process for endorsing self-regulated codes of practice, replacing those codes about which the Committee, and the OFT, were sceptical. In August 2001 the OFT invited code sponsors (such as trade associations) in seven priority sectors to submit revised codes and by Autumn 2002 three codes had reached the point where the OFT was satisfied with their content. It is likely to be a further nine months before the OFT is satisfied that they are being complied with and therefore fit for the OFT's endorsement. The OFT recognises the need to monitor on-going compliance with codes of practice and to assess their effectiveness (paragraphs 2.2 to 2.9).
- The OFT has developed a consumer regulation website that should enable the OFT, trading standards services, and other enforcement agencies to share information on traders and trading practices. In Autumn 2002 the OFT was piloting this web site with 20 trading standards services with a view to national implementation in early 2003. The aim of the website is to identify and spread good practice and the OFT will need to work with other enforcement agencies to ensure that this is achieved (paragraph 2.26).
- The OFT's initiative to publish guidance for sectors or trading activities which it identifies as having a significant risk of consumer abuse had, by Autumn 2002, resulted in two sets of guidance - for debt management companies and the free debt advice sector. Guidance on areas of particular concern to the Committee, used car dealers and debt collectors, is at an advanced stage of preparation. The OFT recognises the need to monitor the effectiveness of its guidance and in September 2002 announced a review of compliance with its debt management guidance (paragraphs 2.27 to 2.28).
- The OFT carries out a limited review of each publicity campaign to assess whether it was likely to have succeeded in reaching its target audience. While it would not be cost effective for the OFT to evaluate the impact of all its publicity campaigns, it should consider carrying out a detailed evaluation of selected high priority campaigns. The results of these evaluations could be used to verify and add weight to its existing post-campaign exercises (paragraphs 2.36 to 2.37).
- The results of the OFT's business awareness survey in April 2002 highlighted the need for publicity to be targeted at smaller businesses, as these seem to be less aware of their responsibilities under consumer protection legislation (paragraphs 2.38 to 2.39).

### On investigating unfair contract terms

- The OFT has increased the size of its team dealing with unfair contract terms and given senior managers more autonomy in a bid to speed up its investigations. It is making good progress in reducing the number of cases over two years old and, as at December 2002, looked like meeting its target of reducing this number to 100 in March 2003. The OFT's long term target is to clear all cases over two years old but it considers this will be difficult to achieve (paragraphs 4.8 to 4.9).

## The OFT has been unable to make much progress on some of the Committee's recommendations

11 Little progress has been made in the following areas:

### On managing consumer credit licensing

- The OFT still does not collect sufficient information to be sure that applicants for consumer credit licences are who they say they are. The OFT considered the Committee's recommendations but concluded that the use of additional information would be resource intensive and would not offer value for money in terms of additional safeguards for consumers. There were also some specific difficulties. The OFT has instead opted to use postcode checking software to verify the personal addresses of applicants (paragraphs 3.2 to 3.5).
- The OFT has, despite considerable effort, been unable to gain routine access to information on past convictions of applicants for consumer credit licences from the only available central source, the Police National Computer. The risk therefore remains that the OFT may be issuing licences to applicants with past convictions sufficiently serious to call into question their suitability to hold one. The OFT seeks to minimise this risk by consulting trading standards services before issuing a licence (paragraphs 3.6 and 3.10).
- A further obstacle to the checking of consumer credit licence applications is the inflexibility of the OFT's computer system which is now some 20 years old. Plans to replace this system continue to be on hold following the Government's announcement of a complete review of the Consumer Credit Act. Improvements are therefore unlikely for several years yet (paragraph 3.9).

### On investigating unfair contract terms

- The OFT has resolved all unfair contract terms cases through consultation, backed up with the threat of legal proceedings. Although the Committee of Public Accounts recommended that the OFT be less constrained from taking cases to court, the OFT has not encountered a case, since the Committee reported, where it has needed to take court action (paragraphs 4.11 and 4.15).

## There are still constraints on the ability of trading standards services to work with the OFT

- 12 The OFT has concentrated on developing a partnership with trading standards services and hopes that they will take on an increasing share of consumer protection work, leaving the OFT to focus on cases with national implications. The Department has taken forward the task of developing performance standards for local authority trading standards services (paragraphs 1.17 and 2.43 to 2.44).
- 13 The Department has taken a number of initiatives to help trading standards services, including setting standards in its National Performance Framework. It is too early to assess the effectiveness of these initiatives, although they have been well received by the trading standards community. The extent to which trading standards services can play an increased role in protecting consumers is still uncertain:

- The Department's ability to promote the development of trading standards services is complicated by the need to work with the other Government departments and agencies which fund local authorities or sponsor the other activities that trading standards services undertake (paragraph 2.48).
- The Department has no control over the resources that individual local authorities allocate to trading standards services nor over local choices about the priorities that services are set. The Department has, however, made £9 million directly available to trading standards services over the period 2001-02 to 2002-03, for specific initiatives, but there is no certainty that such funding will continue (paragraph 2.50).
- There are still substantial variations in the size of individual trading standards services that cannot be explained by variations in the population served, and it is recognised by the OFT, businesses and the trading standards community that performance is consequently variable (paragraph 2.51).
- These variations are particularly relevant to the application of the 'home authority' principle, whereby the trading standards service in which the headquarters of a national business is located takes responsibility for co-ordinating dealings with the business and developing an educative relationship with it. While this principle generally works well, there is a risk that it might not be fully effective where the trading standards service concerned is not resourced to play its part. The responsibility can be relocated but there is no duty on, or financial incentive for, another authority to take on the role (paragraphs 2.22 to 2.23).
- There are serious concerns in the trading standards community that the number of qualified trading standards officers is set to decline, putting at risk the future delivery of the service (paragraph 2.51).
- The OFT has been seeking, through the provision of guidance and support, to encourage trading standards services to make full use of Stop Now powers. It hopes that its own early results will provide encouragement. The OFT should monitor the outcome of Stop Now activity to determine whether the new powers are being used to their full effect (paragraph 2.21).

## Overall conclusion

- 14 The OFT has made steady progress, within its existing powers, towards improving its consumer protection work along the lines the Government promised in their response to the Committee. The introduction of the Stop Now Orders Regulations and forthcoming implementation of the Enterprise Act should strengthen its work further. The OFT will need to be vigorous in driving forward the changes if consumers are to see substantial benefits and it, the Department and local government will need to be vigilant and pro-active if trading standards services are to work effectively alongside the OFT.**



# Part 1

## Introduction

- 1.1 Consumers can be at a disadvantage when dealing with traders because often they are not in possession of all the information required for them to make informed choices when purchasing goods and services. For this reason consumers can pay more than necessary for their goods or enter into contracts that contain unfair terms. It is extremely difficult to place a cash value on the level of detriment suffered by consumers in this way, but it is estimated to be in the region of £8.3 billion per annum<sup>7</sup>. This corresponds to 1.5 per cent of annual household consumer expenditure or roughly £180 a year for every adult in the United Kingdom.
- 1.2 These problems give rise to an estimated 86 million consumer complaints a year, although most complaints are not made to the relevant regulatory bodies. The extent of the problems consumers face means that there is an important role for regulatory and voluntary bodies that seek to protect consumers in their dealings with businesses. Foremost among the Government bodies is the Office of Fair Trading (OFT).

### The Office of Fair Trading

- 1.3 The OFT's goal is to make markets work well for consumers. It aims to achieve this by promoting and protecting consumers' interests, in three ways (Figure 1).
- 1.4 The OFT is headed by the Director General of Fair Trading (currently John Vickers). The OFT has some 630 permanent staff based in London and an annual budget of £51.2 million (2002-03 figures) funded by Parliament as a non-ministerial Government Department. It covers the whole of the UK. While its status makes it independent of direct control by any other Government department, it works closely with the Department of Trade and Industry (the Department) which is responsible for legislation and Government policy relating to consumer protection and competition.

### 1 How the OFT seeks to protect consumers

#### 1. Investigating whether markets are working well for consumers

The OFT investigates markets pro-actively to determine whether they are working well for consumers. As well as business behaviour, investigations cover legislation and regulations designed to ensure a competitive environment for businesses and consumers. The OFT also advises the Government on how to achieve the most effective regime for competition and consumers.

#### 2. Enforcing consumer protection and competition laws

The OFT protects consumers' interests by tackling rogue traders, eliminating unlawful trading practices and licensing certain traders. It co-ordinates enforcement action throughout the UK with its regulatory partners; takes action against traders who act unfairly; and works closely with regulatory bodies in other countries that also have enforcement powers. The OFT promotes a strong and competitive culture across the economy by stopping and deterring abuses of dominant market positions, and assessing mergers for the effect they have on competition.

#### 3. Communicating with consumers, businesses and Government

The OFT improves the behaviour of markets by increasing traders' understanding of their obligations and protects consumers by informing them of their rights. It informs businesses about compliance with new legislation and offers a range of information to help consumers.

- 1.5 The OFT also works closely with local authority trading standards services which, among many other responsibilities, have an important role in investigating and taking action on complaints about unlawful trading practices, as well as giving advice to businesses and consumers. Trading standards services are responsible for enforcing and advising on a wide range of other legislation relating in particular to health and safety, food standards, and weights and measures.

<sup>7</sup> Office of Fair Trading, *Consumer Detriment Report, February 2000*. The estimate (£8.3 billion +/- £2.7 billion at 95 per cent confidence) represents detriment in the form of problems of which the consumer becomes aware and does not measure the value of the emotional stress involved in resolving a problem.

## The report on the OFT by the Committee of Public Accounts

1.6 In August 2000, after taking evidence from the OFT, the Committee of Public Accounts published a report on the OFT's performance in protecting consumers from unfair trading practices. The report concentrated on three pieces of legislation that empower the OFT to act against consumer detriment. Their main conclusions in each area were:

### The Fair Trading Act 1973

"The OFT has found it difficult to use the Fair Trading Act to stop traders who persist in flouting consumers' legal rights, and it can take many years to secure a satisfactory outcome - 16 years in one case. The Government has accepted that new legislation is needed to make it easier for the OFT to persuade the courts to prevent from trading those with a history of disregarding their legal obligations to consumers, and to give similar powers to local authority trading standards services. In the meantime the OFT needs to act more effectively within their existing powers, in particular in liaison with trading standards services where there are considerable variations in performance. This will be especially important as a prelude to the proposed devolution of further powers to trading standards services."

### The Consumer Credit Act 1974

"The OFT's power to revoke traders' consumer credit licences can be an effective sanction in many industries, because losing a licence can put a trader out of business. The OFT has, however, refused few applications for licences, and revoked few existing licences. Some traders obtain or continue to hold a licence despite convictions for serious criminal offences. The OFT needs to improve the way they check applications and obtain timely information on convictions. It needs also to review the arrangements under which trading standards services alert the OFT of doubts about a trader's fitness to hold a licence, as trading standards services are referring fewer and fewer cases to the OFT."

### The Unfair Terms in Consumer Contracts Regulations 1999

"The OFT has received more complaints about unfair contract terms than they expected, and the backlog of work means that it is taking several years to resolve many of these complaints. In only one case, four years after new regulations came into force, has the OFT so far used its powers to apply to the courts to require the trader to revise the contract concerned. Such actions send a powerful message to rogue traders and the OFT should consider what further cases merit an appeal to the courts under existing powers."

1.7 The Committee's report made 16 recommendations to the OFT on the ways it could improve the efficiency and effectiveness of its work. The Government welcomed the Committee's report and was pleased that it recognised that the OFT's ability to act is hampered by weak legislation. The Committee's report provided a number of practical recommendations, mostly accepted, as to how the OFT might improve its effectiveness. The OFT undertook to work in partnership with other key bodies, notably local authority trading standards services and the Department of Trade and Industry, to implement the recommendations.

## Key developments since the Committee of Public Accounts reported

1.8 In evidence to the Committee of Public Accounts the OFT pointed to deficiencies in its powers in both Part III of the Fair Trading Act and the Consumer Credit Licensing Act and stated that it expected new legislation to tackle these difficulties. There have been two legislative changes since then - the introduction of the Stop Now Orders Regulations in June 2001 and an Enterprise Act in November 2002. The Government is currently reviewing the working of the Consumer Credit Act and may bring forward legislation when this is complete. The OFT has also expanded and re-structured, and its Consumer Regulation Enforcement Division has signed up to the Government's 'Enforcement Concordat'<sup>8</sup>.

### (i) Stop Now Orders

1.9 The Stop Now Orders (EC Directive) Regulations came into force on 1 June 2001 giving force to the EC Injunctions Directive. The Regulations provide a new and potentially more effective way of helping to protect consumers from harmful business practices. The Regulations provide a stronger mechanism for enforcing existing consumer protection legislation by giving the OFT (and other specified bodies) a speedier means of acting against non-compliant businesses within the UK and across the EU. They also widened the range of legislation under which the OFT can intervene. The OFT can secure undertakings from, or take injunctive action against, traders who breach regulations that implement 11 EC Directives where those breaches 'harm the collective interests of consumers'. **Figure 2** shows the trading activity covered by the 11 Directives.

## 2 Aspects of trading covered by the Stop Now Orders Regulations

- |  |   |
|--|---|
| ■ Misleading and comparative advertising             | ■ Consumer credit                                 |
| ■ Doorstep selling                                   | ■ TV broadcasting activities                      |
| ■ Package travel, package holidays and package tours | ■ Advertising of medicinal products for human use |
| ■ Unfair contract terms                              | ■ Timeshare                                       |
| ■ Distance selling                                   | ■ Sale of goods rights                            |
|  | ■ E-commerce                                      |

### (ii) The Enterprise Act

1.10 The Enterprise Act implements many of the proposals in the Government's 1999 Consumer White Paper 'Modern Markets: Confident Consumers'. The Act is intended to reform insolvency laws, strengthen competition and empower consumers. It will also create a single enforcement structure, replacing Part III of the Fair Trading Act and the Stop Now Regulations. The Department's aims in this respect are to modernise consumer protection legislation and improve the performance of enforcement bodies. The Act received Royal Assent in November 2002 and is scheduled to come into force in Summer 2003.

1.11 Under the Act enforcement bodies, such as the OFT, will have strengthened powers to obtain court orders against businesses that fail to comply with their legal obligations to consumers, similar to those in the Stop Now Orders Regulations. The new provisions will cover a wider range of consumer protection issues. The OFT has consulted with stakeholders about how the provisions of the Act will work in practice and has based its proposed guidelines on those issued for the existing Stop Now Orders Regulations.

1.12 The Act will also empower the OFT to give formal approval to codes of practice that meet rigorous standards and it will enable designated consumer bodies to make 'super complaints' to the OFT. The OFT will for the first time be given a statutory power to carry out educational activities, for instance, to educate consumers, although in practice it has undertaken such activities for many years.

1.13 Other provisions of the Enterprise Act seek to increase the transparency of the OFT's operations, through the publication of annual plans and reasons for decisions, and will establish a board to replace the post of the Director General of Fair Trading. The board, which is intended to offer broader oversight and a wider range of experience, will consist of a Chairman and at least four other members, appointed by the Secretary of State. It is expected that the board will provide strategic leadership.

### (iii) Consumer Credit Review

1.14 The Consumer Credit Act 1974 is now nearly thirty years old and the Department of Trade and Industry is undertaking a review of it to ensure it remains relevant to modern consumer credit markets and maintains appropriate consumer protection measures. The key objectives of the review are to develop a new credit regime that targets rogue traders; reduces burdens on legitimate businesses; reflects market changes on consumer credit; and gives consumers a fair deal. The Department is consulting widely across a range of bodies, including consumer organisations, businesses and charitable bodies. It has consulted on proposals to improve the licensing system, to remove the financial limit so that more agreements are subject to the Act, and to make early settlement rules more equitable. It is intending to consult on the provisions covering extortionate credit, advertising and the form and content of credit agreements. The Department expects to complete this by Autumn 2003, with draft legislation following as soon as possible after that.

### (iv) The expansion and re-structuring of the OFT

1.15 The Committee's report, and the Government's response, pre-figured a greater willingness within Government to invest in consumer protection and therefore provide increased resources. This has been coupled with an increased workload for the OFT arising from the implementation of the Competition Act 1998. The total resources of the OFT have increased by £21 million between 1998-99 and 2001-02, an increase of 80 per cent in real terms. Over the same period the budget for the OFT's Consumer Regulation and Enforcement Division, excluding self-regulation<sup>9</sup>, increased by 32 per cent from £4.7 million to £6.2 million.

1.16 To reflect the OFT's enlarged role, the current Director General undertook a major re-structuring in October 2001. The OFT now has three front-line divisions. The former divisions responsible for consumer affairs and competition policy have been focused onto the enforcement aspects of these functions. A new Markets and Policy Initiatives division has been created to undertake investigations into how markets and market practices operate. The OFT is intending to use the results of its investigations to help assess what action, if any, needs to be taken to make markets work better, and this may inform the work of the other two divisions. Despite losing some functions to the new division, the staffing of the consumer regulation division has increased by 29 per cent to some 200 since April 1999.

<sup>9</sup> 'self-regulation' is the work undertaken by the OFT on developing codes of practice.



1.17 In July 2001 the OFT concluded that, given its extensive working relations with trading standards services, it was not best placed to set national standards for the service or to monitor performance. This work has been taken forward by the Department which is better placed to liaise with the Office of the Deputy Prime Minister, responsible for local authorities, and others in central government responsible for policy on matters such as health and safety, food standards, and weights and measures.

### (v) The Enforcement Concordat

1.18 The OFT has adopted the principles of the Cabinet Office's voluntary 'Enforcement Concordat'. In doing so it has bound itself to the principles of good enforcement and the implications for the OFT are outlined in **Figure 3**.

## 3 Enforcement Concordat - implications for the OFT

### Standards

The OFT should set out clearly the levels of service and performance that the public and businesses can expect to receive.

### Openness

The OFT should provide clear information on the rules applied. It must consult widely with businesses, voluntary organisations and consumers.

### Helpfulness

The OFT should work closely with businesses to prevent breaches of the regulations.

### Complaints about service

The OFT should provide well publicised, effective and timely complaints procedures.

### Proportionality

The OFT should minimise the costs of compliance for businesses by ensuring that any action required is proportionate to the risks.

### Consistency

The OFT should carry out its duties in a fair, equitable and consistent manner.

### Procedures

OFT officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference.

## Scope of this report

1.19 This report focuses on how the Office of Fair Trading has taken forward the actions proposed in the Treasury Minute in response to the Committee's recommendations. The report sets out the progress made against each of the Committee's recommendations and is split under the same broad headings as the Committee used in their report (paragraph 1.6):

- Part 2: Ensuring fair trading
- Part 3: Consumer credit licensing
- Part 4: Investigating unfair contract terms

1.20 The starting point of the National Audit Office's investigation was a 'self-completion' questionnaire for the OFT. The questionnaire sought evidence of the progress made by the OFT against each of the Committee's recommendations and accompanying practical examples. The OFT was asked to quantify, wherever possible, the effects of its initiatives. We validated the information supplied to us on the questionnaire through a series of meetings with senior staff from the OFT sections dealing with credit licensing and unfair contract terms. We also obtained documentary evidence and management information to support the OFT's answers given on the questionnaire.

1.21 We consulted with relevant stakeholders, including the Trading Standards Institute, The Local Authorities Co-ordinators of Regulatory Services (LACORS), the National Consumer Council and the National Association of Citizens Advice Bureaux. A full list of those consulted is at Appendix 2. The study team also undertook follow-up visits to four local authority trading standards services to canvas their views on developments and improvements made to the regulatory regime over the past three years.

---

The OFT intends to lead the way in taking 'Stop Now' action and is keen to ensure that these powers are used to protect consumers

---





# Part 2

## Ensuring fair trading

- 2.1 The Office of Fair Trading has overall responsibility for protecting consumers from unfair trading practices. It does this through a range of preventative and educational measures, backed up by formal enforcement action where necessary. Local issues require a local response and so the bulk of day to day enforcement activity is carried out by local authority trading standards services. The OFT, however, has a key co-ordinating role and focuses on significant sector-wide issues. The Committee of Public Accounts, in its report, made eight recommendations under this heading. This part examines the progress the OFT has made since.
- 2.2 Self-regulation, in the form of voluntary codes of practice, can be an effective, flexible and cheaper option than legislative and state-enforced regulation in bringing about improved trading behaviour. It builds upon the existing best practices of those being regulated and their desire to enhance their reputation with consumers. It aims to improve the behaviour of suppliers in a market so that standards and competitiveness are raised and the level of consumer detriment is reduced.
- 2.3 The Enterprise Act (paragraph 1.10) will give statutory force to the enhanced regime of codes of practice that was envisaged in the Treasury Minute. The OFT will be able to approve (and withdraw approval from) consumer codes of practice and may sanction the use of an official symbol that can be used only where a code of practice has been approved by the OFT.
- 2.4 The OFT has changed its approach to codes of practice in advance of the Enterprise Act being implemented. Following widespread consultation, in July 2001 the OFT announced a two stage approach:

### Encouraging good practice through self-regulation

#### Summary of the Committee's recommendation and the Government's response

Under the Fair Trading Act 1973, the OFT has a duty to encourage the development by trade associations<sup>10</sup> of voluntary codes of practice. The OFT believes that self-regulation can play an important part in raising business standards but that, quite often, these codes of practice set low standards, compliance was patchy and there were no redress arrangements. The Committee noted that the Government was considering legislation to give the OFT powers to approve codes of practice or to require them to be tightened and supported this development.

**In response**, the OFT stated that it was committed to a more effective codes of practice regime.

- *Stage 1:* The OFT assesses the code of practice against its core criteria and confirms whether it is likely to be of practical benefit to consumers and good traders. There is no approval of the code at this stage;
- *Stage 2:* The code sponsor provides evidence to the OFT that the code is operating effectively and meets the core criteria in practice, delivering real benefits to consumers.

The OFT will approve the code and promote it once it has passed the stage two assessment. The Cabinet Office's Better Regulation Task Force supported the OFT's approach of requiring code sponsors to demonstrate success prior to the approval of a code<sup>11</sup>.

<sup>10</sup> Codes of practice can be developed by any representative body, not just trade associations.

<sup>11</sup> Consumer Codes of Practice: the OFT's response to the consultation, July 2001.

- 2.5 In August 2001 the OFT invited code sponsors in seven designated priority sectors to submit their codes of practice for assessment. The OFT expected to complete its stage one appraisal, and announce which codes had moved on to stage two, in November 2001. To establish a clean break, and help promote the new regime, the OFT withdrew support from all existing codes of practice on 31 December 2001.
- 2.6 By October 2002 the OFT had received applications from eight organisations in six of the priority sectors (Figure 4). The OFT considered that none of the codes submitted initially met its criteria sufficiently to achieve stage one status and that more work was needed to bring them to the required level. The only sector where no code has been submitted is funerals, though discussions are on-going with potential code sponsors.
- 2.7 In developing codes of practice the OFT requires code sponsors to consult with consumer organisations. The National Consumer Council told us, however, that the consultation process could be improved with even greater transparency - it is not clear which organisations are being consulted and whether their input is acted on. Also, while consumer bodies welcome their role in the new arrangements, they are concerned that they do not have the resources for what might be an onerous task. For example, during stage two assessment consumer bodies are expected to provide feedback on the effectiveness of codes in addressing identified problems and detriment.
- 2.8 The OFT announced in October and November 2002 that three codes of practice satisfied its core criteria and had achieved stage one status. The average elapsed time from the OFT's receipt of a draft code of practice to its passing stage one has been more than 12 months. Obtaining improvements to the draft codes from individual code sponsors was a protracted exercise - the OFT had to discuss with code sponsors the need for changes, while code sponsors themselves had to consult with their members and, where appropriate, secure constitutional changes.
- 2.9 The OFT is close to finalising its approach to stage two assessment. It expects that it will take at least nine months for a code sponsor to provide the necessary evidence to demonstrate that the code is being complied with and therefore ready for approval by the OFT. The OFT is currently developing arrangements for evaluating the evidence provided by code sponsors. The OFT is aiming to approve the first codes by mid-2003 and will shortly be announcing the next sectors from which it will be inviting applications for codes to be submitted for assessment. While this enables the OFT to focus on a small number of codes at any one time, the National Consumer Council was concerned that some code sponsors may be excluded.

#### 4 The codes of practice received by the OFT for six of its seven priority sectors

Sector	Organisation	Date code submitted	Date code passed stage one
Car repair and servicing	Vehicle Builders and Repairers Association	11 September 2001	23 October 2002
Used Cars	The Society of Motor Manufacturers and Traders	1 October 2002	
Travel	Association of British Travel Agents	21 September 2001	
Estate agents	Ombudsman for Estate Agents Limited	4 September 2001	23 October 2002
Credit	Debt Managers Standards Association	20 November 2001	
Direct marketing	Direct Selling Association	26 September 2001	29 November 2002
	Direct Marketing Association	19 September 2001	
	Mail Order Traders' Association	17 September 2001	

2.10 The OFT considers that the new codes of practice offer real improvements over their predecessors. For example, the OFT's assessment of the Direct Selling Association's revised code of practice concluded that it:

- offers a clearer definition of direct selling;
- recognises the contractual relationship that arises between the consumer and direct sellers' agents;
- is fully compliant with the Direct Selling Regulations and contains a new annex setting out the main provisions of the Regulations.

2.11 The OFT plans to launch the regime to businesses in March 2003 and to consumers in January 2004. It recognises that this needs to be accompanied by a programme of marketing and consumer education. The OFT has a budget of £813,000 in its 2002-03 publicity programme to "develop the message and guidance" and "create and implement the campaign". Decisions on expenditure in 2003-04 and subsequent years have not been taken.

## Enforcing fair trading legislation

### Summary of the Committee's recommendation and the Government's response

The Committee was concerned that deficiencies in Part III of the Fair Trading Act 1973 meant that the OFT was unable to take prompt and effective action against rogue traders. This discouraged local authority trading standards services from committing scarce resources to cases that held out little promise of reaching a successful conclusion.

**In response**, the OFT referred to the Government's commitment to reform the law to establish a coherent and effective consumer protection regime. In the meantime the OFT undertook to concentrate its efforts to improve its procedures and partnerships with other bodies in order to help consumers get the best deal.

2.12 One of the principles underlying the Government's Consumer White Paper was to protect the public from serious trading malpractice and unsafe products. Although the resulting Enterprise Act only received Royal Assent in November 2002, other proposals in the White Paper have already been introduced:

- *the introduction in June 2001 of the Stop Now Orders Regulations* (paragraph 1.9) to enable the OFT and other enforcement bodies to act more promptly to stop rogue traders infringing certain consumer protection legislation;
- *changes to the National Consumer Council*. The Council's stated purpose is to champion the interests of consumers, especially those who face consumer detriment. The Council is the independent consumer expert and aims to bring about change for the benefit of all consumers;
- *the launch of Consumer Support Networks* with the aim of creating confident and informed consumers who know how to shop around for the best price, know their rights and can avoid rogues. Each network joins up the services of trading standards services, Citizens Advice Bureaux, and independent advice agencies such as Age Concern. As a group they will aim to ensure that good quality, accurate and timely consumer advice is accessible by the whole community.

2.13 Stop Now Orders provide significantly stronger enforcement powers than orders sought under Part III of the Fair Trading Act 1973, as they:

- extend the enforcement jurisdiction to trading standards services and other designated bodies;
- limit the time during which voluntary compliance must be sought to two weeks;
- replace the 'persistent in a course of conduct' test with a requirement that the enforcement authority demonstrate that the trader has engaged, or is likely to engage, in conduct that constitutes an infringement of one of the specified Directives (as implemented in the UK) and that the infringement harms the collective interests of consumers.



2.14 The OFT went out to consultation on its proposed approach for using the new powers in June 2001 and invited comments from other enforcement bodies, businesses and consumer organisations. The OFT published the finalised version of its Stop Now Orders Guidance in April 2002, 10 months after the Regulations came into force. The guidance sets out how the OFT proposes to apply the Regulations. Representatives of business have criticised the long delay between the OFT starting to use the powers and the publication of the guidance as causing uncertainty as to how businesses should react and reducing the transparency of regulation. The OFT considered that protecting consumer interests was too important to delay its use of the Regulations until full consultation had been completed. Looking ahead, the OFT consulted during 2002 on its proposed guidance for Part Eight of the Enterprise Act and is confident that it will be available before the Act comes into force.

2.15 The OFT's guidance provides that, except where urgent action is necessary, businesses should be given a reasonable opportunity to stop the infringement before the OFT seeks a Stop Now Order. The OFT has set out in its guidance the steps that it would take before requesting an order. In the first instance, the OFT will attempt to establish a dialogue with the business and obtain either:

- an informal assurance (where the infringement is minor or inadvertent, or where there is low risk of repetition);
- a formal undertaking (where the infringement is more serious in nature).

2.16 The OFT would not initiate legal proceedings against traders who give and comply with assurances or undertakings. The OFT may, however, apply for a court order where:

- assurances cannot be agreed or are not appropriate;
- resolution is not possible through negotiation and undertakings;
- the circumstances are such that proceedings must be brought as a matter of urgency (for example, where a business committing serious breaches of the law is about to launch a new marketing campaign which would mislead consumers about their rights).

If a trader breaches a Stop Now order made by a court, or an undertaking it has given, the OFT can initiate proceedings for contempt of court.

2.17 The OFT intends to lead the way in taking Stop Now action and is keen to ensure that these powers are used to protect consumers. It has stated that it will not hesitate to take cases to court (including taking cases through to contempt of court) where this is appropriate, although it expects the vast majority to be resolved without the need for court action. From the introduction of the Stop Now Orders Regulations in June 2001 to 31 October 2002, the OFT has taken action against 294 traders (Figure 5). This has resulted in 58 businesses giving undertakings or assurances to desist from unfair trading and has in at least one case put out of business a company that had seriously abused consumer rights.

**5 Action by the OFT under the Stop Now Orders Regulations, 1 June 2001 to 31 October 2002**

Number of Stop Now cases opened	294
Number of assurances and formal undertakings received from traders	58
Number of Stop Now Orders obtained	2
Number of court cases initiated, and won, for breach of an order or a formal undertaking	1



2.18 The Stop Now Orders Regulations have not just enabled the OFT to tackle more effectively matters covered by the Fair Trading Act 1973 but have also strengthened the way it applies other legislation (not covered by the previous National Audit Office report) such as the regulations covering misleading advertising and distance selling. In all cases, the OFT has focused primarily on sector-wide issues where the risk to consumers is greatest. In the majority of cases businesses can be persuaded to change their practices or behaviour voluntarily, without the need for formal action (Figure 6, Case 1). There are, however, cases where negotiation does not work and the OFT finds it necessary to take formal action (Figure 6, Case 2). Where a company does not change its behaviour, the OFT will seek a court order (Figure 6, Case 3). The Regulations also allow the OFT to enforce EU legislation across borders (Figure 6, Case 4).

## 6 Examples of the OFT taking action against traders

### Case 1: The OFT obtained assurances from major lending companies about their advertising of APRs

Under its new powers, the OFT wrote to 28 major lenders in mid 2001 about their use of the term 'APR' (Annual Percentage Rate) when referring to low introductory interest rates on credit card balance transfers. Consumer credit law states that the APR should measure the overall charge for credit over an agreement's lifetime. A temporary rate cannot therefore be called an APR. The OFT considered that the lenders' practice breached consumer law and could have misled consumers. The OFT obtained informal assurances from each of the lenders that it would discontinue this practice.

### Case 2: The OFT obtained a Stop Now Order against a company operating in breach of fair trading legislation

The OFT obtained its first Stop Now Order in April 2002 against four company officers involved with Craftsman Kitchens Ltd and Craftsman Kitchens Manufacturing Ltd<sup>12</sup>. The order requires the individuals to stop breaching consumer legislation, including supplying goods not of satisfactory quality and supplying goods not as described. Although the companies were wound up in the High Court in March 2002 (as a result of a separate action by the Department of Trade and Industry), the individuals trade under other names and the order applies to any business they operate. In contrast with the timescales experienced in taking action under the Fair Trading Act, the OFT obtained the court order nine months after commencing proceedings.

### Case 3: The OFT obtained an injunction against a company

In March 2002 the OFT obtained an interim order in the High Court against Planet Telecom Plc<sup>13</sup>, trading as 192enquiries.com Ltd, its company secretary and a director under the Control of Misleading Advertising Regulations 1988. The advertising that was the subject of the action gave the false impression that it was sent by, or on behalf of, a telephone company providing a directory enquiry service accessed by telephoning '192', such as BT. The company continued to issue, in the opinion of the OFT, misleading advertising prohibited by the interim injunction and a contempt hearing was held in the High Court in July 2002. After agreement, the contempt matters were set aside and a permanent injunction granted against Planet Telecom and the parties concerned.

### Case 4: The OFT has enforced the Stop Now Orders Regulations across EU boundaries

Working closely with the Dutch consumers' association, the OFT took action against a Dutch company that sent unsolicited first aid kits to UK residents accompanied by demands for payment. The OFT obtained written assurances from the company that it would not make further demands for payment. If the company breaches the assurances the OFT will be able to take court action in Holland.

2.19 Where the OFT has been able to use Stop Now Orders, as opposed to Part III of the Fair Trading Act 1973, it has been able to take action much more quickly. In one of the cases in Figure 6 it obtained a court order in ten months whereas under the Fair Trading Act it might have been several years before the case came to court. The Stop Now Orders Regulations are, however, strictly limited to the trading activities set out in paragraph 1.9 (Figure 2). For all other activities, the OFT has had to continue to rely on Part III of the Fair Trading Act 1973. In practice, it has given limited attention to actions not covered by the new Regulations pending the implementation of the Enterprise Act.

2.20 As local authority trading standards services take the lead in enforcing fair trading legislation at a local level, the OFT intends to focus on using Stop Now Orders on significant and sector-wide cases. Our discussions with four trading standards services and the service's national co-ordinating body (LACORS) have identified two key challenges for the OFT:

- most trading standards services are inadequately resourced and will struggle to take on this extra workload. The Department of Trade and Industry has provided additional funds, through the Revenue Support Grant mechanism, to local authorities. But funds are allocated according to local needs and priorities and only one of the four services we visited considered it had received its share of the additional funds;
- trading standards services have had experience in initiating criminal law proceedings for many years, but the introduction of Stop Now Orders, a civil procedure, has presented them with a new challenge. Trading standards staff will therefore need training in this new procedure.

2.21 While the OFT has no power to provide additional funds for trading standards services, it is investing a considerable amount of effort in training and education. The OFT visits individual services, attends regional forums, and is developing material, on video and CD-ROM, for remote learning. The OFT intends to continue its support of trading standards services and hopes that its own early results using Stop Now powers will encourage them to take similar action. The Department has also provided resources to support training activities within trading standards services.

<sup>12</sup> OFT Press Notice PN18/02, 22 April 2002.

<sup>13</sup> OFT Press Notice PN44/02, 23 July 2002.

## Co-ordinating cases that cross local authority boundaries

### Summary of the Committee's recommendation and the Government's response

Where a business (such as a major retail chain) operates across local authority boundaries, the trading standards service that has the company's headquarters within its area acts as the 'home authority' for that company and is responsible for co-ordinating dealings with it. The Committee recommended that the OFT should consider whether it ought in some cases take on the co-ordinating role.

**In response**, the OFT stated that in practice it does take on the major and more resource intensive cases. The OFT recognised that the 'home authority' principle can place strains on some local authorities, but considered that the system is important as it prevents fragmented and inconsistent action against the same company by different trading standards services.

2.22 The OFT continues to support the 'home authority' principle. The local authority acting as the home authority has an important role to play in giving advice on regulation, good practice and remedial action. Since April 2002, the OFT's Stop Now Orders Guidance has encouraged enforcement bodies to use the home authority as a source of advice and information about businesses. The Guidance also recommends that the home authority should be consulted about the business well in advance of any action. It is not, however, the home authority's role to take action on behalf of other enforcement agencies.

2.23 Each of the trading standards services we visited considered that the home authority principle allowed them to establish effective relationships with businesses based in their area, resulting in an emphasis on training and compliance rather than enforcement. But it requires a commitment on the part of the local trading standards service. The home authority principle may not work so well where the local authority is insufficiently resourced to take on the role. For example, we were told that one major supermarket chain for some time did not have an effective home authority because the London borough in which it has its headquarters was not sufficiently resourced for this role. The location of a home authority need not be tied to where a company has its headquarters. The Health and Safety Executive has similar arrangements, in the form of its Local Authority Partnership Scheme, whereby environmental health officers from a particular local authority liaise with individual national companies on health and safety issues. The local authority taking on this responsibility is often one in which the company has a large presence, but not necessarily its head office. This is a useful

precedent for the identification, for unfair trading purposes, of home authorities, though in the absence of any mechanism to provide additional funding, there is little incentive for trading standards services to take on additional home authority responsibilities.

2.24 The OFT does not have any hard and fast rules as to when it would take on a case from a local authority trading standards service. Generally, the OFT would look to take over a case if:

- the detriment caused by the trader's behaviour has affected a significant number of consumers;
- there is evidence that the same, or similar, practices are being adopted across the sector.

An example of a case that has been successfully taken over by the OFT is set out in [Figure 7](#).

### 7 A successful outcome in a case the OFT took over

Northumberland Trading Standards Service asked the OFT for advice about a company's contract terms on 24 May 2001. The company in question provides wedding and banqueting services. The terms included high financial penalties on consumer cancellation and excluded liability for breach of contract. The OFT gave its views on the case within days but on 6 July the trading standards service asked the OFT to take on the case as it did not have the resources to deal with it. The OFT wrote to the company on 24 July challenging five terms and obtained informal undertakings in August. Following negotiations with the company the terms were revised and the case completed in March 2002.

2.25 The OFT acknowledged that local authority trading standards services have, in the past, been reluctant to refer cases to it. Each of the services we visited considered that the OFT's handling of cases had improved, but they still had concerns about the time taken by the OFT to respond and about the continuity of staff dealing with cases. The OFT also identified a need to compile cases more quickly and has worked to improve its training programme and case management system. The OFT told us that it would continue to take steps to address delays in dealing with cases.

2.26 A major initiative aimed at co-ordinating enforcement action is the development, by the OFT, of a consumer regulation website. The aim of the exercise is to identify and spread good practice across the enforcement community. The site has both private and public areas. Access to the private area will be restricted to enforcement bodies and will contain information on enforcement activity. It will allow enforcement bodies to plan and co-ordinate action; for example, they will be able to see if another body is taking action against a particular trader. The website is currently being piloted by 20 trading standards services and the OFT hopes it will be rolled out nationwide in early 2003.



## Being more proactive in identifying sectors with widespread abuse

### Summary of the Committee's recommendation and the Government's response

The Committee considered that the OFT should be more active in working with trading standards services to identify sectors where consumer abuse is widespread.

**In response**, the OFT planned to produce guidance for specific sectors that generate a disproportionate number of complaints. The first two sectors to be targeted would be used car dealers and debt collectors. The OFT had also taken action to identify those sectors of the economy which cause consumer detriment.

2.27 The OFT is taking forward its plan to produce guidance for specific sectors that generate a disproportionate number of complaints. The OFT's response stated that the first two sectors to be targeted would be used car dealers and debt collectors, two sectors that the Committee of Public Accounts were particularly concerned about. The OFT decided to focus initially on the activities of debt management companies as the level of complaints indicated that this area posed a greater immediate risk to consumers. The OFT's guidance for debt management companies was issued in December 2001 with further guidance for the free debt advice sector issued in May 2002. The OFT intends to issue guidance for used car dealers in January 2003, and went out to consultation on draft guidance for debt collectors in November 2002.

2.28 In September 2002 the OFT announced a review of compliance with its debt management guidance. The review will gather information from customers, providers of free debt advice, debt management companies and trade associations.

2.29 As well as issuing guidance, the OFT has become increasingly pro-active by carrying out investigations into the way specific markets operate where it has concerns about the level of consumer detriment. In October 2001 the OFT established a Markets and Policy Initiatives division to strengthen its work in this area. Examples of the investigations it has carried out are given in **Figure 8**.

### 8 Examples of market investigations carried out by the OFT

Sector investigated	Outcome or progress
Consumer IT goods and services	The OFT completed its investigation in December 2002. The most significant problems identified were with the 'aftermarkets'. Support services showed the highest rates of dissatisfaction related to the levels of competition within the market for inkjet cartridges. Recommendations centred on ensuring that consumers have the information to guide their choices.
Extended warranties for electrical goods	The OFT completed its investigation in July 2002 and made a complex monopoly referral of electrical retailers to the Competition Commission.
Private dentistry	This review was initiated following a 'super complaint' from the Consumers Association. The key issues surround the transparency of prices, the level of competition and the interaction of NHS and private dental services. The OFT expects to complete the review in early 2003.



## Publishing warnings to traders

### Summary of the Committee's recommendation and the Government's response

The Committee considered that the OFT should consider making public its warnings to traders who it has good cause to believe are persistently flouting consumers' rights. This would alert consumers to the risks they run in dealing with such traders, and so provide traders with an incentive to behave responsibly.

**In response**, the OFT considered that 'naming and shaming' traders could be a breach of human rights legislation and could prove to be defamatory. The OFT would continue to issue 'consumer alerts' about detrimental practices and make better use of publicising assurances or undertakings given by traders, by targeting specialist publications, local press and trading standards services.

2.30 It is still not the OFT's policy to publish details of warnings to traders. Although the OFT only acts if it has good reason to suspect that a trader is in breach of fair trading legislation, it does not necessarily wait until the suspected breach has been proven. Making public its warnings in such circumstances could be defamatory or open to other legal challenge.

2.31 In response to the Committee's concerns, the OFT has, however, indicated in its Stop Now Orders Guidance that it will usually put information on completed cases in the public domain. This will apply to all cases where an infringement has been admitted. Where no infringement is admitted, the OFT may still publish details of the case, but taking care to indicate accurately the full circumstances and the basis upon which the assurance or undertaking was given. When the Enterprise Act comes into force, and Stop Now powers are extended to other types of trading, the OFT intends to follow this approach for all aspects of its enforcement work.

2.32 Information on completed Stop Now cases is made available to the public by way of press release and it will also be placed on the public area of the consumer regulation website (paragraph 2.26). As at 31 October 2002 the OFT had issued 14 press releases relating to its Stop Now activity. Seven of these publicised assurances and undertakings given by traders and 44 traders were named. A further two press releases gave details of Stop Now orders granted. The OFT now publicises all adverse determinations under the Consumer Credit Act.

2.33 The OFT is developing guidance for staff on publicity across all its activities. It has developed criteria for publicising Stop Now cases (for example, publicity should be accurate, balanced and fair to the trader) and the factors that it may take into account when considering whether to publicise the outcome of a case (for example, warning consumers about practices which are detrimental to their interests and deterring other traders from engaging in similar conduct).

2.34 In its response to the Committee's report, the OFT undertook to continue to issue 'consumer alerts', which are aimed at informing consumers about detrimental practices or 'scams'. It has issued four alerts since the Committee's report, most recently in September 2002 on buying used cars and in November 2002 on Christmas shopping rights and wrongs, and coping with credit. The OFT regularly reviews topics for future consumer alerts, although it now relies more on press notices and publicity campaigns to communicate with the public because it considers that this approach enables it to reach a greater number of consumers.

## Obtaining value for money from the OFT's information campaigns

### Summary of the Committee's recommendation and the Government's response

The Committee noted that the OFT had found it difficult to evaluate the impact of its information campaigns because consumers draw upon a range of information sources and concluded that the OFT could do more to evaluate its impact so as to make future campaigns more effective.

**In response**, the OFT accepted that, with the limited resources at its disposal, it needed to carry out evaluation to ensure value for money and effectiveness. The OFT also accepted the Committee's view that more information was needed on the reach and effectiveness of internet-delivered consumer information. The OFT was conducting a thorough review of its website to ensure it is fully abreast of best practice.

2.35 Out of a total budget of £1.96 million for its 2002-03 publicity programme, the OFT has £443,000 for publicising its consumer protection regulation and within this £290,000 is ear-marked for two specific consumer campaigns.

2.36 For each separate campaign the OFT produces a project plan and carries out post-campaign evaluation. The project plan sets out the campaign objectives, target audience, key messages, marketing activities, and any research requirements (for example, to obtain feedback). The post-campaign evaluation comprises an analysis of press and media coverage of the campaign, the number of leaflets distributed, and feedback from local Citizens Advice Bureaux and trading standards services. **Figure 9** sets out how the OFT evaluated its involvement in National Consumer Week in November 2001.

## 9 The OFT's evaluation of its involvement in National Consumer Week 2001

### Aim of the campaign

To reach young adults between the ages of 20 and 35 and warn them about the dangers of over-indebtedness.

### Key messages

- Think before you borrow
- Shop around for credit as you would for other goods
- If you're in debt - don't panic - get good impartial advice

### Activities and coverage

A **video news release** achieved considerable coverage on popular prime time news slots. There were 15 interviews with OFT spokespeople. A radio news release achieved 43 mentions throughout the UK, including 12 interviews with OFT staff. Taking estimated levels of television and radio audiences, the opportunities to hear the key messages were in the tens of millions overall. Press releases achieved 11 sizeable features in the national press and there was good regional coverage. 140,000 leaflets were requested and sent out in November.

### The OFT's conclusions

The objective of getting the message to the target audience was met. The spend of £59,000 (for all three aims) resulted in key messages getting to consumers on a large scale using a variety of media and provided good value for money.

2.37 The OFT's approach to evaluation is based on the premise that an opportunity to access the message gives some indication that the message may be reaching the target audience. This does not provide conclusive evidence as to whether the target audience has understood the message and the OFT does not evaluate the impact of the campaign on consumers, for instance, by surveying consumers. To do so for each campaign would be disproportionate to the benefit achieved. An alternative approach would be for the OFT to undertake a detailed evaluation of selected high priority campaigns. In the example of the case study at Figure 9, the OFT could, for instance, seek to measure whether the level of indebtedness among 20-35 year olds has reduced over time.

2.38 The OFT has, however, started to undertake general awareness surveys. It reported the results of two surveys in April 2002, one focusing on businesses (which aimed to measure awareness and knowledge of the 1998 Competition Act and of consumer rights legislation among 'consumer facing' businesses) and the other on consumers (which aimed to measure the public's knowledge of consumer rights).

2.39 The surveys' findings were broadly positive but highlighted some areas needing attention:

- with the exception of the Sale of Goods Act, businesses' awareness levels of the legislation that applies to them is low, particularly those businesses with less than 50 employees;
- consumers felt 'fairly well protected' in terms of consumer rights. Although in general terms they did not perceive themselves to be well informed about their rights, they were reasonably confident when using them. In fact, 66 per cent of consumers had taken some action to exercise their consumer rights in the previous 12 months. Knowledge of and confidence in using their rights were higher for faulty goods and mail-order purchases than for those items purchased on the internet;
- consumers' knowledge of the OFT and some awareness of its role was relatively high (around 80 per cent).

2.40 The OFT considers that the data collected during the awareness surveys of businesses and consumers will enable it to better target its limited marketing resources on areas where knowledge levels are low.

2.41 The OFT commissioned a review of its general consumer website during 2000 which identified certain weaknesses<sup>14</sup>. The OFT re-launched the website in February 2002 with a number of improvements (**Figure 10**).

## 10 Improvements in the OFT's re-launched website

- a comprehensive site map to help navigation
- a search mechanism that allows more specific searches and returns fewer but more relevant documents
- a clear homepage
- clearer classification of OFT documents and issues
- a more structured site with rational links between areas
- a division of the site between business and consumer users



2.42 The OFT has received encouraging feedback from users of the new site and an NAO accessibility audit in 2002 classed the OFT website as a 'front runner'<sup>15</sup>.

## Developing guidance on the standards expected of local authority trading standards services

### Summary of the Committee's recommendation and the Government's response

Given wide variations between local authorities in the effort devoted to fair trading activities, the Committee recommended that the OFT should work with local authorities to develop guidance on the minimum standards expected of them.

**In response**, the Government announced a new standards-setting role for the OFT. In advance of this, the OFT worked with the trading standards community and other enforcement agencies to enhance the level and quality of service provision and to promote best practice.

2.43 The OFT works closely with trading standards services on a day to day basis, as joint enforcers of consumer protection legislation. It therefore considered that the overarching responsibility for improving the performance of trading standards services, including developing and promoting national standards, should lie elsewhere (paragraph 1.17).

2.44 In response to findings by the National Audit Office and the Audit Commission that the performance of trading standards services across the country was patchy, the Department has developed a National Performance Framework for the trading standards service. The framework came into effect in April 2002 and is based on service standards that were developed in conjunction with the trading standards community and trialled by 25 individual authorities.

2.45 The framework requires trading standards services to compile a service delivery plan and provide the Department with information on a number of areas at year-end (for example, the number of requests for advice from businesses and the proportion of planned activities completed). As at 31 December 2002, 87 per cent of the 205 trading standards services had submitted a service delivery plan to the Department. The Department has commissioned consultants, IPF, to analyse each plan to see if it addresses the requirements of the framework,

provides the information specified by the Department, and whether there are any innovative working arrangements that could be shared.

2.46 The framework provides for an enhanced annual return to the Department by each trading standards service. The Department considers that these returns, to be completed for the first time for financial year 2002-03, will provide a better basis for understanding what trading standards services do and how effective they are. But in drawing conclusions about the relative performance of individual trading standards services, the Department will need some assurance that the returns have been completed on a consistent basis. This will involve an element of independent validation.

2.47 The Department recognises that there are, at present, no meaningful, nationally applied, performance indicators for trading standards services. It is working with key players in the trading standards community to develop a performance measurement framework that can be implemented for financial year 2003-04. It is currently consulting on a set of proposed performance measures. The Department would like to see some commonality with performance indicators used by the Office of the Deputy Prime Minister and the Audit Commission's Comprehensive Performance Assessment<sup>16</sup>.

2.48 Trading standards services have a wide range of responsibilities beyond fair trading issues. These involve several government departments and agencies (for example, the Department of the Environment and Rural Affairs and the Food Standards Agency). Each of these government bodies provides funds to local authorities in respect of these activities and requires information from trading standards services on the level of service provided. The Department's consultants are currently looking at the scope for consolidating these various information requirements into one single return.

2.49 A report by the Accounts Commission in October 2002<sup>17</sup> confirmed that the level of service provision by trading standards services is variable and that minimum standards are not being achieved. The report concluded that the level of service provision and overall performance are affected by the size of each individual service. The report listed several areas where trading standards services need to improve if they are to meet the standards set out in the Department's National Performance Framework. These included prioritising activities on the basis of a robust risk assessment and improving performance monitoring and review.

<sup>15</sup> NAO Report, *Progress in making e-services accessible to all - encouraging use by older people*, HC 428, 20 February 2003.

<sup>16</sup> *Strong Local Government - Quality Public Services*, Office of the Deputy Prime Minister, 11 December 2001.

<sup>17</sup> *Made to Measure? An overview of trading standards services in Scotland*, Accounts Commission, October 2002.

2.50 The Department has no control over the resources that individual local authorities allocate to trading standards services nor over local choices about the priorities that services are set. The Department has, however, set aside £9 million over the two years 2001-02 and 2002-03 in a 'Modernisation Fund'. This money is available to fund specific initiatives (for example, a system of regional co-ordinators to spread good practice) and cannot be diverted to other local authority activities.

2.51 There continue to be wide variations between local authority areas in the staffing of trading standards services. For instance, in two trading standards services each covering populations of 290,000 one had 23 members of staff while the other had 12<sup>18</sup>. The OFT, businesses and the trading standards community recognise that performance is consequently variable. The representatives of the trading standards service that we met raised a particular concern about the limited resources available for training trading standards officers, which when coupled with the age profile of officers meant that there is a risk that there could soon be insufficient trained officers to deliver the service.

2.52 In view of the action that the Department has taken, and the continuing heavy burdens placed on trading standards services, two initiatives that the OFT mentioned in its response to the Committee's report, have not been progressed:

- the Service Level Agreement scheme (which aimed to provide an agreed baseline of service provision by trading standards services and the OFT) may be discontinued in light of the Department's National Performance Framework;
- the OFT's 'Excellence in Trading Standards' awards scheme has been discontinued as it required too much effort on the part of trading standards services.



**OFFICE OF FAIR TRADING**

CC1/96 **C**

**Application for a Consumer Credit licence**

You must not carry out any activities that need a licence under the Consumer Credit Act before we issue a licence.

The person signing this form is responsible for ensuring accuracy and completeness.

Your application fee is not refundable except in limited circumstances. Please see the enclosed fees leaflet.

If you need more space, please continue on a separate sheet, clearly identifying the question number.

Details in Part 1 will appear on the Public Register. This means that anyone can see this information.

Application no. \_\_\_\_\_

Postcode E. \_\_\_\_\_

Postcode W. \_\_\_\_\_

Postcode N. \_\_\_\_\_

Postcode S. \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

**Part 1 About the applicant** *Information for the Public Register*

**1a If you are a sole trader**

Please tell us your own name.

Your title and surname \_\_\_\_\_

Your other names in full \_\_\_\_\_

Your date of birth \_\_\_\_\_

**1b Name of partnership, company or other organisation**

We use company to mean that you have been set up under the Companies Act or any other Act or authority in the UK or abroad.

We use other organisation to mean a charity, friendly society, trade union or similar organisation, but **NOT** a company.

Name of Act or authority that set up the company \_\_\_\_\_

Registration number of the company \_\_\_\_\_  
This is on the Certificate of Incorporation.

Please send a copy of the Certificate, as we cannot issue the licence without it.

**2 Trading names**

Please list if different from the names above.

You can trade only under the names that appear on your licence, so tell us all the names you wish to use.

If a choice of trading name is not self-evident, please explain it in a covering letter. This will reduce delay.

We may query or refuse a name if it is misleading or undesirable, for example if someone else is already using it.

If you need more space, tick this box. Tell us the other trading names on a separate sheet.

The OFT is responsible for operating the consumer credit licensing system

# Part 3

## Management of consumer credit licensing

- 3.1 The Consumer Credit Act 1974 requires that traders who provide credit or longer-term hire of goods, or who deal with credit or hire agreements, must hold a consumer credit licence. This requirement is intended to ensure that traders dealing with consumer credit issues are fit to do so. Trading without a licence is a criminal offence. The OFT is responsible for operating the licensing system. This part of the Report deals with how the OFT has responded to the Committee's recommendations aimed at strengthening the operation of the licensing system to improve protection for consumers from rogue traders.
- 3.2 In considering whether to issue or renew consumer credit licences, the OFT seeks to satisfy itself that applicants are in fact who they claim to be. Certain individuals (for example, those with specific types of criminal convictions) need to have their fitness to hold a licence considered before being granted a licence. As most applicants are entirely reputable, and not having a licence means they cannot trade, the OFT aims to process applications within 20 working days. This means that the OFT has to confirm the applicant's identity relatively quickly and does not have time for extensive background checks.

### Checking the identity of applicants for consumer credit licences

#### Summary of the Committee's recommendation and the Government's response

The Office of Fair Trading can refuse an application for a licence if it considers that a trader is unfit to hold a licence. But the Committee noted that the OFT does not require applicants to supply sufficient information to verify their identity and that few applications for licences are refused. The Committee recommended that the OFT should give consideration to strengthening its checks on applicants through the use of passport and National Insurance numbers.

**In response**, the OFT stated that it had embarked upon a fundamental review of the information requested from applicants and this was due to be completed by the end of 2000. It also stated that it would by then have new postcode matching software that would enable it to check address details given on an application form to those held on the electoral register.

- 3.3 As indicated in the OFT's response, the OFT examined the feasibility of asking applicants to provide additional information. It concluded that the use of additional information would be resource intensive and would not offer value for money in terms of additional safeguards for consumers. There were also more specific difficulties:
- *National Insurance numbers* would provide a unique identifier for each applicant, but primary legislation would be needed to empower the OFT to use these for checking purposes;
  - *Passport numbers* could adversely affect those who do not hold a United Kingdom passport;
  - *Birth certificates* - the OFT considered that checking and returning certificates would be too resource intensive and might cause delays in processing applications;
  - *References* are not necessarily objective and could easily be falsified.



- 3.4 The OFT is not alone in having to prove the identification of applicants - other organisations face similar difficulties. For example, financial services companies must be satisfied about a person's identity before opening an account for them. They insist on applicants providing proof of identification and for this they use personal items such as driving licences and utility bills. The OFT considers that handling the number of documents involved in such a check would introduce unwarranted delay and cost.
- 3.5 The OFT is, however, proposing to require non-incorporated traders to provide their personal addresses<sup>19</sup> and to check them using postcode matching software. This will help to confirm applicants' identities and prevent 'fronting', a practise where someone applies on behalf of a barred person. The OFT considers this to be the most cost effective approach and referred to this proposal in its response to the Committee's report. The OFT plans to introduce it in Spring 2003 following a pilot of a re-designed application form. It also has benefits for trading standards services as they will be able to contact the prospective trader to establish an early home authority contact, provide information about compliance and gather information about the nature of the new business.
- 3.6 The OFT routinely informs local trading standards services of applications from traders in their locality. Trading standards officers generally alert the OFT if they have concerns about an application and may carry out a site visit to confirm the facts within an application. The trading standards services we visited during the study commented that the OFT's reliance on them is limited by resource constraints. The OFT cannot therefore be certain that trading standards services are performing sufficiently robust checks, making it more likely that a rogue trader will be granted a credit licence.
- 3.7 The Department of Trade and Industry's review of consumer credit is covering the issue of an applicant's fitness to hold a licence and the level of checking that can be carried out. But any changes requiring primary legislation are unlikely to be introduced before the end of 2005.

## Processing data on convictions and sharing conviction information

### Summary of the Committee's recommendation and the Government's response

The OFT had refused or revoked licences where traders had convictions for serious offences such as fraud, dishonesty or violence, but it had not sought to discover how many similar cases remained undetected. The OFT considered that to do this effectively it needed to modify its systems for capturing and processing information on convictions and the Committee recommended that this was done. The Committee also noted that the OFT could not obtain information from the Police National Computer unless it had cause to believe that a trader had previous convictions. The Committee recommended that the question of the OFT's access to Police National Computer data should be considered as a matter of urgency.

**In response**, the OFT stated that it intended replacing its licensing computer system with one that would enable easier and swifter exchange of information with external data sources. However, this was dependent on the outcome of a DTI review of consumer credit licensing, funds being available, and the OFT gaining access to information held by other regulatory bodies. The OFT was urgently pursuing the matter of gaining access to the Police National Computer with the appropriate authorities.

- 3.8 The nature of a previous conviction may make a trader unsuitable to carry on a business requiring a credit licence<sup>20</sup>. There is a risk that, to get round this, applicants might not declare such convictions in their application. Improved access to information on convictions would enable the OFT to confirm that the information provided by applicants is accurate and that there are no omissions.
- 3.9 The OFT's licensing system is some 20 years old and has limited functionality. The OFT had planned to introduce a new system that would have facilitated the capture of conviction data and the sharing of information with other enforcement agencies. It has not proceeded with this because it is awaiting the outcome of the Department's review of consumer credit, which was referred to in the Treasury Minute. The OFT did not want to invest in a new system in advance of possible changes to the licensing arrangements.

<sup>19</sup> Personal address details for incorporated companies are available from other sources.

<sup>20</sup> Other circumstances, such as bankruptcy and mental illness, may make a trader unfit to hold a credit licence.

3.10 The OFT investigated the possibility of obtaining access to the Police National Computer to carry out routine checks of applicants' previous convictions. The Association of Chief Police Officers' 'Disclosure of Convictions Sub-committee' rejected the OFT's application on the grounds that it would constitute an 'employment check'. The sub-committee directed the OFT to the Criminal Records Bureau, but the Bureau did not consider these to be employment checks and the OFT was unable to register as a user. The Bureau advised the OFT that licence applicants could apply for a 'Disclosure of Convictions' which could then be included with their application. The OFT did not consider this to be a practical solution given the volume of cases involved and the likely additional costs both to applicants and the OFT. The OFT is, however, allowed access to the police database where there are grounds for concern about a trader. The outcome of such queries is monitored to ensure that the OFT does not use this right of access for routine checking.

3.11 The OFT has also been working jointly with other enforcement bodies through the Government's Inter-Departmental Data Sharing Group. This group discussed ways of sharing information on applicants. But most of its proposals would have required primary legislation and the group no longer meets on a formal basis.

## Dealing with applicants submitting false or misleading information

### Summary of the Committee's recommendation and the Government's response

The Committee noted that in the three years to 1998-99 only 24 consumer credit licences were revoked in cases where the applicant had provided inaccurate or incomplete information. The OFT generally left prosecutions to local trading standards services. The committee recommended that the OFT should review with local authorities what more could be done to bring prosecutions where the application form had been falsified.

**In response**, the OFT stated that it was in discussions with the national co-ordinating body for local authority trading standards services about how this might best be achieved. In those cases where false or misleading information had been provided, the OFT would refuse or revoke licences. The Committee had noted that such a sanction is in itself a significant penalty as it could remove a trader from the marketplace.

3.12 The provision of false or misleading information is an offence under Section 7 of the Consumer Credit Act. If the OFT considers that an applicant has supplied false or misleading information it can refuse the licence application or revoke the applicant's existing licence. It can also pursue criminal prosecutions against traders, though reserves this action for those cases it considers to be more serious.

3.13 In line with its Memorandum of Enforcement Responsibilities with trading standards services, the OFT considers that it is better for criminal prosecutions to be taken at a local level, leaving the OFT to focus on licensing action. As court action is expensive, it considers that where refusal or revocation of a licence ensures that a business can no longer trade, the additional step of pursuing it through the courts does not represent good value for money. The National Consumer Council considers that using the licence as an enforcement tool can be a crude instrument, as revoking a licence can deprive the holder of their livelihood. The Council considers that while revocation is appropriate for more extreme cases, it is not a proportionate, or fast enough, response to stop much unfair behaviour. The Council is therefore campaigning for a general duty not to trade unfairly which would enable the OFT and trading standards services to use injunctive powers to back up the OFT's guidance rather than just the 'all or nothing' course of licence revocation.

3.14 The OFT's management information indicates that there were no cases of licences being refused or revoked for the provision of false or misleading information in either 1999-2000 or 2000-01 and only three cases in 2001-02. These figures might, however, understate the position as the OFT only records the main reason for taking refusal or revocation action. In some cases the provision of incomplete or misleading information is overshadowed by more serious concerns. The OFT's own paper based review, and management experience, suggests that up to 30 per cent of refusals and revocations result from the provision of false or misleading information. This would be equivalent to some 28 cases in 2001-02 and would represent a significant increase on the average of eight cases a year during the three years to 1998-99.

## Taking account of a history of discrimination

### Summary of the Committee's recommendation and the Government's response

The Committee was concerned that the OFT's ability to take into account discrimination on grounds of race, gender and national origin was compromised by the lack of information available to it.

**In response**, the OFT said that it had started to gather additional information on discrimination and takes this into account when it assesses the fitness of licence holders and applicants.

- 3.15 The Consumer Credit Act<sup>21</sup> states that the OFT must take into account whether or not an applicant for a licence has "practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business..".
- 3.16 The OFT continues to be constrained in its ability to pursue cases of discrimination because of the limited information that tribunals hold on cases. The OFT has consulted with the Equal Opportunities Commission and Commission for Racial Equality to improve the recording of information. The lack of reliable evidence of discrimination means that the OFT has to date acted in only a small number of cases (two cases in 2002-03 and five linked cases in 2000-01).
- 3.17 Cases of discrimination have been confined mainly to businesses operating within a group licence<sup>22</sup>. In these cases both the holder of the group licence and the OFT are responsible for taking appropriate regulatory action. To date, nobody has been excluded from a group licence.

## Increasing the rate of referrals from trading standards departments

### Summary of the Committee's recommendation and the Government's response

The Committee noted that revoking a credit licence can be a serious and effective sanction. But during the three years to 1998-99 the number of licences revoked fell by two-thirds and trading standards services referred 30 per cent fewer cases to the OFT. The OFT and trading standards services attributed the fall in referrals to the time it took to secure a satisfactory outcome and the costs involved. The Committee recommended that the OFT should review what they could do to increase the rate of referrals and to consider encouraging consumers and traders to bring complaints about licence holders directly to the OFT.

**In response**, the OFT had introduced a new management information system, to improve its caseload management, and shortened its target times for completing its action. These changes had resulted in a doubling of the number of licences refused or revoked in the first six months of 2000-01 compared to the number reported by the National Audit Office for 1998-99.

- 3.18 The OFT has a national remit and it is therefore important that significant or complex cases and those involving sector-wide abuse are referred to it for action. The level and timeliness of enforcement activity by the OFT are important factors in trading standards services' decisions to refer cases to it. The OFT has worked closely with trading standards services and the number of referrals has increased slightly. The OFT received 93 credit licence referrals from trading standards services in the 12 months to 31 October 2001 and 102 in the 12 months to 31 October 2002. The National Association of Citizens Advice Bureaux expressed concern about the lack of feedback from the OFT on the progress and outcome of matters it had raised with the OFT for investigation and considers this might deter bodies from referring cases for investigation. In recognition of their common interest in protecting consumers, the OFT and the Association are discussing a Memorandum of Understanding on a framework for co-operation and exchange of information.

<sup>21</sup> Consumer Credit Act 1974, Section 25 (2) (c).

<sup>22</sup> Under the system, professional and other bodies can apply for a group licence to cover members or representatives for specific credit activities.

- 3.19 The increase in licence refusals and revocations that the OFT referred to in response to the Committee's concern has not been maintained (Figure 12). In 2001-02 the proportion of licences revoked on renewal fell by 64 per cent and the number of active licences revoked fell by 41 per cent. The downturn in the number of revocations in 2001-02 reflected in part a shortage of staff in the OFT's adjudication section. Since then staff numbers have increased by 50 per cent. In the period April to October 2002 the OFT refused 22 licence applications and renewals and revoked 16 active licences.
- 3.20 The increase in the number of licence renewals in 2001-02 (Figure 12) was the result of a reduction in the length of a licence from 15 to five years. Coupled with an increase in the number of cases referred to the OFT for investigation, this has placed strains on the OFT's regulatory resources. The OFT has therefore made organisational changes and provided additional senior management input to improve the investigation of cases.
- 3.21 To ensure that consumer credit licence applicants and holders are treated fairly, the OFT must be careful in its approach to handling cases. It has therefore developed an internal management structure to ensure that the adjudication process is fair and based on the facts of the case alone. The OFT's investigation section is separated from the adjudication section by an internal 'chinese wall'.

- 3.22 The importance of the 'chinese wall' was demonstrated in 1995 when the OFT conducted an investigation into the business practices of a particular company, resulting in the issue of a 'minded to revoke' notice<sup>23</sup>. This was the first such notice issued to a publicly quoted company and under Stock Exchange listing rules it had to be publicly disclosed. This led to a collapse in the company's share price and the eventual closure of the company. The founding directors of the company complained to the Parliamentary Commissioner for Administration (the Parliamentary Ombudsman) about the way OFT handled the case. The Parliamentary Ombudsman determined in 2000 that the OFT had been guilty of maladministration because its 'chinese wall' had been breached during the adjudication process (Figure 13).
- 3.23 The OFT restructured its internal reporting lines to ensure that such a mistake could not be repeated. And it has since introduced additional management changes to ensure that there is complete separation between the OFT's investigators and adjudicators. The manager of the adjudication section now reports directly to the Deputy Director General of Fair Trading, who has no responsibility for credit licensing. The OFT has also strengthened its record keeping and management checks, increased the number of adjudicators, and acted to ensure that its legal staff work for either the adjudication section or the investigation section. The OFT considers that its new case handling system will help it to enforce and monitor the 'chinese wall'.

**12 Licence applications, renewals, refusals and revocations 1998-99 to 2001-02**

	1998-99	1999-2000	2000-01	2001-02
Applications	21,200	18,907	16,312	16,293
Applications refused	15	32	32	27
Warning letters issued to applicants	340	238	72	168
Renewals	10,000	8,224	7,312	11,974
Renewals refused	1	21	32	20
Active licences	150,000	174,208	190,191	205,670
Active licences revoked	18	21	32	19

Source: The Office of Fair Trading

**13 The Parliamentary Ombudsman's report into maladministration**

Two former directors of a listed company complained that the OFT failed to fulfil an undertaking to consult the company if the OFT was considering issuing 'minded to revoke' notices in respect of its consumer credit licences. They also complained that the OFT's decision to issue such notices was flawed because the 'chinese wall' intended to ensure the independence of the OFT's adjudicating officer was compromised by improper and inaccurate advice from OFT colleagues in the investigation section. The company's former directors complained that the OFT's actions had set in train a course of events that led to the failure of the company and to the loss of their personal and business reputations. The Ombudsman found that there had been a direct and serious breach of the 'chinese wall'; that the whole revocation process had been compromised; and that this represented substantial maladministration leading to injustice for the complainants in their individual capacities. The Ombudsman welcomed the OFT's acceptance that there had been maladministration (although the OFT did not accept that this was of such substance as to mean that the revocation process had been subverted); the OFT's revisions to its procedures as a result of the case; and the OFT's decision to offer an ex-gratia payment.

*Extract from the Parliamentary Ombudsman's Annual Report for 2000-2001, Chapter 4 - Investigated cases - other Departments, C502/97, OFT: mishandling of a revocation process.*

23 Section 32(2) of the Consumer Credit Act requires an adjudicating officer to give notice to a licensee that he is minded to revoke their licence giving his reasons. The licensee is invited to submit evidence to show that they are fit to continue holding a licence.



# Unfair tenancy terms

don't get caught out



---

OFT consumer guides are designed to help consumers spot unfairness in contract terms

---

# Part 4

## Investigating unfair contract terms

- 4.1 The OFT is responsible for protecting consumers from standard contract terms that it considers to be unfair. The OFT's role is set out in the Unfair Terms in Consumer Contracts Regulations 1999 (the Regulations). The Regulations came into force on 1 July 1995 and were extended on 1 October 1999, mainly to allow other bodies<sup>24</sup> to share the task of enforcement with the OFT.
- 4.2 The Regulations apply a test of fairness to standard terms (terms that have not been individually negotiated) in contracts used by businesses with consumers. A standard term is unfair "if contrary to the requirements of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer". An imbalance may arise wherever a term gives powers or safeguards to the supplier that could put the consumer at a disadvantage, whether or not actual harm is caused.
- 4.3 The OFT's approach is to try to negotiate with a trader to amend its contract when it believes a term is unfair. If negotiation fails it may be necessary for the OFT to take a case to court for a decision, because it is for the courts to have the final say as to whether any term is unfair. This part of the Report deals with how the OFT has responded to the Committee's concerns in this area.

### Setting targets for resolving unfair contract terms cases

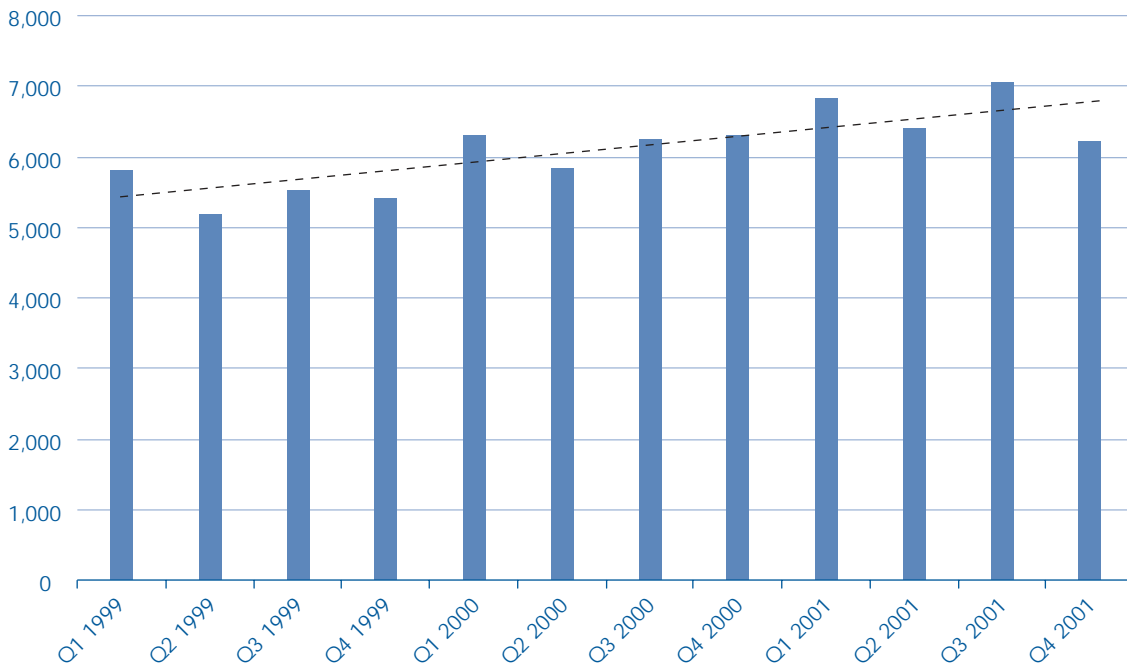
#### Summary of the Committee's recommendations and the Government's response

The Committee noted the OFT's sector-wide approach in investigating unfair contract terms, but had concerns over the delays in bringing about change and recommended that tough target dates should be set for settling cases and reducing the backlog.

**In response**, the OFT agreed with the Committee that the number of complaints about unfair contract terms had been greater than expected and had risen by nearly 20 per cent a year. The backlog of complaints had increased by 80 per cent between December 1997 and May 1999, with over 10 per cent of cases open for over two years. The OFT had countered the additional demand by recruiting heavily and by setting challenging targets to clear the oldest cases.

The OFT also stated that it was promoting the use of model contract terms for a specific business sector by the use of a sector-wide approach, often by negotiation with trade associations. The OFT had found this to be the most effective approach because unless an entire sector moves at the same time, individual businesses will not make the changes because of fears about losing competitiveness.

<sup>24</sup> A number of 'qualifying bodies' have enforcement powers, including the utility regulators, the Consumers Association, the Financial Services Authority, and all trading standards services.

**14 Unfair contract terms - trends in consumer complaints made to trading standards services****NOTE**

Figures beyond 31 December 2001 were not available.

Source: National Audit Office analysis of the OFT's quarterly reports on Trends in Consumer Complaints

- 4.4 The quarterly statistics that trading standards services provide to the OFT show that complaints about new unfair contract terms cases are still increasing (**Figure 14**). The figures for complaints should be interpreted as a broad indication of trends in consumer dissatisfaction as many instances of consumer dissatisfaction go unreported, while not all of those complaints that are made prove to be soundly based.
- 4.5 Trading standards services have found unfair contract terms work difficult and they often pass the cases to the OFT for it to deal with. The OFT is broadly content with the extensive referral of cases as this enables it to obtain a clear view of sectors where there is a significant national problem. The proportion of cases referred to the OFT has in any case been falling, and the number of new cases taken on by the OFT has levelled off since 1998-99 at around 1,100 a year.
- 4.6 The OFT has continued with its sector-wide approach to dealing with unfair contract terms in cases where many complaints are directed at a specific area of trading. It works closely with the trade organisation concerned to

develop model contract terms that can be adopted by the entire industry. It also develops guidance for particular industries so that traders within it are aware of those contract terms that the OFT considers to be unfair. The OFT believes that this approach is the most cost effective way of bringing about beneficial change for consumers, and indeed our earlier report found that in 1998 consumers benefited by over £100 million from the OFT's work to combat unfair contract terms. **Figure 15** gives two examples of recent OFT initiatives aimed at tackling unfair contract terms in particular sectors.

- 4.7 In conjunction with this approach, the OFT has also produced guides aimed at consumers. These guides are designed to help consumers spot unfairness, whether they are thinking about signing an agreement or where they may already have an agreement in place. The OFT makes it clear in its guides that consumers should be aware that an unfair term cannot be enforced against them. It also makes it clear that the unfairness of a term is something that only a court can decide upon. The OFT consumer guides to accompany the business user guides described in Figure 15 are:

## 15 Examples of the OFT's sector-wide approach

### *Guidance on unfair terms in tenancy agreements*

The main terms of concern to the OFT are those that make a tenant pay an excessive interest rate or penalty charge on late payment of rent; make a tenant pay landlord's costs which are unreasonable; give the landlord complete freedom to decide whether a penalty should be paid; give the landlord complete freedom to decide whether the agreement has been breached; and allow the landlord to enter the premises without giving reasonable notice.

This is a complex area of law and this guidance was produced to clarify the position. The guidance is designed to help landlords, letting agents, and suppliers of standard or model terms to meet the requirement of the Regulations. The OFT expects those who use or supply standard or pre-formulated tenancy agreements to review their terms and conditions in the light of the guidance and amend or remove any unfair terms from these contracts.

### *Guidance on unfair terms in health and fitness club agreements*

The main terms of concern to the OFT are those that seek to exclude a club's liabilities; set minimum periods for membership and notice of cancellation; impose cancellation charges; restrict members' ability to terminate a linked consumer credit agreement; and allow clubs to make unrestricted changes to the services contracted for.

This guidance explains why the OFT considers some standard contract terms used in health and fitness club agreements to be potentially unfair. It sets out the OFT's views and explains the basis on which it is likely to take enforcement action. The aim is to ensure that the standard contract terms used are fair and clear. Its purpose is to encourage clubs to revise their contracts so that they comply with the Regulations and are transparent. This helps potential members to make well-informed and confident decisions about joining clubs.



- 'Unfair tenancy terms: don't get caught out', March 2002;
- 'Are they fit to join?: a guide to health club membership terms', March 2002;

Both of these guides are currently available on the OFT's web-site<sup>25</sup>.

4.8 Since the Committee reported, the OFT has nearly doubled the size of its team dealing with unfair contract terms and given senior managers more autonomy in a bid to speed up the processing of investigations. This has enabled the OFT to start tackling the backlog of cases arising from the period when the number of complaints outstripped the available resources.

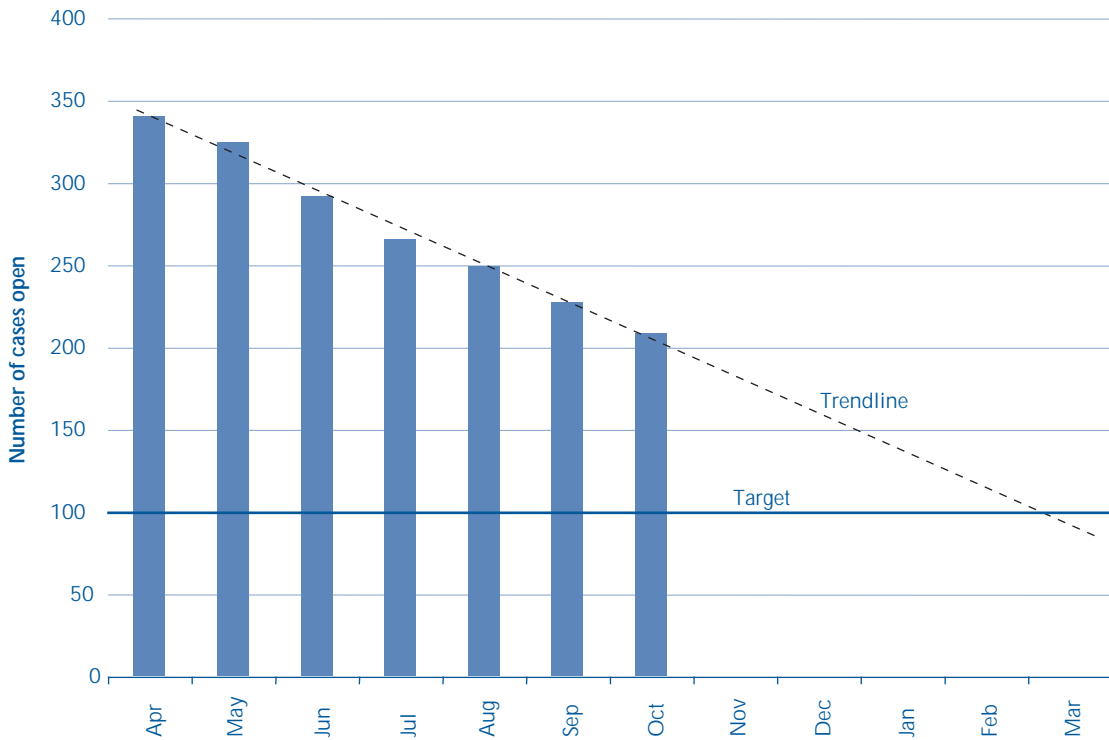
4.9 The OFT has set annual targets for reducing the backlog of cases under investigation:

- for 2000-01 its target was to reduce by one third the number of cases outstanding and it closed 220 cases against a target of 250;
- the OFT's target for 2001-02 was to reduce to 100 or less the number of cases over two years old at 31 March 2002. It ended the year with 144 cases over two years old;
- the OFT kept the same target for 2002-03 and its projections indicate that it is on course to achieve it (**Figure 16 overleaf**). The OFT's long term target is to clear all cases over two years old but it considers that this will be difficult to achieve.

4.10 To help meet this target the OFT introduced, in Autumn 2002, new working practices aimed at speeding up case handling and eliminating delays. In the majority of cases the OFT will focus its investigations on the main unfairness in the contract terms. This new approach could mean that the OFT will refer more cases back to trading standards services where no national problem is apparent.



16 Cases opened before 1 April 2001 and still open during 2002-03



Source: The Office of Fair Trading

## Taking unfair contract terms cases to court

### Summary of the Committee's recommendations and the Government's response

Although the Regulations empower the OFT to obtain a court injunction to stop businesses using unfair contract terms, the Committee concluded that the OFT had tended to resolve cases through advice or businesses giving undertakings that they would comply with the Regulations. Taking cases to court is costly, but the OFT acknowledged that success in court would demonstrate to businesses that OFT legal action is not an empty threat. The Committee recommended that the OFT be less restrained from taking cases to court in future.

**In response**, the OFT stated that it had made effective use of its administrative powers so that companies had, in every case but one, agreed to remove unfair terms<sup>26</sup>. An EC report attributed the OFT's success in combating the use of unfair terms to its policy of initiating negotiations with businesses and trade associations.

4.11 The OFT tackles the use of unfair contract terms through direct enforcement action and by issuing guidance to businesses. The guidance explains the terms that the OFT considers unfair, its reason for taking a particular view, and the legal consequences for businesses that do not comply. Where guidance and consultation do not bring about a satisfactory resolution, the OFT will usually initiate legal proceedings, though a settlement is often reached before a court hearing can take place.

4.12 The OFT sets targets for the number of contracts that are amended and out-performed its target during the first half of 2002-03 (Figure 17).

4.13 The OFT's quarterly bulletins provide details of how cases are settled and they can be found on its website. Bulletin 20 covers the period April to June 2002 and in this period 228 contract terms were deleted or amended as a result of enforcement action by the OFT, in all cases through negotiation with traders. Figure 18 gives an example of the types of changes to contract terms that the OFT has succeeded in making.

4.14 The National Association of Citizens Advice Bureaux considered that the OFT had delivered real benefits to consumers, but that it has not sought a high enough profile for its work. For example, the Association considers that there is scope for improving awareness amongst its advisers of the potential range of issues that could be challenged as unfair terms which the OFT could take action on.

26 These are terms that the OFT considers to be unfair under the Unfair Terms in Consumer Contracts Regulations 1999.

**17** The cumulative number of contract terms revised or deleted compared with the OFT's cumulative target, 2002-03



Source: The Office of Fair Trading

**18** Examples of the types of changes that have been made to contract terms

Original term	How changed
Required an unnecessarily long notice period to end the agreement.	Notice period reduced.
Gave the supplier the right to increase rental and maintenance charges by such an amount as the supplier in its sole discretion considered necessary.	Qualified to provide that any price increases must be reasonable and calculated in accordance with the retail price index or other suitable measure.
Made consumer liable for cost of emergency calls even if these were due to the default of the supplier.	Deleted.

Source: OFT Unfair Contract Terms Bulletin 19, August 2002

4.15 The OFT has told us that it is not averse to taking a case to court where all other avenues have been explored and proved to be unsuccessful. At the time of the Committee's report the OFT had taken one case to court (Figure 19). The OFT won the case on appeal, but this judgement was reversed in the House of Lords, confirming that such a course of action can be high-risk. The OFT has not had to take court action in other unfair contract terms cases.

**19** The OFT's court action against First National Bank

The OFT took First National Bank<sup>27</sup> to court after it had refused to change a term in its unsecured consumer credit agreements. The contract term affected borrowers who found themselves in financial difficulties and were ordered by a court to pay what they owed by instalments. The term allowed the bank to continue to charge interest at the contractual rate, so that after the instalments had been paid, and when the borrower expected the debt to have been repaid, a large sum was still owed.

As a result of the ruling, the OFT has no power to take regulatory or enforcement action in a case involving the same or a similar term. The House of Lords stated that the situation was unsatisfactory and that any unfairness resulted from the failure of the courts to consider using their powers under the Consumer Credit Act. The OFT has taken up the matter with the Lord Chancellor's Department and has made representations to the Department of Trade and Industry in connection with its review of the Consumer Credit Act.

4.16 The OFT has, however, taken court action against traders under the Misleading Advertising Regulations which, like the Unfair Contract Terms Regulations, can be enforced under the Stop Now Orders Regulations. The OFT can take action against any person involved with the publication of an advert that the OFT considers to be misleading. It has sought and obtained High Court injunctions, in most cases interim injunctions, to prevent the publication of the offending advertisement until the case can be fully argued in court. The OFT has a memorandum of understanding with the Advertising Standards Authority and between them they identify which body is best placed to deal with individual cases.

# Appendix 1

## Treasury Minute on the Thirty Seventh Report from the Committee of Public Accounts 1999-2000

### The Office of Fair Trading - Protecting the Consumer from Unfair Trading Practices, CM 4901, 16 November 2000

This Appendix sets out the Government's response and a brief summary of progress made by the OFT on each of the Committee's conclusions and recommendations. For a more detailed account readers should refer to the paragraphs indicated in the main body of the report.

#### *On the OFT's monitoring of voluntary codes of practice of trade associations*

##### **PAC conclusion (i)**

The OFT have a duty under the Fair Trading Act to encourage the development by trade associations of voluntary codes of practice. The OFT believe that, quite often, these codes of practice set low standards, that compliance is patchy and that there are no redress arrangements. The OFT do not have the power to approve trade associations' codes of practice or to require them to be tightened, but the Government are considering legislation to give the OFT powers to do this. We support this development, as it would help make clear to traders the standards expected of them in treating consumers fairly, and encourage the Government to find the necessary legislative time.

#### **The Government's response**

The OFT believes that self-regulation can play an important part in raising business standards and protecting and promoting the interests of consumers. The OFT is working with the Department of Trade and Industry and the Trade Association Forum to develop guidance for trade associations on best practice standards such as those set out in the White Paper core principles.

The OFT remains committed to a more effective codes of practice regime. The OFT therefore welcomes the Committee's support for new powers to approve codes of practice and, where deficiencies are identified, to be able to require improvements.

#### **Summary of progress made by the OFT on PAC conclusion and recommendation**

The OFT is implementing a revised codes of practice regime which will be underpinned by the Enterprise Act (paragraphs 2.2 to 2.11).

#### *On the OFT's inability to apply fair trading law promptly and effectively and the Government's plans to replace the Fair Trading Act with new legislation.*

##### **PAC conclusions (ii) and (iii)**

Not all traders, however, belong to trade associations and not all members of associations adhere to their codes of practice. Part III of the Fair Trading Act empowers the OFT to apply to the courts to prevent traders persistently flouting consumers' legal rights where other action has failed. The OFT depend on local authority trading standards services referring cases to them for action. But the majority of cases found by trading standards services are not referred to the OFT and, where cases are referred, it has taken the OFT a long time, at least a year and in one case 16 years, to use the Act to take effective action against traders. The OFT's inability to apply the law promptly and effectively means for example that some motor dealers may continue to sell unroadworthy vehicles to the public, thereby endangering lives.

#### **The Government's Response**

The OFT would reiterate its view, shared by many other bodies and demonstrated by the Government's commitment to reform the law, that existing legislation designed to enable action against rogue traders is deficient. The OFT is required to show that a trader has persisted in an unfair course of conduct, which takes time to establish. The OFT is then required to ask for written assurances that the behaviour will cease before it can take any proceedings before a court. The trader is able to exploit this requirement by raising arguments or otherwise delaying a response. The trader may then, after such delay, ultimately refuse to sign assurances. At this stage court action can finally be taken. Where an assurance is signed and the trader subsequently breaches it, the OFT can also take the trader to court. This in itself is a lengthy process. Where a trader breaches a court order the OFT can bring proceedings for contempt. In these circumstances, while they can impose a custodial sentence, the courts do not have the power to ban the trader for a period or indefinitely. Not only does the process of taking action make those cases OFT pursues very time-consuming, but the technicalities of the legislation mean that there is no guarantee of a successful outcome even against those firms responsible for some of the most flagrant breaches of fair and responsible trading. This in turn, as the Committee suggests, has had the effect of discouraging local trading standards services from committing scarce resources to cases which hold out so little promise of reaching a successful conclusion. Trading standards services will often take alternative action because of the known shortcomings of the legislation, but this may not be as successful in bringing the wrongdoing to a halt as it should be.

The Government's proposals for reform of the rogue trader provisions of the Fair Trading Act, which were contained in the Consumer White Paper, are therefore central to establishing a coherent and effective consumer protection regime. The Government is committed to implementing the proposals at the earliest possible opportunity.

The OFT consider that difficulty in defining terms in the Act such as the persistence test has made the provisions difficult to enforce, and has discouraged trading standards services from referring cases to them. However the Government plan to replace the Act with new legislation to enable the OFT to act promptly and effectively against rogue traders.

Further reform will increase the effectiveness of the OFT and trading standards services but until such time as reform is implemented the OFT will continue to concentrate its efforts to improve its procedures and partnerships with other bodies in order to help consumers get the best deal.

#### Summary of progress made by the OFT on PAC conclusions and recommendations

There have been two legislative changes - the introduction of Stop Now Orders Regulations in June 2001 and the Enterprise Act in November 2002 (paragraphs 1.9 to 1.13 and 2.12 to 2.21).

#### *On developing guidance for trading standards services*

##### PAC conclusion (iv)

The Government's plans to replace Part III of the Act would give to local authority trading standards services as well as to the OFT the power to apply to the courts to prevent people from trading for specified periods. There are at present, however, wide variations between local authorities in the effort devoted to fair trading activities and hence in the effectiveness of the action they take to protect consumers. There is no guidance on the minimum standards for fair trading activities which would inform local decisions on priorities. The OFT should work with local authorities to develop guidance on the minimum standards expected of them in applying the provisions of consumer protection legislation. This will be particularly important if the Government legislate to give trading standards services greater powers to take action against traders who persistently abuse consumers.

#### The Government's response

The OFT accepts the Committee's conclusion that there is a need for the consistent provision and application of consumer protection services across the country. The Government has announced a new standards-setting role for OFT in relation to trading standards services. In advance of this new role, the OFT has already become involved in work designed to develop guidance on minimum standards and is working with the trading standards community to find ways in which to ensure a consistent and high level of consumer protection throughout the UK. This need for consistency in consumer protection is accentuated by the development of shared enforcement powers with trading standards services jointly responsible with OFT and others for enforcing legislation that was previously administered centrally. For example, the OFT has concluded concordats with other regulatory bodies responsible for enforcing the Unfair Terms in Consumer Contracts Regulations so that the risk of gaps or inconsistencies in their application are minimised. The OFT is holding a conference in November to bring enforcers together to help develop a common approach to enforcement.

Other efforts continue to be made independent of legislative change to enhance the level and quality of service provision and to promote best practice. These include the following:

- The continued development of service level agreements between individual trading standards services and OFT which detail standards of service across a range of regulatory provisions. There are currently 25 trading standards services signed up to the service level agreement. This is expected to double by January 2001. With recently improved information technology systems within OFT all trading standards services (over 200 in all) will be encouraged to join the service level agreement scheme by the end of 2001.
- The annual Excellence in Trading Standards Awards made by the Director General of Fair Trading in recognition of high standards achieved by trading standards services.
- The provision of guidance for trading standards services on best practice for case handling in order to promote consistent and effective application of the relevant legislation, including, for example, on the evidence required to revoke or refuse a consumer credit licence. The OFT also provides a guidance booklet on how to compile a case.
- Organisational changes within the OFT's investigatory section designed to enhance liaison with trading standards services and help ensure the OFT properly understands local and regional issues.

#### Summary of progress made by the OFT on PAC conclusion and recommendation

In July 2001 the OFT concluded that, given its extensive working relations with trading standards services, it was not best placed to set national standards for the service or to monitor performance. This work has been taken forward by the Department of Trade and Industry which is better placed to liaise with the Office of the Deputy Prime Minister, responsible for local authorities, and others in central government responsible for policy on matters such as health and safety, food standards, and weights and measures. The Department is taking forward several initiatives to ensure standards across trading standards services. In light of this, several of the specific actions referred to in the Government's response have not been progressed (paragraphs 2.43 to 2.52).



*On the OFT's co-ordinating role in 'Home Authority' cases***PAC conclusion (v)**

Complaints against businesses that operate across local authority boundaries are handled by the trading standards service that has the business' headquarters within its area-the 'Home Authority'. The OFT believe that some of these services are too small to be able to co-ordinate action involving large companies and multinationals unaided, and encourage them to work with neighbouring services. In such cases the OFT should consider whether they ought in some cases to take on the role of co-ordinating action to deal with the complaints.

**The Government's response**

The OFT recognises that the 'Home Authority' principle can place strains on those local authorities with a significant number of company headquarters within their area. Despite this, the home authority system is important as it ensures that action against companies is properly co-ordinated and prevents fragmented and inconsistent action against the same company by a number of different trading standards services.

Where major consumer problems across borders arise the OFT has the power to take action under the legislation for which it is responsible. This means in practice that the OFT does take on the major and more resource intensive cases. For example in a recent large case involving a high level of complaints about an importer of children's toys, the OFT took over the lead role from the local authority and has obtained undertakings from the importer.

**Summary of progress made by the OFT on PAC conclusion and recommendation**

The OFT continues to support the Home Authority principle. It also encourages local authority trading standards services to refer to it cases of national significance (paragraphs 2.22 to 2.26).

*On identifying sectors with widespread abuse***PAC conclusion (vi)**

The National Association of Citizens Advice Bureaux's recent report on the activities of bailiffs points to abuse such as intimidation that might merit investigation. The OFT told us that they would only act against traders in particular sectors if trading standards services brought evidence of problems to their attention, and that they hoped that the proposed new legislation would make it easier to tackle such cases. The OFT should be more active in working with trading standards services to identify sectors where consumer abuse is widespread, so as to seek to raise standards and act against persistent offenders using the powers available to them.

**The Government's response**

The OFT is preparing general guidelines on behaviour and standards for all consumer credit licence holders. These will be completed by the end of the year. Additional guidance for specific sectors that generate disproportionate numbers of complaints will also be produced soon after. These will be prepared in partnership with trading standards services, the National Association of Citizens Advice Bureaux and in consultation with industry representatives and other regulatory bodies. The specific guidance notes will target, initially, used car dealers and debt collectors - two sectors that continue to give cause for concern. These will be issued to all those in these sectors with a consumer credit licence and it will be made clear that failure to meet the requirements of the guidelines will result in licensing action by OFT.

The OFT continues to collate trends and complaint data from trading standards services and Citizens Advice Bureaux. It also attends meetings of regional groups of trading standards services where current casework on emerging issues are discussed.

The OFT has taken action to identify areas which cause consumer detriment. For example, the 1999 report on consumer detriment provided an up to date picture of those sectors of the economy which continue to give cause for concern.

**Summary of progress made by the OFT on PAC conclusion and recommendation**

The OFT is producing guidance for sectors that generate a disproportionate number of complaints and carries out pro-active investigations into the way specific markets operate where it has concerns about the level of consumer detriment (paragraphs 2.27 to 2.29).

*On publicising warnings to traders***PAC conclusion (vii)**

The Government have yet to find time for new consumer protection legislation, so it will be some time before the Fair Trading Act 1973 is reformed to expedite the prosecution of traders who persistently abuse consumers in contravention of the law. In the meantime the OFT should consider applying the approach they and some trading standards services take in relation to anti-competitive practices, and make public their warnings to traders whom they have good cause to believe are persistently flouting consumers' rights. This would alert consumers to the risks they run in dealing with such traders, and so provide such traders with an incentive to behave responsibly.

**The Government's response**

There are real difficulties with proposals to 'name and shame'. The OFT will need to consider in more detail whether such an approach is practicable but there are limits to what can be done in the absence of legislative change. If the OFT was to publicly accuse a trader of causing detriment to consumers but had not taken formal action under the Fair Trading Act (in other words, without following the due process of existing law) this could amount to a breach of human rights legislation which provides for a fair trial by an independent person. Any public declaration of alleged unfair trading practices, without having undergone the full legal process, could prove to be defamatory.

The OFT will, however, continue to issue 'consumer alerts' which are aimed at informing consumers (ie through local press and radio) about detrimental practices or 'scams'. For example, in September 2000 the OFT issued a consumer alert aimed at informing consumers of their rights under the Consumer Credit Act which included advice on refund of credit brokers fee and the cancellation of consumer credit agreements. The OFT will also make better use of publicising assurances or undertakings given by traders by targeting specialist publications, local press and trading standards services.

**Summary of progress made by the OFT on PAC conclusion and recommendation**

Although it is not the OFT's policy to publish details of warnings to traders (as this could leave the OFT open to legal challenge), it looks, wherever possible, to publicise the outcome of completed cases where it has found evidence of breaches of unfair trading legislation (paragraphs 2.30-2.34).

**On evaluating the impact of informing consumers****PAC conclusion (viii)**

The Fair Trading Act enables the OFT to provide information and advice to consumers. The OFT have found it difficult to evaluate the impact of their information campaigns, because consumers draw upon a range of information sources, some of which carry OFT content, though not produced by the OFT. The OFT could nonetheless do more to evaluate the impact, so as to help make future campaigns more effective, for instance by asking providers of websites containing OFT material for data on hit rates.

**The Government's response**

The OFT accepts that, with the limited resources at its disposal, it needs to evaluate its information campaigns to ensure value for money and maximum effectiveness. It was pleased that independent research commissioned by the National Audit Office (NAO) for its report confirmed a high level of consumer satisfaction with OFT material, and that consumers who received it considered it was easy to understand, and had appreciable influence on consumer decisions. It is OFT policy that all substantive campaigns should be verified where appropriate by pre-research to ensure that its communications approach is right for the target consumer group, and post-campaign evaluation to find out how successfully objectives have been met. Examples within the past 12 months include a pilot campaign to test the effectiveness of making OFT's flagship consumer publication, *A Shopper's Guide*, available through Post Office counters. Independent research was commissioned to observe how effectively the material was distributed at a randomly selected sample of outlets, including conducting an exit survey of customers and follow-up telephone research on whether the information in the booklet was considered effective by those who received it. The evaluation, in particular, assessed the effectiveness of this approach in reaching low income consumer groups whom prior OFT economic research identified as a particularly vulnerable group. A campaign aimed at providing information on credit and debt issues, and on consumer rights, aimed at students in higher education in the United Kingdom, was preceded by focus group research, and post campaign effectiveness evaluation. The OFT is working with partner organisations and the emphasis is now on specific targeting of vulnerable groups.

The OFT also accepts the Committee's view that more information is needed on the reach and effectiveness of Internet-delivered consumer information. The OFT has launched marketing initiatives to encourage other sites on the web to link to key consumer elements of the OFT's electronically published output. For example, Dixons *Freereserve* shopping forum links directly to the OFT page providing information on consumer rights and methods of redress when shopping on the Internet. The Autotrader web-site links directly to the OFT page that gives information on avoiding problems when buying second-hand cars. Some 50 such links with other organisations have been established and some other sites, for example, Abbey National's now incorporate OFT consumer information. The OFT is keen to find better means to evaluate the impact of these links. There are some obstacles to overcome. At present, for example, the Central Computer and Telecoms Agency, which hosts the OFT site and that of most other government departments<sup>28</sup>, is unable to provide an analysis of how many accesses can be attributed to such links. It is understood this is due to resource rather than technical reasons. The OFT is conducting a thorough review of all aspects of its current web-site with a view to ensuring its site is fully abreast of best practice in a fast developing field. The review will be informed by an online research questionnaire asking for the views of current users about how useful the site is and how they would like to see it develop. A key factor in the review will be to make the site as relevant and useful as possible to its various audiences.

**Summary of progress made by the OFT on PAC conclusion and recommendation**

The OFT produces a project plan and carries out some post-hoc evaluation for each campaign, but, because of resource constraints, focuses on the level of publicity achieved rather than the overall impact of the campaign. The OFT has, however, carried out general awareness surveys (paragraphs 2.35 to 2.42).

**On checking the identity of consumer credit licence applicants****PAC conclusion (ix)**

Traders need to apply to the OFT for a consumer credit licence before they can carry on many types of business. The OFT can refuse an application for a licence if they consider the trader or a business associate has a history of fraud, other dishonesty, discrimination, violence or treating consumers unfairly. The OFT do not require applicants to supply sufficient information to verify their identity. Few applications for licences are refused. The OFT recognise that their checks need to be strengthened. They should at least require applicants to give their passport number and National Insurance number.

**The Government's response**

The OFT is engaged in a fundamental review of the information requested from applicants for consumer credit licences. As part of this review the OFT is looking specifically at the feasibility of using identifiers such as National Insurance numbers, passport numbers, birth certificates and references. The review will be completed by the end of this year. By the end of the year, the OFT will introduce postcode matching software into its licensing checks to establish whether or not address details given on an application form match those held on the electoral register. This will enable verification checks to be carried out on all individuals named on application forms, while also supplying information on others residing at the same address.

**Summary of progress made by the OFT on PAC conclusion and recommendation**

The OFT examined the feasibility of asking applicants for additional information, but concluded that this would not offer value for money in terms of additional safeguards for consumers. The OFT is still in the process of introducing postcode matching software to confirm an applicant's personal address (paragraphs 3.2 to 3.7).

28 As at winter 2002 Fujitsu host the website and the Central Computer and Telecoms Agency has been replaced by the Office of Government Commerce.

***On processing data on convictions*****PAC conclusion (x)**

The OFT can refuse a consumer credit licence where the applicant has previous convictions, although these are not an automatic cause for refusal. The OFT have revoked licences where convictions for serious offences such as fraud, other dishonesty or violence have come to light, but have not sought to discover how many similar cases remain undetected. The OFT believe that they could more effectively check which traders have convictions if they modified their systems for capturing and processing information on convictions and we recommend that they do so.

**The Government's response**

The OFT intends to replace the current licensing computer system with another that will enable easier and swifter exchange of information with external sources of relevant data. Such replacement is dependent upon the outcome of a Department of Trade and Industry review of consumer credit licensing and funds being available. A key element of this project will be to ensure that the OFT can access information from other regulatory bodies. Discussions have already been held with a number of such bodies to prepare the ground for future information exchange.

The OFT also hopes to benefit from the Integrating Business and Information Systems in the Criminal Justice System project, which aims to co-ordinate exchange of information (including convictions) within the criminal justice system. When completed this should have created a more easily accessible pool of conviction data within the UK.

**Summary of progress made by the OFT on PAC conclusion and recommendation**

The OFT is awaiting the results of the Department's review of the Consumer Credit Act before committing resources to upgrading its licensing system (paragraphs 3.8 to 3.9).

***On checking information with the Police National Computer*****PAC conclusion (xi)**

The OFT told us that the Police National Computer was the best source of information on whether traders have previous convictions, as the alternative of trawling through the records of individual courts was laborious. But the OFT cannot obtain information from the Police National Computer unless they have cause to believe that a trader has previous convictions. Thus public information which could be obtained from other public sources such as court records cannot be made available to help the OFT to discharge their statutory responsibility of checking on the fitness of traders to hold a licence. The Government have set up an InterDepartmental Data Sharing Group and we urge that the question of the OFT's access to Police National Computer data should be considered as a matter of urgency.

**The Government's response**

The OFT is pleased to see the Committee's recommendation that the question of access to the Police National Computer should be given urgent consideration. This would give the OFT better information on the fitness of traders to hold consumer credit licences and allow it to take more rigorous enforcement action. The OFT is urgently pursuing the matter of gaining such access in consultation with the appropriate authorities.

**Summary of progress made by the OFT on PAC conclusion and recommendation**

The OFT was unable to secure full access to the Police National Computer (paragraphs 3.10 to 3.11).

***On prosecuting applicants for falsifying application forms*****PAC conclusion (xii)**

The OFT revoked some 24 consumer credit licences during 1996-97 to 1998-99 where the applicant had provided inaccurate or incomplete information on the application form, usually by omitting to provide details of all convictions. The OFT and local trading standards services are both able to prosecute traders for fraudulently applying for a consumer credit licence. The OFT have prosecuted applicants for this offence in the past, but generally leave prosecutions to local trading standards services. The OFT should review with local authorities what more can be done to bring prosecutions where the falsification of the application form is discovered.

**The Government's response**

The OFT accepts that it is necessary to review what more can be done to bring prosecutions in appropriate circumstances. The OFT is discussing with the national co-ordinating body for local authority trading standards services how this might be best achieved.

In those cases where false or misleading information has been provided, formal refusal or revocation action will be taken against the applicant or consumer credit licence holder. As the NAO and Committee have noted, such a sanction is in itself a significant penalty as it will remove a trader from credit activity and possibly, depending upon the type of business activities in which the trader is engaged, from the marketplace altogether.

**Summary of progress made by the OFT on PAC conclusion and recommendation**

The OFT refuses and revokes licences where false information is provided, but considers that where this ensures that a business can no longer trade, the additional step of taking court action would not represent good value for money (paragraphs 3.12 to 3.14).

***On taking account of a history of discrimination*****PAC conclusion (xiii)**

The Consumer Credit Act 1974 states that the OFT can take into account any history of discrimination on grounds of race, sex and national origin in checking whether traders are fit to hold a licence. We note that the OFT have belatedly started to gather information on discrimination and now take this into account when judging whether applicants are fit to hold a licence. We look to them to ensure that this important factor is taken into account in all cases.

**The Government's response**

The OFT accepts that in the past it has not gathered information on discrimination. As noted by the Committee such information is now gathered and taken into account in assessing the fitness of licence holders and applicants. This will continue to be the case.

**Summary of progress made by the OFT on PAC conclusion and recommendation**

The OFT is working with the Commission for Racial Equality and the Equal Opportunities Commission to improve the recording of information on discrimination (paragraphs 3.15 to 3.17).

***On increasing the rate of referrals from trading standards services*****PAC conclusion (xiv)**

There are around 150,000 active traders holding a consumer credit licence. Revoking a consumer credit licence is a serious and effective sanction because in many industries it can put a trader out of business. But during the three years to 1998-99, when harm to consumers has been as great as ever, the number of licences the OFT revoked fell by two-thirds and trading standards services referred 30 per cent fewer cases to the OFT. The OFT and trading standard services attribute the fall in referrals to the time it takes to secure a satisfactory outcome and to the costs involved. The OFT should review what they can do to increase the rate of referrals and to consider encouraging consumers and traders to bring complaints about licence holders directly to the OFT.

**The Government's response**

The OFT has taken a number of measures to ensure that levels of referral are increased. These include ongoing discussions with trading standards services and their representative body in order to work out how best to speed up action on cases referred to the OFT and the development of formal procedures with the National Association of Citizens Advice Bureaux to facilitate the exchange of complaint information. The guidelines the OFT is developing for holders of consumer credit licences will make it much clearer what type of activity will call into question a trader's fitness and trigger formal regulatory action. The OFT will publish the guidelines to help trading standards services, traders and consumers to identify problem traders and bring complaints to the OFT's attention.

The OFT has also introduced a new management information system that will enhance its ability to administer its caseload and ensure that timely and appropriate action is taken. Further internal change has shortened the target times for completion of formal regulatory action and both these measures should assist in convincing trading standards services that such action against problematical traders is achievable and of value. These changes have already resulted in the doubling of the number of licences being refused or revoked in the first six months of this financial year in comparison to the number reported by the NAO for 1998-99.

**Summary of progress made by the OFT on PAC conclusion and recommendation**

The OFT has worked closely with trading standards services and the rate of referrals has increased slightly. The number of licences revoked fell in 2001-02, reflecting a shortage of resources within the OFT, but this has now been reversed (paragraphs 3.18 to 3.19).

***On investigating Unfair Contract Terms cases*****PAC conclusion (xv)**

The number of complaints about Unfair Contract Terms made to the OFT is greater than the OFT expected and has risen by nearly 20 per cent a year. The backlog of complaints increased by 80 per cent between December 1997 and May 1999 and in May 1999 12 per cent of cases had been open for over two years. The OFT told us that their approach of grouping cases so as to take a industry by industry view contributed to delays in settling cases. Grouping cases may produce benefits, but the delays in settling cases are unsatisfactory, and we recommend that the OFT should set and achieve target dates for settling complaints and reducing the backlog.

**The Government's response**

The OFT accepts the Committee's analysis. The number of complaints continues to rise steeply. The OFT received 25 per cent more complaints in 1999-2000 than in 1998-99, and it is believed that there is considerable additional pent-up demand for enforcement activity since complaints recorded by trading standards services about unfair terms numbered over 1,200 in the period October-December 1999. The scale of the problem could not have been predicted and is the main reason for the delays in dealing with a significant proportion of cases. The OFT has sought and received funding for 10 more staff (a 55 per cent increase in staffing levels) and recruitment is underway. The OFT has set a target for 2000-01 to close the oldest third of the 756 cases on hand in April 2000.

The OFT approach of dealing with entire sectors and changing a trade association's recommended or model terms promotes the adoption of fairer terms through an entire business sector. The OFT has found that unless an entire sector moves at the same time, individual business will not make the necessary changes because they fear a loss of competitiveness. The OFT had success with this method dealing with mobile phone contracts, while discussions with the British Vehicle Renting and Leasing Association (representing 80 per cent of car renters) resulted in changes being made to over 1,000 contracts. For similar reasons it was necessary to take action against the International Air Transport Association (IATA) recommended airline conditions rather than an individual company such as British Airways or Air France. IATA has now agreed new airline conditions, which it will recommend for adoption by all its members.

**Summary of progress made by the OFT on PAC conclusion and recommendation**

The OFT considers that its sector-wide approach is the most cost effective way of bringing about beneficial change for consumers. It has set targets for clearing cases and introduced new working practices. By 31 March 2003, it expects to reduce to 100 the number of cases over two years old. The OFT has also issued guidance for those sectors where it has received a large number of complaints (paragraphs 4.4 to 4.10).



***On taking Unfair Contract Terms cases to court*****PAC conclusion (xv)**

Although the Regulations empower the OFT to obtain a court injunction to stop businesses using unfair contract terms, almost all of the unfair contracts cases the OFT have settled since the Regulations came into force have been resolved through advice or businesses giving undertakings that they would comply with the Regulations. The OFT have taken only one company to court, in July 1999, which they won on appeal. Taking cases to court is costly, but the OFT acknowledge that their success in court should demonstrate to businesses that OFT legal action is not an empty threat. Despite the OFT's emphasis on the need for strengthened fair trading legislation, they have made little use of their existing powers. They should be less restrained from taking cases to court under these Regulations in future.

**The Government's response**

The OFT has made effective use of its administrative powers so that companies have, in every case but one, responded to enforcement action by agreeing to remove unfair terms. The OFT has no power to take businesses to court if they agree to make the necessary changes. Businesses are told at the outset that they risk court action if they refuse to revise their contracts. They are left in no doubt that the OFT will take legal action where it is necessary. Not all are willing to co-operate initially, but only one has refused to improve its terms following threats of legal action. All others have accepted that they were, despite their initial reluctance, able to remove unfair terms from their contracts.

As part of its five-year review of the underlying Council Directive on unfair terms the EC commissioned a report on its implementation in each member state. The report on UK enforcement noted that the Director General of Fair Trading had combated the use of unfair terms with "outstanding success". The subsequent Commission report agreed, and attributed this success to the OFT's policy of initiating negotiation with businesses and trade associations. But, to repeat, court action will be used where necessary.

**Summary of progress made by the OFT on PAC conclusion and recommendation**

The OFT has not had recourse to court action in respect of unfair contract terms since the Committee reported. It has, however, taken court action under other fair trading legislation (paragraphs 4.11 to 4.16).

# Appendix 2

## Stakeholders consulted by the National Audit Office

Audit Commission Inspection Service

British Retail Consortium

Confederation of British Industry

Local Authority Co-ordinators of Regulatory Services (LACORS)

National Association of Citizens Advice Bureaux

National Consumer Council

Trading Standards Institute

Trading Standards Services: Bristol, Cardiff, Devon, West Yorkshire Joint Service