

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

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 legislation¹. 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 estimates²).

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 practices³, on the basis of an earlier report by the Comptroller and Auditor General⁴. 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 Government⁵, 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 Paper⁶ 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.

⁵ *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.*

⁶ *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.**