

Anti-Money Laundering Annual Report

to Her Majesty's Treasury 2010-2011

June 2011

OFT1345

© **Crown copyright 2011**

You may reuse this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Any enquiries regarding this publication should be sent to us at: Marketing, Office of Fair Trading, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX, or email: marketing@oft.gsi.gov.uk.

This publication is also available from our website at: www.oft.gov.uk.

CONTENTS

<i>Chapter/Annexe</i>	<i>Page</i>
1 The OFT	4
2 The Supervised Population	5
3 Resources	7
4 Risk Based Approach and Inspections	9
5 The OFT's AML Supervisory Role and Activities	13
6 Advice and Guidance	16
7 Information Sharing and Co-operation	18
8 SAR Reporting	20
Annex A	21
Annex B	24

1 THE OFT

1.1 The OFT is a non-ministerial government department. It is the UK's competition and consumer authority and its mission is to make markets work well for consumers. The majority of the OFT's work consists of:

- analysing markets
- enforcing consumer and competition law
- undertaking advocacy
- working with partners to deliver information and education programmes to businesses and consumers.

1.2 The OFT is based in central London with an office in Edinburgh. The Anti-Money Laundering (AML) Team is based in London.

1.3 The OFT has a Board which gives the OFT strategic vision and perspective, plus the range and depth of experience to ensure that its powers are matched by proper accountability. All major policy and funding issues are submitted to OFT committees and to the Board for approval. The AML team reports monthly to the Board on its progress and risks.

1.4 The OFT publishes an annual report that includes information on its AML work.

1.5 There is a discrete team within the OFT dealing with AML supervision but legal advice is provided by General Counsel's Office which provides legal advice on a range of OFT activity. The OFT's AML team works closely with other parts of the OFT, including those dealing with consumer credit licensing and the OFT's powers to ban estate agents.

2 THE SUPERVISED POPULATION

2.1 The OFT's supervised population consists of:

- estate agents – those businesses engaged in estate agency work as defined by section 1 of the Estate Agents Act 1979
- Consumer Credit Financial Institutions (CCFIs) – those businesses engaged in consumer credit lending requiring a standard licence which are not authorised by the Financial Services Authority (FSA) or supervised by Her Majesty's Revenue and Customs (HMRC) as a money service business.

2.2 See annexe A for descriptions of the main business models supervised and a profile of the registered population is contained in table 1.

Table 1 (figures at 31 March 2011)

	No. of business	No. of premises	Average No. of premises	Average Turnover ¹	Average No of employees
Estate Agents	6,601	12,599	1.91	£836,938	12
CCFIs	5,561	12,222	2.20	£9,710,738	81
All businesses	12,056 ²	24,407	2.02	£4,840,290	43

2.3 In setting up its registration scheme the OFT estimated that it supervised up to 9,600 estate agents and 4,000 CCFIs and we continue to work to

¹ Figure given at registration and not required to be updated. For estate agents this figure represents turnover from sales commission and not from other business, for example, lettings.

² Some businesses are both estate agents and CCFIs and are therefore included within both subtotals.

ensure that all relevant businesses supervised by the OFT are registered. This work at the OFT is known as the 'population improvement programme' (PIP). In 2010/11 the OFT carried out a pilot PIP following the close of registration. As a result:

- 727 unregistered estate agency businesses were drawn from a mailing list and telephone – 213 (29 per cent) were identified as being required to register with the OFT as estate agents
- 124 (58 per cent) registered following initial telephone advice
- 88 (41.5 per cent) registered following receipt of a warning letter
- action was taken against one trader to impose a penalty of £2,000 in line with the OFT's interim penalties policy³
- one trader applied to register but did not pay the fee resulting in the application being refused following appropriate action.

2.4 It is intended that PIPs are carried out throughout the year in order to identify those that need to register but have not done so as well as new entrants to the market.

³ www.oft.gov.uk/shared_of/money-laundering/OFT1271.pdf

3 RESOURCES

- 3.1 The OFT's anti-money laundering regime is required to be self-funding, with the reasonable costs of operating the regime met by the fees paid by supervised businesses. The OFT charge a registration fee and an annual fee.
- 3.2 The AML team is small, consisting in 2010/11 of 13.2 full time equivalent (FTE) staff – the team structure is set out in Annexe B. AML activity is stand alone and not integrated with other OFT regulatory activity. The highest cost for the regime is staffing costs although a number of vacancies were carried in the compliance team during the year. The OFT's AML regime is due to move from the development and registration phase to 'business as usual' (BAU) in 2011/12 but this will be dependant on filling vacancies in the compliance team.
- 3.3 The annual fee for 2010/11 was set at £57 per premises with a cap of 20 premises and the registration fee for businesses was £74 per premises with a cap of 20 premises.
- 3.4 Fees are based on OFT's best estimates of costs for the financial year. However, the OFT's costs have been less than were originally estimated⁴. Although the number of businesses registering has been in line with initial forecasts, the total income received from those businesses has exceeded expectations, due to a higher than expected number of premises per business and also because the AML team has carried a number of vacancies. As a result, for the financial year 2010/11 the OFT's AML regime had an unintended surplus of £633,000.
- 3.5 In order to ensure that this saving was passed on to the supervised population, all businesses that registered with the OFT before 17

⁴ From 31 July 2009 to 17 February 2011 the AML registration fee was set at £115 per premises capped at 20 premises.

February 2011 have been given a discount on their first annual fee⁵ of £41 per business premises, capped at 20 premises, which is equivalent to their share of the surplus. In consequence, the amount payable towards the annual fee by those of the OFT's supervised population already registered with it for 2010/11 was £16 per premises capped at 20 premises, that is, a maximum of £320.

⁵ The OFT also refunded relevant sums to those businesses that, for example, had withdrawn from registration.

4. RISK BASED APPROACH AND INSPECTIONS

- 4.1 Since 15 December 2007 the OFT has had a statutory duty under the Money Laundering Regulations 2007 (the Regulations) to effectively monitor and take necessary measures to secure compliance with the Regulations by its supervised businesses. In 2010/11 the OFT's focus moved from implementing the registration scheme to working towards BAU in 2011/12.
- 4.2 Supervisory Authorities such as the OFT are expected to operate their supervisory regimes in accordance with a risk based approach as agreed by the Anti-Money Laundering Supervisors Forum (the AMLSF).⁶ The aim is to ensure a consistent framework and approach to supervision in the UK.
- 4.3 The adoption of a risk based approach to monitoring and enforcement is not new to the OFT and its high level approach (after consideration for the purposes of the OFT's Hampton Implementation Review in 2008⁷) has been set out in its AML Enforcement Principles⁸ published in May 2009 and in some detail in successive OFT Simplification Plans.⁹
- 4.4 During 2010/11 OFT has considered in more detail how the AMLSF risk principles applies to its own AML supervisory role as it moves towards BAU. In February 2010 the OFT launched a formal public consultation on its future supervisory approach seeking, in particular, the views of those it supervises. Information on the risks posed by, or to, the OFT's

⁶ The Forum was set up by Her Majesty's Treasury (HMT) and consists of representatives of all Supervisors under the Regulations. See the HMT website at www.hm-treasury.gov.uk

⁷ www.bis.gov.uk/policies/better-regulation/improving-regulatory-delivery/implementing-principles-of-better-regulation/reviewing-regulators/hampton-implementation-review-reports

⁸ www.oft.gov.uk/shared_of/business_leaflets/general/oft1094.pdf

⁹ The OFT's Simplification Plan sets out in general terms where our powers stand in relation to the better regulation legislation www.oft.gov.uk/shared_of/529862/oft1067.pdf

supervised population is, as yet, minimal although registration provides some information. However, further information is needed to identify the points at which businesses are at risk in their day to day activity. Further work in this area will be made possible as the OFT gathers further information as a result of future engagement with its supervised population, such as through visits to supervised businesses.

4.5 During the year the OFT focused on:

- reactive enforcement – acted on adverse intelligence received from third parties, for example, business, the Serious Organised Crime Agency (SOCA) and the Local Authority Trading Standards Services (LATSS)
- raising awareness of the Regulations within our supervised population and of the obligations and need to register with us
- providing advice and guidance to businesses on compliance, and
- development of a supervisory framework and practice and procedures for BAU.

4.6 During 2010/11 monitoring and enforcement activity was limited due to the induction into the team of new staff and the drafting of compliance processes and procedures. However, inspections were carried out during the year both as part of a pilot working with the Department of Enterprise, Trade and Investment in Northern Ireland (DETINI) and in response to adverse information received by the AML team. The OFT can carry out inspections as a desktop procedure where details of the businesses' AML policies and procedures are received and reviewed and through on-site visits to businesses. Table 2 provides details of inspections and outcomes (excludes PIP work detailed in paragraph 2.3).

Table 2

Carried out by	Desktop Inspection	Inspection Visits	Revisits	Advice Letters	Warning Letters	Penalty Notice
OFT	9	12	0	35	18	0
TSS	0	20	0	0	0	0
TOTAL	9	32	0	35	18	0

4.7 The reactive inspections carried out are not statistically significant because they are focussed on businesses about which we have received information indicating a likelihood of non-compliance. However, the pilot carried out on estate agents in Northern Ireland, although targeting a cross section of businesses, was a random sample and results indicate a very low level of compliance amongst businesses (see chart 1 on the following page). It was found that many businesses had made no attempt at compliance in key areas of the Regulations. Those that did attempt compliance were often only partially successful and it was found that no business had adequate policies and procedures in place and only one business carried out any risk assessment of their business with regard to money laundering or terrorist financing. It was clear that most businesses did not understand the concept of risk sensitive policies and procedures.

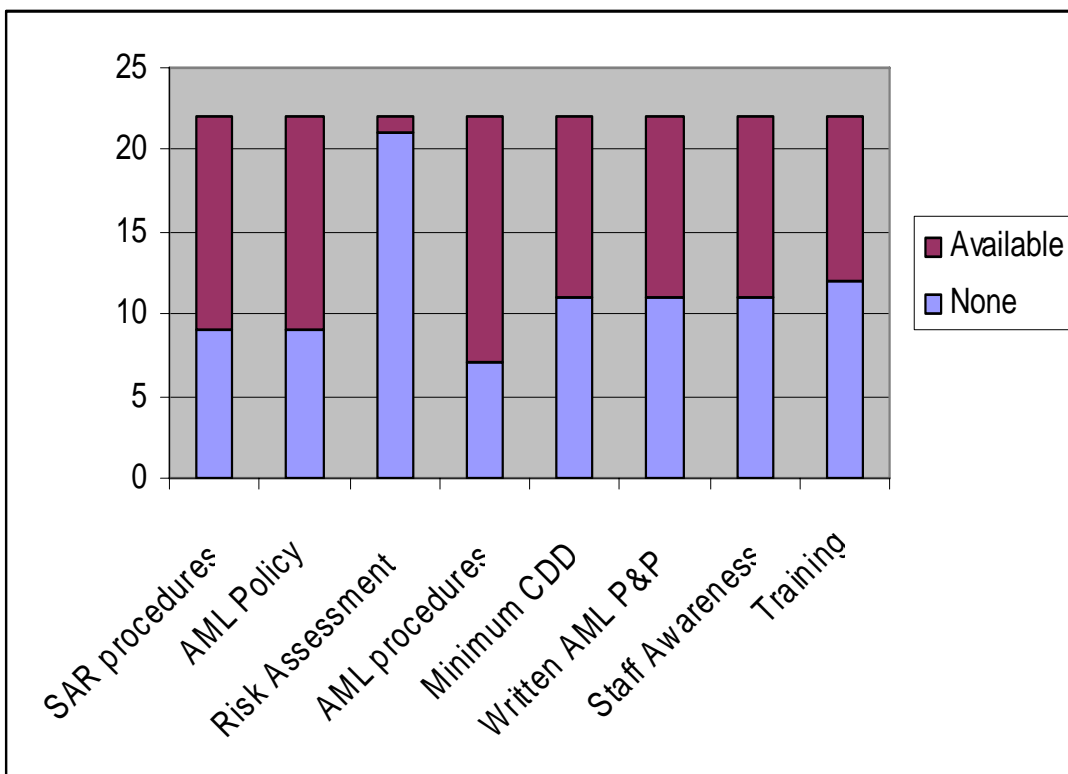
4.8 Other areas of concern included:

- 50 per cent of businesses not carrying out the minimum level of customer due diligence (CDD) required
- lack of training resulting in 50 per cent of staff not knowing of, or where to find out about, the policies and procedures implementing the Regulations. This was aggravated by the fact that half of the businesses did not have *any* procedures in writing and many others had documented only partial customer due diligence measures

- 68 per cent of businesses failed to inform the OFT of material changes to the information they had provided on their application form.

4.9 Due to the lack of understanding of the requirements of the Regulations amongst small businesses, visits often lasted over two hours with compliance staff providing what was, in effect, a training session for the owner of the business. In order to make better use of our resources in future the OFT will set up a series of workshops for small businesses so that training can be delivered on a larger scale.

Chart 1



5. THE OFT'S AML SUPERVISORY ROLE AND ACTIVITIES

5.1 In order to move to BAU, the OFT launched a consultation in February 2010 on the most appropriate future supervisory approach and fee structure that it should adopt in its role as a supervisory authority under the Regulations. The consultation paper invited view on four key areas:

- registration
- monitoring and enforcement
- penalties, and
- fee structure.

5.2 The summary of responses to the consultation was published in December 2010. The responses to the consultation were taken into account in developing the Interim Penalties Policy and the assessment of the annual fee for AML. It had been the OFT's intention to include its own response to the consultation within this summary of responses outlining the OFT's future supervisory approach. However, a number of factors caused a change to this approach and delayed publication of the future supervisory approach. Not least of these factors are the proposed changes to the wider regulatory landscape which substantively effect the OFT and are the subject of wider consultation by the Government. In addition in implementing SR10, the OFT needs to identify the scope for efficiencies and to follow Government rules regarding freezing of recruitment. The OFT's response to the consultation is due to be published in 2011/12.

5.3 However, this has not prevented the OFT focusing on taking a positive and proactive approach towards ensuring compliance by helping and encouraging business to understand and meet regulatory requirements more easily. The OFT seeks to comply with the Regulators Compliance Code in all its compliance work including AML and the compliance process is detailed in the following published documents:

- OFT Anti-Money Laundering Enforcement Principles¹⁰
- OFT Anti-Money Laundering Registration Policy¹¹
- Anti-Money Laundering: Interim Penalty Policy for Trading Whilst Unregistered¹² and
- Supervision by the OFT – Frequently Asked Questions 2011.¹³

5.4 In 2009 the OFT set up a register of its supervised population and in 2010/11 has continued to maintain that register as provided for in the Regulations. It also has the power to publish, or make available to public inspection, all or part of its register but has not done so to date although it is committed to doing so.

5.5 The OFT can refuse to register an applicant if it appears that information provided is false or misleading in a material particular or if the applicant has failed to pay the correct fee or failed to supply information requested. The OFT can cancel registration in similar circumstances and cancellation can have immediate effect where the OFT considers this is in the public interest.

The OFT has a number of powers under the Regulations to enable it to effectively supervise its population – see table 3.

¹⁰ www.of.gov.uk/shared_of/business_leaflets/general/of1094.pdf

¹¹ www.of.gov.uk/shared_of/business_leaflets/general/of1104.pdf

¹² www.of.gov.uk/shared_of/money-laundering/OFT1271.pdf

¹³ www.of.gov.uk/shared_of/business_leaflets/general/AML-FAQs.pdf

Table 3

Power	Regulation	Issued or Used
Information notices	Reg 37(1)(a)	3
Attendance for questioning notices	Reg 37(1)(c)	0
Enter and inspect premises without a warrant	Reg 38(1)	8
Enter and search premises under warrant	Reg (39)(1)	0
Agreements with other Supervisors	Reg 23(2)	2
Agreements with TSS	Reg 41(1)	1
Warning Letters		106
Minded to Refuse Notice	Reg 34(4)	3
Minded to Cancel Notice	Reg 34(8)	0
Penalty Notices and Amount	Reg 42	1 (undecided)
Prosecution	Reg 45	0

5.6 The Regulations also provide that the OFT's monitoring and enforcement role can be shared with LATSS and with the DETINI under agreements although only the OFT is able to make decisions in relation to registration. This year the OFT entered into an agreement with the Trading Standards Service (TSS) within DETINI in order to pilot working with TSS in the future (see paragraphs 4.6, 4.7 and 4.8).

6. ADVICE AND GUIDANCE

- 6.1 The OFT is committed to working with stakeholders to produce clear and meaningful guidance in order to assist business in meeting their obligations under the Regulations. Core Guidance for estate agents and CCFIs on the requirements of the Regulations was issued in 2007¹⁴ and the OFT also worked with the SOCA to produce guidance for estate agents to assist them in compliance 'Estate Agents –Identifying Risks to your Business and Reporting Suspicious Activity'.¹⁵
- 6.2 The OFT also seeks to work with trade associations and representatives of small businesses, for example, our FAQs has been updated and reissued following consultation with these groups in particular the estate agency associations.
- 6.3 The Regulations and other associated legislation, along with our published policies, guidance and advice continued to be made available to business on our website at (www.offt.gov.uk/mlr) which during 2010/11 received 31,363 hits.
- 6.4 Advice and guidance documents are also available on request from the OFT's dedicated AML email address (amlid3@oft.gov.uk) or on request via our telephone helpline (020 7211 8200) which is staffed from 9am to 5pm. Through the helpline and AML mailbox the OFT provides advice directly to business, LATSS, the Police and other stakeholders. Details of the enquiries received are given in table 4 below:

¹⁴ www.offt.gov.uk/shared_offt/business_leaflets/general/oft954.pdf

¹⁵ www.offt.gov.uk/shared_offt/business_leaflets/general/estate-agents.pdf

Table 4

Contacts	Numbers Received
Helpline enquiries	4,699
Email enquiries	1,770
Letter enquiries	240
TOTAL	6,709

6.5 The OFT also worked to raise awareness of the requirements of the Regulations in other ways including by:

- giving 11 presentations to stakeholders
- raising awareness of the Regulations through, for example, a series of four presentations for estate agents organised by OFT and LATSS
- having stands at three conferences
- providing two articles for trade associations and the trade press, and
- directly emailing sectors of its registered businesses with tailored advice.

6.6 The OFT keeps in contact with business representatives via email and meetings and in some instances has been in extensive dialogue with them providing information and guidance on the requirements of the Regulations and the OFT's views.

7 INFORMATION SHARING AND CO-OPERATION

- 7.1 Although there are 28 supervisors under the Regulations the OFT has not encountered any difficulty in working with this number as it has experience of sharing responsibilities under a number of other pieces of consumer legislation with 200 other regulators in the form of LATSS.
- 7.2 Co-operation has been key in providing an effective supervisory regime where supervisors share responsibilities under the Regulations. It is particularly important for the OFT due to the number of adjoining areas of responsibility with Schedule 3 supervisors¹⁶ and overlapping areas of responsibility with other public sector supervisors.
- 7.3 In order to ensure that through 2010/11 it provided a consistent approach the OFT has been an active member of the AMLSF and, in particular, worked towards building close links with other supervisors whose population either overlaps or abuts those supervised by the OFT. In particular, the OFT attended regular meetings of the public sector affinity group¹⁷ and ad hoc meetings with other supervisors in order to agree a common position or interpretation.
- 7.4 Whilst the Regulations seek to appoint Supervisory Authorities that will cover discrete areas of business, the Regulations also recognise that there may be some business models that will be regulated by more than one Supervisory Authority. In consequence, they go on to provide for the relevant Supervisory Authorities to agree who will take responsibility for either a particular business or category of businesses. In 2010/11 the OFT entered into two agreements: one with the Institute of Chartered Accountants in England and Wales and a second with the Association of

¹⁶ For example, estate agency work, which in general is supervised by the OFT, can be carried out by solicitors and supervised by their professional bodies or carried out on the same premises as businesses supervised by the Council for Licensed Conveyancers.

¹⁷ Members include the Gambling Commission, the FSA and HMRC

Chartered Certified Accountants – both in respect of individual businesses.

8 SAR REPORTING

- 8.1 The OFT has a duty to report any suspicion it has of money laundering taking place, including amongst its supervised population. In consequence, it has in place an internal suspicious activity reporting procedure, a Nominated Officer for the whole of the OFT (including for the purposes of the Regulations) namely the Head of AML Compliance and a procedure for reporting suspicious activity to SOCA. The OFT did not make any SAR reports during 2010/11.

ANNEXE A - AML supervised business models

A1. Estate Agents

Estate agents are defined in the Regulations as those who carry out estate agency work as defined by Section 1 of the Estate Agents Act 1979. Subject to certain limited exceptions, a business is engaged in estate agency work if, in the course of business, acting on instructions from a third party (the client) who wishes to either buy or sell property (an interest in land), a business does things **either** (or both):

- for the purpose of, or with a view to, effecting the introduction to the client, of someone who either wishes to buy or sell property
- after such an introduction has been made to secure the sale or purchase of the property.

The law only requires a business to do things **for the purpose of, or with a view to** introducing the client to a buyer or seller in order for it to be acting as an estate agent. It is not necessary to actually introduce the client to a buyer or seller in order to fall within the legal definition of estate agency work. Estate agents include:

- a. **Residential and commercial estate agents:** these act on behalf of their vendor clients providing a number of services designed to support/promote the sale of the property or land. In general businesses have a high street presence but may also carry out estate agency on-line.
- b. **Destination service providers and private acquisitions specialists:** These businesses deal with re-location and property finding for private clients and as corporate services. Estate agency may be one service amongst many that are on offer in order to resettle individuals.
- c. **Property/land auctioneers:** An auctioneer takes fees from both the buyer and seller with the sale taking place at the fall of the auctioneer's hammer. Both the buyer and seller can be clients of the auctioneer.

- d. **Social Housing Providers:** These are often known as Housing Associations and offer flats and houses for rent to local people. Housing associations are almost always run on a 'not-for-profit' basis and most will also run schemes to assist tenants to purchase their homes often through a joint equity arrangement. These Associations are often covered by the Regulations as a CCFI by offering second charge mortgages as well as being an estate agent through offering estate agency services to the home owner when they wish to sell.

A2. Consumer Credit Financial Institutions

These are businesses engaged in consumer credit lending which are **not**

- authorised by the Financial Services Authority, nor
- supervised by HM Revenue and Customs as a money service business (cheque cashing, money transfer or bureau de change).

CCFIs include:

- a. **Payday lending:** Usually involves a small, short-term cash [loan](#) that is intended to cover a borrower's expenses until his or her next payday. Commonly repaid via a post-dated cheque in, for example, high street premises. On-line lending is increasing where payment is made into a borrower's bank account and repayment made via a debit card.
- b. **Home collected credit:** Usually these are small, short-term, unsecured cash loans - typically £50 to £500. They are provided by local agents delivering the money direct to customers' homes with a call every week to collect repayments.
- c. **Pawnbroking:** Short term [loans](#) secured on items of [personal property](#) (usually high value items such as jewellery) which are used as [collateral](#) for the loan.
- d. **Bills of sale:** A bill of sale is a method by which a lender can secure a loan on goods, typically a car, although previously they were used in the

purchase of boats or cargo where they were commonly known as 'marine mortgages'.

- e. **Hire purchase:** Money is advanced to purchase goods. The goods belong to the creditor and are 'hired' to the borrower for a specified period during which time the borrower makes regular payments to the creditor which will equate to the purchase price plus interest and charges. At the end of the period the borrower has an 'option to purchase' the goods by making a further payment at which point the goods become the property of the borrower.

ANNEXE B - Anti-Money Laundering Team Structure (2010/11)

