





# Office of Fair Trading Annual Plan 2008–09

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# Introduction

by the Chairman and Chief Executive

Last year we set out our plans for 2007–08 under four broad themes of delivering high-impact outcomes, being a centre of excellence and intelligence, working in partnership, and building our internal capability. These themes underpin the challenges set out in our performance framework agreed with Her Majesty's Treasury (HMT) under the Comprehensive Spending Review 2007 (CSR07). 2008–09 is the first year of the three year CSR07 period and as such the four themes set out above will continue to shape our work over the coming year.

## The past year

The clear focus on high impact outcomes, which we set out last year, is already delivering significant changes in market behaviour. In 2007–08, we have made a number of high profile decisions which provided real benefits to consumers. Demonstrating our commitment to tackle anti-competitive behaviour rigorously, we announced our heaviest ever fine of £121.5m against British Airways. Such action sends a clear message to players in all markets that we will not hesitate to use our enforcement powers to tackle anti-competitive behaviour in this way.

We have also issued Statements of Objections in relation to other market behaviour which we believe harms the functioning of markets and the economic welfare of consumers. Notably our recent Statement of Objections issued to supermarkets and dairy processors in relation to the sale of milk, butter and cheese again underlined our commitment to take firm action against such anti-competitive behaviour in markets affecting millions of consumers in their everyday lives. Similarly, we began proceedings in the High Court for a declaration on the application of the law in respect of unauthorised overdraft charges by banks and we have undertaken a number of high profile campaigns to improve consumers' understanding of products such as Christmas saving schemes.

The OFT places tremendous importance on its work with stakeholders across the consumer, business and competition policy landscape. In 2007 we implemented a Stakeholder Relationship Management

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'The OFT places tremendous importance on its work with stakeholders across the consumer, business and competition policy landscape.'

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system to ensure consistency of approach with all our key stakeholders and have recently completed a stakeholder audit in order to further tailor our approach to individual stakeholders.

Going forward we hope to consolidate our existing stakeholder activity by exploring new methods of engaging with our diverse range of stakeholders and facilitating a more robust 360 degree approach to engagement and information sharing with all our stakeholders.

## The coming year

The coming year will bring a series of new challenges to the OFT and in this Annual Plan we set out how we plan to rise to meet these. For the first time the Consumer Protection from Unfair Trading Regulations 2007 will add criminal penalties for various unfair commercial practices to the range of sanctions available to the OFT. In line with our existing policies we will seek to use any new powers in a proportionate and market informed manner.

From April 2008 the provisions contained in the Consumer Credit Act 2006 will improve and strengthen the credit licensing regime administered by the OFT. The reforms give the OFT powers to impose requirements on consumer credit licensees and to impose financial penalties on licensees, where they fail to comply with these requirements or to provide relevant information to the OFT. We anticipate that the requirements will largely replace the use of undertakings and will enable us to take the initiative to resolve issues between us and licensees more effectively.

The Money Laundering Regulations 2007 came into force in December 2007 and the coming year will provide further challenges to the OFT in our new role as a Supervisory Authority. The OFT's supervisory role with Local Authority Trading Standards Services (TSS) involves us in contributing to the UK Government's strategy to combat money laundering and the financing of terrorism. This new role requires us to ensure that businesses have processes in place to reduce their vulnerability to being used by money launderers. This will be a challenging new role for us but we are determined to deliver an efficient and effective regime.

In order to assist us in continuing to ensure our work is targeted and proportionate we are introducing changes to the way we prioritise and evaluate our work. We have recently consulted stakeholders on our proposed prioritisation principles which will ensure that we consider a range of factors when deciding which work is taken forward, whilst the rollout of an evaluation programme across a wide range of OFT work allows us to estimate the impact of our work at the moment we do it. Similarly we have recently consulted our stakeholders on our proposals to measure our impact.

In our leadership and championing role for TSS, we will build on the success of the Programme for Joint Action in a new Programme for Partnership. This will involve agreeing with TSS a partnership strategy to make markets work well for consumers and the wider economy, while encouraging TSS to deliver better local services to consumers and businesses. We will work with TSS to assess the economic benefits of their 'fair trading' role, while continuing to provide strategic leadership for the regional intelligence

network. We will also ensure that TSS have a voice within central government and that our role as champion of TSS is clearly articulated and understood. We will work closely with the Local Better Regulation Office (LBRO) in areas of shared interest and support LBRO's ambition to create a world class local authority regulatory services system.

During the past year we have made a number of new appointments across the organisation. Senior management positions have been filled with people taking those roles coming from both inside the OFT and other organisations. During 2008-09 we will also be pleased to welcome to the OFT board James Hart, Anthony Lea and Dr Philip Marsden who all bring a wealth of experience and expertise to our team. In 2008-09, we plan to maintain our focus on attracting and retaining highly talented people at all levels across the OFT.



**Philip Collins**  
Chairman

**John Fingleton**  
Chief Executive

# About the OFT

The OFT is a non-ministerial government department. We have a broad remit and a diverse set of tools available to us. We are not, for the most part, a regulator; indeed our direct regulatory powers are limited – for example, to the operation of the consumer credit and merger control regimes, which are statutory functions. The majority of our work consists of analysing and studying markets, enforcing competition and consumer law, undertaking advocacy and working with partners to deliver relevant education programmes to businesses and consumers. We also strive towards intellectual leadership in competition and consumer policy in order to exert maximum impact on decision-takers, opinion formers and influencers across the UK economy and internationally in the most efficient manner possible.

## The OFT mission

**Our mission is to make markets work well for consumers. Markets work well for consumers and contribute to the health of the wider economy when they are efficient and productive.**

Where markets are not working well for consumers, the problems may often be resolved without the need for intervention by the OFT, for example by the actions of the market players themselves or by new entrants, through the impact of external factors or as a result of innovation. Where the problems cannot be, or are unlikely to be, resolved naturally, then intervention by the OFT using one or more of the available tools may be necessary. Intervention by the OFT is designed to support the development of competitive, efficient, innovative markets where standards of consumer care are high, consumers have choice and are empowered and confident about making choices, and where businesses are not disproportionately burdened by government regulations and are encouraged to offer benefits to consumers beyond the protection afforded by law.

The tools to achieve this goal are found within the competition and consumer law regimes which lie at the heart of UK economic policy. These tools enable us to look at all aspects of markets to ensure that they are working well for consumers. We use the competition regime to ensure that consumers benefit from competitive and innovative markets which are not constrained, for instance by price fixing, by market sharing and other anti-competitive behaviour, by unnecessary or inappropriate regulations or by anti-competitive mergers. We use the consumer law regime to ensure that consumers are able to make informed and rational selections of products and services and that their choices are unimpeded by artificial constraints such as deceptive practices, misleading advertising, unfair contract terms or the withholding of material information.

Our view is that it is essential to look at the demand and supply sides of markets together. The competition and consumer regimes are complementary to each other. Empowered and well-informed consumers act as a positive stimulus to competition between businesses. Where consumers are able to make informed decisions, businesses are more likely to innovate, reduce inefficiencies in production and supply and compete in ways which make markets work well for consumers and the wider economy.

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‘Empowered and well-informed consumers act as a positive stimulus to competition between businesses.’

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Deliver  
high-impact  
outcomes

Develop,  
promote and  
attract the  
best talent

Be a centre  
of excellence

## Our vision

Achieve our  
objectives

Be a centre  
of intelligence

### Deliver high-impact outcomes

Deliver high-impact outcomes that have significant benefits for consumers and the economy, improve legal certainty, support wider compliance and deterrence, and foster efficient, competitive and pro-consumer market conduct using the entire range of our policy instruments.

### Be a centre of excellence

Be a centre of excellence in consumer and competition policy and enforcement – linking international best practice and national economic understanding with national and local delivery, and engaging in critical self-examination and open evaluation and improvement in how we work.

### Be a centre of intelligence

Be a centre of intelligence using economic data and feedback from Consumer Direct, partners and stakeholders, to inform our own and others' work, to identify markets that are not working well, to empower consumers, and to inform business, Government and the public about consumer and competition issues.

### Achieve our objectives

Achieve our objectives in partnership with others including sector regulators, government, the courts, the Competition Commission, the European Commission, Local Authority Trading Standards Services and businesses and consumers and their representatives.

### Develop, promote and attract the best talent

Develop, promote and attract the best talent providing a supportive environment in which staff can learn and develop to reach their potential.

## The OFT approach

Our approach is founded on the principle that consumer welfare is optimised through vibrant competition in open and well-functioning markets. In pursuing this approach, we strive, through focused advocacy and education, and directed and effective enforcement when necessary, to promote open competition and to encourage the unfettered availability of products and services and the provision of accurate, non-deceptive information between businesses and consumers. We focus our interventions on those areas which pose the greatest threat to consumer welfare, such as cartel behaviour (price-fixing, market sharing and bid-rigging), the abuse of market power, the use of unfair contract terms and unfair commercial practices, deceptive or misleading advertising, mass-marketed scams and the actions of 'rogue' traders. We employ an increasingly sophisticated, systematic and rigorous approach to identifying the scale and causes of consumer harm and pay special attention to harm arising in key industries and markets and to the needs of vulnerable consumers. We also recognise the need to avoid imposing unnecessary burdens on business.

We aim to take a market-informed approach, focusing on outcomes which support productivity growth and the prosperity of the UK economy. We believe that this approach is in the best interests of businesses, consumers, the UK economy and society. We have a wide range of tools at our disposal, from self-regulation in the form of OFT approved Codes of Practice and business education to merger

control and the direct enforcement of competition and consumer legislation, including the criminal offences for cartels and unfair commercial practices.

Our methods include enforcement (civil and criminal), market studies, consultations and workshops, advocacy to help formulate government policy and to address new or developing competition and consumer issues, and educating businesses and consumers. Beyond the immediate goal of stopping a particular bad practice or promoting a beneficial one, our activities improve the institutions and processes through which competition and consumer policies are formulated and applied.

Acting to prevent harm in the first place is better for consumers than taking enforcement action afterwards. One of the ways to achieve this is to equip both businesses and consumers with the necessary knowledge about their legal obligations and rights so that businesses understand and comply with the law and consumers can exercise their rights to protect themselves. We undertake powerful awareness and education programmes with business and consumers and co-ordinate an alliance of consumer education partners. Our aim is to increase consumer and business knowledge and to deal rapidly with complaints from those parties who are affected by unlawful activity and market failure. However, intervention should be the last, not the first, resort, and we encourage businesses and representative organisations to play an important role by raising compliance levels and by stopping unlawful, unfair and deceptive practices.

## The OFT: supporting business

By monitoring, addressing and remedying all aspects of markets we protect the fundamental framework in which business can operate in a climate of fairness and freedom to innovate. We protect business when it acts as a buyer and a seller by taking action against cartels, misuse of market power, and government restrictions which distort markets and harm competition. We also seek to protect the reputation of legitimate business and the UK markets as a whole by dealing with scams, rogue traders, cartels and other negative influences on consumer confidence across all markets.

The OFT is committed to applying the Government's principles of better regulation – transparency, accountability, proportionality, consistency and targeted intervention. The OFT's overall approach – for example, rigorous prioritisation and evaluation of its market interventions – is closely aligned with these better regulation principles.

We recognise the need to remove unnecessary burdens on business. For the OFT, whose primary aim is to make markets work well for consumers, burdens on business matter because they will typically be passed on to consumers in the form of higher prices, lower quality, or reduced choice. Therefore, making markets work well for consumers means ensuring that our interventions do not impose unnecessary costs on business, subject to delivering our overall objectives.

In November 2007 we issued a statement of consumer protection enforcement principles setting out our commitment to the principles of good enforcement, as set out in the Legislative and Regulatory Reform Act 2006, the Enforcement Concordat and the Regulators' Compliance Code.

More widely, across all our work, we are committed to acting in a manner which is proportionate to the matter in hand. We will consider carefully, and at an early stage, what remedies (including voluntary resolution) might be most appropriate. Both the choice of the intervention tool and the most appropriate remedy will be kept under review during our investigations to ensure that we remain focused on obtaining proportionate and effective outcomes.

In our work we aim to ensure that we conduct ourselves in a transparent manner and that parties are regularly informed of the status and anticipated time frame of the inquiries in which they are involved.

In carrying out our functions, we will act fairly and apply our procedures to achieve consistent outcomes in the market. This does not mean that we will always take the same steps to enforce the law in the same way on apparently comparable cases or use the same legislative option – we will aim to tailor the action to the individual circumstances.

We work on the principle that, where powers are shared between separate authorities, action should always be taken by the most appropriate body, taking account of other statutory and non-statutory mechanisms.

Making markets work well for consumers also means identifying and (where possible) addressing regulatory burdens imposed by government, where these reduce the efficiency of markets and create costs for businesses and consumers.

### Making markets work well – competition and consumer law regimes

Competition stimulates businesses to improve their price and quality offering. They do this to win customers. In competitive markets, when buyers dislike the products or practices of one supplier, they can switch to others. This incentivises each supplier to satisfy customer preferences. However, competition does more than simply improve the choices available for customers. It increases the motivation for suppliers to provide truthful, useful information about products and to fulfil promises concerning price, quality, and other terms of sale. Consumers can punish a seller's poor service or failure to fulfil a promise by voting with their feet – and their wallets. This punishment is usually swift, particularly for sellers of products which people frequently buy and where they can readily judge quality.

The 'informed and empowered consumer' stands on the common ground between the goal of competition policy – the maintenance of an efficient, innovative competitive economy – and the goal of consumer laws – confident consumers operating free from deception or ignorance concerning the material features of products and services and the terms of supply. If consumers have access to good information, and act upon this

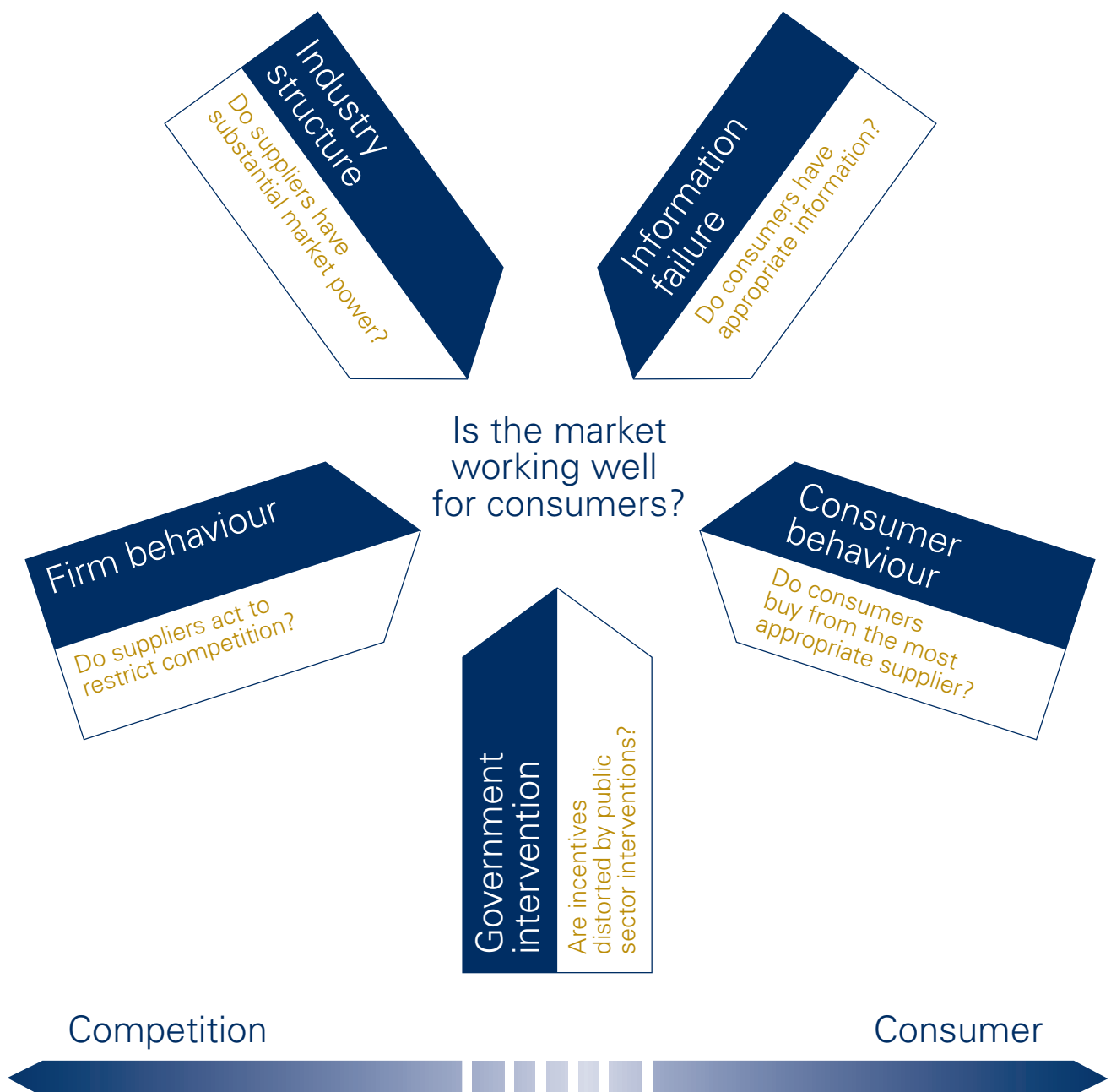
information, then normal market forces are likely to compel sellers to improve their products or services in ways that are most important to the consumer.

Reputable businesses care about how consumers see them. They count on reputation and consumer satisfaction to retain custom and increase sales. By contrast, disreputable businesses have no such concerns. They cheat consumers, take the revenues, and disappear from sight, often to re-emerge in another guise to steal again. Likewise, cartelists conspire to deny consumers the benefits of competition and usually seek to cover up their actions in order to deprive consumers of lower prices and/or greater choice.

When market forces cannot overcome such threats to consumer welfare, for example, because some sellers are unconcerned about repeat business and reputation, where there are structural or behavioural barriers to free competition, or where consumers and harmed businesses are unable to gain redress themselves, then OFT action may be required.

The diagram opposite shows the key factors underlying markets which work well for consumers.

**Key factors underlying markets that work well for consumers**



## Our tools

**Where one or more of these factors contribute to market failure, we have a range of tools at our disposal to address such failures and make the market work well for consumers. In many cases, it will be appropriate for us to use a combination of these tools to address such failures in a holistic way. In many cases we will work in partnership with other organisations which have complementary powers or influence in relation to markets.**

**Preventative tools** including the Consumer Codes Approval Scheme, OFT guidance to consumers and business and consumer education programmes.

**Diagnostic tools** including research, market studies, investigating and responding to super-complaints, references to the Competition Commission and our investigation and intelligence gathering functions.

**Advocacy tools** including our international work where we use our influence to promote the interests of UK consumers, informal advice to government, business and consumers on competition and consumer issues following a market study or other OFT action and encouraging private actions and redress for breaches of consumer and competition law.

**Enforcement tools** including accepting and reviewing undertakings, applying financial penalties and imposing directions under competition law, taking criminal actions for a range of unfair commercial practices, seeking court injunctions, refusing and revoking consumer credit licences and warning and banning estate agents. Our current powers under competition and consumer law are explained in more detail on the OFT website.

In addition, our **statutory remit** includes obligations on us to operate the consumer credit licensing and merger control regimes, to act as a supervisory authority under the Money Laundering Regulations, to respond to super-complaints and to assist the European Commission to carry out any inspections in the UK under Articles 81 and 82 of the EC Treaty.

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'We will work in partnership with other organisations which have complementary powers or influence in relation to markets.'

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The diagram below highlights which tools are available to us when addressing a variety of market failures.

			Making markets work well for consumers				
			Industry Structure	Firm Behaviour	Consumer Behaviour	Information Failure	Government Intervention
Enforcement	Competition regime	Cartels and anti-comp agreements		✓			
		Abuse of dominance	✓	✓		✓	✓
		Merger control	✓	✓			
	Consumer regime	EA02 Part 8		✓			
		CPRs		✓			
		UTCCRs		✓		✓	
		Credit licensing		✓		✓	
		Estate agents		✓		✓	
		AML		✓			
	Markets regime	Market references	✓	✓	✓	✓	✓
Super-complaints		✓	✓	✓	✓	✓	
Codes of practice		✓	✓	✓	✓		
Diagnostics	Market studies	✓	✓	✓	✓	✓	
	Research work	✓	✓	✓	✓	✓	
Advocacy	Advice to government					✓	
	International policy work	✓	✓	✓	✓	✓	
Prevention	Advice and guidance	Consumer Direct			✓	✓	
		Consumer education			✓	✓	
		Business education	✓	✓	✓	✓	

# Key themes for the OFT in 2008–09

The OFT will face a number of new challenges in 2008–09. In this section we set out the key focus areas for us in the coming year.

## Prioritisation

We recently consulted stakeholders for their views on the OFT's proposed prioritisation principles, asking them which principles should guide the OFT's future priorities.<sup>1</sup> We will consider all responses and decide how to best reflect these in the final version of the principles which we expect to issue in spring 2008. Having done so, we intend to embed these into our project delivery framework over the course of 2008. How we prioritise our work is a crucial element of our operating strategy. Together with our focus on effective project delivery, we have developed a framework which, with our partners, will enable us to do the right things for consumers and the wider economy in the most effective and efficient way.

## Transparency

We recognise the importance of being transparent with stakeholders, including the businesses involved in our enforcement action, about the work that we do, what we are doing, how long it is likely to take and how we will engage them in the process. In 2008–09, we want to build on our business practice improvements by increasing the public transparency of our work further. In particular, we plan to publish a Guide to OFT Business Practice, which will set out benchmark processes and timetables for projects of various types.

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'We recognise the importance of being transparent with stakeholders, including the businesses involved in our enforcement action, about the work that we do.'

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## Evaluation

As part of our ongoing commitment to evaluating our work, in 2008–09, we will conduct a wide ranging programme to measure our impact in markets. This will include in-depth ex-post evaluations of OFT projects and procedural support in helping to estimate the impact of our work at the moment that we do it.<sup>2</sup>

We recently consulted stakeholders on our proposal to assess performance against our target to deliver direct financial benefits to consumers of at least five times the amount the OFT costs the Exchequer over the CSR07 period (2008-2011).<sup>3</sup>

Other benefits of OFT work, such as deterring future anti-competitive behaviour or increasing confidence in markets are not included in this target but we will evaluate these through the wider programme of evaluation.

1. The consultation can be found at [www.of.gov.uk/shared\\_of/consultations/of953con.pdf](http://www.of.gov.uk/shared_of/consultations/of953con.pdf)

2. Further information on the OFT's evaluation work to date can be found at [www.of.gov.uk/about/benefits/evaluation/publications](http://www.of.gov.uk/about/benefits/evaluation/publications)

3. [www.of.gov.uk/shared\\_of/consultations/of955con.pdf](http://www.of.gov.uk/shared_of/consultations/of955con.pdf)

# Policy change for the OFT in 2008–09

## New criminal powers in consumer law

In May 2007, the Department for Business, Enterprise and Regulatory Reform (BERR) published its draft proposals to implement in UK law the Unfair Commercial Practices Directive (UCPD). The new law, the Consumer Protection from Unfair Trading Regulations 2007 (CPRs), will, from May 2008, replace key elements of the Trade Descriptions Act 1968, the Consumer Protection Act 1987 Part 3 and various other mainstream consumer protection laws which have been enforceable by Local Authority Trading Standards Services (TSS) using criminal sanctions. BERR has always stated that the UCPD will not lead to a reduction in the level of consumer protection. Accordingly, the CPRs, as well as being enforceable by the civil injunctive route available under Part 8 of the Enterprise Act 2002 will, with very minor exceptions, be enforceable by criminal prosecution.

The OFT and TSS will be given a duty to enforce the CPRs. The OFT already has some criminal powers in the consumer law sphere and the Enterprise Act 2002 gave the OFT criminal powers in relation to cartels. In order to fulfil this duty, the OFT will gain new criminal prosecution powers in other areas of our remit.

We welcome this expansion of our toolkit. We believe that it will enable us to tailor our enforcement response to tackle different market problems in the most appropriate ways. We are currently developing new policies, procedures and operational arrangements to enable us to enforce effectively the new criminal provisions

in appropriate cases. We will continue to develop our approach in conjunction with our stakeholders and we intend to consult on a statement of policy in relation to the use of the new powers.

## New consumer credit regime

In April 2008 the Consumer Credit Act 2006 will come into force amending the Consumer Credit Act 1974 to include new provisions to improve and strengthen the licensing regime administered by the OFT.

These reforms reflect a recognition that more needs to be done to raise standards of performance in the consumer credit market, particularly by raising the standard of those considered fit to provide consumer credit and taking action against irresponsible lending to protect consumers. The new powers provided to the OFT are a substantial up-rating of the licensing regime, to make it more effective and better focused on high risk activities and providers.

The reforms will grant the OFT power to impose requirements on consumer credit licensees to address matters that cause the OFT to be dissatisfied and to impose new obligations on licensees to update specified information they have provided to the OFT. The reforms will also give power to the OFT to impose financial penalties on licensees where they fail to comply with certain requirements and where they fail to provide relevant information to the OFT. We may also consider revoking a licence or taking other licensing action where there is a serious failure to comply with requirements.

In line with our overarching approach to enforcement, we will decide whether to impose a penalty, and how much it should be, according to all the circumstances of the case and taking account of any representations made to us.

## Private actions in competition law

In April 2007 the OFT published a discussion paper, Private Actions in Competition Law: Effective Redress for Consumers and Business (OFT916) on the issue of how to make redress for consumers and business for breaches of competition law more effective. The discussion paper was welcomed by a wide range of stakeholders and was successful in stimulating a lively debate. Around 60 written submissions were made to the OFT from, amongst others, consumer organisations, business representative groups, law firms and chambers, members of the judiciary, legal organisations, academic experts, other government departments and enforcement agencies from other Member States.

Following publication of the discussion paper, a public hearing was held in September 2007 to allow respondents and other interested parties to expand upon their submissions and make further, oral comments to the OFT.

As a result of this work and informal discussions with HM Government, in October 2007 the Pre-Budget Report included an announcement of

a public consultation. In November 2007 we finalised and published our Recommendations to Government as to the steps which, in its view, should be taken at the domestic level to make private actions in competition law more effective.<sup>4</sup>

The OFT continues to engage in discussions at the EU level in anticipation of the European Commission's White Paper on damages actions for breach of the EC competition rules and intends to respond formally to the White Paper when it is published in 2008.

## The Consumers, Estate Agents and Redress Act 2007

The Consumers, Estate Agents and Redress Act, which received Royal Assent on 19 July 2007, contains provisions which impact directly on the work of the OFT, specifically:

- The role of Consumer Direct is expanding to handle first tier consumer advice calls in both energy and postal sectors.
- The OFT will have more scope to consider estate agents' fitness to practice by allowing it to ban an agent where there is evidence that an offence has been committed, even if there is no conviction. There are also new powers to allow OFT and the TSS to inspect estate agents' transaction files.
- The OFT will approve independent redress schemes which will determine disputes between estate agents and buyers or sellers of residential property in the UK.

- The introduction of New Doorstep Selling Regulations, enforceable by the OFT and the TSS under Part 8 of the Enterprise Act 2002, which will extend to solicited visits the cancellation rights and cooling off periods that consumers currently enjoy for unsolicited visits to their home.

## Better regulation

The Legislative and Regulation Reform Act 2006 comes into force in April 2008. This requires the OFT, in its consumer enforcement work, to have regard to the broad Hampton principles of risk-based regulation, carrying out regulatory activities in a way which is transparent, accountable, proportionate, consistent and targeted. The OFT published its Statement of Consumer Enforcement Principles in November 2007, in anticipation of this requirement, and the associated Regulatory Compliance Code.

In addition, the current Regulatory Enforcement and Sanctions Bill is expected to:

- Establish the Local Better Regulation Office (LBRO) on a statutory footing. The OFT is committed to working with the LBRO to raise the effectiveness and consistency of local authority regulation, particularly in relation to Trading Standards activities, building on our existing leadership and championing role.

- Introduce a requirement to review and reduce unnecessary burdens on business. The OFT is committed to producing and updating a simplification plan setting out how it proposes to minimise burdens on business.

## Northern Rock

We have committed to publish a report annually which will consider whether Northern Rock, under public ownership, is creating any identifiable negative impacts on competition in the banking sector.

# Performance framework and objectives

Our plans for the next three years are underpinned by a new performance framework (see Annexe A) agreed with government setting out our commitments to the Government, consumers and businesses; and the high-level performance indicators that we will use to measure our success. As such our proposed objectives below for 2008–09 work towards achieving this performance framework.

## Objective 1: To deliver high-impact outcomes

**Make markets work well for consumers by delivering high impact work efficiently, focused on priorities, and spanning the OFT's enforcement and non-enforcement functions.**

Our target is to deliver direct financial benefits of at least five times that of our cost to the taxpayer and to demonstrate the additional wider benefits of the OFT's work such as increasing consumer and business confidence in markets and deterring future anti-competitive behaviour.

All our work is focused on ensuring the best outcomes in markets for consumers. Our commitment to measuring directly the benefits we are having to consumers compared with our cost to the taxpayer is a clear signal of this focus on outcomes.

In order to achieve the highest possible impact on consumers, we need to make use of all our tools – competition, consumer and market-focused – in a clear way; to prioritise our work effectively; and to ensure we are excellent in delivering work across the range of our remit. Specific commitments in each of these areas are set out in the performance framework.

The OFT's procedural framework will allow us to deliver high impact outcomes for consumers, while minimising unnecessary burdens on business, as we continue to use the principles set out for prioritisation. We will provide transparent information on all our ongoing cases, including progress against timescales set out at the start of each project. Specifically:

- We will publish a Guide to OFT Business Practice, which will set out benchmark processes and timetables for projects of various types.
- We will keep parties informed on progress against project timescales.
- We will apply prioritisation principles in deciding which new work to carry out and report transparently on this in the Annual Report.
- We will reduce unnecessary burdens on business by carrying out the initiatives set out in our Simplification Plan, and updating the plan by the end of this financial year.

In our enforcement work we will concentrate our action on areas where we believe the benefit to consumers and the economy from our intervention would be greatest. We aim to focus on preventing and ending serious misconduct and increasing overall compliance levels, either as a direct consequence of our action or through wider deterrence or educational effects. Specifically:

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## 'We will continue to identify, investigate and challenge misuses of market power.'

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- We will accept parties' offers of merger undertakings where this would clearly resolve any concerns, and will refer other problem cases to the Competition Commission (CC); equally, we will strive to ensure the merger regime operates in a timely and efficient manner.
  - Where mergers are not notified to us we will investigate where we believe consumers may be at risk of adverse consequences flowing from the merger.
  - We will continue to root out hard core cartel activity across the whole economy. We are committed to using our criminal powers where appropriate. We will also continue to identify, investigate and challenge misuses of market power.
  - We will take preventative, deterrent and disruptive action to prevent mass marketing scams reaching consumers, both through direct enforcement and increasing consumer empowerment to identify and protect themselves from scams.
- We will use our market-wide tools to raise industry standards, increase business and consumer awareness and remedy generic issues of market failure. We will focus on empowering consumers, increasing effective self regulation, and dealing with structural defects in markets. Specifically:
- We will assess the performance of the UK Payments Council against its objectives of setting a strategic vision across the payments industry and the increasing transparency and innovation.
  - We will continue to work closely with the CC to develop, monitor and review remedies in markets which we refer, where this is appropriate to their findings.
  - We will undertake at least one comprehensive review of individual undertakings given or Orders made following a CC (or earlier Monopolies and Mergers Commission) inquiry.
  - In partnership with Ofcom we will review the Contracts Rights Renewal undertakings agreed during the merger of Carlton and Granada to form ITV plc.
  - We will work to ensure the successful operation of that part of the anti-money laundering compliance regime for which the OFT is responsible.
  - We will work with new applicants to the Consumer Codes Approval Scheme to achieve stage one completion and also work with those that are at stage two to full code approval. We will aim to send an initial assessment letter to code sponsors within one month of receipt of a stage 1 application.
  - We will continue our work in the banking sector publishing our market study report into Personal Current Accounts and continuing our work on the fairness of unauthorised overdraft charges.
  - We will continue to provide informal assistance in merger cases which raise genuine competition issues and where our involvement will assist business in ways their advisers cannot. Consumers will benefit if pro-competitive mergers are encouraged and where business can build merger remedies advice into their transaction planning early on.
- In our advocacy and policy work we will focus our attention on markets where we believe that regulations may be harmful and unnecessary or market structures hinder competition. We will use our market expertise and experience to influence and educate policy makers, representative organisations and other interested parties in order to ensure that they are aware of issues relating to supply and demand, and that they take account of competition and consumer concerns when they are relevant to their work. Specifically:
- We will continue to work to establish legal precedent where appropriate.
  - In dealings with professions we will continue with our approach of using advocacy combined with enforcement to bring about change.
  - We will continue to engage proactively with other government departments, including the devolved administrations, to ensure that forthcoming legislation is no more restrictive of competition than necessary. We will respond to requests for such advice from government departments in an effective and timely manner.

## Objective 2: To be a centre of intelligence and excellence

**Monitor markets proactively, systematically and transparently. Evaluate the impact of our work, and use this evaluation to inform strategy and future work. Provide effective education and advice for consumers, including through Consumer Direct. Promote innovative approaches in our work.**

Our target is to be acknowledged as a thought leader, developing innovative approaches to our work, using intelligence effectively, and having a wider impact on markets through our advocacy of competition.

The OFT is committed to being a world-class competition and consumer authority. We can only achieve the benefits for consumers that we desire by becoming more intelligent, continually assessing and monitoring our performance and coming up with innovative approaches to tackling market problems. We are also committed to providing advice to businesses and consumers so that they can help themselves wherever possible, including through the Consumer Direct.

We will monitor markets proactively, taking account of all market aspects. We will provide international leadership on market studies. Specifically:

- We will carry out impact evaluations of at least two market interventions (including one market study) and publish the results. We will evaluate the specific impact of at least two consumer campaigns and report on the results.
- We will establish criteria for opening new market studies. We will hold a conference reviewing the market studies regime five years after implementation.
- We will develop our use of productivity analysis to identify areas of detriment and build a consistent analytical framework for identifying possible future investigations.

We will ensure that we are aware of, and able to influence, the latest developments, innovations and research in policy and enforcement best-practice, including through engaging with national and international fora. Specifically:

- We will continue to work closely with BERR and the European Commission on the development and formation of competition and consumer protection legal and policy regimes.
- We will continue to work on developing relationships with overseas consumer and competition agencies via our participation in a variety of fora such as the International Consumer Protection and Enforcement Network, Organisation for Economic Co-operation and Development, European Commission and the International Competition Network.

We will undertake critical and transparent analysis of our work, and use the results to inform our work and overall strategy going forward. Specifically:

- We will refine our Statement of Consumer Protection Enforcement Principles, having regard to statutory Better Regulation requirements and the benefits of all relevant enforcers taking coherent approaches.
- We will seek to develop our capacity to carry out criminal prosecutions in relation to consumer protection legislation and where we identify serious infringements of the Consumer Protection from Unfair Trading Regulations 2007 (CPRs) we will not hesitate to take criminal prosecutions.
- We will work to develop and increase understanding among market participants and other interested parties of the concept of 'fairness' in principled-based regulation.
- We will review, in light of recent changes to our internal and external environment, our guidance on Part 8 of the Enterprise Act 2002 and consult on and publish revised guidance.
- We will issue revised procedural guidance on how the OFT deals with mergers.

## Objective 3: To work in partnership

### **Work with our partners to better achieve our other objectives.**

This will include: working with Local Authority Trading Standards Services (TSS) to pursue a risk-based, intelligence-led approach to delivery at local level of coordinated and consistent services to businesses and consumers; co-operating with other UK regulators, the European Commission, the Competition Commission and other National Competition Authorities to ensure effective enforcement of the competition regime in the UK; and working with government to influence competition, regulation and consumer policy, and reduce the potential for government actions to adversely affect markets.

Our target is to demonstrate increased effectiveness of OFT work by engaging the strengths of other bodies and organisations, and by increasing mutual awareness and understanding.

We realise that we can only achieve the impacts we desire by working effectively with a range of other organisations, businesses and individuals. As well as a general commitment to working with our stakeholders, we also have specific commitments relating to TSS, and to our work with central government. We will work with our partners, and influence others, to make markets work well for consumers, including: reducing the distortions of markets created by government actions; working with TSS to ensure a risk-based, proportionate and coordinated approach to their

work; and co-operating with sectoral regulators, the European Commission and other National Competition Authorities to ensure effective enforcement of the competition regime in the UK. Specifically:

- We will develop a multi level contact programme for Westminster and Whitehall stakeholders to improve our liaison with government. We will also develop a programme to increase wider engagement with the policy community. In addition, we are currently reviewing our engagement with the devolved administrations and key stakeholders in Scotland, Wales and Northern Ireland in order to ensure an inclusive and consistent approach to our work. We will use these means to raise issues of concern to the OFT and also to champion the work of the TSS.
- We will work with other enforcers to coordinate enforcement action against business to business misleading indications under the Business Protection from Misleading Marketing Regulations 2007 (BPRs) and consider and consult on the need for guidance on their operation.
- We will consult on how to maximise use of established means under both the Consumer Protection from Unfair Trading Regulations 2007 (CPRs) and the BPRs and publish principles as appropriate.
- We will continue to provide advice and guidance to, and liaison, with UK sectoral regulators, via the Concurrency Working Party and on going contact.
- We will continue to work in partnership with and provide leadership for TSS and will agree a partnership framework. We will explore ways to develop a closer and more effective partnership in enforcement and to clarify our respective roles.
- We will devise a robust methodology for assessing the economic impact of fair trading work undertaken by TSS and complete the first national assessment of that economic impact. We will also lead a review of the TSS risk assessment scheme, in consultation with LACORS and other partners.
- We will continue to provide strategic leadership for the joint OFT/TSS Regional Intelligence Network and evaluate the business case for supporting it with an IT based intelligence system.
- We will continue to provide case support and training to enforcement partners focusing on the successful use of the CPRs, and we will facilitate the sharing of best practice across traditional (enforcers) boundaries'.
- We will continue to promote the codes scheme and encourage use of codes in appropriate markets.
- We will continue to develop the Local Authority Assured Trader Scheme Network (LAATSN) and develop criteria to enable an assessment of the impact of local trader schemes and LAATSN.

We will provide effective education and advice for consumers and businesses, including through Consumer Direct. Specifically:

- We will work to ensure the successful integration of Energywatch and Postwatch contacts into Consumer Direct providing appropriate funding has been secured.
- We will continue to work with our international enforcement counterparts to raise awareness of scams.
- We will seek to empower consumers via improvements in consumer skills and knowledge by communicating directly with consumers and developing education work through the Consumer Education Alliance.

We will ensure OFT external services such as Consumer Credit Licensing and Consumer Direct continue to provide efficient and effective services to stakeholders.

- We will operate the consumer credit licensing regime in order to minimise the impact on business and will seek to process 90% of applications within 25 working days. When undertaking credit enforcement cases and investigations into credit fitness we will complete 75% of cases within 6 months.
- Our enquiries team will respond to 90% of public enquiries and complaints within 10 working days.
- We will aim for a satisfaction rate of 85% of Consumer Direct customers and through its advice we will seek to empower consumers to resolve 45% of their consumer problems.

## Objective 4: To develop the OFT as an organisation

**The OFT's key asset is the diversity of the skills, expertise and experience of its staff. Our ability to change markets and deliver excellent outcomes for the UK economy relies on investing in the skills and talent of our staff.**

Our target is to have a comprehensive career and knowledge development programme for our people.

In 2008–09, we will continue to invest in our people by developing their skills and ensuring that they have the appropriate tools to do their jobs effectively and that we contribute skills to the economy. We will particularly focus our learning and development programme in 2008–09 on the skills and behaviours required to meet new challenges.

We will, for example invest in recruitment, training and development to ensure that we have both the capability and the capacity to undertake the full range of our work (including the exercise of criminal powers) and to deliver high quality projects which provide substantial benefits to consumers and to the economy on time and within budget.

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'Our target is to have a comprehensive career and knowledge development programme for our people.'

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# Resources

2008/09 will be the first year of a new three year HM Treasury (HMT) funding cycle covering the financial years 2008–09, 2009–10 and 2010–11. The OFT achieved an early settlement agreement with HMT therefore avoiding protracted discussion and uncertainty on funding levels. As with all Government bodies the OFT has been subject to rigorous scrutiny of our financial position and has committed to a 5% efficiency saving year on year over the CSR period.

There are two significant changes from the 2006–07 settlement. Firstly funding for Consumer Direct is no longer ring fenced and has been subject to the same efficiency saving as the rest of the OFT. Secondly Consumer Credit Licensing Bureau (CCLB) will be self financing from the 1st April 2008, and therefore the OFT no longer receives any central funding for this activity.

## **For the CSR07 period the OFT Settlement has been fixed at:**

2008-09	2009-10	2010-11
£65.7m	£64.1m	£62.6m

## **For the financial year 2008-09 this may be broken down into the following areas:**

Running Costs	£62.4m
Capital	£1.4m
Litigation costs (ring fenced)	£1.9m

In meeting what is a challenging financial target while at the same time at the very least meeting the operational objectives placed upon the organisation, we will continue to review our staffing levels and mix ensuring the right people are in place at the right time. We will continue with a policy of using specialists and temporary resource where it is most effective to do so, consider novel and innovative ways of delivering the required objectives and undertake an on-going review of the organisational structure to ensure it reflects the most effective way of both supporting and delivering the challenging objectives for 2008–09.

During 2008–09 we will continue to develop our outcome approach to business planning and reporting. This will allow us to be flexible and proactive in our approach to planning and to meet those additional and unexpected activities that arise during the year.

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‘During 2008–09 we will continue to develop our outcome approach to business planning and reporting.’

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# Annexe A

## CSR07 Performance Framework Agreement (for 2008–11)

The OFT is responsible for making markets work well for consumers. We achieve this by promoting and protecting consumer interests throughout the UK, while ensuring that businesses are fair and competitive.

### Objective 1

**Make markets work well for consumers by delivering high impact work efficiently, focused on priority areas, and spanning the OFT's enforcement and non-enforcement functions.**

1. In each annual report provide quantitative evidence of how the OFT delivers direct financial benefits to consumers of at least five times that of its cost to the taxpayer across the spending review period.<sup>5</sup>
2. In each annual report estimate the additional wider benefits of OFT's work, e.g. increasing consumer and business confidence in markets and deterring future anti-competitive behaviour.
3. Publish annually statistics and information on all the OFT's enforcement and non-enforcement outcomes, including comparisons with previous year's statistics and, where applicable, other leading NCAs.
4. Publish a project performance management system, including anticipated timeframes for the completion of principal types of projects, and report annually on performance against this framework and the proportion of projects delivered within the anticipated timeframes (with explanations for projects not completed in time).
5. Publish and continue to develop a framework for prioritising work, drawing on information from complaints to OFT and Consumer Direct, proactive market monitoring and project evaluation work. Report annually on how the framework has been reflected in projects carried out.
6. Publish detailed performance monitoring arrangements for Consumer Direct and report annually on success against these targets. Demonstrate that Consumer Direct is generating benefits of at least three and a half times its operating costs.
7. Ensure that investigations are conducted in a transparent manner, with parties frequently informed of the status and anticipated time frame of the investigations in which they are involved.

### Objective 2

**Be a centre of intelligence and excellence. Monitor markets proactively, systematically and transparently. Evaluate the impact of our work, and use this evaluation to inform strategy and future work. Provide effective education and advice for consumers, including through Consumer Direct. Promote innovative approaches in our work.**

8. Systematically monitor markets, with the aim of progressively increasing impact from the proactive market studies, investigations and advocacy programme, as measured by increases in consumer welfare or other relevant indicators of impact.

<sup>5</sup> The approach to calculating benefits will be consulted on and published.

9. Publish objective criteria for undertaking and terminating market studies.
10. Evaluate the impact of at least two market interventions (including at least one market study) annually and publish the results. Evaluate the specific impact of consumer campaigns on at least two markets per year, and report on the results.
11. Demonstrate an increasing awareness of OFT's work and role, through measures such as survey evidence and number of website hits.
12. Take action to drive up the average quality of complaints received, and respond to 90% of public enquiries within 10 days.
13. Demonstrate the use of innovative and appropriate approaches to market problems, recording in the annual plan examples such as direct settlement, third party interventions and new types of study.
14. Maintain or improve OFT's rating as one of the top consumer and competition authorities in the world as measured by BERR's peer review, Global Competition Review and other appropriate measures.
15. Monitor and increase the number of OFT decisions cited favourably in international competition and consumer policy debate (e.g. through Lexus Nexus citations).

### Objective 3

**Work with our partners, to better achieve objectives 1 and 2. This will include: working with trading standards to pursue a risk-based approach to local regulation of businesses; co-operating with other UK regulators, the European Commission, the Competition Commission and other NCAs to ensure effective enforcement of the competition regime in the UK; and working with government to influence competition, regulation, and consumer policy, and reduce the potential for government actions to adversely affect markets.**

16. Deliver and extend the joint implementation plan with Local Authority Trading Standards Services. Demonstrate a more consistent, better-coordinated service delivery, and a more risk-based approach, leading to reduction in the administrative burdens placed on fair-trading businesses, promotion of the well being of local communities, and improved economic productivity and efficiency.
17. Have an increasing impact on government policy through RIA assessments, regulatory reviews and wider advocacy work, and monitor and improve the feedback we receive from OGDs through our advocacy work.

### Objective 4

**Develop the skills and talent of OFT staff to deliver high quality outcomes and add skills to the economy.**

18. Identify the skills profiles required to deliver the OFT's strategic goals; actively shape the staff profile to match these. Publish annually information on the skills of existing staff and new joiners.
19. Provide an environment that rewards talent, and with structures and culture that enable staff to develop as far and as fast as they are able.
20. Monitor and report on the destination of staff leaving the OFT and use this information to inform work towards achieving targets 18 and 19.

# Annexe B

## OFT Organagram

<b>Steering</b>	<b>Board:</b> <b>Chairman</b> <b>Chief Executive</b> Philip Collins      John Fingleton  <b>Executive Committee:</b> <b>Chair</b> John Fingleton		
<b>Market-facing Services</b>	<b>Policy and Strategy</b> <b>Jonathan May</b> <ul style="list-style-type: none"> <li>• Strategy and planning</li> <li>• Policy unit</li> <li>• General counsel's office</li> <li>• Chief economist's office</li> <li>• Trading Standards Partnership Team (TSPT)</li> <li>• Information and Advisory Centre</li> </ul>	<b>Markets and Projects</b> <b>Sean Williams</b> <ul style="list-style-type: none"> <li>• Services</li> <li>• Goods</li> <li>• Infrastructure</li> <li>• Mergers</li> <li>• Cartels</li> <li>• Consumer Protection</li> <li>• Resource Allocation Unit</li> </ul>	<b>Corporate Services</b> <b>Anna Benedicic (Interim)</b> <ul style="list-style-type: none"> <li>• Consumer Direct</li> <li>• Enquiries</li> <li>• Consumer Credit Licensing</li> <li>• Anti-money Laundering</li> </ul>
<b>Central Services</b>	<b>Communications</b> <b>Barney Wyld</b> <ul style="list-style-type: none"> <li>• Press Office</li> <li>• Public Affairs and Stakeholder Liaison</li> <li>• Consumer Education</li> <li>• Business and Consumer Campaigns</li> <li>• Marketing, E-comms and Events</li> </ul>	<b>Executive Office</b> <b>Erik Wilson</b> <ul style="list-style-type: none"> <li>• Private Office</li> <li>• OFT Scotland</li> <li>• Internal Communications</li> </ul>	<ul style="list-style-type: none"> <li>• Finance</li> <li>• Procurement</li> <li>• Human Resources</li> <li>• Facilities Management</li> <li>• IT and RMU</li> </ul>

## If you would like to find out more

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