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Delivering better regulatory outcomes – an update

A joint FSA and OFT Action Plan

OFFICE OF FAIR TRADING





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Foreword

Regulation is important to maintaining markets which are efficient, orderly and fair, and to protect consumers and the integrity of markets from abusive or fraudulent practices. It is essential that we carry out regulation in a way that is proportionate to the risks and does not constitute an unnecessary burden to business or consumers.

In this context, the Financial Services Authority (FSA) and the Office of Fair Trading (OFT) must work closely together to improve the way in which we deal with our jointly regulated firms. This will help us deliver benefits to firms, consumers and to the economy as a whole. Our Joint Action Plan, published in April, set out a wide-ranging programme of work to deliver this objective.

Over the last six months both organisations have devoted considerable resource to this, which is reflected in this update on our progress. This marks a step change in the way our organisations work together. For example, last month we published the results of our studies on payment protection insurance, on which there has been very close collaboration. That will continue as we strive towards addressing the sales practices and competition issues that prevent consumers getting a fair deal in this market. Other progress includes highly practical steps to make life easier for firms and consumers in areas such as financial advertising and consumer communications.

But this, of course, is by no means the end of the story. We have already identified other areas where more joint working might bring benefits to firms and consumers. For example, the FSA is carrying out a review of the distribution of retail investment products and there will be close collaboration between us in areas of mutual interest.

We will work closely with each other and with other relevant parties to explore further opportunities to achieve the wider goals we set out in April: reducing the administrative burden on firms, improving the way in which we make information available to consumers and delivering risk-based regulation.

Finally, we would like to thank the members of the industry and consumer user groups and representatives from Local Authority Coordinators of Regulatory Services (LACORS) and the Trading Standards Institute (TSI) for their continuing help on delivering this Action Plan.

We look forward to reporting further progress in six months.



John Tiner



John Fingleton

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John Tiner

A handwritten signature in black ink that reads "John Fingleton".

John Fingleton

Introduction

Background

On 22 March 2006, the FSA and the OFT announced an intention to collaborate more on matters of joint regulatory interest. This was followed in April by a Joint Action Plan that set out in more detail how we intended to do this.

This update provides a progress report on the Joint Action Plan.

Firms regulated by both the FSA and OFT

A data matching exercise of the FSA and OFT regulated populations has confirmed that around 22,100 firms are regulated in some capacity by both organisations.

Summary of progress

Of the 17 workstreams set out in the April Action Plan, we have delivered 11 and six remain work in progress.

Those delivered include working closely on payment protection insurance, unfair contract terms and the implications of the new Consumer Credit Act 2006 for the Financial Ombudsman Service. We have delivered rule changes and simplified guidance on jointly regulated advertising and developed a programme for linking our communications to firms.

We have also completed feasibility studies into aligning our authorisation and licensing, firms' standing data and revenue collection processes. These indicated that, on cost benefit grounds, few changes should be made at this time. These findings were endorsed by our industry user group. A separate study into whether it makes sense to integrate our respective consumer contact centres continues; there are promising signs that progress can be made here over time.

We will continue to strengthen our overall FSA-OFT liaison and communication arrangements and to collaborate on enforcement matters. Ongoing work also includes further discussions with the Treasury on the gateways by which the FSA may pass information to the OFT and joining up our consumer communications strategies. The work on consumer communications is particularly important in the context of the FSA's financial capability work and the OFT's consumer education objective. We will also complete the feasibility study on aligning the FSA and OFT's public registers by March 2007.

Next steps

We are committed to exploiting further opportunities for better joint working. For example, the FSA will engage with the OFT in two key strategic areas: the review of the retail distribution system and the post-implementation review of depolarisation. There is also potential for greater collaboration in respect of the Unfair Commercial Practices Directive and money laundering regulations. We will continue to work with our industry and consumer user groups, LACORS and TSI to turn these opportunities into practical benefits.

There are other ways in which we can improve our ability to regulate better. For example, we will begin a programme of short- and long-term secondments so that staff at both organisations develop a deeper practical understanding of our respective roles and responsibilities. As part of our liaison work we will also look for further opportunities to share processes and systems. Most importantly, we will build on the enhanced communications, at all levels, between the two organisations.

We will report on further progress in six months.

Summary

This table summarises progress made on the key actions set out in the April 2006 Joint Action Plan. These are set out in more detail in the main text of this report.

Working more closely together		
Action	Progress made	Page
Unfair Contract Terms	Delivered Updated Concordat formalising our working arrangements on unfair contract terms published July 2006.	7
Payment Protection Insurance	Delivered The FSA and OFT published studies in October 2006. Ongoing collaboration on future regulation of the PPI market.	7
Financial Ombudsman Service	Delivered Relevant changes to the FSA's Handbook were announced in the November Handbook Notice and will take effect in April 2007.	8
Gateways	Discussions continuing with the Treasury on the current legal framework for sharing information.	8
Reducing the administrative burden on jointly authorised firms		
Advertising Producing a single source of FAQs for firms; removing duplicative advertising requirements	Delivered Consolidated guidance on jointly regulated advertisements published in May 2006. Delivered Revised rules on jointly regulated advertisements came into effect on 31 October 2006.	9
Authorisation and licensing processes	Feasibility study completed No changes to be made to the existing processes on cost benefit grounds.	9
Changes to firms' standing data	Feasibility study completed No changes to be made to the existing processes on cost benefit grounds.	10
Collection of revenue	Feasibility study completed No changes to be made to the existing processes on cost benefit grounds.	10
Communicating with firms	Delivered New joint communications strategy agreed.	11
Communicating with consumers		
Relaunch of the FSA and the OFT's consumer websites and improved coordination of consumer communications	Collaboration continuing The FSA and OFT working closely on revamp of their respective website and consumer communications strategy.	11
Consumer Contact Centres	Collaboration continuing On feasibility of integrating these contact centres.	12
Public Registers	Collaboration continuing Updated FSA register launched August 2006. New OFT register expected to go live by end 2006. Work on feasibility study considering whether the two registers can be integrated. Study to be completed by end March 2007.	12

Progress on delivering better regulatory outcomes

Working more closely together on matters of joint regulatory interest

FSA-OFT communications

Underpinning the work detailed in this update is an established network of effective communication channels, starting at the very top of both organisations. This is reflected at working level: our staff meet regularly where responsibilities overlap and are much more aware of the need to involve the other organisation at an early stage of new work. We recognise that we can learn much from sharing our thinking and experience and by pooling resources as appropriate. This increased contact between FSA and OFT staff will enhance our knowledge and understanding of each others' responsibilities and help make a difference to both jointly regulated firms and consumers.

Unfair Contract Terms

Both the OFT and FSA have powers over unfair contract terms under the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs). We continue to coordinate to ensure the effective delivery of consumer protection.

A revised Concordat came into effect on 31 July 2006. This commits the FSA and OFT to take necessary and proportionate action where there is evidence of a potential breach of the UTCCRs causing consumer harm. It also means that firms, in normal circumstances, are given a reasonable opportunity to stop relying on unfair terms, removing or revising them as appropriate, before formal action is taken. It will ensure that there is no duplication of effort and that action is taken by the body best placed to lead on any given issue.

Payment Protection Insurance (PPI)

The results of FSA and OFT work were published on 19 October 2006. Throughout the year, we shared knowledge, information and ideas to ensure a joined-up approach to the challenges posed in this market. Looking ahead, we will continue to cooperate and share information, particularly on competition issues and on the FSA's Insurance Conduct of Business review.

Financial Ombudsman Service

The OFT is responsible for regulating consumer credit. The new Consumer Credit Act creates the Consumer Credit Jurisdiction (CCJ), which allows consumers to access the Financial Ombudsman Service (FOS) for consumer credit complaints concerning firms that are licensed by the OFT but not authorised by the FSA.

The FSA and FOS worked with the OFT to align the CCJ with the existing FOS Compulsory Jurisdiction (CJ), resulting in changes to the relevant FSA Handbooks. The FSA will be responsible for the way FSA-authorised firms handle all complaints, including those concerning consumer credit business, so jointly regulated firms' complaint handling procedures will be overseen by one regulator only. This also means that FSA-authorised firms will only pay a single levy to fund the FOS rather than two separate levies. These changes will be brought into effect in April 2007.

Enforcement

The FSA's Enforcement Division and the Credit Licensing Investigation section of the OFT's Markets and Projects Area liaise on a regular basis about cases and issues of common interest. In particular, designated contacts from the respective teams meet quarterly to discuss cases and exchange information where appropriate, as well as on an ad hoc basis when necessary.

The arrangements outlined above are valuable in ensuring, for example, that both the FSA and the OFT are made aware of serious issues relating to firms or individuals that may have implications for those persons' continued authorisation or licensing.

Intelligence

The FSA and OFT jointly considered the benefit of OFT joining the Shared Intelligence Service (SIS). OFT has decided that it would not be sensible to subscribe to SIS at this time. However, OFT will reconsider once its new IT system for consumer credit licensing is fully implemented and the joint feasibility study on public registers is completed. It will also wait until OFT structural changes are bedded down (some of which impact on SIS) and OFT-wide usability of SIS is assessed within the new OFT structure.

Meanwhile, we will continue to share enforcement information via established liaison and gateway routes.

Gateways

The FSA is prevented from passing confidential information it has received to third parties, including the OFT, unless a special exception (known as a 'gateway') has been created in legislation. The Treasury is considering amending the existing gateways to take advantage of the greater flexibility offered by the Markets in Financial Instruments Directive (MiFID). This will allow the FSA to disclose to the OFT more of the information it obtains about investment firms than is currently possible.

As part of the MiFID regulations, amendments may be made to allow disclosure of information to help the OFT deal with firms that are not (and have not been) authorised under FSMA but that are 'financial organisations' under the relevant directives. These firms may include, for example, subsidiaries of authorised firms.

The MiFID-related changes are expected to be made in early 2007 and to come into force in November 2007. Any non-MiFID related changes may come in to force earlier in Spring 2007. In the meantime, the FSA will continue to cooperate with the OFT on sharing information to the greatest extent permitted under the existing Regulations.

Reducing the administrative burden on jointly regulated firms

Understanding the Annual Percentage Rate (APR)

The APR is an important piece of consumer information under both the Consumer Credit Act and the FSMA mortgage regime. It appears in advertising, disclosure documents and contracts.

In reviewing our consumer education materials, which encourage consumers to use the APR to compare mortgage deals, we identified scope for a new resource explaining in a little more detail what the APR is and how consumers can make use of it. Given the relevance of the APR to both OFT and FSA regimes, we agreed that we should have a consistent consumer message. This was achieved through publishing, in February 2006, consumer education material explaining the effect of the APR and how consumers can use it.

Advertising: consolidating existing rules and removing duplicative requirements

Some mortgage advertisements may be subject to both the Consumer Credit (Advertisements) Regulations 2004 and the FSA's financial promotion rules. This previously meant that a firm had to include two risk warnings in advertisements, both serving the same purpose – to put the consumer on notice that they may lose their home. In April 2006, the FSA consulted on a rule change that would allow firms to use only one (the Consumer Credit Act) risk warning in jointly regulated advertising. The rule change came into effect on 31 October 2006.

In addition, we revised and consolidated the key messages for firms published by each organisation to produce a single resource of frequently asked questions (FAQs) to help firms comply with both OFT and FSA advertising requirements. We published these on our websites in May 2006. The FAQs will be kept under review in the light of experience of operating the CCA Regulations and the FSA's financial promotion rules.

Authorisation and licensing processes: Feasibility Study

Some firms are required to apply for authorisation to the FSA and apply separately for a Consumer Credit Licence to the OFT. Our study considered whether the FSA's authorisation and the OFT's consumer credit licensing processes could be aligned, for example by developing a single application form with separate processes, or by sharing common data for the relevant firms.

We found that the number of firms affected would be relatively small. Only approximately 300 firms apply simultaneously to the FSA and OFT each year, and a further 600-700 firms that are already regulated by the FSA or OFT apply to become regulated by the other each year. Given this, the cost to the FSA or OFT of pursuing this at this time outweighs the benefits to this population of firms. This position has been endorsed by our industry user group.

Both the FSA and OFT are already developing online application systems which will themselves deliver benefits to firms. We will revisit this area once both new systems are in place, to evaluate the costs and benefits of developing the systems further.

Changes to firms' standing data: Feasibility Study

For jointly regulated firms, certain items of 'standing data' (addresses, telephone numbers, etc) are held by both the FSA and OFT. Our study considered whether we could reduce the administrative burden on these firms by making either the FSA or OFT solely responsible for collecting standing data changes, or by setting up a common interface for firms.

Each of the main options considered would require the FSA and OFT to implement significant business and system changes at a cost of between £28 and £40 per jointly regulated firm, plus annual running costs. This compares to the potential cost of having to duplicate common standing data items on forms of about £10 per year per firm. We believe that there is no clear cost benefit to jointly regulated firms to change the current arrangements and this position has been endorsed by our industry user group.

As a result of the study, no changes will be made at this time other than those which the FSA or OFT undertake for their own purposes to improve the effectiveness and efficiency of their own operations or to meet their relevant legislative obligations. Both the FSA and OFT have projects underway to develop systems that will enable firms to submit standing data changes online which should make it easier for firms to do business with both regulators. We will, however, revisit the results of this study in conjunction with any future significant development of the online systems currently being developed by the two regulators.

Collection of revenue: Feasibility Study

This study considered the scope to rationalise the invoicing and collection of fees, so that in any one year a firm would receive a single invoice for fees due to the FSA, the OFT, the Financial Services Compensation Scheme and Financial Ombudsman Service.

Although we identified some scope for the FSA to undertake certain revenue functions on behalf of the OFT, there are legislative and administrative difficulties in aligning these processes. These present significant and potentially costly barriers. For example, system change costs for the FSA to undertake invoicing on behalf of the OFT are estimated to be approximately £70,000. The benefit would be a reduction in the number of invoices received by firms but the cost saving would be minimal, particularly because firms make payments to the OFT only when applying for a licence or on renewal of that licence (currently every five years).

The study proposed that no changes should be made to the existing revenue collection processes and this position has been endorsed by our industry user group. Again, we will, however, revisit the results of this study in conjunction with any future development of online applications and the feasibility study on firms' standing data.

Communication with firms

Currently, both the FSA and the OFT communicate separately to our respective regulated firms. We have now agreed a basis for working together when communicating to engage firms. This will include linking relevant sections of our websites, providing speakers at our roadshows, working together with trade bodies and sharing exhibition space. This new programme will be rolled out in 2007.

Smaller businesses make up 90% of our jointly regulated firms. As we said in April, small businesses tend to find the burden of regulation more onerous than larger and generally better resourced firms. For this reason, our joint communication strategy will target the smaller firms in the three main sectors of the jointly regulated population: general insurance brokers, mortgage advisers and financial advisers.

Communicating with consumers

Both the FSA and OFT recognise the central importance of communicating effectively to consumers. As there is significant overlap here, we have considered how we can coordinate our consumer communications and education work as effectively and consistently as possible. This has covered our websites, campaigning and financial education work.

We are both currently revamping our consumer websites, with the FSA site going live in December 2006 and the OFT site in the first quarter of 2007. We have improved the links between the two websites, ensuring that consumers have access to relevant information at the point at which they need it. For example, as consumer credit is regulated by the OFT, the FSA's new consumer website will have basic information on unsecured credit products, such as credit cards and loans. It will clearly signpost consumers to the OFT site. OFT has reviewed relevant content for the new FSA site to ensure consistency of messages and appropriateness of signposting.

The new FSA website will also have specific pages for promoting FSA campaigns and, where appropriate, will highlight OFT campaigns. The FSA will ensure that it briefs Consumer Direct before launching any FSA campaign so that it is able to deal with any calls it may receive. Where appropriate, an FSA representative will sit on the campaign working group for relevant OFT campaigns, starting with the OFT's 2007 scams campaign. This will also allow FSA and OFT to share lessons learned and feed them in to future campaign planning and evaluation. This will include using regional data from the FSA's Financial Capability Baseline Survey.

In addition to our work on direct communication to consumers, we both recognise the importance of intermediaries in educating consumers and improving their financial capability. We will work together to ensure that our messages are consistent and to share plans to enable

joined up communications to take place. The FSA will continue to contribute to the Consumer Education Alliance, led by the OFT, which brings together representatives from public, private and voluntary sectors to share views and initiatives in consumer education.

Consumer Contact Centres: Feasibility Study

The FSA and OFT operate separate centres to handle calls from consumers. Our study considered whether these could be better aligned to deliver a more efficient and effective service to consumers.

The study concluded that there was a great opportunity for these calls to be migrated to Consumer Direct, and that they could be best handled by a dedicated team in one or two Consumer Direct centres. While we are keen to explore this further, the study did note that there are some uncertainties at the moment which must be addressed before any migration can be successful. For example, uncertainty over the future direction and scope of Consumer Direct, pending the outcome of recent DTI consultation, and current differences in scope and strategy of the two services.

Even so, we are pleased to see the potential to bring benefits to consumers through this work. We have begun discussions to assess the recommendations in greater detail and will work together to explore the possibility of developing a joint working model within three to four years.

Public registers of Authorised and Licensed firms

Planned work on upgrading the FSA register has been completed and was launched in August 2006. The new OFT register is in the final stages of development and expected to go live by the end of 2006.

Work on the feasibility study, considering whether the FSA and the OFT registers can be integrated to provide consumers and firms with a single point of information on FSA-authorised and OFT consumer credit licensed firms, is due to be completed on time, by end March 2007.



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