

July 2007



Delivering better regulatory outcomes – July 2007 update

A joint FSA and OFT Action Plan

OFFICE OF FAIR TRADING





Contents

Foreword by John Tiner and John Fingleton	3
Introduction	4
Progress on delivering better regulatory outcomes	6

Foreword

It has been 15 months since the Financial Services Authority (FSA) and the Office of Fair Trading (OFT) announced an intention to step up the way in which we work together in areas of shared interest. Much has happened since then and much more since our November 2006 update on progress made towards the shared goal of delivering risk-based regulation.



John Tiner



John Fingleton

The National Audit Office's April 2007 review of the FSA noted the improving relationship the FSA has with other regulators. It singled out the OFT as the organisation that should be the FSA's main priority for future joint working and recognised the 'step change' in the FSA-OFT relationship as a result of the work set out in the 2006 Joint Action Plan. We agree that taking this relationship forward is a key priority for both organisations.

Finally, we look forward to a new era in the FSA-OFT relationship as a new Chief Executive takes over at the FSA. We have no doubt that he or she will be as committed as we are to building on the strong working relationship between the FSA and the OFT to help deliver benefits to consumers, firms and the economy as a whole.

A handwritten signature in black ink that reads "John Tiner". The signature is written in a cursive style.

John Tiner

A handwritten signature in black ink that reads "John Fingleton". The signature is written in a cursive style.

John Fingleton

Introduction

Background

The Financial Services Authority (FSA) and the Office of Fair Trading (OFT) first announced an intention to collaborate more on matters of joint regulatory interest on 22 March 2006. This was followed in April by a Joint Action Plan that set out in more detail how we intended to do this.

This is the second update providing a report on progress made.

Firms regulated by both the FSA and the OFT

As at end June 2007, around 21,000 firms are jointly regulated, in some capacity, by the FSA and the OFT.

Summary of progress and next steps

We have completed two more workstreams since the November 2006 update and made progress in several other areas.

Our remaining feasibility study looked at how we might more closely align our public registers. The study recommended that the best option was to maintain two separate registers but to provide clear navigational links between them. The FSA has also concluded its discussions with the Treasury on widening its 'gateways' to the OFT, meaning that the FSA is now able to disclose more information to the OFT than was previously allowed.

Other workstreams from the Joint Action Plan, such as enforcement liaison and joint working on communications, are ongoing.

Alongside this update we publish a joint FSA-OFT statement that, we hope, clearly sets out the respective roles and responsibilities of the OFT and the FSA. It also sets out how we work together, on those areas where our interests coincide, to discharge those responsibilities effectively.

Furthermore, the OFT has strengthened its links to the Financial Ombudsman Service (FOS) by agreeing a new Memorandum of Understanding and by joining the existing FSA-FOS process for dealing with issues with wider implications for firms or consumers.

Finally, we highlight the work being done together on initiatives coming from Europe, specifically on the Third Money Laundering Directive, the Unfair Commercial Practices Directive and the Consumer Protection Co-operation Regulation.



What remains is to take forward our commitment to exploit further opportunities for better joint working. The work we have begun on financial advertising is one example of this; the OFT's engagement in the FSA's Retail Distribution Review is another. We will continue our work to send clear messages to consumers in our campaigning and financial education work. And we will continue to strengthen the way in which we work together, at all levels of both organisations, such as through our programme of short- and long-term secondments so that we share the skills and experiences of the two organisations.

We will report again in six months.

Progress on delivering better regulatory outcomes

1. Statement of roles and responsibilities

The FSA-OFT relationship was praised in the recent National Audit Office (NAO) review of the FSA, which concluded that 'The FSA has good and improving working arrangements with the Office of Fair Trading...'. Furthermore, the work both organisations did on Payment Protection Insurance was held out as 'a model for future successful joint working between the two organisations.'

To further help our stakeholders, we have today published a statement describing our respective roles and responsibilities. It also sets out the Financial Ombudsman Service's role as the UK's independent statutory dispute resolution scheme. This is intended to help our various stakeholders understand the differences in our roles and, where our interests coincide, how we manage them.

2. Financial Ombudsman Service

(i) Memorandum of Understanding between the Financial Ombudsman Service and the OFT

The Financial Ombudsman Service (FOS) and the OFT signed a Memorandum of Understanding (MoU) in June 2007 setting out how the two organisations work together in a number of areas. These include how the two organisations share information and how they work together including in relation to the consumer credit jurisdiction (CCJ), in particular the collection of the industry levy to support the CCJ. In April 2007, the OFT became responsible for collecting this levy which partly funds the FOS role under the CCJ in considering complaints about consumer credit products and services.

The FSA and the FOS already have an MoU that sets out how they co-operate and communicate to carry out effectively their independent roles and separate functions.

Both MoUs can be found at www.financial-ombudsman.org.uk/about/other_bodies.html.

(ii) Bringing OFT into the FSA-FOS 'wider implications' process

Wider implications issues are those that affect a large number of consumers or firms or common industry practice. The FSA and the FOS have had a published process in place to deal with complaints to the FOS that might have wider regulatory implications for firms and consumers since March 2005. The OFT joined this process in June 2007, extending the process to areas regulated by the OFT.

The arrangements clarify the different roles and responsibilities of the FSA, the OFT and the FOS when wider implications issues arise.

Information about the wider implications process, updated to take account of OFT's involvement, can be found at www.wider-implications.info.

3. Banking

The OFT is carrying out a market study into personal bank current account pricing, alongside a formal investigation into the fairness of charges for unauthorised overdrafts¹. As part of this, the OFT is liaising closely with the FSA and other relevant bodies such as the banks, the British Bankers' Association and the FOS.

The OFT and the FSA also discussed their respective responses to the 2007 independent review of the Banking Code. Amongst other proposals, both responses called for the Code to adopt an over-arching fairness objective to ensure consistency with FSA and OFT principles, and for consumers to be pre-notified of unauthorised overdraft charges.

4. Advertising

Some firms may be subject to both the Consumer Credit (Advertisements) Regulations 2004 (CCARs) and the FSA's financial promotions rules. While some progress has already been made in this area, we have set up a working group, bringing together staff from the OFT and the FSA, to begin discussions with the industry to assess the nature and extent of problems arising from compliance with our respective requirements. We will listen to the industry's concerns and ideas for solutions to see what we can do to reduce the regulatory burden for firms and to increase the clarity and fairness of advertising for consumers.

While some steps may take some time to implement, we hope to be able to make a difference in the short-term, for example by publishing a joint statement clarifying our existing rules and guidance, making any immediate changes as appropriate (as we did with our 'risk warning' amendment last year) and further joint work focusing, for example, on directory advertising.

Beyond that, our intention is to explore how we can align the two advertising regimes. The FSA will need to take into account the OFT/Department for Business, Enterprise and Regulatory Reform (DBERR)² work on the implementation of the Consumer Credit Act 2006 and the outcome of the Consumer Credit Directive. We expect the EU Commission's proposals for an EU mortgage credit market later this year.

We will publish progress in further updates to the Joint Action Plan.

1 www.offt.gov.uk/shared_offt/reports/financial_products/oft918.pdf

2 Formerly the Department of Trade and Industry.

5. Communication with consumers

The FSA and the OFT worked together on the overhaul of the FSA's consumer website³. Specifically, the OFT reviewed the relevant sections on credit cards and personal loans to ensure consistency of messages. And, where appropriate, the FSA strengthened its signposting to OFT material, for example on scams and swindles. The OFT also worked with the FSA on the launch of its enhanced website.

In addition, our consumer communications teams meet quarterly to discuss forthcoming campaigns so that, where appropriate, we can each highlight the work being done by the other organisation. Recent examples include the FSA highlighting the OFT's 'Save Xmas' campaign on the front page of MoneyMadedclear and the OFT's references to the FSA's National Strategy for Financial Capability in publicity for its Young Consumer of the Year competition.

6. Public Register of Authorised and Licensed firms: feasibility study

The FSA and the OFT carried out a feasibility study to consider whether our two public registers could be integrated to provide stakeholders with a single point of information on FSA-authorized and OFT-licensed firms.

The feasibility study considered five options for achieving closer alignment. These ranged from retaining the status quo once the OFT online register is launched (but making sure that each register is linked to the other) to considering different technical ways of aligning the two registers more closely from the user's perspective.

The study recommended that the planned use of navigational links between the FSA's and the OFT's online registers was, at this time, the most appropriate solution. The cost of developing any of the other four options (from £0.9m to £1.7m, plus additional annual costs to support the register services) far exceeded the benefits currently identified.

However, the study recommended that, as part of the FSA's and the OFT's wider consumer agenda, and once the OFT's online register has been operational for a suitable period of time, research is carried out to understand how and why consumers use (or do not use) the two online registers.

7. Retail Distribution Review

The FSA published the first proposals for discussion from its Retail Distribution Review (RDR) in June 2007. The Discussion Paper followed six months work to address the root causes of persistent problems in the retail investment market. The ideas set out in the Discussion Paper seek to improve current standards of professionalism, find more cost-effective ways of making advice available to a wider range of consumers and improve consumer understanding of what they are getting for their money.

One of the key RDR priorities was to consider the impact of incentives. It was clear from the outset that any change in remuneration structures may have implications for competition in the retail investment market. So, at the end of 2006, the FSA sought the OFT's views to help consider this in developing the RDR. Teams from each organisation have met at key points during the review to consider potential competition issues and have established an ongoing relationship that will lead to more detailed discussion of the RDR's proposals going forward.

8. Christmas hamper schemes

In November 2006, DTI Ministers asked the OFT to work with the FSA and the DTI (now the Department for Business, Enterprise and Regulatory Reform) to identify the issues raised by the collapse of Farepak Gifts and Foods Limited (Farepak) and consider the options for addressing them. Following discussions with the hamper scheme industry and others, the OFT, with a significant contribution from the FSA, provided advice to the DTI. The advice explained that the OFT was not satisfied that there was a clear case for regulating all pre-payments or the hamper scheme model specifically, whether by bringing these products within the FSA's regime or otherwise⁴.

In March 2007, following close co-operation by all parties, the government announced that the DTI had agreed with the industry that hamper scheme companies would set up individual trust accounts to protect consumer pre-payments. Voluntary protection of pre-payments, where this can be implemented successfully and deliver better protection for consumers, is a desirable and proportionate response to the problem, particularly given the Government's, FSA and OFT's commitment to better regulation.

On 1 June 2007, the OFT also launched a £1m campaign to improve consumer awareness of the range of options available when saving for Christmas. The FSA has offered its advice and support for this campaign, as well as providing information on alternative forms of saving on its Moneymadeclear website.

9. Sharing skills and experience

The Consumer Credit Act 2006 (CCA) began to come into force in April 2007, with full implementation by 1 October 2008. The CCA gives the OFT new powers and establishes a number of new regulatory elements such as credit competence, irresponsible lending, unfair business relationships, intermediate sanctions and financial penalties. Given its experience in risk-based regulation, the FSA agreed to second an experienced member of staff to the OFT to help the OFT implement the CCA.

The FSA secondee is leading a project on aspects of the strategic development of consumer credit regulation. As the OFT develops its strategy for introducing the full regime from 2008, it is benefiting from the fresh view of a regulatory practitioner familiar with introducing changes in the retail sector. The first phase of the project will be complete during Q3 2007.

⁴ *Farepak: review of the regulatory framework*, December 2006
http://www.oft.gov.uk/shared_of/press_release_attachments/farepak.pdf

Furthermore, teams at the OFT and FSA responsible for taking action on unfair contract terms (under the Unfair Terms in Consumer Contracts Regulations 1999) are beginning a programme of 'work shadowing' to help each learn from the issues the other faces.

10. Payment Protection Insurance (PPI)

In our November 2006 update, we highlighted the results of our work on PPI. Since then, further progress has been made. In February 2007, the OFT referred PPI to the Competition Commission. The OFT and FSA agreed that FSA action targeted at selling practices alone could not remedy the lack of competition that the OFT identified in the PPI market.

The FSA is also undertaking its third phase of work on PPI, designed to test sales standards. This work included visits to firms, enforcement action where appropriate, a review of information given to consumers and a review of current FSA rules on PPI. Findings from FSA's visits to firms will be announced in September 2007.

The FSA maintained close contact with the OFT throughout, particularly to leverage off the OFT's expertise gained from its market study. The FSA has also begun working with the Competition Commission. This work includes opening formal information sharing gateways and regular meetings. This relationship with the Competition Commission aims to ensure that the industry is not sent conflicting messages and requirements by the two organisations. We also aim to ensure that any findings and possible remedies, if needed, are complementary.

11. Gateways

In our November update, we noted that the Treasury was considering amending the existing gateways that allow the FSA to pass confidential information it has received to third parties. This could be done by using the greater flexibility offered by the Markets in Financial Instruments Directive (MiFID).

These changes came into force in January 2007, allowing the FSA to disclose information to help the OFT deal with firms that are not authorised under FSMA but that are 'financial organisations' as defined in the Banking Consolidation Directive. The practical effect of the change is that the FSA will be able to disclose more information to the OFT, for example, to help it deal with firms which hold a consumer credit licence but which are not banks.

12. Anti-money laundering responsibilities

New Money Laundering Regulations will come into effect in the UK on 15 December 2007. These bring the requirements of the EU's Third Money Laundering Directive into UK law. An important change under the new 2007 Regulations is that certain types of business will have their anti-money laundering controls monitored by a supervisory authority for the first time.

Under the Treasury proposals, the FSA will continue to supervise all FSA-authorized firms. The OFT and local authority Trading Standards Services will take on the new role of supervising the

anti-money laundering procedures of certain consumer credit businesses and estate agents. A number of other bodies, such as HM Revenue and Customs and the Gambling Commission, also have supervisory responsibilities under the regulations.

The FSA, the OFT and other supervisors meet regularly to discuss implementation of the new Regulations. We aim to ensure that businesses have clear and consistent guidance about how to register with their relevant supervisor, and how to meet their requirements under the Regulations.

13. Unfair Commercial Practices Directive

The Department for Business, Enterprise and Regulatory Reform (DBERR) is currently consulting on regulations to implement the Unfair Commercial Practices Directive (UCPD). The Directive harmonises unfair trading laws in all EU Member States and introduces a general prohibition on traders not to treat consumers unfairly. The UK law will be the Consumer Protection from Unfair Trading Regulations (CPRs).

The FSA's regulatory approach and Handbook already address unfair commercial practices by firms regulated by the FSA. The FSA will have injunctive powers under the CPRs, however it is most likely to use its existing powers under the Financial Services and Markets Act when taking action against its firms.

The FSA and the OFT are already in discussions about drawing up a concordat similar to that used for the Unfair Terms in Consumer Contracts Regulations 1999, to ensure clarity when enforcing the CPRs. This would provide a clear division of responsibilities so firms would understand the respective powers available to the FSA and the OFT. These are preliminary discussions but will be finalised well ahead of the CPRs coming into force in April 2008.

14. Consumer Protection Co-operation Regulation (CPC)

The CPC came into force in January 2007. It is designed to eliminate barriers and gaps in cross-border enforcement of European consumer protection laws. The CPC requires national enforcement bodies that have been designated as competent authorities to help each other by exchanging information and co-operating on cases which harm the collective interests of consumers and contain a cross-EU border element.

The OFT has two roles under the CPC. It is the United Kingdom Single Liaison Office, ensuring that requests are sent to the Competent Authority best placed to deal with suspected breaches, and it has been designated as a Competent Authority.

The FSA is also designated as a Competent Authority. The FSA and OFT are two of the five UK Competent Authorities. (The others are the Medicines and Healthcare products Regulatory Agency, the Civil Aviation Authority and OfCom.) The Competent Authorities have agreed a protocol setting out how they should work together to carry out their responsibilities under the CPC.



Financial Services Authority

25 The North Colonnade
Canary Wharf
London E14 5HS

Tel: +44 (0) 20 7066 1000
Fax: +44 (0) 20 7066 1099
Website: www.fsa.gov.uk

Office of Fair Trading

Fleetbank House
2-6 Salisbury Square
London EC4Y 8JX

Tel: +44 (0) 20 7211 8000
Fax: +44 (0) 20 7211 8800
Website: www.oft.gov.uk

Pub Ref: 001141