

May 2008



# Delivering better regulatory outcomes – May 2008 update

A joint FSA and OFT Action Plan

OFFICE OF FAIR TRADING







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# Foreword

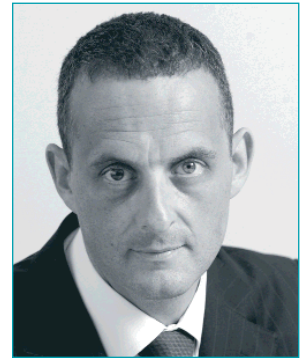
Two years ago, the Financial Services Authority (FSA) and the Office of Fair Trading (OFT) announced an intention to work better together in areas of shared interest.

The first Hampton Implementation Reviews<sup>1</sup>, carried out by the National Audit Office and the Better Regulation Executive, were published in March 2008. The FSA and the OFT were two of the five bodies reviewed. The review team acknowledged our engagement with the Hampton principles and reported industry recognition of our efforts to work together more closely and the improvements made. Of course the Industry would like us to do more and we have been asked to consider how we can build upon work to date.

We agree that continuing to build a strong working relationship is a key priority for both organisations so that we can deliver benefits to consumers, firms and the economy as a whole.



*Hector Sants*



*John Fingleton*

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Hector Sants

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

John Fingleton

<sup>1</sup> The Hampton Implementation Reviews.

# 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 this.

This is the third update that reports on our progress so far.

## Firms regulated by both the FSA and the OFT

As at end June 2007, around 21,000 firms held an OFT consumer credit licence as well as being authorised by the FSA.

## Summary of progress and next steps

We have completed a series of workshops with trade bodies and their members on our dual roles in relation to Credit Advertising. We will follow this with a short guide on our requirements for sponsored links web advertising.

We will continue to work together on significant projects such as the OFT's market study into personal bank current account pricing, the FSA's Retail Distribution Review and our respective work on PPI. In addition we will continue to work together on initiatives coming from Europe, specifically the Third Money Laundering Directive, the Unfair Commercial Practices Directive, where we will agree a concordat shortly, and the Payment Services Directive.

Other workstreams from the Joint Action Plan, such as enforcement liaison and joint working on communications and education, continue. We will also continue with our programme of short and long term secondments so that we share skills and experiences, widen mutual understanding and ensure consistency in approaches where possible.

We will report again in one year.

# Progress on delivering better regulatory outcomes

## Personal Bank Current Account Pricing Market Study & Test Case

The OFT has been carrying out a market study into personal bank current account pricing, the report is due for publication in the next few weeks, alongside a formal investigation under the Unfair Terms in Consumer Contracts Regulations 1999 ("UTCCRs") into the fairness of charges for unarranged overdrafts and returned items. The judgment on the initial stage of the test case, delivered on 24 April 2008, found that the charges can be assessed for fairness.

The OFT is liaising closely with the FSA and other relevant bodies such as banks, the British Bankers' Association, consumer organisations, and the Financial Ombudsman Service (FOS). The FSA is also party to the litigation agreement the OFT entered into with the banks prior to the 'test case' to facilitate an orderly and timely resolution of the legal issues. So the OFT and the FSA have put coordination arrangements in place at all levels.

As the OFT's action is expected to provide greater certainty about the application of the law to these charges, the Financial Ombudsman Service has decided not to progress complaints about current account charges until the outcome of the test case is known. The courts decide independently how to handle claims before them although at the moment they have decided to stay proceedings.

The FSA is responsible for the complaints handling rules that apply to current account providers in relation to unauthorised overdraft charges complaints. It considers that it is desirable for there to be further clarity as to how unauthorised overdraft charges complaints should be handled by obtaining greater legal certainty, so that complainants can be handled fairly and consistently. The FSA therefore issued a waiver on 27 July 2007, which means that, until the test case is resolved or the waiver ceases or is lifted, any bank or building society to whom the waiver applies will not be required to handle complaints relating to unauthorised overdraft charges within the usual time limits set out in the FSA rules.

## Credit Card Interest Calculation

The consumer body Which? made a super-complaint to the OFT about credit card interest calculation methods. Which? considered that methods should be standardised to enable easier comparison. The OFT responded that it agreed consumers did not understand interest calculations, but thought the key problem was that most consumers do not compare credit cards effectively at all.

The OFT worked on establishing how to help consumers make effective comparisons. In consultation with the FSA, the OFT recommended that the FSA create a price comparison website as part of its 'moneymadeclear' consumer site. The central proposition, discussed between the FSA and the OFT, is a comparison table which would allow consumers to sort products by the actual cost of the card based on their predicted usage. Since then the FSA has been tasked with taking forward key recommendations made in the Thorensen Review of Generic Financial Advice. These recommendations complement the OFT and FSA price comparison work. We continue to work closely on this initiative and are now discussing with relevant parties how to take this forward in light of Thorensen recommendations.

The OFT also recommended improvements to Summary Boxes and other product literature, which will make credit card comparisons easier for consumers. The credit card industry supports these recommendations.

## Credit Advertising

We have been working jointly with the industry to understand existing areas of confusion relating to the dual advertising regulatory regimes. We agreed a joint position and communicated this through a series of meetings with trade bodies and their members.

In light of the discussions with business, we are working to update the Frequently Asked Questions on dual regulation to make them clearer and easier to use. We aim to publish these by July 2008. We are also collaborating to produce a short guide for firms that will outline both our requirements in the area of sponsored links web advertising.

## 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 might 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 proposals going forward.

The FSA published its RDR Interim Report in April 2008, which provided direction but not final proposals to this review. It also advised that the FSA would be carrying out further investigations into the possible solutions.

The FSA will publish a feedback report in October 2008. This report will focus on indicating to the industry what the market might look like and the consequences of the FSA's proposals.

## Payment Protection Insurance (PPI)

In our November 2006 and July 2007 updates, we highlighted the results of our work on PPI. Since then, further progress has been made.

The FSA is completing its third phase of work on PPI, designed to test standards. This work includes:

- visits to firms;
- enforcement action where appropriate;
- empowering consumers through the publication of comparative tables for consumers on PPI; and
- the introduction of the new Insurance Conduct of Business (ICOB) rules (in transition until 5 July) designed to improve PPI sales by better oral disclosure and increased cancellation period.

The FSA has maintained close contact with the OFT throughout, particularly over its role in carrying out oversight of the Consumer Credit Act.

The teams also regularly communicate with the Competition Commission, sharing information on current work and views of the market ahead of the Commission's upcoming report into PPI<sup>2</sup>.

## With-Profits Funds

The OFT and the FSA have discussed anti-competitive behaviour by financial services companies as part of an ongoing dialogue about the life and pensions market and the changes it has faced, such as demutualisations, mergers and acquisitions, closures to new business and new entrants.

Recently, the FSA and the OFT have been working together to clarify the competition effects of life insurance companies using their With-Profits funds to provide capital support for writing new business. The FSA provided information to assist the OFT in preparing its submission to the Treasury Select Committee in April 2008 on this matter.

The FSA and OFT will continue to work together to ensure that any competition issues requiring our consideration arising from the planned AVIVA distribution and reattribution of its With-Profits funds are understood and consistently and appropriately handled.

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2 OFT Press Release - OFT Refers PPI to the Competition Commission, February 2007.

## Communication with Consumers

The FSA and the OFT work together in raising consumer financial awareness and education. Examples include for the FSA, its financial capability work and consumer-facing micro-site 'moneymadeclear' and for the OFT, its Save Xmas education programme, Scam buster teams and Consumer Direct.

Through our actions we aim to ensure that we target help towards those consumers who need it the most - for example, those that are in financial difficulty, have complaints or are in dispute about poor advice, products or services, and where there is limited access to regulated financial services or options in the wider market.

The OFT provided input to the FSA during development of the suite of online tools available through 'moneymadeclear' to help consumers make the most of their money – the financial health check, budget planner and debt test.

In the last year, the FSA has reviewed and revised a number of its consumer facing guides. Consumer Direct is mentioned within these as a useful contact.

We have each conducted an inventory of the consumer financial awareness and education work undertaken and have met to consider how best to ensure that consumers and other key stakeholders are clear about our respective areas of regulation and the benefits and protections that these provide.

In the coming months, we will explore further how we can work together to ensure that consumers have the necessary information and access to information to help them in their financial decision-making.

## Consumer Credit Act 2006

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, intermediate sanctions and financial penalties.

The OFT is currently scoping a project on irresponsible lending. In April 2008, the OFT warned 13 companies, including debt collection agencies and financial institutions, that they needed to take steps to improve their debt collection practices<sup>3</sup>.

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 secondee contributed to the successful development of the OFT's strategic objectives for the CCA06 regime and the development of the OFT's risk-based approach to regulation of this sector. We continue to share knowledge and experience of our respective regulatory roles where this is appropriate.

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3 OFT Press Release - Debt Collection Practices, April 2008.

## Mortgage Arrears

The FSA and the OFT are continuing to work closely together to align their approaches. Regulation is designed to ensure that borrowers who experience difficulty with repayments are treated fairly and we seek to ensure that this is the case.

The FSA has started a piece of thematic work that aims to assess whether mortgage lenders are complying with the:

- Mortgage Conduct of Business (MCoB) requirements in their treatment of customers in arrears; and
- general principle of Treating Customers Fairly.

The work is being carried out through desk-based reviews and supervisory visits. The aim is to publish the findings in June 2008.

In January 2008 the FSA team met with the OFT credit policy team to ensure work was joined up and to outline future plans and actions. This is important given the need to ensure that firms lend responsibly and treat customers in arrears fairly.

In the coming months, the two teams will maintain contact to ensure that any matters arising from the thematic work are shared to the greatest extent permitted under the existing gateway, which will help the OFT carry out its oversight role of the Consumer Credit Act.

## Sale and Rent Back

In May 2008 the OFT launched a market study looking at 'Sale and Rent Back' arrangements<sup>4</sup>. These arrangements involve individual homeowners selling their property at a discount in return for the option to remain in the house as a tenant. Sale and rentback arrangements may be taken up by consumers in financial difficulty, facing possible repossession of their homes.

The market study will build on the initial work of the cross-government working group on sale and rent back, in which both the OFT and the FSA participated. The OFT seeks to obtain further evidence on the issues which were highlighted and will consider what action, if any, is appropriate to remedy any concerns identified. The OFT will remain in close contact with the FSA and other government departments throughout the study.

## Unfair Commercial Practices Directive

The Consumer Protection from Unfair Trading Regulations 2008 (CPRs), which implement the Unfair Commercial Practices Directive (UCPD) has been approved by Parliament and will have effect from 26 May 2008.

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4 OFT Press Release - Sale and Rent Back Market Study, May 2008

The Directive and the Regulations harmonise unfair trading laws in all EU Member States and introduce a general prohibition on traders not to treat consumers unfairly.

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 2000 when taking any action against firms it regulates.

The FSA and the OFT are preparing a concordat similar to that used for the Unfair Terms in Consumer Contracts Regulations 1999, to make clear the division of responsibilities between them. The concordat will be finalised by the time the CPRs come into force.

## **Anti-Money Laundering Responsibilities**

New Money Laundering Regulations came 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.

The FSA will continue to supervise all the FSA-authorized firms. The OFT has a new role supervising the anti-money laundering procedures of the non-FSA authorised consumer credit lenders as well as 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 Regulations. Our aim is to ensure that businesses have clear and consistent guidance about how to register with their relevant supervisor (where they are required to register) and how to meet their requirements under the Regulations.

## **Payment Services Directive**

The Payment Services Directive, once transposed into UK law, will harmonise the regulatory regime for payment services across EU Member States and will introduce a new EU-wide licensing regime for 'Payment Institutions'. This will allow non-bank payment service providers to offer their services EU-wide on the basis of a license obtained in any one EU Member State. The FSA will be responsible for the licensing regime and the OFT will have responsibility for enforcing open and fair access to payment schemes. Under HM Treasury's lead, the OFT and the FSA will work closely together to ensure that implementation of the Directive is as smooth as possible, and that once implemented, communications and regulation are joined-up and effective.



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