

Minutes of the Office of Fair Trading Board Meeting

Thursday 14 January 2010

Present:

Philip Collins (Chairman)
John Fingleton (CEO)
Lord Blackwell
Vivienne Dews
Alan Giles
James Hart
Tony Lea
Philip Marsden
Jonathan May

Apologies: Frédéric Jenny

OFT Staff:

Frances Barr
Barney Wyld
Heather Clayton, Peter Lukacs, Cristina Luna-Esteban (Item 1)
Heather Clayton, Juliet Young, Simon Perrett, Jason Freeman, Amelia Fletcher (Item 2)
David Philpott, Ian Blomfield (Item 3)
Simon Williams, Geoff Steadman, Bethan Watts, Graham Winton, Daniel Caistor (Topical items)
Simon Williams, Geoff Steadman (BTL paper (10) 07)

Executive Office:

Jennifer Halliday
Erik Wilson

Item 1: Infrastructure and knowledge economy: Portfolio

The team presented developments in the group and portfolio since they last came to the Board in late 2007, including the completion of legacy work (five projects); the starting of new work in line with the OFT's priorities (11 projects); and the strengthening of the group in terms of capacity, capability and skills. Noting that three significant projects will end in early-mid 2010, there is capacity to take on new projects throughout this year. In the recent past, their focus had been on market studies.

Item 2: Market study proposals

The team explained the genesis of two proposed market studies.
The Board approved both the market studies.

Item 3: Irresponsible Lending Guidance

A copy of the draft Irresponsible Lending Guidance which had been the subject of a consultation exercise between July and November 2009 was tabled at the meeting.

The Consumer Credit Act 2006 (CCA06) contains a provision that practices which appear to the OFT to involve irresponsible lending are included amongst the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper for the purposes of considering fitness to hold a consumer credit licence. The project team explained that the guidance is primarily aimed at providing greater clarity for businesses and consumer representatives on what the OFT considers may constitute 'irresponsible lending'.

The guidance covers each stage of the lending process, from pre-contract advertising and marketing to post-contract issues.

Following the launch of a consultation on the scope of the guidance in August 2008, the team engaged in a period of extensive stakeholder liaison which included holding workshops in England, Scotland, Wales and Northern Ireland, some for businesses and others for consumer groups, and engaging in a number of bi-laterals with business and consumer representatives as well as with representatives of other Government and regulatory bodies (including BIS, HMT, the FSA and the FOS), to seek their views on the substance and form of the guidance.

The team stressed that the guidance does not contain a list of mandatory requirements (although some of the content does reflect new legal requirements, including those being introduced by the implementation of the Consumer Credit Directive) but is aimed at outlining matters that lenders should have regard to in formulating and exercising their business practices and procedures.

The OFT has committed to reviewing and updating the guidance within a reasonable period of time post issue, in light of the transient regulatory environment in which it is being produced.

The team explained that the draft guidance is currently undergoing substantive revision in order to take account of consultation responses and other ongoing Government initiatives which impact on lenders (and consequently on the content of the Guidance). Some further revision would be undertaken by the project team to take account of comments and suggestions expressed by the Board. The Board will be further updated on the progress of the project in March.

Item 4: ExCo oral and written report to the Board (monthly report)

Executive Director, Markets & Projects and Policy & Strategy

Market investigation reference of the local bus market

The reference decision was published this month and communications strategy went very well.

Groceries ombudsman

The government has now announced its intention to accept the CC's recommendation of the need for a body to examine and enforce the application of the new Groceries Supply Code of Practice. It is understood that questions such as the powers of the body and whether this will require the establishment of a new entity will be left to the consultation document which is expected in the next few weeks.

Executive Director, Corporate Services

Consumer Direct

The IT issues the service was experiencing at the close of last year have now been fixed and service levels are almost back to target (last week service levels were 77 per cent against a target of 80 per cent).

Finance

Finance is drawing up indicative allocations of budgets for next year. The Board emphasised the importance of understanding the different elements of performance against budget (e.g. disaggregating non-staff costs) and the importance of disciplines in budget forecasting and management. It was confirmed that next year's budgets will be reviewed very closely in light of this year's spending.

Credit and Credit Strategy

The OFT will host a roundtable on 11 February to discuss its credit work and strategy going forward. The event will be chaired by Alan Giles. The outcomes of the event will feed into the OFT's proposed credit strategy.

HMT Select Committee on Credit Reference Checks

On Tuesday 22 December the HMT Committee released its report. The report notes the fine balance of public interest between ensuring that fraud is prevented and consumers are protected from reckless lending, and ensuring that the market is subject to the disciplines of informed consumer choice. The Committee acknowledges that it did not get compelling evidence that application search data is essential, nor was it presented with overwhelming evidence that making multiple application searches is a major source of direct consumer detriment. The Committee also notes the positive work the OFT is doing in other credit and debt areas.

However, the Committee remains concerned about the effect of the use of credit searches on market mechanisms and calls for the OFT and the Information Commissioner's Office to investigate the effects of shopping around on credit scores and credit prices. This followed concerns that in shopping around for credit, especially for unsecured credit such as personal loans and credit cards, consumers were building up a record of credit application searches on their credit reference files and that high numbers of applications make it harder or more costly to obtain credit.

General Counsel

Construction Recruitment Forum and Construction

The Board was updated on these ongoing cases before the Competition Appeal Tribunal.

Vance Miller

The Board was updated on the judgment of Jonathan Foster QC at Manchester Crown Court on 12 January 2010, that acquitted Miller of the criminal charges brought against him by TSS.

BAA v. Competition Commission

The Board was updated that BAA has been successful in its appeal on the grounds of apparent bias of a CC panel member. The CAT has invited the parties to make representations on the next steps.

CCA06 OFT intervention at Manchester High Court

The OFT intervened regarding the interpretation of what is an enforceable consumer credit agreement (*Carey v. HSBC*). The OFT's draft guidance on these matters and its submission to the court was extensively quoted by all parties in the week-long hearing. The judgment follows the OFT's submission on all issues covered by the hearings.

Director Communications

Parliamentary reception

80 people attended the reception hosted by Lord Blackwell on 8 December at the House of Lords on protecting consumers in the recession. There have already been some positive cross-party outputs including an early day motion on the Scamnesty campaign and MPs using OFT information and advice in their surgeries.

Staff Event

The staff event will be held on the morning of the 15 April. Board members are requested to attend. The April Board meeting will follow on the afternoon of the same day.

Item 5: Topical items

Campaign for Real Ale (CAMRA) appeal against OFT

The Board was updated on the key issues arising from CAMRA's appeal against the OFT's decision in response to CAMRA's Supercomplaint.

Item 6: Review of the future Board agenda

The Board will receive the minutes of the December Audit Committee meeting at the February Board meeting. One Board member has responded providing feedback on future agenda items, other Board members are asked to review the forward agenda submitted to the February meeting which will include fuller details on planned pre-Board seminars and provide any feedback (e.g., suggested inclusions, deletions etc.) to Erik Wilson.

Item 7: Minutes of the Board meeting (3 December), below the line items and AoB

The Board approved the private and public minutes of the last meeting subject to two minor changes.

Anti-Money Laundering Consultation

The Board received this paper for information only.

Jennifer Halliday
27 January 2009