

**Overview of responses to the
key questions in the
consultation paper on
guidance for the Enterprise
Act 2002 Part 8 consumer
reforms**

March 2003

OFT512b

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1 INTRODUCTION

1.1 The consultation on the 'Consumer Reforms Guidance' was published on 16 August 2002. The aim of the consultation was to obtain the views of business, its representatives and consumer groups on the OFT's draft guidance on reforms to the enforcement of consumer protection legislation introduced by Part 8 of the Enterprise Act 2002 (the Act). The draft guidance sets out the impact of the Part 8 reforms on consumer protection legislation and the OFT's general approach to enforcement. This paper summarises the responses to the consultation.

1.2 The OFT received responses from 26 business/trade associations, consumer bodies, sectoral regulators and government departments. The breakdown of these by origin was as follows:

- six government departments and other agencies (including local government bodies)
- thirteen business sector or trade organisations
- three consumer bodies
- four sectoral regulators or designated enforcers.

2 SUMMARY OF MAIN FINDINGS

- 2.1 Overall, the OFT received positive and constructive feedback from respondents. The draft guidance was acknowledged as being helpful to business and enforcers alike. Whilst the majority of respondents found the draft guidance very useful, concerns were raised over the ability of small businesses to understand the legalistic terms used. It was felt this particular audience would benefit from a more concise guidance document written in simpler terms. Other suggestions included more examples to illustrate what would happen to a business facing Part 8 enforcement action.
- 2.2 Some respondents felt that terms such as 'collective interests of consumers' and the 'Home Authority Principle' need further explanation. Responses from trade/business organisations stressed the importance of the OFT only publicising cases where an application for a Enforcement Order had been successful and providing the business with two days notice before issuing any press release. Consumer bodies stressed the importance of keeping consumers informed about the new legislative approach, action taken under it and the OFT monitoring the effectiveness of action taken by other enforcers.
- 2.3 The responses received have been summarised below according to the eight key questions asked by the consultation paper.

3 SUMMARY OF RESPONSES TO SPECIFIC QUESTIONS

Question 1: Does the draft guidance provide a clear and adequate explanation of the law and the way the OFT and other enforcers will seek to enforce it?

- 3.1 There were some calls for further information on how Part 8 would operate in practice, particularly regarding the enforcement process. Providing examples was suggested as the most effective way of achieving this. Some respondents said it would be helpful for business to outline the different stages when approached by an enforcer. The use of flow charts was suggested.
- 3.2 Concerns were raised on behalf of Small and Medium Enterprises (SMEs) about the legalistic language used in the draft guidance. Some respondents said it would be useful to publish a separate and more focused executive summary of the guidance, written in simpler terms aimed directly at SMEs.
- 3.3 There was also concern that the draft guidance provided no explanation of judicial issues, such as the burden of proof required for an order, and the court process as a whole.
- 3.4 Some respondents felt that the draft guidance referred to future decisions of the Secretary of State too much and, as such, was a statement of what might be, as opposed to what actually is. In the same vein, it was felt that references to the law prior to the Act could be removed.
- 3.5 One response to the consultation felt that the guidance would benefit from further clarification of the Home Authority Principle.

Question 2: Is the procedure for the consultation periods with traders sufficiently explained?

- 3.6 There was concern that confusion could arise over the 14-day consultation period between a business and enforcer and the consultation between an enforcer and the OFT.
- 3.7 There were some calls for an explanation of the criteria used by the OFT to determine when immediate action is deemed appropriate. Similarly, the criteria OFT would apply in approving such an application could benefit from further clarification.

3.8 Respondents felt that it was unclear what a business had to do to comply with the minimum consultation period, i.e. whether a business has to reply within the 14-day period in order to get a time extension, and what happens next.

Question 3: Is the proposed mechanism for applying the law appropriate and proportionate?

3.9 All respondents thought the proposed mechanism for applying the law was proportionate and appropriate. However, there were some requests to clarify certain areas of the mechanism. For example, some respondents asked for a definition of "the collective interests of consumers". It was also noted that there was no mention of the avenues available to business that feel requests for information from enforcers are onerous and burdensome.

3.10 Some respondents felt it was appropriate for businesses, who are the subject of an OFT press release regarding Part 8 action, to be consulted on the content of the press release at least two days before issue.

3.11 It was felt that the guidance should explain further that information gathering powers would normally be used where there was suspicion that an infringement had or was about to be committed, or where there was monitoring of compliance with an order or undertaking.

Question 4: Could the coordination arrangements, to ensure consistency and the avoidance of duplication, be improved? If so, how might that be done?

3.12 There was some concern expressed that the OFT's coordination role only applies when enforcers are seeking enforcement orders and not when an enforcer has identified an infringement or is seeking an undertaking. It was suggested that the Consumer Regulations Website (CRW) should be used to ensure coordination of initial investigations and not just in advance of an application to the Courts for an order.

3.13 The coordination arrangements could be strengthened by setting out the OFT's responsibilities to ensure good communication and information sharing amongst enforcers.

3.14 Respondents also felt there was little indication about how failure to use Part 8 powers in appropriate cases will be identified and addressed. Some respondents said it would be useful for the OFT to monitor use of the new powers by all enforcers to ensure consistency across the UK.

3.15 To do this, it was suggested that other enforcers should report the reasons for not taking action when approached by consumers who have suffered detriment.

Question 5: Should we do more to explain the draft guidance? Can you identify, for example, conferences, seminars or other similar events that might be helpful in this respect?

3.16 Respondents gave various examples of what the OFT could do to help explain the guidance further. These included:

- ensuring all presentations given by the OFT regarding Part 8 are tailored to meet the demands (sectoral or local) of the audience
- press releases aimed specifically at trade and consumer press
- ensuring the OFT presence (via stands etc) at trade/consumer conferences
- providing educational packs for business, and
- providing separate advice and regional workshops for local Trading Standards Departments.

Question 6: Is there anything you can suggest to help business become more aware of, and work with, this guidance? If so, what is it?

3.17 Respondents identified the use of trade organisations, Business Links, the Small Business Service and Chambers of Commerce to disseminate guidance and advice.

3.18 Trading Standards Officers were also identified as a valuable resource in helping business to become more aware of the guidance. It was suggested that they could hold talks with local business to explain the Part 8 provisions and that could provide copies of the guidance to all businesses after regular inspection visits.

3.19 Again, it was suggested that production of a more concise and simpler document explaining Part 8, including the use of examples, would be of benefit.

3.20 A regular bulletin, similar to the Unfair Terms in Consumer Contracts Regulations (UTCCRs) bulletin, explaining how Part 8 was being implemented and what criteria had been applied in cases would help business gain a greater understanding.

3.21 Other suggestions included referring businesses to the guidance at the earliest opportunity in the enforcement process and the use of media coverage to publicise the guidance.

Question 7: Is the guidance written in clear and unambiguous language? Does it provide sufficient detail?

- 3.22 Whilst in general respondents were happy with draft guidance, it was felt that some small businesses may be put off by the length and sometimes legalistic language used.
- 3.23 One respondent suggested how the Home Authority Principle will affect enforcement of Part 8 could benefit from further explanation.
- 3.24 It was also suggested that the definition of "consumers" needed further explanation to clarify when a prospective business would be considered as a consumer.

Question 8: Are there any other comments you wish to make?

- 3.25 Not all of the comments received related specifically to Part 8 and its application. A number of responses to this question were raised by others in response to the previous 7 questions.
- 3.26 Other comments made by respondents include:
- the need to provide feedback to consumers on action taken as a result of their complaint to encourage confidence in the enforcement regime
 - the guidance should include details of how the OFT proposes to encourage consumers to submit evidence about problem traders
 - information regarding Part 8 action including undertakings should be made available to the public via websites such as the OFT and TSI
 - only information regarding Enforcement Orders should be made public
 - the guidance should be updated regularly to take into account court decisions.

4 LIST OF RESPONDENTS:

4.1 Advertising Standards Authority

Association of British Insurers

British and Irish Ombudsman Association

British Holiday and Home Parks Association

British Retail Consortium

Building Societies Ombudsman

Civil Aviation Authority

Confederation of British Industry

Credit Services Association

Department of Trade and Industry

Federation of Master Builders

Finance and Leasing Association

Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS)

Information Commissioner

Innogy

Institute of Credit Management

Local Authorities Coordinators of Regulatory Services

Law Society of Scotland

Legal Services Ombudsman

National Association of Citizens Advice Bureaux

National Association of Estate Agents

National Consumer Council

Office of Gas and Electricity Markets

Scottish Consumer Council

Teletext Ltd

Wragge and Co

5 ACCESS TO REPONSES

- 5.1 The OFT was not asked to treat any responses to the consultation in confidence.
- 5.2 Copies of all the responses are available for public viewing at the OFT Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX.