

Anti-Money Laundering

Summary of responses to the OFT's consultation on its future supervisory approach under the Money Laundering Regulations 2007

December 2010

OFT1157res

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1 INTRODUCTION

1.1 This document summarises the responses to the Office of Fair Trading's (the OFT's) consultation - launched on 9 February 2010 - on the most appropriate future supervisory approach and fee structure that the OFT should adopt in its role as a supervisory authority under the Money Laundering Regulations 2007 (the Regulations).

1.2 The consultation paper invited views on four key areas:

- **Registration:** What steps the OFT should take in the future in connection with registration:
 - how to identify firms which have not registered
 - whether the procedure outlined for dealing with those firms who have not registered, in particular against those firms who refuse to register, is suitable for longer term use
 - whether online payment and registration systems are desirable.
- **Monitoring and Enforcement:** What approach the OFT should adopt for its risk based approach to supervision – for example should it carry out random sampling to check on compliance levels. The consultation also asked for views as to what the advantages or concerns would be of the OFT and the Local Authority Trading Standards Service (TSS) sharing enforcement powers under the Regulations.
- **Penalties:** What should be the OFT's approach to imposing financial penalties, and
- **Fee Structure:** Whether the OFT should continue to operate a premise based fee structure.

1.3 A total of 38 responses to the consultation were received from a range of interested parties. A list of respondents is at Annexe A. A large number of respondents did not respond to each question, and some did not respond directly to any of the questions but voiced their concerns with the Anti-Money Laundering (AML) regime. Responses were received from 22 individual businesses (17 estate agencies and five

consumer credit providers), five representative organisations, and representatives of the TSS

- 1.4 It had been the OFT's intention to include the OFT's response to the consultation within this summary of responses outlining the OFT's future supervisory approach. However, a number of factors have caused a change to this approach and delayed publication of the OFT's future supervisory approach. Not least of these factors are the proposed changes to the wider regulatory landscape which are subject of wider consultation by the Government. In addition the OFT needs to identify the scope for efficiencies and we need to follow Government rules regarding freezing of recruitment.
- 1.5 A full list of the questions posed in the consultation document is at Annexe B.

2 EXECUTIVE SUMMARY

- 2.1 The responses received to the OFT's consultation have provided invaluable insight on the views held by a wide range of interested parties, not least the views of those supervised by the OFT for AML purposes.

Public Register of those registered with the OFT

- 2.2 The OFT stated that it believed that an online Public Register of those registered with the OFT for AML purposes would be a key tool in identifying those who should be registered with the OFT. This would allow industry, members of the public, TSS and others to help the OFT identify businesses which should have registered but have not. In general, responses to the consultation supported this.
- 2.3 Many respondents agreed that the OFT should develop an online Public Register of those registered with the OFT for AML, but support was not universal. A number of respondents expressed concern that the OFT should only decide on its future approach to an online Public Register after a full cost benefit analysis.
- 2.4 Respondents felt that information on a Public Register should contain more than the basic information suggested by the OFT but agreed with the OFT that commercially sensitive information such as turnover should not be included.

AML Hotline

- 2.5 The OFT has an existing AML helpline through which it currently provides advice to businesses. The OFT proposed expanding this service so that allegations of non-compliance with the Regulations can be reported to it.
- 2.6 Support for an AML compliance hotline was widespread. In particular, one estate agency representative body suggested it would be useful if this could also be used by supervised businesses to seek help and guidance on AML compliance issues.
- 2.7 Respondents suggested a number of sources of information about businesses who are trading as estate agents or Consumer Credit

Financial Institutions (CCFIs) which the OFT could check against the list of registered businesses to identify those who have not registered.

Taking action against those who fail to register

- 2.8 The OFT's current procedure allows non-registered businesses a period of 21 days, after being identified as required to register, to apply for registration before initiating its process to impose civil financial penalties. No date has been set for this policy to cease. There were mixed views from industry representatives. Some felt that there should be no grace period or that it should end by January 2011. One credit trade association felt that there should be a grace period of 60 days. Removal of a grace period would, in the OFT's view, run counter to Hampton Principles and the OFT's preference to persuade businesses to comply rather than move straight to use of formal powers.
- 2.9 Therefore, the OFT intends to continue to allow a grace period of 21 days and this is incorporated in its interim penalties policy, published on 17 September 2010.¹

Moving to online transactions with the OFT

- 2.10 There was general support from respondents for a move away from paper forms and cheque payments, but concern was expressed that the OFT should take care that the costs did not outweigh the benefits. One estate agency representative body was concerned that these development costs should not be passed onto the supervised population.
- 2.11 Respondents did not identify any sectors of the supervised population for which online transactions would be particularly beneficial or inconvenient. Some respondents did suggest that some businesses would prefer paper forms and cheques to an online system.

Raising compliance levels - Advice and guidance

- 2.12 The OFT stated its belief that the best way to achieve the goals of raising compliance levels amongst supervised businesses and reducing

¹ [OFT press release 98/10](#)

businesses' vulnerability to being used for money laundering and terrorist financing is through the provision of advice and guidance to supervised businesses.

- 2.13 Respondents took the view that the OFT could only be an effective supervisor if it works closely with individual businesses and business representatives to raise awareness of the Regulations and provide advice and guidance to businesses on how business can best comply with the Regulations.
- 2.14 Respondents suggested that the OFT should adopt a variety of ways to provide advice. Many respondents suggested that the OFT should make better use of e-mail as well as the OFT website.
- 2.15 Representative organisations suggested that the OFT should continue to send information to them in advance of publication so that they can be in a position to pass information onto their members at the appropriate time.
- 2.16 Respondents were also keen that the OFT should set up a mechanism for keeping businesses - particularly small businesses - up to date with regulatory changes and updates.

A risk based approach

- 2.17 The OFT is expected to operate its supervisory regime adopting a risk based approach. Respondents agreed that the OFT should use the Anti-Money Laundering Supervisors Forum (AMLSF) risk factors as the key components in developing a risk model. Some respondents suggested additional factors which will be considered.

Monitoring and enforcement

- 2.18 Respondents agreed that the OFT's purely reactive approach to monitoring and enforcement was not a viable long term model and that the OFT should adopt a more proactive approach. Respondents agreed that monitoring activity should be supported by a risk model, and that the OFT should undertake random sampling of the market in order to develop, test and update the model.

2.19 Respondents supported the OFT's view that the current approach to monitoring and enforcement was not a viable long term approach and that some level of sampling activity should be carried out in support of compliance activity. There was no consensus as to how much sampling would be appropriate with some supporting a minimal level of sampling (between 100 and 200 businesses each year) and some supporting an enhanced level of sampling. In particular, a fellow supervisor felt that the suggested levels were significantly below the level that the OFT should be carrying out to be effective. Others felt that OFT should base the level of sampling activity on intelligence (such as the level of actual compliance with the Regulations).

Sharing powers with the TSS

2.20 Representatives of TSS expressed reluctance to share formally (as envisaged by the Regulations) the role of monitoring and enforcement given that TSS are dealing with reduced resources and that the prevention of money laundering does not dovetail with their mission to assist consumers. However, TSS representatives expressed the desire to continue to work with OFT in other ways, such as checking reports of unregistered new businesses in their area.

Penalties

2.21 The Regulations give the OFT the power to impose a penalty of such amount as considered appropriate and define appropriate as 'effective, proportionate and dissuasive'. The OFT felt that a rigid formulaic approach was unlikely to reflect the circumstances of different cases – such as the extent to which breaches of the Regulations are accidental, through ignorance or misinformation, negligent or deliberate. In addition, a flat rate penalty would not differentiate in terms of the size of a business.

2.22 The OFT had identified that a different approach might be more appropriate in cases where businesses have failed to register but continue to carry out supervised activity. As announced on 17

September 2010² the OFT has decided to adopt an interim penalties policy for such cases.

- 2.23 In publishing its interim policy the OFT stated that it would handle other breaches on a case by case approach.

Fee structure

- 2.24 The OFT invited views on the future fee structure and gave examples of possible options such as turnover based or premise based.
- 2.25 The majority of respondents favoured continuance of a premise based fee. Respondents felt that the OFT should operate a fee structure which would be less costly to administer.
- 2.26 There was a mixed response to whether the OFT should retain a cap on fees. The majority of respondents, including industry representatives, supported retention of a cap.
- 2.27 There was general support for charging online businesses on the basis of turnover rather than premises as this would better reflect the size of the business. However, respondents acknowledged the difficulty the OFT would have in verifying turnover information.
- 2.28 Respondents felt that the OFT's supervisory regime should include an element of 'polluter pays'. In general, they felt that the best way of developing such an approach would be through the financial penalties imposed on businesses for breaching the Regulations rather than through the fee structure.
- 2.29 There was general agreement amongst respondents that a different fee structure might be appropriate for estate agents and CCFIs as they are different markets facing different risks. However, there were no suggestions as to what fee structures should be adopted for the separate markets.
- 2.30 There was some support expressed by respondents for a move to a longer charging period of three or five years, but the majority view,

² [OFT press release 98/10](#).

supported by the industry representatives, was that annual fees appeared to be the simplest and most practical approach.

3 REGISTRATION

Identifying those who have not registered

Summary of Consultation

- 3.1 The OFT sought views on how best it can identify businesses who have not registered including new entrants to the market. The OFT stated its belief that a key tool to help identify those who have not registered is to publish an online Public Register so that others can help the OFT identify businesses who should have registered, but have not. In addition the OFT proposed running a compliance hotline so that allegations of non-compliance with the Regulations can be reported to it.

Questions 1 – 3:

Q1. What ways, in addition to an online Public Register and a compliance hotline, do you think the OFT should identify businesses who have not registered?

Q2. What additional information do you think should be published by the OFT on its online Public Register?

Q3. Do you support the proposal for an AML compliance hotline so that businesses, other supervisors and regulators, consumers, TSS and others can report non-compliance, including failure to register, to the OFT?

Summary of Responses

- 3.2 Many respondents agreed that a Public Register of those registered with the OFT was an essential tool in identifying who was registered and who was not, but support was not universal - one estate agency representative body believed that the OFT should only decide on its future approach to an online Public Register after a full cost benefit analysis. Respondents agreed that businesses and regulators should be able to report to the OFT's AML team those suspected of failing to register.

- 3.3 Respondents suggested that information on a Public Register should contain more than the basic information suggested by the OFT. The OFT had proposed that the Public Register would be confined to basic information that allows the business to be correctly identified and verified as registered, for example business names, address. The OFT would not include commercially sensitive information such as turnover.
- 3.4 Respondents provided a wide range of additional fields that could be included. For example, one estate agency representative body suggested that the register should be a valuable tool for consumers and should include: a businesses contact details, area of coverage, services offered, redress mechanism plus details of membership of a professional body or industry association. One CCFI representative body agreed with the OFT that only basic information should be included and that no commercially sensitive information should be included.
- 3.5 Support for an AML compliance hotline was widespread. In particular, one estate agency representative body suggested it would be useful if this could also be used by supervised businesses to seek help and guidance on AML compliance issues.
- 3.6 Respondents suggested a number of sources of information about businesses who are trading as estate agents or CCFIs which the OFT could check against the list of registered businesses to identify those who have not registered. These included:
- membership lists of industry organisations and the list of businesses registered with the Property Ombudsman for the Estate Agents redress scheme
 - data held by fellow AML supervisors, particularly HMRC and the FSA
 - Companies House records, telephone directories, and lists available from Experian and other similar businesses.

Tackling businesses that do not register

Summary of Consultation

- 3.7 The OFT wants to encourage supervised businesses that are trading whilst unregistered to become compliant. The OFT proposed to do this

by alerting them to the need to register, allowing them time to register and penalising those who continue to trade whilst unregistered. The OFT gave an overview of the approach it proposed to take against businesses which are found to be carrying on a supervised business but unregistered after 31 January 2010 (see below).

Extract from chapter 3.11 of OFT's Future Supervisory Approach consultation

... the following approach is proposed for businesses which are found to be carrying on a supervised business but unregistered after 31 January 2010:

- A warning letter will be sent by the OFT setting out the requirement for the business to register if they intend to continue carrying on that business.
- The business will be given a grace period of 21 days from issue of the warning letter within which to apply for registration or face use of the OFT's formal powers.
- In the majority of cases failure to respond would result in a formal letter advising that the OFT intends to impose a civil financial penalty and specifying the amount. In accordance with the Regulations the business would have 28 days in which to make representations in relation to the imposition of a financial penalty and the amount.
- There may be cases where the OFT believes that prosecution would be appropriate. An example would be where the business ignores the OFT's approaches, continues trading and fails to register.
- This process will be kept under review so that the OFT can deal most effectively with those who deliberately avoid registration.

Questions 4 – 7:

Q4. Do you agree with the OFT giving business a grace period before making use of its formal powers?

Q5. Is the grace period reasonable? If not, what do you think it should be?

Q6. Is the procedure above suitable for use beyond the first few months after the end of the six-month registration period?

Q7. What amendments, if any, do you believe should be made to this procedure for longer term use?

Summary of Responses

- 3.8 There was support amongst respondents that the OFT must act against those businesses that have not registered.
- 3.9 There was also general support for the OFT continuing its policy of giving businesses a grace period in which to apply for registration. Respondents generally supported the view that the period of grace should be reduced, or revoked, in the longer term. The majority of respondents felt that there should be a cut-off point for when this interim approach should finish, and that the cut-off point should be no longer than a year from the closure of the initial registration period - end January 2011. One credit trade association felt that the grace period should be much longer - up to 60 days.

Moving to Online Transactions with the OFT

Summary of Consultation

- 3.10 The OFT's AML registration process is paper based. For the longer term the OFT invited comments from the supervised population that would assist it in assessing the advantages and disadvantages of a fully online system.

Questions 8 – 10:

Q8. Should the OFT seek to develop online transactional capability? and if so in what timescale?

Q9. What should be the higher priority – the ability to pay online or to register or update registration information?

Q10. Are there sectors of the supervised population for which online

transactions would be particularly beneficial or inconvenient?

Summary of Responses

- 3.11 There was general support from respondents for a move away from paper forms and cheque payments, but concern was expressed that the OFT should take care that the costs did not outweigh the benefits. One estate agency representative body was concerned that the development costs should not be passed onto the supervised population.
- 3.12 Respondents did not identify any sectors of the supervised population for which online transactions would be particularly beneficial or inconvenient. One CCFI representative body did point out that some individual businesses will still prefer to complete forms and payments offline, a view supported by the Local Better Regulation Office.

4 MONITORING AND ENFORCEMENT

Emphasis on working with business to raise compliance levels

Summary of Consultation

- 4.1 The OFT stated that it would continue to seek to achieve compliance through the provision of advice and guidance to business. The OFT further stated that it will seek to work with industry bodies and representatives of small businesses wherever possible in order to identify how best to provide relevant and targeted advice and guidance to supplement the core guidance first published in 2007.

Questions 11 – 13:

Q11. What do you see as priority areas for targeted advice and guidance activity?

Q12. How would you/your members like to receive advice and guidance?

Q13. What methods for the provision of advice and guidance have you found most useful?

Summary of Responses

- 4.2 Respondents took the view that the OFT could only be an effective supervisor if it works closely with individual businesses and business representatives to raise awareness of the Regulations and provide advice and guidance to businesses on how business can best comply with the Regulations.
- 4.3 Respondents suggested that the OFT should adopt a variety of ways to provide advice. Many respondents suggested that the OFT should make better use of e-mail as well as the OFT website. Other suggested methods of communication were: online training; seminars; e-mail newsletters; networking events and presentations at industry events and conferences.

- 4.4 Representative organisations suggested that the OFT should send information to them in advance of publication so that they can be in a position to pass information onto their members at the appropriate time.
- 4.5 Respondents said that any advice produced by the OFT should be clear and concise.
- 4.6 Suggestions for areas for targeted advice included:
- new businesses
 - those businesses who are not members of a professional or trade body and
 - businesses with a history of misconduct.
- 4.7 Respondents were also keen that the OFT should set up a mechanism for keeping businesses - particularly small businesses - up to date with regulatory changes and updates.

Risk based approach

Summary of Consultation

- 4.8 The OFT is expected to operate its supervisory regime adopting a risk based approach. A risk based approach will allow the OFT to use its significant powers only where appropriate and where risks are highest. The OFT proposed to use the Anti-Money Laundering Supervisors Forum (AMLSF) risk factors³ as the key components in developing a risk model to support this approach. These included:
- risks associated with the activity undertaken by the business and the environment it works in
 - risks based on a combination of objective factors and experience, and

³ See paragraph 4.5 of the Consultation Paper for a more complete breakdown of the risk factors identified by the AMLSF.

- potential harm that could be caused should money laundering be taking place in the business or industry sector.

Questions 14 – 18:

Q14. What do you believe should be the key components of the OFT risk models for estate agents and CCFIs?

Q15. Are the AMLSF factors listed all appropriate to CCFIs and/or estate agents? If not, please say why.

Q16. Are there additional factors not listed that you believe are appropriate?

Q17. Are there particular sectors or types of supervised businesses, or business practices, which you believe pose higher risks?

Q18. What sectors or types of supervised business do you believe pose minimal risks of being used for money laundering and why?

Summary of Responses

- 4.9 There were relatively few comments from respondents to this section of the consultation. Those that did respond recognised that the OFT has to operate a risk based approach.
- 4.10 Respondents felt that the risk factors outlined in the consultation were appropriate for the markets supervised by the OFT as a first step in developing a risk model.
- 4.11 A number of suggestions were received as to what key components could be included in the OFT's risk model in addition to the AMLSF factors mentioned in the consultation. These additional factors included transaction monitoring or membership of a trade or professional body.
- 4.12 There was no real consensus amongst respondents on whether estate agents or CCFIs pose higher risks. A number of respondents mentioned factors that OFT should take into account when considering the money laundering risks associated with sectors or types of supervised businesses, some of which are also reflected in the AMLSF factors.

4.13 Respondents suggested that factors indicating a higher risk were:

- businesses that deal with high cash volumes
- non face-to-face business being conducted on a regular basis
- the type of client being handled, for example if the client is a 'politically exposed person', is self employed or high net worth
- businesses with a history of breaching other regulatory requirements, and
- cross border property transactions.⁴

4.14 Factors indicating a lower risk:

- businesses not holding or dealing with client funds
- businesses subject to other supervision either through a professional body or trade association.

The OFT's approach to monitoring and enforcement

Summary of Consultation

4.15 The OFT sought views on its future approach to compliance and monitoring. It outlined three compliance monitoring models and sought views on the level of sampling that should be carried out in support of compliance activity:

- **No Change:** The OFT would focus solely on providing education and guidance.
- **Minimal Sampling:** The OFT's compliance work would be supported by a small element of random and targeted sampling of between 100 and 200 businesses each year.

⁴ Cross border transactions are not covered by the Regulations

- **Enhanced Sampling:** The OFT's compliance work would be supported by a higher level of random and targeted sampling.

Questions 19 – 22:

Q19. Which model do you believe the OFT should adopt and why

Q20. Is the minimal rate of sampling suggested sufficiently high? If you believe that higher rates are appropriate, what level do you recommend?

Q21. Are there elements missing which you believe would be appropriate and cost effective?

Q22. Which sectors or types of business do you believe should be targeted?

Summary of Responses

- 4.16 Respondents agreed that the OFT's purely reactive approach to monitoring and enforcement was not a viable long term model and that the OFT should adopt a more proactive approach. Respondents agreed that monitoring activity should be supported by a risk model, and that the OFT should undertake random sampling of the market.
- 4.17 The OFT had indicated that the current approach to monitoring and enforcement was not viewed as a viable long term approach and suggested that some level of sampling activity should be carried out in support of compliance activity. Respondents supported the OFT's suggested approach, but there was no consensus as to how much sampling would be appropriate with some supporting a minimal level of sampling (between 100 and 200 businesses each year) and some supporting an enhanced level of sampling. In particular a fellow supervisor felt that the suggested levels were significantly below the level that the OFT should be carrying out to be effective. Others felt that OFT should base the level of sampling activity on intelligence (such as the level of actual compliance with the Regulations).
- 4.18 A suggestion was made by a CCFI representative body that the OFT should benchmark any sampling figures against those used by other AML supervisors.

Sharing the OFT's monitoring and enforcement powers

Summary of Consultation

- 4.19 The Regulations enable the OFT to share some of its monitoring and enforcement role with the TSS and the Department of Enterprise Trade and Investment (Northern Ireland) (DETINI). The OFT sought views as to whether respondents believed TSS and DETINI should be involved in the monitoring and enforcement of the Regulations and their perception of the potential advantages and concerns.

Questions 23 – 25:

Q23. Should the TSS and the DETINI be involved in the monitoring and enforcement of AML Regulations?

Q24. What advantages do you see in the sharing of powers?

Q25. What concerns do you have with the sharing of powers?

Summary of Responses

- 4.20 Industry respondents were in general agreement that it would be useful if the OFT could work in partnership with TSS and the DETINI in order to deliver an efficient monitoring regime. However, significant numbers of respondents raised concerns that the OFT would need to be diligent in ensuring that working in partnership with TSS will not lead to an inconsistent approach to monitoring and enforcement across the country.
- 4.21 Representatives of TSS expressed reluctance to share formally (as envisaged by the Regulations) the role of monitoring and enforcement. They cited the following factors
- TSS are dealing with reduced resources, and
 - the prevention of money laundering does not dovetail with their mission to assist consumers.

4.22 However, TSS representatives also expressed the desire to continue to work with OFT in other ways, such as checking reports of unregistered new businesses in their area.

5 PENALTIES

Summary of Consultation

- 5.1 The OFT expressed a preference for a case by case approach to imposing civil financial penalties where businesses breached requirements of the Regulations. The Regulations give the OFT the power to impose a penalty of such amount as considered appropriate and define appropriate as 'effective, proportionate and dissuasive'⁵. The OFT argued that a rigid formulaic approach was unlikely to reflect the circumstances of different cases – such as the extent to which breaches of the Regulations are accidental, through ignorance or misinformation, negligent or deliberate. In addition, a flat rate penalty would not differentiate in terms of the size of a business.
- 5.2 The OFT's consultation did suggest that flat rate penalties might be more appropriate for certain offences - for example, where supervised businesses continue to carry out supervised activity but have failed to register with the OFT.

Questions 26 – 29 - Penalties

Q26. Do you agree with the OFT's proposed approach to imposing penalties? If not, why not?

Q27. In what situations would a flat penalty be more appropriate than a case by case approach?

Q28. On what basis should penalties be calculated? To what extent should they reflect the size of a business – for example, as a percentage of turnover?

Q29. Should there be a set range of penalties for particular breaches and increases for repetitions?

⁵ Regulation 42

Summary of Responses

- 5.3 Respondents broadly supported the OFT's proposed approach to imposing penalties on a case by case basis for the majority of breaches of the Regulations. The OFT's approach should be consistent with fellow AML supervisors.
- 5.4 A number of respondents suggested that there were circumstances in which flat rate penalties might be appropriate for 'routine failures' such as failure to register or failure to pay fees. However, a number responded in favour of a case by case approach for all penalties. Three of the representative organisations firmly supported the view that OFT should adopt a case by case approach, one suggesting that there were no circumstances in which flat rate penalties should be adopted. One CCFI business suggested that there should be a flat rate for all breaches as this will give businesses a clear understanding of the penalty for non compliance.
- 5.5 Respondents agreed that any penalty should reflect the size of the business and/or the severity of the breach. A wide variety of suggestions were made as to how this could be achieved. Many respondents suggested that the best way of reflecting the size of the business would be to link the penalty in some way to the turnover of the business.
- 5.6 A number of respondents suggested that penalty levels should increase where businesses repeatedly breach the Regulations. An estate agent representative organisation also felt that publicising any financial penalty imposed by the OFT would be important as this could act as a greater deterrent than the financial penalty itself.
- 5.7 Some respondents were also in favour of the OFT using the penalties system as the best way to ensure an element of 'polluter pays' is built into the supervisory model adopted by the OFT⁶ (see responses to Q34).

⁶ This is that those who cause the most enforcement work should pay more to the OFT in financial penalties

- 5.8 Some respondents felt that it would be useful for business if there was a range of penalties appropriate for each offence, and that these ranges should be published. Respondents argued that this would increase the deterrence effect of imposing financial penalties.
- 5.9 The OFT had identified a different approach might be more appropriate in cases where businesses have failed to register but continue to carry out supervised activity. As announced on 17 September⁷ the OFT has decided to adopt an interim penalties policy for such cases.

⁷ [OFT press release 98/10](#).

6 FEE STRUCTURE

Summary of Consultation

- 6.1 The AML supervisory regime is designed to be self funding. The Regulations provide that a supervisory authority may impose charges:
- on applicants for registration
 - on relevant persons supervised by that authority, and
 - in respect of each of the premises at which a person carries on (or proposes to carry on) business.
- 6.2 Under the Regulations 'charges levied [by the OFT] must not exceed such amount as ... the OFT ... consider will enable them to meet any expenses reasonably incurred by [it] in carrying out [its] functions under these Regulations or for any incidental purpose.'⁸ The OFT also has to abide by HM Treasury guidance on Managing Public Money. This requires that fees should be set at a level that reflects the cost of carrying out the service provided, that there should be no discrimination in the setting of fees and that cross subsidies should be avoided.
- 6.3 The OFT imposed charges for the first time at registration. Fees charged were for 2009 - 10 and related largely to the costs of set up of registration with a minimal amount covering compliance activity. The fee payable on registration was set at £115 per premise capped at twenty premises.
- 6.4 The OFT invited views on the future fee structure and gave examples of possible options:
- flat fees regardless of size or type of company
 - continue with premise based fees and a cap

⁸ Regulation 35(2)

- continue with premise based fees but with no cap. All businesses would pay a fee based on total number of supervised premises
- fees based on turnover for all businesses instead of premises
- fees based on turnover for on line businesses only continuing with premise based fees for others, or
- some element of 'polluter pays' – those who cause the most enforcement work should pay more to the OFT in fees.

6.5 The OFT stated a preference for premise based fees as they reflect the size of businesses and the number of premises which are within the supervisory net.

Questions 30 – 36:

Q30. Do you agree with the OFT's proposal to continue with premise based fees? Should they be capped, and if so, at what level?

Q31. If you do not agree with this proposal which approach do you favour and why?

Q32. Which of the following fee structures should be adopted for online businesses who have no, or few, premises?

- Flat fees regardless of size or type of company.
- Turnover based fees.

Q33. Are there other possible fee structures?

Q34. Do you favour an approach such as 'polluter pays' – those who cause the most work should pay more to the OFT in fees. What are the advantages/ disadvantages of such an approach?

Q35. Should the OFT follow the same approach for estate agents and CCFIs? If so, what structures best suit what sectors or types of business?

Q36. Should OFT move towards a longer charging period such as three to five years?

Summary of Responses

- 6.6 The majority of respondents favoured continuance of a premise based fee. An estate agent representative body said that the alternative of a turnover based fee would be burdensome for the OFT and industry in terms of validating the information and keeping it up to date. Respondents felt that the OFT should operate a fee structure which would be less costly to administer.
- 6.7 There was a mixed response to whether the OFT should retain a cap on fees. The majority of respondents, including industry representatives, supported retention of a cap. Those who opposed a cap suggested that a cap discriminates against small businesses and is inconsistent with the approach adopted by other AML supervisors.
- 6.8 There was general support for charging online businesses on the basis of turnover rather than premises as this would better reflect the size of the business. However, respondents acknowledged the difficulty the OFT would have in verifying turnover information.
- 6.9 Respondents felt that the OFT's supervisory regime should include an element of 'polluter pays'. In general, they felt that the best way of developing such an approach would be through the financial penalties imposed on businesses for breaching the Regulations rather than through the fee structure.
- 6.10 There was general agreement amongst respondents that a different fee structure might be appropriate for estate agents and CCFIs as they are different markets facing different risks. However, there were no suggestions as to what fee structures should be adopted for the separate markets.
- 6.11 There was some support expressed by respondents for a move to a longer charging period of three or five years, but the majority view, supported by the industry representatives, was that annual fees appeared to be the simplest and most practical approach. Some respondents felt that a longer charging period would result in businesses facing a large fee to pay all at once and that OFT would face additional difficulties in refunding fees for businesses who exit the market, which could increase the administrative burden and cost of the regime.

A LIST OF RESPONDENTS

A.1 A list of those organisations who responded to the consultation is below:

Barry L Hawkins

British Cheque & Credit Association

British Vehicle Rental And Leasing Association

Century 21 UK

Cole Rayment & White

Consulsoft Ltd

Courtenay Estate Agents Limited

D B Roberts Property Centres

David Clarke Estate Agents Ltd

David Linnell

Devon Trading Standards

Finance and Leasing Association

Grey And Co

HM Treasury

Hunters

Islington Council Trading Standards

Jarvie Bedhall

Legal And General

Local Better Regulation Office

Local Government Regulation (ex Local Authorities
Coordinators of Regulatory Services)

Mallards Estate Agents

Maxey & Son

McCartneys Llp

MW Financial Crime Consultancy Ltd

Myddelton And Major

National Association of Estate Agents and National
Federation of Property Professionals

NCT Estate Agents

Outlook Finance Limited

Property Forum Acting For Safe Transactions (Pfast)

Royal Institution of Chartered Surveyors

Solicitors Regulation Authority

South Coast Moneyline

St Helen's Finance

Tate Residential

The Better Business Group Limited

The Due Diligence Exchange Ltd

The Law Society Of England And Wales

Trading Standards Institute

B SUMMARY OF CONSULTATION QUESTIONS

Consultation Chapter 3 – registration

- Q1. What ways, in addition to an online Public Register and a compliance hotline, do you think the OFT should identify businesses who have not registered?
- Q2. What additional information do you think should be published by the OFT on its online public register?
- Q3. Do you support the proposal for an AML compliance hotline so that businesses, other supervisors and regulators, consumers, TSS and others can report non-compliance, including failure to register, to the OFT?
- Q4. Do you agree with the OFT giving business a grace period before making use of its formal powers?
- Q5. Is the grace period reasonable? If not, what do you think it should be?
- Q6. Is the procedure above suitable for use beyond the first few months after the end of the six month registration period?
- Q7. What amendments, if any, do you believe should be made to this procedure for longer term use?
- Q8. Should the OFT seek to develop online transactional capability? and if so in what timescale?
- Q9. What should be the higher priority – the ability to pay online or to register or update registration information?
- Q10. Are there sectors of the supervised population for which online transactions would be particularly beneficial or inconvenient?

Consultation Chapter 4 – monitoring and enforcement

- Q11. What do you see as priority areas for targeted advice and guidance activity?
- Q12. How would you/your members like to receive advice and guidance?

- Q13. What methods for the provision of advice and guidance have you found most useful?
- Q14. What do you believe should be the key components of the OFT risk models for estate agents and CCFIs?
- Q15. Are the AMLSF factors listed all appropriate to CCFIs and /or estate agents? If not, please say why.
- Q16. Are there additional factors not listed that you believe are appropriate?
- Q17. Are there particular sectors or types of supervised businesses, or business practices, which you believe pose higher risks?
- Q18. What sectors or types of supervised business do you believe pose minimal risks of being used for money laundering and why?
- Q19. Which model do you believe that the OFT should adopt and why?
- Q20. Is the minimal rate of sampling suggested sufficiently high? If you believe that higher rates are appropriate, what level do you recommend?
- Q21. Are there elements missing which you believe would be appropriate and cost effective?
- Q22. Which sectors or types of business do you believe should be targeted?
- Q23. Should the TSS and the DETINI be involved in the monitoring and enforcement of AML Regulations?
- Q24. What advantages do you see in the sharing of powers?
- Q25. What concerns do you have with the sharing of powers?

Consultation Chapter 5 – penalties

- Q26. Do you agree with the OFT's proposed approach to imposing penalties? If not, why not?
- Q27. In what situations would a flat penalty be more appropriate than a case by case approach?

Q28. On what basis should penalties be calculated? To what extent should they reflect the size of a business – for example, as a percentage of turnover?

Q29. Should there be a set range of penalties for particular breaches and increases for repetitions?

Consultation Chapter 6 – fees

Q30. Do you agree with the OFT's proposal to continue with premise based fees? Should they be capped, and if so, at what level?

Q31. If you do not agree with this proposal which approach do you favour and why?

Q32. Which of the following fee structures should be adopted for online businesses who have no, or few, premises?

- Flat fees regardless of size or type of company.
- Turnover based fees.

Q33. Are there other possible fee structures?

Q34. Do you favour an approach such as 'polluter pays' – those who cause the most work should pay more to the OFT in fees. What are the advantages/ disadvantages of such an approach?

Q35. Should the OFT follow the same approach for estate agents and CCFIs? If so, what structures best suit what sectors or types of business?

Q36. Should OFT move towards a longer charging period such as three to five years?

C SUMMARY OF RESPONSES

Table 1: Summary of Responses received

Issue	Identifying Businesses who have not Registered		
Number of Responses	16	Question	1
Summary of main points made by Respondents			
<ul style="list-style-type: none"> OFT should be proactive in uncovering businesses who have not registered. Many alternative sources that may hold information on estate agents and CCFIs that the OFT can compare with AML registration data were suggested. 			
Issue	AML Public Register		
Number of Responses	14	Question	2
Summary of main points made by Respondents			
<ul style="list-style-type: none"> Strong support for a Public Register. Information held on register should not contain confidential information, but should contain enough information to enable a business to be identified. No consensus on the detailed fields that should be included on a register. OFT should carry out a cost benefit analysis before launch. 			
Issue	Compliance Hotline		
Number of Responses	19	Question	3
Summary of main points made by Respondents			
<ul style="list-style-type: none"> Seventeen respondents expressed support for the OFT to operate a compliance hotline. One trade representative felt that such a hotline should also be used as an avenue for OFT to provide advice and guidance to business. One trade representative mentioned that it would be important that such a hotline would have adequate technical support. One business mentioned that it would be important that the hotline would be manned by staff with sufficient expertise to handle calls. 			
Issue	Formal Enforcement Action: Grace Period		
Number of Responses	19	Questions	4 - 7
Summary of main points made by Respondents			
<ul style="list-style-type: none"> Fourteen respondents expressed support for a grace period at this current time. No consensus on how long any grace period should be. Ten out of 17 respondents felt that the grace period would not be suitable beyond the first few months following the registration period. Suggestions that grace period should remain in place for new entrants to the market. 			

Issue	Online Transactions		
Number of Responses	15	Questions	8 - 10
Summary of main points made by Respondents			
<ul style="list-style-type: none"> • Thirteen respondents expressed support for a move to online transactions. • Respondents felt that this would be a business friendly approach that would result in cost savings and, ultimately, a lower fee. • Respondents felt that OFT should carry out a cost benefit analysis before agreeing to implement, particularly as the majority of businesses have already registered. • Some respondents were concerned that the supervised community should not bear the cost of developing systems that would benefit the wider OFT. 			
Issue	Emphasis on working with business to raise compliance levels		
Number of Responses	13	Questions	11 - 13
Summary of main points made by Respondents			
<ul style="list-style-type: none"> • The OFT should provide clear, concise guidance. • The OFT should use a range of communication methods and formats to provide advice and guidance to the supervised population. • A trade representative suggested that the initial focus of the OFT's guidance activity should be: new businesses; those business not a member of a professional body, or, businesses with a history of misconduct. • The OFT should work with professional and trade bodies to communicate messages to their members. 			
Issue	Risk Based Approach		
Number of Responses	10	Question	14 – 18
Summary of main points made by Respondents			
<ul style="list-style-type: none"> • The majority of respondents felt that the AMSLF risk factors listed in the consultation were appropriate. • Some respondents mentioned that that the risk models for estate agents and CCFIs should be different. (Those within the estate agency sector felt that CCFIs posed the higher risk while those within the CCFI sector felt that estate agents posed the higher risk.) • A number of additional components for an AML risk model were suggested. • One professional body stated that due to the AML compliance regime it has in place, its members should be classed as low risk in what is '...an already low risk category.' • Generally concerns were raised about cross border transactions, PEPs, dealing with business, individuals or regimes on HMT's Sanctions list and non face to face transactions. • Specific concern was raised in relation to estate agency businesses holding client 			

funds.			
<ul style="list-style-type: none"> • Specific concern was raised in relation to CCFIs dealing with large cash volumes (for example, Home Collected Credit), short term asset hire, pawnbrokers and 'cashback' businesses.⁹ 			
Issue	The OFT's Approach to Monitoring and Enforcement		
Number of Responses	15	Questions	19 - 22
Summary of main points made by Respondents			
<ul style="list-style-type: none"> • Sampling should play a part in the OFT's approach to monitoring and enforcement. • No consensus on whether sampling should be minimal or enhanced. • The OFT should benchmark any sampling figures against those used by other AML supervisors. • One business suggested that each registered business should supply a copy of their policy document and nominated officer details on an annual basis. • A professional body suggested that professional bodies may be able to assist the OFT in enforcing the Regulations. • Respondents felt that the targeting of specific sectors or business can only be carried out on a risk basis that should be informed by intelligence and knowledge gained from sampling. 			
Issue	Sharing the OFT's monitoring and enforcement powers		
Number of Responses	19	Questions	23 - 25
Summary of main points made by Respondents			
<ul style="list-style-type: none"> • Business respondents supported a role for TSS/DETINI in the monitoring and enforcement of AML. • Respondents from the TSS sector were against any role for TSS/DETINI beyond, for example, reporting non registration as part of their normal investigation/visits. • TSS saw no obvious area of overlap with existing TSS/DETINI commitments. • Business respondents were concerned that TSS/DETINI staff would not have the necessary knowledge or experience. • Advantages mentioned by business respondents included potential cost savings and local TSS staff may have better relationships with local agencies and be better placed to advise smaller businesses within their own area. • Some concerns from business respondents were expressed in regards to the potential for a lack of a consistent approach across the UK; potential increase in cost/bureaucracy and potential dilution of OFT powers and effectiveness. 			

⁹ Cash back businesses are not covered by the Regulations

Issue	Penalties		
Number of Responses	15	Questions	26 - 29
Summary of main points made by Respondents			
<ul style="list-style-type: none"> • Strong support of the approach outlined in the consultation document. • The OFT should have the ability to revoke registrations for serious non compliance. • Penalties policy needs to be consistent with other supervisors. • Case by case approach would be preferable, but a flat rate could be appropriate in cases of 'administrative' failure. • Some respondents felt that the size of a penalty should reflect the size of a business. • Respondents felt that the size of a penalty should reflect the seriousness of the breach. • Penalties should only be imposed where business repeatedly breached the law or failed to respond to compliance advice. • Publicity for the penalties is important as an incentive for compliance. • The OFT should introduce a minimum and maximum amount for each type of breach of the Regulations. • Penalties for a first offence should be at a significantly lower rate than the level for subsequent offences. • The seriousness of the offence should be reflected in the penalty, for example, there also needs to be a differentiation between a business ignoring requirements of the legislation and a business making minor technical breaches whilst attempting to comply. • The OFT should be able to demonstrate fairness and consistency for example it would be unfair to impose a penalty of £100 on a small two-person business for committing an offence and impose a penalty of £5000 on a 10 office business for committing the exact same offence. • A mixture of fixed and variable penalties is the best option. • OFT should not limit its disciplinary options to a fine or prosecution as there may be more effective ways of bringing businesses back into compliance. 			

Issue	Fee Structure		
Number of Responses	15	Questions	30 - 35
Summary of main points made by Respondents			
<ul style="list-style-type: none"> • General support for a premise based fee. • Difficulty using turnover for fees as this would be problematic to validate and would need to be updated regularly. • The OFT should keep a cap to avoid larger businesses facing disproportionate fees. • The OFT should not use a cap as this discriminates against smaller businesses. • OFT should maintain consistency with other supervisors (eg HMRC) and not have a cap. • Online businesses should be charged differently as the number of premises may not reflect their size – using turnover was the preferred option. • Many suggestions for alternative fee structures, but no consistent message. • Elements of 'polluter pays' should be through the imposition of financial penalties rather than the fees imposed. • Divergent views were expressed on whether OFT should follow the same approach for estate agents and CCFIs: some respondents felt that the markets are different so different fees should apply; some that businesses would welcome a simpler – one fee for all – system; some that fees should only be differentiated if there was evidence to justify doing so. • Some respondents welcomed the suggestion of a move to charging over a 3 – 5 year period as this would reduce costs. • Some respondents felt that asking businesses to pay a significant sum covering many years could cause some businesses, particularly small businesses difficulty. 			

**D INTERIM PENALTY POLICY FOR TRADING WHILE
UNREGISTERED**

Money Laundering Regulations 2007:

Interim penalty policy for trading while unregistered

September 2010

OFT1271

Anti Money Laundering (AML): Interim penalty policy for trading while unregistered

Introduction

1. The Office of Fair Trading (OFT) launched its consultation on its future supervisory approach under the Money laundering Regulations 2007 (the Regulations) in February 2010. This consultation included a section on the way the OFT will exercise its power to impose civil financial penalties. The OFT expects to publish its response to the consultation findings in late September/early October 2010. The consultation responses received reinforced the OFT's belief that it needed to take action against supervised traders that have failed to register. Responses to the consultation have been taken into account in developing this interim policy.
2. This interim penalty policy has been developed pending the development and implementation of a full policy following the publication of the consultation response. The full policy will cover all of the breaches of requirements under the Regulations. As this policy is likely to take some time to develop, the OFT is publishing this interim policy to deal specifically with the issue of businesses trading whilst being unregistered.

What powers does OFT have to impose a financial penalty or prosecute for trading whilst unregistered?

3. The Regulations require that a relevant person (a business carrying on Estate Agency work or acting as a Consumer Credit Financial Institution (CCFI)) may not carry on the business in question unless it is included in the register maintained by the OFT.
4. OFT has the power to impose a civil penalty if there is a failure to meet this requirement. Further, a person who fails to comply with this requirement is guilty of an offence and liable to imprisonment for up to two years and/or a fine.

5. This policy does NOT relate to other failures to comply with the Regulations (such as failing to carry out customer due diligence) – they will be addressed on a case by case basis in the interim.

OFT policy for imposing a financial penalty for trading whilst unregistered

6. The OFT will act in accordance with its published AML Enforcement Principles. See www.offt.gov.uk/shared_offt/business_leaflets/general/oft1094.pdf.
7. The OFT will:
 - **approach unregistered businesses:** if the OFT has reason to believe a business should be registered, but is not, it will approach the business and explain the requirement for registration and provide advice and information
 - **issue a written warning:** if the business remains unregistered, it will be issued with a written warning that continuing to act as an estate agent or CCFI whilst unregistered will lead to further action by the OFT. The business will be given a period of 21 days to apply for registration, or to provide a substantive response detailing why the business is not required to register with the OFT
 - **issue a formal notice:** if the business fails to apply for registration within the specified period, or provide a response which raises substantive issues as to whether it is required to register, the OFT will issue a formal notice to the business proposing the imposition of a financial penalty and stating the amount.
8. Any penalty imposed must be effective, proportionate and dissuasive. The OFT has decided, after taking into account responses received from the recent consultation, that it is appropriate to set a financial penalty at a **starting point of £2,000** for this breach of the Regulations.
9. The formal notice will contain the following information:
 - a statement of the proposal to impose a financial penalty

- the reasons for imposing the penalty
- the amount of the proposed penalty, details of how it has been calculated, and a copy of this policy
- an invitation to submit representations to the OFT within 28 days, and
- information on how to make representations.

10. An OFT Adjudicator will consider representations, make the decision on whether to apply a penalty, and the amount of that penalty, based on the information contained in the notice, and any representations. Their decision will then be given in writing and give notice of:

- the decision not to impose a penalty, or
- the decision to impose a penalty, giving details of the amount, the reasons for the decision and the right to appeal.

11. Any appeal against the Adjudicators decision will be heard by the First-tier Tribunal (Consumer Credit). Your rights of appeal, and the procedures for doing so, are explained on the Tribunal website: www.consumercreditappeals.tribunals.gov.uk. The First-tier Tribunal (Consumer Credit) can be contacted at:

45 Bedford Square

London

WC1B 3DN

Telephone: 020 7612 9700

E-mail: consumercreditappeals@tribunals.gsi.gov.uk

Penalty calculation

Step 1 – Adjustment for size of business

12. The penalty which each business pays is adjusted upwards from the starting point of £2,000 to take account of the size of the business. The size of business measured is that relevant to the supervised market not global size. A sum of £1,000 for each additional premise will be added to the £2,000 starting point to calculate the base penalty rate for each business.

Examples:

- The financial penalty for a business with one premise would be £2,000.
- The financial penalty for a business with two premises would be £3,000.
- The financial penalty for a business with five premises would be £6,000.
- The financial penalty for a business with 50 premises would be £51,000.

Step 2 – Adjustment for aggravating and mitigating factors

13. The base penalty rate may be increased to reflect aggravating factors which may include the fact that previous action has been taken against the business or other undertakings in the same group or that such businesses have been subject to penalties previously.
14. Mitigating factors advanced by the business will be considered and could possibly result in a reduction. However, the OFT does not currently anticipate any circumstances that would warrant a reduction in the financial penalty, as businesses will have been given a reasonable opportunity to apply for registration in advance of a penalty being imposed. In particular, they will have been given a 21-day grace period described at paragraph 7 above.

What happens when a financial penalty is not paid?

15. If the business does not pay the penalty imposed, the OFT has the power to recover the amount through the civil courts as a debt. Interest may accrue on top of the level of the financial penalty imposed. If a business continues to carry out estate agency work or act as a CCFI without registering, in addition to seeking to recover the penalty, further financial penalties may be imposed or a prosecution may be taken.

GLOSSARY OF TERMS

AML	Anti-Money Laundering
AMLSP	Anti-Money Laundering Supervisors Forum
CCFI	Consumer Credit Financial Institution ¹⁰
DETINI	Department of Enterprise Trade and Investment (Northern Ireland)
Estate Agent	A business or sole practitioner carrying out estate agency work ¹¹
FSA	Financial Services Authority
HMRC	HM Revenue and Customs
OFT	Office of Fair Trading
The Regulations	The Money Laundering Regulations 2007
TSS	Local Authority Trading Standards Service

¹⁰ As defined under R.22 of the Regulations

¹¹ As defined under R.11 of the Regulations