

Evaluation of the impact of OFT's intervention in the Foxtons case Independent Review¹

Professor Stephen Davies, June 2011

I comment below first on the analysis and results in this evaluation report, and then on the substantive lessons to be learned from the case itself.

Assessment of the analysis and results

The calculations of the estimated **direct savings** for the consumer landlords of Foxtons (from the reduction in renewal commission and removal of sales commission terms) are not unreasonable, and are based on generally conservative assumptions. In that sense, the headline estimate of £4.4 million p.a. saving is defensible.

However, it is disappointing that we have no estimates of the **indirect effects**. Throughout the report, it is repeatedly explained that there are potentially four impacts: indirect effects on other letting agents' behaviour, 'empowerment' of consumers and (potentially negative) counteracting impacts, as well as the above direct effects. Given the repeated mention of these other effects, it would be good had the report explored at more length the reasons **why** these indirect effects are not estimated. I guess that, in principle, there are three possible alternative explanations:

1. such indirect effects are intrinsically not amenable to estimation
2. they are in principle estimable, but the information collected from the survey is unhelpful in this respect
3. there are no indirect effects in this case

If (1) is true, then this suggests that we may never be able to quantify factors such as the deterrent effect in consumer protection. If (2) is true, this suggests that greater care should be taken when conducting surveys (to ensure that they

¹ This is the second of two evaluations I have conducted in recent months. In the previous one, on the NAPP case (see www.offt.gov.uk/shared_offt/ca-and-cartels/stephen-davies.pdf), I made some general points about how impact evaluations might be structured – advocating particularly the use of a standard template which should help establish uniformity and comparability as the OFT publishes increasing numbers of such evaluations. I will not repeat those comments here, but they apply equally to this report too.

focus on the important issues). If (3) is true, then this is a very worrying policy lesson – deterrence is minimal.

My own tentative view on these three alternatives is as follows. I am reluctant to accept explanation (1) without further attempts in future studies. Inevitably, this will require further analysis. Examples of questions which come immediately to mind are: can deterrence occur without consumer awareness? Are there better ways of diffusing information amongst the peers of the investigated party? (This might include in this case perhaps investigations of Foxtons' rivals.) On (2), in this case, I found it difficult to form definite opinions on the reliability of the IFF survey. We are told the size of the sample, but not the response rate. Standard errors are not attached to point estimates so it is impossible to know how much credence to attach to them. Sometimes, it is difficult to interpret statements. For example, para 1.13 explains that 'survey findings suggest that it may take time for consumers and businesses to become aware...' Is this based on any survey evidence that they are gradually becoming more aware over time? Or is this just another way of saying that, at present, not many are aware, but that we hope they might become so in future? If so, what grounds are there for hoping this? I would think that if not many are aware now, some of these will gradually forget.

In a similar way, I would like a fuller discussion of the possibilities of the 'counteracting impacts' mentioned above. I can appreciate that these might be difficult to measure, but there might be some discussion of what they might be, and how likely. For example, is there the implication of a possible 'waterbed' effect? If so, what forms might this take, and what evidence would we need?

I have similar questions about the counterfactual (which I think should always feature prominently in the early part of any impact evaluation.) At present, the 'no change' counterfactual is justified (para 4.20) merely on the grounds that there is no evidence to suggest the contrary. But it should be remembered that, by definition, it is difficult to justify or reject a counterfactual on the basis of hard evidence alone – it's what **would have** happened, and is therefore unobservable. As such, it is sometimes helpful to conjecture or theorise – in this case, given what we know about changes in the aggregate demand and supply of properties in the years since the intervention, was this market becoming more or less conducive to the exercise of market power by the agents? Alternatively what was happening in other parts of the country, in which one would expect less impact from the Foxtons case? This returns us to survey design, and although some statements are made in places in the report concerning

differences between London and other parts of the country, these tend to be imprecise and not supported with significance tests (e.g. para 3.3).

Evaluation Impact

Did the intervention work? In a limited sense, the answer is yes: Foxtons did what the court had required of them on the basis of the OFT's investigation, and this led to the direct savings mentioned above.

On the other hand, there is very little evidence of awareness of the intervention by either other letting agents or consumer landlords. Even when prompted, two thirds of consumers and nearly half of other letting agents were unaware of the enforcement. Further, only 1% of consumers who were aware reported that they subsequently switched or renegotiated (para 4.15). It is also reported that 'a relatively large number' of other letting agents continue to apply contractual conditions similar to those which Foxtons were required to change. But how many is this? Does this mean only limited deterrence? The report correctly identifies a potentially key role for industry bodies (para 1.15), but their impact on awareness has been limited: only 1 in 7 of who were spontaneously aware of the case cited the ARLA as an important source of knowledge (para 10).

My main conclusions

1. It is very difficult to evaluate the impact of OFT interventions in consumer protection cases. This is especially true for the deterrent effect.
2. Supporting surveys should be carefully formulated to focus on the extent and determinants of awareness and deterrence. When reporting results from such surveys, statistical rigour is essential; for example, in highlighting reliability and statistical significance (or the lack of it).
3. On the face of things, it appears that this particular intervention had a very low deterrent effect. Indeed, awareness of the intervention is very limited.
4. Of course, awareness is a necessary, but not sufficient, condition for any intervention to have any deterrent effect. This suggests that the OFT should further increase its efforts to publicise the results of its interventions to all interested parties.