

Consumer Law and Business Practice

Drivers of compliance and non-compliance

June 2010

OFT1225

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CONTENTS

<i>Chapter</i>	<i>Page</i>
1 Executive summary	4
2 Introduction	10
3 Methodology	29
4 Findings	35
5 Next Steps	58
<i>Annexe</i>	
A Existing OFT work aimed at driving compliance	62

1 EXECUTIVE SUMMARY

- 1.1 The Office of Fair Trading (OFT) is the UK's consumer and competition authority. Our mission is to make markets work well for consumers. Our vision is for competitive, efficient, innovative markets. We have a wide range of tools to enable us to look at all aspects of markets to ensure that they are working well for consumers.
- 1.2 Many millions of business-to-consumer transactions appear to be concluded satisfactorily. However, there is still a significant number where things go wrong. OFT research¹ in 2008 estimated the overall value of revealed consumer detriment (financial loss suffered by consumers as a result of unsatisfactory goods and services) in the UK economy over the preceding 12 months to be £6.6 billion and that consumers experienced 26.5 million problems with unsatisfactory goods and services over the preceding 12 months.
- 1.3 This report presents the findings from OFT research looking at the drivers of compliance and non-compliance with consumer protection laws enforced by the OFT and our enforcement partners. The findings will assist the OFT in helping businesses to comply with the law, and where necessary in taking action to enforce consumer protection laws.
- 1.4 The report draws on a number of sources of information including the findings from a literature review and OFT discussions with business and enforcement stakeholders. We also commissioned both qualitative² and quantitative³ research to investigate the general level of

¹ Consumer detriment: Assessing the frequency and impact of consumer problems with goods and services (OFT 992 April 2008). Fieldwork conducted late 2007, covering problems occurring in a twelve month period at the end of 2006 and during most of 2007.

www.oft.gov.uk/shared_oftrreports/consumer_protection/oft992.pdf

² Drivers of compliance and non-compliance with consumer protection law: a report by Ipsos MORI commissioned by the OFT ([OFT1225a](#) June 2010).

³ Factors affecting compliance with consumer law and the deterrent effect of consumer enforcement Prepared for the Office of Fair Trading By IFF Research. ([OFT1228](#) June 2010)

understanding of consumer protection laws, how businesses prioritise compliance issues, and the specific challenges of complying with OFT-enforced consumer protection laws.⁴ The quantitative research additionally explored the deterrent effect of consumer enforcement on businesses. Both pieces of independent research looked at a range of businesses.

- 1.5 These various sources provide information which, we believe, allows us to identify a number of key findings, which we have grouped under four broad themes. These findings are not based on a legal assessment of any business' level of compliance with consumer protection laws. Further although we consider the general patterns revealed in this research are useful, we recognise that what drives or promotes the behaviour of a particular business can be complex and highly specific to the individual circumstances.

Theme 1: The importance of reputation and the influence of consumers

Key finding 1. A desire to win and then retain customers means that many businesses are naturally focused on protecting their customer relationships and reputation for the quality of product they supply and/or the service they provide.

Key finding 2. Informed consumers asserting their rights can have a significant impact on business behaviour and appear to be a key driver of compliance. The desire to satisfy consumers can therefore sometimes act as an incentive for businesses to meet or exceed the requirements of consumer protection laws.

- 1.6 Whilst consumer pressure is an important driver of compliance, consumers may not be able to exert influence equally across all legislation. It may be easier for consumers to assert rights such as

⁴ Drivers of compliance and non-compliance with consumer protection law: a report by Ipsos MORI commissioned by the OFT ([OFT1225a](#) June 2010).

those available under the Sale of Goods Act 1979 which provide that goods must be of satisfactory quality, fit for purpose and as described, as opposed to less familiar and more specialised rights conferred under other legislation.

Theme 2: Business awareness of, and attitudes towards, consumer protection laws

Key finding 3. In general businesses seek to treat consumers fairly although they may have a limited understanding of the law. SMEs in particular are likely to have less awareness of the detail of consumer protection laws, and how they can access relevant information to assist compliance. Larger businesses are more likely to understand the detail of the laws but may have different drivers for not complying.

Key finding 4. Fear of enforcement action acts as a driver for compliance even though there is, across all business, evidence of low levels of awareness of the details of enforcement activity and the potential consequences of non-compliance.

Key finding 5. Compliance with consumer protection laws is low on the list of priorities for some businesses.

- 1.7 In the absence of detailed knowledge, many businesses interviewed as part of the qualitative research said that they followed their understanding of the principles of consumer protection laws rather than 'the letter of the law'. They appeared to believe that a focus on customer service and common sense was sufficient to ensure compliance.

Theme 3: Guidance and support

Key finding 6. Some businesses rely heavily on their relationships with local authority Trading Standards Services (TSS) and/or trade associations while others rely increasingly on the internet for the information they need.

- 1.8 The research found that business wants and needs support and guidance to comply. A number of business relationships with third parties support consumer protection laws compliance. These include membership of trade associations or other collective bodies, positive relations with TSS, access to advice from external lawyers and the influence of competitor monitoring. However, some businesses reported that support can sometimes be inconsistent and identified some guidance material as not sufficiently user friendly or accessible. Businesses often use the internet to access materials, frequently using search engines to access information, rather than navigating direct to sources of advice. Searching often appears to be random, and there was no clear message from respondents on which sites – once identified - offered the best advice and information.

Theme 4: The influence of competitor behaviour

Key finding 7. Competitor behaviour, and practices which become the norm in a market, can impact on compliance levels and may act as a driver for both compliance and non-compliance.

- 1.9 Our discussions with stakeholders revealed that the behaviour of competitors can act as both a positive and negative influence on compliance. Businesses tend to follow the accepted norms in the market in which they operate and, in some instances, customer service norms may go beyond what the law requires. We see this as a positive development for consumers. However, sometimes market practices develop which are in breach of consumer protection laws and cause detriment.

Implications for the OFT

- 1.10 The OFT is already engaged in a wide range of work which is aimed at improving compliance such as engaging with business to increase its understanding of consumer protection laws, promoting self regulation, delivering consumer awareness and education programmes, and where necessary taking enforcement action in respect of consumer protection

laws (see Annexe for details of our current work to promote compliance with consumer protection laws).

1.11 The OFT will discuss the findings from the research with stakeholders before considering further and publishing a Policy Statement later in the year to set out next steps.

1.12 In particular, we shall explore the following:

- Delivering messages to consumers in more varied and user friendly formats to equip consumers with knowledge of their rights.
- How the OFT can support stakeholders to deliver messages to businesses, especially SMEs, on consumer protection laws and consumer rights.
- How businesses (especially SMEs) access information and how we can raise awareness levels of the consequences of breaching consumer laws.
- How to improve businesses awareness of the laws and regulations that are hard to understand or contain difficult detail.
- How to harness the business desire to build and maintain reputation, and their intuitive approach to fairness, in order to raise the awareness and priority of consumer protection laws.
- How to identify which tools can best address non-compliance where it has become an accepted market practice.
- How to enhance the deterrent effect of enforcement actions.

1.13 We would welcome views from business, consumer and enforcement stakeholders on the findings of this study and on how to develop our

work promoting compliance.⁵ We ask that any comments should be submitted in writing by 3 September 2010 to:

Policy Report: Consumer Law and Business Practice

Policy Group – 3C20
Office of Fair Trading
Fleetbank House
2-6 Salisbury Square
London
EC4Y 8JX
Fax: 020 7211 8757

Email: gordana.cumming@oft.gsi.gov.uk

⁵ This is not a formal consultation exercise which complies with the Code of Practice on Consultation but an attempt to provide a clear route of communication for all those who read the report and wish to comment. We are still in the very early stages of policy development and will keep under review the need for formal consultation.

2 INTRODUCTION

Purpose of this report

- 2.1 This report presents the findings of an OFT project investigating the drivers of compliance and non-compliance with consumer protection laws enforced by the OFT. We have engaged with businesses and enforcement stakeholders to learn about compliance experiences, and have commissioned qualitative and quantitative research to learn more about the factors that can lead to non-compliance and the particular challenges relevant to consumer protection laws.
- 2.2 The OFT has a range of enforcement powers and functions which are described below. The research described in this report has been carried out to help ensure that the OFT is better placed to take decisions and to perform its functions, in particular:⁶
- to promote good practice in the carrying out of activities that may affect the economic interests of consumers in the UK (section 8 of the Enterprise Act 2002)
 - the enforcement of certain consumer legislation (Part 8 of the Enterprise Act 2002).
- 2.3 The report presents the findings from qualitative and quantitative research and discussions with business and enforcement stakeholders. We will be exploring the practical implications of these findings with stakeholders in the coming months. In particular, we will be considering possible ways in which we might work more with business and enforcement partners to promote increased levels of compliance with consumer protection laws, leading to less need for enforcement.

⁶ See Section 5 of the Enterprise Act 2002, which requires the OFT to obtain and review information about matters relating to the carrying out of its functions.

- 2.4 This report is published with accompanying OFT commissioned reports prepared by Ipsos MORI⁷ and IFF Research,⁸ which present the findings of qualitative and quantitative research respectively into the drivers of compliance and non-compliance with consumer protection laws.
- 2.5 Although many millions of business-to-consumer transactions appear to be concluded satisfactorily, there is still a significant number where things go wrong. In 2008, OFT research⁹ estimated the overall value of revealed consumer detriment (financial loss suffered by consumers as a result of unsatisfactory goods and services) in the UK economy over the preceding 12 months to be £6.6 billion (of the estimated £814 billion household domestic consumer spend over the same period). The research estimated that consumers experienced 26.5 million problems with unsatisfactory goods and services over the preceding 12 months, and that 34 per cent of the problems were unresolved. Consumer Direct (a publicly funded national telephone and online advice service for consumers which is managed by the OFT and delivered in partnership with TSS) logged 850,000 consumer complaint cases in 2009. These results are not conclusive evidence of high levels of business non-compliance with consumer protection laws. However, for the purposes of the report, we assume a number of individual transactions (even if relatively small in proportion to the overall number of business-to-consumer transactions) involve some element of non-compliance with the law.

⁷ Drivers of compliance and non-compliance with consumer protection law: a report on qualitative research by Ipsos MORI commissioned by the OFT ([OFT1225a](#) June 2010)

⁸ Factors affecting compliance with consumer law and the deterrent effect of consumer enforcement: a report on quantitative research by IFF Research commissioned by the OFT ([OFT1228](#) June 2010)

⁹ Consumer detriment: Assessing the frequency and impact of consumer problems with goods and services (OFT 992 April 2008). Fieldwork conducted late 2007, covering problems occurring in a twelve month period at the end of 2006 and during most of 2007. www.of.gov.uk/shared_of/reports/consumer_protection/of992.pdf

2.6 The OFT's use of its enforcement tools must of necessity be selective and we follow a set of prioritisation principles to choose the cases on which to focus our resources. It is therefore important to understand any wider impact on businesses not directly involved in our interventions. It is also important to understand the other mechanisms by which compliance can be achieved and detriment reduced.

Programme of OFT compliance work

2.7 The consumer protection laws compliance research reported here is part of a wider programme of OFT compliance work, which also includes:

- qualitative research on the drivers of compliance and non-compliance with competition law, published on 19 May 2010¹⁰
- business and consumer campaigns, including the 'Know Your Consumer Rights' campaign (in partnership with the Department for Business, Innovation and Skills (BIS)), the Skilled To Go education toolkit and the Sale of Goods campaign for business.

Background on the OFT

2.8 The OFT is the UK's consumer and competition authority. Our mission is to make markets work well for consumers. Our vision is for competitive, efficient, innovative markets where standards of consumer care are high, consumers have choice and are empowered and confident about making choices, and where businesses comply with consumer and competition laws but are not disproportionately burdened by Government regulations, or restricted and harmed by market abuse.

¹⁰ Drivers of Compliance and Non-compliance with Competition law: An OFT report May 2010 OFT1227 www.oft.gov.uk/shared_oftrreports/comp_policy/oft1227.pdf

2.9 We have a wide range of tools to enable us to look at all aspects of markets to ensure that they are working well for consumers. We work to inform and support business about how to comply with the consumer and competition legislation we enforce. We work to encourage self-regulation where possible (see our policy statement¹¹) and we provide guidance and advice. When we cannot overcome compliance problems by working in partnership with business, we can use enforcement tools to target non-compliant behaviour. The OFT seeks to concentrate its enforcement work on areas where our intervention will deliver most benefit to consumers.

2.10 The OFT has a number of enforcement duties and a range of enforcement powers derived from consumer protection legislation. By way of a general overview, these include allowing the OFT to:

- bring criminal prosecutions in respect of unfair commercial practices
- apply for civil orders restraining businesses from future breaches of consumer legislation
- refuse and revoke consumer credit licences, and impose requirements and financial penalties on licensees of up to £50,000 where a requirement is not complied with
- warn and ban estate agents.

2.11 One of the enforcement tools used by the OFT and enforcement partners to secure compliance with consumer protection laws is Part 8 of the Enterprise Act 2002. Part 8 gives enforcers such as the OFT and TSS the power to apply to the courts for orders against traders that

¹¹Policy Statement The role of self-regulation in the OFT's consumer protection work September 2009 www.offt.gov.uk/shared_offt/reports/consumer-policy/oft1115.pdf

breach a range of specified consumer legislation to the harm of the collective interests of consumers including:

- Consumer Protection from Unfair Trading Regulations 2008 (CPRs)
- Consumer Credit Act 1974
- Estate Agents Act 1979
- Unfair Terms in Consumer Contracts Regulations 1999
- Sale of Goods Act 1979
- Supply of Goods and Services Act 1982, and
- Consumer Protection (Distance Selling) Regulations 2000.

2.12 The OFT is committed to acting in a manner which is proportionate across all our work. We consider carefully what intervention tools and remedies (including voluntary resolution and undertakings accepted in lieu of action) might be most appropriate to ensure proportionate and effective outcomes. We recognise the importance of being transparent in the work we do.

2.13 With the introduction of the Enterprise Act 2002, the OFT was given the responsibility to coordinate enforcement activity by the OFT, TSS and other designated enforcers such as Ofcom, Ofgem, the Civil Aviation Authority and the Information Commissioner for breaches of certain consumer protection laws. This has led to greater collaborative working, particularly in agreeing which cases should most appropriately be handled by the OFT, TSS and other enforcers, and we have established a better understanding of our respective priorities and ways of working. The OFT also provides strategically important support for TSS, involving case support, advice and training, (most recently in the use of the CPRs) and the provision of guidance.

2.14 The OFT works in partnership with TSS across the UK to promote and protect the interests of consumers and businesses. TSS are funded and

provided by local authorities. While we share enforcement powers in relation to the consumer protection laws listed above, TSS enforce a broader range of legislation than the OFT and often have responsibility for areas such as licensing, animal health and age restricted sales.

Background on deterrent effect of OFT interventions

Deterrence resulting from consumer interventions

- 2.15 We have recently published research by London Economics¹² which evaluated a sample of six OFT consumer enforcement cases, and a report on research by IFF Research¹³ evaluating the OFT's consumer credit interventions. The evaluation of consumer enforcement cases found that OFT interventions can deliver some benefits through having a deterrent effect on non-targeted businesses and preventing infringements of a similar nature from occurring. This was found to be more likely for precedent-setting cases that receive media attention and also cases with high visibility among competitors. However, the deterrence value,¹⁴ while significant in some of the cases evaluated, represented only a small proportion of the overall benefits delivered by the interventions.
- 2.16 The accompanying quantitative research based on a survey of mainly medium and large businesses provides more findings on the deterrence of OFT's consumer interventions. The results are discussed in Chapter 4.

¹²Evaluation of a sample of consumer enforcement cases (OFT 1139 October 2009) www.of.gov.uk/shared_of/reports/Evaluating-OFTs-work/oft1139.pdf

¹³ Consumer Credit Interventions Evaluation Prepared for OFT by IFF Research -(OFT 1091 June 2009) www.of.gov.uk/shared_of/reports/Evaluating-OFTs-work/oft1091.pdf

¹⁴ London Economics assessed the difference in the assumed consumer detriment before and after OFT interventions and assessed the deterrent effect of OFT intervention on competing businesses. For further details please refer to the report. www.of.gov.uk/shared_of/reports/Evaluating-OFTs-work/oft1139.pdf

Deterrence resulting from competition enforcement

- 2.17 The OFT has previously examined the deterrent effect of competition enforcement and published a research report prepared by Deloitte in 2007¹⁵ which examined the deterrence of competition enforcement decisions from the viewpoint of firm executives and their advisors. The Deloitte report found that companies abandoned or significantly modified a large number of possible anti-competitive agreements and conduct because of the risk of OFT investigation. The Deloitte report also confirms that the OFT/Competition Commission's merger control and the OFT's competition law enforcement work are successful in preventing other anti-competitive behaviour from taking place and that the benefits of OFT work go well beyond the financial benefits in terms of lower prices that consumers get as a direct result of our merger and infringement decisions. Given that the direct effect of competition enforcement in 2006/7 was £116m, OFT estimates that, based on the scale of the deterrence effect, the benefits to consumers from OFT competition work may be at least a further £600m per year.
- 2.18 The OFT has also published research by London Economics¹⁶ assessing the penalty regime, and how the UK penalty regime compares to an 'optimal' regime (by providing a comparison of the UK with international peers in the tools used and the fine levels imposed). These reports note the importance of financial penalties, damage to reputation, criminal sanctions, director disqualification and private actions. The new qualitative research on competition compliance, referred to at paragraph 2.7 above, builds on what we already know about deterrence in the competition field, and identifies drivers of

¹⁵ The deterrent effect of competition enforcement by OFT A report prepared for the OFT by Deloitte (OFT 962 November 2007) www.of.gov.uk/shared_of/reports/Evaluating-OFTs-work/oft962.pdf

¹⁶ An assessment of discretionary penalty regimes A report prepared for the OFT by London Economics (OFT 1132 October 2009) www.of.gov.uk/shared_of/economic_research/oft1132.pdf

compliance and non-compliance. The new work also identifies current best practice in competition law compliance, and further steps the OFT could take to encourage compliance.

Wider regulatory framework

2.19 The reality for business, and for the enforcers, is that law enforced by the OFT and TSS forms just a small part of the wider regulatory framework in which business operates. Existing business research (particularly the *Anderson Review of Government Guidance on Regulation*¹⁷) indicates that complying with other regulatory requirements (for example, health and safety and employment) are the most time consuming and costly for businesses. This might mean that compliance with consumer protection laws can sometimes be afforded lower priority than compliance with other laws.

2.20 It is relevant to note the findings of the 2009 National Audit Office (NAO) report on business perceptions of complying with regulation¹⁸. The NAO found that less than a third of businesses feel government understands business well enough to regulate, or consults well with them about new regulation or regulatory change. The report included wide ranging recommendations, including that government departments need to:

- look at regulation from the perspective of the individual business
- learn from businesses how best to minimise the time and cost of complying with regulation

¹⁷ www.bis.gov.uk/policies/better-regulation/reviewing-regulation/anderson-review-of-guidance-provision

¹⁸ Complying with Regulation: Business Perceptions Survey (2009) Report by the Comptroller and Auditor General HC 1028 Session 2008–2009
www.nao.org.uk/idoc.ashx?docId=DC946588-A5AA-476A-B3BD-DE7286F48EF3&version=-1

- look together at all of the regulatory demands placed on business rather than concentrating on those regulations for which each individually is responsible.

2.21 The NAO reported that 'complying with regulation' ranked second in a list of business concerns, behind 'attracting and retaining customers'. Just over 60 per cent of businesses surveyed believed that regulation was an obstacle to their success, with the most common reasons reported to be that businesses feel 'over-regulated' and that regulation was 'too time consuming'. Businesses surveyed were reported to feel positive about understanding the purpose of regulation, with over half agreeing that its purpose is clear, 45 per cent agreeing that most regulation was fair and proportionate, although less than 40 per cent agreed that 'it is easy to comply with regulations'.

Findings from research into compliance with other law

2.22 To inform our work, and place OFT interventions within the wider regulatory framework, we have looked at other published literature, notably examining compliance with food standards, health and safety, and environmental requirements in the UK and compliance with the Trade Practices Act 1974 in Australia. We have spoken to other regulators to learn from their experience and to compare findings.

2.23 We note a number of common themes in the academic research, discussed below, which seem relevant to our consideration of drivers of compliance and non-compliance with consumer protection laws:

- enforcement/regulatory issues
- importance of reputation
- business attitude/commitment towards compliance
- economic costs of compliance/non-compliance
- size of business

- importance of clear, uncomplicated law.

Enforcement/regulatory action

- 2.24 Baldwin and Black¹⁹ looked in particular at fisheries regulation, where detection of non-compliant behaviour is particularly difficult for a number of reasons. The research suggested that factors such as a perceived low risk of detection / enforcement, where it was cheap and easy to break the rules, where there was a conflict between the interests of the regulator and the regulatee, could each contribute to non-compliance.
- 2.25 Research into what drives compliance by SMEs with food safety law (Fairman and Yapp²⁰) indicated that enforcement activity against others does not in itself lead to compliance. The research noted that the fear of prosecution expressed by small businesses might indicate that prosecutions within a local authority area would motivate other businesses to comply. However, for such a deterrence strategy to succeed, small businesses would have to relate the reasons for a prosecution in another business to the problems that exist in their own. In fact the research found that many of the SMEs believe they comply with the law even when they do not. When the lack of knowledge and awareness of hazards within businesses is considered alongside their general belief that they comply, the report noted that it is clear that deterrence may not be effective.

¹⁹ Really Responsive Regulation: Robert Baldwin and Julia Black. LSE Law, Society and Economy Working Papers 15/2007 London School of Economics and Political Science Law Department <http://eprints.lse.ac.uk/23105/1/WPS2007-17BlackandBaldwin.pdf>

²⁰ Compliance with food safety legislation in small and micro-businesses: enforcement as an external motivator Dr Robyn Fairman and Charlotte Yapp 'Kings' Centre for Risk Management, Kings College London Journal of Environmental Health Research, Volume 3, Issue 2, 2004 www.cieh.org/library/Knowledge/Food_safety_and_hygiene/JEHR/JEHR-Vol3-Iss2-Compliance%20with%20food%20safety%20legislation.pdf

- 2.26 The food safety research highlighted that many SMEs displayed a reactive rather than proactive approach toward food safety compliance, only taking action when instructed to do so by an enforcement officer. Consequently, while the use of formal enforcement action achieved short term improvements in compliance, this was often not maintained over time. Conversely, SMEs in authorities adopting a predominantly educational approach to enforcement demonstrated the ability to make sustained improvements in compliance.
- 2.27 Research for the Health and Safety Executive (HSE) into how best to secure compliance with health and safety law²¹ showed that 80 per cent of employers interviewed would 'check their house is in order' if they heard of a prosecution in a similar organisation, but only 15 per cent thought there was a real possibility of action being taken against them. Half of those questioned were worried about the cost of fines, and said that enforcement would force health and safety up their list of priorities.
- 2.28 Research by the Australian Competition and Consumer Commission (ACCC)²² indicated that businesses that feel watched, or are criticised or believe that they will be investigated, are more likely to change their compliance behaviour. Businesses that have experienced some form of regulatory action were said to be far more likely to be compliant in future.
- 2.29 Some sources argue that non-compliance is more likely where businesses perceive there to be ineffective penalties and sanctions.

²¹ An evidence based evaluation of how best to secure compliance with health and safety law
Prepared by Greenstreet Berman Ltd for the Health and Safety Executive 2005
www.hse.gov.uk/research/rrpdf/rr334.pdf

²² 'To what extent do third parties influence business compliance?' Vibeke Lehmann Nielsen and Christine Parker http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1218728## This research is part of the ACCC Enforcement and Compliance project
www.cartel.law.unimelb.edu.au/go/related-projects/the-australian-competition-and-consumer-commission-enforcement-and-compliance-project

The Hampton review on regulatory inspections and enforcement²³ noted that if businesses face no effective deterrent for illegal activity, some will be tempted to break the law, and regulators will need to inspect more businesses. The review found that regulatory penalties do not always take the economic value of a breach into consideration and it is quite often in a business' interests to pay the fine rather than comply. It noted that this is especially true where a business feels able to shrug off the reputational risk of prosecution. Baldwin and Black²⁴ found that excessive penalties (such as withdrawal of the licence to operate) are not effective as a deterrent where businesses believe they will not be applied. In a literature review on health and safety compliance, Amodu²⁵ notes that intensifying enforcement pressure is not always commensurate with enhanced compliance.

Importance of reputation

2.30 The literature we examined indicated that reputation and fear of bad publicity are extremely important as drivers for compliance – supporting the NAO finding that attracting and retaining customers is the top business priority. Reputation emerges as an extremely important factor influencing compliance and non-compliance across the studies we reviewed, appearing important to both large and small firms. We see that a number of agencies advocate the use of publicity to inform the public, and consequently to encourage improved levels of compliance.

2.31 The Food Standards Agency is harnessing this business motivation in efforts to improve hygiene standards in businesses. It is developing the

²³ Reducing administrative burdens: effective inspection and enforcement. Phillip Hampton March 2005 www.hm-treasury.gov.uk/d/bud05hamptonv1.pdf

²⁴ Baldwin and Black, op cit Page 9

²⁵ A research report on the determinants of compliance with laws and regulations with special reference to health and safety A Literature Review by Dr Tola Amodu for the Health and Safety Executive www.hse.gov.uk/research/rrpdf/rr638.pdf

Scores on the Doors scheme²⁶ whereby food businesses' compliance with food hygiene laws will be assessed and made available to the public via a website. Businesses will be encouraged to display prominently their hygiene rating score, and it is expected that those achieving a high score will willingly do so. The primary purpose of the scheme is to allow consumers to make informed choices about the places in which they eat and from which they purchase food, and through this, to encourage businesses to improve hygiene standards. There is some evidence from other countries that such schemes can contribute to improved compliance.²⁷

2.32 In other areas (for example where environmental issues are high on the business agenda) maintaining excellent relations and reputational capital with local communities can promote ongoing business success, whilst loss of reputation (for example, because of an environmental problem) can be damaging to the business. Research by Gunningham, Kagan and Thornton²⁸ showed that reputation within the community in which a business operates can encourage businesses to choose to go beyond compliance. The avoidance of adverse publicity was also noted as important to those included in the study, and the publication of environmental performance indicators and infringements was effective for driving compliance because of public pressure.

2.33 Amodu's research into determinants of compliance with health and safety law also highlighted the importance of reputation. The report

²⁶ Food Standards Agency web link to information on Scores on the Doors initiative
www.food.gov.uk/safereating/hyg/scoresonthedoors/

²⁷ Food Standards Agency, public written consultation on UK wide scores on the doors scheme on hygiene standards in food businesses
www.food.gov.uk/multimedia/pdfs/consultation/sotdeng08.pdf

²⁸ 'Social Licence and Environmental Protection: Why businesses go beyond compliance' Neil Gunningham, Robert A Kagan, Dorothy Thornton

refers to earlier research by Fisse and Braithwaite²⁹ which found that in 17 high profile cases studied, corporations feared the effects of adverse publicity and its reputational effects more than they feared the law. The HSE research³⁰ into how best to secure compliance with health and safety law found that virtually every respondent to a business survey agreed that reputation was the single biggest factor in how health and safety was seen, and hence how the businesses operated.

Business attitudes and commitment to compliance

2.34 In our literature review we noted a variety of features of individual businesses which might indicate a business commitment, or lack of commitment, towards compliance, and which might impact on actual compliance levels. These included:

- the moral case for compliance, and managers' values
- that some elements of compliance systems appear to contribute to good compliance management
- that a lack of alignment of business and regulatory goals, and the perceived fairness of the regulation can influence compliance levels.

2.35 Research for the ACCC³¹ found a moral obligation to observe the Trade Practices Act to be very important for substantive compliance management in practice. The HSE research also concluded that the

²⁹ Fisse B and Braithwaite J. *Corporations, Crime and Accountability* Cambridge University Press, Cambridge 1993.

³⁰ HSE, op cit.

³¹ 'What difference does a Regulator Make? Findings from the ACCC Enforcement and Compliance project' Christine Parker

www.compliance.org.au/www_aci/user/docs/Christine_Parker_Paper.pdf

moral case for compliance with health and safety regulation is one of the key motivational factors, and the report suggested that employers, either consciously or implicitly, recognise that regulations exist to ensure that they do not profit at others' expense. A study by Hutter and Amodu³² referred to considerable research showing that the moral stance of an organisation can lead to an institutionalization of certain practices and ways of seeing the law, which might promote compliant behaviour (where it is seen as the 'right thing to do' or the regulation fits with the business reading of the law) or non-compliance, for instance when the regulations are perceived as illogical or wrong.

2.36 The Australian research also indicated that implementation of some elements of compliance systems is positively associated with compliance management in practice. The following elements were particularly identified:

- written compliance policy. The research found that although a written compliance policy is often criticised as only a piece of paper, it is nevertheless important for compliance management in practice, probably because it indicates that senior management have taken the first step in commitment by choosing to communicate their policy to the organisation.
- dedicated compliance function. Putting in place a dedicated compliance function indicates that management is not only willing to state a formal policy of commitment to compliance, but are actually devoting resources to actively manage compliance. The research finds that hiring compliance staff will often be the key turning point in whether a company, once aware of the need to ensure its own compliance with the law, goes on to develop the capacity to do so effectively

³² Risk Regulation and Compliance: Food Safety in the UK by Professor Bridget M. Hutter and Tola Amodu September 2008 <http://new.wales.gov.uk/ecolidocuments/NCP/NCP.04219.pdf>

- other sets of controls identified as important for compliance management in practice include having 'a clearly defined system for handling compliance failures identified by staff, competitors, suppliers or the ACCC'. The inclusion of 'substantial training' in trade practices compliance for new employees, and external consultant review of compliance systems are also positively associated with compliance management in practice.

2.37 In our literature review, we noted that the degree of alignment of business and regulatory goals, and the perceived fairness of regulation has been said to influence compliance levels. For example, a National Audit Office report on fisheries³³ found that specific factors which might lead to non-compliance include regulations that may lead fishermen to act in ways which they regard as unnatural, such as having to throw fish back into the sea to preserve their quota. Baldwin and Black³⁴ commented that the 'unnaturalness' of throwing dead fish back into the sea was likely to undermine self-regulation through voluntary compliance, to lead fishermen to land such fish 'off-screen', and to fail to declare such catches.

Economic costs of compliance and non-compliance

2.38 The costs of compliance, ease of passing the costs to the consumer, and financial assistance for compliance are mentioned in a number of the reports discussed in this section as significant in influencing levels of compliance and non-compliance.

³³ Fisheries Enforcement in England: Report by the Comptroller and Auditor General HC 563 Session 2002-2003: 3 April 2003
www.nao.org.uk/publications/0203/fisheries_enforcement_in_engla.aspx

³⁴ Baldwin and Black, op cit. Further sources identifying disagreement with the regime as motivation for non-compliance can be found in Amodu, op cit.

- 2.39 Research by Parker and Lehmann for the ACCC³⁵ concluded that firms' perceptions of the costs and gains of compliance are an important part of the story that explains their compliance behaviour and that
- providing the regulator with the power to impose greater penalties for non-compliance would not improve compliance on its own. The research found that increasing the perception of the likelihood of detection is a more powerful way to change compliance behaviour than increasing perceptions of severity of sanctions
 - if businesses truly think that the gains to their business from compliance are high, then they will do more to implement good compliance management behaviours, even if this costs them a lot.
- 2.40 Another study by Parker and Lehmann³⁶ provides a detailed analysis of the factors which influence the businesses surveyed. The research concluded that overall, Australian businesses rate the costs of Trade Practices Act (TPA) non-compliance as quite high, especially the formal sanctions from enforcement action. However, they are also concerned about informal economic and social losses, especially in relation to customers, shareholders and employees. On the other hand, those who had breached the TPA reported that the gains of TPA non-compliance are fairly low.
- 2.41 The HSE research³⁷ notes that avoiding the costs of accidents, rising insurance premiums, and business incentives might, for example, all influence compliance with health and safety legislation.

³⁵ 'Deterrence and the Impact of Calculative Thinking' Christine Parker and Vibeke Lehmann Nielsen http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1527326

³⁶ 'How much does it hurt? How Australian businesses think about the costs and gains of compliance and non-compliance with the Trade Practices Act' Christine Parker and Vibeke Lehmann Nielsen Legal Studies Research paper 369 University of Melbourne

³⁷ HSE, op cit.

Size of business

- 2.42 A number of studies report that small businesses cannot keep up with the volume of regulations and regulatory guidance. For example, the Anderson Review³⁸ interviewed SMEs to establish their attitudes to compliance (primarily with health and safety and employment law, but also regulation more generally). The research found that a majority of the businesses met by the review team wanted to comply with their regulatory obligations, but considered themselves over-regulated and found that the pace of regulatory change made compliance difficult. The report also found that businesses wanted regulators to work with them to help them to comply, rather than having an excessive emphasis on enforcement.
- 2.43 Research into compliance with health and safety and food standards regulation also notes the challenges faced by smaller businesses in achieving compliance.³⁹ The Hampton⁴⁰ Report states that regulatory burdens are felt most heavily by smaller businesses and quotes a NatWest survey which claimed that a business with two employees spends over six hours per month per employee on Government regulation and paperwork, while a business with over 50 employees spends only two hours per month. The Hampton Report also refers to research by the Organisation for Economic Co-operation and Development which suggests that the same is true internationally, with businesses with fewer than 20 staff bearing a burden proportionately five times greater than businesses with more than 50 staff.

³⁸ The Anderson Review: Summary of meetings with small and medium sized enterprises (SMEs) www.bis.gov.uk/files/file49882.pdf

³⁹ Fairman and Yapp, op cit. and Amodu, op cit.

⁴⁰ Hampton, op cit.

Lack of awareness of the law, and the importance of clear, uncomplicated law

- 2.44 In a number of studies, levels of business compliance with regulation are shown to be related to the complexity of the relevant law, and the level of understanding. For example, research for the Food Standards Agency evaluating the effectiveness of enforcement approaches in SMEs⁴¹ found that one of the main barriers preventing compliance was a lack of knowledge and understanding of food safety requirements and principles. Amodu's research into determinants of compliance with health and safety law⁴² notes that '... regulated communities rarely, if ever, acquire a clear or comprehensive understanding of the regulations applying to them'.
- 2.45 Research by Fairman and Yapp⁴³ evaluating the effect of interventions upon compliance with health and safety legislation in SMEs found that businesses surveyed (SME hairdressing businesses) all believed that they complied with the law even though formal compliance levels (judged by independent assessment) indicated that in many cases, they did not. The research confirmed earlier research into compliance with food safety regulation⁴⁴ that businesses surveyed believed they were compliant until it was made known to them that they were not.

⁴¹ The evaluation of the effectiveness of enforcement approaches for food safety in SMEs by Charlotte Yapp and Robyn Fairman 27/08/04
www.food.gov.uk/multimedia/pdfs/e03003finalreport.pdf

⁴² Amodu, op cit.

⁴³ Making an impact on SME compliance behaviour: An evaluation of the effect of interventions upon compliance with health and safety legislation in small and medium sized enterprises by Dr Robyn Fairman and Charlotte Yapp, Research Report 366
www.hse.gov.uk/research/rrpdf/rr366.pdf

⁴⁴ Fairman and Yapp, op cit.

3 METHODOLOGY

Summary

- 3.1 The OFT has a wealth of enforcement experience acquired over many years and benefits from close working relationships with enforcement partners, such as TSS, the Advertising Standards Authority and industry regulators. We are also building a good picture, through OFT evaluation studies, of what happens when we make specific interventions. However, we need to complement that picture with a wider understanding of business behaviour, and we are therefore attempting to identify and analyse the factors which can potentially help or hinder business compliance with consumer protection legislation. We have sought to capture information from a wide variety of sources, and have used what we found in the literature review described in Chapter 2 to frame our research.

Business research

- 3.2 We commissioned Ipsos MORI to undertake qualitative research to hear from business about their understanding of consumer protection laws, and their efforts to comply⁴⁵. In autumn 2009 the researchers completed in-depth interviews with 44 businesses to investigate the general level of understanding of consumer protection laws, how businesses prioritise compliance issues, and the specific challenges of complying with OFT-enforced consumer protection laws. Interviewers asked how the businesses ensure that:
- advertising and product/service descriptions are truthful and provide sufficient information
 - contract terms and the obligations they involve are understandable and not unfair

⁴⁵ Drivers of compliance and non-compliance with consumer protection law: a report by Ipsos MORI commissioned by the OFT ([OFT1225a](#) June 2010)

- goods and services are as described, of satisfactory quality and fit for purpose, and services are provided with reasonable skill and care, and proper remedies are available if they are not
- lenders operate fairly within the framework of the consumer credit regime
- suitable protection is offered to consumer when booking and taking package holidays, and that
- consumers buying at a distance (for example over the internet) are given the appropriate information, cancellation rights and so on.

3.3 Research conducted by other agencies has highlighted that size of business is particularly relevant, with larger businesses being usually more able to dedicate resource to ensure compliance. Ipsos MORI interviewed 32 SMEs and 12 large businesses with the ratio mirroring the population of businesses in the UK. This also complemented our own stakeholder discussions, which were in the main with larger businesses and their representative bodies.

3.4 We focused the qualitative research on five sectors. The factors selecting sectors included levels of complaints and whether there were effective trade bodies which might be expected to generate business support and advice. The sectors selected were the sale and supply of:

- home improvements (including sale and installation of goods)
- furniture and floor coverings
- domestic appliances
- holidays
- assistive products.

- 3.5 Other research⁴⁶ has indicated that business location can impact enforcement activity, and so a geographic spread of business was sought across a number of urban and rural/semi-rural locations. The findings from the qualitative research are discussed in Chapter 4.
- 3.6 To complement the qualitative research and to explore further the deterrent effect of consumer enforcement on businesses, the OFT commissioned IFF Research (IFF) to conduct telephone interviews with a total of 482 mainly medium (50-249 employees) and large (over 250 employees) businesses.⁴⁷ To allow for comparison between sectors in which the OFT has intervened⁴⁸ (the 'target group') and sectors in which the OFT has not intervened (the 'comparison group'), the number of interviews were split as follows:

	Sector	Interviews achieved
'Target' group (233)	Retail of home improvements/DIY/carpets	95
	Furniture retail	32
	Clothing retail & dept stores	57
	Retail of holidays	49

⁴⁶ See, for example, Hutter and Amodu, op cit.

⁴⁷ Factors affecting compliance with consumer law and the deterrent effect of consumer enforcement Prepared for the Office of Fair Trading By IFF Research.

⁴⁸ The OFT uses a combination of intervention tools to fulfil its mission of making markets work well for consumers, including the enforcement of consumer protection law and the provision of information and advice to business. The sectors selected for this study were designed to examine approaches to compliance across a range of sectors. Whilst sectors are divided into 'target' and 'comparison' groups, in practice, there are likely to be instances of the OFT taking interventions across all sectors considered in the report.

'Comparison' group (249)	Entertainment retail	194
	Food retail	55
TOTAL		482

3.7 The respondents were screened to confirm that they were the person responsible for ensuring the business meets its obligations under consumer protection laws (generally the same OFT-enforced laws⁴⁹ as considered for the qualitative research). The interviews were conducted between January and February 2010 and followed a questionnaire designed to capture and where possible quantify the views from businesses about the following:

- their level of familiarity with consumer protection laws and cases which the OFT has enforced in the respondent's sector
- the perceived benefits of enforcement of consumer protection laws
- the factors that encourage compliance and those that make compliance with consumer protection laws difficult
- the risk of other businesses in the respondent's sector breaching consumer protection laws and, where relevant, the impact of the competitor's non-compliance on the respondent's business
- the perceived risk of OFT action and the effect of that risk on the respondent's business, such as whether modifications were made

⁴⁹ The definition of consumer protection law used by IFF Research in the quantitative research was "matters relating to ensuring advertising and product/service descriptions are not misleading, contract terms are fair, goods are fit for purpose and of satisfactory quality, services are provided with reasonable skill and care, consumers are provided with proper remedies when things go wrong, consumers buying at a distance (for example, over the internet) are not disadvantaged.

to advertising campaigns, product descriptions, contract terms or selling methods.

- 3.8 The findings of the quantitative research are also discussed in Chapter 4 with an analysis of how both pieces of commissioned research identify similar key drivers of compliance and non-compliance.

Stakeholder discussions

- 3.9 We held a series of discussions with stakeholders to broaden our understanding of why and how the vast majority of firms and individuals comply with consumer protection law, and the circumstances that lead to non-compliance. The stakeholders were assured that their comments would be non-attributable, so as to give them an opportunity to express their views and experiences frankly. The stakeholders interviewed included:

- enforcement and regulatory bodies
- compliance partners
- organisations with an interest in regulatory issues
- academics/researchers
- business representatives
- individual businesses.

- 3.10 These discussions helped us to shape our own research. We are grateful for the high level of cooperation and honest views which we received from all parties.

Other research

- 3.11 We have also reviewed other OFT research, for example the evaluations conducted by London Economics examining the extent to which our interventions have reduced assumed consumer detriment.⁵⁰

⁵⁰ London Economics, op cit.

4 FINDINGS

Key drivers of compliance and non-compliance

- 4.1 We have grouped the findings from the business research and our discussions with stakeholders into four broad themes:
- **The importance of reputation and the influence of consumer pressure.**
 - **Business awareness of, and attitudes towards, consumer protection laws.**
 - **Guidance and support.**
 - **The influence of competitor behaviour.**
- 4.2 Before presenting the results we should introduce two points of caution. First, these findings are not based on a legal assessment of the level of compliance with consumer protection laws on the part of any of the businesses involved in our research. Indeed, in the absence of a court finding, what amounts to a breach of consumer protection laws can be contentious and remains a matter of opinion, rather than settled law. Second, when considering motivations for compliance and non-compliance, it is important to acknowledge that these will vary greatly from business to business. The general patterns and relationships revealed in the research are important and useful, but we recognise that what drives or promotes the behaviour of a particular business can be complex and highly specific to the individual circumstances.
- 4.3 The business research also confirmed that our approach to compliance also needs to take into account the enormous variations in size, structure, and the markets in which they operate. As indicated, there cannot be a 'one size fits all' approach to encouraging compliance – it is important to understand the culture of the business, to be aware of its maturity and explore how it wants to receive information.

Theme 1: The importance of reputation and the influence of consumer pressure

- 4.4 The qualitative research and discussions with stakeholders indicate that consumers can play an important role in driving compliance by influencing business behaviour. First, businesses want to maintain a good reputation and therefore strive to provide customers with standards of service which comply with or go beyond the obligations provided by law. Second, pressure from consumers to assert their rights can directly influence business behaviour and help to ensure compliance.

Key finding 1. A desire to win and then retain customers means that many businesses are naturally focused on protecting their customer relationships and reputation for the quality of product they supply and/or the service they provide.

- 4.5 Business stakeholders told us that the need to acquire and maintain a good reputation by meeting consumer needs (and, for large companies, meeting shareholder expectations) is an extremely strong driver of compliance with consumer protection laws. Some suggested that for SMEs compliance is regarded as, in any case, the right thing to do to attract and retain customers, and that it is behaviour which is independent of their knowledge of the law. This was echoed by a representative of one large business who said that meeting the standards which customers want, and shareholders expect, is a far more important driver for business than compliance with the law as an end in itself.
- 4.6 The qualitative research indicated that attracting and retaining customers is the main business driver for most businesses interviewed (in line with the NAO findings referred to earlier). A large proportion of the businesses sampled believe that complying with consumer protection laws is integral to good customer service and a good

reputation, helping to ensure the continued success and growth of the business. In these cases, compliance with consumer protection laws appears to form part of a 'customer-focused' business approach. Many of the interviewees emphasised that good customer service was part of their 'offer' to consumers and sometimes contrasted this approach with that of those competitors who they felt competed more on price and less on quality of customer service. Several emphasised that their businesses were long established and that they placed great importance on repeat business. Reputation was more important than short term gain.

- 4.7 Failure to comply with the law and the possibility of therefore being subject to enforcement action was considered to have the potential to damage reputation. In all the research among businesses - the qualitative and quantitative research, and the stakeholder discussions - fear of damage to reputation was found to be a major incentive for both large and small businesses to comply. The qualitative research found that poor customer service experience can damage business because it can result in negative comments being passed on to other potential customers. A few businesses, because of their size and profile, felt they were also exposed to risk of adverse media comment and the consequent brand damage this could cause.
- 4.8 Some regulators and enforcement partners considered that, with reputation a major driver, it was crucial for businesses to avoid any adverse publicity. The quantitative research supports the finding that the risk of negative publicity and damage to reputation are important factors in encouraging businesses to comply with consumer protection laws.
- 4.9 The stakeholder discussions and the qualitative research supported the finding that many businesses are compelled by customer pressure and/or shareholder expectations to comply with regulatory requirements.
- 4.10 We consider that this finding on the importance of reputation and good customer service is significant. It implies that for many businesses

there is an intuitive acceptance and understanding that treating the consumer fairly is good for business, and that consumer protection laws are largely aligned with good business practice. This seems to be the case even for businesses where little is known about the detail of consumer protection law requirements.

Key finding 2. Informed consumers asserting their rights can have a significant impact on business behaviour and appear to be a key driver of compliance. The desire to satisfy consumers can therefore sometimes act as an incentive for businesses to meet or exceed the requirements of consumer protection law.

- 4.11 The research suggests that empowered and informed consumers play a role in driving business compliance with consumer protection law. It seems to us that this may happen in two ways: first, consumers may demand their rights from businesses who may not have provided them in the first place, and second, businesses may raise their standards to compete for consumers' attention. This second mechanism can lead to customer service standards that go beyond compliance with the law - for example, businesses that are willing to offer refunds for goods where a consumer has changed their mind regarding a product and the law does not give the consumer a cooling off period.
- 4.12 It is likely that the role of empowered and informed consumers is strongest in respect of the legislation which equates to everyday customer service standards. For example, consumers expect goods to be of a satisfactory quality and fit for purpose and this is a requirement of the Sale of Goods Act 1979. Where legislation is more complex, contains technical detail or is less intuitive in nature (for example, some aspects of the Distance Selling Regulations) then the typical consumer may be expected to be less knowledgeable.
- 4.13 Consumers' awareness of their legal rights was widely remarked upon by businesses interviewed in the qualitative research. Business respondents believe that consumers have become more aware of their

legal rights in recent years and that the source of this improved awareness is the media.

- 4.14 There was also a widespread perception among the businesses interviewed for the qualitative research that consumers' understanding of their rights is often incorrect, and that this creates unnecessary demands on businesses' time in terms of complaints that are without merit but nevertheless need to be dealt with.
- 4.15 Larger businesses often appear to have established systems which allow them to handle complaints. Some of the smaller businesses interviewed were reported to feel more pressure to settle customer complaints, even where they believed the complaint to be unjustified. A number of businesses interviewed emphasised that they would in future prefer to settle complaints with customers to avoid legal action, even if they did not believe the complaint to be justified. They said that they do all they can to avoid disputes with customers and keep customer relationships intact, thereby avoiding the costs and inconvenience of a legal case. The qualitative research report found some resentment among smaller businesses resulting from a perceived bias against business in consumer protection laws.

Theme 2: Business awareness of, and attitudes towards, consumer protection laws.

Key finding 3. In general businesses seek to treat consumers fairly although they may have a limited understanding of the law. SMEs in particular are likely to have less awareness of the detail of consumer protection laws, and how they can access relevant information to assist compliance. Larger businesses are more likely to understand the detail of the law but may have different drivers for not complying.

- 4.16 Nine out of ten respondents to the quantitative research agreed that 'Knowing we are doing the right thing for customers encourages us to comply with consumer protection laws'. This finding is supported by

the qualitative research, which found that businesses who took part sometimes described a sense of 'ethics' as driving their approach to treating consumers fairly. However, the qualitative research highlighted that this approach was often coupled with a limited understanding of the actual legal obligations.

Consumer Protection Laws

- 4.17 The quantitative and qualitative research found that there was a widespread acceptance of the importance of consumer protection laws. A number of businesses commented in discussions that the law was useful in setting a level playing field between competing businesses and respondents in the quantitative research said this was the main benefit of enforcement of consumer protection laws.
- 4.18 The qualitative research found that it was uncommon for respondent businesses to disagree fundamentally with consumer protection laws. However, the quantitative research respondents said the main factors which made compliance more difficult was that the regulations were over-complex, unfair, or out of tune with the needs of industry.
- 4.19 The qualitative research indicated that understanding of the detail of the law was variable and in many cases poor, with smaller businesses appearing less likely to have a good understanding. This was supported by the quantitative research finding that larger businesses reported greater familiarity with consumer protection laws. In the qualitative research, a few businesses, particularly SMEs, were candid about their limited knowledge. In the absence of a good grasp of the detail, many fell back on what they understood to be the general principles of consumer protection laws. This was sometimes articulated as compliance with the 'spirit' rather than the 'letter' of the law. We consider it a reasonable assumption that a lack of knowledge of the detail might increase the risk of non-compliant behaviour and possibly detriment, but through ignorance rather than intent.
- 4.20 The quantitative research interviewees were selected on the basis they were responsible for ensuring that their business complied with

consumer protection laws. It was therefore expected that a large proportion of those interviewed would report they were familiar with consumer protection laws. The research found that 79 per cent of interviewees reported they were 'familiar' or 'very familiar' with consumer protection laws (with 20 per cent regarding themselves as 'very familiar'). In line with the findings from the qualitative research, larger businesses were more likely to claim to be 'very familiar' with consumer protection laws and cases than smaller businesses. The numbers claiming familiarity with specific pieces of regulation fell further when asked about some particular pieces of regulation - for example 14 per cent considered themselves to be very familiar with the Unfair Terms in Consumer Contract Regulations, nine per cent with the Distance Selling Regulations, and four per cent with the Consumer Protection from Unfair Trading Regulations.

- 4.21 The quantitative research also found that over half of the businesses interviewed could not identify any specific consumer protection laws as being of relevance to their businesses' commercial behaviour. The Sale of Goods Act and the Trade Descriptions Act (the majority of its provisions are repealed) were the most regularly mentioned by respondents as of relevance (eight per cent each) with 'advertising standards' mentioned by only one per cent of respondents. A number of stakeholders said that parts of the law were unclear, and one stakeholder said confusion about who enforced the law resulted in misunderstandings between business and enforcers, and businesses and consumers.
- 4.22 In the qualitative research some businesses interviewed reported that the volume of regulatory requirements on them made it more difficult to comply. They also reported that the variety of enforcement agencies caused confusion, with little understanding of where to go for authoritative guidance. There was also concern among some stakeholders about the lack of clarity in particular pieces of legislation - for example, what exactly are consumers' rights in terms of the right to reject under the Sale of Goods Act. One stakeholder also mentioned the difficulty with interpreting what constitutes an unfair contract term (with lengthy guidance being unhelpful) and what constitutes truthful

advertising. It was felt that where law is simple, compliance will follow.

Guidance

- 4.23 There are a number of sources where businesses can obtain free guidance on consumer protection laws, including Business Link⁵¹ (a free Government service providing advice and support for businesses on a range of issues) and the Everything Regulation When You Need It (ERWIN) site⁵² which provides information on trading standards business related information. In addition, the OFT and other agencies provide detailed guidance on specific areas (such as OFT guidance on doorstep selling, advertising, offering credit and selling online or at a distance).
- 4.24 The qualitative research found that some respondent businesses (particularly larger businesses and those with relationships with TSS, trade or professional associations) were confident they would know where to obtain guidance on a consumer protection law issue. Many commented favourably on the importance of TSS and other bodies in providing guidance and advice. However, among some of the smaller businesses interviewed, in particular those without established relations with the TSS or other bodies, the qualitative research found there to be limited awareness of where information could be obtained. This is discussed further at paragraph 4.67 below.
- 4.25 Stakeholders considered that SMEs, in particular, expect to be told what they need to do rather than independently accessing information and guidance in order to find out. It was felt this may result in a poor

⁵¹ www.businesslink.gov.uk

⁵² www.everythingregulation.org.uk ERWIN is a collaborative project involving the Trading Standards, Environmental Health, Fire and Rescue (FRS) and Licensing services across the East of England. It has a wider scope within Trading Standards as the project has received support of all of the English and Welsh regional trading standards groups

understanding of consumer protection laws, which in turn may increase the risk of unintentional non-compliance. The quantitative research asked respondents how they heard about consumer protection laws and cases. Trade-specific communications channels were the most often quoted source. Almost half (49 per cent) of all respondents said that they heard about consumer protection laws and cases from their trade press and over a third (38 per cent) said they heard from a trade association. The next most commonly mentioned sources among respondents were Business Link (26 per cent) and TSS (with 16 per cent talking direct to TSS and 12 per cent visiting TSS websites).

Business size and compliance

- 4.26 The qualitative research found that larger businesses generally devote more resources to compliance than SMEs, and were more likely to have put in place programmes likely to promote compliance. The research highlighted various instances of good practice. Examples included:
- specialists employed at a senior level within the organisation with a responsibility for consumer protection law compliance issues
 - specialist teams for resolving consumer protection law issues
 - consumer protection law compliance procedures including measures such as branch inspections, weekly briefings to branches, and training programmes
 - use of support offered by external sources (such as TSS for advice and training, sector specific guidance offered by trade and professional associations, and advice provided by external lawyers or buying groups).
- 4.27 The qualitative research found that larger businesses and those in specialist roles appear to be the better informed on the areas of consumer protection laws covered by this report. The quantitative research also found that larger businesses were more likely than

smaller businesses to claim to be 'very familiar' with both guidance and specific pieces of legislation.

- 4.28 All the business stakeholders we spoke to were of the view that larger firms invest heavily, and to a far greater extent than SMEs, to achieve a high level of compliance. Such firms were considered to be more compliance conscious and have policies, procedures and staff training in place to minimise the risks to their reputation. Knowledge and awareness of consumer legislation is generally provided by in-house lawyers or compliance teams.

Organisational failure and human error

- 4.29 The qualitative research found that the failure of organisational processes can sometimes be a barrier to compliance. For example, two businesses attributed specific instances of non-compliance to individual members of staff failing to follow the correct procedure.
- 4.30 Business representatives and enforcement stakeholders shared the view that non-compliance often results from human error, the poor judgement of one individual in the organisation. For example, it was suggested that price indication failures are usually unintended mistakes caused mainly by logistical problems in ensuring the correct price is displayed in all branches. Poor communication was considered to be a driver of non-compliance, for example between an advertiser and its advertising agency or between management and staff.
- 4.31 Bad compliance practices by businesses in a sector can sometimes be followed by some of their competitors. For example, we were told by stakeholders that some businesses often copy another firm's terms and conditions rather than draft their own and therefore do not make appropriate checks to ensure compliance with the Unfair Terms in Consumer Contracts Regulations 1999. We assume that there could be a variety of reasons why this occurs, including the desire to minimise compliance costs.

Competing/conflicting regulatory demands

- 4.32 Some stakeholders said that businesses often need to juggle the demands of separate pieces of legislation which are administered by different enforcers and regulators. This can place a strain on the resources available to deal with compliance matters and result in some inevitable prioritisation based on where non-compliance may have the most serious consequences for the business, for example health and safety legislation. Instances of non-compliance with consumer protection laws may therefore occur despite the desire of a business to meet its legal obligations.
- 4.33 In addition, some business stakeholders said that interpretations of consumer protection laws by enforcers can occasionally be ambiguous or differ from the business' own interpretation of the law. Clarity of interpretation and consistency of approach by enforcers and regulators was seen as very important.

Business model

- 4.34 Some stakeholders considered that different types of business models can impact on compliance. For example, where business models are driven predominantly by price, sales volumes and individual sales targets, there may be a greater incentive to give compliance a lower priority or make minimal investment in complaints handling. In contrast, business models that place more importance on quality of service, customer satisfaction and customer loyalty are likely to help drive compliance.

Changes in the law

- 4.35 The qualitative research also indicated that for some businesses, especially SMEs, the difficulty of keeping up with the pace of change in consumer protection laws can contribute to a lack of business awareness, and is therefore a potential driver of non-compliance.

- 4.36 Taking an economic perspective, we assume businesses need to decide how much to invest to make sure they are continually up to date with regulatory requirements. Difficult choices may sometimes need to be made between the costs of ensuring continued compliance (updating training, procedures and in-house guidance material) and the possible results of non-compliance (reputational damage, financial penalties, costs etc) if it is detected.
- 4.37 For SMEs this decision, as with the issue of competing regulatory demands, may mean a careful calculation of the benefits and risks which may override the desire 'to do the right thing'. Based on this assumption, it is our view that keeping abreast of changes to the law is therefore an area where the support of trade associations, TSS and other information providers is likely to be particularly welcome.

Disagreement with the law

- 4.38 As mentioned above, the qualitative research and stakeholder discussions indicated a broad acceptance of the value of consumer protection laws and little outright opposition. This was reinforced by findings in the quantitative research where only 28 per cent of respondents failed to identify any benefits from enforcement of consumer protection laws. In the qualitative research, there was, however, a perception amongst some that consumer protection laws can be biased in favour of the consumer. The qualitative research also found some disagreement with particular features of the law, for example the rights of consumers to return goods under the Consumer Protection (Distance Selling) Regulations 2000 were specifically mentioned as being overly generous to the consumer as compared to the business.
- 4.39 In the quantitative research the joint second highest factors quoted by businesses as making it more difficult for them to comply with consumer protection laws were that some regulations were 'unfair' and that regulations were 'out of tune' with the interests of industry. Together these indicate that some businesses feel the requirements of

consumer laws do not take sufficient account of the way in which they need to run their businesses.

Wider market pressures

- 4.40 One stakeholder considered that the temptation for SMEs to cut corners on compliance issues to maximise profit is greater than it is for large businesses. Another stakeholder said that some large businesses feel they will not sell anything unless a discount is given and that such a perception can potentially lead businesses to mislead on price ('fictional discounting').
- 4.41 Some stakeholders considered that the relationship between larger businesses and their suppliers meant that it would be less costly for them to comply with the Sale of Goods Act 1979, as they were presumed to be in a stronger position than SMEs to negotiate with their suppliers for the recovery of the costs of goods returned by consumers. However, this finding was not supported by the qualitative research, where a number of businesses, irrespective of size, reported that relationships with suppliers can be challenging. Many businesses were reported to accept the relationship as part of commercial life, but some were said to see their obligations to consumers as contributing to an imbalanced relationship where they felt squeezed between suppliers and consumers. This was seen to be particularly significant in markets where the manufacturers had the resources and market power to push back on retailers who tried to return products up the supply chain. This problem was reported even by large retailers.

Influence of policy agenda

- 4.42 Business representatives considered non-compliance could be driven by policy agendas and constantly changing priorities at both national and local government level. It was argued that laws which were introduced without adequate consultation as a result of wider political agendas (for example, the law on knife sales) did not always take into account marketing practices or the impact on business costs. Furthermore, it was suggested that enforcement action for breaches of such legislation

was not always consistent because of differing resource pressures across local authorities.

Key finding 4. Fear of enforcement action acts as a driver for compliance even though there is, across all business, evidence of low levels of awareness of the details of enforcement activity and the potential consequences of non-compliance.

- 4.43 We were told in stakeholder interviews that regulators and enforcers publicise their interventions because, in part, of the powerful deterrent effect on other businesses. However, we also heard from one enforcement body that prosecutions alone do not drive up levels of compliance. This is because businesses often do not identify their own behaviours with those of the prosecuted business and are therefore not motivated by awareness of prosecutions to examine their own procedures.
- 4.44 The qualitative research showed that among businesses interviewed, there was a low level of awareness of OFT and TSS enforcement actions. Most businesses could not identify examples of enforcement action in their sector or locality. A few of the interviewees said that they had heard of enforcement action through, for example, trade magazines that they received, but awareness levels were still low. This is supported by evidence from the quantitative research which found that only one per cent of businesses when unprompted were able to mention any **relevant** (emphasis added) OFT enforcement cases.
- 4.45 One stakeholder commented that even where there is little awareness of actual enforcement activity, an awareness of the powers of enforcers, can still act as a deterrent. We have already noted that the qualitative research indicated that it is very important for businesses to avoid adverse publicity associated with enforcement and the potential effect on reputation. Concerns about publicity are likely to enhance the deterrence effect of enforcement actions. This was echoed by an enforcer who considered that SMEs, in particular, perceived a greater risk of inspection, fines and sanctions than perhaps exists.

- 4.46 The qualitative research found that there was considerable misunderstanding and confusion amongst businesses interviewed regarding the exact consequences of a breach. The penalty for non-compliant behaviour was widely thought to be fines. However, there was little understanding of how large the fines might be or the circumstances in which they might be imposed. (The OFT's consumer enforcement powers are described at paragraph 2.11 above.)
- 4.47 The qualitative research found a lack of awareness and confusion around the consequences of breaches of legislation and the types of possible enforcement action. This impacted on businesses' views of the likelihood of action being taken, either against themselves or others, with several businesses interviewed believing that enforcement action was unlikely. It was also felt that even where companies were found to have breached the law they would not be highly penalised.
- 4.48 Nevertheless, the quantitative and, in particular, the qualitative research has highlighted that the fear of enforcement action can act as a driver of compliance. Whilst the majority of respondents in the qualitative research said they were unaware of enforcement action being taken by the OFT or TSS (and were also confused about the possible consequences of such action), a significant number still cited the potential negative consequences of breaching the law as a driver of compliance. In the quantitative research 90 per cent of respondents were unable to name any decision or case that had an effect on their business. While the risk of enforcement action by the OFT is perceived as moderate, the risk of action from the TSS is perceived to be greater.

Finding 5: Compliance with consumer protection laws is low on the list of priorities for some businesses

- 4.49 Some stakeholders explained that businesses need to balance and prioritise the competing demands of different regulatory requirements and allocate resources accordingly. We were told that how businesses prioritise compliance with particular legislation would depend very much on the sector. For example, a manufacturing business would be

likely to regard health and safety compliance as the highest priority, while a business offering financial products would focus on financial services legislation.

- 4.50 The quantitative research highlighted that consumer protection laws came overall fourth on a list of regulatory priorities for businesses behind health and safety, employment law and food standards and only 30 per cent of respondents mentioned it as one of their top three regulatory priorities.
- 4.51 The qualitative research found larger businesses are generally able to allocate more resource to the range of compliance issues including consumer protection laws. Interviewees from larger businesses were often employed in specialist roles within the organisation and had specific responsibilities for compliance issues.
- 4.52 Approximately half of the businesses in the qualitative research did not regard compliance with consumer protection laws as a top priority. A number of reasons for this emerged:
- problems involving consumer protection laws have not affected them
 - the belief that good customer service makes consumer protection laws irrelevant
 - competing compliance obligations are seen as more urgent or important and the consequences of those breaches are more severe when compared with consumer protection laws
 - dealing with consumer protection law issues is not a core part of the interviewee's job
 - consumer protection laws are subsidiary to professional standards or obligations
 - a significant part of their business is business to business rather than business to consumer.

- 4.53 The most common reason was that the business had never needed to engage with consumer protection laws or become familiar with its requirements. It is likely that this was either because the business had not received consumer complaints, or if it had, the complaints had been resolved to the consumer's satisfaction without recourse to the law. The qualitative research found that the priority afforded to the provision of good customer service means that many businesses interviewed regard knowledge of the detail of consumer protection laws as unnecessary to achieve broad compliance, or even irrelevant. To some extent, this is supported by the quantitative research which found that a half of the respondents admitted to having no budget over the previous year to ensure compliance with consumer protection laws and only 10 per cent had a budget of over £10,000.
- 4.54 It is worth noting that the some stakeholders took a wide view of what constitutes consumer protection laws. They saw it as more than the 'fair trading' legislation and defined it as encompassing health and safety, food and product safety and environmental law. This is a reminder that we cannot assume that terminology is used uniformly among businesses and enforcers.

Theme 3: Guidance and support

- 4.55 The qualitative research identified the importance of the role of the TSS in providing advice to businesses on compliance with consumer protection laws. Businesses that said they had a relationship with TSS stressed the role this played in providing them with guidance and information.
- 4.56 Trade associations were again confirmed as an important information source for businesses on their duties and obligations to consumers under consumer protection laws. Trade associations can offer information targeted at their members' specific needs as well providing updates on changes to legislation. Trade associations can also drive compliance by providing model terms to be used in consumer contracts. This is illustrated by ABTA's work in improving standards in the package travel market through the use of model terms.

Key finding 6. Some businesses rely heavily on their relationships with TSS and/or trade associations while others rely increasingly on the internet for the information they need.

- 4.57 One of the key findings of the qualitative research is the importance of good relations with the TSS, trade associations and other professional bodies in promoting levels of compliance.

Trading Standards Service

- 4.58 Businesses interviewed in the qualitative research that had relationships with the TSS (approximately one third of those interviewed) tended to be positive about the level of support that was available. This was mirrored by the findings from the quantitative research which found that 36 per cent of respondents had contact with their local authority Trading Standards Service over the past year. The qualitative research found that TSS support might take the form of one-off instances of advice on a particular issue, or a more routine ongoing relationship. Businesses that had such relationships with the TSS reported that they often consulted their established contact point

on a variety of compliance issues. The benefits of a relationship with the TSS included access to authoritative advice, impartial conciliation and (for larger businesses) a co-ordinated approach to dealing with TSS.

- 4.59 The importance and value of a good relationship with their local or 'home authority'⁵³ trading standards was emphasised in discussions with business stakeholders and their representatives. We were informed of research⁵⁴ which found that, for some SMEs, regulatory visits are viewed as compliance advice sessions rather than regulatory inspections. These are therefore valued and not seen as a burden.
- 4.60 Business representatives considered it important to have a relationship with trading standards which allowed businesses and enforcers to work together in an effective, informal and speedy way to address any issues. One business stakeholder considered that the key to a good relationship with TSS is that the officers should have a good understanding of commercial issues and how a business is run.

⁵³ The Home Authority Principle helps to ensure a single local authority Trading Standards Service takes responsibility for advising and liaising with businesses that operate in more than one local authority area. Part 2 of the Regulatory Enforcement and Sanctions Act 2008 establishes a statutory Primary Authority Partnership Scheme across the UK for business that operate across local authority boundaries, with each authority exercising the same regulatory functions, as specified. The regulatory functions of trading standards are covered. The Local Better Regulation Office (LBRO) has responsibility for the administration of the scheme. Under the scheme, in certain circumstances, the LBRO may nominate a local authority to be the "primary authority" for the business. A primary authority is responsible for giving advice and guidance to the partner business or organization and is also responsible for giving advice and guidance to other local authorities about how they should exercise the relevant function(s) in relation to that business or organization.

⁵⁴ Review and assessment of the methodology of the Retail Enforcement Pilot (REP) in a business environment. May 2009: Report submitted to the Local Better Regulation Office by the Centre for Regional Economic Development. Authors Prof. Frank Peck, Dr Simon Parry, Keith Jackson, Jacqui Jackson

- 4.61 Some business stakeholders also described how they valued being able to informally ask a trading standards officer for advice on particular issues or problems they were having with consumers. Some businesses said they felt supported when dealing with difficult problems regarding their compliance with consumer protection laws.

Trade associations and professional bodies

- 4.62 The qualitative research also highlighted the value attached by business to membership of a trade association. Benefits of trade association membership were said to include:
- access to accurate, sector-specific information on business obligations
 - regular updates on legislative changes
 - a way of isolating 'cowboys' in the sector.
- 4.63 The qualitative research indicated that members of trade associations said that they would generally turn to their association for advice in the first instance. Trade associations often provided a package of services which businesses found useful such as an audit or inspection of procedures, and the provision of standard template terms and conditions. This was supported by the quantitative research which found that in a list of sources where business obtained information from trade associations received the second highest response (38 per cent) after the trade press (49 per cent).
- 4.64 Both business representatives and enforcers said that trade associations acted as a valuable resource for businesses and were proactive in promoting compliance. Respondents to the qualitative research also identified professional bodies and external lawyers as important sources of advice, guidance and information.
- 4.65 Discussions with stakeholders highlighted that they believed the OFT would benefit from greater partnership working. It was suggested that closer collaboration with regulators, other enforcers, trade

associations, compliance partners and self-regulatory schemes (for example Consumer Codes Approval Scheme, TrustMark etc) might help drive compliance.

The internet as a source of information

- 4.66 The qualitative research found that around two thirds of those interviewed did not have a relationship with the TSS. Those without such a relationship were reported to view the TSS and the OFT in a less positive way, and to be wary of entering into such a relationship. The causes for this concern were reported to be difficulties in getting access, reliability of response and consequences that might flow from seeking to use the services of the TSS. In particular, a concern was expressed that by getting in touch, there was a risk of 'opening a can of worms', and they feared the prospect of inspection should they approach the TSS for information or advice.
- 4.67 The qualitative research found for those that did not seek advice or guidance from sources such as trade associations, external legal advisors or the TSS, the internet was mentioned most frequently as a means of accessing information. Some businesses said that they would seek help by using key search terms (for example, by searching for 'Sale of Goods Act'), while others said that they would go to a specific site and those mentioned included TSS, the OFT, the Department for Business, Innovation and Skills, the Better Regulation Executive and Business Link. Those who were less informed about consumer protection laws often mentioned using search engines such as Google to seek advice on particular issues. Internet searching by business sometimes appears to be random in nature and there was no clear message from respondents on which sites offered the best advice and information.

Theme 4: The influence of competitor behaviour

- 4.68 The role of competitor businesses on compliance behaviour appears to be mixed and has been identified as both a potential driver of compliance and non-compliance. In some instances businesses identified the need to keep up with competitors who offered protections to consumers which went beyond those offered by law. In such instances competition was seen as a positive force in driving compliance.
- 4.69 However, there was some evidence from stakeholders that where businesses pushed at the limits of consumer protection laws or committed breaches, and this was not addressed by the relevant enforcement agency, then the risk of competitors adopting similar tactics in order not to lose ground was increased. This could contribute to non-compliant behaviour becoming endemic in some markets.

Key finding 7. Competitor behaviour, and practices which become the norm in a market, can impact on compliance levels and may act as a driver for both compliance and non-compliance.

- 4.70 Discussions with stakeholders revealed that they believed competitive markets in themselves act as a driver of compliance with consumer protection laws. One business representative stated that intense competition in the retail sector is the main driver for providing what the consumer wants, and in turn aids compliance with consumer protection laws.
- 4.71 This was further supported by the views of other stakeholders that competing for customers drives businesses to provide consumers with rights that go beyond the legal minimum. The retail sector is highly competitive and if customers are not satisfied they can easily go elsewhere.
- 4.72 One enforcement body considered that competitive markets could also act as an effective control mechanism for businesses to comply, as competitors readily monitor and complain about each other. BERR

research⁵⁵ found that although businesses find regulation both beneficial and constraining, SMEs particularly valued a regulatory framework which helped maintain a level playing field.

- 4.73 It was suggested by some enforcers and compliance partners⁵⁶ that in response to a fiercely competitive market, some businesses may be driven to test the boundaries of law. Similarly the qualitative research found that in challenging economic times the risk of breaches of consumer protection laws could be increased. For example, businesses might move towards dubious comparative advertising in an attempt to secure a greater market share.

⁵⁵ *The Impact of Regulation on Small Business Performance: Understanding and Capturing the Direct and Indirect Effect of Regulation* www.berr.gov.uk/files/file35696.ppt

⁵⁶ OFT Compliance Partners include self-regulatory bodies, statutory enforcers, industry funded self-regulatory and co-regulatory bodies, code scheme operators (OFT approved and non-OFT approved) trade and business associations. OFT seeks to encourage partners to act as a first port of call for resolving compliance issues and looks at alternative ways of bringing about compliance rather than dealing with matters always through the criminal or civil courts. Download the [Compliance partnerships consultation](#) (pdf 196 kb)

5 NEXT STEPS

- 5.1 The OFT is looking at ways in which it can further promote compliance with the consumer protection laws it enforces. We are working within tight constraints on resources and we are therefore seeking to ensure that we are better placed to take decisions and to perform our functions more efficiently and effectively.
- 5.2 The OFT has powers to intervene when there are breaches of the consumer protection laws detailed in Chapter 2. It also has a function of promoting good practice amongst those whose activities affect the economic interests of consumers. Its role is therefore a combination of promotion and enforcement: effective action to promote compliant business practice, together with appropriate enforcement action to end non-compliant behaviour.
- 5.3 The OFT therefore seeks to work with businesses and their representatives to spread good practice and deter non-compliant activity. OFT provides guidance and information to businesses about consumer protection laws, and aims to deter breaches of the law before they happen, believing that prevention is better than cure.
- 5.4 The aim of this study was to provide a better factual evidence base to inform our decision-making and to perform our functions effectively. The research findings will contribute to our day-to-day work diagnosing problems in the marketplace and developing strategies to remedy them. They will also guide us in promoting compliance.
- 5.5 The findings suggest that there are good prospects for the OFT to work with businesses and their representatives to increase compliance. The research indicates that businesses generally have an intuitive, working understanding of what constitutes fair trading and that consumer protection laws are largely aligned with good business practice. Furthermore, firms readily point to their desire to build and preserve reputation as a factor that drives their adherence to the law, which means that they see compliance as commercially good for business. We hope to be able to harness this natural alignment by

working with the grain of retail business practice and to enhance it by finding ways to increase understanding of the more difficult elements of the law.

- 5.6 Over the coming months we shall be discussing our findings with business, consumer and enforcement stakeholders. Our aim is to work towards formulating a policy statement which sets out our practical approach to promoting compliance.
- 5.7 In particular, we shall explore the following:
- Delivering messages to consumers in more varied and user friendly formats to equip consumers with knowledge of their rights.
 - How the OFT can support stakeholders to deliver messages to businesses, especially SMEs, on consumer protection laws and consumer rights.
 - How businesses (especially SMEs) access information and how we can raise awareness levels of the consequences of breaching consumer protection laws.
 - How to improve businesses awareness of the laws and regulations that are hard to understand or contain difficult detail.
 - How to harness the business desire to build and maintain reputation, and their intuitive approach to fairness, in order to raise the awareness and priority of consumer protection laws.
 - How to identify which tools can best address non-compliance where it has become an accepted market practice.
 - How to enhance the deterrent effect of enforcement actions.
- 5.8 The OFT is already engaged in a wide range of work aimed at improving compliance such as enforcement action in respect of consumer protection laws, promoting self-regulation, delivering consumer awareness and education programmes, and engaging with

business to increase its understanding of the law (see Annexe for further details of our current work).

- 5.9 We would welcome views from business, consumer and enforcement stakeholders on the findings of this study and on how to develop our work promoting compliance. We ask that any comments should be submitted in writing by 3 September 2010 to:

Policy Report: Consumer Law and Business Practice
Policy Group – 3C20
Office of Fair Trading
Fleetbank House
2-6 Salisbury Square
London
EC4Y 8JX

Fax: 020 7211 8757

Email: gordana.cumming@oft.gsi.gov.uk

- 5.10 This is not a formal consultation exercise which complies with the Code of Practice on Consultation but an attempt to provide a clear route of communication for all those who read the report and wish to comment. We are still in the very early stages of policy development and will keep under review the need for formal consultation.
- 5.11 Any personal data received will be processed in accordance with the Data Protection Act 1988. All information received (including personal data) is subject to Part 9 of the Enterprise Act 2002. We may choose to refer to comments or information received in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, as far as that is practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, would or might, in our opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, that information should be marked 'confidential'

information' and an explanation given as to why you consider it is confidential.

- 5.12 Please note that information provided, including personal information, may be subject of requests from the public for information under the Freedom of Information Act 2000 (FOIA). In considering such requests for information we will take full account of any reasons provided by respondents in support of confidentiality, the Data Protection Act 1998 and our obligations under Part 9 of the Enterprise Act 2002.
- 5.13 If you are replying by email, these provisions override any standard confidentiality disclaimer that is generated by your organisation's IT system.

A EXISTING OFT WORK AIMED AT DRIVING COMPLIANCE

Self regulation

- A.1 We are committed to working with self-regulation⁵⁷ where doing so can assist in our mission to make markets work well for consumers. Effective self regulation can help raise compliance levels. Under the OFT's Consumer Codes Approval Scheme (CCAS), we approve consumer codes of practice, administered by trade bodies (usually trade associations) which meet our criteria on matters such as the use of clear contracts, procedures for dealing with consumer complaints, low cost and independent redress mechanisms and prepayment protection among others. The OFT has also worked in partnership with trade associations to address particular trends in markets which cause consumer protection problems, such as working with ABTA to address misleading holiday and travel pricing and working with code sponsors to increase compliance with new laws governing doorstep selling.
- A.2 The OFT supports the Local Authority Assured Trader Scheme Network, which assists the development of assured local trader schemes. These are types of self-regulatory schemes with businesses voluntarily signing-up to best-practice rules
- A.3 OFT market studies have often considered self-regulatory activity within the markets being investigated. Recommendations from market studies have also led to changes to consumer codes, and the creation of new self-regulatory bodies with the aim of increasing compliance and consumer confidence in markets.
- A.4 The OFT has worked with trade associations to better understand the business perspective on issues causing consumer detriment and to

⁵⁷ See OFT's *Policy statement on the role of self-regulation in the OFT's Consumer Protection work* [Sept 2009] www.of.gov.uk/shared_of/reports/consumer-policy/oft1115.pdf

improve their guidance to member businesses such as through improvements to model terms. In December 2008 the OFT issued 'Compliance partnerships: an OFT consultation on developing the use of 'established means'', which proposed a draft set of principles that the OFT will apply when working with partners to maximise compliance with the Regulations. These include that compliance partners will be able to display certain characteristics and that the partner best placed to act will do so.

- A.5 The policy seeks to encourage bodies such as OFT approved code sponsors and other trade associations to act as a first port of call for resolving compliance issues in addition to recognised established means such as the Advertising Standards Authority (ASA). It looks at alternative ways of bringing about compliance outside of the traditional statutory framework for enforcing the law.
- A.6 We received a positive response to the consultation and stakeholders broadly welcomed our innovative approach and felt the principles at the heart of the policy provided a strong foundation. A response to the consultation and the revised policy was published in July 2009⁵⁸.

Business engagement and compliance

- A.7 The OFT is currently working to engage more closely with business organisations and individual businesses with the aim of increasing the impact of OFT's enforcement and compliance activity, especially in relation to consumer protection laws.
- A.8 The OFT also provide guidance, advice and information to businesses about consumer protection laws to encourage compliance. Published guidance for businesses includes information about distance selling, consumer credit, unfair contract terms and more recently the Consumer Protection from Unfair Trading Regulations 2008 (CPRs).

⁵⁸ www.offt.gov.uk/shared_offt/reports/consumer-policy/oft1115.pdf

A.9 The OFT is working in partnership with industry to develop a campaign to increase front line sales and consumer support staff's knowledge of the Sale of Goods Act (1979). A suite of educational and training tools are being developed to enable businesses to provide a more informed service to consumers.

Consumer campaigns and education

A.10 Well informed and empowered consumers act as a positive stimulus to competition between businesses. The OFT's consumer campaigns to highlight consumer rights help increase consumer knowledge and awareness. The OFT has run a number of campaigns on topics such as doorstep selling and distance selling which all seek to raise consumers' awareness of their rights.

A.11 The OFT also runs a consumer education package, 'Skilled to go', which is targeted at adults on further education literacy and numeracy courses. 'Skilled to go' helps to develop transferable consumer skills, knowledge and confidence.

A.12 The OFT has also been working closely with the Department of Business, Innovation and Skills (BIS) to develop and implement the 'Know Your Consumer Rights' campaign to increase consumers awareness of their rights.

Consumer Direct

A.13 Consumers also receive help in exercising their rights through Consumer Direct (CD), a government funded service managed by the OFT which provides clear, practical and impartial advice on a broad range of issues. Its objective is to empower people with the knowledge, tools and confidence they need to resolve problems for themselves. CD offers advice and information on consumer rights at all stages of the transaction (before, during and after), including advice on how to solve specific problems. It will refer consumers to partner organisations (for example TSS and Consumer Focus) where intervention or more complex advice may be required. It will also signpost consumers to other

organisations (for example Citizens Advice) better placed to give advice on specialist subjects.

- A.14 In 2009 CD advisors answered more than 1.5 million calls and emails and recorded almost 850,000 complaints against businesses by consumers.⁵⁹

OFT/TSS Partnership working

- A.15 The pre-Budget report in December 2005⁶⁰ outlined new functions for a strengthened OFT, which were further developed in the 2006 Budget. The OFT Trading Standards Partnership Team consulted extensively with TSS and developed the OFT/TSS Programme of Joint Action to try to address strategic problems that they raised with us. Engagement between TSS and the OFT is channelled through the Trading Standards Partnership Team and case support enquiries are handled via our Preliminary Enquiries Team.
- A.16 The OFT works with others to produce an annual UK Strategic Threat Assessment that helps TSS to concentrate activity where consumer detriment is highest; such activity can include raising business awareness. As highlighted in the report the relationship between a business and a TSS can be instrumental in helping raise understanding of obligations rights under consumer protection laws.

Enforcement of consumer protection laws

- A.17 The OFT enforces a range of consumer protection laws to protect consumers from unfair practices and other instances where businesses disregard their legal obligations. We aim to ensure that any interventions deliver high impact results, for example, by changing market behaviour, clarifying laws or providing the necessary level of deterrence to those

⁵⁹ www.consumerdirect.gov.uk/news/press_releases/national/2010/2009top10

⁶⁰ www.hm-treasury.gov.uk/prebud_pbr05_repindex.htm

who would deliberately flout their legal obligations. We take a risk-based approach, prioritising our actions to ensure resources are used to maximum effect and to avoid burdening business with the costs of unnecessary interventions. Our aim is to be as robust as necessary to gain compliance while allowing maximum freedom for effective competition within the law. Our approach to enforcement is outlined in our Statement of Consumer Enforcement Principles.⁶¹

⁶¹ www.ofc.gov.uk/ofc_at_work/enforcement_regulation/enforcement/