

Review of online enforcement

Internet shopping - Annexe G

June 2007

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OFT market study on internet shopping: review of online enforcement - TSS questionnaire analysis

In total, 204 questionnaires were sent out to Local Authority Trading Standards Services (TSS). Of these, 70 had been returned by 13 July 2006. This represents a response rate of 34 per cent. Table 1 shows the response rate by Government Office Region (GOR). It can be seen that Scotland had the highest response rate (not including Northern Ireland as it only has one TSS).

<i>Table 1: GOR</i>	<i>Questionnaires returned</i>	<i>Total number of TSS</i>	<i>Response rate (%)</i>
Northern Ireland	1	1	100
Scotland	20	31	65
South West	8	15	53
South East	8	19	42
East of England	4	10	40
North East	5	13	38
West Midlands	5	13	38
Wales	6	23	26
East Midlands	2	9	22
London	7	32	22
Yorkshire and The Humber	2	13	15
North West	2	22	9
Other ¹	0	3	0
Grand total	70	204	34

The following analysis is based on the 70 returned questionnaires. Where a particular question has some non-respondents, the percentage quoted (rounded to the nearest whole number) is based on the total who did respond to that question.

¹ Guernsey, Isle of Man and Jersey.

Internet-related guidance and compliance strategies

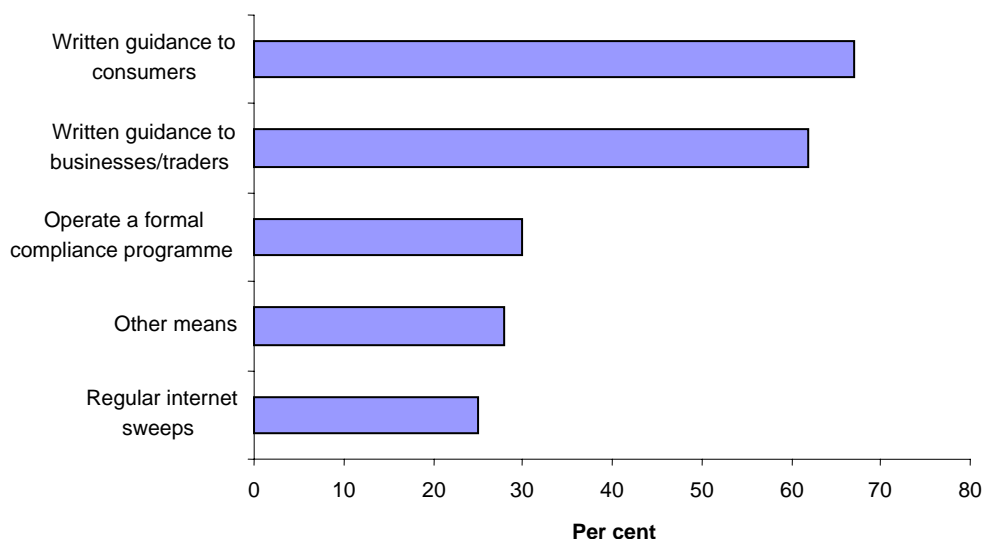
The TSS were asked what priority their authority gives to ensuring compliance with the relevant regulations by internet traders as compared with High Street traders. The split between those who give internet traders higher priority and those who give lower priority was fairly even (27 per cent and 24 per cent respectively). The remaining 49 per cent give them equal priority.

The TSS were asked about what proactive steps were in operation to ensure compliance regarding internet purchases. The most popular form of activity in operation was written guidance to businesses and consumers. Two thirds of TSS published written guidance to consumers; with 62 per cent publishing written guidance to businesses/traders (see Chart 1).

Only 30 per cent of TSS said that they operate a formal compliance programme regarding internet traders based in their authority; with only 25 per cent undertaking regular monitoring using internet sweeps. Twenty eight per cent of TSS said that they undertook regular monitoring of online traders using other means.²

² There was not space on the electronic version of the questionnaire to give examples of 'other means'. One respondent who sent in a hardcopy of the return wrote 'Newspaper ads often have web addresses/emails. Local publications that is, visitor guides.' It is unclear exactly what is meant by this and it is something that can be followed up in the Enforcers' Workshop.

Chart 1: Practical steps taken by TSS to ensure compliance regarding internet purchases



Case recording system/database

When asked if they could search/extract data on investigations regarding internet sales, 48 per cent of TSS said they could and 52 per cent said they could not.

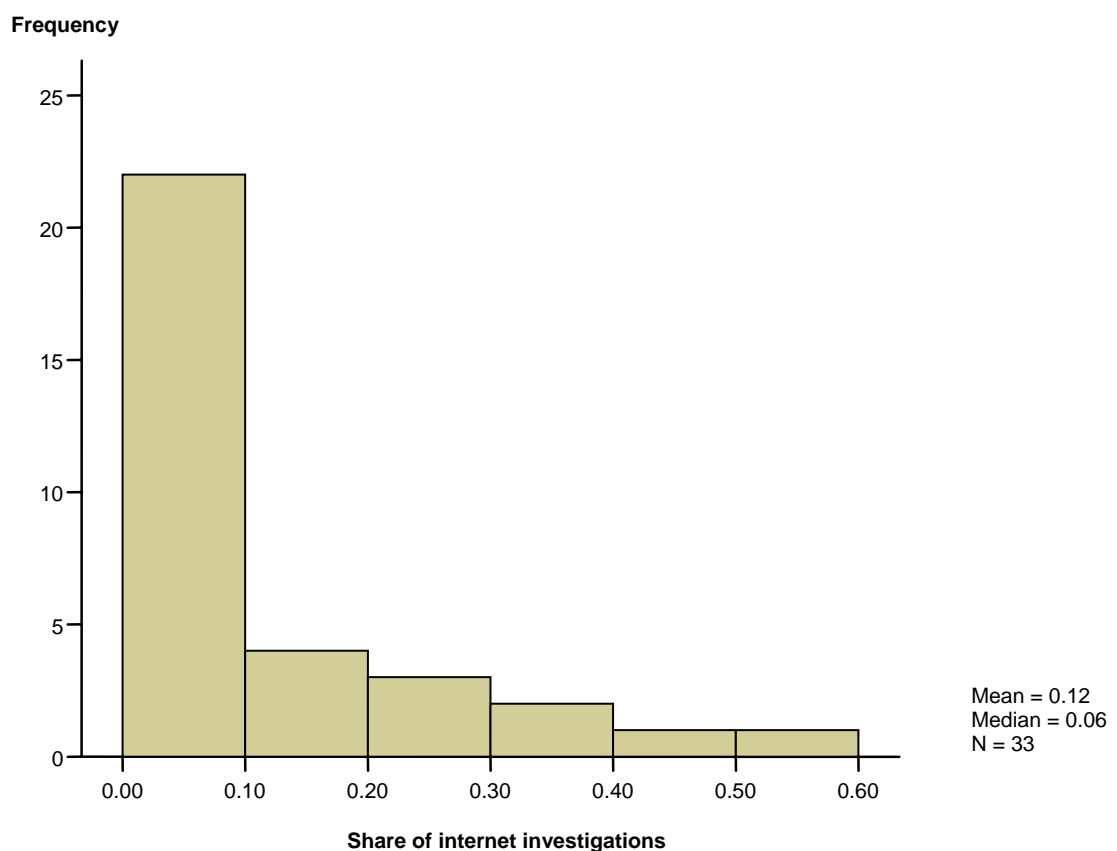
The TSS were asked how many investigations they launched in total in 2005 and how many were related to internet sales. Around half of respondents did not answer either of these questions. Less than half of those respondents who said they could search/extract data on investigations regarding internet sales actually responded to these questions. In fact, there were more responses from those who said they couldn't search/extract data, meaning that there were more estimates than actual figures for these questions. Of those who did respond, most had a share of internet investigations which was less than one fifth of total investigations (the share ranged from 0 per cent to an extreme of 57 per cent).

From those that did respond, the mean number of internet related investigations as a share of all investigations was 12 per cent, although this is skewed because of two particularly high shares (see Chart 2). The

median, which is a better measure given that it is not affected by extreme values, is six per cent.

When using these figures it is important to bear in mind that the results are based on only 33 TSS and, of these, over half had estimated their figures. Also it seems probable that the TSS most likely to respond to this questionnaire will be the ones who are more concerned/have more issues with internet traders and thus the figures may be slightly biased upwards.

Chart 2: Share of internet investigations out of total investigations



Internet-related investigations

The TSS were asked, of the investigations their authority launched in 2005 that related to internet sales, how often certain problems were investigated. Table 2 shows the results as percentages, ranked from highest to lowest in terms of the combined total of sometimes and often.

<i>Table 2: Potential problems investigated</i>	<i>Never</i>	<i>Rarely</i>	<i>Sometimes</i>	<i>Often</i>
Counterfeit goods	7	18	37	39
Cancellation and refunds	12	13	53	22
Failure to provide information on cooling off period	15	12	49	25
False description of goods/services	5	21	55	19
Misleading advertising	9	19	63	10
Failure to provide business address	12	17	53	18
Difficulties in contacting trader	13	16	49	21
Non provision of good or service	12	23	39	26
Misleading price indication	12	26	51	12
Faulty goods or services	16	26	38	20
Delays in delivery	12	31	30	28
Difficulty and cost of returning goods	17	37	32	15
Fraud or deception	18	38	31	13
Cross-border/international issues	29	33	29	9
Unsolicited advertising (e.g. spam)	27	42	23	8
Under-age sales	58	34	7	2
Breach of privacy or personal data	57	38	3	2
Other ³	77	23	0	0

As can be seen from Table 2, some of the problems that were investigated most often were counterfeit goods, cancellations and refunds, failure to provide information on cooling off period, false description of goods/services, misleading advertising, failure to provide business address and difficulties in contacting trader. Breach of privacy or personal data and under-age sales were least likely to be investigated.

The TSS were asked, of the investigations launched in 2005 relating to internet trading, how often they used certain powers/practices to help resolve cases. Table 3 shows the results as percentages, ranked from highest to lowest in terms of the combined total of sometimes and often.

³ The non-response for this question was 81 per cent, whereas for the other questions in this section it averaged 14 per cent. Therefore interpret with caution.

<i>Table 3: Powers/practices</i>	<i>Never</i>	<i>Rarely</i>	<i>Sometimes</i>	<i>Often</i>
Criminal enforcement powers (such as powers under the Trade Descriptions Act)	3	20	48	28
Test purchases/Mystery shopping	22	22	41	16
Regulation of Investigatory Powers Act (e.g. to intercept communications data)	38	35	21	6
Civil investigative order (e.g. Enterprise Act s.225 or equivalent)	62	18	19	2
Use of TSS Internet Labs to gather evidence	79	13	7	2
Other ⁴	82	9	9	0

As can be seen from Table 3, criminal enforcement powers are most likely to be used, with the use of TSS Internet Labs to gather evidence much less likely.

Outcomes of internet-related investigations

Of the investigations conducted in 2005 that related to internet trading, the most common outcome appears to be informal resolution in the form of advice to business (91 per cent of TSS said this was sometimes or often the outcome). Enterprise Act undertaking provided was least likely, with only seven per cent of TSS saying it was sometimes the outcome. Results as percentages are summarised in Table 4 and are ranked from highest to lowest in terms of the combined total of sometimes and often.

⁴ The non-response for this question was 84 per cent, whereas for the other questions in this section it averaged ten per cent. Therefore interpret with caution.

<i>Table 4: Outcomes</i>	<i>Never</i>	<i>Rarely</i>	<i>Sometimes</i>	<i>Often</i>
Informal resolution – advice to business	6	3	55	36
Informal resolution – warning given	13	20	58	9
No further action – insufficient evidence	19	27	44	10
Criminal case brought	40	24	25	11
No further action – no case to answer	30	35	30	5
Enterprise Act undertaking provided	79	15	7	0

The TSS were asked to what extent they agreed that various elements of consumer protection legislation were effective in protecting consumers online. The results as percentages are summarised in Table 5, ranked from highest to lowest in terms of the combined total of strongly agree and agree.

<i>Table 5: Legislation</i>	<i>Strongly agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Strongly disagree</i>
Trade Descriptions Act	24	65	10	2
Consumer Protection Act	18	71	10	2
Distance Selling Regulations	20	62	15	3
Enterprise Act	12	62	24	3
E-commerce Regulations	3	64	26	7
Misleading advertising regulations	6	54	39	1

As can be seen from Table 5, over half of TSS agreed that each element of legislation was effective. The most effective appear to be the Trade Descriptions and Consumer Protection Acts, with 89 per cent of TSS agreeing or strongly agreeing. Even though more TSS agree than disagree that E-commerce and misleading advertising regulations are effective, they tend to feel less strongly about these elements.

Views on internet-related cases

Table 6 summarises (as percentages) the extent to which the TSS agree with certain statements related to internet-related cases. The results are

ranked from highest to lowest in terms of the combined total of strongly agree and agree.

<i>Table 6: Views</i>	<i>Strongly agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Strongly disagree</i>
There is a need to provide more guidance to businesses/traders regarding trading on the internet	44	49	6	1
There is a need to provide more guidance to consumers regarding buying on the internet	43	47	10	0
Existing working arrangements between TSS and regional work should be strengthened	23	66	10	1
Investigations relating to the internet should form part of each TSS day to day compliance and enforcement work	33	56	11	0
We often work with other trading standards colleagues to address internet-related cases	13	58	26	3
Investigations concerning cross-border issues represent an increasing proportion of cases	14	53	23	10
The regulatory framework is increasingly out of date given the ongoing developments in the internet	19	40	40	2
We often work with other UK regulators (e.g. OFT, Ofcom etc), to address internet-related cases	6	46	36	13
We have the necessary skills to investigate cases concerning internet traders	6	43	41	10
The consumer protection framework is too complicated to be effectively enforced	4	31	59	6

All internet investigations should be undertaken by a specialist internet investigations team either on a regional or national basis	10	17	43	30
Businesses/traders are aware of their legal obligations when trading online	6	19	57	19
Enough resources are dedicated to enforcing Consumer Protection Legislation regarding online traders	2	7	62	29

Table 6 shows that 93 per cent of TSS agree that there is a need to provide more guidance to businesses/traders regarding trading online and 90 per cent agree that there is a need to provide more guidance to consumers regarding buying on the internet. Most (89 per cent) TSS also believe that existing working arrangements between TSS and regional work should be strengthened and investigations relating to the internet should form part of their day to day compliance and enforcement work. The majority (91 per cent) of TSS do not think there are enough resources dedicated to enforcing Consumer Protection Legislation regarding online traders and 76 per cent believe that businesses/traders are unaware of their legal obligations when trading online.

The TSS were asked to what extent they agreed that it is harder to investigate possible breaches for internet sales than for other distance selling channels. More tended to be in agreement, with 65 per cent either agreeing or strongly agreeing compared to 35 per cent who disagreed or strongly disagreed (only three per cent strongly disagreed).

The TSS were asked to what extent they agreed that the current sanctions are less effective in addressing problems for internet sales than for other distance selling channels. More tended not to agree, with 66 per cent either disagreeing or strongly disagreeing compared with 34 per cent who agreed or strongly agreed.

Nearly three quarters (73 per cent) of TSS would be willing to participate in an Enforcers' Workshop to explore the issues relating to the

enforcement of consumer protection law online and assist in developing solutions to identified problems.