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Dear Mr Flack

**OFT response to BIS Consultation “The Future of the Local Better Regulation Office and Extending the Benefits of the Primary Authority Scheme”**

The OFT welcomes the opportunity to respond to this consultation. The OFT is a non-ministerial government department whose mission is to make markets work well for consumers. We support the development of competitive, efficient, innovative markets where standards of consumer care are high, consumers are empowered in making choices, business is not disproportionately burdened by government regulations and firms are encouraged to offer benefits to consumers beyond the protection afforded by law. We recognise that not imposing unnecessary burdens is particularly important in a time of economic uncertainty.

The OFT's functions include:

- enforcing consumer law
- enforcing competition law and merger control
- researching and publishing market studies
- making market investigation references to the Competition Commission
- exercising a consumer credit licensing role under the Consumer Credit Act (CCA)
- supervising anti-money laundering compliance by consumer credit and estate agency businesses
- advising Government and carrying out wider advocacy work
- providing information to businesses and promoting consumer education
- supporting the provision of advice to consumers via Consumer Direct, and
- encouraging industry codes and self-regulation.



Most of these functions do not fall within the scope of legislation controlling the exercise of regulatory functions<sup>1</sup>. However, clearly a significant number of them, even if they are not strictly regulatory in nature, represent alternatives to regulation. Hence the OFT has a real interest in the subject matter of this discussion document.

### **The future of the Local Better Regulation Office**

The OFT has worked closely and energetically with the Local Better Regulation Office (LBRO) and we intend to do so with the Better Regulation Delivery Organisation (BRDO). We support the objectives of the new organisation: simplifying the regulatory system, advising the government on regulatory delivery and providing a forum for business engagement.

We note that the BRDO will not continue the LBRO function of promoting service improvement in local authorities.

The OFT has participated in the LBRO's World Class Coalition from the start and we welcome the proposal to continue this panel as one of the BRDO's stakeholder reference groups.

### **Extension of the Primary Authority Scheme**

We can see the clear advantages in widening the Primary Authority scheme to firms and groups that are at present excluded because of their structure and geography, and we therefore support the proposals to remove those requirements described in Q8 and Q9 that currently keep them out. There may be some risks of a lower level of engagement when the headquarters of a subsidiary is a long way from the Primary Authority but, if positive steps are taken to mitigate that risk, then the potential benefits from bringing such business structures within the scope of Primary Authority are clear.

We would be more cautious about extending the scheme to trade associations. The logic of the current Primary Authority scheme is to give a single large firm (or corporate group) consistency of operation across a number of local authorities, driven by a relationship between a Primary Authority and a the firm's head office which has a substantial degree of control over the business processes in its branches. In return for these compliance arrangements, other local authorities do not impose their own requirements and do not act without the agreement of the Primary Authority. In contrast, the degree to which trade associations can guarantee their members' adherence to agreed processes is usually much less than that provided by the chain of command and accountability within a single firm or group. As a result there seems less reason to limit other local authorities' scope to intervene and therefore a much narrower basis for a Primary Authority relationship for trade associations. A further risk may be that the sheer number of members in a trade

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<sup>1</sup> In particular, competition functions are excluded, see for instance Legislative and Regulatory Reform (Regulatory Functions) Order 2007 and Regulatory Enforcement and Sanctions Act 2008 s.73(2). See OFT's 2009 Simplification Plan, OFT 1067, particularly Chapter 2 on "The OFT and Regulation". [http://www.of.gov.uk/shared\\_of/529862/of1067.pdf](http://www.of.gov.uk/shared_of/529862/of1067.pdf)

association may make a Primary Authority relationship difficult to resource effectively and incentives to comply may consequently be diluted.

In our response to the companion Discussion Paper “Transforming Regulatory Enforcement: Freeing Up Business Growth” we have made some further comments on the difficulties of applying assured guidance to general fair trading law such as the Consumer Protection Regulations and the Unfair Terms in Consumer Contracts Regulations.

**Other proposals**

We have no comments on the proposals regarding inspection plans and extending the scope of the legislation covered by the Primary Authority scheme.

If you have queries about any of these points we would be happy to discuss them further.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'C. J. B.', with a long horizontal flourish extending to the right.

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