



House of Commons

Committee of Public Accounts

The Office of Fair Trading: progress in protecting consumers' interests

**Thirty-fourth Report of
Session 2002–03**



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*Report, together with formal minutes,
oral and written evidence*

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Summary

An important role of the Office of Fair Trading (OFT) is to help to protect consumers in their dealings with businesses. Consumers need relevant information to enable them to make informed choices when purchasing goods or services so that they do not pay more than necessary for their goods or enter into contracts that contain unfair terms. The OFT aims to promote and protect consumers' interests by:

- Investigating whether markets are working well for consumers;
- Enforcing consumer protection and competition laws;
- Communicating with consumers, businesses and Government to raise awareness.

Our predecessor Committee reported in August 2000 on the OFT's performance in protecting consumers' interests¹ and made a number of recommendations designed to improve the OFT's effectiveness. The OFT undertook to implement them. On the basis of a Report by the Comptroller and Auditor General, we took evidence from the OFT on the progress it has made in fulfilling the undertakings it gave, in particular those concerning consumer credit licensing, the provision of guidance to businesses and the enforcement of fair trading legislation.²

We draw the following main conclusions from our examination.

- It is still too easy for unsuitable people to obtain a consumer credit licence. The OFT has been slow to act on the views of our predecessor Committee that it was too easy for people such as unscrupulous lenders and debt collectors to obtain a licence. The OFT discounted our predecessor Committee's suggestions for strengthening checks on the identity of applicants but promised to introduce postcode matching software to improve its checking. It was only in March 2003 that it piloted a new application form to secure the full benefits of this software.
- The OFT has done little to prevent people with previous criminal convictions from obtaining a licence. The OFT still does not have routine access to centralised information on criminal convictions to check against applicants for consumer credit licences. Such information is in the public domain but the OFT can only readily access it from the Police National Computer or the Criminal Records Bureau. The authorities responsible for these systems have given apparently contradictory reasons for refusing the OFT routine access to the data. In the spirit of joined-up government the Home Office and the Department of Trade and Industry should work together with the relevant agencies to resolve this contradiction, and to provide the OFT with routine access in the interests of consumers.

1 37th Report from the Committee of Public Accounts, *The Office of Fair Trading: Protecting the consumer from unfair trading practices* (HC 501, Session 1999–2000)

2 C&AG's Report, *The Office of Fair Trading: Progress in Protecting Consumers' Interests* (HC 430, Session 2002–03)

- The rising trend in the number of complaints suggests that unfair contract terms are a serious problem area for consumers. The OFT has concentrated on specific market sectors and has also reduced the backlog of long-standing complaints that concerned our predecessor Committee. But there remain a significant number of cases over two years old outside the specific market sectors. It should eliminate this backlog as well as maintaining its drive to tackle contracts before they give rise to complaints.

1 Consumer credit licensing

1. Traders who provide credit for longer-term hire of goods or who deal with credit or hire agreements must, under the Consumer Credit Act 1974, hold a consumer credit licence. Trading without such a licence is a criminal offence. The OFT is responsible for implementing the system and its checks of applications for and renewals of consumer credit licences are the main protection against unsuitable people holding a licence³. To carry out this task successfully the OFT has sought to improve its information in two ways, through strengthening its basic screening of applications and by obtaining more information on previous convictions.⁴

Identity checks

2. The OFT seeks to confirm that applicants are who they claim to be. Our predecessor Committee considered that the OFT did not require sufficient information to verify the identity of applicants and recommended additional checks. In response the OFT stated that by the end of 2000 it would have new software to facilitate enhanced checks of applicants' address details using applicants' postcodes⁵. It considered that this approach was the most cost-effective check it could carry out without placing undue burdens on the many suitable applicants. There appear to have been delays in fully introducing the new system, however, as it was only in March 2003 that the OFT was able to pilot a new application form which would capture more information on personal addresses for postcode checking purposes.⁶

Checks of criminal convictions

3. The OFT can refuse an application for a licence if it considers that a trader is unfit to hold one, for example due to the nature of a previous conviction.⁷ The OFT said it could have greater confidence that consumer credit licence holders did not have relevant criminal convictions if it had routine access to convictions data.⁸ The Police National Computer is a potential source of such information and our predecessor Committee urged that the OFT's access to that data be considered as a matter of urgency.⁹ Since then the Criminal Records Bureau has become another potential source of such information. But the OFT has not secured access to either database.

4. Information on convictions is in the public domain but it would be very costly for the OFT to create its own data capture system.¹⁰ The OFT currently obtains paper-based details of convictions from the National Identification Service if it suspects that a conviction has not been disclosed. This arrangement does not, however, allow routine

3 C&AG's Report, para 3.1

4 Q 7

5 C&AG's Report, para 3.2 and summary box, p25

6 Qq 7, 36

7 C&AG's Report, para 3.8 and summary box, p25

8 Q 21

9 C&AG's Report, summary box, p26

10 Qq 100–103

checking against criminal records. That would require electronic access to the information to cope with the volume of names.¹¹

5. The Criminal Records Bureau provides three types of disclosure service – enhanced, standard and basic disclosure. The Bureau has so far given priority to the standard and enhanced disclosures, which apply to sectors involving work with children and vulnerable adults. These disclosures are available to an employer who can ask questions about spent convictions under the Exceptions Order to the Rehabilitation of Offenders Act 1974. The Criminal Records Bureau informed the OFT early in 2001 that the Exceptions Order did not cover it, as consumer credit licensing did not amount to ‘employment checks’.¹²

6. Any individual can apply to the Bureau’s Basic Disclosure service for a certificate setting out information on any unspent criminal convictions against them. For the purpose of licensing the Bureau suggested that the application be made via the OFT which would then receive a copy of the disclosure direct from the Bureau (to provide assurance that the disclosure was authentic and not tampered with). Although this would give the OFT conviction information, it would be paper-based and present significant practical problems in handling the 100,000 named individuals a year that the OFT would wish to vet. In any case, the Bureau did not plan to introduce this service until summer 2002 and the introduction of the service has since been delayed.¹³

7. The OFT applied for routine electronic access to the Police National Computer at the beginning of 2001. The Association of Chief Police Officers Disclosure of Convictions sub-committee rejected the request on the grounds that the OFT’s purpose was to conduct employment checks, which should be handled by the Criminal Records Bureau. The OFT challenged this decision and was advised by the Home Office in September 2001 that its general policy was for criminal record checks to be conducted through the Criminal Records Bureau and not through direct access to the Police National Computer. The OFT has since discussed the problem further with the police and the Home Office and has been advised to re-submit its application for access to the Police National Computer.¹⁴

8. In essence, an important stumbling block has been whether the OFT’s request for information constitutes an employment check. The OFT agreed to consider our suggestion that it should seek a legal ruling on whether its checks constituted an employment check. The OFT hoped that the Department’s review of consumer credit licensing and the views of this Committee might lend weight to its arguments.¹⁵

Rejecting unsuitable applications

9. In 1999–2000 the OFT rejected only 0.2% of the 19,000 new licence applications. The rejection rate remained about the same in 2001–02¹⁶ and has since risen to 0.6%. This is still only around 95 out of 16,000 new applications.¹⁷

11 Ev 13, para 3

12 Ev 13, para 6

13 *ibid*

14 Ev 14, para 10

15 Qq 23, 28, 44

16 C&AG’s Report, para 3.19 and Figure 12

10. The OFT's starting point is that the great majority of applicants for consumer credit licences are entirely fit to operate in this important market sector. It has therefore aimed to process applications within 20 days as good administrative practice. When preliminary checks have identified applicants as potentially unfit they have been subject to considerably more investigation than the majority. The OFT saw the need to maintain a balance between investigating thoroughly those cases that might be questionable while not imposing an unduly lengthy or costly process on the vast majority. It would therefore like to target more effectively its resources on the potentially problematic cases, but its attempts had been thwarted by the problem of obtaining convictions data.¹⁸

Falsified applications

11. The provision of false or misleading information in support of an application for a consumer credit licence is an offence under Section 7 of the Consumer Credit Act 1974. If the OFT considers that an applicant has supplied false or misleading information it can refuse the licence application or revoke the applicant's existing licence. In 2001–02 up to 30% of refusals or revocations of licences (28 cases) resulted from the provision of incomplete or misleading information.¹⁹ The OFT can also institute criminal proceedings against traders in such cases but in practice it has not done so, as court action is expensive, and the OFT considers that the additional step of pursuing a business through the courts would not represent value for money. The OFT thought that prosecutions by local trading standards services provided a deterrent but it did not have reliable information on the number of local prosecutions.²⁰

Consumer credit licensing computer system

12. The OFT's licensing computer system which went live in 1988²¹ has only limited functionality. The OFT had planned to introduce a new system that could capture conviction data and share information with other enforcement agencies. But it has deferred this in case the Department's review of consumer credit, announced in 1999, resulted in changes to the licensing arrangements.²² The OFT understood that the review would be finished in summer 2003. Although the Department has already published a series of consultation documents, the review is not yet finished. When it is, time will have to be found in the Government's legislative programme to implement resulting changes and the earliest such changes could take effect is 2004.²³

13. The OFT's initial development work on the replacement system became worthless due to the way things had moved on and the uncertainty. In 2002 it wrote off the preliminary expenditure it had incurred and it now has no clear idea of the specification of the eventual replacement system or its cost.²⁴

17 Qq 11–14

18 Qq 33–35, 84

19 C&AG's Report, paras 3.12–3.14

20 Qq 49–57

21 Q 93

22 C&AG's Report, para 3.9

23 Qq 86–89

24 Qq 93–94

2 Guidance and codes of practice for businesses

14. Under the Fair Trading Act 1973, the OFT has a duty to encourage the development, by trade associations and other representative bodies, of voluntary codes of practice. Self-regulation can play an important part in raising business standards. But the OFT told our predecessor Committee in May 2000 that the codes of practice that then existed set low standards, that compliance was patchy, and that there were no redress arrangements. The OFT therefore committed itself to introducing a more effective codes of practice regime.²⁵

15. The new regime has not yet been implemented in full.²⁶ In 2001 the OFT announced a two-stage regime with seven ‘priority’ areas from which it sought applications:

- The first stage of the regime requires code sponsors to satisfy the OFT’s criteria, which four had done. The OFT was in discussion with other code sponsors who were seeking stage one approval but it had not received a submission from one of the priority sectors, the funeral industry.²⁷
- The second stage of the new regime requires code sponsors to satisfy the OFT that the code is operating effectively and meets the core criteria in practice, delivering real benefits to consumers.²⁸ No code had reached this point. The OFT had launched its logo to businesses and was awaiting the implementation of the Enterprise Act which would give it statutory backing to approve (and withdraw approval from) codes.²⁹

16. The OFT recognised that it was not a coincidence that the sectors which were not co-operating in developing new codes of practice were those which caused most problems for consumers. There would therefore be considerable benefit in getting codes to work well in those sectors, and that was why they were a priority.³⁰

17. Our predecessor Committee wanted the OFT to be more active in identifying sectors where consumer abuse was widespread. The OFT therefore planned to produce guidance for specific sectors that generated a disproportionate number of complaints. The first to be targeted would be used car dealers and debt collectors,³¹ two sectors that our predecessor Committee was particularly concerned about. But in practice the OFT has focused on debt management because it became a priority issue. It produced guidance on debt management in December 2001 and has almost completed its compliance review in that area. The OFT did not issue its guidance relating to consumer credit matters for motor

25 C&AG’s Report, summary box, p13 and para 2.3

26 C&AG’s Report, para 2.9

27 Qq 16, 64

28 C&AG’s Report, para 2.4

29 Q 64

30 Q 69

31 C&AG’s Report, summary box, p19

dealers until January 2003 and its guidance on debt collection was still out for consultation in March 2003.³²

3 Enforcing other legislation

Stop Now Orders

18. Our predecessor Committee was concerned that deficiencies in Part III of the Fair Trading Act 1973 had prevented the OFT from taking prompt and effective action against rogue traders. In response the OFT said that the Government was committed to reforming the law to establish a coherent and effective consumer protection regime. The resulting Enterprise Act received Royal Assent in November 2002, and many of its provisions have still to be implemented. But since June 2001 the OFT has been able to use the Stop Now Orders (EC Directive) Regulations for certain types of trading to secure undertakings from traders or secure injunctions against them. By October 2002, the OFT had taken action against 294 traders, resulting in two Stop Now Orders and 58 other businesses giving undertakings or assurances to desist from unfair trading.³³

19. The OFT said that over 100 Stop Now cases have produced successful results for consumers. In such cases, the OFT did not initiate court action unless the trader breached the assurances or undertakings. There is, however, a risk that rogue traders will readily give assurances and undertakings, but then ignore them. The OFT confirmed that it would pursue follow-up action, including court action, as a matter of urgency against a trader who breached an assurance or undertaking.³⁴

Unfair contract terms

20. The OFT is responsible for protecting consumers from standard contract terms (terms that have not been individually negotiated) that it considers to be unfair. Under the Unfair Terms in Consumer Contracts Regulations 1999, a standard term is unfair “if contrary to the requirements of good faith, it causes a significant imbalance in the parties’ rights and obligations arising under the contract, to the detriment of the consumer”. The OFT acknowledged that there had been more complaints about unfair terms than had been expected and the number had risen by nearly 20% a year. At the same time the OFT’s backlog of unfair contract terms cases had increased and by May 1999 10% of cases had been open for more than two years. Our predecessor Committee recommended that tough targets should be set for settling cases and reducing the backlog.³⁵

21. Quarterly statistics (**Figure 1**) show an increasing trend in the number of complaints about new unfair contract terms. The OFT thought that this reflected a greater perception by complainants that terms were unfair, and a greater expectation that something could be done about such problems.³⁶ The OFT had sought not just to deal with complaints about contracts that had been signed, often some time later, but also to pre-empt and prevent problems arising in the first place. It had done this through guidance in a range of areas

33 C&AG’s Report, summary box, p15 and paras 2.12, 2.15, 2.17

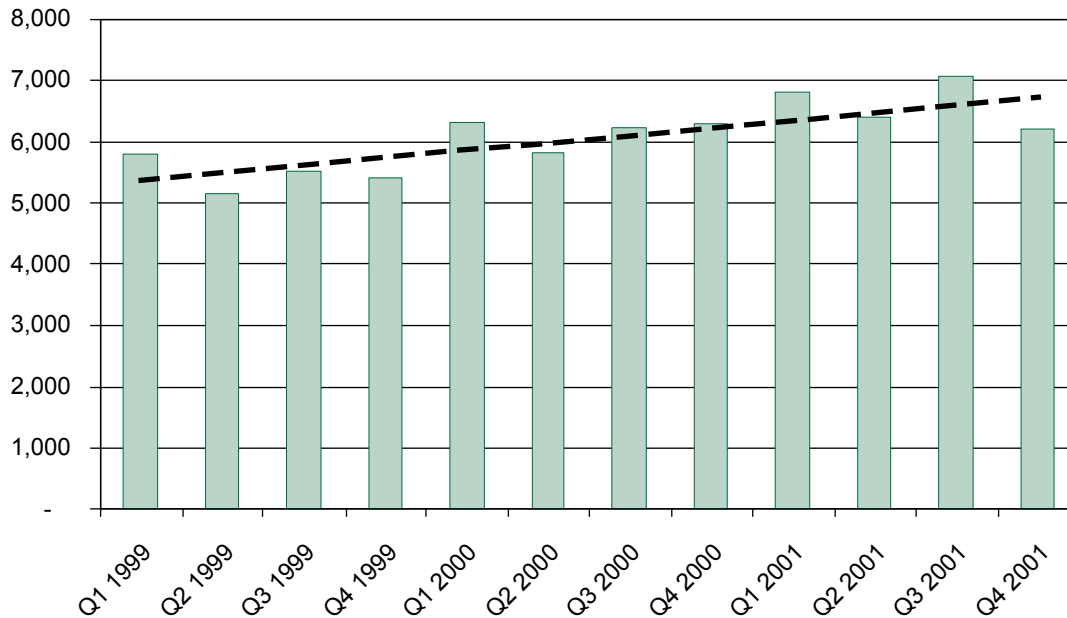
34 Qq 3, 5, 113

35 C&AG’s Report, para 4.1–4.2 and summary box, p31

36 Q 99

including tenancy terms, sports clubs and airline contracts. It had thereby improved contracts affecting thousands of people including the intelligibility of contracts.³⁷

Figure 1: Unfair contract terms—Quarterly statistics from local authority trading standards services of consumer complaints 1999 to 2001



Note: the dotted line shows the rising trend in the number of complaints over the three year period.

Source: National Audit Office

22. The OFT set targets for reducing the backlog of unfair contract terms cases but it has not fully met these targets.³⁸ Although the OFT is now well on the way to eliminating the backlog, it has not done so as quickly as it had wished. Its strategy has been to take some of the most difficult issues first as this is probably more beneficial overall for consumers. In the event, many of the remaining cases over two years old were in specific market sectors (such as tour operators and landlord/tenant agreements) where the OFT had focused its attention, with about 70 being in other areas.³⁹

37 Qq 70–71

38 C&AG's Report, para 4.9

39 Q 117

Local authority trading standards services

23. The OFT works jointly with local authority trading standards services on a day-to-day basis to enforce consumer protection legislation.⁴⁰ The OFT relies on those services in various ways, including:

- informing trading standards services of all applications for consumer credit licences so that the local service can advise the OFT if they have any concerns about an application;⁴¹
- looking to trading standards services to take the lead in enforcing fair trading legislation, so that the OFT can focus on using Stop Now Orders on significant and sector-wide cases.⁴²

24. Our predecessor Committee found that the level of resources devoted to combating unfair trading varied greatly from one local authority to another, with considerable variations in the performance of trading standards services.⁴³ That situation remains and there are still wide variations between local authority areas in the staffing of these services.⁴⁴ The OFT was concerned about the consequent unevenness of the work of trading standards services. It had been doing what it could to help address these problems by providing training and guidance, co-ordinating activity, and taking the lead on practical case work. For example, the OFT had used the new Stop Now powers to take some of the lead cases and show trading standards services the way. The OFT had been encouraged to see how trading standards services had themselves been taking action, often with help from the OFT.⁴⁵

40 C&AG's Report, para 2.43

41 *ibid*, para 3.6

42 *ibid*, para 2.20

43 37th Report from the Committee of Public Accounts, *The Office of Fair Trading: Protecting the consumer from unfair trading practices* (HC 501, Session 1999–2000), paras 4, 14

44 C&AG's Report, paras 2.49–2.50

45 Q 115

Conclusions and recommendations

Consumer credit licensing

1. The OFT has not taken any traders to court for falsifying a licence application and it has not collected data on prosecutions brought by local enforcement agencies. There appears to be little to deter applicants from obtaining licences on the basis of false information and then trading until they are caught. The OFT should monitor the rates of prosecutions by local agencies and step in to initiate prosecutions itself until such time as local enforcement agencies can be relied upon to act against traders who falsify their applications.
2. The OFT's management of consumer credit licensing has been hampered by its 20 year old computer system. Its plans to replace this system have been frustrated by a Department of Trade and Industry review of consumer credit licensing announced in 1999 and not yet completed. Now that the Department has issued consultation papers on its emerging findings, the OFT should start to develop the replacement system so that procurement can start as soon as future arrangements are sufficiently clear.

Guidance and codes of practice for businesses

3. At the end of 2001 the OFT withdrew its support from 42 industry codes of practice which in response to our predecessor Committee's recommendations it had acknowledged to be of limited value. It then identified seven priority sectors for the development of new codes with more stringent criteria, but by March 2003 it had approved only four of these codes in principle. In the priority sector of funerals no revised code had even been submitted to the OFT. The OFT needs to secure faster progress from industry in future by giving a lead to trade associations and others in the drafting of worthwhile codes.
4. In responding to the concerns of our predecessor Committee the OFT promised, in November 2000, to issue guidance for traders in sectors that generated a disproportionate number of complaints. It singled out for early attention used car dealers and debt collectors but subsequently gave greater priority to debt management. It did not publish its guidance on used car dealers until January 2003, and is still consulting on proposed guidance for debt collectors. The OFT should quickly determine whether guidance should be issued to some of the other sectors that generate large numbers of complaints and issue such guidance promptly.

Enforcing other legislation

5. Since June 2001 the OFT has had powers to issue Stop Now Orders, and by October 2002 it had used the threat of these powers to obtain some 58 voluntary undertakings from traders to desist from unlawful activity. The OFT had applied for court orders to back up these undertakings in only two cases because it preferred to obtain a satisfactory outcome without court action unless traders failed to honour their

undertakings. The OFT should monitor consumer complaints to see whether voluntary undertakings are providing sufficient deterrent, and make greater use of its injunctive powers if not.

6. In enforcing consumer protection legislation, the OFT places considerable weight on the advice of local authority trading standards services, and often relies on them to take the lead on local issues. But the unevenness in resources available to trading standards services means that they may not be in a position to support the OFT effectively. To secure consistent enforcement action across the country, the OFT should identify which services it can rely on and where it needs to take up more cases itself.

Formal minutes

Monday 23 June 2003

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon

Geraint Davies

Mr Frank Field

Mr Nick Gibb

Mr George Howarth

Mr Brian Jenkins

Mr Gerry Steinberg

Jon Trickett

Mr Alan Williams

The Committee deliberated.

Draft Report (The Office of Fair Trading: progress in protecting consumers' interests), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 24 read and agreed to.

Conclusions and recommendations read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the Thirty-fourth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the provisions of Standing Order No. 134 (Select Committees (Reports)) be applied to the Report.

Adjourned until Monday 30 June at 4.30 pm

Witnesses

Monday 17 March 2003

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Professor John Vickers, Miss Penny Boys, and Miss Caroline Banks,
Office of Fair Trading

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1 Office of Fair Trading

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Second Report	Dealing with pollution from ships	HC 119 (<i>Cm 5770</i>)
Third Report	Tobacco Smuggling	HC 143 (<i>Cm 5770</i>)
Fourth Report	Private Finance Initiative: redevelopment of MOD Main Building	HC 298 (<i>Cm 5789</i>)
Fifth Report	The 2001 outbreak of Foot and Mouth Disease	HC 487 (<i>Cm 5801</i>)
Sixth Report	Ministry of Defence: Exercise Saif Sareea II	HC 502 (<i>Cm 5801</i>)
Seventh Report	Excess Votes 2001–02	HC 503 (<i>N/A</i>)
Eighth Report	Excess Votes (Northern Ireland) 2001–02	HC 504 (<i>N/A</i>)
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Eleventh Report	Facing the challenge: NHS emergency planning in England	HC 545 (<i>Cm 5802</i>)
Twelfth Report	Tackling pensioner poverty: encouraging take-up of entitlements	HC 565 (<i>Cm 5802</i>)
Thirteenth Report	Ministry of Defence: progress in reducing stocks	HC 566 (<i>Cm 5849</i>)
Fourteenth Report	Royal Mint Trading Fund 2001–02 Accounts	HC 588 (<i>Cm 5802</i>)
Fifteenth Report	Opra: tackling the risks to pension scheme members	HC 589 (<i>Cm 5802</i>)
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Twenty-third Report	Innovation in the NHS—the acquisition of the Heart Hospital	HC 299
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Twenty-fifth Report	Protecting the public from waste	HC 352
Twenty-sixth Report	Safety, quality, efficacy: regulating medicines in the UK	HC 505

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Twenty-seventh Report	The management of substitution cover for teachers	HC 473
Twenty-eighth Report	Delivering better value for money from the Private Finance Initiative	HC 764
Twenty-ninth Report	Inland Revenue: Tax Credits and tax debt management	HC 332
Thirtieth Report	Department for International Development: maximising impact in the water sector	HC 446
Thirty-first Report	Tackling Benefit Fraud	HC 488
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Thirty-third Report	Ensuring the effective discharge of older patients from NHS acute hospitals	HC 459
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