

Foot – the Gap Review

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Michael Foot's [interim report](#) on his work reviewing the UK's secrecy jurisdictions provides clear indication of three things.

The first is that Michael Foot was not the man to undertake this review. Sometime soon, I hope, the government is going to realise that appointing those with self interest in perpetuating the status quo is not the way to secure meaningful reports on required reforms involving real change. John Christensen [has dealt with the conflicts of interest](#) the man faces in undertaking his task here, so I will not repeat the charges. Suffice to say I wish he acknowledged these impediments to his objectivity in his report. It is so much better to recognise your own conflicts of interest than have others point them out for you.

Second, the report demonstrates just how confused is thinking on this issue at present. The report refers to the G20, of course, but only as an influence, as if it came up on Foot unexpectedly. Gordon Brown's announcement that tax avoidance is also on the tax haven compliance agenda has unambiguously gate-crashed Foot's party. It does, of course, get a mention, and yet sticks out like a sore thumb as something the author has not thought about. He says:

The renewed focus on tax transparency and tax avoidance will have implications for the financial centres covered by the Review.

There is no hint as to what those implications might be or how he will tackle them in the work to be undertaken. This is astonishing.

Thirdly, and most importantly though, the report reveals considerable poverty of thinking at this stage. I can only pick some examples now, but let's start with these.

1. At its most basic level the report's terms of reference are deficient. For example, it says:

The review will take account of Crown Dependencies' and Overseas Territories' respective constitutional relationships with the UK. Changes to the UK's constitutional

relationship with Crown Dependencies and Overseas Territories are out of scope for the review.

If this could have been justified last December when the terms of the review were announced that decision is no longer sustainable. The government of the Turks & Caicos Islands (TCI) has failed since then with the UK having to step in and take over — with appropriate constitutional changes. Such an extraordinary development does surely require that the relationship between these places and the UK be reviewed in detail and the right of the UK to undertake this review and to impose any recommendations has to be laid out clearly and precisely. As it will not be quite what status the review has is hard to determine.

2. The review also precludes a review of the tax policies of the territories, saying:

The Review will not, however, make recommendations on specific tax regimes and rates which are a matter for the governments concerned.

But when it also asks, as consultation questions:

a) to what extent are the economic models in the financial centres covered by this Review reliant on being low tax jurisdictions?; and
~~*Review each the financial centres ensure that their tax models remain sustainable in the light of changing international standards and attitudes on tax evasion and avoidance?*~~

it seems almost impossible to see how a full review of the tax affairs of each territory will not be undertaken. In that context though the details of the tax regimes they offer noted in appendix to the report are notable by completely ignoring a number of their most important features. For example, when looking at Jersey, Guernsey and the Isle of Man there is no mention whatsoever of the differences between resident and non-resident taxation, or their trust tax regimes, or the arrangements Jersey and the IoM have put in place to ring fence taxation of corporate income when companies are owned by their own residents. the most important characteristics of their tax regimes are, therefore, being ignored and a purely domestic perspective is being taken, which is absurd when these places are offshore centres — a fact even Foot acknowledges.

3. This last point It does seem indicative of a theme that is consistent within the report — the fact that tax haven activity is being ignored altogether. the word trust does not appear once, company only in the context of domestic tax, accounts not at all. It would seem that these places tax haven activity is to be entirely ignored by the review.

4. The review notes:

There is no agreement on who may gain or lose from the existence of offshore centres.

Staggeringly, having said this it does not then go on to say it will seek to answer that

question. Why not?

5. What it does do is say:

What is clear is that, at least for the larger centres covered by this Review, business flows both ways between them and the UK. Some also see significant business flows to and from other jurisdictions, particularly the United States. Defining these business flows will provide evidence to analyse the impact on the City of London should the viability of any of this business in future be called into question.

The close relationship the centres have with the UK also gives the UK Government a direct interest in understanding each centre's ability to remain viable, both economically and in terms of complying with international regulatory standards, during the current global economic downturn.

Understanding the nature and degree of these mutual dependencies will provide an overarching theme for the Review.

Quite clearly this is a banking review, and little more. The regulatory issues are peripheral to keeping the money flowing, and nothing more.

6. In that context note that the review says:

Important questions for this Review are the ability of each financial centre to weather the downturn and to remain competitive in the future, and the implications both for the centre and for the UK if they cannot or if there were significant failures of individual firms located in these jurisdictions.

So what this is really about is:

- a) how does the UK keep these places going?
- b) what is the risk from doing so?
- c) Let's not ask questions on the broader costs / benefits of doing so.

7. And in conclusion it looks like the report is heading to suggest regional subsidies. Extraordinarily it says at the outset:

Even in a downturn, new opportunities may arise to offset retraction in certain areas of financial services business. Managing toxic assets from the banking sector may be an example of one such area.

So it seems UK taxpayers will bail out toxic bank assets at a loss as a work creation programme for the Channel Islands.

Surely the review has to do better than this?

Surely it has to address the systemic and not the micro issues, the tax and not just the micro banking issues, the development issues as well as those that the UK faces, the questions of legality of the business undertaken and not just token regulatory compliance, the issues of tax evasion deliberately made available, and not just information exchange?

If not Gordon Brown is going to be in for a severe embarrassment at the next G20 — because after the fine noises he has made he has to deliver — and right now it is not at all clear Michael Foot has any intention of doing so.