



**Money Laundering Regulations
2007:
The OFT's approach to penalties**

May 2011

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MONEY LAUNDERING REGULATIONS 2007

THE OFT'S APPROACH TO PENALTIES

03 May 2011

Introduction

- 1.1. The Office of Fair Trading (OFT) launched its consultation on its future supervisory approach under the Money Laundering Regulations 2007 (the Regulations) in February 2010. This consultation included a section on the way the OFT will exercise its power to impose civil financial penalties. In its consultation the OFT stated that it preferred to adopt a case by case approach to the majority of penalties.
- 1.2. The consultation responses¹ reinforced the OFT's belief that it needed to take action against supervised traders that carried out supervised activity but have failed to register. The OFT published its Interim Penalty Policy for such offences on 17 September 2010 and that policy remains in force.²
- 1.3. In publishing its interim policy the OFT stated that it would develop a full penalties policy in consultation with interested parties covering all breaches of the Regulations. The interim policy would be replaced in due course with a penalties policy covering all breaches of the Regulations.
- 1.4. Until a full penalties policy is developed, this statement confirms the OFT's approach to imposing civil financial penalties for breaches of the Regulations other than for trading whilst unregistered.

¹ www.offt.gov.uk/shared_offt/consultations/oft1157res.pdf

² www.offt.gov.uk/shared_offt/money-laundering/OFT1271.pdf

Applying a Civil Penalty

- 1.5. The OFT will apply penalties on a case by case basis underpinned by key principles which reflect the Regulations and the approach outlined in the OFT's consultation document.
- 1.6. The Regulations give the OFT the power to impose a penalty of such an amount as it considers appropriate. This is defined in the Regulations as effective, proportionate and dissuasive.
- 1.7. The key principles are that a penalty must be appropriate for the non-compliance and set at a level that:
 - is effective in encouraging compliance
 - is proportionate to the failure
 - dissuades future non-compliance.
- 1.8. In addition, the Regulations require that
 - a. a penalty is not imposed on a business where there are reasonable grounds for the OFT to be satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with, and
 - b. in deciding whether a business has failed to comply with a requirement of the Regulations, the OFT will consider whether the business followed any relevant guidance which was at the time:
 - issued by the OFT or any other appropriate body
 - approved by the Her Majesty's Treasury, and
 - published in a manner approved by the Treasury as suitable in their opinion to bring the guidance to the attention of persons likely to be affected by it.

1.9. In applying penalties the OFT will be seeking to:

- change the behaviour of the offender
- eliminate any financial gain or benefit from non-compliance
- be responsive and consider what is appropriate for the particular offender and regulatory issue
- be proportionate to the nature of the offence and the harm caused
- take into account the compliance history of the business (and the owners of the business) and the level of co-operation shown to the OFT
- deter future non-compliance both individually and generally.

OFT powers to impose a financial penalty

1.10. Regulation 42 of the Regulations gives the OFT the power to impose civil financial penalties on businesses that fail to comply with the requirements of the Regulations in respect of:

- notification and registration requirements
- customer due diligence measures
- ongoing monitoring of a business relationship
- enhanced customer due diligence and ongoing monitoring
- record keeping
- policies and procedures to prevent money laundering and terrorist financing
- appointing a Nominated Officer

- internal and external reporting procedures for making suspicious activity reports to the Serious Organised Crime Agency, and
 - training of employees.
- 1.11. The Regulations require that where it is proposed to impose a penalty, the OFT must give the person notice of its intention to impose a penalty and the proposed amount, the reasons for imposing the penalty and the right to make representations to the OFT within 28 days.
- 1.12. Adjudicators employed by the OFT will consider any representations from and must give the person notice of:
- its decision not to impose a penalty or its decision to impose a penalty and the amount
 - the reasons for its decision, and
 - the right to appeal to the First Tier Tribunal (Consumer Credit Appeal).
- 1.13. In all cases the OFT will act in accordance with its published Anti-Money Laundering Enforcement Principles.³
- 1.14. The AML regime is separate to other regulatory regimes for which the OFT has responsibility and the imposition of other sanctions by other parts of the OFT, including for example requirements under the Consumer Credit Act 1974, would not preclude the imposition of a financial penalty for breach of the Regulations.

³ www.oft.gov.uk/shared_oft/business_leaflets/general/oft1094.pdf