

Consumer Credit (Advertisements) Regulations 2004

Frequently asked questions

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INTRODUCTION

The Consumer Credit (Advertisements) Regulations 2004 (the Regulations)¹ came into force on 31 October 2004.

The Regulations were further amended by the Consumer Credit (Miscellaneous Amendments) Regulations 2004² with effect from 31 May 2005, and by the Consumer Credit (Advertisements) (Amendment) Regulations 2007³ with effect from 6 April 2008.

In addition, the Regulations were amended by the Consumer Protection from Unfair Trading Regulations 2008 (the CPRs)⁴ with effect from 26 May 2008. The CPRs removed the hire aspects of the Regulations, and also replaced section 46 of the Consumer Credit Act 1974 (CCA) which previously prohibited false or misleading advertisements.

The CPRs prohibit unfair commercial practices, including misleading actions or omissions.⁵ These may occur, for example, if an advertisement contains false information or is likely to deceive consumers in relation to specified matters, or if it omits or hides material information or provides such information in a manner which is unclear, unintelligible, ambiguous or untimely. The CPRs apply to both credit advertisements and hire advertisements.

The OFT and BERR have jointly produced separate guidance on the CPRs.⁶

Purpose of FAQs

The OFT has a duty under section 4 of the CCA to disseminate to the public information and advice relating to the CCA. A general guidance note *Credit advertising* has been published in relation to the Regulations, and was updated in

¹ [SI 2004/1484](#)

² [SI 2004/2619](#)

³ [SI2007/0827](#)

⁴ [SI 2008/1227](#)

⁵ The CPRs apply to commercial practices by traders which affect or may affect consumers – business-to-business commercial practices are covered by the [Business Protection from Misleading Marketing Regulations 2008](#).

⁶ [Consumer protection from unfair trading](#)

August 2008.⁷ An annexe to the guidance note contains sample advertisements and a flowchart illustrating the requirements.⁸

In addition, the OFT has produced more detailed guidance in the form of answers to frequently asked questions (FAQs). These complement the general guidance note. Initial FAQs were published in October 2004, and updated in September 2005, and this revised version takes account of issues arising since then – in particular, the implementation of the CPRs.

The purpose of the FAQs is to address the key questions which businesses may need to consider when ensuring compliance with the Regulations. The guidance represents the views of the OFT as an enforcer of the Regulations. It is not a determinative statement of the law and should not be relied upon as a substitute for legal advice. Only the courts can provide a definitive interpretation of the law. The guidance will however be taken into account by the OFT in considering possible enforcement action for breach of the Regulations.

Some advertisements for mortgages or other loans secured on land may be subject to dual regulation under the Regulations and the Financial Services and Markets Act 2000 (FSMA). If so, they will need to comply with the rules of the Financial Services Authority (FSA) as well as the Regulations. The OFT and FSA have jointly produced guidance⁹ to help firms identify when an advertisement may be dually regulated and to address some of the common issues that firms may encounter when creating a fully compliant advertisement.

The regulatory regime

The Regulations are made under sections 44 and 151 of the CCA. Section 44 requires regulations to be made as to the form and content of credit advertisements, with a view to ensuring that, having regard to its subject-matter and the amount of detail included in it, an advertisement conveys a fair and reasonably comprehensive indication of the nature of credit facilities offered by the advertiser and their true cost to persons using them. Breach of such regulations is a criminal offence under section 167(2).

⁷ [Credit advertising](#) (OFT016)

⁸ [Sample advertisements and flowchart: An Annexe to 'Credit advertising'](#) (OFT016a)

⁹ [Credit Advertising - A guide to dually-regulated advertisements](#)

The Regulations extend to all forms of advertising, including in print, on television or radio, on the internet or by way of telephone canvassing. In particular:

- advertisements must be clear and use language which is not difficult to understand
- if an advertisement contains certain types of information about the credit on offer, other information must also be displayed
- key information such as the typical APR, where triggered, must be easily identifiable and placed with other important information.

Section 45 provides that if an advertisement indicates that the advertiser is willing to provide credit for the purchase of goods or services, but the supplier of those goods or services is not holding himself out as prepared to sell them for cash, the advertiser commits an offence.

Section 47 provides that, where an advertiser commits an offence against the Regulations or section 45, the offence is also committed by:

- the publisher of the advertisement
- any person who in the course of a business devised all or part of the advertisement, and
- any other person who arranged for its publication.

In the case of publishers, this is subject to the defence in section 47(2) where the person did not know and had no reason to suspect that publication would be an offence. A 'publisher' may include a newspaper or website owner.

Section 168 provides that, in any proceedings for an offence under the CCA, it is a defence for the person charged to prove:

- that his act or omission was due to a mistake, or reliance on information supplied to him, or an act or omission by another person, or an accident or some other cause beyond his control, and
- that he took all reasonable precautions and exercised all due diligence to avoid such an act or omission by himself or any person under his control.

Section 169 provides that where an offence is committed by a limited company or other body corporate, with the consent or connivance of (or because of neglect by) any director or manager or other officer, that individual also commits an offence.

Enforcement action

The OFT, Local Authority Trading Standards Services (TSS) and the Department of Enterprise, Trade and Investment in Northern Ireland (DETINI) can take enforcement action against any person who breaches the CCA or the Regulations. This may include prosecution in the courts, possibly leading to a fine and/or imprisonment.

In addition, breach may be actionable under Part 8 of the Enterprise Act 2002 (EA02). This gives certain enforcers power to seek court orders against businesses that infringe, or in certain circumstances are likely to infringe, specified legal obligations to consumers, where this harms or would harm the collective interests of consumers. The OFT, TSS and DETINI are 'general enforcers' and the OFT also has a co-ordinating role under Part 8.

A summary of the provisions of Part 8 EA02, and the OFT's general approach to enforcement, can be found in *Enforcement of consumer protection legislation: Guidance on Part 8 of the Enterprise Act*.¹⁰ We have also issued a general statement of our enforcement principles in relation to consumer protection legislation.¹¹

The OFT and other enforcers have information-gathering powers, and powers of entry and inspection, under the CCA. In addition, section 224 EA02 enables the OFT to seek information in appropriate cases to enable it to exercise, or to consider whether to exercise, powers under Part 8. Section 225 EA02 makes equivalent provision in relation to TSS and DETINI.

For example, the OFT or another enforcer can request information in order to establish whether a typical APR has been calculated correctly.

Breach of the CCA or Regulations may also be taken into account by the OFT in considering fitness to hold a consumer credit licence. Account may also be taken of unfair business practices in relation to the marketing of credit products, whether or

¹⁰ [Enforcement of consumer protection legislation: Guidance on Part 8 of the Enterprise Act](#) (OFT512)

¹¹ [Statement of consumer protection and enforcement principles](#) (OFT 964)

not regulated under the CCA. A practice may be unfair or improper, whether unlawful or not.¹²

The FAQs also include suggestions for what the OFT regards as 'best practice' in relation to credit advertising. These are not legislative requirements but are intended to help compliance with the spirit as well as the letter of the law. Failure to comply would not lead to sanctions of any type where there is no breach of legislation and a practice is not unfair or improper.

The OFT's approach to enforcement

The OFT is committed to good enforcement policies and procedures in line with the recommendations of the Hampton Report¹³ as implemented by the Legislative and Regulatory Reform Act 2006¹⁴ (LRRRA). In addition, the use of enforcement sanctions is governed by the Regulatory Enforcement and Sanctions Act 2008.¹⁵

Part 2 of the LRRRA requires regulators to have regard to certain principles of good regulation, namely that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent, and should be targeted only at cases where action is needed. This has been elaborated through a Regulators' Compliance Code.¹⁶

The OFT acts in accordance with the Code and the Hampton principles in carrying out enforcement activities. In particular, we aim to ensure that enforcement action is taken only where necessary and proportionate, having regard to the risks of detriment to consumers. We seek to resolve any problems by agreement with the business concerned where possible. Key elements in our enforcement decisions will be:

- the level of detriment caused – or likely to be caused – to consumers by advertisements that do not comply
- whether the breach was inadvertent or was a deliberate or wilful (or negligent) flouting of the legal requirements, and

¹² The OFT has published general guidance on fitness – see [Consumer credit licensing: General guidance for licensees and applicants on fitness and requirements](#) (OFT969)

¹³ [Reducing administrative burdens: effective inspection and enforcement](#)

¹⁴ [Legislative and Regulatory Reform Act 2006](#)

¹⁵ [Regulatory Enforcement and Sanctions Act 2008](#)

- whether the breach is an isolated instance of non-compliance or forms part of a pattern, whether involving similar or different breaches.

The OFT is unlikely to take enforcement action where a trader has acted in good faith and with proper regard to the law and relevant guidance. Thus genuine misinterpretations which are not designed to mislead consumers and are not capable of causing detriment will be viewed differently from clear and deliberate breaches which do mislead or harm consumers. Where appropriate, we will take enforcement action further to our objective to make markets work well for consumers.

Further information

If you wish to subscribe to the OFT's web alert service, to be notified of updates to these FAQs, go to www.offt.gov.uk/subscribe. When you have entered your details, tick the box next to 'Consumer Credit Act'.

Specific queries regarding interpretation of the Regulations, or issues raised in these FAQs, may be addressed to credit.guidance@oft.gsi.gov.uk.

1 SCOPE OF REGULATIONS

1.1 What is an advertisement?

Section 189 of the CCA defines 'advertisement' broadly, as including 'every form of advertising' and 'in any... way'. This extends to all forms of media used to advertise credit facilities, including advertising in-store or on television or radio or via the Internet.

The Regulations apply to advertisements published for the purposes of a business carried on by the advertiser. The OFT takes the view that this should be interpreted broadly and may, depending on the facts, include oral representations to individuals where these are designed to attract custom – see also Q1.7.

In the OFT's view, it is not necessary for an advertisement to be promoted to the public generally. It may be 'published' when it is made available to any section of the public, however limited in number.

1.2 What is the scope of the Regulations?

The Regulations apply, with certain limited exceptions, to advertisements published for the purposes of a business carried on by the advertiser, indicating that he is willing to provide credit.

In addition, by virtue of section 151 the Regulations apply to advertisements published for the purposes of a credit brokerage business which advertise the services of the broker or of lenders to whom he effects introductions.

The Regulations no longer apply to hire advertisements, following implementation of the CPRs in May 2008. The CPRs apply to both credit advertisements and hire advertisements.¹⁷

¹⁷ See Introduction to these FAQs

1.3 Do the Regulations apply to business credit?

The Regulations do not apply to advertisements which indicate that credit is available only to companies or other bodies corporate. This must be clear from the advertisement itself.

In addition, the Regulations do not apply to advertisements which indicate clearly that the credit is solely for business purposes, unless the advertisement indicates (whether expressly or impliedly) that credit is also available for non-business purposes.

1.4 Do they apply to unregulated agreements?

The Regulations apply irrespective of whether the agreement would be regulated under the CCA, unless the credit is solely for business purposes (Q1.3) or the advertisement is regulated under the Financial Services and Markets Act (Q1.5).

1.5 What about mortgages?

The Regulations do not apply to an advertisement to the extent that it invites or induces engagement in investment activity within the meaning of the Financial Services and Markets Act (FSMA), other than an exempt generic communication (see Q1.6). 'Engaging in investment activity' includes entering or offering to enter into an agreement for qualifying credit.

'Qualifying credit' is credit provided pursuant to an agreement under which:

- the lender is a person who carries on the FSMA-regulated activity of entering into (as lender) or administering regulated mortgage contracts, and
- the obligation of the borrower to repay is secured (in whole or part) on land.

This includes second charge mortgages where the lender is authorised by the FSA in respect of first charge mortgage lending or administration. It also includes 'buy to let' lending, commercial lending and loans secured on properties overseas where the lender is so authorised.

The Regulations do not therefore apply to any part of an advertisement which is regulated under the FSMA regime. They do however apply to any part which is an

exempt generic communication, or which is outside the FSMA regime, irrespective of whether the agreements in question would be regulated under the CCA. See also Q1.14-16.

1.6 What is an exempt generic communication?

This is an advertisement (or part of an advertisement) which is exempt from the FSMA financial promotions regime because it:

- does not identify (whether directly or indirectly) a person who provides the controlled investment to which the communication relates, and
- does not identify (whether directly or indirectly) a person who carries on a controlled activity in relation to that investment.

A 'controlled investment' includes a qualifying credit agreement (see Q1.5) and a 'controlled activity' includes providing qualifying credit or arranging or advising on qualifying credit.

In practice, the scope of the above exemption from the FSMA regime is very limited. It does not apply to advertisements which identify the mortgage lender. It also does not apply to advertisements by credit-brokers which identify the broker (as a person involved in arranging or advising on qualifying credit) even if the advertisement does not also identify any relevant lender.

1.7 Do the Regulations apply to telephone canvassing?

Yes – see Q1.1. The OFT takes the view that 'publication' of an advertisement may include oral representations to individuals by telephone or in person. This will depend upon the facts of each case.

Insofar as a telephone call constitutes publication of an advertisement, it must comply with the Regulations.

The OFT's Non-Status Lending Guidelines also apply in relation to secured lending to non-status borrowers. Paragraph 9 states: 'Firms should avoid engaging in credit advertising by telephone to consumers who are known or likely to be non-status if the credit being advertised would be secured on the borrower's home'.

1.8 Can a promotion consist of more than one advertisement?

A promotion or advertising copy may contain more than one 'advertisement'. This will depend upon the facts of each case including how the promotion is structured and presented.

If it is designed so as to appear to constitute a single advertisement, and is likely to be seen as such by consumers, then in the OFT's view it should generally be treated as one 'advertisement' for the purposes of the CCA. This is regardless of whether it covers a number of different products or types of product.

On the other hand, if the different parts of the promotion are clearly separate and distinct, and if each is self-contained (see Q1.9) and is clearly identifiable as an advertisement in its own right, then in the OFT's view there is likely to be more than one 'advertisement'. Each must comply separately with the Regulations.

If advertisements are combined artificially within a single promotion, with the aim of avoiding regulatory requirements, but are clearly separate and distinct, the courts may find accordingly irrespective of the form of the promotion. Equally, if advertisements purport to be separate, but are unlikely to be seen as such by consumers, a court may find there to be a single 'advertisement'.

1.9 Does an advertisement have to be self-contained?

In the OFT's view, an 'advertisement' must be self-standing – that is, it must not be dependent upon information appearing elsewhere in a promotion or in a separate document. All information required by the Regulations must be contained within the individual advertisement (subject to Q1.10).

This would include, for example, the advertiser's name and a postal address if required. 'Together as a whole' and other requirements – including Schedule 2 information and security statements – must also be satisfied separately for each advertisement.

1.10 Are there any exceptions to this?

Special provisions apply where information in a book, catalogue, leaflet or other document is likely to vary from time to time.

In such cases, Regulation 4(3) permits the variable information to be set out in a separate document, provided that this is clearly identified in the principal document and all other information in the advertisement is shown 'together as a whole' in the principal document – see Q10.20.

In all other cases an advertisement must in the OFT's view be complete and self-contained – see Q1.9. See also Q10.21 for other special provisions relating to advertisements in dealers' publications.

1.11 Can an advertisement be subject to both the CCA and FSMA?

An advertisement may include elements falling within the 'qualifying credit promotion' aspects of the FSMA regime – see Q1.5. To the extent that it does, this must be regarded as a separate 'advertisement' for the purposes of the Regulations.

In effect, the advertisement is a 'composite' with parts falling into different regulatory regimes. Each part must satisfy the relevant requirements. Some elements (for example, a name and address) may fall into both parts, and so must comply with both regulatory regimes. This does not mean that the information must be repeated, rather that the advertiser must ensure that both sets of rules are complied with.

1.12 What if an advertisement is combined with an agreement?

A mailshot may include a credit agreement that the consumer can sign and return. In the OFT's view, this will not form part of the advertisement provided that the information contained in the agreement is not relied upon as a means of promoting the particular attributes of the product.

Businesses should take care in how they structure their arrangements, to ensure that the agreement is clearly separate from any advertisement. It may not be

feasible to comply both with the Regulations and with the Consumer Credit (Agreements) Regulations, given in particular the different rules on APRs and prominence.

1.13 What if it is combined with pre-contract information?

A mailshot may include pre-contract information. In the OFT's view, this may be regarded as part of the advertisement where it is relied upon or may be taken as a means of promoting the particular attributes of the product. This will depend upon the facts of each case.

If the pre-contract element merely repeats in a factual manner information contained previously in the mailshot it is unlikely that it will form part of the advertisement. However, if it includes additional information which is intended to promote the product (or can be taken as doing so), or if key product features are shown more prominently, then in the OFT's view this is likely to form part of the advertisement. As such it must comply with the Regulations.

If pre-contract information is subject to the Consumer Credit (Disclosure of Information) Regulations (for non-distance contracts) it will be important to ensure that it is clearly separate from any advertisement. It may not be feasible to comply with those regulations and also the Advertisements Regulations given for example the different rules on APR prominence.

1.14 A lender is advertising secured loans – is this subject to the CCA or FSMA?

If the lender is authorised by the FSA to enter into or administer regulated mortgage contracts, then any advertisement by that lender for qualifying credit (see Q1.5) would fall under the FSMA financial promotions regime. As such, it would be outside the CCA regime.

In such cases the FSMA regime would apply even if the advertisement is only promoting second charge mortgages. The scope of 'qualifying credit promotions' is broader than the investments and activities regulated by the FSA.

If the lender is not authorised by the FSA for first charge mortgage lending or administration, the CCA regime will apply. This includes where the lender is

authorised for activities other than mortgage lending or administration (such as arranging or advising on regulated mortgage contracts or general insurance).

1.15 A broker is advertising secured loans – is this subject to the CCA or FSMA?

This depends upon whether the lenders providing the loans in question are authorised by the FSA for first charge mortgage lending or administration – see Q1.14. This is regardless of whether they are identified in the advertisement.

If the advertisement relates to loans secured on land, and all of the lenders are authorised by the FSA to enter into or administer regulated mortgage contracts, then the whole advertisement will be a qualifying credit promotion under the FSMA regime. This is irrespective of whether the broker is authorised for the regulated activities of mortgage arranging or advising. It applies even if all of the loans are second charge.

It will not be an exempt generic communication (see Q1.6) if the broker is identified in the advertisement, since he is carrying on a controlled activity to which the communication relates – namely, arranging or advising on qualifying credit. Again, this is irrespective of whether he is carrying on a regulated activity or is authorised as such. Where the broker is not directly authorised he will need to get an authorised firm to approve his promotions.

1.16 What if some of the loans are from non-FSA lenders?

If the broker is advertising loans secured on land, and none of the lenders is FSA-authorised for mortgage lending or administration, the advertisement will be subject wholly to the CCA regime.

If some of the lenders are FSA-authorised, and some are not (or are authorised for activities other than mortgage lending or administration), the advertisement will be subject to both regimes. That part relating to FSA-authorised lenders will be subject to the FSMA financial promotions regime, whilst that part relating to non-authorised lenders will be subject to the CCA regime. Some parts may be common to both and so will need to comply with both regimes – see Q1.11.

1.17 What about advertising stickers on cars?

In the OFT's view, each sticker (if it is an advertisement) is likely to constitute a separate 'advertisement' for the purposes of the CCA. Each is separate and distinct from the stickers on other cars – see Q1.8.

Each advertisement must comply in its own right with the Regulations – see Q1.9. If therefore the sticker on one car indicates a monthly repayment amount, it will be necessary to state the 'typical APR' for that car (see Q3.16) together with the cash price and all other applicable Schedule 2 information.

1.18 What about advertisements directed at brokers?

In the OFT's view, a credit advertisement may fall within section 43, and be 'published' within the meaning of the CCA and Regulations, even if it is intended solely for brokers or other intermediaries. This depends upon whether it indicates a willingness to provide credit and if so, whether it is exempted under section 43 or the Regulations. The exclusion in Regulation 10(1) will not apply where, for example, a lender issues a mailshot to credit-brokers promoting the credit agreements which it makes available to consumers.

2 MEANING OF 'PUBLICATION'

2.1 What does it mean to 'publish' an advertisement?

Any person who causes an advertisement to be published is under a duty to ensure that it complies with the Regulations – see Q2.2.

The OFT considers that an advertisement is 'published' each time it is communicated or made available to the public, or to a section of the public. For example, a leaflet is published when it is handed to consumers or made available in bank branches, and a mailshot is published when it is sent out.

It has been suggested that publication is 'once and for all' and applies only where an advertisement is made available to the public for the first time. The OFT does not agree. In our view, an advertisement is 'published' *whenever* it is made public. It may be published more than once or on a continuing basis. For example, a poster continues to be published while it is available to be seen by consumers, and a website continues to be published while it is capable of being accessed.

Where a person has power to remove or amend an advertisement that is not compliant with the Regulations, we would expect them to do so.

2.2 Who is subject to the 'duty to comply'?

The duty in Regulation 2 applies to any person who causes an advertisement to be published. This is not limited to the 'advertiser' (see Q11.8) but may include other persons in the 'chain' of causation leading to publication of the advertisement, including the publisher and any advertising agency.

Equally, not all 'advertisers' will be subject to Regulation 2. For example, an advertisement by a credit-broker may identify a particular lender as willing to enter into credit agreements. The lender is also then an 'advertiser' for the purposes of section 189 and so will need to be named in the advertisement by virtue of Regulation 3(c) even though he may not have caused it to be published.

3 TYPICAL APR

3.1 What is the 'typical APR'?

The 'typical APR' is defined as an APR at or below which an advertiser reasonably expects, at the date on which an advertisement is published, that credit would be provided under at least 66% of the agreements which will be entered into as a result of the advertisement. This is irrespective of whether they are entered into with the advertiser or a third party. In the case of an advertisement which falls within section 151(1) of the CCA, 'advertiser' means the person carrying on the business of credit brokerage.

An advertisement may have only one 'typical APR' – see Q3.3.

3.2 When is a typical APR required?

The typical APR must be stated if a credit advertisement:

- specifies any other rate of charge – see Q3.28
- includes any of the items of information listed in Schedule 2 paragraphs 5-7 – see Q9.3
- indicates in any way that credit is available to persons who might otherwise consider their access to credit restricted
- indicates in any way that any of the terms on which credit is available is more favourable than corresponding terms applied in any other case or by any other creditor, or
- includes any incentive to apply for credit or to enter into an agreement under which credit is provided.

Non-status, comparative and incentive triggers are considered further in chapter 8 of these FAQs.

3.3 Can an advertisement contain more than one typical APR?

No. The definition of 'typical APR' is by reference to all agreements expected to be entered into as a result of the advertisement (and is expressly referred to as 'the' typical APR) – see Q3.1. An individual advertisement may not therefore have more than one typical APR. This is regardless of whether it covers different products or

types of product, each with its own APR or range of APRs. If however a promotion consists of more than one advertisement (see Q1.8), each may contain a typical APR attributable to agreements expected to arise from that advertisement. In such a case it is not permissible to include a single 'typical APR' in respect of all of the advertisements taken together. Each advertisement must be separate and self-contained – see Q1.9.

3.4 What about 'step banded' advertisements?

In the OFT's view, a 'step banded' advertisement with a table of rates will generally constitute a single 'advertisement' for the purposes of the CCA – see Q5.1. As such, it may contain only one 'typical APR' even if it also includes APRs for the individual products.

The OFT's view on the treatment of 'step banded' advertisements is considered further in chapter 5.

3.5 When does the 66% rule have to be applied?

The 'typical APR' is defined by reference to reasonable expectations at the date on which an advertisement is published. The advertiser must forecast the business likely to arise from the advertisement, and the mix of products and customers and the applicable rates. This should be based on all agreements expected to result from the advertisement, irrespective of when such agreements are concluded and whether they are entered into with the advertiser or a third party.

The business generated by the advertisement may, in the event, be different from that forecast, with the result that fewer than 66% of agreements are written at APRs at or below the typical APR stated in the advertisement. This does not however involve a breach of the Regulations, provided that the typical APR was based on reasonable expectations at the date of publication, or at the latest possible date on which the advertisement was caused to be published.

The advertiser should be able, if challenged, to substantiate the basis on which a typical APR was calculated – see Q3.11.

3.6 What about continuing publication of an advertisement?

An advertisement may be published more than once. If so, the typical APR should be re-calculated each time the advertisement is published. If reasonable expectations have changed – for example because of changes in the market or because the mix of business to date is different from that forecast – this should be factored into a new typical APR.

An advertisement may also be published on a continuing basis (see Q2.1). If so, the assessment of the typical APR should be repeated periodically to ensure compliance with the Regulations. If reasonable expectations have changed, and as a result the typical APR is no longer correct, the advertisement should where possible be withdrawn and replaced by a new advertisement with a new typical APR. This should be done as soon as reasonably practicable.

3.7 Is the 66% rule based on past business?

Not as such. The definition of 'typical APR' is based on reasonable expectations of business resulting from the advertisement. Such expectations may derive in part from past performance, but this cannot be the only consideration. The test is forward-looking.

The advertiser must consider what agreements are likely to arise in future from the advertisement – this may be different from the position under previous advertising campaigns, taking into account any referred business.

3.8 How can I calculate a typical APR for a new product?

This should be based on reasonable expectations of business likely to result from the advertisement. The advertiser should use reasonable assumptions, taking into account any relevant information, and should be able to justify these if challenged – see Q3.11.

3.9 What if the advertisement is part of a wider campaign?

The definition of 'typical APR' relates to agreements to be entered into as a result of the advertisement. This is irrespective of any wider campaign. For example, a

trader may use different advertisements for Internet or non-status business – the typical APR should relate to business expected to derive from the particular advertisement rather than from the advertising campaign as a whole.

3.10 What if the advertisement covers unregulated agreements?

The 66% test should be applied to all credit agreements expected to arise from the advertisement. This is irrespective of whether some may not be regulated under the CCA. However, where part of an advertisement is subject to the 'qualifying credit promotion' aspects of the FSMA regime, any agreements arising from that part must be disregarded in determining the typical APR – see Q1.5.

3.11 What evidence is needed to substantiate typical APRs?

The typical APR must be based on reasonable expectations of business likely to derive from the advertisement. The advertiser should be able to justify the assumptions used, if challenged, and to demonstrate that they were in fact reasonable in all the circumstances. It would make sense therefore to document fully the basis for any decision, so as to be able to demonstrate compliance.

The OFT and trading standards services have powers under the EA02 to seek information in appropriate cases.¹⁸ This could include information as to the basis on which a typical APR has been calculated. If the advertisement has been placed by a credit-broker, questions could also be asked of the relevant lenders.

3.12 What if the APR is linked to base rates?

Some products may provide that the interest rate or APR is linked to the Bank of England or other base rate. A statement to that effect (for example, 'base rate tracker') will not itself trigger a typical APR since it does not specify a rate of charge. However, if the amount or percentage of the link is stated – for example '3% above base rate' – this will enable the consumer to calculate the applicable rate of charge. In the OFT's view Regulation 8(1)(a) will apply in such a case and a typical APR is required. For such products, a change in the base rate will affect the APR for each agreement expected to arise from the advertisement. This may

¹⁸ See Introduction to these FAQs

impact on the typical APR. If so, it may be necessary to withdraw the advertisement where possible and replace it with a new advertisement containing a new typical APR. This should be done as soon as reasonably practicable – see also Q3.6.

3.13 Is there more than one possible 'typical APR'?

The definition of 'typical APR' refers to 'an APR at or below which' – see Q3.1. In the OFT's view, this permits the advertiser to show either the rate which corresponds to the 66% point on a cumulative frequency scale, or any higher rate.

So for example, if a product has a range of rates comprising 8%, 9% and 10%, and the 66% point corresponds to the 9% rate, it would be permissible to show the typical APR as either 9% or 10%. It must however correspond to an actual APR charged on some of the transactions – it would not be permissible to show the typical APR as 9.5% if no consumer will actually pay that rate.

3.14 Can the typical APR correspond to a 'from' or 'to' rate?

It is possible that the 66% point may be the highest APR in the range, or the advertiser may elect to show this as the typical APR – see Q3.13. It may also correspond to the 'from' APR provided that it is the lowest APR at which credit is expected to be provided under at least 10% of agreements.

The typical APR would however have to be shown separately from any 'from' or 'to' rate, and more prominently by virtue of Regulation 8(5)(c).

3.15 How should the typical APR be denoted?

The typical APR must be denoted as '%APR', and must be accompanied by the word 'typical'. It may also need to be accompanied by the word 'variable' – see Q3.21. For example, if the typical APR is 9.9% (and is not subject to change), it could be denoted as '9.9%APR Typical' or 'Typical 9.9%APR' but not '9.9% Typical APR' or 'Typical APR 9.9%'.

3.16 What if I am advertising a product with only one APR – do I still have to call it 'typical APR'?

Yes. Regulation 8(1) requires that an advertisement must specify the typical APR if any of the triggers applies, and Regulation 8(5) requires this to be accompanied by the word 'typical'. This applies even if the product has only one possible APR – it must still be denoted as 'typical'.

It would be open to the advertiser to indicate that the typical APR applies to all of the advertised products, or that all successful applicants will get that rate, where that is the case.

3.17 What if the APR is zero?

An agreement may have a 0% APR if there are no interest or other charges entering into the total charge for credit. If the advertiser reasonably expects that 66% or more of agreements resulting from the advertisement will be at 0% APR, this may be shown as the typical APR. However, it must be accompanied by the word 'typical' – see Q3.16.

A 0% APR will always trigger the typical APR as it is a 'rate of charge' within Regulation 8(1)(a) – see also Q13.6.

If the advertiser expects to offer agreements to some applicants at a higher rate – for example because they cannot meet minimum deposit requirements – these must be factored into the typical APR calculation.

3.18 What prominence rules apply?

Regulation 8(5) requires that the typical APR must be more prominent than any relevant trigger (see Q3.2) and any Schedule 2 item. This is irrespective of whether the Schedule 2 information falls within paragraphs 5-7 and so triggers the typical APR. In the case of an advertisement in printed or electronic form, the typical APR must be shown in characters at least 1.5 times the size of any Schedule 2 item.

3.19 What about the individual elements of the APR?

The prominence requirements in Regulation 8(5) relate to 'the typical APR', and Regulation 8(3) requires this to be denoted as '%APR'. In the OFT's view, the requirements therefore apply to each of the matters specified, that is, the number (including any decimal digit), the % figure and the letters 'APR'.

It is not necessary for these to be of equal prominence, but each must in the OFT's view satisfy the requirements individually. So for example, the letters 'APR' must be more prominent than any interest rate or any indication or incentive within Regulation 8(1), and (in the case of an advertisement in printed or electronic form) shown in characters at least 1.5 times the size of any Schedule 2 information.

3.20 What about accompanying information?

The typical APR must be accompanied by the word 'typical' and (where applicable) the word 'variable'. In the OFT's view, these are not subject to the same prominence requirements, although must be easily legible.

As a matter of good practice, the OFT considers that the words should be of sufficient prominence that consumers are likely to see them and to appreciate their significance.

3.21 What does it mean for an APR to be 'variable'?

Regulation 8(4) requires that where an APR is subject to change it must be accompanied by the word 'variable'. In the OFT's view, this applies where the rate or amount of any item included in the total charge for credit (TCC) for an individual agreement, such as the interest rate or an annual fee, will or may be varied during the lifetime of the agreement. The APR itself is fixed when an agreement is entered into and does not change subsequently.

The requirement applies to any APR, including the typical APR. In the OFT's view, it applies individually to each APR stated.

3.22 What if rates vary for other reasons?

In the OFT's view, the term 'variable' should not be used in relation to an APR or other rate of charge otherwise than in accordance with Regulation 8(4) (see Q3.21), since this may mislead consumers.

For example, an APR should not be denoted as 'variable' merely because rates differ according to the amount or duration of credit or the borrower's circumstances, or because the advertised rate may change between the date of publication and the date of entry into an agreement. In such cases, advertisers should use alternative phrases such as 'rates vary according to your circumstances' or 'rates subject to change'.

3.23 How do the requirements apply to brokerage advertisements?

The definition of 'typical APR' refers to an APR at or below which the advertiser reasonably expects that credit will be provided under at least 66% of the agreements which will be entered into as a result of the advertisement. In the case of an advertisement for credit brokerage, 'advertiser' means the credit broker, whether it is the credit broker's own services, or the services of those to whom introductions may be effected by the broker, which are advertised.

In the OFT's view, this means that, in calculating the typical APR (and 'from' and 'to' rates), account should be taken of the APRs for the individual credit agreements the broker reasonably expects to be made as a result of the advertisement by introductions effected by the broker within the meaning of section 145(2). See also Q3.24.

3.24 How do I calculate a typical APR in such cases?

This should be based on reasonable expectations of credit agreements likely to result from the advertisement – see Q3.23.

In the OFT's view it is immaterial whether the broker is involved in the further processing of the application or in assisting the lender. It is sufficient that he has effected an introduction, pursuant to a contract with the consumer, and as a result

the consumer enters into a credit agreement. Where this is as a result of the advertisement, it should be factored into the advertiser's reasonable expectations.

3.25 What if I am acting as both a lender and a broker?

A lender may also act as a credit-broker if he effects introductions to other lenders or brokers within the meaning of section 145(2). For example, if he declines to lend to a particular applicant, but refers the applicant (with the latter's consent) to another lender, or to a credit-broker, who may be better placed to offer credit.

In the OFT's view, in determining the typical APR in such cases (and 'from' and 'to' rates), account should be taken of the advertiser's reasonable expectations of:

- credit agreements he will enter into (as lender) with consumers, and
- credit agreements that consumers will enter into with other lenders as a result of introductions effected by the advertiser (as broker) pursuant to a contract with the consumer – see Q3.23.

3.26 Can I limit the typical APR to a particular class of agreements?

The typical APR must take into account all agreements the advertiser reasonably expects to be entered into as a result of the advertisement. This cannot be limited to a particular class of agreements, unless the advertiser does not expect any other agreements to result from the advertisement. For example, if the advertisement is promoting loans between £5k and £15k, but the advertiser expects to offer different amounts to some applicants who respond to the advertisement – or to refer them to other brokers or lenders – in the OFT's view this should be taken into account. As above, this should be based on reasonable expectations.

3.27 What about rate-for-risk pricing?

If the advertiser expects to offer products as a result of the advertisement to some applicants at rates higher than those advertised, these must in the OFT's view be taken into account in calculating the typical APR and 'from' and 'to' rates. Equally, if the advertiser expects to offer different products to applicants who do not qualify for the advertised deal, these must be taken into account.

The definition of 'typical APR' is by reference to *all* agreements expected to be

entered into as a result of the advertisement – not just those featured in the advertisement.

3.28 What is a 'rate of charge'?

Regulation 8(1)(a) requires that the typical APR must be stated if the advertisement specifies any other rate of charge.

In the OFT's view, a 'rate of charge' can comprise:

- the rate of interest under the credit agreement, or any such rate
- the rate (not amount) of any fees or charges payable, or
- any individual APR including 'from' and 'to' APRs.

4 OTHER APRs

4.1 Do I have to include 'from' and 'to' APRs?

Regulation 8(2) provides that a credit advertisement may not indicate the range of APRs charged otherwise than by specifying, with equal prominence, *both* of the following:

- the APR which the advertiser reasonably expects, at the date on which the advertisement is published, will be the lowest APR at which credit will be provided under not less than 10% of the agreements which will be entered into as a result of that advertisement, and
- the APR which the advertiser reasonably expects, at that date, will be the highest APR at which credit will be provided under any of the agreements which will be entered into as a result of the advertisement.

In these FAQs, the first of these is referred to as the 'from' APR and the second as the 'to' APR. See also Q4.12.

The Regulations do not require the inclusion of 'from' and 'to' APRs. However, where either is shown, the other must also be shown, with equal prominence, with the typical APR being more prominent. The 'from' APR must be calculated on the 10% rule as above.

4.2 Can I include other APRs?

The OFT takes the view that the Regulations do not preclude the inclusion of APRs other than the typical APR and 'from' and 'to' rates. However, this is subject to Regulation 8 (and the CPRs).

Any such APR would be a 'rate of charge' for the purposes of Regulation 8(1)(a) and so would trigger the typical APR. It is also likely to trigger 'from' and 'to' rates – see Q4.6.

As a matter of good practice, the OFT considers that an advertisement should make clear what each APR relates to, and how therefore it differs from any other APR including the typical APR. In any event, the rates must not be presented in a way that may mislead consumers contrary to the CPRs.

4.3 Can an APR be shown without a typical APR?

No. An APR is a 'rate of charge' and this will always trigger the typical APR – see Q3.28. This applies even if the product has only one possible APR – this must be denoted as 'typical' (see Q3.16). The typical APR must be more prominent than any other APR.

4.4 Can 'from' or 'to' rates be shown without a typical APR?

No. 'From' and 'to' APRs are rates of charge. The inclusion of either triggers the other, by virtue of Regulation 8(2), and each also triggers the typical APR by virtue of Regulation 8(1)(a).

It is possible that the typical APR may correspond to a 'from' or 'to' rate – see Q3.14. However, it must also be shown separately, and more prominently, in accordance with Regulation 8(5), and must be denoted as 'typical'.

4.5 What constitutes 'the range of APRs charged'?

Regulation 8(2) provides that an advertisement may not indicate the range of APRs charged otherwise than by specifying, with equal prominence, both a 'from' APR (calculated on the 10% rule) and the 'to' APR – see Q4.1.

'Range' is not defined in the Regulations, so the starting point is that it must take its ordinary and natural meaning. In the OFT's view, this means that 'the range' is the variation between certain limits and not the points between those limits, and therefore anything that purports to show the highest and/or lowest APRs or may be construed as doing so is an indication of 'the range'. See also Q4.6.

4.6 What is an 'indication' of the range?

In the OFT's view, an indication may be express or implied. Examples of the former might be 'rates from 5%APR' or '6%APR and above'. The OFT considers that an implied indication is one capable of being taken by a person reading the advertisement as indicating the range of APRs charged in relation to the credit. This will be a matter of fact falling ultimately for the courts to decide.

For example, the statement 'rates as low as 4%APR' constitutes an indication of the range of APRs, triggering the 'to' rate and the typical APR. The statement may be included only if 4% is the lowest APR at which credit is reasonably expected to be provided under not less than 10% of agreements resulting from the advertisement. The 'to' APR must be the highest APR charged, irrespective of the number of agreements entered into at that rate.

4.7 What if a single APR is shown together with the typical APR?

Inclusion of any individual APR triggers the typical APR – see Q4.3. If together these purport to indicate the range of rates charged, or may convey that impression, then in the OFT's view Regulation 8(2) will apply. This is because this would be an implicit indication of the range of APRs – see Q4.6. Whether or not this is the case will depend upon the facts including any other information or indication in the advertisement and any impression arising from it.

If however an individual APR is shown merely as an example, and it is clear that it is only that (and will not be taken to represent the lowest or highest in the range), then in the OFT's view Regulation 8(2) is unlikely to apply. If so, there is no requirement to include 'from' and 'to' APRs.

This is however subject to the CPRs if the advertisement is liable to mislead consumers. In the OFT's view it may do so if it confuses consumers as to the basis for the example chosen, or undermines in any way the 'typical APR'.

4.8 What if two APRs are shown together with the typical APR?

In the OFT's view, inclusion of more than one APR alongside the typical APR is likely to indicate the range of APRs charged. This may be the case even if the rates in question are not in fact the highest and lowest in the range – they may appear to be so to a prospective borrower. If so, this will trigger 'from' and 'to' rates in accordance with Regulation 8(2) – see Q4.6. The 'from' APR must be calculated on the 10% rule.

4.9 Can intermediate APRs also be shown?

In the OFT's view, it is permissible to show intermediate APRs within the range, subject to the CPRs (see Q4.2), but this will generally trigger 'from' and 'to' rates in accordance with Regulation 8(2) – see Q4.6. The typical APR must also be shown and must be more prominent.

For the OFT's view on the use of 'representative' APRs, see chapter 5.

4.10 Can I show rates lower than the 'from' APR?

In the OFT's view, it is not permissible to show any APR which is lower than the 'from' APR calculated on the 10% rule.

Insofar as this indicates the range of APRs charged, it does so 'otherwise than' in accordance with Regulation 8(2), and so is precluded. In any event, the OFT takes the view that it is likely to be misleading under the CPRs. This is because consumers may assume that it is the 'from' APR and so will be available to at least 10% of customers, when that may not be the case.

For example, if some agreements may be offered at 0% APR (but that is not the 'from' APR), it would not be permissible to state that in an advertisement as this would be indicating the range otherwise than in accordance with the Regulations – see also Q4.13.

4.11 What prominence rules apply?

Regulation 8(5) requires that the typical APR must be more prominent than any other rate of charge including any individual APR. It must also be more prominent than 'from' and 'to' rates, which must be of equal prominence.

The Regulations are otherwise silent on the relative prominence of APRs including intermediate rates within the range. However, this is subject to the CPRs if the advertisement may mislead.

As a matter of good practice, the OFT considers that individual APRs in an advertisement (for example, as part of a table) should generally be shown with

equal prominence, with the typical APR being shown separately and more prominently. If undue prominence is given to a lower APR this may undermine the purpose of the Regulations and could be challenged under the CPRs.

4.12 Do 'from' and 'to' rates have to be denoted as such?

Not necessarily. Regulation 8(2) does not require that 'from' and 'to' APRs are denoted as such, using that particular wording. However, in the OFT's view it should be clear to consumers that that is what they are, otherwise the advertisement may be misleading.

The 'from' APR should not be stated in such a way as to give the impression that rates lower than that are available, since this may confuse consumers and could be challenged under the CPRs.

4.13 What about the statement '0% finance available'?

In the OFT's view, this triggers the typical APR by virtue of Regulation 8(1)(a), and is also likely to trigger 'from' and 'to' APRs by virtue of Regulation 8(2). This is because it is likely to be construed by consumers as indicating the lowest APR in the range. The statement may be included only if the advertiser reasonably expects at least 10% of agreements to be entered into at 0% APR, and only if the 'to' APR is also shown with equal prominence.

5 'STEP BANDED' ADVERTISEMENTS

5.1 Can I still use a 'step banded' advertisement?

Yes, subject to Regulation 8 (and the CPRs) – see chapter 4. A 'step banded' advertisement will typically include a single table of rates which vary according to the amount and/or duration of credit, together with accompanying information. The OFT considers that this is likely to be a single 'advertisement' even if it relates to more than one product type.

For example, a promotion may contain a table of say 10 rates and products. In the OFT's view, this is designed to appear as a single advertisement, and should be treated as such, rather than as 10 separate advertisements. The different elements of the promotion are not separate and self-contained – see Q1.9.

5.2 Does this have a single 'typical APR'?

As above, a 'step banded' advertisement will generally constitute a single 'advertisement'. As such, it must include a single 'typical APR'. This must be calculated by reference to all agreements expected to result from the advertisement – see Q3.1.

5.3 How should the typical APR be shown?

The typical APR must be accompanied by the word 'typical' and must be more prominent than any other APR.

As a matter of good practice, the OFT considers that the typical APR should generally be shown separately from the table of rates, to avoid confusion with any 'band' APR. Otherwise consumers may assume that it is 'typical' only of the band in question. In any event the rates must not be presented in a way that is liable to mislead consumers contrary to the CPRs.

5.4 Do I have to include 'from' and 'to' rates?

In the OFT's view, the use of a table of rates is likely to indicate the range of APRs charged for the purposes of Regulation 8(2) – see Q4.8. If so, this triggers 'from' and 'to' rates.

It is not permissible in the OFT's view to show an APR which is lower than the 'from' APR calculated on the 10% rule – see Q4.10. Any band relating to such an APR should therefore be omitted from the table shown in the advertisement, or included without a band APR.

5.5 Do I have to show all possible bands in the table?

No, but if this is not done care must be taken to ensure that the advertisement is not misleading contrary to the CPRs.

The bands chosen should be representative of products covered by the advertisement. As a matter of good practice, the OFT considers that at least one of the bands should correspond to the typical APR, since otherwise consumers may be confused as to the relationship between the band APRs and the overall typical APR. A band should not be shown with an APR if this is lower than the 'from' APR – see Q5.4.

5.6 Can I include representative rates?

The Regulations do not preclude the use of representative information, although this would be subject to the CPRs if the advertisement is liable to mislead. In the OFT's view it is permissible therefore to show a 'representative' APR for a particular product or band of credit – in addition to an overall 'typical APR' – subject to the important caveats set out below.

If such an APR is shown, this should in the OFT's view be in place of the individual APRs that would otherwise apply. It should not be in addition to those APRs since this may confuse consumers. The rate should be genuinely representative of the APRs in question and it should be made clear that it is representative. There should be no risk of confusion with the typical APR – an APR should not be denoted as 'typical' if it does not correspond to the typical APR.

If the use of representative information could mislead consumers or undermine the typical APR this may be challenged under the CPRs.

5.7 How should I calculate a representative APR?

The Regulations are silent on the use of representative information and hence the basis for arriving at a 'representative' APR. However, this must be done in a way which is not liable to mislead consumers contrary to the CPRs. It should not have the effect of undermining the typical APR or confusing consumers as to its application.

The use of representative information is less likely to be challenged under the CPRs if it corresponds to the typical APR or is calculated on an equivalent 66% test. The OFT would therefore expect a 'band APR' to be a rate at or below which the advertiser reasonably expects that credit will be provided under at least 66% of the agreements in question. This ensures that it is genuinely representative of such agreements. There should also be an overall 'typical APR' which is more prominent and clearly applies to the advertisement as a whole.

5.8 How should a representative APR be denoted?

If a 'representative' APR is included in place of individual APRs, it should be made clear that it is representative. In the OFT's view, this should be done in a way that is likely to be seen and understood by consumers. In any event, it must not be liable to mislead under the CPRs.

In the OFT's view, a 'representative' APR or interest rate should not be denoted as 'typical' as this could cause confusion with the overall typical APR. An advertisement may have only one 'typical APR'. Advertisers should use alternative terminology to denote that an APR is representative of a particular product or band of credit. If an advertisement purports to indicate a typical APR otherwise than in accordance with Regulation 1(2), this is a breach of Regulation 8(1). It is also likely to mislead consumers contrary to the CPRs.

6 APR CALCULATION

6.1 How do I calculate an individual APR?

The APR in an individual agreement is calculated in accordance with the Consumer Credit (Total Charge for Credit) Regulations (the TCC Regulations). In the case of agreements for running-account credit, the assumptions in Schedule 7 to the Agreements Regulations must be used in place of relevant assumptions in the TCC Regulations.

The APR for each agreement will be the basis for determining any advertised APR including the typical APR and 'from' and 'to' rates. This is subject however to Schedule 1 to the Advertisements Regulations. Paragraph 1 of the Schedule specifies certain assumptions which must be used in advertisements relating to running-account credit (see Q6.2), and paragraphs 2-4 provide for permissible tolerances in APR disclosure in advertising (see Q6.5).

6.2 What about running-account credit?

Schedule 1 paragraph 1 provides that, in the case of an advertisement relating to running-account credit (such as a credit card), the specified assumptions must be used in calculating the total charge for credit and any APR, notwithstanding the terms of the transaction advertised and in place of any assumptions in Part IV of the TCC Regulations that might otherwise apply.

The assumptions in Schedule 1 displace those in the TCC Regulations only to the extent to which they cover the same subject matter. Other than to that extent, the assumptions in the TCC Regulations (including Regulation 15 relating to index-linked rates) continue to apply.

In the OFT's view, the Schedule 1 assumptions displace all relevant assumptions in the TCC Regulations, and not merely those in Part IV.

6.3 Do the assumptions apply only to credit cards?

No – they apply to all forms of running-account credit. The assumptions must be used where necessary and applicable.

6.4 Does this differ from the position in agreements?

As above, the APR for an individual agreement for advertising purposes must be calculated in accordance with the TCC Regulations and, where applicable, Schedule 1 to the Advertisements Regulations. In these FAQs, this is referred to as the 'advert APR'.

In most cases this will correspond to the APR in the actual agreement. However, in the case of running-account credit, such as credit cards, the assumptions in Schedule 1 may differ from those applicable to the agreement pursuant to Schedule 7 to the Agreements Regulations. In particular, the amount of credit for advertising purposes is taken to be £1,500 (unless the credit limit will be less), whereas in agreements the actual credit limit is used where known.

6.5 Is there any leeway in calculating APRs?

Schedule 1 paragraph 2 provides for permissible tolerances in disclosure of APRs in advertising. An advertisement may show a rate which exceeds the relevant APR by no more than one unit, or which falls short of the APR by not more than 0.1 units.

There are also permissible tolerances in cases where repayments are nearly equal, or where the period before the first repayment is greater than the interval between each subsequent repayment.

6.6 How can a typical APR be calculated?

The 'typical APR' is defined by reference to agreements expected to be entered into as a result of the advertisement – see Q3.1.

In the OFT's view, it is necessary therefore to start by calculating an 'advert APR' for each agreement expected to arise from the advertisement. This is done by applying the assumptions in the TCC Regulations and, where applicable, Schedule 1.

Having calculated an 'advert APR' for each individual agreement, a typical APR can be derived using the 66% rule in Regulation 1(2). 'From' and 'to' rates can be determined on a similar basis.

6.7 Does a credit card have a single APR?

In the OFT's view, credit card agreements should be regarded as agreements with different parts in different statutory categories within section 18(1)(a) CCA such that each part must be treated for the purposes of the CCA as a separate agreement by virtue of section 18(2). A credit card typically comprises elements relating to purchases, cash advances and balance transfers.

However, the effect of the Regulations is that, in advertising, a single APR should be calculated in respect of the credit card agreement as a whole, using the assumptions in Schedule 1 (but see Q6.11). This is also the basis for determining the typical APR and 'from' and 'to' rates.

6.8 Can I show 'part APRs' as well?

Schedule 1 paragraph 1 provides that, in the case of an advertisement relating to running-account credit, the specified assumptions must be used in calculating the total charge for credit and 'any APR'. Paragraph 1(e) requires that an APR must be based on the purchase element where present – see Q6.10.

In the OFT's view, this means that a single 'advert APR' should be calculated in respect of the agreement as a whole. This also in the OFT's view precludes an advertisement from showing APRs for the individual 'parts' of a credit card agreement (subject to Q6.11). The typical APR and 'from' and 'to' rates should be based on the purchase element, where present, and the same applies to any individual APR.

6.9 How then do I show rates for balance transfers or cash advances?

In the OFT's view, it is not permissible in advertising to show an APR for an individual 'part' of a credit card agreement (subject to Q6.11). If such rates are included in an advertisement, they must be shown as interest rates rather than APRs.

The OFT considers that it may be misleading under the CPRs to show the interest rate for one element of an agreement without also indicating the rates for each other element, or making clear that the rate shown applies only to part of the

facility or only for a limited time. The APR for the agreement as a whole (based on the purchase rate) may however be shown without also indicating the interest rates for the other elements.

6.10 How do I calculate a 'unitary APR'?

Schedule 1 paragraph 1(e) applies where:

- the agreement provides credit to finance the purchase of goods or services, and also provides credit for one or more other purposes such as cash loans or to refinance existing indebtedness; and
- different rates of interest and/or different charges are payable in respect of different elements of the credit facility.

In such cases it must be assumed that the rate of interest and charges payable in relation to the whole of the credit are those applicable to the purchase element, where present.

6.11 What if there is no purchase element?

If there is no purchase element, or it is unregulated (as in the case of a charge card), Schedule 1 paragraph 1(e) will not apply. There is then no basis for calculating a 'unitary' APR for the agreement as a whole. In such cases it will be necessary in the OFT's view to calculate an APR separately for each 'part agreement', using the remaining assumptions in Schedule 1 and the TCC Regulations. Having done so, a typical APR can be determined by applying the 66% rule to all the 'part agreements' expected to result from the advertisement. Where there are only two 'parts' to an agreement, the typical APR will correspond to the higher of the 'part APRs'.

6.12 What do I assume for the amount of credit?

Paragraph 1(a) of Schedule 1 provides that the amount of credit is taken to be £1,500 or, where the credit limit will be less than £1,500, an amount equal to that limit. If the credit limit is unknown, see Q6.13.

If there will be no credit limit at all, the amount of credit must be taken to be £1,500. The assumption in paragraph 1(a) overrides that in Regulation 13 of the TCC Regulations.

6.13 What if the credit limit is unknown?

In the OFT's view, if the credit limit for one or more prospective agreements is unknown at the date of publication of an advertisement, estimated information should be used based on reasonable assumptions.

In other words, the advertiser should forecast a credit limit for each individual agreement expected to result from the advertisement. If the anticipated credit limit is greater than £1,500, it must be 'capped' at £1,500 – see Q6.12. An 'advert APR' can then be calculated individually for each agreement, and this will be the basis for determining the typical APR and 'from' and 'to' rates – see Q6.6.

6.14 What is the assumed period of credit?

Paragraph 1(b) of Schedule 1 requires the assumption in the case of credit cards and other running-account credit that the credit is provided for a period of one year beginning with the relevant date (see Q6.15). This overrides any relevant assumption in the TCC Regulations, and applies irrespective of the terms of the agreement.

Paragraph 1(c) of Schedule 1 requires the assumption that the credit is provided in full on the relevant date.

6.15 What is meant by 'the relevant date'?

Regulation 1(2) defines 'relevant date' (in line with the TCC Regulations) as the earliest date, identifiable under the agreement at the time it is made, on which the debtor is entitled to require the provision of anything which is the subject of the agreement (such as the credit or any goods) or, in any other case, the date on which the agreement is made.

6.16 How are interest and charges deemed to be repaid?

Paragraph 1(f) of Schedule 1 requires the assumption that the credit is repaid in twelve equal instalments and at monthly intervals beginning one month after the relevant date. The final payment will be 12 months after the relevant date, and after that no balance will be outstanding.

In the OFT's view, repayments of 'credit' for these purposes should be taken to include any interest or other charges applicable to the 12 month period in question. This is consistent with Regulation 1(5).

The terms of the agreement will determine the proportions of each payment which are attributable to repayment of capital, interest or charges, and these may vary from one month to the next, but with the total instalment being assumed to be the same each month.

6.17 How are introductory rates treated?

Paragraph 1(d) of Schedule 1 provides that if the rate of interest will change at a time provided in the transaction within the first three years, the rate used in calculating the APR must be the highest rate applicable during that period. This overrides any relevant assumption in the TCC Regulations, and applies irrespective of the terms of the agreement.

If the rate will change, but the timing of any variation is unknown, see Q6.19. If the go-to rate is unknown see Q6.20.

6.18 What if rates vary between transactions?

The Regulations are silent as to the position where different interest rates apply to purchases in different circumstances but each rate does not change within the three year period specified in Schedule 1 paragraph 1(d). For example, where different rates apply to purchases of different amounts or in different retail outlets.

In the OFT's view, the highest such rate should be used in calculating an 'advert APR', as this is consistent with the approach under paragraph 1(d) and is less likely to mislead consumers.

6.19 What if rate variations are uncertain?

Paragraph 1(d) of Schedule 1 applies only where it is known that the rate of interest will change at a time provided in the transaction within the first three years. If rates are stated to be variable, but the date (or earliest date) of such variation is unknown and cannot be ascertained, it must be disregarded by virtue of Regulation 2(1)(d) of the TCC Regulations. See also Q6.20.

6.20 What if future rates are unknown?

If there is an introductory interest rate, and it is known that this will revert to the lender's standard variable rate (SVR) at a specified time within the first three years, but the level of the SVR which will apply at that time is not known in advance, the assumption must be made that the go-to rate will be the lender's current SVR when the agreement is entered into. This is by virtue of Regulation 15 of the TCC Regulations.

If there is more than one such SVR, in the OFT's view the go-to rate should be taken to be the highest SVR applicable to the products in question – see Q6.18. If it is known that a variation will occur, but the amount of the variation cannot be ascertained, it must be disregarded.

6.21 What about fees and charges?

Fees and charges must be included in the APR calculation if:

- they fall within the total charge for credit (TCC)
- they are deemed to be payable under the relevant transaction – see Q6.22, and
- they relate to the 12 month period in question – see Q6.14.

If an annual fee is payable retrospectively, after the end of the 12 month period, but is referable to that period, it must be included. In the OFT's view it is deemed to be applied and repaid at the same time as the final repayment of credit.

6.22 What if a fee is payable on only part of the credit?

Paragraph 1(e) of Schedule 1 provides that, where different charges are payable in respect of different elements of the credit facility, it must be assumed that the charges payable in relation to the whole of the credit are those applicable to the purchase element.

If therefore a fee is payable in respect of purchases under a credit card, it must be taken into account. The same applies to any fee payable in respect of the credit card facility as a whole, unless it is payable only if no purchases are made within the first 12 months.

If however a fee is payable only in respect of balance transfers, and the agreement includes a purchase element, the fee must be disregarded in calculating the total charge for credit and any APR – but see Q7.6.

7 INTEREST RATES

7.1 Can interest rates be included in advertisements?

The Regulations do not preclude this. However, if an interest rate is shown this must not be liable to mislead consumers contrary to the CPRs. It should be clear what any rate relates to – for example, if it relates only to balance transfers (and not purchases) or applies only for a limited period. The inclusion of any interest rate will always trigger the typical APR by virtue of Regulation 8(1)(a) – see Q3.28.

The OFT would discourage the use of interest rates in circumstances where this is not genuinely informative to consumers or may lead to confusion with any APR.

7.2 Is it permissible to show introductory rates?

The OFT has no objection to the inclusion of introductory interest rates in advertising, since this may be useful and informative to consumers. However, it should be done in a way that does not mislead.

In the OFT's view, it may be misleading to show an introductory interest rate without any indication of the period over which it applies. As a matter of good practice, the OFT considers that the relevant 'go-to' rate should also be shown, unless it is clear from the advertisement that this corresponds to the stated APR. Omission of such a rate may in any case be misleading under the CPRs.

7.3 Is it permissible to show rates for the different elements of a credit card?

The OFT has no objection to the inclusion of such rates in advertising. However, they should be shown as interest rates rather than APRs (subject to Q6.11), and the typical APR should be more prominent.

It should be clear what each rate relates to. For example, it may be misleading under the CPRs to show a 0% rate for balance transfers if it is not clear from the advertisement that this is limited to balance transfers and does not apply to other elements of the credit. The period of the rate should also be shown where this is time-limited – see Q7.2.

7.4 What prominence rules apply to interest rates?

The Regulations require that the typical APR must be shown more prominently than any other rate of charge, including any interest rate.

As a matter of good practice, the OFT considers that an interest rate should also be less prominent than any other APR in the advertisement. Otherwise this may undermine the purpose of APR disclosure and could confuse consumers. In some circumstances it may be misleading under the CPRs.

7.5 What if conditions are attached to a particular rate?

In the OFT's view, it may be misleading under the CPRs for an advertisement to state an interest rate without also indicating, with sufficient prominence, any special conditions or limitations attached to that rate over and above those generally applicable.

For example, if the rate applies only for a limited period, or is conditional on using a credit card for purchases during the month, or on spending a minimum amount on the card or closing a previous account.

7.6 What about related fees or charges?

In the OFT's view, it may be misleading under the CPRs for an advertisement to state an interest rate without also indicating, with sufficient prominence, any associated fees or charges over and above those generally applicable and which the consumer may not therefore expect to pay.

For example, an annual fee on a credit card, or a fee for balance transfers or credit card cheques.

7.7 How should interest rates be denoted?

It should be clear from the advertisement that they are interest rates rather than APRs, and there should be no risk of confusion with the typical APR or any other APR.

In the OFT's view, an interest rate should not be denoted as 'typical' unless it corresponds to the basis for the typical APR. Otherwise this may mislead consumers contrary to the CPRs.

7.8 Should interest rates be shown on a per annum basis?

The Regulations are silent on this. However, the Agreements Regulations require that interest rates must be 'quoted on a per annum basis', and the same applies to pre-contract disclosure pursuant to the Disclosure of Information Regulations.

As a matter of good practice, the OFT considers that interest rates should also be shown on a per annum basis in advertising, so that this is consistent with the position in pre-contract disclosure and agreements. We believe that this is also more readily understood by consumers.

The OFT would discourage the use of monthly or other periodic rates in advertising, as this may confuse consumers. In some circumstances it may be misleading under the CPRs.

7.9 Should interest rates be simple or compounded?

As a matter of good practice, the OFT considers that interest rates should be shown on a compounded basis where the contract provides for compounding, for example, in the event that less than the full repayment is made each month. This also ensures comparability with the APR calculation.

It may be confusing to consumers to see interest rates shown on a simple basis when APRs are compounded. In some circumstances this may also be misleading under the CPRs.

7.10 What if a 'from' interest rate is shown?

The inclusion of any interest rate in a credit advertisement will trigger the requirement to state the typical APR. If together these purport to indicate the range of APRs charged, or may convey that impression, then in the OFT's view Regulation 8(2) will apply – see Q4.7.

This would depend upon the facts of the individual case, and would fall ultimately to the courts to decide. In the OFT's view, there may be an implied indication of the range of APRs if consumers may be confused by the reference to a 'from' rate and assume that it is in fact an APR, or if the advertisement is constructed in such a way as to give that impression. It may also be the case if there are no other charges entering into the total charge for credit and so the interest rate equates to the APR.

In any event, if an interest rate is shown this must not be liable to mislead consumers contrary to the CPRs – see Q7.1.

8 NON-STATUS AND COMPARATIVE INFORMATION

8.1 When is the typical APR triggered?

The 'typical APR' triggers are listed at Q3.2. They include where an advertisement:

- indicates in any way that credit is available to persons who might otherwise consider their access to credit restricted
- indicates in any way that any of the terms on which credit is available is more favourable than corresponding terms applied in any other case or by any other creditor, or
- includes any incentive to apply for credit or to enter into an agreement under which credit is provided.

For ease of reference in these FAQs, the first of these is referred to as 'non-status indications' and the second as 'comparative indications'.

8.2 What does it mean to 'indicate in any way'?

An indication may be express or implied – see Q8.3. It may appear as part of the name given to a business or an address used for the purposes of electronic communication, or in any other way. The examples cited in Regulation 8(1)(c) are non-exhaustive.

For example, an indication may appear in a logo or a description of occupation, or in an indication of the nature of the credit facilities available or the persons to whom they are available. It may appear as part of a trading name, or a postal address or other address.

8.3 What is an implied indication?

In the OFT's view, an implied indication is one capable of being taken by a person reading the advertisement as indicating any of the matters specified. This would be a matter of fact in each case, falling ultimately for the courts to decide.

The indication must, however, derive from the advertisement itself rather than the circumstances in which it is published. For example, an advertisement by a lender of weekly collected credit would not trigger a typical APR merely because such

customers tend to be non-status. There would need to be a real indication arising from the individual advertisement. But see also Q8.4.

8.4 What if I advertise in a non-status magazine?

In the OFT's view, the fact that an advertisement appears in a newspaper or magazine which is known to have a high non-status readership would not in itself trigger a typical APR. On the other hand, there may be an implied indication if the advertisement is in a section entitled 'non-status' or 'lenders who can help if you have credit problems' or in a publication expressly dedicated to such advertisements.

8.5 Who might consider their access to credit restricted?

Regulation 8(1)(c)(i) applies where an advertisement indicates in any way that credit is available to persons who might otherwise consider their access to credit restricted.

In the OFT's view, this applies even if in reality such access is not restricted – the question is whether the individuals in question consider that it might be. For example, they may believe that they are unable to obtain finance from high street lenders, or can do so only on less favourable or restricted terms.

There are similarities with the OFT's Non-Status Lending Guidelines. These define 'non-status' borrowers as 'those with impaired or low credit ratings and who would find it difficult generally to obtain finance from traditional sources on normal terms and conditions'. For example, consumers may have an impaired credit rating because of county court judgments or arrears. They may have a low credit rating because of a poor history of employment or because their income through self-employment is irregular or difficult to verify.

8.6 What are examples of non-status triggers?

In the OFT's view, non-status indications triggering a typical APR may include reference to any of the following:

- arrears or default
- county court judgments (CCJs)

- certain employment or housing circumstances
- credit history or adverse or low credit rating
- being turned down for credit
- having problems obtaining credit.

This is not intended to be an exhaustive list of possible triggers.

As above, an indication may be express or implied. In the OFT's view, the statement 'Whatever your circumstances, call us' is an implied indication that credit is available to persons who may consider their access to credit restricted, and so triggers a typical APR.

8.7 If an advertisement covers both status and non-status loans, on what basis should the typical APR be calculated?

The typical APR is defined by reference to agreements expected to be entered into as a result of the advertisement – see Q3.1. If a single advertisement covers both status and non-status loans, a typical APR should be calculated covering all such agreements. This is regardless of whether the advertisement is expressly targeted at non-status borrowers or includes a relevant trigger. If on the other hand a promotion clearly comprises two separate and distinct advertisements (see Q1.8), a typical APR may be shown for each.

Where rates vary on the basis of 'rate for risk' pricing (see Q3.27), the OFT would encourage advertisers, as a matter of good practice, to make clear in the advertisement that rates may depend upon the borrower's circumstances. Lenders may wish to encourage prospective borrowers to apply for a personalised illustration or quotation.

8.8 What kind of comparative information triggers an APR?

Regulation 8(1)(c)(ii) applies where an advertisement indicates in any way that any of the terms on which credit is available is more favourable than corresponding terms applied in any other case or by any other creditor.

This is not limited to comparisons with the products of competitors. It may include comparisons with the advertiser's other products, or with rates offered previously by the advertiser, or with any existing loan.

In the OFT's view, terms may be 'more favourable' in relation to cost or in any other way. This is not limited to indications suggesting a lesser expense or obligation. An indication may be express or implied, but must derive in some way from the individual advertisement – see Q8.3.

8.9 What are examples of comparative triggers?

In the OFT's view, comparative indications triggering a typical APR may include the following:

- 'low cost loans'
- 'our lowest rates'
- 'best buy'
- 'cheapest loans'
- 'we won't be beaten on rates'
- 'reduce your monthly payments'
- 'save money'
- 'have cash to spare'.

This is not intended to be an exhaustive list of possible triggers. See also Q8.10-13.

8.10 What about reference to 'low' rates?

If interest rates or APRs are stated to be 'low', it is implicit in the OFT's view that this must be relative to something else or the generality. They cannot be 'low' in the abstract. The OFT takes the view therefore that this is a comparative indication triggering the typical APR requirement.

The same is true of rates described as 'lower' – they may be lower than the rates of competitors or the advertiser's previous rates, but in either case this triggers a typical APR. Regulation 8(1)(c) is not limited to comparisons with other creditors.

In some circumstances, reference to 'competitive rates' may also in the OFT's view constitute a comparative indication. This would depend upon whether it may be construed by consumers as implying that terms are 'more favourable' within the meaning of Regulation 8(1)(c).

8.11 What about reference to 'low' fees or charges?

In the OFT's view, if fees or charges are stated to be 'low', this is likely to be a comparative indication triggering a typical APR – see Q8.10. This is irrespective of whether in fact the amount of the fee or charge is lower than that of competitors – the statement suggests to prospective customers that that is the case.

The same also applies in the OFT's view to use of the word 'only' – for example, 'broker's fee only 1%'.

8.12 What about reference to 'no' fees or charges?

In the OFT's view, comparative triggers may also include indications that no fees or charges are payable. For example, 'no annual fee' , 'no fee for cash advances' or 'no arrangement fees'.

This will depend upon whether these are merely statements of fact, or whether they highlight, or purport to highlight, an advantage of the advertised product over those of competitors. This will be a question of fact in each case, and will depend upon the nature and circumstances of the advertisement. Ultimately this would be for the courts to decide.

8.13 What about the statement 'no deposit' (or 'low deposit')?

Where Regulation 4(1) is triggered, the advertisement must include a statement as to whether an advance payment is required – see Q9.4. This must be shown together as a whole and of equal prominence with other Schedule 2 information in the advertisement. It does not in itself trigger a typical APR or Schedule 2 information.

If however the statement 'no deposit' is also shown separately, or with greater prominence, this may in the OFT's view constitute a comparative indication and/or

incentive triggering a typical APR. This will depend upon the nature and circumstances of the advertisement. It would in any case be a breach of Regulation 4(2) – see chapter 10.

The statement 'low deposit' is likely in the OFT's view to constitute a comparative indication and/or incentive – see Q8.11.

8.14 What is an 'incentive' to apply for credit?

Regulation 8(1)(d) applies where an advertisement includes any incentive to apply for credit or to enter into an agreement under which credit is provided.

A dictionary definition of 'incentive' is 'that which incites to action'. In the OFT's view, this could include any inducement to apply for the credit in question or to do so in preference to other products. This would depend upon the facts of the individual case, and would fall ultimately for the courts to decide.

8.15 What are examples of incentives?

An 'incentive' would include a gift or special offer such as 'apply for our Platinum card and receive a free Walkman' or '£50 vouchers if you apply before 31 July'. It would also in the OFT's view include reference to any cashback or other benefit associated with the product, such as Air Miles or reward points or vouchers.

In the OFT's view, other examples of incentives triggering a typical APR may include the following:

- '2% off our usual rates'
- 'low rates until 31 March'
- 'pay nothing for 6 months'
- 'buy now, pay next June'
- 'no fee on loans over £10,000'
- 'no deposit on orders before 1 May'
- 'cash within 24 hours of application'
- 'superfast loans'
- 'quick decision'
- 'easy finance'.

As above, this would depend upon the nature and circumstances of the individual advertisement. Some of the statements may also constitute comparative indications within Regulation 8(1)(c) – see Q8.8.

8.16 What prominence rules apply?

Regulation 8(5) requires that the typical APR must be more prominent than any non-status or comparative indication or incentive within Regulation 8(1).

In addition, Regulation 7(6) requires that the warning statements in Regulation 7(2) and (4) must be more prominent than any such indication or incentive – see chapter 12.

9 OTHER FINANCIAL INFORMATION

9.1 What Schedule 2 triggers apply?

Regulation 8(1)(b) applies where an advertisement includes any of the items of information listed in Schedule 2 paragraphs 5-7 – see Q9.3. In contrast, Regulation 4(1) applies only if the advertisement includes any of the amounts referred to in paragraphs 5-7 – see Q9.2. Information other than 'an amount' will therefore trigger a typical APR but not other Schedule 2 information.

Information in paragraphs 1-4 does not trigger either the typical APR or Schedule 2 information. However, if the advertisement includes any of the amounts referred to in paragraphs 5-7, it must also include all other Schedule 2 information applicable to the particular case – see Q9.4. All of the Schedule 2 items must be shown together as a whole and of equal prominence – see chapter 10.

9.2 What 'amounts' trigger Schedule 2 information?

Regulation 4(1) applies where an advertisement includes any of the amounts referred to in Schedule 2 paragraphs 5-7. These comprise:

- the amount of any repayment of credit under the advertised transaction
- the amount of any other payment or charge which may be payable under the transaction, other than default charges, and
- the total amount payable by the debtor.

They do not however include the amount of credit, or the amount of any deposit or advance payment, or the cash price of goods or services. These may be included without triggering Schedule 2 information or a typical APR.

9.3 What information triggers a typical APR?

Regulation 8(1)(b) applies where an advertisement includes any of the items listed in Schedule 2 paragraphs 5-7. These comprise:

- the amount of any repayment of credit
- the frequency of repayments
- the number of repayments

- the manner in which the amounts of repayments (in the case of running-account credit) will be determined
- the amount of any other payment or charge which may be payable under the transaction, other than default charges
- a description of such payments or charges
- the circumstances in which liability to make such payments or charges will arise, and
- the total amount payable by the debtor (in the case of fixed-sum credit, see Q9.36).

9.4 What is triggered by Regulation 4(1)?

Where Regulation 4(1) applies (see Q9.2), the advertisement must:

- include all of the other items of information listed in Schedule 2, to the extent applicable to the particular case – see Q9.6, and
- specify a postal address at which the advertiser may be contacted, subject to certain exceptions – see Q11.11.

In addition to the items listed in Schedule 2 paragraphs 5-7 (see Q9.3), the advertisement must therefore include as applicable:

- the amount of credit to be provided under the agreement, or an indication of the maximum or minimum amount or both
- a statement of any requirement to place on deposit any sum of money in an account with any person
- the cash price of goods or services (or land or other things) specified in the advertisement, which are to be financed by the credit from an identified dealer
- a statement as to whether an advance payment is required, and
- the amount or minimum amount of such advance payment.

9.5 What if only part of the information is shown?

Regulation 4(1) applies where an advertisement includes any of the amounts referred to in Schedule 2 paragraphs 5-7, and Regulation 8(1)(b) applies where it includes any of the items listed. In the OFT's view, a relevant trigger may include part of the item in question. For example, a statement of the frequency of

repayments (for example, 'monthly') will trigger the typical APR even if the number and amounts of repayments are not also stated.

9.6 Do I have to show all Schedule 2 information where a relevant trigger applies?

Regulation 4(1) provides that, where an advertisement includes any of the amounts referred to in Schedule 2 paragraphs 5-7, it must also include all other Schedule 2 information applicable to the particular case.

For example, if the advertisement shows a monthly repayment amount for a particular credit deal, it must also show other relevant Schedule 2 information including (where applicable) the cash price, the amount of credit and any deposit or advance payment. The information must be that applicable to the particular deal.

9.7 What if the advertisement covers three products and only one has trigger information?

An advertisement may be promoting three credit products, but may show financial details for only one of them. If this includes any of the amounts referred to in paragraphs 5-7 this will trigger full Schedule 2 information for that product – see Q9.6. It will not also be necessary to include Schedule 2 information for the other two products if there are no relevant triggers applicable to those products.

In such a case it will be important to make clear in the advertisement that the example shown relates to only one of the products, and is not intended to be representative of all three. Otherwise the advertisement may be misleading under the CPRs.

9.8 What if credit information is shown for the other products?

If an amount referred to in Schedule 2 paragraphs 5-7 (such as a monthly repayment or a fee or charge) is shown in respect of a particular product, the advertisement must include all other Schedule 2 information applicable to that product – see Q9.6.

Regulation 4(1) is not, however, triggered in respect of other products in the advertisement if they do not include any amount within paragraphs 5-7. For

example, the advertisement may show the range of credit for each product, or the amount of any deposit or advance payment, but this will not trigger Schedule 2 information for those products. All Schedule 2 information in the advertisement must however be shown together as a whole and of equal prominence – see Q10.3.

9.9 Can I show a list of cash prices with a worked example?

If the 'worked example' includes any of the amounts referred to in paragraphs 5-7, such as the amount of any repayment of credit, this will trigger all other Schedule 2 information applicable to that example.

It is permissible also to show a cash price alongside each product listed or shown in the advertisement. The cash price does not fall within paragraphs 5-7 and so does not trigger Schedule 2 information for the product – see Q9.8. However, all Schedule 2 information in the advertisement (including any cash prices) must be shown together as a whole and of equal prominence – see Q10.18.

The worked example must include all applicable Schedule 2 information, including the cash price attributable to the particular example and any deposit or advance payment. See also Q9.10.

9.10 Can I include representative information?

The Regulations do not preclude the use of representative information, although this would be subject to the CPRs if the advertisement is liable to mislead.

In the OFT's view, if an amount or other Schedule 2 information is unknown at the date of publication of an advertisement, or may vary between relevant products or transactions, representative information may be used based on reasonable assumptions. This may be in the form of a 'worked example'.

Any such information should be genuinely representative of the transactions in question (see Q9.11), and it should be made clear that it is representative (see Q9.12). It should not be presented in a way that may mislead consumers.

9.11 On what basis should representative information be used?

The Regulations are silent on this, but this is subject to the CPRs if the advertisement may mislead. In the OFT's view, the use of representative information is less likely to be challenged under the CPRs if it corresponds to the typical APR or is calculated on an equivalent 66% test.

The OFT would expect the advertiser, in the event of a challenge, to be able to demonstrate that the particular basis used was reasonable in the circumstances and was not liable to mislead consumers.

Where representative information is used in place of actual information, this should be genuinely representative of the products or transactions in question. If the basis for such information varies within the advertisement, this should be made clear.

9.12 How should representative information be denoted?

Where representative information is used in place of actual information which is unknown or may vary between transactions, this should be made clear. In the OFT's view, this should be done in a way that is likely to be seen and understood by consumers. In any event, it must not be misleading contrary to the CPRs.

In the OFT's view, information should not be described as 'typical example' (or similar) unless it corresponds to the basis for the typical APR. Otherwise this may confuse consumers, and could be challenged under the CPRs. Advertisers should use alternative terminology in such cases, such as 'worked example'.

9.13 Can I show the amount of credit without an APR?

Yes. Schedule 2 paragraph 1 permits an indication of the amount of credit, or the range of credit available, or both, without this triggering a typical APR or Schedule 2 information. For example, 'loans up to £15,000' or 'loans from £500 to £3,000'.

However, if the typical APR is also shown this must be presented together with the amount of credit (and any other Schedule 2 items in the advertisement) by virtue of Regulation 8(5)(b). The typical APR must be more prominent, and (in the case of an

advertisement in printed or electronic form) shown in characters at least 1.5 times the size.

9.14 What about the statement 'no deposit'?

This will generally relate to an 'advance payment' within the meaning of Schedule 2 paragraph 4, rather than a 'deposit on account' within paragraph 2. In any event, it is not information falling within paragraphs 5-7 and so does not trigger other Schedule 2 information.

The statement could however, depending upon the circumstances, constitute a comparative indication and/or incentive for the purposes of Regulation 8(1), in which case it will trigger a typical APR – see Q8.13.

Where Regulation 4(1) applies, the advertisement must include all applicable Schedule 2 information including the existence and amount (or minimum amount) of any advance payment. If no advance payment is required, the advertisement must include a statement to that effect. This must be shown together as a whole and of equal prominence with all other Schedule 2 information in the advertisement.

9.15 What about reference to 'monthly payments'?

This is a statement of the frequency of repayments within Schedule 2 paragraph 5. As such, it triggers a typical APR by virtue of Regulation 8(1)(b). The same would apply to reference to 'weekly collected credit'. However, this does not trigger other Schedule 2 information since it is not an 'amount' for the purposes of Regulation 4(1). A statement of the number of repayments is also not an 'amount'.

9.16 What about a statement of the period of the loan?

This depends upon whether it constitutes a statement of the frequency and/or number of repayments falling within Schedule 2 paragraph 5.

For example, '60 monthly payments' would trigger a typical APR, but 'loans up to 5 years' would not if there is nothing to indicate the frequency or number of

repayments. In any event, this would not trigger other Schedule 2 information as it is not an 'amount'.

9.17 What are 'repayments of credit'?

Regulation 1(5) provides that references to 'repayment of credit' are references to repayment of credit with or without any other amount.

If therefore a fee or charge is payable together with, and at the same time as, repayments of the credit advanced, it may be included in the 'repayments of credit' for the purposes of Schedule 2 paragraph 5 (although this is not mandatory). Alternatively, the creditor may elect to treat the fee or charge separately, in which case it will constitute an 'other payment or charge' for the purposes of Schedule 2 paragraph 6.

If a fee is mentioned in the advertisement, and is not clearly stated to form part of the repayments of credit, then in the OFT's view it should generally be treated as falling within paragraph 6 – see Q9.22.

9.18 What is a statement of the 'amount' of any repayment?

Paragraph 5(3) of Schedule 2 provides that the amount of any repayment of credit may be expressed as a sum of money or a specified proportion of a specified amount (or both). For example, '£15 per month' or '5% of balance outstanding' or 'minimum payment £5 or 3%'.

Reference to 'low monthly payments' would not constitute a statement of the amount of repayments, since it is not a sum of money or a percentage. However, in the OFT's view it is likely to constitute a comparative indication and/or incentive – see Q8.10. As such, it would trigger a typical APR but not Schedule 2 information.

9.19 What if a one-off fee is payable with a monthly instalment?

A fee may be payable with the first (or last) monthly instalment. As above, if it is not clearly stated to form part of the 'repayments of credit', it is likely to constitute an 'other payment or charge' within Schedule 2 paragraph 6 – see Q9.17.

In either case, if the amount of the fee is stated this will trigger all other applicable Schedule 2 information – see Q9.2. Mention of the fee, with or without an amount, will trigger a typical APR – see Q9.3.

Where Regulation 4(1) applies, the advertisement must state the amount of each repayment of credit. If the advertiser wishes to show the fee as part of the 'repayments of credit', the amount of the first (or last) repayment will comprise the relevant instalment plus the fee. Alternatively, the advertiser may elect to show the fee separately, as an 'other' payment or charge.

9.20 What about the statement 'nothing to pay for a year'?

In the OFT's view, this is a statement of the 'amount' of repayments of credit for the purposes of Schedule 2 paragraph 5. It is an indication that the amount is zero for the first year. As such, this triggers other Schedule 2 information by virtue of Regulation 4(1), together with a typical APR.

Advertisers should take care to ensure that consumers are not misled into believing that interest does not accrue within the relevant period, where this is not the case, as this may be contrary to the CPRs – see also Q13.1.

9.21 What about the statement 'borrow £x for less than £y'?

In the OFT's view, this is a statement of the 'amount' of repayments of credit for the purposes of Schedule 2 paragraph 5. It indicates that the amount is less than £y (and implicitly that it is likely to be close to £y). As such, this triggers the obligation in Regulation 4(1) to include all other applicable Schedule 2 information, together with a typical APR.

The same also applies in the OFT's view where an advertisement states the monthly cost as 'under £y' or similar.

9.22 What are 'other payments and charges'?

Schedule 2 paragraph 6 applies to payments and charges other than those mentioned previously in the Schedule. It therefore excludes any repayment of credit

(paragraph 5) and any deposit or advance payment (paragraphs 2 and 4). It also excludes default charges – see Q9.31.

If a fee or charge is included in the 'repayments of credit' in the advertisement (see Q9.17), then it will fall within paragraph 5 of Schedule 2 and will not need to be stated separately under paragraph 6 (although may be included as optional information).

9.23 Will a fee or charge always be a relevant trigger?

If the fee or charge is payable under the transaction advertised (and is not a default charge), reference to the fee will trigger a typical APR by virtue of Regulation 8(1)(b). In the OFT's view this is irrespective of whether it is an 'other' payment or charge within Schedule 2 paragraph 6 or part of the 'repayments of credit' within paragraph 5. It is also regardless of what the fee is called and to whom it is payable.

If the amount of the fee is stated, this will trigger other Schedule 2 information by virtue of Regulation 4(1). Again, this is irrespective of whether it is an 'other' payment or charge or part of the repayments of credit.

9.24 What is a statement of the 'amount' of any fee or charge?

Schedule 2 paragraph 6(1), where triggered, requires a statement indicating the description and amount of any relevant fee or charge.

In the OFT's view, an 'amount' for these purposes must be expressed as a sum of money. There is no equivalent in paragraph 6 to the provision at paragraph 5(3) which permits the amount of a repayment of credit to be expressed as a specified proportion of a specified amount.

A fee may be calculated as a percentage of the loan amount or the balance outstanding, but where Regulation 4(1) applies the OFT considers that the advertisement must state the cash amount of the fee applicable in the particular case. This must be made clear.

9.25 If a fee is shown as a percentage, is this a relevant trigger?

If a fee or charge is shown as a percentage, rather than a sum of money, this will not be a relevant trigger for the purposes of Regulation 4(1), in the OFT's view. This is because Schedule 2 paragraph 6 refers to the 'amount' of any relevant payment or charge, and the OFT considers that this does not encompass a percentage figure – see Q9.24.

Reference to the fee will, however, trigger a typical APR where it constitutes a 'description' of the payment or charge – see Q9.23.

9.26 What if the amount of the fee is unknown?

Where Schedule 2 paragraph 6 is triggered, the advertisement must include a statement indicating the description and amount of any relevant payment or charge.

The exclusion in paragraph 6(2) applies only where the liability of the debtor to make any payment cannot be ascertained at the date of publication of the advertisement. If the advertiser knows that a fee will be payable in certain circumstances, the exclusion will not apply. It will then be necessary to state the amount of the fee. If the debtor's liability to make a payment is ascertainable, but the amount of the fee is not ascertainable at the date of publication of the advertisement, estimated information should be used based on reasonable assumptions – see Q9.10.

9.27 What if the amount varies between transactions?

As above, the exclusion in paragraph 6(2) of Schedule 2 applies only where the liability of the debtor to make any payment cannot be ascertained at the date of publication of the advertisement.

An advertisement may relate to a number of different transactions, and a fee may be payable under some but not others. In each case, however, the advertiser will be clear whether a fee is payable and in what circumstances. The paragraph 6(2) exclusion will not therefore apply.

If the amount varies between relevant transactions, representative information may be used based on reasonable assumptions – see Q9.10.

9.28 What about an annual fee on a credit card?

Where this forms part of the 'repayments of credit' in the advertisement, it will fall within Schedule 2 paragraph 5 – see Q9.17. Otherwise it will fall within paragraph 6 as an 'other' payment or charge.

In either case, if the amount of the fee is stated this will trigger all other applicable Schedule 2 information – see Q9.2. Mention of the fee, with or without an amount, will trigger a typical APR – see Q9.3.

Where Regulation 4(1) applies, the advertisement must include a description and amount of any fee falling within Schedule 2 paragraph 6. In the OFT's view, the amount must be expressed as a sum of money rather than a percentage – see Q9.24. Representative information may be used – see Q9.10.

If the fee is covered instead by paragraph 5 it must be included in the amounts of repayments of credit if stated. As such, it would not also need to be stated separately under paragraph 6, although the OFT would encourage this in the interests of transparency.

9.29 What about the statement 'no annual fee'?

In the OFT's view, this is a description of a payment or charge, and so triggers a typical APR by virtue of Regulation 8(1)(b) – see Q9.3. It may also be a comparative indication and/or incentive – see Q8.12.

However, the OFT does not consider that it constitutes an 'amount' triggering Regulation 4(1). The statement indicates that no fee is payable at all, rather than that the amount is initially zero and thereafter increases.

On the other hand, the statement 'no fee for the first 6 months' would, in the OFT's view, be a relevant trigger for Regulation 4(1) purposes as it indicates that a fee is payable but that the amount is zero for the first six months. This therefore triggers other Schedule 2 information.

9.30 What about transaction charges?

Schedule 2 paragraph 6 applies to all relevant fees and charges other than default charges (see Q9.31). In the OFT's view, this would include transaction charges such as a fee for cash advances or balance transfers under a credit card, or a foreign transactions fee.

Where Regulation 4(1) applies, the advertisement must include a description and amount of each relevant fee or charge, unless this is included as part of the 'repayments of credit' – see Q9.17.

9.31 What about default charges?

Schedule 2 paragraph 6 does not apply to any charge payable under the transaction (whether to the creditor or a person acting on the creditor's behalf) upon failure by the debtor or a relative to do or refrain from doing anything which he is required to do or refrain from doing. This would include default charges, and any other charge for breach of the agreement. For example, in the case of a credit card it would include any charge for failure to make the minimum repayment by the specified date or for exceeding the credit limit.

Mention of such charges would not therefore trigger a typical APR or Schedule 2 information, and where Regulation 4(1) applies it would not be necessary to include a description and amount of the charge.

9.32 What is meant by 'payable under the transaction'?

Schedule 2 paragraph 6 relates to fees or charges which may be payable under the transaction advertised.

An advertisement may be promoting one or more credit agreements. It may also be promoting the services of a credit-broker and hence the brokerage contracts offered by that broker. In the OFT's view, 'transaction' must be interpreted more broadly than the credit agreement(s) promoted by the advertisement – see also Q9.33.

If there is more than one transaction advertised, it may be necessary to show Schedule 2 information separately for each transaction where a relevant trigger

applies. Alternatively, representative information may be used subject to the CPRs – see Q9.10.

9.33 Will a brokerage fee be 'payable under the transaction'?

If an advertisement is placed by a lender, and it is not a condition of the relevant credit agreements that a brokerage fee will or may be paid, then it will not be payable under the transaction advertised.

On the other hand, if the advertisement is placed by a credit-broker, then it will be advertising his services as such irrespective of whether it is also promoting the agreements of one or more lenders. 'The transaction advertised' would therefore include any brokerage contract which the broker expects to enter into as a result of the advertisement. If a brokerage fee may be payable under any such contract, this must be stated where a relevant trigger applies – see Q9.34.

9.34 What triggers a statement of a brokerage fee?

In the OFT's view, a brokerage fee will generally fall within Schedule 2 paragraph 6 as an 'other' payment or charge. It will usually be payable separately from the repayments of credit – see Q9.17.

If the advertisement includes any of the amounts referred to in paragraphs 5-7, there will need to be a statement indicating the description and amount of any relevant brokerage fee.

For example, an advertisement placed by a credit-broker may show an example of the loans available from creditors including the amount of the monthly repayment. In such a case the amount of any brokerage fee applicable to that example would also need to be stated.

9.35 How should a brokerage fee be expressed?

Where a statement of the brokerage fee is triggered (see Q9.34), the amount shown should be that applicable in the particular case. In the OFT's view it should be expressed as a sum of money rather than a percentage – see Q9.24.

For example, if a broker is advertising three different products, and a monthly repayment amount is shown for one of these, the advertisement must also state any brokerage fee applicable to that product. If trigger information is included for two or more products, a brokerage fee should be stated for each. Alternatively, a representative fee may be shown, subject to the CPRs – see Q9.10.

If the advertisement includes an example which is representative of the loans available, but the brokerage fee attributable to that example is less than that payable generally under brokerage contracts to which the advertisement relates, it may be necessary to explain this. Otherwise the advertisement may be misleading under the CPRs. This could be done, for example, by also showing a representative fee (that is, one which is representative of all the brokerage contracts) or by indicating the range of fees payable.

9.36 When do I have to state the total amount payable?

Schedule 2 paragraph 7 is triggered where an advertisement includes any of the amounts referred to in paragraphs 5 and 6. The requirement is limited to fixed-sum credit agreements, and applies only where the total amount payable exceeds the cash price.¹⁹ See also Q9.37-39.

9.37 Is the total amount payable always a relevant trigger?

A statement of the total amount payable (TAP) will trigger other Schedule 2 information, by virtue of Regulation 4(1), only where it falls within paragraph 7 – see Q9.36.

If the TAP does not exceed the cash price of goods or services to be financed by the credit, and which are specified in the advertisement as being available from an identified dealer, then Schedule 2 paragraph 7 will not apply. In such a case a statement of the TAP will not be a relevant trigger for Regulation 4(1) purposes. In all other cases, a statement of the TAP will trigger a typical APR together with all applicable Schedule 2 information.

¹⁹ This requirement was extended to all fixed-sum credit agreements by the Miscellaneous Amendments Regulations from May 2005

9.38 What is included in the total amount payable?

The total amount payable (TAP) is the total of:

- any advance payments
- the amount of credit repayable by the debtor, and
- the amount of the total charge for credit (TCC).

The TCC is determined in accordance with the TCC Regulations and, where applicable, Schedule 1 to the Advertisements Regulations.

9.39 Is a broker's fee part of the total amount payable?

Where a fee or commission is charged by a credit-broker, and is payable under the transaction (whether to the broker or the creditor or any other person), it will enter into the total charge for credit (TCC) in the agreement. 'Transaction' is defined in the TCC Regulations to include any credit brokerage contract relating to the agreement.

A brokerage fee will therefore form part of the TCC, and so must be included in the total amount payable (TAP) pursuant to Schedule 2 paragraph 7. It may also need to be stated separately as an 'other payment or charge' within paragraph 6 – see Q9.34.

10 'TOGETHER AS A WHOLE' AND PROMINENCE

10.1 What information must be shown 'together as a whole'?

Regulation 4(2) requires that, where any Schedule 2 information is included in an advertisement, the items must be shown 'together as a whole' and with equal prominence. This is not limited to the trigger information referred to in Regulation 4(1) – see Q10.3.

In addition, Regulation 8(5) requires that the typical APR must be presented 'together with' any Schedule 2 items in the advertisement – see Q10.6. The typical APR must be more prominent, and (in the case of an advertisement in printed or electronic form) shown in characters at least 1.5 times the size. Again, this is not limited to information triggering the typical APR.

10.2 What is meant by 'together as a whole'?

The OFT takes the view that all of the items of information in question must be shown together in one place so that they are capable of being (and are likely to be) read as a whole. This will generally mean on the same page and in the same part of the page.

If an individual item is repeated elsewhere in the advertisement – such that it is no longer 'together as a whole' with other Schedule 2 information – it must in the OFT's view be accompanied by a repetition of all of the other items. See also Q10.4.

The OFT does not accept that 'together as a whole' means merely that the information must be in the same advertisement. That would make the phrase redundant and is clearly not the intention of the Regulations. For the OFT's view on 'interspersing' see Q10.5.

10.3 Does 'together as a whole' apply only to the mandatory Schedule 2 information?

No. The requirement in Regulation 4(2) applies to any Schedule 2 information included in an advertisement. This is not limited to the amounts or indeed items listed in paragraphs 5-7.

In the OFT's view, Regulation 4(2) operates independently of Regulation 4(1). It applies even if the advertisement does not contain any of the 'trigger' information specified in Regulation 4(1).

So for example, if the advertisement includes an amount of credit or advance payment, and a cash price, these must be shown together as a whole and of equal prominence by virtue of Regulation 4(2) even though they do not trigger other Schedule 2 information. See also Q10.18.

10.4 Does 'together as a whole' apply to each occurrence?

Yes. It is not permissible in the OFT's view to show all of the information together in the 'small print' and then 'cherry pick' items for more prominent display in the main body of the advertisement. The OFT takes the view that the rules on 'together as a whole' and equal prominence apply to each occurrence of the specified information.

If however there is a single block of Schedule 2 information in an advertisement, in the OFT's view it would be permissible to repeat that block elsewhere in the advertisement and with a different level of prominence. It is not necessary for the two blocks to be together with equal prominence, provided that they contain the same Schedule 2 information and within each block all Schedule 2 information is shown together as a whole and of equal prominence. See also Q10.19.

10.5 Can the information be interspersed?

The Regulations do not prohibit interspersing, in contrast to the Agreements Regulations which provide that key information must not be interspersed with other information or wording apart from subtotals of total amounts and cross references to the terms of the agreement.

However, in the OFT's view it would be contrary to 'together as a whole' if Schedule 2 items were interspersed in such a way as to remove or confuse the coherence between the items. A consumer should not be able to read some of the Schedule 2 information and be distracted from the remainder of the information. If linking or explanatory wording is included, this must be done in a way that does not undermine the 'together as a whole' principle.

As above, the OFT considers that 'together as a whole' means that all of the items must be capable of being (and likely to be) viewed as a whole.

10.6 What is the difference between 'together with' and 'together as a whole'?

Regulation 4(2) requires that Schedule 2 information must be shown 'together as a whole' whereas Regulation 8(5) requires that the typical APR must be presented 'together with' any Schedule 2 information in the advertisement. These are clearly different.

In the OFT's view, the main difference is that 'together as a whole' means that all of the information must be shown together on each occurrence (see Q10.4) whereas 'together with' means only that a statement of the typical APR must accompany each reference to Schedule 2 information or each block of such information.

In addition, the OFT considers that 'together with' may permit a greater degree of interspersing (see Q10.5), provided that the information is still capable of being (and likely to be) viewed at the same time.

10.7 Can the typical APR be shown on its own?

If any Schedule 2 information is included in an advertisement, and a typical APR is also shown, they must be presented together by virtue of Regulation 8(5)(b). This applies even if the Schedule 2 information does not fall within paragraphs 5-7 and so does not trigger the typical APR.

In the OFT's view it is permissible also to show the typical APR separately, without accompanying Schedule 2 information, provided that wherever Schedule 2 information appears in the advertisement it is shown together as a whole and with

a statement of the typical APR. An advertisement may have only one 'typical APR' but this may be stated more than once.

10.8 What prominence rules apply?

Regulation 8(5)(c) requires that the typical APR must be given greater prominence in an advertisement than:

- any other rate of charge
- any of the items listed in Schedule 2, and
- any non-status or comparative indication or incentive.

In addition, Regulation 8(5)(d) requires that, in the case of an advertisement in printed or electronic form, the typical APR must be shown in characters at least 1.5 times the size of any Schedule 2 items.

Regulation 7(6) requires that the prescribed security statements (see chapter 12) must be more prominent than any rate of charge (other than the typical APR) and any indication or incentive within Regulation 8(1), and no less prominent than any Schedule 2 items.

Regulation 4(2) requires that any Schedule 2 items in an advertisement must be given equal prominence and shown together as a whole.

10.9 What is meant by 'prominence'?

In the OFT's view, prominence must be assessed in the context of the advertisement as a whole. This will generally depend upon the positioning of text and whether information is of a consistent type size and colour. It may also depend upon the background medium including relative colouring and surrounding information.

The OFT considers that prominence should generally be looked at from the perspective of the reader (or listener). Information will be of equal prominence if the reader's attention is drawn equally to all of the items, and if the advertisement is not constructed in such a way that attention is likely to be drawn more to one item than another.

10.10 Does equal prominence mean equal size?

Not necessarily. Information may be of the same type face and size, but may not be of equal prominence by virtue of, for example, colour or background or adjacent material. Equally, information may be in a larger font size but may be less prominent because of its positioning or the way it is presented – see also Q10.11.

For example, information shown on an envelope is likely to be more prominent than in any leaflet inside the envelope, irrespective of relative font size. This is because it is seen (and is designed to be seen) first, and so the consumer's attention is drawn to it. If other information is shown separately, and cannot be seen at the same time as that on the envelope, then in the OFT's view it is not together as a whole and of equal prominence.

10.11 If information is in a larger font size, or bold or underlined, does that make it more prominent?

Not necessarily – see Q10.10. Prominence is not just about the size of text – it also depends upon where the information is positioned and its appearance relative to adjacent or background material.

In the OFT's view, greater prominence requires that the consumer's attention is drawn more to the information in question than to other information in the advertisement.

10.12 When does the 'one and a half times' rule apply?

Regulation 8(5)(d) applies in the case of an advertisement in printed or electronic form. This excludes information given orally.

In the OFT's view, a television or radio advertisement is in electronic form. Where information is presented on screen, it is subject to Regulation 8(5)(d). However, where information is given orally, the requirement does not apply since the information is not 'shown in characters'. The typical APR does not have to be one and a half times as loud.

10.13 Are there special rules for Internet advertising?

The provisions in the Regulations apply equally to Internet advertising and other forms of electronic communication such as teletext or mobile phones. The rules must be applied taking into account the nature of the advertising medium and the way information is presented to consumers. For example, 'together as a whole' and prominence and legibility must be judged by reference to the context.

10.14 How does 'together as a whole' apply to the Internet?

Regulation 4(2) requires that Schedule 2 information must be shown together as a whole and with equal prominence. In the OFT's view, this will not be satisfied if information is presented on separate pages of a website, or if it is necessary to 'click' between items. It may not always be possible to ensure that information is on the same screen, as this may depend upon the viewer's technology, but if not it should in the OFT's view be on the same page so that the viewer can scroll down easily.

A website should not be designed in such a way as to make it unlikely that the consumer will see all of the Schedule 2 information together as a whole and with equal prominence. Information should not be hidden away or positioned so that it is unlikely to be read.

10.15 What about 'click through' advertisements?

In the OFT's view, 'together as a whole' is not satisfied if it is necessary to 'click' between items on a website. The consumer should be able to see all of the information together on one screen, or by scrolling down a single page – see Q10.14. The items should not be dispersed across different pages so that they cannot be viewed at the same time. It should not be possible to 'click through' an advertisement so that part of the information is effectively hidden from view, even if the link makes clear that other information may be found elsewhere.

10.16 What about 'pop-up' or 'banner' advertisements?

These may constitute separate advertisements for the purposes of the Regulations – see Q1.8. If so, each advertisement must be complete and self-contained – see Q1.9.

If however the 'pop-up' or 'banner' is part of a wider advertisement, there are issues relating to together as a whole and prominence. In the OFT's view, the requirements cannot be satisfied by including some information in the 'pop-up' or 'banner' and the remaining information in another part of the advertisement. It will not be 'together as a whole'. It will also not be of equal prominence, even if the information is shown in the same font size – the 'pop-up' or 'banner' is designed to be more prominent and will be what the consumer sees first.

10.17 What about broadcast advertising?

The requirements on 'together as a whole' and prominence apply to all forms of advertising including television and radio. The rules must be applied taking into account the nature of the advertising medium.

In the OFT's view, information is likely to be more prominent if it is displayed on an earlier screen, irrespective of relative font size. It may also not be 'together as a whole'. The period of time for which information is presented on screen, or the speed with which it is read out, may also make it more or less prominent.

10.18 What if I show a list of cash prices together with a worked example?

These must be shown together as a whole and of equal prominence by virtue of Regulation 4(2). This applies even if the cash prices relate to different products from the 'worked example'. It is not permissible in the OFT's view to show the cash prices in one part of the advertisement and the worked example in a separate part or with less prominence.

This would not preclude the information being interspersed, provided that this does not make it unlikely that the consumer will view all of the information together and as a whole – see Q10.5.

10.19 What if I show two separate 'worked examples'?

Regulation 4(2) requires that all Schedule 2 information in an advertisement must be shown together as a whole and of equal prominence. If a separate 'worked example' is shown for each credit product, such that within each example there is differing Schedule 2 information, the examples must be shown together and with equal prominence. This is irrespective of whether they contain 'trigger' information for Regulation 4(1) purposes.

10.20 What about variable information?

Special provisions apply where information in a book, catalogue, leaflet or other document is likely to vary from time to time.

In such cases, Regulation 4(3) permits the variable information to be set out in a separate document, provided that:

- it is set out 'together as a whole' in that document
- the document is issued together with the book, catalogue, leaflet or other document ('the principal document')
- all other information in the advertisement is shown together as a whole in the principal document, and
- the separate document containing the variable information is clearly identified in the principal document.

10.21 What about advertisements in dealers' publications?

Regulation 6 provides a limited derogation from the 'together as a whole' rule in respect of certain advertisements in dealers' publications relating to credit under debtor-creditor-supplier (d-c-s) agreements – see Q10.23. In addition, Regulation 5 provides a derogation from the 'together as a whole' and equal prominence rules (and the remainder of Regulation 4) in respect of certain advertisements in dealers' publications covering a calendar or seasonal period – see Q10.24.

10.22 Do the provisions apply to all dealers' publications?

The provisions in Regulations 5 and 6 are limited to advertisements of the kinds specified – see below. In addition, in each case the provision applies only if the

advertisement is contained in (or in the case of Regulation 5 in a separate document issued with) a publication which:

- is published by or on behalf of the dealer, and
- relates to goods or services sold or supplied by him.

The provisions do not therefore apply if the advertisement is in a third party publication such as a newspaper or magazine.

10.23 How do the Regulation 6 provisions operate?

Where Regulation 6 applies (see Q10.22), information may be taken to be shown 'together as a whole' if:

- the advertisement clearly indicates:
 - the cash price alone, or
 - the cash price together with any advance payment and all applicable items within Schedule 2 paragraphs 5-7, plus the APR (except in the case of agreements under which the total amount payable does not exceed the cash price)
- such indication is in close proximity to each description of, or specific reference to, relevant goods or services
- no other credit information is shown together with the cash price;
- all other information in the advertisement is presented in a way that is readily comprehensible as a whole, and
- an indication is given in close proximity to such information that it relates to all or specified descriptions of goods or services.

For Regulation 6 to apply, all of the above conditions must be satisfied. If information within Schedule 2 paragraphs 5-7 is included (or any individual APR is shown), the typical APR must also be stated.

10.24 How do the Regulation 5 provisions operate?

Where Regulation 5 applies (see Q10.22), the information triggers in Regulation 4(1) and the rules on together as a whole and equal prominence in Regulation 4(2) will not apply.

The advertisement must be contained in, or in a separate document issued with, a publication published by or on behalf of a dealer which relates to goods or services which may be sold or supplied by him in a calendar or seasonal period specified in the advertisement. In addition, the advertisement must:

- contain the name and a postal address of the dealer, or of the creditor or credit-broker (with or without a statement of occupation or of the general nature of occupation)
- indicate that individuals may obtain on request details of the terms on which the advertiser is prepared to do business, and
- include no other information indicating a willingness to provide credit.

11 LEGIBILITY AND OTHER GENERAL REQUIREMENTS

11.1 What is meant by 'easily legible'?

Regulation 3(b) requires that every credit advertisement must be easily legible (or, in the case of information given orally, clearly audible).

This is a higher requirement than 'legible'. In the OFT's view, 'easily legible' means that the lettering must be easy for a person with average eyesight, adjusted as necessary with glasses, to read. This may depend upon the nature and context of the advertisement and the manner in which information is communicated. See also Q11.2.

11.2 Does this apply only to credit information?

No. The legibility requirement applies to all lettering in an advertisement, and not merely items required or permitted by the Regulations such as the typical APR or Schedule 2 information. It is also not limited to information relating to credit.

11.3 What about billboard advertisements?

In the OFT's view, a billboard advertisement should be easily legible by a person standing on the opposite side of the road (but not necessarily one in a passing vehicle). It is not sufficient that the advertisement can be read by someone standing directly in front of the billboard, since it is designed to be seen by a much wider audience.

11.4 What about posters in store?

In the OFT's view, a poster on an office wall should be easily legible by a person standing a reasonable distance away. It should not be necessary to stand directly in front of the poster if it is designed to be seen at a much greater distance. Similarly, an advertisement hung from a ceiling should be easily legible by a person standing on the ground and from a reasonable distance.

11.5 What is meant by 'clearly audible'?

The consumer should be able to hear all of the information in the advertisement distinctly. Information should not be conveyed at speed if this may render it unclear or inaudible.

11.6 What is meant by 'plain and intelligible language'?

In the OFT's view, this means that the advertisement must use language which is likely to be understood by the persons to whom it is addressed. It should be clear and easily comprehensible, and should avoid the use of legal or technical jargon.

11.7 Are there restrictions on the names used in advertising?

Regulation 3(c) requires that every credit advertisement must specify the name of the advertiser, and Regulation 1(6) provides that in the case of a person covered by a standard licence this must be a name specified in the licence. If a name is used in a way that may mislead this may be challenged under the CPRs.

11.8 Who is an 'advertiser' for these purposes?

The requirement in Regulation 3(c) is to specify the name of 'the advertiser'. If there is more than one advertiser each must be named.

'Advertiser' is defined in section 189 as any person indicated by the advertisement as willing to enter into transactions to which it relates. This is not necessarily the same as the person who caused the advertisement to be published (see Q2.2).

An advertisement published by a credit-broker will generally be promoting his services as such. If so, the broker will be an 'advertiser' since he is indicating a willingness to enter into brokerage contracts. If the advertisement is also promoting the products of one or more lenders, and indicates a particular lender – whether expressly or impliedly – as willing to enter into credit agreements, then that person is also an 'advertiser' and so will need to be named.

11.9 Can the advertiser's name trigger other requirements?

If the name indicates in any way that credit is available to persons who might otherwise consider their access to credit restricted, or that any of the terms on which credit is available is more favourable than corresponding terms applied in any other case or by any other creditor, this will trigger a typical APR by virtue of Regulation 8(1)(c).

11.10 Does an address have to be stated?

Every credit advertisement must include the advertiser's name, but not necessarily an address or other contact details. However, if the advertisement includes any of the amounts referred to in Schedule 2 paragraphs 5-7, this triggers (with certain exceptions) a statement of a postal address at which the advertiser may be contacted. This is by virtue of Regulation 4(1)(b).

This must be a postal address rather than an e-mail address or website. It is not necessary to include a telephone number as well.

In the OFT's view, a 'postal address' must be one to which the Royal Mail could make a delivery so that post may reach the advertiser within a reasonable timescale. This may include a PO Box address.

11.11 When is an address not required?

The requirement to specify a postal address (see Q11.10) does not apply in relation to an advertisement which:

- is published by means of television or radio broadcast
- is on the premises of a dealer or creditor (and is not intended to be taken away by customers)
- includes the name and address of a dealer, or
- includes the name and a postal address of a credit-broker.

An 'address' in the case of a dealer may comprise a postal address, or any other address (such as an e-mail address or website), provided that this is sufficiently specific to enable the consumer to contact the dealer or to visit the relevant premises.

12 SECURITY STATEMENTS

12.1 What requirements apply to secured loans?

Regulation 7(1) requires that where the subject-matter of a credit advertisement (see Q12.2) is a facility for which security is or may be required, the advertisement must:

- state that security is or may be required, and
- specify the nature of the security.

This applies in all such cases. Regulation 7(8) disapplies the requirements of Regulation 7(2)-(4) and Regulation 7(6) in certain circumstances (see Q12.11) but does not disaply Regulation 7(1).

In addition, Regulation 7(2)-(4) may require the inclusion of one or more warning statements in relation to the security – see Q12.6.

12.2 When do the requirements apply?

Regulation 7(1) applies where the 'subject-matter' of a credit advertisement is a facility for which security is or may be required.

This will be a question of fact in each case, and will be irrespective of any impression created or otherwise by the advertisement. It is not necessary for the advertisement to indicate in any way, whether expressly or impliedly, that security is or may be required.

If the mortgage comprises or may comprise a mortgage or other charge on the debtor's home, see also Q12.6.

12.3 What is meant by 'security'?

Section 189 defines 'security' broadly as comprising any mortgage, charge, pledge, bond, debenture, indemnity, guarantee, bill, note or other right which:

- is provided by the debtor or hirer, or at his request (whether express or implied), and

- is to secure the carrying out of his obligations under an actual or prospective agreement.

Regulation 7(1) therefore includes where security is required in the form of a guarantee, provided by a third party guarantor or surety.

12.4 What comprises a statement of the 'nature of security'?

Where Regulation 7(1) applies, the advertisement must state that security is or may be required and specify the nature of the security.

In cases where the security comprises or may comprise a mortgage or other charge on the debtor's home, Regulation 7(2) requires the inclusion of one or more warning statements.

In the OFT's view, inclusion of any of these warning statements is sufficient also to satisfy the requirement in Regulation 7(1), as the statements include reference to 'your home'. See also Q12.5.

12.5 Is it sufficient to refer to 'loans secured on property'?

In the OFT's view, this is not sufficiently specific on its own, without any accompanying warning statement, to satisfy the Regulation 7(1) requirement to specify the nature of the security. 'Property' could encompass a vehicle or personal belongings, or residential property.

12.6 When are the warning statements required?

The warning statements prescribed by Regulation 7(2) are required in cases where the security comprises or may comprise a mortgage or other charge on the debtor's home.

The statement in Regulation 7(2)(a) is required in all such cases, except where Regulation 7(2)(c) applies (certain equity release mortgages).

The statement in Regulation 7(2)(b) is required in addition if the advertisement indicates that credit is available for the payment of debts due to other creditors – see Q12.7.

Regulation 7(4) applies where repayments are to be made in a currency other than sterling.

12.7 When is the debt consolidation warning triggered?

The warning statement in Regulation 7(2)(b) applies where:

- the subject-matter of the advertisement is a facility for which security is or may be required
- the security comprises or may comprise a mortgage or charge on the debtor's home, and
- the advertisement indicates that credit is available for the payment of debts due to other creditors.

It does not apply to unsecured debt consolidation (where the debts will not be secured against the debtor's home) or to equity release mortgages covered by Regulation 7(3).

The statement must be accompanied by and precede the general warning in Regulation 7(2)(a). Both must be in block capitals.

12.8 What if an advertisement contains elements falling into the CCA and FSMA regimes?

The wording of the prescribed statements differs slightly as between the CCA and FSMA regimes. It may be necessary therefore to include both statements in the same promotion – see Q1.11.

The CCA requirements can be satisfied only if the warning statement is in precisely the form specified in the Regulations, using the same wording and in block capitals.

12.9 What prominence rules apply?

Regulation 7(6) requires that the warning statements in Regulation 7(2) and (4) must be more prominent than any rate of charge (other than the typical APR) and any indication or incentive within Regulation 8(1). They must therefore be more prominent than any interest rate or any individual APR including 'from' and 'to' rates.

The prescribed warnings must be no less prominent than any Schedule 2 information. This is not limited to the amounts or items specified in paragraphs 5-7. For example, the statements should be at least as prominent as any reference to the amount of credit or any advance payment or the fact that monthly repayments are to be made.

12.10 Do the statements have to be shown in block capitals?

Regulation 7 requires a warning 'in the form' stated in each case. This means that the statement must be shown in block capitals.

12.11 When are warning statements not required?

Regulation 7(8) disappplies the requirements of Regulation 7(2)-(4) and Regulation 7(6) in the case of an advertisement which:

- is published by means of television or radio broadcast in the course of programming the primary purpose of which is not advertising
- is published by exhibition of a film (other than exhibition by television broadcast), or
- contains only the name of the advertiser.

It does not however disapply Regulation 7(1) – see Q12.1. It would still be necessary in such cases to state that security is or may be required and to specify the nature of the security.

In practice, the exclusion relating to the advertiser's name is of very limited application. It applies only if the advertisement contains only the name of the advertiser. It does not apply if the advertisement includes any other information such as an address or other contact details.

13 RESTRICTED EXPRESSIONS

13.1 What is meant by 'interest free'?

Regulation 9(1)(b) prohibits the expression 'interest free' or any similar expression unless the total amount payable does not exceed the cash price of goods or services financed by the agreement. A 'similar expression' might include 'zero APR' or '0% finance' or the like.

In the OFT's view, it may be a breach of Regulation 9(1)(b) if liability for interest or charges (other than default charges) arises under the agreement but is waived if the borrower pays a sum equivalent to the cash price by a stated date. An expression which breaches Regulation 9(1)(b) may also be misleading under the CPRs.

13.2 What if there are different terms for cash and credit?

Where there are additional charges for credit, such as a more favourable part-exchange allowance given to cash purchasers compared with credit purchasers, expressions such as 'interest free' should not be used as this would be a breach of Regulation 9(1)(b) – see Q13.1.

In addition, section 45 of the CCA prohibits the advertising of goods or services on credit when they are not also available for cash.

13.3 When can the term 'pre-approved' be used?

Regulation 9(1)(d) prohibits the expression 'loan guaranteed' or 'pre-approved' or any similar expression, except where the agreement is free of any conditions regarding the credit status of the debtor.

If the granting of a loan is conditional upon the applicant's response to questions regarding his credit status, or a further check with a credit reference agency, then in the OFT's view it would be a breach of Regulation 9(1)(d) to use the restricted expressions. It may also be misleading under the CPRs. See also Q13.4.

13.4 Does this not conflict with responsible lending?

A loan may not be described as 'guaranteed' or 'pre-approved' unless it is free of any conditions regarding the credit status of the debtor.

If a lender wishes to reserve the right to make additional checks on credit status, or to decline an application if it contains information impacting on credit-worthiness or ability to repay, such expressions must not be used. If however the loan is genuinely pre-approved, the lender should take care to ensure that this does not amount to irresponsible lending.²⁰

13.5 Can I use the phrase 'no credit checks'?

In the OFT's view this may be an expression similar to 'loan guaranteed' or 'pre-approved' for the purposes of Regulation 9(1)(d) – see Q13.3. This will depend upon the individual circumstances.

It may be interpreted by consumers as meaning that the lender will make no checks on credit status, whether with a credit reference agency or in any other way. If firms wish to avoid this (and hence possible breach of Regulation 9(1)(d)), the advertisement should make clear what is meant by the phrase, or use an alternative expression.

13.6 Can I use the phrase '0% interest'?

Yes, subject to Regulation 9(1)(b) – see Q13.1. In the OFT's view, reference to '0% interest' will trigger the typical APR in all cases, as it is a 'rate of charge' within Regulation 8(1)(a) – the rate being zero. The same also applies in the OFT's view to expressions such as '0% APR' or 'interest free'. The typical APR must be shown more prominently by virtue of Regulation 8(5)(c).

The statement does not however trigger Schedule 2 information since it is not an amount within paragraphs 5-7.

²⁰ The OFT is currently engaged in a project aimed at the production of guidance on irresponsible lending practices, in relation to the credit licensing regime

13.7 Can I state '0% introductory rate' in relation to a credit card?

The OFT would not generally regard a reference to '0% introductory rate' in an advertisement for running-account credit as a restricted expression within Regulation 9(1)(b), provided that it is made clear that it is merely an introductory interest rate and the period in question is clearly stated together with the typical APR.

There may however be a breach of the CPRs if non-interest charges apply during the period and the fact and amount of such charges are not stated prominently in the advertisement – see also Q7.6.

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