

Group licensing regime

Guidance for consumer credit group licence holders
and applicants

April 2008 (updated August 2011)

OFT990rev

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1 INTRODUCTION

Group licences and the public interest test

- 1.1 Group licences are granted in terms that permit **specified descriptions of persons and/or businesses** (the specified descriptions of members of the group falling within the parameters as stated on the group licence) to carry out the credit, and/or ancillary¹ credit activities specified on the licence, under cover of that licence.
- 1.2 In deciding whether to grant a group licence, section 22(5) of the Consumer Credit Act 1974 (the Act) requires the OFT to consider whether the public interest is better served by granting a group licence than by obliging each person and/or business to be covered by the group licence, to instead apply separately for individual standard licences (the public interest test). The OFT's view is that the public interest test will **not** be served in granting a group licence unless the applicant is able to satisfy us that (this is a non-exhaustive list):
- the members of the group are 'fit' to engage in the activities covered by the licence within the meaning of section 25 of the Act
 - it has appropriate mechanisms in place for assessing and monitoring the fitness of the members of the group for the duration of the licence, and
 - if any members of the group are not fit to be covered by the licence, suitable procedures are in place to allow for their exclusion from the cover of the group licence **by the group licence holder**.

Fitness considerations

- 1.3 Reforms introduced by the Consumer Credit Act 2006 amended and strengthened the fitness test as applied to applicants for, and holders of, standard consumer credit licences. The OFT is now required, amongst other matters, to have regard to any evidence as to the

¹ See Annexe A for list of, and description of, ancillary credit activities. See also section 145 of the Consumer Credit Act 1974.

business's ability to be able to conduct its consumer credit business activities in a **competent** manner.

- 1.4 In considering 'fitness', it is relevant for the OFT to consider both the '**integrity**' and '**competence**' of the business and its employees. Considerations of integrity tend to be 'backward looking' and take account of whether the business and/or its employees have engaged in any unlawful,² unfair or improper practices. Considerations of competence tend to be 'forward looking' and take account of whether the business and/or its employees have the relevant skills, knowledge, experience, business practices and procedures, to be fit to engage in the credit and/or ancillary credit activities covered by the group licence.
- 1.5 The OFT takes a **risk-based approach** to the assessment of credit competence having regard to the likely level of risk associated with **specific credit activities**.

We would certainly expect those engaging in credit and/or ancillary credit activities under cover of a group licence to be familiar with, and have appropriate regard to, the provisions of relevant OFT guidance³ and to ensure that their business practices and procedures fully reflect the standards the OFT expects of businesses engaging in such activities (as set out in the guidance).

Risk-based approach

- 1.6 Where a controlling body applies for a group licence, the OFT must satisfy itself that the body is able to provide the required level of regulatory control. In general, we have taken the view that while group licence holders need not apply precisely the same criteria in precisely

² This would include a consideration of any relevant criminal convictions.

³ For example, *Debt collection guidance* (OFT664) and *Debt management (and credit repair services) guidance* (OFT1338).

www.oft.gov.uk/about-the-oft/legal-powers/legal/cca/debt-collection

www.oft.gov.uk/about-the-oft/legal-powers/legal/cca/debt-management

the same way as the OFT does in relation to the regulation of standard licence holders, the overall approach should be similar and the level of consumer protection provided should be appropriate taking account of, amongst other matters, the credit activities engaged in by the members of the group.

- 1.7 The OFT's assessment of what constitutes an 'appropriate level of consumer protection' will largely be based on its consideration of the level of actual or potential risk associated with any licensable credit activity undertaken under the cover of the group licence.⁴
- 1.8 We would generally expect the level of risk to be less when the credit activity is engaged in on a **non profit-seeking basis** by a person or body with altruistic aims. Consequently, under such circumstances, we consider that it is likely to be appropriate for the group licence holder to operate a 'lighter touch' regulatory approach to the mitigation of risk associated with the licensable activities undertaken by its members than would be the case where members engage in similar credit activities but with a profit-seeking motive.
- 1.9 Under circumstances in which a group licence holder has members with a profit-seeking motive engaging in high risk credit activities under cover of its group licence, the OFT would expect it to operate far greater regulatory control over such members, with a view to mitigating the associated risk and ensuring that an appropriate level of consumer protection is maintained.
- 1.10 Furthermore, if businesses or persons with a profit-seeking motive are engaged in high risk credit and/or ancillary credit activities as a '**primary business activity**'⁵ (for example, a law firm engaged in debt collection/recovery as a primary activity or a business providing commercial debt advice/debt management services as one of its

⁴ See Annexe B – 'High risk credit activities'. The OFT considers both debt collection/recovery and the provision of debt advice/debt management services on a commercial (profit-seeking) basis to be amongst the high risk credit activities.

⁵ A 'primary business activity' in this context is an activity that a business engages in on a more than ad hoc or occasional basis and which may often (but not necessarily always) be one of the principal activities of the business. Whether or not a business activity constitutes a primary business activity will be a matter of fact and degree in each case.

primary business activities), we would expect the group licence holder to apply a particularly high level of regulatory supervision over their credit activities.

The OFT considers that if a person engages in a high risk credit activity as a 'primary business activity' (as opposed to on an occasional or ad hoc basis), the potential risk to consumers of adverse consequences resulting from those activities is increased – in part by virtue of the relatively higher frequency of engagements by the person in that activity. It is more difficult in such circumstances for us to be satisfied that the public interest test is met.

We consider that an individual standard consumer credit licence may be more appropriate if a primary activity of a profit-seeking business involves what we would classify as high risk credit activity. This is, in part, because we consider that where businesses are engaged in such activities it may be more appropriate for them to be subject to **direct regulatory supervision by the OFT itself** (in its capacity as the regulator of consumer credit activities).

- 1.11 Section 22(5) of the Act makes clear that it is for the **OFT** to determine whether the public interest test is met. In doing so, the OFT needs to form a view as to what it considers to be matters relevant to such a determination. We consider that the actual or potential risk to consumers associated with the credit activities engaged in under cover of the group licence – and the steps taken to mitigate those risks - are key considerations in this regard.

The criteria for considering whether or not a person or business operating under cover of a group licence is engaged in 'high risk credit activity' will always be determined by the OFT by reference to its risk model. Group licence holders' determinations of the risk associated with the credit activities of their members should also be made **solely by reference to the OFT's risk model** (taking account of the extracts of the revised Guidance for group licence holders which refer to 'profit-seeking motive' and 'primary business activity').

The OFT is not aware of **any** circumstances in which it would consider a person or business with a profit-seeking motive, engaged in high risk credit activity as defined in the OFT's risk model (operating under cover of a group licence or otherwise), to **not** be engaging in activity that actually or potentially represents a high risk to consumers – and we would always expect the regulatory controls applied by the group licence holder to ensure that the associated risks are mitigated to adequately reflect this.

1.12 On the basis of the above, we consider that group licences are most likely to be suitable for groups where the risk of consumer detriment arising from the credit activities of members of the group is low. Where we consider that the risk may be high, there will be a much greater onus on the group licence holder (or applicant) to satisfy us that:

- it has sufficient awareness and understanding of the regulated consumer credit activities being undertaken (or in the case of applicants, to be undertaken) by **individual members of the group** under cover of the group licence
- it has taken adequate steps to raise awareness amongst the members of the group of the standards of conduct that the OFT expects from those engaging in high risk credit activities in particular⁶

⁶ This would include disseminating relevant information provided by the OFT specifically for this purpose. Group licence holders **may** also wish to provide appropriate training for members of the group.

- it has sufficient awareness and understanding of the potential risks to consumers associated with those activities, and
- it has appropriate practices and procedures in place for ensuring that the members of the group take appropriate steps to mitigate those risks.

1.13 It is also the case that, in accordance with section 22(5A) of the Act, a group licence to carry on a business may 'limit the activities it covers in any way the OFT thinks fit'. The OFT may consider it appropriate to limit the activities covered by a group licence, as opposed to refusing or revoking the licence, where we consider that the public interest would only be served, or would only continue to be served, if we do so. For example, this might be the case where a group licence holder fails to demonstrate to the OFT's satisfaction that it has sufficient awareness and/or understanding of the high risk credit and/or ancillary credit activities being carried out by individual members of the group and/or that it has failed to take adequate steps to ensure that members of the group have themselves implemented appropriate practices and procedures to mitigate those associated risks.

Categories of group licence holders

1.14 While it is the case that any application for a group licence will be assessed on its own merits, there are three broad categories of applicant that we currently consider are most likely to meet the criteria to engage in regulated consumer credit activity under the cover of a group licence:⁷

- advisory organisations with altruistic aims
- professional bodies with established disciplinary arrangements, whose members only engage in low risk credit activity, and
- professional bodies with established disciplinary arrangements, and that have, in particular, sufficient awareness and understanding of the risks posed to consumers by the high risk credit and/or ancillary

⁷ There appears to us to be no compelling reason, at this time, for extending the scope of group licensing beyond these categories.

credit activities engaged in by the **individual** members of the group, such that they can ensure that all the members of the group take appropriate steps to mitigate those risks.

- 1.15 The OFT expects all group licence holders, regardless of which 'category' they are in, to adopt a **partnership approach** to working with the OFT with a view to ensuring the effective regulation of those who operate under the cover of its group licence.

In the OFT's view, based on its experience of administering the group licensing system, only where group licence holders properly engage with the OFT during the currency of the licence as 'effective regulatory partners' is the public interest test likely to continue to be satisfied.

Exclusion from group licence

- 1.16 The OFT has the power under section 28 of the Act to exclude any person from the cover of a group licence. However, we expect group licence holders themselves to take the lead in excluding unfit members from the group and notifying the OFT in a timely manner that they intend to do so and, where applicable, have done so. If a group licence holder fails to exclude unfit members of the group from operating under cover of its group licence, it would seriously call into consideration whether it remains in the public interest to continue to grant the group licence in question.

The Fitness and Compliance Plan

- 1.17 One of our purposes in producing this guidance is to assist consumer credit group licence holders, and applicants for such licences, in producing a Fitness and Compliance Plan (FCP).
- 1.18 The FCP is intended to play a key role in
- identifying the potential risks arising from the consumer credit activities undertaken by members of the group
 - satisfying the OFT that an appropriate risk analysis has been undertaken, and

- setting out the procedures adopted (or in the case of an applicant, the procedures to be adopted) to ensure that members of the group mitigate identified risks.

1.19 It is intended that the requirement for an FCP to be provided by all new applicants, and each group licence holder at the point when its licence comes up for renewal, should ensure that the OFT is provided with sufficient information to be able to reach a decision as to whether or not the public interest test is/continues to be satisfied.

We consider that existing group licence holders should **normally** only need to provide the OFT with an updated/amended FCP immediately prior to the renewal of their licences (as part of the licence renewal process). We envisage that, in many cases, relatively little update is likely to be required – so, in such cases in particular, this should not represent a significant burden.

However, if during the term of the licence an FCP is rendered substantively incorrect or out of date (perhaps, for example, because the group licence holder adopts fundamentally different procedures for dealing with disciplinary matters relating to its members), we would expect to be notified in a timely manner of such changes by being provided with an updated FCP at that time which reflects the changes.

1.20 The FCP should set out the potential risks associated with the credit activities of the members of the group. It should contain sufficient information to satisfy us that adequate means are in place to assess and monitor the fitness of group members to engage in the credit activities covered by the licence.

1.21 The FCP should also demonstrate that specific consideration has been given as to the fitness of members of the group **to engage in specified credit activities** under the cover of the group licence as distinct from their general suitability to be members of the organisation which holds the group licence.⁸ This requires a general awareness and

⁸ For example, while a group licence holder may consider a person or business unsuitable to be granted the cover of its group licence – perhaps because a primary activity of the business involves the undertaking of high risk credit activity - this would not necessarily mean that it was unsuitable to be a member of the organisation which holds the group licence.

understanding of the nature and extent of the credit activities undertaken by members of the group and any potential risks to consumers that may be associated with such activities. The OFT has produced guidance on fitness and this should be taken into consideration when producing a FCP.

We would also expect group licence holders to raise awareness of relevant OFT guidance amongst members of the group by appropriate means (for example, by means of a newsletter which is sent to all members of the group) and to take appropriate and proportionate steps to monitor that members of the group are adhering to the standards set out in the guidance.

1.22 It is expected that an FCP will cover the following (non-exhaustive list of) points:

- criteria for membership of the group to be covered by the group licence (including how the fitness of members to engage in specified credit activities is assessed)
- background information on the group's membership including a description of the business activities of the members of the group and in particular the credit activities engaged in
- details of any members of the group (individuals or businesses) **with a profit-seeking motive** that engage in high risk credit activities setting out the credit activities that each is engaged in
- the identification of any members of the group (individuals or businesses) that engage in high risk credit activity, with a profit-seeking motive, **as a primary business activity**
- an assessment of potential risk of consumer detriment arising from the credit activities of the members of the group and an outline of the practices and procedures to be employed by members of the group to mitigate those risks
- the procedures to be employed to monitor the maintenance of appropriate standards of fitness of the group's members, and

- the meeting of any reporting requirements to the OFT.⁹

1.23 The following chapters suggest approaches that may aid group licence holders in the identification, monitoring and management of any potential risks associated with credit activities undertaken by members of the group.

⁹ For example, see paragraph 4.2 of this document.

2 ASSESSMENT OF FITNESS AND POTENTIAL RISK

Identifying and addressing risk

- 2.1 The OFT applies a risk-based approach to consumer credit licensing. The OFT's over-riding aims are to ensure an appropriate standard of consumer protection in these regulated activities is applied in a way that leads to a well-functioning market whilst not imposing unnecessary burdens on business.
- 2.2 An FCP must include an assessment of the potential risk of consumer detriment which may arise from the credit activities engaged in by the members of the group and identify what steps have been taken to ensure that the members have appropriately addressed any such risk. The assessment should include consideration of the nature, potential severity, and likelihood, of risk associated with the credit activities. This need not involve a detailed analysis of the business activity of every individual member of the group (although we expect group licence holders to be **aware** of the credit and/or ancillary credit activities being undertaken by individual members of the group).
- 2.3 It will generally be sufficient to provide a reasoned basis for the proposed strategy to ensure that the group only includes members who are fit to engage in the specified credit activities covered by the licence and are engaged in sufficiently low risk credit activity (or appropriate steps have been taken to mitigate potential risks associated with higher risk credit activity) for it to be in the public interest to allow the members of the group to operate under the cover of a group licence.
- 2.4 We would expect each actual or potential group licence holder to explain in its FCP why it considers its level of 'screening' of its members to be sufficient when balanced against the specific potential risks associated with the credit activities engaged in by members of the group.
- 2.5 We would also expect the level of information provided in the FCP to be **proportionate** to the level of risk associated with the group's members' credit activities.

The credit activities

2.6 The FCP should demonstrate that appropriate consideration has been given to the credit activities undertaken by members of the group under cover of the group licence. For each credit activity, consideration should be given to factors such as:

- the level of risk associated with the credit activity in accordance with the OFT's risk model
- whether the credit activity is undertaken on a profit-seeking basis
- the frequency¹⁰ with which the credit activity is undertaken
- whether all the categories of credit activity that members of the group wish to engage in are covered by the group licence, and
- the extent to which the licensable activities undertaken by individual members are suitable activities to be undertaken under cover of a group licence given the potential risk associated with those credit activities.

2.7 The FCP should include information on the nature of the credit activities undertaken, or to be undertaken, by members of the group. For some groups, an assessment of associated risk may be more straightforward than for others. For example, a group of advice agencies providing debt counselling and/or debt adjusting as their primary activity are likely to be able to make such an assessment more readily than businesses which provide such services but only on a very occasional ad hoc basis.

2.8 Such considerations are relevant to the assessment of the level of risk of consumer detriment which potentially may arise from the credit activities of members and consequently in assessing how such risks might be mitigated.¹¹ To that extent, we expect the FCP to convey a

¹⁰ That is to say, whether the credit activity is undertaken so frequently by a member of a group that it is, in effect, a primary business activity of that member.

¹¹ For example, by the provision of professional training and/or promotion of the OFT's various guidance documents.

sense of the range and extent of the credit activities engaged in by the members of the group, noting significant¹² variations between the activities of individual members that might consequentially give rise to different types or levels of risk.

Credit competence considerations

2.9 Since April 2008, when considering fitness to operate under a consumer credit licence, the OFT has been required to have regard to what we term 'credit competence'. This involves a consideration of:

- the skills, knowledge and experience of those operating under a consumer credit licence to carry out the credit activities covered by the licence to a reasonable standard and
- the practices and procedures those operating under the licence implement or propose to implement (in the case of an applicant) in connection with their licensable credit activities.

The OFT's consideration of competence relates only to the credit activities being, or to be, undertaken under the credit licence. It is not a consideration of competence to run businesses generally.

2.10 All businesses are expected to be competent to carry out the regulated credit activities which they undertake under cover of a credit licence. The levels of competence required and the corresponding type and degree of information we will seek from group licence holders may differ according to the categories of credit activity engaged in, or proposed to be engaged in, by members of the group and the potential risks those particular activities might pose to consumers.

2.11 In considering the potential risk of consumer detriment which might arise as a consequence of the activities engaged in by members of the group, consideration should be given to any relevant factors. The FCP should include (but not necessarily be limited to):

¹² For example, it would be 'significant' where a **primary activity** of a business involved operating as a 'volume IVA provider' as opposed to a business providing occasional debt advice.

- the nature¹³ and categories of the credit activities the licence is to cover
- the extent¹⁴ of the credit activities carried out by (individual)¹⁵ members of the group
- the organisational or business models of members of the group, including but not limited to:
 - whether members of the group are involved in 'profit seeking' activities
 - the type of persons¹⁶ subject to the licensable activity undertaken by the members of the group
 - whether the licensable activity takes place on business premises or in private homes
 - whether any credit provided is secured against a client's assets.
- details as to whether members of the group are already covered by a legislative framework covering fitness requirements, or any other relevant regime covering business standards or conduct.

2.12 Amongst the factors that may contribute to a positive assessment of competence include **evidence** that members of the group have (this is a non-exhaustive list):

- a working knowledge of relevant consumer protection law, including the Act and related regulations

¹³ For example, if members of a group are providing 'debt solutions', the range of debt solutions being provided.

¹⁴ Whether the credit activity engaged in by named members constitutes one of their primary business activities.

¹⁵ We would expect the FCP to specifically identify persons engaging in high risk credit activities, with a profit seeking motive, as a **primary activity**, under the cover of the group licence.

¹⁶ For example, if members of the group are involved in recovering money from persons already vulnerable as a consequence of their problem over-indebtedness.

- a good knowledge of relevant OFT guidance
- a mechanism for providing access to a non-court based redress mechanism
- good/established compliance processes and complaints-handling procedures
- documentation such as credit agreements and credit advertising which is compliant with relevant regulations
- established relationships with Local Authority Trading Standards Services.

Integrity considerations

2.13 It is primarily the responsibility of the group licence holder to monitor the fitness of the members of the group to engage in regulated consumer credit activities. The FCP should set out the criteria for membership of the group and the nature of the background screening to be carried out on any applicant for membership. The assessment of fitness of an applicant to be a member of the group should involve a consideration of whether the applicant business¹⁷ and/or any of its officers has engaged in any past misconduct which may raise questions about integrity, including but not restricted to whether they have:

- previous convictions¹⁸
- been disqualified under the Company Directors Disqualification Act 1986
- been declared bankrupt in the last five years (or have had their estate sequestrated) and whether they are an undischarged bankrupt

¹⁷ Also applies to associates.

¹⁸ In particular in respect of any offences involving fraud or other dishonesty or violence.

- been a director, secretary or controller of a company in the last ten years that has gone into administration, liquidation, called in a receiver or been wound up
- received a county court judgment or, in Scotland, a sheriff's court judgment, in the last five years.

2.14 Details should be included of steps taken to obtain and verify such information and the extent to which references are taken up. If the checks carried out on applicants for membership of a group are different from those listed above, the FCP should explain why it is considered that the alternative checks are appropriate and sufficient, given the nature of the credit activities engaged in by members of the group and the associated risks.

We would expect the extent and the scope of the screening undertaken by group licence holders to be proportionate to the risks associated with the credit activities undertaken by their members under the cover of their group licence.

2.15 The group licence holder may also obtain information on occasions, either via the OFT or from other sources, which may call into question the integrity and consequent fitness of one of the members of the group, or an applicant for membership of the group, to operate under the cover of the group licence. Such information includes, but is not restricted to, whether the member or applicant has:

- breached the Act, any of the related regulations or any other consumer protection law
- not had sufficient regard to relevant OFT guidance
- engaged in business practices that appear to the OFT to be deceitful or oppressive, or otherwise unfair or improper, whether unlawful or not and whether arising in relation to the licensed business or otherwise
- provided false or misleading information to the OFT
- been the subject of any substantiated complaints about the business whether or not the activity in question is regulated under the Act

- breached the rules of the Financial Services Authority
- been the subject of adverse information from other regulators, the Financial Ombudsman Service, professional bodies, trade bodies, consumer organisations or other businesses, or been the subject of any disciplinary action (including by a trade association)
- engaged in discrimination including on grounds of sex, colour, race or ethnic or national origin, disability, sexual orientation or age, in, or in connection with, the carrying on of any business (whether or not involving licensable activities).

On-site inspections

2.16 On-site inspections may also form part of a group licence holder's fitness assessment and monitoring regime. Where a group has a programme of ad hoc or programmed checks on the activities of individual members of the group, the FCP should provide details of the nature of the inspection carried out.

2.17 The OFT may itself¹⁹ undertake on-site inspections of persons operating under cover of a group licence where it considers it appropriate to do so. Amongst the circumstances that might trigger such visits are:

- the OFT has concerns about the conduct²⁰ of a particular business operating under cover of a group licence
- the OFT wishes to generally review the credit competence of businesses operating under cover of a particular group licence or group licences or
- the OFT wishes to form a view as to whether the group licence holder's own monitoring, and procedures for ensuring that members of the group take appropriate steps to mitigate the risks

¹⁹ In practice, such on site visits may be undertaken by OFT's enforcement partners in Local Authority Trading Standards Services on behalf of the OFT.

²⁰ Any evaluation of conduct may include an assessment of the competence of the business to engage in the credit activities covered by the group licence.

associated with the credit activities undertaken, are adequate and effective.

- 2.18 Other than in exceptional circumstances,²¹ both the group licence holder and the relevant member(s) would be notified in advance of any on-site inspection to be undertaken by the OFT or on its behalf, and the inspection would be arranged for a mutually convenient time.

OFT guidance

- 2.19 When appropriate to do so, in the light of the intelligence and evidence we gather, we issue fitness guidance relating to specific credit activities or practices. This sets out some of the types of business practices that we consider to be deceitful, oppressive or otherwise unfair or improper and is designed to help inform those licensed to engage in regulated consumer credit activities of the appropriate standard of conduct expected of them. We may also publicise industry practices that we consider unfair, for instance by way of press notices or consumer alerts.

- 2.20 The credit sector specific guidance we have issued to date covers the following:

- debt collection²²
- debt management (and credit repair services)²³
- second charge lending²⁴

²¹ An example of 'exceptional circumstances' in this regard might be, for example, if the OFT is exercising its powers of entry and inspection under section 162 of the Act in order to ascertain whether any breach of any provision of or under the Act has been committed. We would expect such a power to only be exercised very rarely.

²² See footnote 3.

²³ See footnote 3.

²⁴ For secured lending, this guidance now supersedes existing OFT guidance on Non-Status Lending (OFT192v2) www.oft.gov.uk/about-the-oft/legal-powers/legal/cca/second-charge-lending

- irresponsible lending²⁵
- mental capacity guidance for creditors²⁶
- credit brokers and intermediaries.²⁷

2.21 It is expected that any person engaging in activities covered by sector-specific guidance will have regard to relevant OFT guidance applicable to that sector. Failure to do so is likely to call into question fitness to engage in those activities –particularly if, as a result, the person has engaged in unfair or improper business practices that have led to adverse consequences for consumers.

²⁵ www.oft.gov.uk/about-the-oft/legal-powers/legal/cca/irresponsible

²⁶ www.oft.gov.uk/about-the-oft/legal-powers/legal/cca/mental-capacity-guidance

²⁷ www.oft.gov.uk/OFTwork/consultations/current/credit-brokerage

3 SCOPE OF THE GROUP LICENCE

3.1 The FCP should clearly describe the members, and the activities of the group, to be covered by the group licence. **The cover of the group licence can only be afforded to those who fall within the descriptions in the licence.** It is imperative that the FCP describes clearly which persons or businesses that have membership of the 'wider group' are:

- considered by the group licence holder to fall within the description in the group licence (and why this is considered to be the case) and
- to be included²⁸ amongst those members to be covered by the group licence.

There can be no ambiguity with regards to who is – or is not – covered by the group licence and/or the specific activities in respect of which the licence provides cover.

3.2 The FCP needs to be worded so that it **clearly differentiates** those members of the group who it is intended should be subject to the group licence holder's regulatory scrutiny and have the cover of the group licence from those who are members of the wider organisation that holds the group licence but are not considered suitable (or for it to be necessary) to be covered by the group licence.

3.3 Subject to the wording of the group licence, it is capable of covering the activities of either individuals as members of a group and/or individual organisations (for instance, individual advice centres which are part of a larger group) or businesses. However, in order to do so, it needs to be **clearly** set out in the licence which specific descriptions of members of a wider organisation would have cover of the group licence and for which activities.

²⁸ A group licence holder may decide that even though one or more of its members falls within the description in the group licence, it does not wish for it or them to be included amongst the members afforded the cover of the group licence – perhaps because the member/members are engaged in high risk credit activities, with a profit-seeking motive, as a primary business activity, and the group licence holder considers it more appropriate for each of them to apply to the OFT for an individual standard consumer credit licence.

- 3.4 For example, it may be the case that some members of the group may operate under the cover of the group licence for the purposes of certain low risk credit activities in which they engage, but hold individual standard licences to cover their engagement in other higher risk credit activities.

This might be the case, for example, where a group licence holder considers it appropriate to only include as members of the group those who engage in low risk credit activities. This would significantly limit the administrative burden placed on the group licence holder in terms of the regulatory monitoring and controls that it would be expected to operate.

- 3.5 The group licence may cover credit activities undertaken by an individual or a business **provided** that the individual or business (as applicable) falls within the description of members of the group to be covered by the group licence and is listed in the register of the members of the group. For instance, a sole trader business registered as an individual member of a group may have the cover of the group licence for that business provided the appropriate category of credit business is covered by the group licence.
- 3.6 Individual members of a group covered by a group licence may form themselves into partnerships.²⁹ Where **all partners** in the business have the cover of the same group licence, credit activities listed on that licence, and carried out in the course of the business of the partnership, are capable of being covered by that group licence. However, under such circumstances, we would expect **the partnership itself** to be included in the register of members of the group to be covered by the group licence as well as the names of the individual partners. If the fitness of the **partnership** to continue to operate under the cover of the group licence is called into consideration, it may be necessary to consider excluding from the cover of the group licence either the entire partnership or individual partners, as appropriate given the specific circumstances, and it should be possible to differentiate between the two where appropriate/necessary to do so.

²⁹ Partnerships may be formed by agreement or may be limited liability partnerships.

Under circumstances in which it is considered necessary/appropriate to exclude the entire partnership (or other forms of business or bodies) from operating under the cover of a group licence (as opposed to excluding 'individuals'), the OFT expects the group licence holder itself to take responsibility for doing so. Failure to do so, under circumstances in which the OFT has a reasonable basis for considering it appropriate to do so, would call into question whether it remains in the public interest for the relevant group licence to continue to have effect.

- 3.7 It follows that where **all** partners are not covered as individuals under the same group licence then the business of the partnership will not have the cover of the group licence unless the description of members to be covered by the group licence, as stated in the wording on the group licence, allows for the **partnership itself** to be a member of the group that is covered by the group licence and the group licence holder is content to allow its membership of the group to be covered by its licence, on that basis.
- 3.8 Where a group licence covers a partnership, the group licence will also cover its employees in so far as their work is undertaken as part of the business of the partnership.
- 3.9 If individuals are named in a group's register as being members of the group covered by the group licence, and they are **company directors**, while the individuals themselves would be entitled to undertake the credit activities subject to the cover of the group licence in their capacity as **individuals**, any company in respect of which they were directors would need its own licence to undertake those activities or would itself need to fall within the description of members to be covered by the group licence and be listed on the register of members as a member of the group.
- 3.10 If an individual subject to the cover of a group licence is an **employee** of a company, the coverage only extends to activities that he undertakes **solely in his capacity as an individual** and will not extend to any credit activity he carries out as part of his work for that company. The company can not benefit from the group licence that covers his activities as an individual. The company would need to have its own individual standard licence covering the regulated credit activities that it was engaged in or, in order to benefit from the cover of the group

licence, it would need to be included in the description of members to be covered by the licence (and included in the group licence holder's register of members).

4 COMPLAINT AND DISCIPLINARY PROCEDURES

Complaint handling

- 4.1 A copy of the group's complaint and disciplinary procedures should be attached to the FCP and where appropriate a web-link should be provided for access to documents on-line.
- 4.2 The procedural documents should include details of any independent aspects of the complaints process, such as complainant access to an Ombudsman scheme or other independent alternative dispute resolution scheme. Where applicable, a copy of the most recently published independent report on the procedures should be appended to the FCP along with a copy of the group's annual report. In addition, details of any agreed targets relating to complaint handling or disciplinary actions should be provided. Supplementary commentary on these reports should be provided by means of explanation where the group falls short of any such performance targets.
- 4.3 The group licence holder should provide details as to where and how these procedures are published and whether there is any requirement placed on members to make these procedures known to their clients. Copies or links to client leaflets on how to complain might also be provided.

Disciplinary procedures

- 4.4 Group licence holders and applicants for group licences should have robust procedures in place for ensuring that appropriate action is taken against members of the group when adverse evidence/information is received regarding their conduct.
- 4.5 The FCP should include information on the:
- nature and scope of any disciplinary policies and procedures
 - the actual procedures and sanctions applied to discipline members where their fitness to continue operating under cover of the group licence is called into consideration
 - the process for excluding members from the cover of the group licence

There should be provision within each disciplinary procedure for excluding a member from the cover of the group licence without necessarily excluding the member from the group or profession - as total exclusion may not be a proportionate response to the identified misconduct.

- other forms of 'intermediate' action that might be taken against members where their conduct falls short of that expected of members of the group but is considered not so serious as to require their exclusion from the cover of the group licence (on the basis that they are not considered 'unfit' to engage in licensable credit activities)
- the nature and composition of any appeals body, including any lay observer element
- the grounds and procedures for appeal against decisions of the disciplinary and appeals bodies and
- the nature and extent of the publicity given to the outcome of disciplinary actions.

4.6 Although the group licence holder must take primary responsibility for disciplining members of the group where appropriate to do so, it should also have in place systems by which it may refer details of member's misconduct to the OFT, upon receipt of a request from the OFT to do so, under circumstances in which we might wish to give consideration to the member's fitness to continue to be able to undertake licensable activity³⁰ - and whether, subject to such a consideration, we might take the view that it is necessary or appropriate to take further action ourselves.

Redress

4.7 Groups covered by a group licence do not fall within the jurisdiction of the alternative dispute resolution scheme (ADR) run by the Financial Ombudsman Service (the Consumer Credit Jurisdiction). Consequently, the FCP should detail any means by which consumers may seek and

³⁰ See paragraph 5.5.

obtain redress where appropriate over and above the remedies provided for by the Courts.

- 4.8 If ADR is not provided for, then an explanation should be provided in the FCP as to why the availability of such a process to clients who may suffer loss as a direct consequence of their engagement with a member operating under the cover of the group licence, is not considered necessary/appropriate.

5 PROVISION OF INFORMATION

- 5.1 The OFT has the ultimate responsibility for the operation of the group licensing regime. Consequently, efficient information flow between the group licence holder and the OFT is important in ensuring that the licensing system overall works effectively.
- 5.2 The group licence holder is required to comply with any reasonable request for information or for documents made by the OFT, for purposes connected with our regulatory functions under the Act. In doing so, it should ensure that it observes relevant Data Protection Act 1998 considerations.

Personal data is exempt from the subject information provisions of the Data Protection Act 1998, in accordance with section 31(5)(a)(i) of that Act, where the personal data is processed for the purpose of facilitating the discharge of OFT's statutory functions under the Consumer Credit Act 1974.

Notifications

- 5.3 The FCP should also indicate how the OFT will be notified, when appropriate³¹ to do so, of disciplinary action taken against a member of the group. Any such notification should include sufficient information to enable us to identify the individual member on our standard licensing database and should include:
- the member's name and date of birth
 - the member's home and business address
 - a synopsis of the issue that gave rise to the action, and
 - the decision and details of any sanction(s) imposed.

³¹ We would expect to be notified of disciplinary action taken in respect of matters relevant to considerations of fitness to engage in licensable credit activities. We would not expect, for example, to be notified of minor technical breaches of the group's rules or conditions of membership.

- 5.4 The FCP should also indicate that the OFT would be **notified promptly** of the exclusion of any member from the group, the suspension of any member of the group and/or the termination of any suspension imposed on a member.

Referrals

- 5.5 Circumstances under which consideration might be given to referring details of a member of the group's conduct to the OFT, rather than the group licence holder disciplining the member itself, should be covered in the FCP. However, we would expect such circumstances to be very limited since if the burden of regulating the group's members was to remain with the OFT, it would call into consideration whether it remains in the public interest for the relevant group licence to continue to have effect.
- 5.6 If making a referral to the OFT, we would expect group licence holders to provide us with **relevant information** about the member of the group which might call into consideration whether the member should be allowed to continue to engage in licensable activity.

Such a referral should state clearly whether the conduct of the member of the group in question has merited its exclusion from the wider organisation that holds the group licence or whether it has been excluded from the cover of the group licence but permitted to retain its membership of the wider group. For example, a solicitor's actions may call into question his fitness to engage in credit activities under a group licence but not necessarily merit the withdrawal of his practising certificate.

- 5.7 If disciplinary issues are referred for the consideration of the OFT, in order to establish what action may be appropriate, we **may** require copies of a group licence holder's case papers³² from its own internal disciplinary proceedings to be made available to us.

³² See text box adjacent to paragraph 5.2.

Membership register

- 5.8 The OFT expects group licence holders to maintain an up-to-date register of the members of the group. The register need only contain details of the specific persons or businesses engaging in credit activities under the cover of the group licence – not details of any members of the wider organisation that holds the group licence who are not covered by the group licence and are not subject to the divested regulatory scrutiny of the group licence holder.
- 5.9 The FCP should set out the information available on the register and where the membership is made up of individual persons or businesses, the information we require to be held would normally include:
- name
 - date of birth (individual persons only)
 - trading name(s)
 - status (for example, sole trader, partner)
 - company number (where applicable)
 - business address
 - date of admission to membership, and
 - credit activities engaged in.
- 5.10 Some group licences cover members of the group that are organisations rather than individual persons or businesses in which case the information that we would normally expect to be set out in the register should include:
- the name and address and status of each organisation or body
 - services provided by the organisations
 - date of admission to membership, and
 - credit activities engaged in.

- 5.11 However, where obtaining and providing aspects of this information (as set out in paragraphs 5.9 and 5.10 above) appears to represent a **particular** burden for a group licence holder, the OFT will give consideration to representations that it should be exempted from the requirement to provide us with **some** of the specified information. In considering such representations, we will balance the cost/burden to the group licence holder of gathering and providing the information against the perceived additional benefits to the OFT from a regulatory perspective of obtaining it.
- 5.12 We will also consider the extent to which the group licence holder itself could function effectively in its divested regulatory role in the absence of it holding the specified information. This will be a relevant consideration as to whether or not the public interest test is satisfied.
- 5.13 The FCP should also provide the following information:
- the location of the register of members of the group and the form in which it is held (for example, on a computer database)
 - whether the whole of, or which parts of, the register are readily accessible by members of the public and by regulatory authorities
 - how quickly the group licence holder would respond to enquiries regarding whether a person was a member of the group
 - whether any charge is made for the provision of information from the register and if so how much
 - the requirements upon members to notify the group licence holder of relevant changes in details of membership
 - how frequently the register is updated to take account of changes in membership or in the details of individual members of the group
 - whether records in the register are kept in perpetuity.
- 5.14 The membership register should be updated on an ongoing basis to take account of changes in membership or in the details of individual members. The FCP should provide details of requirements placed on members of the group by the group licence holder to advise of any relevant changes and the time for the register to then be updated.

- 5.15 The FCP should provide information on how the OFT may obtain a hard copy, or electronic copy of the register of members of the group, or any part of the register, on request.
- 5.16 If group licence holders fail to provide the OFT with specified information that may change from time to time and/or updates in respect of such information, such a failure may call into consideration whether it remains in the public interest for the relevant group licence to continue to have effect.

Publication of General Notices

- 5.17 The Act places legal requirements on the OFT to publish general notices in certain specified circumstances including whenever any group licence is issued, renewed, varied, revoked or suspended and in the event we are minded to exclude a member from the group. In addition to the OFT publicising such actions in the London, Edinburgh and Belfast Gazettes, we would also expect a group licence holder to accept for publication any group licensing general notice and/or to otherwise circulate it to members of the group in such a manner that will bring it to the attention of all members.
- 5.18 The FCP should contain details of the publication and how the OFT may place a general notice.
- 5.19 The OFT may also place any such general notice on its own website.

A DEFINITIONS FOR ANCILLARY CREDIT BUSINESSES

Ancillary credit business: any business in so far as it comprises or relates to credit brokerage, debt adjusting, debt counselling, debt collecting, debt administration, the provision of credit information services, or the operation of a credit reference agency.

Credit brokerage: the effecting of introductions of individuals desiring to obtain credit to sources of credit. An introduction may be effected if it is only one way, for instance, the debtor is introduced to a creditor by being given an application form for a loan by a third party, such as an accountant, but that creditor is not in turn introduced to the debtor by the broker.

Debt adjusting: in relation to debts due under consumer credit agreements or consumer hire agreements, negotiating with the creditor or owner, on behalf of the debtor or hirer, terms for the discharge of debt; or taking over, in return for payments by a debtor or hirer, his obligation to discharge a debt; or any similar activity concerned with the liquidation of debt.

Debt counselling: the giving of advice to debtors or hirers about the liquidation of debts due under consumer credit agreements or consumer hire agreements.

Debt collecting: the taking of steps to procure payment of debts on behalf of a third party, due under consumer credit agreements and consumer hire agreements.

Debt administration: the taking of steps to perform duties under a consumer credit or consumer hire agreement on behalf of the creditor or owner, or to exercise or enforce rights under such an agreement on behalf of the creditor or owner (so far as these steps do not constitute debt collecting).

Credit information services: the taking of steps or the giving of advice to an individual in relation to the taking of any steps, with a view to ascertaining whether:

- another credit information agency holds information relevant to the financial standing of an individual
- ascertaining the contents of such information

- securing the correction of, the omission of anything from, or the making of any other kind of modification of such information³³ or
- securing that an agency which holds such information stops holding it or does not provide it to another person.

Credit reference agency: carrying on a business comprising the furnishing of persons with information relevant to the financial standing of individuals, being information collected by the agency for that purpose.

³³ This is generally known as 'credit repair'.

www.ofc.gov.uk/news-and-updates/press/2008/111-08

B HIGH RISK CREDIT ACTIVITIES

Based on the OFT's experience of operating the consumer credit licensing regime, it has identified certain factors which influence the extent and nature of the risks which different credit and ancillary credit activities potentially pose to consumers.

On a case-by-case/individual business basis, relative risks can depend very heavily on matters such as the specific vulnerability of consumers who deal with the business. Such factors can, in part, influence whether a business is considered to be engaging in high risk credit activity. In general, however, it is possible to identify specific credit activities which carry higher risks due to certain intrinsic features of the markets in which the businesses which engage in such activities operate.

A factor which affects the level of risk to consumers is the **transparency** of the market and the consumer's consequential ability to shop around. Where consumers have free choice and good information they may be able to use their buying power to force businesses to compete on standards as well as price. However, where consumers' choice is limited (or where they have no choice – for example, when being pursued for an outstanding debt by a debt collector), or there are information asymmetries (for example, where a consumer is seeking advice from a debt advisor as to what might be the most appropriate debt solution for him given his personal circumstances), there is always a bigger risk of consumer detriment.

In consumer credit and ancillary credit markets there are a number of specific activities where consumer choice plays little or no part in the selection of service or service provider, either because the provider is chosen exclusively by a third party, or because consumers are restricted in some manner (for example, because they have a poor credit history or current problem indebtedness).

Consumer credit markets are also widely regarded as being highly complex markets where there are significant information asymmetries, and increasingly there is significant use of behavioural and psychological biases in designing and marketing products and services, thereby making objective choice very difficult for the average consumer.

Taking these factors into account, and based on its own regulatory experience, the activities that the OFT considers to be higher risk are as follows:

- debt collection³⁴
- commercial³⁵ debt management (credit repair, debt adjusting, debt counselling)
- sub-prime (including 'home credit') lending and broking.

For each of these credit activities we believe that the potential risks to the consumer and to markets as a whole are sufficiently large to require high levels of regulatory scrutiny. Debt collection and commercial debt management (including credit repair) are activities where there are known problems of consumer detriment, primarily involving distress products, and/or consumers who are vulnerable because of existing problem debts and defaults, and where there is either no choice of service provider or that choice may be, or may appear to be, restricted. Problems with these activities have already been identified and are covered in the OFT's Debt Collection Guidance and Debt Management Guidance.

Sub-prime (including 'home credit') lending and broking³⁶ are activities where the consumer may have limited choice of products and/or providers due to either adverse credit history, or other circumstances considered non-standard. The credit products may be complex making it more difficult for consumers to understand and appreciate the key associated risks. Risk may be heightened when loans are secured on property, or when transactions take place within the home.³⁷ Problems with these activities have already been identified and are covered in the OFT's Irresponsible Lending Guidance.

³⁴ This includes debt recovery by businesses that have purchased the debt from the creditor. The debt purchaser becomes the owner/creditor in respect of debts purchased and consequently requires a category A consumer credit licence. Businesses that only recover debts **on behalf of third parties** require a category F consumer credit licence.

³⁵ 'Commercial' activity means that a business or an associate charges a fee or otherwise receives remuneration in connection with the provision of services and does not operate, for example, as a non-commercial charitable service. In the context of this guidance, those with a 'profit-seeking incentive' will always be engaged in 'commercial' activities.

³⁶ We consider, on the basis of our regulatory experience, the broking of both secured **and unsecured** credit for sub-prime borrowers to be high risk credit activities.

³⁷ For further guidance on the OFT's approach to risk see *Consumer Credit Licensing – General guidance for licensees and applicants on fitness and requirements* (OFT 969). www.of.gov.uk/shared_of/business_leaflets/credit_licences/oft969.pdf