

Consumer credit licensing

**Statement of policy on civil
penalties**

January 2008

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THE STATEMENT

1 INTRODUCTION

- 1.1 If your business offers any kind of regulated consumer credit or hire, or if you are involved in regulated activities relating to consumer credit or consumer hire, you must be licensed under the Consumer Credit Act 1974 (CCA). The Office of Fair Trading (OFT) is the government department responsible for licensing those engaged in regulated consumer credit activities. We are supported by the Local Authority Trading Standards Services (LATSS) in operating the licensing regime. To find out if you need to be licensed, see our booklet *Do you need a credit licence?* (OFT147).
- 1.2 The Consumer Credit Act 2006 amends the CCA to include new provisions to improve and strengthen the licensing regime administered by the OFT.
- 1.3 The reforms give the OFT power to impose requirements under section 33A CCA ('s33A requirements') on consumer credit licensees to address matters that cause the OFT to be dissatisfied. Additionally, section 36A CCA permits the OFT to impose new obligations on licensees to update specified information they have provided to the OFT ('s36A requirements').
- 1.4 The OFT has powers to impose financial penalties on licensees where they fail to comply with s33A requirements and where they fail to provide relevant information to the OFT. Section 39C CCA requires the OFT to issue a statement of policy on how it proposes to exercise these powers. The statement has been approved by the Secretary of State.
- 1.5 The statement provides information for businesses planning to apply for a credit licence or who are already licensed. It explains:

- the key factors the OFT will consider when assessing whether to impose a financial penalty where a licensee has failed to comply with either type of requirement
- the factors we will take into account in assessing the amount of the penalty
- the processes involved in imposing a penalty, and
- when we are likely to impose financial penalties on you rather than use the other enforcement options available to us.

1.6 The statement should be read alongside the *General guidance for licensees and applicants on fitness and requirements* (OFT969).

1.7 Licensing is just one part of the regulatory regime relating to credit. You must also comply with rules on advertising, form and content of agreements and other documentation, default and termination, and other matters. You may also be subject to the new provisions on unfair relationships. We have issued guidance in a number of these areas. For a full list of current OFT publications, visit our website at www.of.gov.uk

2 FINANCIAL PENALTIES

2.1 Under section 39A CCA, the OFT has the power to impose a financial penalty on you in two situations:

- when you fail to observe a requirement imposed on you as a standard licensee under section 33A CCA ('s33A requirement'), or as a responsible person in relation to a group licence under section 33B CCA, to address any matter that causes us dissatisfaction
- when you do not provide the OFT with information specified under section 36A CCA ('s36A requirement').

2.2 Penalties imposed under s39A will be of amounts the OFT considers appropriate. Section 39A(3) CCA limits the maximum penalty for failure to comply with a single requirement to £50,000.

2.3 The statement concentrates on financial penalties in relation to standard licences. The OFT also has the power to impose financial penalties on a responsible person in relation to a group licence. We will do so within the principles and objectives of the group licensing regime. These are explained at paragraphs 2.39 to 2.40.

Consumer credit licensing principles

2.4 Under the CCA, the OFT must be satisfied that when you apply for a credit licence you are a fit person to engage in the credit activities identified on the licence application before we issue a licence. You can be a business entering the market or one applying to renew your existing licence – the same fitness test applies to either case. Once we have granted a licence, you must maintain the required standard of fitness. If the OFT considers that you are not a fit person to be licensed, we can refuse your application or revoke your existing licence.

2.5 We may impose s33A requirements on you if you are a licensee or an applicant where we are dissatisfied with any matter relating to your conduct or practices or those of your businesses. The matters covered

include any causing us dissatisfaction but that fall short of making you unfit to be licensed. The s33A requirement obliges you to address these matters and ensure that matters of the same or similar kind do not happen again.

- 2.6 S33A requirements can be used to address concerns that we may have previously addressed by accepting undertakings from you prior to issuing your licence. The power to impose such requirements better enables us to take the initiative to resolve issues that cause us concern. We anticipate that s33A requirements will largely replace the use of undertakings.
- 2.7 The s33A requirements that we impose will set out the changes you will have to make to ensure that matters of the same or similar kind do not recur. Failure to comply with a s33A requirement means you will be potentially liable to a penalty so long as the requirement remains in place. But we will decide whether to impose a penalty, and how much it should be, according to all the circumstances of the case and taking account of any representations that you make. The factors and circumstances we will take into account in considering whether it is appropriate to impose a financial penalty are set out later in this statement.
- 2.8 Failure to comply with a s33A requirement may also reflect negatively on your fitness, since it will show that you have failed to address a matter that has caused the OFT dissatisfaction. Not complying with a requirement could therefore lead us to revoke your licence or to take other licensing action.
- 2.9 Failing to provide us with information we require under s36A CCA may also call your fitness into question since you may not have met your basic obligation to provide information relevant to our initial and continuing assessment of fitness.

General principles of regulatory penalties

2.10 The following general principles will inform the way that we impose financial penalties:

Proportionality – We will not automatically impose a penalty if you do not comply with s33A or s36A requirements. Where your non-compliance is minor or there are other mitigating factors, we may consider that a penalty is not necessary or appropriate. However, where the evidence about a failure to comply casts doubt on your fitness to be licensed this may lead us to take action to limit or revoke your licence. We will also have regard to the size of your business in deciding the amount of any penalty.

Changing behaviour – We will set any penalty, so far as possible, at a level to deter you or your business from repeating the matter giving rise to our concerns. However, we may also need to impose additional or revised s33A requirements and increase our monitoring to ensure that you do not repeat the conduct that caused us dissatisfaction.

No, or limited, financial benefit obtained from non-compliance – We will take into account the net financial gain to you or your business, if we can establish it, in deciding the amount of the penalty for failure to comply with a s33A requirement or failure to provide the OFT with s36A information. We will also take into account whether you gained or intended to gain financial benefit from not complying with the requirement, even if we cannot readily quantify the gain.

Consistency – The CCA gives the OFT discretion to decide when to impose penalties and the amount of the penalty (up to the £50,000 limit). We will exercise our powers consistently and in accordance with this statement, particularly when calculating the size of penalties for non-compliance. We will also have regard to precedents set over time by our decisions and those of others including, for example, the Consumer Credit Appeals Tribunal.

Financial penalties for failure to comply with s33A requirements

When can the OFT impose financial penalties?

- 2.11 Any failure to comply with a s33A requirement makes you liable to a possible financial penalty and other enforcement action up to and including revoking your licence. We will decide what action to take on the basis of all the evidence relating to the failure to comply with the s33A requirement.
- 2.12 In general, we would not expect to pursue a penalty when we revoke your licence or you voluntarily surrender it – but we would reserve our right to do so. If you give up your licence, we may waive our right to impose a financial penalty on the understanding that you (and your associates if appropriate) will not reapply for a licence. But if you later reapply, we may reconsider our decision not to pursue the penalty. In assessing the new application, we may take into account your failure to comply with the earlier requirement, as well as any attempt to mislead the OFT.
- 2.13 There may be a number of different and separate parts of your behaviour that each give rise to dissatisfaction. If so, you may be subject to a number of different, and separate, s33A requirements dealing with the various matters that cause us to be dissatisfied. Failure to comply with any or all of the s33A requirements would expose you to a financial penalty in each case. This would be up to the maximum amount of £50,000 for each requirement, subject to the overall assessment of a suitable penalty outlined below.
- 2.14 Where we have imposed a penalty, we will consider whether it is appropriate to continue or vary the s33A requirement in question, as also discussed in paragraph 2.36 below. If you subsequently fail to comply with that requirement we may impose new financial penalties on you. Alternatively, we may take action to vary or revoke your licence.

How will the OFT decide whether a financial penalty is appropriate and its amount?

2.15 If you fail to comply with a s33A requirement, we will take into account the following factors in assessing the seriousness of the non-compliance, whether a financial penalty is an appropriate response, and the amount of the penalty. This is not an exhaustive list of relevant factors, and we will take account of any other evidence that comes to light in making our assessment:

- what is the nature of the non-compliance? Is it a one-off event, or recurring or continuing?
- was non-compliance confined to isolated actions of a small proportion of staff, who have hidden their conduct from management?
- have you taken active steps to bring non-compliance to an end and/or reduce its detrimental effects?
- have other penalties been imposed by another body in relation to the conduct giving rise to the non-compliance?
- have you co-operated with the OFT and/or LATSS during investigation of non-compliance with the s33A requirement?
- have you accepted responsibility for non-compliance, particularly at an early stage of investigation and shown contrition about its impact?
- were the senior management and/or controlling mind of your business aware of non-compliance but failed to act?
- were the senior management and/or controlling mind of your business unaware of non-compliance through lack of diligence?

- have you put in place compliance procedures that should have minimised risk of non-compliance?
- what was the duration of the non-compliance, where it was continuing or repeated?
- did you continue not to comply after you received a penalty charge notice from the OFT?
- what was the actual or potential detriment (including economic loss/financial detriment) caused by non-compliance?
- how many consumers were affected or potentially affected by non-compliance?
- was a financial benefit gained (or intended to be gained) from not complying with a s33A requirement?
- did the matter causing the non-compliance inhibit consumers from exercising their legal rights or seeking independent advice?
- did the matter impact on consumers' ability to make free and informed choices, and
- did the matter causing the non-compliance disproportionately affect vulnerable consumers?

2.16 The OFT will not establish any fixed starting points from which to calculate the size of any financial penalty - this would significantly limit our ability to take account of the individual circumstances of the failure to comply with a s33A requirement including the factors outlined above. Failures to comply that appear similar in nature may have very different consequences depending on:

- the business of the licensee
- the likely diverse nature and scope of s33A requirements
- the different types of consumer affected
- and the differing degree of seriousness of any failure to comply.

2.17 We will have regard to penalties we imposed in previous cases or on which the Consumer Credit Appeal Tribunal adjudicates but will not be bound by previous decisions. It is our intention to make use of the full range of the penalties available to us and in appropriate cases to impose the maximum penalty of £50,000.

2.18 Where you bring your failure to comply with a s33A requirement to our attention, we will consider whether it is appropriate to reduce the penalty that would otherwise have been imposed. In considering whether any reduction is appropriate, and if so the amount of any such reduction, we will take into account whether the licensee has gained - or sought to gain - any financial advantage from the failure to comply with a requirement.

2.19 The OFT may have regard to the size of your licensed business, including any available information on turnover, in order to ensure that any financial penalty is proportionate.

2.20 At the end of this process, the OFT will review the size of the penalty calculated and consider whether it is, in all the circumstances, appropriate, proportionate and consistent with other decisions.

Financial penalties for failure to provide the OFT with required information

When will the OFT impose a penalty for failure to provide information under s36A?

- 2.21 The information that the OFT will require under s36A is needed to assess continuing fitness of licensees. S36A requires licensees to provide us with any new information relevant to fitness that we require where this information has been specified in a General Notice. Licensees must also notify the OFT of any changes to certain information they have provided, but only in circumstances where this information has been specified in a General Notice. We have yet to specify such information, but this may eventually include, for example, information about criminal convictions of licensees and their associates.
- 2.22 Failing to provide s36A information undermines the effectiveness of the licensing regime. Such failure makes it more difficult for us to assess whether you are still fit to be licensed, and may therefore expose consumers to unnecessary and avoidable risks.
- 2.23 If you fail to comply with s36A requirement you are potentially liable to a penalty. The OFT will decide whether to go ahead and impose a penalty, and how much it should be, on the basis of all the circumstances. We will take account of your representations when making the decision. In some cases it may be enough for us to issue a warning letter advising you of your obligations under s36A. In other cases, failing to provide the information, taking account of the nature of the information not disclosed, may lead us to take the view that you are not fit to be licensed. We would then take action to revoke the licence.
- 2.24 Generally, financial penalties will be appropriate where failing to provide information may constrain the OFT's assessment of the relative risk you pose to consumers in the credit market but does not justify finding you unfit to be licensed.

How will the OFT calculate the amount of the penalty?

- 2.25 Penalties related to s36A information requirements deal with only one aspect of your behaviour - the failure to provide the information required. We consider that this relative uniformity makes it appropriate to use some indicative starting points for setting penalties for failure to comply. They are set to ensure a consistent basis from which to calculate a penalty that reflects the seriousness of the failure to comply.
- 2.26 Where you provide information late, we will usually begin calculating any financial penalty at £500 and then take account of the factors listed below. In circumstances where you do not provide the information at all, or it is provided but is materially inaccurate, we will usually begin calculating penalties at £1,000 and then take account of the factors listed below.
- 2.27 Having established the starting point for the proposed penalty, we will adjust the amount of the financial penalty in the light of any aggravating or mitigating factors including, but not limited to:
- exercising due diligence to comply with the requirement
 - admission at an early stage of your failure to comply
 - your co-operation with the OFT or LATSS enabling us to impose a financial penalty efficiently
 - the length of your delay in providing the information
 - previous failures to provide the OFT with s36A or other information
 - previous warnings that you have been given relating to failures to provide, or delays in providing, information
 - whether the senior management and/or controlling mind of your business was aware of the failure to provide the information but did not address the failure

- the nature of the information you provided late or did not provide at all. For example, information about a conviction of an employee for a crime of dishonesty will substantially increase the relative risk of consumer detriment that your business poses, especially if the employee deals face to face with consumers.
- non-co-operation with the OFT and/or LATSS.

2.28 The OFT may have regard to the size of your licensed business including any available information on turnover, in order to ensure that any financial penalty is proportionate.

2.29 At the end of this process, the OFT will review the size of the penalty calculated and consider whether, in all the circumstances, it is appropriate, proportionate and consistent with other decisions.

Process for imposing a financial penalty for non-compliance with s33A and s36A requirements

2.30 The OFT becomes aware of actual or suspected failures to comply with s33A requirements and failures to provide information under s36A in a number of ways including:

- monitoring by LATSS or the OFT
- information from other regulators or advice agencies
- active monitoring of complaints made directly to the OFT or through Consumer Direct
- admissions by licensees.

2.31 Where, after investigation, we consider that you have failed to comply and that a financial penalty is appropriate, we will calculate the amount and then issue a notice informing you that we are minded to impose it. If the nature of the non-compliance also calls into question your continued fitness to be licensed, the notice may indicate that we are minded either to revoke the licence or alternatively to impose a financial penalty.

2.32 The notice will contain the following information:

- the reasons for issuing the notice – the OFT's view that a licensee has not complied with a s33A requirement or provided required s36A information
- the amount of the proposed penalty and reasons for the amount
- the time by which the penalty must be paid and how it should be made to the OFT
- an invitation to submit representations to the OFT in writing and/or in person within a specified period
- notice of our intention to re-apply the s33A requirement, vary it or introduce a new one.

2.33 If you submit representations about the decision to impose a penalty or its level, we may consider amending the amount of the penalty or may decide not to impose the penalty at all. If you do not make representations, it is almost certain that the proposed penalty will stand.

2.34 If, having considered your representations, we nevertheless decide to impose a penalty, you have the right to appeal against our decision to impose a penalty, and the amount, to the Consumer Credit Appeals Tribunal.

Financial penalties and other licensing enforcement action

- 2.35 On investigating a failure to comply with a s33A requirement or failure to provide s36A information, we may conclude that you are unfit to be licensed. In these cases, we may issue a notice that we are minded either to impose a financial penalty or to revoke your licence. If you are able to satisfy us that you are fit, we may impose a penalty for the failure to comply with the s33A requirement or failure to provide the s36A information. For information on other enforcement options available to the OFT to address concerns about licensees, see our *General guidance for licensees and applicants on fitness and requirements* (OFT969).
- 2.36 We may issue you with a penalty notice together with a notice to impose an additional or a new s33A requirement. The penalty will address the failure to comply with a s33A requirement or the failure to provide s36A information. The additional s33A requirement may oblige you to act in a particular way to ensure the infringement does not happen again. For example (depending on the circumstances giving rise to a failure to provide s36A information), we may impose a requirement obliging you to provide us with annual confirmation that the relevant information has not changed. Failure to comply with the additional requirement would expose you to future financial or other sanctions.

Publicity and financial penalties

- 2.37 The CCA requires the OFT to maintain a public register (the Consumer Credit Register) of decisions made under the licensing regime. The decision to impose a financial penalty, and the amount, will be recorded on the public register. We may issue press notices concerning the imposition of penalties if we consider that it helps the performance of our functions to do so.

Action in response to non-payment of a financial penalty

- 2.38 If you do not pay the penalty, the OFT has the power to recover it through the civil courts and interest will accrue on what you owe. We consider that failure to pay a penalty, once any appeals process is complete, amounts to an unreasonable failure to co-operate with the regulator that may cast doubt on your fitness to be licensed. As a result, we may consider revoking a licence instead of, or in addition to, seeking to recover the penalty.

Financial penalties and group licences

- 2.39 The OFT issues group licences where the public interest would be better served by issuing one rather than obliging the members of the group to apply separately for standard licences. We will issue a group licence to responsible persons who must ensure the fitness of the members of the group to engage in the credit activities that the licence covers.
- 2.40 We can impose a requirement under s33B CCA on a responsible person who must provide s36A information to us. If a responsible person fails to comply with a s33B requirement or fails to provide s36A information to us, we may impose a financial penalty. Alternatively, we may reconsider whether the public interest continues to be served better by the group licence remaining in effect.

3 FURTHER INFORMATION ABOUT CONSUMER CREDIT LICENSING

3.1 If you have any queries about consumer credit licensing, you can contact the OFT at:

Consumer Credit Licensing
Room 1C/5
Fleetbank House
2-6 Salisbury Square
London EC4Y 8JX

Phone: 020 7211 8608

Email: enquiries@oft.gov.uk

3.2 For information about FSA authorisation, you can visit the FSA website at www.fsa.gov.uk or telephone them on 020 7066 0082.

3.3 For further help and advice you can also contact:

- your Local Authority Trading Standards Service (see local phone book for contact details, or go to www.tradingstandards.gov.uk)
- your trade association, if appropriate
- an independent legal adviser.