

Group licensing regime

Guidance for consumer credit group licence holders
and applicants

April 2008

OFT990

© **Crown copyright 2008**

This publication (excluding the OFT logo) may be reproduced free of charge in any format or medium provided that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as crown copyright and the title of the publication specified.

CONTENTS

<i>Chapter</i>	<i>Page</i>
1 Introduction	4
2 Assessment of potential risk	8
3 Complaint and disciplinary procedures	17
4 Provision of information	20
<i>Annexe</i>	
A Definitions for ancillary credit businesses	25

1 INTRODUCTION

1.1 The Office of Fair Trading (OFT) has produced this guidance in order to assist consumer credit group licence holders, and future applicants for such licences, in producing a Fitness and Compliance Plan (FCP).

1.2 The FCP is intended to play a key role in

- identifying the risks arising from the consumer credit activities undertaken by members of the group
- satisfying the OFT that such a risk analysis has been undertaken, and
- outlining any procedures to mitigate against identified risks.

Background

1.3 Group licences are granted in terms that permit those covered by them to carry out specified credit activities, but only within their role as part of the group.

1.4 In deciding whether to grant a group licence, Section 22(5) of the Consumer Credit Act 1974 (the Act) requires us to conclude that the public interest is better served by doing so than by obliging the persons covered to each 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:

- it and its members would be fit within the meaning of Section 25 of the Act
- it has mechanisms in place for assessing the fitness of the members of the group for the duration of the licence, and

- if any members 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.
- 1.5 Where a controlling body applies for a group licence, the OFT must satisfy itself that it is able to provide the desired 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 the same way as the OFT does in relation to standard licences, the overall approach and the level of consumer protection provided must be similar.
- 1.6 The Consumer Credit Act 2006 ('the 2006 Act') amends and strengthens the fitness test for applicants for, and holders of, standard licences in that the OFT is required to have regard to any evidence as to the trader's ability to be able to conduct its credit business activities in a competent manner. The OFT will take a risk-based approach to the assessment of credit competence having regard to the likely level of risk associated with specific credit activities¹. We consider that group licences are likely to only be suitable for groups where the risk of consumer detriment arising from the credit activities of members of the group is low.
- 1.7 Currently, there are two broad categories of applicant that we consider generally meet the criteria to engage in regulated consumer credit activity under the cover of a group licence:
- advisory organisations with altruistic aims, and
 - professional bodies with established disciplinary arrangements, who engage in limited, low risk, credit activity, as an adjunct to their primary business activity.

¹ For example, we consider debt collection and lending in the home to be high risk credit activities. 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). This can be found at www.of.gov.uk.

- 1.8 There appears to us to be no compelling reason for generally extending the scope of group licensing beyond these categories. It is our view that if a group's primary function is providing credit and/or engaging in ancillary credit activity² and its members' activities have a strong commercial motive, it is more difficult in such circumstances for us to be satisfied that the public interest test would be met. However, any application for a group licence will be considered on its own merits and on a case by case basis.

The Fitness and Compliance Plan

- 1.9 It is intended that the requirement for an FCP to be provided by all new applicants and each group licence holder should ensure that the OFT is provided with sufficient information to reach a decision as to whether or not the public interest test is met.
- 1.10 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 ensure the fitness of group members to engage in the activities covered by the licence.
- 1.11 The FCP should also demonstrate that specific consideration has been given as to the fitness of group members to operate under the cover of the group licence as distinct from their general suitability to be members of the group as a whole. This would require a general understanding of the nature and extent of the credit activities undertaken by members of the group and any risks to consumers that may be associated with such activities. The OFT has produced guidance on fitness³ and this should be taken into consideration when producing an FCP.

² See section 145 of the Consumer Credit Act 1974

³ The OFT's general fitness guidance for those engaged in regulated consumer credit activities (OFT 969) and guidance specifically on Debt Management (OFT 366) and Debt Collection (OFT 664) can be found at www.ofc.gov.uk.

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

- background information on the group's membership and a description of the business activities of the members of the group and in particular the credit activities
- membership requirements
- an assessment of potential risk of consumer detriment arising from the activities of the members of the group and a plan of how those risks will be addressed
- proposals for monitoring the maintenance of appropriate standards of fitness of the group's members
- reporting requirements to the OFT.

1.13 The following chapters suggest approaches that may aid the management, identification and monitoring of any potential risks.

2 ASSESSMENT OF POTENTIAL 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 risk of consumer detriment which may arise from the activities of the group members and identify what steps have been taken to address any such risk. The assessment should include consideration of the nature, potential severity and likelihood of risk associated with its members' credit activities. This need not involve any detailed analysis or evidence of individual business activity. It will generally be sufficient to provide a reasoned basis for the proposed strategy to ensure that the group licence only includes persons who are:

- fit to engage in credit activities, and
- engaged in sufficiently low risk credit activity for it to be in the public interest to allow them to operate under the cover of a group licence.

2.3 We would expect the level of information provided in the FCP to be proportionate to the risks associated with the nature of the group's activities and it may be that all the proposed information might not need to be supplied in every case. However, we would expect each actual or potential group licence holder to explain in its FCP why it considers its level of screening to be sufficient when balanced against the specific potential risks identified for that group's activities.

Risk associated with credit activity

2.4 From April 2008, in considering fitness to operate under a consumer credit licence, the OFT will be required to take into account what we describe as credit competence. This involves a consideration of:

- the skills, knowledge and experience of those operating under the licence to carry out the activities covered by the licence to a reasonable standard, and
- the practices and procedures those operating under the licence propose to operate in connection with their licensable business activities.

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

2.5 All licensed businesses are expected to be competent to carry out the regulated activities for which they are licensed. 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 particular risks those activities pose. As noted above, the OFT considers that some business activities pose greater potential risks to consumers than others and group licences are likely to only be suitable for groups where the risk of consumer detriment arising from the credit activities of members of the group is low.

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

- the nature and categories of the credit activities the licence is to cover

- the extent of the credit activities carried out by the group's members
- the organisational or business models of the group's members and in particular
 - whether the members are involved in 'commercial activities'⁴
 - the type of client-base⁵ serviced by the members of the group
 - whether services are generally provided to clients on business premises or in the clients' own homes
 - Whether any credit provided is secured against the client's assets
- details as to whether the group is already covered by a legislative framework covering fitness requirements, or any other relevant regime covering business standards or conduct.

2.7 Factors that may contribute to a positive assessment of competence include:

- evidence that members have a working knowledge of relevant consumer protection law, including the Act and related Regulations as well as relevant OFT Guidance
- good compliance processes and complaints-handling procedures
- documentation such as credit agreements and credit advertising are compliant with relevant regulations
- established relationships with Local Authority Trading Standards Services.

⁴ Commercial activities are those that charge a fee for goods or services provided or commission is received.

⁵ For example, if members are involved in providing credit, do they provide this service to sub-prime borrowers.

Integrity considerations

Background screening

2.8 It is the responsibility of the group licence holder to monitor the fitness of those wishing to be members of the group. The FCP should set out the criteria for membership of the group and the nature of any background screening to be carried out on any applicant for membership. The assessment of an applicant's fitness to operate under the cover of the group licence should involve a consideration of whether the business and/or one of its officers has engaged in any past misconduct which may raise questions about integrity, including but not restricted to, whether an officer (and/or the business where appropriate) has:

- previous convictions⁶
- been disqualified under the Company Directors Disqualification Act 1986
- been declared bankrupt in the last five years (or has had his estate sequestrated) and/or is an undischarged bankrupt
- 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.

2.9 You should include details 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 your group are different from those listed above, your FCP should explain why you consider your alternative checks are appropriate and sufficient, given the

⁶ Also applies to associates

nature of the activities of members of your group and the associated risks.

Other adverse information

2.10 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 its members, or an applicant for membership, 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 law⁷
- 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, and with particular regard to any breaches of OFT guidance. This could include irresponsible lending.
- provided false or misleading information to the OFT
- engaged in unauthorised use of the OFT name or logo, including the OFT Approved consumer code logo, or misrepresenting the business' status to suggest that the business is 'approved' by the OFT or in any other way
- been the subject of any legitimate complaints about the business whether or not the activity in question is regulated under the Act

⁷ The breach of any legislation - particularly if the breach relates to matters involving fraud or other dishonesty or violence or breaches of any enactment regulating the provision of credit to individuals or other transactions with individuals - may adversely affect the continued ability to hold, or operate under the cover of, a consumer credit licence.

- breached the rules or principles of the Financial Services Authority ('FSA')
- been the subject of adverse information from other regulators, professional bodies, trade bodies, consumer organisations or other businesses, including the Financial Ombudsman Service, the Advertising Standards Authority, 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).

OFT guidance

- 2.11 The OFT may issue specific tailored guidance on fitness in the light of the intelligence and evidence we gather. This will outline some of the types of business practices that we consider to be deceitful, oppressive or otherwise unfair or improper and will be designed to help ensure that licence holders meet the appropriate standard of fitness. The OFT may also publicise industry practices that we consider unfair, for instance by way of press notices or statements.
- 2.12 The specific guidance we have issued to date includes guidance covering the following:
- debt collection
 - debt management
 - non-status lending
- 2.13 It is expected that any licensee engaging in activities covered by sector-specific guidance will comply with that guidance. Failure to do so is likely to call into question its fitness to be licensed if, as a result, it has engaged in business practices that are deceitful, oppressive, improper or unfair.

Cover of the group licence

- 2.14 The FCP must contain a definition of the group to be covered by the group licence. It must be worded so that only those who would be subject to the group licence holder's regulatory scrutiny would have its cover.
- 2.15 The group licence is able to cover individual members of a group and individual organisations, for instance, individual advice centres which are part of a larger group. However, it must be made clear which members of a wider group would have cover of the group licence and for which activities. 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 require individual standard licences to cover their engagement in other higher risk activities.
- 2.16 The group licence may cover credit activities undertaken as part of a business. For instance, an individual member of a group working as a sole trader may have cover of the licence for that business provided the appropriate category of credit business is covered by the group licence.
- 2.17 Individual members of a group covered by a group licence may form themselves into partnerships⁸. 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. It follows then 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. Where a group licence covers a partnership, the group licence will also cover their employees as far as their work is undertaken as part of the business of the partnership.
- 2.18 However, an employee of a limited company, if covered by a group licence solely in his capacity as an individual, will not have the cover of

⁸ Partnerships may be formed by agreement or may be limited liability partnerships.

that group licence for any credit activity carried out as part of his work for that company. The company would itself need to be appropriately licensed to undertake the credit activity.

Extent of the credit activities

2.19 The FCP should demonstrate that consideration has been given to the extent of 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 activity in accordance with the OFT's risk model
- the frequency with which the activity might occur
- whether the activity is a primary business activity or whether it is an ancillary activity related to the provision of other goods or services
- whether all the categories of credit activity that members wish to engage in under cover of the group licence are covered by the group licence and/or are suitable activities to be undertaken under cover of a group licence.

2.20 The FCP must include information on the nature of credit activities⁹ undertaken or to be undertaken by members of the group. For some groups, an assessment of associated risk will be more straightforward than for others. For example, a group of advice agencies providing debt counselling and/or debt adjusting as a primary activity should be able to make the assessment more readily than businesses which provide various ancillary credit services but on an ad hoc basis.

2.21 Such considerations are critical in assessing the level of risk of consumer detriment which may arise from the activities of members and

⁹ From October 2008, there will be 2 new categories of licensable activity, 'debt administration' and 'credit information services'. The full list of categories and their definitions can be found at annexe A.

consequently in assessing how such risks might be mitigated against¹⁰. This is not to say that the FCP should detail precise numbers or percentages for members and activities, unless this information is to hand, but rather that the FCP should convey a sense of the range and extent of activities of the group's members noting variations within those activities that might give rise to different types or levels of risk.

- 2.22 It is clear that the more the credit activity forms part of, or relates to, the primary activity of the individuals within the group, the greater the potential risk that consequential consumer detriment may result from the credit activity identified. Group licensing is most suitable therefore for any group whose members only engage in occasional, low risk, credit activities as an adjunct to their primary business activities. A standard consumer credit licence is more appropriate for a business, a significant part of whose commercial business activity is comprised of what we would classify as high risk credit activity.

¹⁰ For example by the provision of professional training and/or promotion of the OFT's various guidance documents.

3 COMPLAINT AND DISCIPLINARY PROCEDURES

Complaint handling

- 3.1 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.
- 3.2 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.
- 3.3 The group licence holder must 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 any client leaflets on how to complain should also be provided.

Disciplinary procedures

- 3.4 Group licence holders and applicants for group licences must have robust procedures in place for ensuring that appropriate action is taken against members when adverse evidence/information is received regarding their conduct.
- 3.5 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 question
- 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
- the process for excluding members from the cover of the group licence¹¹, and
- the nature and extent of the publicity given to the outcome of disciplinary actions.

3.6 Although the group licence holder must take primary responsibility for disciplining members where appropriate to do so, it should also have in place systems by which it may refer members to the OFT, under appropriate circumstances, in order that we might give consideration to the member's fitness to continue to be covered by the group licence¹².

On-site inspections

3.7 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, the FCP should provide details of what would trigger such a visit and details of the nature of the inspection carried out.

¹¹ 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.

¹² See paragraph 4.5.

Redress

- 3.8 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). In consequence, the FCP should detail any means by which consumers may seek and obtain redress where appropriate over and above the remedies provided for by the Courts. If ADR is not provided for, then an explanation should be provided as to why no such process is considered necessary.

4 PROVISION OF INFORMATION

- 4.1 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.
- 4.2 The 2006 Act provides the OFT with access to a statutory gateway under Section 35(1) of the Data Protection Act for such information flow. The group licence holder is required to comply with any reasonable request for information or for documents for purposes connected with our licensing functions under the Act.

Notifications

- 4.3 The FCP should also indicate how the OFT will be notified of any disciplinary action taken against a member. The notification must include sufficient information such that we are able to identify the individual 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
 - the decision and details of any sanction(s) imposed.
- 4.4 The FCP must also indicate that the OFT would be notified of the termination of any suspension imposed on a member.

Referrals

- 4.5 The circumstances under which a member would be referred to the OFT for licensing action rather than disciplined by the group licence holder should be covered in the FCP. However, such circumstances should be very limited as otherwise it would not be in the public interest to issue the group licence.

- 4.6 In making a referral, group licence holders must provide the OFT with relevant information about members which might call into question whether they should be allowed to continue to operate under the umbrella of the group licence – and specifically identify those whose conduct may not merit their exclusion from the wider group. For instance, 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.
- 4.7 Where disciplinary issues are referred for the consideration of the OFT, in order to establish what action may be appropriate, we may require, for instance, copies of a group licence holder's case papers from its own internal disciplinary proceedings.

Membership register

- 4.8 The OFT expects group licence holders to maintain an up-to-date register of those members covered by the group licence. The membership register should hold sufficient information to provide consistency with the information contained on the Public Register for standard licence holders.
- 4.9 The FCP should outline the information available on the register and where the membership is made up of individuals, the information we require to be held will include:
- name
 - date of birth
 - trading name
 - status, for example, sole trader, partner
 - name of partners
 - business address, and

- date of admission to membership.
- 4.10 Some licences cover members that are organisations rather than individuals in which case information on the register should include:
- the name and address and status of each organisation or body
 - names, positions and dates of birth of those individuals who are the 'controlling minds' of the organisation - in the case of limited companies this will be the directors and company secretary
 - services provided by the organisations, and
 - date of admission to membership.
- 4.11 Where obtaining and providing aspects of this information appears to be 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 specified information. In considering such representations, we will balance the cost/burden of providing the information against the perceived additional benefits to us from a regulatory perspective of obtaining it. For instance, in the case of those members of organisations whose motives are altruistic, the need to provide dates of birth of the managers of those organisations could possibly be waived.
- 4.12 In addition, the FCP should also provide the following information:
- the location of the register 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 or covered by the group licence

- 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
 - whether records in the register are kept in perpetuity.
- 4.13 The membership register must be updated on an ongoing basis to take account of changes in membership or in the details of individual members. The FCP must provide details of requirements placed on the group's members to advise of any relevant changes and the time for the register to then be updated.
- 4.14 The FCP must provide information on how the OFT may obtain a hard or electronic copy of its register or any part of the register, on request.
- 4.15 Section 36A of the Act permits¹³ the OFT to impose new obligations on applicants for group licences to update specified information they have provided to the OFT ('s36A requirements').
- 4.16 We may specify information group licence holders would be required to update us about in a 'General Notice', and the information may change from time to time.
- 4.17 If this information is not provided within the specified time, the OFT may impose a financial penalty on the group licence holder of up to £50,000. We will calculate the level of any penalty according to our statement of policy on civil penalties¹⁴.

¹³ Effective from 6 April 2008

¹⁴ The statement of policy on financial penalties can be found at www.offt.gov.uk

Publication of General Notices

- 4.18 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 publication in the London, Edinburgh and Belfast Gazettes we would 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.
- 4.19 The FCP should contain details of the publication and how the OFT may place a General Notice.

ANNEXE 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 or the operation of a credit reference agency. From October 2008 new licence categories of 'debt administration' and 'credit information services' will come into force.

Credit brokerage: the effecting of introductions of individuals desiring to obtain credit or obtain goods on hire. 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: covers those businesses that help individuals to locate and correct¹⁵ records relating to their financial standing held by credit reference agencies and others in credit hire industries.

¹⁵ Credit repair