

# THE MONEY LAUNDERING REGULATIONS 2007 SUPERVISION BY THE OFT

## Frequently Asked Questions

Version 7– May 2011

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## 1. INTRODUCTION

The OFT has been given a role under the Money Laundering Regulations 2007 (the Regulations) to supervise the anti-money laundering controls of:

- estate agents – those businesses engaged in estate agency work as defined by section 1 of the Estate Agents Act 1979 (this includes property finders and property/land auctioneers and covers both residential and commercial premises). Also see the OFT's Estate Agency Guide (OFT031)<sup>1</sup>
- consumer credit financial institutions (CCFIs) – those businesses engaged in consumer credit lending which are not either authorised by the Financial Services Authority (FSA) or supervised by HM Revenue and Customs (HMRC) as a money service business.

Estate agents or CCFIs may, under certain limited circumstances, also be supervised by the FSA or HMRC but it is the intention that businesses will only have to deal with one supervisor. If a business is already registered with an alternative supervisor it should make enquiries with its current supervisor about its position before applying to be registered with the OFT.

**From 1 February 2010 it is a criminal offence to carry on the business of an estate agent or a CCFI and not be registered with the OFT. The OFT can prosecute or impose a penalty upon unregistered businesses that continue to carry out supervised activity.**

The OFT has sought in these FAQs to address the main questions which may arise as businesses consider whether they need to comply with the Regulations and if so, whether they are supervised by, and therefore need to register with, the OFT. The answers to these FAQs represent the views of the OFT as a Supervisory Authority under the Regulations.

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<sup>1</sup> [www.oft.gov.uk/shared\\_oft/business\\_leaflets/general/oft031.pdf](http://www.oft.gov.uk/shared_oft/business_leaflets/general/oft031.pdf)

If these FAQs do not answer your question here email your query to us at [aml3@oft.gsi.gov.uk](mailto:aml3@oft.gsi.gov.uk) or you can ring us on 020 7211 8200. Further information is available on the Regulations from the OFT's website: [www.oft.gov.uk/mlr](http://www.oft.gov.uk/mlr)

## 2. WHO IS MY SUPERVISOR?

### General

#### **Q1. I trade with UK consumers but my company is registered abroad – am I supervised by the OFT?**

The relevant test is where you carry on business, and not where your company is registered. If you are either an estate agent or CCFI and carry on business within the UK, the Regulations will apply to that business and you will be supervised by the OFT.

Whether you are carrying on business in the UK will depend on the facts and your particular circumstances. If you have a presence in the UK (including agents acting on your behalf) and carry out significant business activity here, you are likely to be covered by the Regulations. However, in some circumstances you may be regarded as carrying on business here even if you are not physically present in the UK and only do business with UK consumers through distance means of communication, for example, foreign internet-trading lenders providing consumer credit in the UK.

Other factors that may be taken into account when considering whether business is being carried on in the UK are:

- whether advertising is directed at, or services/facilities offered to prospective clients in the UK (for example, costs given in pounds sterling)
- whether agreements are subject to UK law
- whether agreements are concluded in the UK
- whether services/facilities are provided in the UK, for example loans paid into UK bank accounts.

If you are in doubt, please contact the AML helpline on 020 7211 8200.

**Q2. What responsibility does a franchise company have towards ensuring compliance by the franchisees?**

As separate legal entities the franchisees are responsible for their own compliance with the Regulations and the franchise must be registered.

**Q3. I am a limited company and my parent company has registered with the OFT. Do I also need to register?**

If you are a CCFI or an estate agent you will need to also register with the OFT because you are a separate legal entity.

A parent company's registration does not cover any separate legal entities that it controls even if they are wholly owned subsidiaries. In fact the parent company may not need to register if it does not itself carry out estate agency work or provide consumer credit.

**Q4. I am a business with a number of brand names under which I trade. Do I have to register all the brand names?**

No. It is the legal entity, for example, the limited company, sole trader or partnership, that must register with the OFT as an estate agent or CCFI. However, when filling in the application form you must list all the brand or trading names that you use along with all the addresses where the supervised activity, or part of that activity, takes place.

**Q5. There are several different legal entities operating out of the same business premises, do I need to register them all?**

If these separate legal entities are estate agency and/or CCFI businesses, then you will need to submit separate registration applications for each. Registration is required from each separate legal entity conducting supervised activities.

## **Estate Agency**

**Q6. I only carry out commercial estate agency work– am I supervised by the OFT?**

Yes. For the purposes of the Regulations there is no distinction between residential and commercial estate agency work.

**Q7. I am a member of an Ombudsman scheme and/or a professional body – do I still have to register and be supervised by the OFT's AML regime?**

Yes. The Ombudsman schemes and professional bodies are separate from the AML regime and the need to register with the OFT for AML purposes.

Residential agents must join an approved Ombudsman scheme for the purposes of the Consumers, Estate Agents and Redress Act 2007. These schemes provide redress for consumers and residential estate agents will need to be a member of one of these schemes and also be registered with the OFT for AML. Commercial estate agents need only register with the OFT for AML although membership of a redress scheme may be a requirement of the membership of your professional body.

Estate agents' professional bodies do not have a supervisory role under the Regulations although they may provide information and advice for their members on compliance. Whilst an estate agent may choose to join such a body the business must also register with the OFT for AML purposes.

**Q8. I am a lettings/property management agent – am I supervised by the OFT?**

No. If you are strictly a lettings or property management agent and do not carry out any estate agency work within the meaning of section 1 of the Estate Agents Act 1979, then you are not supervised by the OFT and are not covered by the Regulations.

You should note, however, that any lettings agency which offers, or plans to offer, estate agency services to its landlord clients, albeit that such transactions may arise infrequently, should register with OFT. Such services could include, for example, contacting other estate agents on behalf of a landlord with a view to identifying potential buyers for the landlord's property. Registration fees are not calculated with reference to numbers of transactions but on the number of premises from which the estate agency work is carried out.

It is important to remember that you are still subject to the money laundering provisions of the Proceeds of Crime Act 2002 including the reporting duties of any nominated officer you may have appointed.

**Q9. I am a land agent/real property auctioneer – am I supervised by the OFT?**

Yes. Estate agency covers not just the sale of property but also the sale of land and so if the work you carry out falls within the definition of estate agency work in section 1 of the Estate Agents Act 1979, the business must register with the OFT for AML purposes.

**Q10. I am a housing association – am I supervised by the OFT?**

If you carry out estate agency work or are a CCFI in respect of, for instance, granting second charge shared equity mortgages then you will be supervised by the OFT and must register for AML purposes.

You may be engaging in estate agency if you act on behalf of another Housing Association in respect of the sale of a property or if you act on behalf of the home occupier with whom you co-own a property in respect of the sale of their interest.

Further information is available from the National Housing Federation website [www.housing.org.uk/default.aspx?tabid=1058&mid=2050&ctl=Details&ArticleID=2958](http://www.housing.org.uk/default.aspx?tabid=1058&mid=2050&ctl=Details&ArticleID=2958)

**Q11. I am a housing association/construction company and I maintain non permanent sales offices at my construction sites – do I need to register these premises?**

These premises need only be included in your application for registration, or notified to us after registration,<sup>2</sup> where you conduct regulated activity there, for example, negotiate and agree shared equity loans, or undertake estate agency work, that is, sell property which is owned by a third party and not by your business.

It may be useful to note that the taking of a deposit or reservation fee for a property is not regulated activity provided that these do not constitute part of a loan agreement.

**Q12. I am a relocation agent or private acquisitions specialist – am I supervised by the OFT?**

Yes. If you act as an agent for a buyer and carry out estate agency work within the meaning of section 1 of the Estate Agents Act 1979, you are covered by the Regulations and will be supervised by the OFT.

**Q13. I am a solicitor practising in England and I carry out estate agency work – am I supervised by the OFT?**

If you are a solicitor engaged in estate agency as part of your work as a solicitor then the OFT is not your supervisory authority. If, however, you engage in estate agency work outside your practice as a solicitor then that business will be supervised by the OFT. Further information is available on the Law Society's website at

[www.lawsociety.org.uk/newsandevents/news/view = newsarticle.law?NEWSID = 424915](http://www.lawsociety.org.uk/newsandevents/news/view = newsarticle.law?NEWSID = 424915)

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<sup>2</sup> Regulation 27(4)(a) – change in the number of premises constitutes a 'material change' which must be notified to the OFT within 30 days of the change.

**Q14. My business provides financial services as well as estate agency. The FSA is the AML supervisor for the financial services part. Does the estate agency side of my business also need to register?**

Many FSA authorised estate agency businesses are currently supervised by both the FSA and OFT under the Regulations. Such firms must register with the OFT, and if they have queries, can contact the OFT or the FSA (on 0845 606 9966). The possibility of a single supervisor having oversight of anti-money laundering arrangements for individual businesses will be considered by the FSA and OFT on a case by case basis. The FSA will, of course, retain oversight of these businesses' compliance with their wider obligations under the Financial Services and Markets Act 2000.

Estate agency business that are appointed representatives of FSA authorised firms are only supervised by the OFT under the MLR and must register with the OFT.

**Q15. I carry out estate agency work but only occasionally and on a very limited basis. Can I rely on the exemption set out in Schedule 2 of the Regulations?**

No. The exemption set out in Schedule 2 relates to financial activity carried out on an occasional or very limited basis and does not extend to estate agency work. This exemption can only be used by CCFIs who satisfy all of the conditions specified in paragraph 1 of Schedule 2. If you are a CCFI and believe that the exemption may apply to you, you should contact OFT to discuss the evidence that is required in order to benefit from the exemption.

**Q16. How do the Regulations affect Scottish estate agents?**

In Scotland, if you are a Solicitors Property Centre or a free standing estate agent carrying out estate agency work under section 1 of the Estate Agency Act you are subject to the Regulations and will be supervised by the OFT.

In Scotland, if you are a solicitors' practice which carries out estate agency work as part of that practice, but not as a separate business you will be supervised by the Law Society of Scotland.

**Q17. I am an estate agent and all my customers have bank accounts and their transactions are handled by solicitors – why should I be covered by the Regulations?**

This is not a decision made by the OFT. It stems from a European Directive implemented in the UK through HM Treasury. This reflects the fact that estate agents are involved in large value property transactions and are a central party to the property transactions as they generally meet both sides – normally face to face and are therefore best placed to see trends in certain areas and to spot any suspicious activity.

It is not just about handling cash, although agents' approach to cash should be cautious because of the risk of money laundering.

**Q18. Do I have to carry out customer due diligence measures on the executor of a will under which a property is being sold?**

An executor of the estate of a deceased person is the 'beneficial owner' for the purposes of the Regulations, and therefore falls within the customer due diligence obligations even where the executor is a solicitor. It makes no difference that a solicitor is subject to AML supervision by the Law Society. When they are acting as executor, it is perfectly reasonable that their identity should be subject to checks by the estate agent to ensure they are who they say they are in order to avoid the risks of money laundering. For further information on appropriate customer due diligence measures see the Joint Money Laundering Steering Group guidance.<sup>3</sup>

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<sup>3</sup> [www.jmlsg.org/bba/jsp/polopoly.jsp?d=749](http://www.jmlsg.org/bba/jsp/polopoly.jsp?d=749). As at 13 July 2010 the relevant paragraph is 5.3.86.

## **Consumer Credit Financial Institutions (CCFIs)**

CCFIs are businesses that provide consumer credit. This includes lending money and providing for payment for goods or services by instalments (except where the credit is repayable within 12 months by no more than four instalments). The Regulations do **not** cover credit brokerage, that is, the introduction of a consumer to a third party who provides credit.

### **Q19. I hold a category A licence – am I supervised by the OFT?**

If your business provides **consumer credit** you will be supervised by the OFT - providing you are not authorised by the FSA or supervised by HMRC as a money service business.

If your business is engaged in **credit brokerage** (where your business does not offer the consumer credit itself but 'introduces' the consumer to the financial institution that does) then you will not be required to register with the OFT for anti-money laundering purposes.

In providing consumer credit the business should hold a consumer credit licence for category A. However, the OFT will supervise those businesses that **require** a category A licence whether they hold a current licence or not. The requirement to hold a CCL is separate to the obligation to be registered for anti-money laundering purposes. If you are engaged in providing consumer credit but do not hold a current consumer credit licence for category A you should apply for one immediately.

### **Q20. What if I hold a category A licence but I'm not in the business of lending?**

If you hold a category A licence but do not provide consumer credit then you will not be a CCFI and so you will not be supervised by the OFT.

**Q21. I am a consumer credit lender whose parent company is supervised by the FSA as it is an authorised firm – am I also supervised by them?**

Not necessarily. As a separate legal entity it will depend on whether your company is also authorised by the FSA, and if it is, then it will be supervised by them. If it is only your parent company that is authorised and your company (even if it is an Appointed Representative) is not then you will be supervised by the OFT.

If you are an **appointed representative** of an FSA authorised firm and you do not:

- provide any sort of credit/lending (except as a broker through a third party lender), nor
- carry out estate agency activity

then you will **not** be supervised by the OFT. However if you do provide credit and are a CCFI or you do carry out estate agency work (see chapter 1), then you will be required to register with the OFT.

**Q22. I am a pawnbroker – am I supervised by the OFT?**

If you carry out pawn broking and/or payday lending then you will be providing consumer credit and therefore supervised by the OFT. However, if you also

- carry out third party cheque cashing
- carry out money transmission or
- act in any other way as a money service business

you will be supervised by HMRC and not the OFT. For more information see HMRC's website at [www.hmrc.gov.uk/mlr](http://www.hmrc.gov.uk/mlr).

**Q23. I am a payday lender – am I supervised by the OFT?**

Some payday lenders will be supervised by the OFT (see Q19 above) but the majority will be supervised by HMRC because you are likely to be carrying out third party cheque cashing, money transmission or act in other ways as a money service business. For more information see HMRC's website.

**Q24. I am a debt collector – am I supervised by the OFT?**

Yes, but only if you purchase debts by way of legal assignment. If you purchase books of debts under regulated consumer credit agreements and require a category A consumer credit licence in order to carry on a consumer credit business you will be supervised by the OFT.

If you are collecting only your own debts or collecting debts on behalf of a third party then you are not covered by the Regulations and so not supervised by any of the Supervisory Authorities.

**Q25. I am an asset leasing company with a category A consumer credit licence and I am authorised by the FSA but only for insurance purposes – am I supervised by the OFT?**

No. You will be supervised by the FSA as you are an authorised firm. All CCFI firms authorised for mortgages or insurance are supervised by the FSA.

### **3. HOW WILL I BE SUPERVISED?**

#### **Q26. How will the OFT approach compliance?**

Like other supervisors under the Regulations, the OFT operates a risk based supervisory regime. We will identify the highest risk businesses and target our level of supervision accordingly. In order to effectively supervise our businesses the OFT has established a register of estate agents and CCFIs. In consequence a business may not carry on as an estate agent or a CCFI after 31 January 2010 unless included in the OFT's register.

The OFT will help business to reduce the risks of being used for money laundering by producing guidance, giving advice to business and raising awareness levels generally.

We have powers to take enforcement action where appropriate against those businesses that fail to put in place the required anti-money laundering system and controls, or fail to register with the OFT when required to do so. We have powers to prosecute and to impose civil financial penalties. Further information on penalties is available in Interim Penalty Policy,<sup>4</sup> the general approach to applying penalties<sup>5</sup> and OFT's Enforcement Principles.<sup>6</sup>

#### **Q27. Do Local Authority Trading Standards Services (TSS) have a role in compliance?**

In the future Local Authority Trading Standards Services (TSS) may share monitoring and enforcement powers with the OFT under agreements yet to be negotiated. As detailed in the response to the consultation, the TSS are not currently able to agree to taking on a shared role. The OFT has been working with some individual authorities in piloting different models of working together and hopes that the results of this activity will help identify cost effective and efficient ways of future working. Until any such

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<sup>4</sup> [www.oft.gov.uk/shared\\_of/money-laundering/OFT1271.pdf](http://www.oft.gov.uk/shared_of/money-laundering/OFT1271.pdf)

<sup>5</sup> [www.oft.gov.uk/shared\\_of/AML/penalty-statement](http://www.oft.gov.uk/shared_of/AML/penalty-statement)

<sup>6</sup> [www.oft.gov.uk/shared\\_of/business\\_leaflets/general/oft1094.pdf](http://www.oft.gov.uk/shared_of/business_leaflets/general/oft1094.pdf)

arrangements are in place the OFT will be solely responsible for supervision although we will continue to work with TSS and act on information of non-compliance that we receive.

**Q28. Will there be future fees for businesses supervised by the OFT?**

Yes. The initial fee is a registration fee, but businesses will also be required to pay an annual fee. Annual fees will be payable by businesses when requested by the OFT and, like the registration fee, will be based on the number of premises from which a business carries out supervised activity.

**Q29. Do I need to register with the OFT?**

All businesses carrying out supervised activity are required to register (see Q26). More information is available on our website including the level of fees payable: [www.oft.gov.uk/mlr](http://www.oft.gov.uk/mlr)

The FSA and HMRC require businesses that they supervise to register with them.

## 4. HOW WILL OFT DEAL WITH BUSINESSES WHO HAVE NOT REGISTERED?

### Q30. How will OFT deal with me if I have not registered?

If you are found to be carrying out supervised activity without being registered with the OFT then we will:

- **contact you:** if the OFT has reason to believe a business should be registered, but is not, it will approach the business and explain the requirement for registration and provide advice and information. You will be given an opportunity to explain if you believe the OFT may be mistaken and you do not need to be registered with the OFT (for example, you are already registered with one of the other AML Supervisors)
- **issue a written warning:** if your business remains unregistered, you will be issued with a written warning that continuing to act as an estate agent or CCFI whilst unregistered will lead to further action by the OFT. You will be given a period of 21 days to apply for registration, or to provide a substantive response detailing why your business is not required to register with the OFT
- **issue a formal notice:** if you fail to apply for registration within the specified period, or provide a response which raises substantive issues as to whether it is required to register, the OFT will issue a formal notice to your business proposing the imposition of a financial penalty and stating the amount.

### Q31. What is the level of financial penalty that OFT will impose on businesses?

The penalty calculation is a two stage process. The starting point for financial penalties is £2,000, this is then adjusted for

- Step 1: the size of the business and
- Step 2: aggravating and mitigating factors

### **Step 1 – Adjustment for size of business**

A sum of £1,000 for each additional premise will be added to the £2,000 starting point to calculate the base penalty rate for each business.

### **Step 2 – Adjustment for aggravating and mitigating factors**

- The base penalty rate may be increased to reflect aggravating factors which may include the fact that previous action has been taken against the business or other undertakings in the same group or that such businesses have been subject to penalties previously.
- Mitigating factors advanced by the business will be considered and could possibly result in a reduction. However, the OFT does not currently anticipate any circumstances that would warrant a reduction in the financial penalty, as businesses will have been given a reasonable opportunity to apply for registration in advance of a penalty being imposed.

### **Q32. What happens when a financial penalty is not paid?**

If a business does not pay the penalty imposed, the OFT has the power to recover the amount through the civil courts as a debt. Interest may accrue on top of the level of the financial penalty imposed. If a business continues to carry out estate agency work or act as a CCFI without registering, in addition to seeking to recover the penalty, further financial penalties may be imposed or a prosecution may be taken.

**Q33. What should I do if I suspect a business is not registered?**

If you suspect a business is carrying on a supervised activity without being registered you should report your suspicion to the OFT. You can contact the OFT either by telephone on 020 7211 8200, or e-mail the AML team at [aml3@oft.gsi.gov.uk](mailto:aml3@oft.gsi.gov.uk).

## **5. WHERE CAN I FIND MORE INFORMATION**

### **Q34. Where can I find more information on the OFT regime?**

More information is available on our website at [www.oft.gov.uk/mlr](http://www.oft.gov.uk/mlr) or if you cannot find the answer to your question on the website you can email us at [aml3@oft.gsi.gov.uk](mailto:aml3@oft.gsi.gov.uk).

Your trade association may also be able to assist you with further information and the Joint Money Laundering Steering Group has also produced guidance for credit businesses which can be found at [www.jmlsg.org.uk/bba/jsp/polopoly.jsp?d=754](http://www.jmlsg.org.uk/bba/jsp/polopoly.jsp?d=754) .

### **Q35. Where can I find more information on the FSA regime?**

This will be available at [www.fsa.gov.uk](http://www.fsa.gov.uk)

### **Q36. Where can I find more information on the HMRC regime?**

This will be available at [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

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