

OFT Anti-Money Laundering Enforcement Principles

Money Laundering Regulations 2007

May 2009

OFT1094

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1 INTRODUCTION

- 1.1 The enforcement principles set out in this document are tailored to the supervisory functions that the OFT has been given under the Money Laundering Regulations 2007 (the Regulations).¹ The OFT's functions under the Regulations are regulatory in nature and therefore in carrying them out the OFT is subject to the statutory better regulation principles.² This document should be read in conjunction with the OFT Statement of Consumer Protection Enforcement Principles published December 2008.³
- 1.2 Our supervisory role under the Regulations commenced on 15 December 2007. Since then the OFT has had a duty to effectively monitor estate agents and consumer credit financial institutions (CCFIs) and to take the necessary measures to secure their compliance with the Regulations. CCFIs are consumer credit lenders not authorised by the Financial Services Authority (the FSA) or supervised by Her Majesty's Revenue and Customs (HMRC) for Money Services.
- 1.3 In order to comply with these duties the OFT will implement a system of registration for CCFIs and estate agents it must supervise. In the future we hope that the regime will involve Local Authority Trading Standards Services (TSS) as our enforcement partner as envisaged by the Regulations.⁴ However, until agreements are made with representatives of the TSS, the OFT will carry out all enforcement and compliance monitoring activity relating to estate agents and CCFIs.

¹ S.I.2007/2157.

² These are set out in Part 2 of the Legislative and Regulatory Reform Act 2006 and Part 4 of the Regulatory Enforcement and Sanctions Act 2008.

³ OFT Statement of Consumer Protection Enforcement Principles published December 2008 www.of.gov.uk/shared_of/reports/consumer_protection/oft964.pdf.

⁴ Under the Regulations these powers are not activated until an agreement is reached specifying the nature of the work to be undertaken by TSS.

- 1.4 Our regime will initially focus on raising awareness, compliance and registration although where adverse information regarding non compliance is brought to our attention we will take the necessary enforcement action in the appropriate circumstances. We will also report any suspicious activity we may come across in the course of our supervisory duties to the Serious Organised Crime Agency (SOCA). SOCA works with the police and other law enforcement agencies across the U.K.⁵
- 1.5 Our enforcement principles will be reviewed on an ongoing basis (at least annually) and may be subject to change in the future.

⁵ More information on the Serious Organised Crime Agency can be found on its website www.soca.gov.uk.

2 BACKGROUND

- 2.1 The Regulations came into force on 15 December 2007. Their aim is to detect, deter and disrupt money laundering and the funding of terrorism. To do this the Regulations seek to reduce the vulnerability of businesses for being used to launder money. They require that businesses take appropriate steps to prevent criminals from laundering the proceeds of crime or raising terrorist financing and using their business as a mechanism by which to do so.
- 2.2 The Regulations do not take a prescriptive approach to business compliance but instead introduce a risk based approach allowing businesses to adopt measures appropriate to the level of risk inherent in their particular business model.
- 2.3 Supervisory authorities⁶ such as the OFT are also expected to operate their compliance regimes in accordance with a risk based approach to supervision agreed by the Anti-Money Laundering Supervisors Forum (the AMLSF).⁷ Their aim is to ensure a consistent framework and approach to supervision in the UK. The risk based approach adopted by AMLSF reflects recommendations on enforcing the Regulations made by the Financial Action Task Force (FATF). FATF is an inter- governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing.⁸

⁶ Supervisory authorities monitor the relevant business and take necessary measures for the purpose of securing compliance with the Regulations.

⁷ The Forum was set up by Her Majesty's Treasury (HMT) and consists of representatives of all Supervisors under the Regulations. See the HMT website www.hm-treasury.gov.uk/.

⁸ See Financial Action Task Force website www.fatf-gafi.org.

3 THE MONEY LAUNDERING REGULATIONS 2007

- 3.1 The Regulations require that supervisors such as the OFT **effectively** monitor its supervised businesses.
- 3.2 Our role is to ensure that supervised businesses have the required checks, controls and procedures in place to anticipate and prevent money laundering or terrorist financing. It is not the function of supervisors under the Regulations to investigate alleged money laundering or terrorist financing activity. Supervisors must also, where necessary, report any suspicious activity to SOCA under the Proceeds of Crime Act 2002 and the Terrorism Act 2000.
- 3.3 Failure of a business to comply with the regulatory requirements, or to continue trading without registering as required by OFT, may make it subject to civil financial penalties or prosecution.
- 3.4 In order to assist business with compliance we have issued core guidance for estate agents and CCFIs on their obligations under the Regulations which is available on our website.⁹
- 3.5 In addition, the OFT can refuse to register or it can cancel registration if:
- information required by the OFT for registration has not been provided
 - it appears to the OFT that the information provided is false or misleading, or
 - the applicant has failed to pay the charges imposed by the OFT.

⁹ OFT Money Laundering Regulation 2007 Core Guidance – www.oft.gov.uk/shared_of/business_leaflets/general/oft954.pdf.

Our approach to enforcement

- 3.6 We will adopt a risk based approach that allows us to target our resources to those areas that are perceived to present a higher risk of money laundering. We will identify priority areas for action through a risk assessment of our supervised sectors, thereby seeking to minimise burdens on businesses generally.
- 3.7 We will keep under review our risk based approach to ensure that it takes into account, amongst other things, changes to markets, working practices and legislation.
- 3.8 We will promote and encourage business compliance by providing guidance and advice for business. We will seek to work with trade associations and representatives of small businesses wherever possible in order to identify how best to provide relevant and targeted advice and guidance.
- 3.9 We will generally seek to achieve compliance without use of formal sanctions unless the factors indicate that formal enforcement intervention is the appropriate first step. Where the information we gather merits further investigation we will enter and inspect premises, where appropriate. The OFT has power of inspection without a warrant at any reasonable time on production of evidence of our authority providing the premises are being used by an estate agent or CCFI in connection with their business activity.
- 3.10 When we need to use enforcement action, our objective is to ensure that our interventions are effective and efficient and provide the necessary level of deterrence to those who would deliberately flout their legal obligations. We will take a risk-based approach to these enforcement interventions and within that context will be as robust as necessary. We want to act so that business, fellow supervisors and other stakeholders such as HMT are satisfied that decisions on enforcement interventions will be:
- proportionate

- consistent
- targeted
- transparent, and
- accountable.

4 THE ENFORCEMENT PRINCIPLES

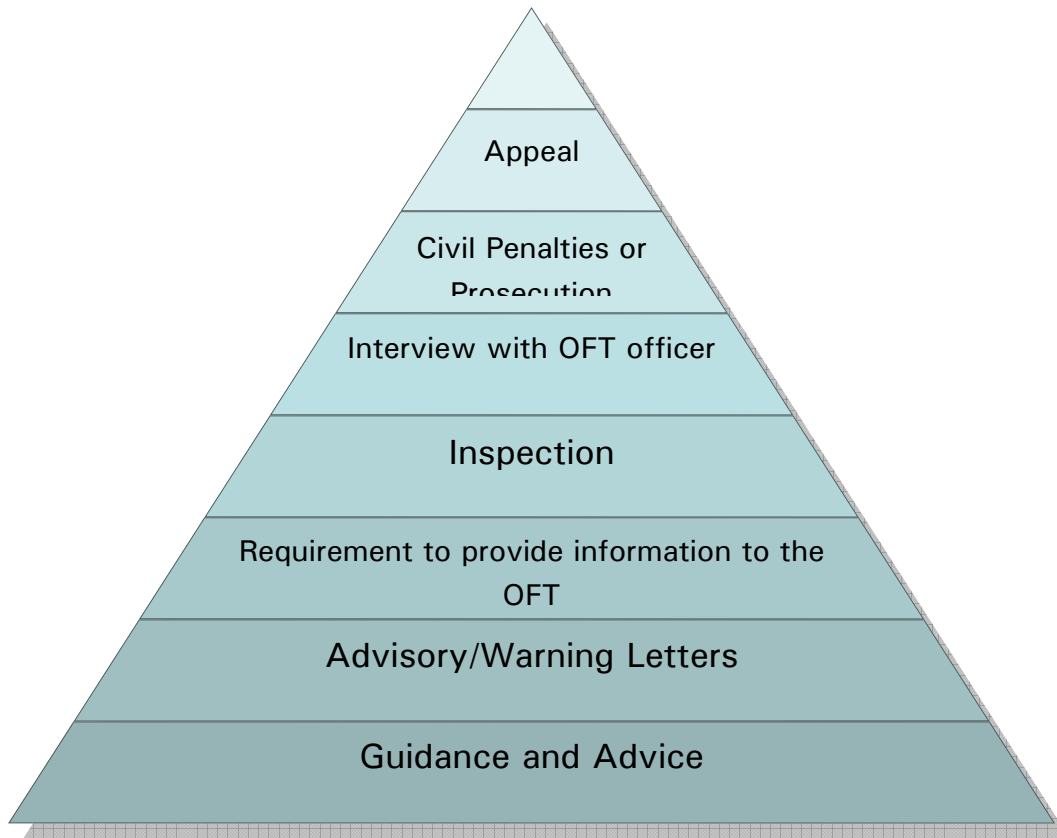
Proportionate

4.1 To ensure that our enforcement action is proportionate, we will take account of the level of risk and the circumstances of each case, focusing on the following factors:

- the direct and indirect risks of taking action bearing in mind the seriousness of any breach of the law and any impact on the effectiveness of the anti-money laundering and terrorist financing regime
- the available enforcement options
- the extent of administrative burdens likely to be imposed in the use of the various enforcement options
- information including knowledge of the business's past behaviour including the type of action which the business is most likely to respond to, and
- ensuring the cost is proportionate to achieving the desired results.

4.2 The diagram below shows the range of compliance and enforcement options available to us under the Regulations. We will generally seek to use compliance options in the first instance unless factors indicate that more formal enforcement action is required as a first step.

Chart 1: OFT Anti-Money Laundering Enforcement diagram



Consistent and Targeted

- 4.3 We will actively seek to promote consistency in enforcement between OFT and other AML supervisors, and will work closely with them to this end. This will include working and sharing information with AMLSF as well as liaison with individual supervisors such as the FSA and HMRC.
- 4.4 We will work with other supervisors to give guidance to businesses as to who is their supervisor. In the event of overlapping responsibilities we will seek to reach an agreement in accordance with the Regulations as to who will act as supervisor for that business. In the absence of any such agreement, we will cooperate with the other supervisors to ensure consistency of approach and to avoid the business receiving multiple

approaches on linked issues. We will inform any such business of agreements that have been reached in this respect under the Regulations.

- 4.5 Our enforcement approach will be risk based, this will enable us to focus our supervisory activities and target those businesses that are considered high risk. In carrying out our functions, we will act fairly and consistently. This does not mean that we will **always** enforce the law in the same way on apparently comparable cases – we will tailor the action to the individual circumstances. We will assess each case on its own merits, taking account of risk and of the need for proportionality, deterrence and achieving high levels of compliance.
- 4.6 We are committed to working with the SOCA, police forces and other supervisors. We will be working with TSS, to develop and agree a coordinated enforcement approach for the future. We will ensure that such arrangements establish complementary priorities, a framework for efficient and effective enforcement, avoid multiple approaches to businesses and that the principles of better regulation are embodied in them.

Transparent and Accountable

- 4.7 Except when circumstances make it inappropriate, we will give businesses an opportunity to comply with the Regulations. We will not in normal circumstances escalate our enforcement decisions unless dialogue is failing or the business has a history of non-compliance.
- 4.8 When we take action we will tell businesses the reasons why. We will state clearly:
- the area in which the business is failing to comply with the Regulations and the specific provisions being breached
 - what the next steps will be including timescales
 - an invitation to discuss the matter

- the possible consequences (civil and/or criminal) of failure to respond.
- 4.9 Following the outcome of any enforcement action we will make known the rights of appeal available.
- 4.10 We will cooperate fully with FATF and with HMT in reviews of our effectiveness as supervisors and the outcomes of our actions.
- 4.11 We will, wherever possible and appropriate, publicise all outcomes of court proceedings and other formal action taking due account of the need to:
- deter others from engaging in similar kinds of conduct
 - facilitate detection of further breaches, and
 - educate other businesses in the market.
- 4.12 We will be developing a system for reviewing outcomes and the impact of our compliance work.
- 4.13 We are committed to providing a high quality, accessible and responsive service to individuals and businesses.
- Our policy and practice is to be professional, courteous and helpful in all our contacts and enquiries.
 - The OFT procedure for dealing with complaints is set out on the OFT website – www.of.gov.uk/about/governance/complaint.
 - We are, however, subject to disclosure constraints in law and will protect commercial and personal data accordingly.

5 SANCTIONS AND PENALTIES

5.1 In the event of a breach of the Regulations, the Regulations provide for:

- the imposition of civil penalties of such amounts as are considered appropriate by the supervisory authority, or
- in the event of a criminal conviction
 - on summary conviction, a fine not exceeding the statutory maximum
 - on conviction on indictment, imprisonment for a term not exceeding two years, to an unlimited fine or to both.

5.2 By applying sanctions and penalties the OFT will be seeking to:

- change the behaviour of the offender
- eliminate any financial gain or benefit from non-compliance
- be responsive and consider what is appropriate for the particular offender and regulatory issue
- be proportionate to the nature of the offence and the harm caused, and
- aim to deter future non-compliance.

5.3 The OFT cannot impose a civil penalty on a business where there are reasonable grounds for us to be satisfied that the business took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with. Also, there is no criminal offence committed in these circumstances.

5.4 In deciding whether a person has failed to comply with a requirement of the Regulations, the OFT or a court must also consider whether the business followed any relevant guidance which was at the time—

- a. issued by the OFT or any other appropriate body such as a trade association, or
- b. approved by HMT, and which was published in a manner approved by HMT as suitable in their opinion to bring the guidance to the attention of persons likely to be affected by it.

5.5 Further guidance on penalties and sanction will be published by the OFT in due course.