

Consumer credit licensing

**General guidance for licensees
and applicants**

**Draft guidance on fitness and requirements –
consultation document**

June 2007

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PART 1: THE CONSULTATION

1 INTRODUCTION

- 1.1 The Consumer Credit Act 2006 amends the Consumer Credit Act 1974 (CCA) to include new provisions to improve and strengthen the licensing regime administered by the Office of Fair Trading (OFT).
- 1.2 The reforms give the OFT a new power to impose requirements under section 33A CCA ('s33A requirements') on consumer credit licensees to address matters that cause the OFT to be dissatisfied. The CCA has also been amended to enable the OFT to impose requirements on licensees to update specified information they have provided to the OFT (s36A requirements).
- 1.3 Another change is that in future the OFT must take account of the skills, knowledge and experience of anyone who applies for a licence in deciding whether they are fit to be licensed.
- 1.4 Sections 25A and 33E CCA require the OFT to issue guidance on how we decide whether someone is fit to be licensed and the way in which we propose to exercise our power to impose s33A requirements on licensees. The draft guidance on which we consult here covers both fitness and s33A requirements and we intend it to fulfil both legislative obligations.
- 1.5 This guidance relates principally to standard consumer credit licences. It also relates to group licences but only in relation to the power to impose requirements on supervisory bodies under section 33B CCA. Section 33A requirements can also be imposed on group licensees but we would anticipate doing so only in exceptional circumstances. The OFT will also be issuing separate additional guidance on what we would expect group licence holders to include in their Fitness and Compliance Plans.

- 1.6 We are publishing this guidance in draft form to invite comments from stakeholders and other interested parties. As the majority of our licensees are small to medium-sized businesses we particularly welcome comments from their representative bodies. The final guidance will take responses into account and we aim to publish it by the end of 2007.
- 1.7 Part 1 of this consultation document describes the consultation process and lists the questions on which we invite views. Part 2 comprises the draft guidance. Part 3 is a list of consultees.

Features of the guidance

- 1.8 The guidance is directed at businesses planning to apply for a credit licence or who are licensed. Although the main purpose of the guidance is to inform these businesses, it will also be useful for consumer advisers and other bodies seeking information on the obligations of licensees. It covers the key factors the OFT considers when assessing fitness to be licensed, how the OFT makes its fitness assessments, and how we deal with businesses who do not satisfy us that they meet the appropriate standard of fitness.
- 1.9 This guidance will replace the current general guidance on fitness for licensees and applicants, *Consumer credit licences: Guidance for holders and applicants* (OFT329). It will be supported by an updated version of *Do you need a credit licence?* (OFT147), which we aim to publish by the end of 2007. *Do you need a credit licence?* explains what types of business are likely to need a licence and the credit activities that fall under each category of licence. The updated version will outline the two new categories of credit business, debt administration and credit information services.

- 1.10 We need to pitch this guidance at a fairly general level given the diversity of licensees and applicants, who range from plc retailers and multinational banks to sole trader motor dealers and small companies specialising in debt collection. It sets out the principles by which we apply our regulatory tools. It does not aim to provide a comprehensive set of best practice guidelines, or to supply specific examples of 'unfit' conduct, or an exhaustive list of the circumstances that can result in an application for a licence being refused or a licence being revoked or limited.
- 1.11 The guidance outlines the factors, both positive and negative, that the OFT considers most relevant to fitness. But the ways in which those factors impact on fitness will depend on the specific circumstances of the individual applicant or licensee. Our aim is to provide straightforward information on the OFT's general approach to assessing fitness and the consequences of not meeting or maintaining the appropriate standard of fitness.
- 1.12 We may supplement this guidance in due course with further guidance on specific market sectors and/or activities and how we might apply the fitness test in respect of the associated business practices and conduct. We will develop any such guidance in the light of evidence of unfair practices or other risks to consumers and taking into account the extent of actual or potential detriment.
- 1.13 A list of other main consumer protection legislation with which licensees should ensure that they comply will be added to our website at www.offt.gov.uk

2 THE CONSULTATION PROCESS

Responding to this consultation

- 2.1 We welcome your views and comments not only on the questions set out in Chapter 3 but any other issues related to the draft guidance.
- 2.2 When you respond, please say whether you are doing so as an individual or on behalf of an organisation. If you are responding for an organisation, please make clear who it represents.
- 2.3 The consultation process is in line with Cabinet Office guidelines – for more information see Chapter 4.
- 2.4 A list of the organisations we have consulted is at Part 3. However, we would welcome comments from any organisation or individual who wishes to contribute. Please draw this consultation document to the attention of others who may have an interest.

The consultation period

- 2.5 The consultation period began on 26 June 2007 and will run until 21 September 2007. Please ensure that your response reaches us by that date.
- 2.6 Responses to this consultation should be sent to:

Denise Ellis
Room 3C/055
Office of Fair Trading
FREEPOST
London EC4B 4AH

Phone: 020 7211 8333
Email: denise.ellis@oft.gsi.gov.uk

- 2.7 If you have any queries about this consultation please contact Denise Ellis as above.

Next steps

- 2.8 We will collate responses and publish a formal response to the consultation exercise by the end of 2007. We aim to publish a final version of the guidance at the same time. Copies will be available from the OFT website at www.of.gov.uk

Confidentiality and data protection

- 2.9 We do not intend to publish individual responses to this consultation, but we may share non-confidential information with others in line with the disclosure provisions of Part 9 of the Enterprise Act 2002.
- 2.10 We may publish or disclose information we receive in response to this consultation, under the Freedom of Information Act 2000 ('FOIA') or other legislation on public access to information. Under the FOIA there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations about confidentiality.
- 2.11 We will process your personal data in accordance with the Data Protection Act 1998 ('DPA'). We will not disclose your personal data to third parties except in compliance with the DPA and other applicable legal requirements.
- 2.12 If you want us to keep your details or any information confidential, please request this clearly in your response and also state your reasons. We will take full account of your reasons if we receive requests to disclose information, although we cannot give an assurance that we can maintain confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your organisation's IT system will not in itself bind the OFT.

Comments or complaints about the consultation process

2.13 If you wish to comment on the conduct of this consultation or make a complaint about the way we have conducted this consultation, please write to:

Catherine Mason
OFT Consultation Co-ordinator
Room 5C/029
Office of Fair Trading
FREEPOST
London EC4B 4AH

Phone: 020 7211 8308

Email: catherine.mason@oft.gsi.gov.uk

3 CONSULTATION QUESTIONS

- 3.1 We want to ensure that the guidance is clear and comprehensive for its intended users and covers all relevant matters. We would therefore like to know how easy you find it to use, whether it meets its aim, and what else it might include.
- 3.2 The following is a summary of questions to which we would like answers. These questions are not intended to limit debate. We also welcome any other views or comments.

List of questions

- 3.3 We invite your views on the following:

Question 1: Is the draft guidance clear and concise?

Question 2: Does the draft guidance have any significant omissions?

Question 3: Is the draft guidance in need of amplification or clarification and, if so, in what respect?

Question 4: Are there any points in the draft guidance with which you disagree and, if so, in what respect?

Question 5: In particular, do you disagree with the risk assessment model proposed (at paragraph 2.9 onwards)? If so, in what way do you consider that it could be improved or refined?

Question 6: Are there any parts of the draft guidance that are not needed?

Question 7: Are there any areas that could be covered by supplementary fitness guidance and, if so, why?

4 CONSULTATION GUIDANCE

4.1 We are conducting this consultation in line with the Cabinet Office's Code of Practice on Consultation. The consultation criteria are listed below. You can access the full Code of Practice at:

www.cabinetoffice.gov.uk/regulation/consultation

The six consultation criteria for consultations by public bodies

- consult widely throughout the process, allowing a minimum of 12 weeks for written consultations at least once during the development of the policy
- be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses
- ensure that your consultation is clear, concise and widely accessible
- give feedback regarding the responses received and how the consultation process influenced the policy
- monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator
- ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

PART 2: THE DRAFT GUIDANCE

1 INTRODUCTION

- 1.1 If your business offers any kind of consumer credit or hire, or if you are involved in activities relating to consumer credit or 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 you if you are engaged in regulated consumer credit activities. We are supported in this by our enforcement partners in Local Authority Trading Standards Services (LATSS).
- 1.2 To find out if you need to be licensed, see our booklet *Do you need a credit licence?* (OFT147).
- 1.3 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 it issues a licence. You can be a business entering the market for the first time or one applying to renew your existing license – the same fitness test applies in either case. Once we have granted you a licence, you must maintain the required standard of fitness.
- 1.4 This guidance discusses the range of factors we consider when assessing your fitness. This includes your competence to engage in the credit activities covered by the licence and any evidence of unfair business practices.
- 1.5 It also explains how the OFT can obtain information relating to your fitness and the actions the OFT can take if you fail to meet the appropriate standard of fitness.
- 1.6 You should read this guidance if:
- you are applying for a consumer credit licence

- you are licensed and want information on:
 - the changes to the fitness test
 - the OFT's information-gathering powers
 - the OFT's licensing powers.

1.7 This guidance relates to standard consumer credit licences. For the guidance in respect of group licences, visit our website at www.offt.gov.uk/advice_and_resources/resource_base/credit-licence

1.8 Licensing is just one part of the regulatory regime relating to credit. Your businesses must also comply with rules on advertising, forms 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 and FAQs relating to these areas. For a full list of current OFT publications, visit our website at www.offt.gov.uk/advice_and_resources/publications

2 THE FITNESS TEST

2.1 The CCA¹ states that you will be granted a consumer credit licence if you satisfy the OFT that:

- you are a fit person to be involved in the activities the licence covers, and
- the name under which you want to be licensed is not misleading or undesirable.

2.2 In considering fitness, the OFT can take into account any circumstances that appear to us to be relevant, whether you are an applicant or an existing licensee. In particular, we need to consider any evidence that your business, or its employees, agents or associates, past or present, has:

- committed offences involving fraud or other dishonesty, or violence
- failed to comply with credit or other consumer legislation
- practised discrimination in connection with any aspect of your business
- engaged in business practices appearing to us to be deceitful, oppressive, or otherwise unfair or improper (whether unlawful or not).

2.3 Where the OFT has such evidence, we can take action up to and including refusing your application or revoking your existing credit licence.

2.4 In short, when assessing your fitness, the OFT can take into consideration anything that may be relevant to your ability to deal

¹ 1974, section 25

lawfully, honestly and fairly with consumers while carrying out the activities you wish to be licensed for, or that reflects on your ability to maintain the necessary standard of conduct.

- 2.5 We can also take into account the conduct and fitness of your employees, agents or associates, whether past or present. The CCA² defines 'associates' broadly to mean anyone associated with operating the business, including your spouse (or civil partner) and relatives. It can also include the persons you frequently do business with, who are regarded as business associates.

Factors relevant to fitness

- 2.6 Because fitness is a broad principle and not closely defined, the OFT is able to take all relevant factors into account. For example, the OFT takes into account not only evidence of actual harm or detriment to consumers, but also evidence pointing to risks to consumers from contact or engagement with the applicant or licensee.

- 2.7 Key factors that may call your fitness into question include the following:

- criminal offences committed by you or your associates, particularly offences involving violence, fraud or dishonesty, whether or not they lead to prosecution or a conviction
- any breach of the CCA, such as the rules relating to default and termination, or joint and several liability
- any breach of CCA Regulations, such as those relating to advertising, agreements, pre- or post-contract information or early settlement

² 1974, section 184

- any breach of other consumer protection law, including that relating to misleading advertisements, price indications and product descriptions, harassment of debtors, unfair contract terms, and distance selling
- any breach of the rules or principles of the Financial Services Authority (FSA), such as those set out in the consumer credit provisions of the Financial Services and Markets Act 2000 (FSMA)³
- insolvency, bankruptcy or disqualification as a director
- discrimination including on grounds of sex, colour, race or ethnic or national origin in, or in connection with, the carrying on of any business (whether or not involving licensable activities)
- providing false or misleading information to the OFT
- consumer complaints about the business
- adverse information from other regulators, professional bodies, trade bodies, consumer organisations or other businesses, including any disciplinary action by a trade association, the FSA, or the Financial Ombudsman Service
- unauthorised use of the OFT name or logo, including the OFT Approved consumer code logo, or misrepresenting the business's status to suggest that the business is 'approved' by the OFT or in any other way
- evidence of 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

³ See www.fsa.gov.uk

- an absence of, or insufficient, skills, knowledge and experience in relation to the consumer credit business activities covered by the licence.

2.8 The assessment of fitness will also take account of positive factors, where relevant. These may include:

- membership of an OFT-approved consumer code scheme
- FSA authorisation or approval
- a record of fair dealing over a significant period, for example evidence of no serious consumer complaints or enforcement action taken against your business, or an active policy of addressing consumer complaints
- a record of co-operating with LATSS, within a Home Authority relationship or otherwise, including addressing any concerns they might have about your business.

Risk assessment

2.9 The principle of risk assessment underpins the OFT operation of the licensing regime. Risk is assessed in the main by market sector, the kind of credit activity for which you have asked to be licensed, your target customer base, and the presence or absence of a range of relevant negative and positive factors.

2.10 Some market sectors pose greater potential risks to consumers by reason of the relative vulnerability of those consumers. If you are operating in higher-risk sectors you are likely to be subject to greater scrutiny at the application stage. You are also more likely to be subject to supervision or monitoring throughout the life of your licence than others operating in sectors where we perceive the risks to be lower. Such high risk sectors include sub-prime or non-status lending. Similarly, debt collection and businesses associated with high-pressure selling in consumers' homes are examples of sectors where a closer degree of

scrutiny of fitness is appropriate. This is because of the potential vulnerability of consumers to intimidation or harassment.

- 2.11 An OFT assessment of high risk is also likely to result in greater scrutiny of the your credit competence at the application stage (see paragraphs 2.17 to 2.21).
- 2.12 Risk assessment also means that the presence of negative factors (see paragraphs 2.7 and 2.22 for examples) may trigger closer scrutiny. Conversely, the presence of positive factors may reduce the need for additional scrutiny, depending on the credit activities you have applied for. Negative factors may make it more likely that the OFT or LATSS will monitor your activities more closely, or that the OFT will begin an investigation into your fitness as a licensee.

Providing false or misleading information to the OFT

- 2.13 It is a criminal offence for you knowingly or recklessly to provide false or misleading information to the OFT when applying for a consumer credit licence.
- 2.14 Providing such false information, or withholding information requested by the OFT, or misleading the OFT can all have a significant impact on the OFT's assessment of your fitness to be licensed. Withholding or distorting material information may also amount to an offence under the CCA.
- 2.15 It is essential that we have correct and up-to-date information about your business. Only in this way can we operate the licensing regime effectively to protect consumers. The OFT has been given a new power to impose civil penalties where your business does not supply information about changes in its circumstances within the time specified. This duty to notify changes in information previously supplied is imposed under section 36A CCA ('s36A requirements') and relates to information that the OFT needs to assess the continuing fitness of licensees. The scope of s36A requirements will be specified in a General Notice. For more on 36A requirements see paragraphs 3.7 to 3.9 of this document.

See also our statement of policy on imposing financial penalties – www.offt.gov.uk/shared_offt/consultations/oft932con.pdf

- 2.16 If the information you provide to us causes us to be in some way dissatisfied, the OFT response may not be to refuse or revoke your licence. It may be appropriate to address our concerns by imposing requirements on your business under section 33A of the CCA ('s33A requirements' - see paragraphs 4.3 to 4.11).

Credit competence

- 2.17 Credit competence means that you, and those participating in your business, have the skills, knowledge and experience needed to carry out the activities covered by your licence to a reasonable standard. This includes the ability and knowledge to comply with relevant legislation. We may need evidence of your competence when considering whether you are fit to be licensed. The type and degree of evidence we seek from you may depend on the categories of credit activity you engage in or propose to engage in.

- 2.18 We will ask you to provide evidence of credit competence where our risk assessment indicates a need to seek further information. We are therefore more likely to seek evidence of your credit competence if:

- you are a new entrant to the consumer credit market
- you want to engage in activities that potentially pose a higher risk of consumer detriment, whether you are a new entrant or already licensed.

- 2.19 Factors that may help us make a positive assessment of your competence include:

- evidence that you have a working knowledge of relevant consumer protection law, including the CCA and related Regulations

- good compliance processes and complaints-handling procedures – we may ask to see your desk instructions or training manuals, or phone scripts
- use of standard agreements that comply with the CCA and other relevant legislation and Regulations
- membership of trade associations or professional bodies with codes of practice that promote compliance with consumer credit law.

2.20 We will consider the information you provide on your application form, and if we need further evidence of your credit competence we may contact you. We may ask you to provide evidence in writing or ask one of our LATSS regulatory partners to visit you. The visit will enable a trading standards officer to review evidence of your competence and discuss your familiarity with the relevant credit law.

2.21 If you cannot demonstrate the necessary degree of competence for all the activities for which you have applied, the OFT can limit your credit licence just to those for which we consider you to have the necessary skills, knowledge and experience. Or we can consider imposing an appropriate s33A requirement (see paragraphs 4.3 to 4.11).

Deceitful, oppressive, improper or unfair business practices

2.22 When assessing fitness, we will take account of evidence of practices that are deceitful, oppressive, improper or unfair whether or not they breach the law. Any evidence of breaches of consumer protection legislation and other law will also affect our assessment of your fitness to be licensed. Indicators of such practices include the following:

- misleading consumers
- practices that take advantage of consumers who are vulnerable
- practices that involve aggressive or high-pressure tactics to secure sales or payment

- failure to follow OFT guidance with the legislation or other relevant matters
- practices that are contrary to an industry code of practice such as the Advertising Standards Authority Code or established principles of fairness such as those underpinning the FSA's Treating Customers Fairly initiative.

Irresponsible lending

- 2.23 Practices that appear to the OFT to involve 'irresponsible lending' are amongst business practices that we are likely to consider deceitful or oppressive or unfair. Lending irresponsibly will therefore call into question your fitness to be licensed.
- 2.24 We consider irresponsible lending to include failing to make a proper and diligent assessment of the potential borrower's ability to repay a loan in full and to make all the periodic payments as they fall due.
- 2.25 The OFT would consider it irresponsible for lenders and intermediaries not to take reasonable care in making loans or advancing lines of credit in revolving credit card agreements. Reasonable care would include taking steps to find out and check the borrower's creditworthiness, and ability repay the debt and to meet the full terms of the agreement. For example, we would not consider offering new lines of credit to borrowers who are exhibiting typical signs of inability to repay existing debts (such as missed payments or always making only minimum repayments on a credit card account) to be responsible lending.
- 2.26 The OFT plans to produce guidance for the credit market to identify practices that we consider may be irresponsible lending.

Current and future guidance

- 2.27 We monitor business practices in the consumer credit market. We may issue specific tailored guidance, in the light of the intelligence and evidence we gather. This is to help you ensure that you meet the

appropriate standard of fitness and avoid engaging in unfair practices that may result in detriment to consumers.

2.28 We have issued specific guidance on:

- debt collection
- debt management
- non-status lending
- car dealers.

2.29 We expect you to comply with any relevant sector-specific guidance. Failure to comply with such guidance is likely to call into question your fitness to be licensed if, as a result, you have engaged in business practices that are deceitful, oppressive, improper or unfair. Alternatively, the failure to comply may cause us to consider imposing an appropriate s33A requirement (see paragraphs 4.3 to 4.11).

2.30 In deciding whether you are fit to be licensed, we take into account evidence of practices directly related to those activities covered by your licence. But we may also give weight to any other relevant evidence including any that reflects doubt on your integrity or fairness in dealings with consumers. This evidence does not have to relate to a licensable activity and consumer credit does not have to be your primary business. The way you operate any aspect of a business may well be relevant to your fitness.

2.31 We have not attempted to compile a full list of business practices that we consider are or may be unfair. Precise circumstances may vary and can often have a significant bearing on whether we consider a practice to be unfair. In addition, products and trading methods may develop and evolve very quickly, so that such a list may soon be out of date. But where we consider appropriate, the OFT will publicise industry practices that we consider unfair, for instance by way of press notices or statements.

- 2.32 The OFT also has powers to take enforcement action against you under Part 8 in respect of domestic or Community infringements falling within sections 211 or 212 of the Enterprise Act 2002. This includes business practices that breach the CCA. Our approach to the use of these powers is discussed in the guidance *Unfair relationships – enforcement action under Part 8 of the Enterprise Act 2002* (OFT854). We also co-ordinate such actions undertaken by other enforcers.
- 2.33 The OFT expects to be given both civil and criminal enforcement powers when the Unfair Commercial Practices Directive (UCPD) is implemented in the UK. The UCPD will be implemented through the Consumer Protection from Unfair Trading Regulations 2007, which come into force on 6 April 2008. The scope of the UCPD means that it overlaps with other existing UK consumer protection legislation. As a result, some statutes such as the Trade Descriptions Act 1968 and the Consumer Protection Act 1987 are to be repealed or amended.⁴

⁴ The Department of Trade and Industry and the OFT plan to issue joint guidance on the Consumer Protection from Unfair Trading Regulations 2007 ahead of implementation. The draft guidance is currently out for consultation - www.offt.gov.uk/shared_offt/reports/consumer_protection/oft931con.pdf.

3 GATHERING INFORMATION TO ASSESS AND MONITOR FITNESS

On applicants

- 3.1 Application forms from applicants for new licences and those renewing their licences are a vital primary source of information on which to base licensing decisions. They are designed to give us information about key indicators of your fitness to be licensed (see paragraphs 2.7 to 2.8). We may check some of the information from your application against various other databases, for example the Disqualified Directors Register and our own Consumer Credit Licensing database. We can also ask LATSS to provide us with information that may be relevant to your fitness. We may check that the information you have given to us about convictions is accurate if we need to investigate your application.
- 3.2 For overseas applicants, we may contact the relevant regulators in the country in which your main place of business is located.
- 3.3 Depending on the information about you that we collect and the credit activities you wish to be licensed for, we may ask you for additional information to help with our fitness assessment. Information that indicates a key negative risk factor may prompt us to ask questions requiring written answers from you. Or it may lead us to request a trading standards officer to visit your business premises and ask you questions in person. We may also arrange a visit by a trading standards officer to assess your credit competence if, for example, you are a new entrant to a market involving higher-risk credit activity (see paragraphs 2.17 to 2.21).

- 3.4 Where there are doubts about your fitness, we will continue to gather information until we are satisfied that we can make a fair assessment of your fitness.
- 3.5 If you do not respond to requests for information about your application for a licence, the OFT can decide not to proceed with the application and a licence will not be granted.

On licensees

- 3.6 As a licensee you must inform the OFT of any material changes to the information you provided on your application form during the period you are licensed.
- 3.7 In addition section 36A CCA permits the OFT to impose new obligations on you to update specified information they you have provided to the OFT ('s36A requirements').
- 3.8 We will specify information you will need to update us about in a 'General Notice', and the information may change from time to time. For example, we anticipate issuing a General Notice requiring all licensees to inform us if they or their associates are convicted of a criminal offence.
- 3.9 If you do not provide this information within the specified time the OFT may impose a financial penalty on you of up to £50,000. We will calculate the level of any penalty according to our statement of policy on civil penalties [[link to statement of policy on financial penalties](#)].
- 3.10 As well as asking for information from you, the OFT receives information on its licensees from other sources including:
- Local Authority Trading Standards Services
 - the FSA
 - consumer bodies such as Citizens Advice

- complaints data from the national consumer advice service Consumer Direct
- complaints data from the Financial Ombudsman Service.

3.11 Information from these and other relevant sources can trigger fitness investigations during which we can ask you for any information relevant to your fitness to be licensed. We do this by sending you a notice explaining what we need and why. If necessary, the OFT can issue a notice to you requiring you to produce documents and/or data. We can also require you, by notice, to permit us to observe how you carry out your business on your business premises. We can also enter under warrant to carry out an inspection and take copies of documents – but only where it is necessary and proportionate to do so.

4 WHAT CAN HAPPEN WHEN THE OFT HAS CONCERNS ABOUT YOUR CONDUCT?

- 4.1 The OFT encourages businesses to comply with consumer protection law by making extensive use of guidance setting out how we interpret the law and exercise our various powers. We are committed to the fair, effective and proportionate enforcement of consumer law. In practice this means that we will decide on the appropriate enforcement mechanism in the light of the facts and circumstances of the individual case, especially the risk of detriment to consumers. We have several available enforcement tools.
- 4.2 It may, for example, be appropriate for the OFT to take action under Part 8 of the Enterprise Act 2002⁵ to change specific aspects of your conduct that are causing detriment to consumers. However, where your conduct calls into question your fitness to be licensed we are likely to consider taking away your credit licence.

Section 33A requirements

- 4.3 One of the major reforms of the CCA enables the OFT to impose a s33A requirement on you if you are a licensee or an applicant, where we are dissatisfied with certain aspects of your conduct or that of your business. Where you fail to comply with a s33A requirement we can impose a financial penalty. We may also compulsorily vary a licence, for instance to limit the activities for which you are licensed, or limit the life of the licence.

⁵ Breaches of the Regulations implementing the Unfair Commercial Practices Directive will also be actionable under the Enterprise Act.

- 4.4 The OFT can grant you a licence subject to a s33A requirement or impose a s33A requirement on you at any time during life of your licence. A s33A requirement obliges you to address any matter causing us dissatisfaction, including matters causing dissatisfaction that fall short of making you unfit to be licensed. We will set out in the requirement the changes that you have to make to address our concerns and to ensure that matters of the same or similar kind do not happen again.
- 4.5 S33A requirements can be used to address concerns that the OFT may have previously addressed by accepting undertakings from you prior to issuing your licence. The power to impose such requirements better enables the OFT to take the initiative to resolve issues that cause us concern. We anticipate that the imposition of s33A requirements will largely replace the use of undertakings.
- 4.6 We can use s33A requirements not only to address dissatisfaction we have about your business activities but any concerns we may have about your associates. Such a requirement must relate to the business that you are carrying or propose to carry on under your licence. But the **cause** of dissatisfaction leading to the requirement does not have to originate with a related business or activity. Any matter or conduct on the part of the licensee or an associate could give rise to the dissatisfaction on which the OFT bases a requirement.
- 4.7 Section 33A requirements are not limited to any particular activity within your business or the business you propose to carry on since they can address the cause of dissatisfaction in any part of your licensable business. Requirements can therefore relate not only to the licensable credit activity you carry on but also to the wider activities of the business covered by the licence.

4.8 S33A requirements can be framed negatively, to stop you from acting in a particular way. For example, a requirement could restrict the hours in which a debt collector contacts debtors. Requirements can also compel you to take positive steps. For example, we could require a lender to deal appropriately with third parties acting on behalf of consumers (such as Citizens Advice) or to ensure that relevant staff receive appropriate training to ensure that the business operates properly. We could require you to put new procedures in place and to keep proper records to show that you follow these procedures.

4.9 Other examples of the circumstances where it may be appropriate to impose s33A requirements include:

- to address deficiencies in your competence to carry out the consumer credit activities from which you have applied
- to prevent inappropriate individuals, such as those with convictions for violent offences, dealing face-to-face with consumers (where revocation or refusal of a licence is not appropriate)
- to revise and upgrade existing processes to ensure your compliance with consumer credit law, and
- to stop you employing high-pressure marketing and sales techniques that take advantage of consumers.

4.10 If the OFT imposes a s33A requirement on you, your details and details of the requirement will be entered on the Consumer Credit Register.⁶ This public database holds information on all consumer credit licensees. The OFT may publicise the requirement more widely if we consider that doing so helps the performance of our functions.

⁶ The Consumer Credit Register is accessible to personal callers and by phone and email. It is due to go online in summer 2007.

- 4.11 We can charge you a financial penalty of up to £50,000 if you fail to comply with a s33A requirement. We will impose a penalty and calculate the level of penalty according to our guidance on penalties – www.offt.gov.uk/shared_offt/consultations/oft932con.pdf.

5 ENFORCEMENT PROCESSES

The OFT's approach to enforcement – necessary and proportionate action

- 5.1 We are committed to good enforcement policies and procedures in line with the recommendations of the Hampton Report as given effect to by the Legislative and Regulatory Reform Act 2006. We are also committed to the principles of the Cabinet Office's Enforcement Concordat.⁷
- 5.2 Part 2 of the Legislative and Regulatory Reform Act requires regulators to have regard to certain principles of good regulation. Regulators should carry out their activities in a way that is transparent, accountable, proportionate and consistent, and should target their activities only at cases where they consider that action is needed. The Act also enables Ministers to issue a statutory code of practice for regulators, and the Government has indicated that it intends to issue a Regulators' Compliance Code to stand alongside the Enforcement Concordat.⁸

Refusing or revoking a licence

- 5.3 If we have sufficient doubts about your integrity as an applicant or licensee or the risk you pose to consumers, we may decide that you are

⁷ The Enforcement Concordat can be found on the Cabinet Office website at www.cabinetoffice.gov.uk/regulation/reform

⁸ Information on the Regulators' Compliance Code can be found on the Cabinet Office website at www.cabinetoffice.gov.uk/regulation/reform

unfit to be licensed and refuse to grant you the licence applied for, or revoke your existing licence.

- 5.4 Where we refuse your licence application, you are not able to engage in any consumer credit activity unless and until the refusal is overturned on appeal. Where we revoke your licence, you are able to continue to engage in consumer credit activities until after all the appeal processes have been exhausted.
- 5.5 Where we refuse your licence application or revoke your licence, the names of the applicants or licensees will be entered on the Consumer Credit Public Register, together with brief details of the reasons. The OFT can publicise the reasons for the refusal or revocation more widely if we consider doing so help us in the performance of our functions.

Process for requirements, revocation and refusal

- 5.6 If the OFT proposes to impose a s33A requirement on you or a s33B requirement on the supervisory body of a group licence, or proposes to revoke or refuse your licence, we must do this by formal notice. We will issue the notice, which will give reasons for the proposed action, to you or a group licence holder. You will then have an opportunity to respond to the notice within 21 days to indicate that you wish to make representations to the OFT. Representations can be in writing and can also be made orally at a hearing in person. An independent OFT adjudicator will consider your representations and make a final decision. Further information about the adjudication process can be found in our leaflet *Licensing – your right to make representations* (OFT661).
- 5.7 Following the final decision by an adjudicator, you will have the further right to appeal the decision against you to the Consumer Credit Appeals Tribunal (CCAT).

6 GROUP LICENCES AND REQUIREMENTS

- 6.1 The OFT issues group licences where it decides that the public interest is better served by doing that than by obliging those covered by a group licence to apply separately for standard licences (the public interest test).
- 6.2 The OFT considers that the public interest test will in general not be met unless the following conditions are met by the group licence holder:
- they and their members are fit within the meaning of section 25 CCA
 - they have mechanisms in place to assess the fitness of their membership throughout the life of the licence, and
 - if any members are not fit to be covered by the licence, suitable procedures are in place for their exclusion from the cover of the group licence.
- 6.3 As with standard licences, the OFT has the power to renew a group licence, vary its terms, suspend or revoke it, or refuse an application. The OFT can also exclude individual members from the cover of the group licence.
- 6.4 The OFT also has the power to impose a requirement on a responsible person in respect of a group licence under section 33B CCA ('s33B requirement'). The responsible person will be the group licence holder who has responsibility for regulating or otherwise supervising the group. S33B requirements can oblige a 'responsible' person to address any aspect of the regulation or supervision of the group that causes the OFT to be dissatisfied. The requirement must relate to the group licence holder's practices and procedures for regulating or supervising licensees who operate under the cover of the group licence, in connection with their carrying on of businesses under the licence.

- 6.5 The following are examples of when the OFT may consider imposing s33B requirements:
- the OFT is dissatisfied with some aspect of a group licence holder or applicant's Fitness and Compliance Plan. The plan sets out how the group licence holder ensures that members of the group are fit to engage in the activities covered by the licence.
 - the group licence holder has evidence that members have proved unfit to engage in the credit activities covered by the group licence but has not excluded them from its cover
 - a group licence holder is not following the process described in its plan for referring disciplinary matters to the OFT where it is appropriate to do so
 - a group licence applicant's proposed plan does not include a robust membership screening process that ensures that new entrants to the group are fit to engage in the activities covered by the licence.
- 6.6 Before imposing a s33B requirement, the OFT will discuss its concerns with the group licence holder. Where the OFT imposes the requirement it will do so by notice to the responsible person giving the reasons for imposing it. The responsible person then has 21 days to indicate whether they wish to make representations. Representations can be made in writing or made at an oral hearing in person. Following any representations, the OFT will make a final decision.
- 6.7 Details of the requirement will be entered on the Consumer Credit Public Register. The OFT may decide to publicise the requirement more widely in the interests of consumers or to promote the integrity of the group licensing system.
- 6.8 Where a person does not comply with a section 33B requirement, the OFT may impose a financial penalty. The OFT's approach to financial penalties is set out in our *Statement of policy on civil penalties* – www.of.gov.uk/shared_of/consultations/of932con.pdf.

6.9 Alternatively, a failure by a responsible person to comply with a s33B requirement may cause the OFT to review whether or not the public interest continues to be better served by allowing the group to operate under cover of the group licence. It may be appropriate to revoke the licence if the group licence holder is unable to provide the supervision and co-operation required to satisfy the public interest test.

7 FURTHER INFORMATION ABOUT CONSUMER CREDIT LICENSING

7.1 Additional booklets and information on consumer credit licensing and the Consumer Credit Act and related Regulations are available from our website at www.offt.gov.uk/advice_and_resources/resource_base/legal/cca

7.2 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

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

7.4 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.

PART 3: LIST OF CONSULTEES

1 LIST OF CONSULTEES

Advertising Standards Authority

AdviceUK

Association of Chartered Certified Accountants

Association of Independent Financial Advisers

Association of Mortgage Intermediaries (AMI) and Association of Finance Brokers (AFB)

APACS

Banking Code Standards Board

Better Regulation Commission

Better Regulation Executive (Cabinet Office)

British Bankers Association

British Chambers of Commerce

British Cheque Cashers Association

British and Irish Ombudsman Association

British Retail Consortium

Building Societies Association

Church Action on Poverty

Citizens Advice

Citizens Advice Scotland

Confederation of British Industry

Consumer Action Network

Consumer Credit Association UK

Consumer Credit Counselling Service

Consumer Credit Trade Association

Convention of Scottish Local Authorities

Council of Mortgage Lenders

Credit Services Association

Debt on our Doorstep

Debt Managers Standards Association

Department for Constitutional Affairs

Department for Education and Skills

Department of Enterprise, Trade and Investment in Northern Ireland

Department of Trade and Industry

Direct Marketing Association

Direct Selling Association

Federation of Small Businesses

Federation of Small Businesses (Northern Ireland)

Federation of Small Businesses (Scotland)

Federation of Small Businesses (Wales)

Finance & Leasing Association

Finance Industry Standards Association

Financial Ombudsman Service

Financial Services Authority

Financial Services Consumer Panel

General Consumer Council for Northern Ireland

H M Treasury

Highlands and Islands Enterprise

Insolvency Service

Institute of Business Advisers

Institute of Chartered Accountants in England & Wales

Institute of Chartered Accountants in Northern Ireland

Institute of Chartered Accountants in Scotland

Institute of Consumer Affairs

Institute of Credit Management

Institute of Directors

Institute of Money Advisers

LACORS

Law Society of England and Wales

Law Society of Northern Ireland

Law Society of Scotland

Mail Order Traders Association

Money Advice Liaison Group

Money Advice Liaison Group (Scotland)

Money Advice Scotland

Money Advice Trust

National Association of Commercial Finance Brokers

National Consumer Council

National Consumer Federation

National Debtline

National Federation of Enterprise Agencies

National Pawnbrokers Association

Northern Ireland Association of Citizens Advice Bureaux

Office of Fair Trading

Retail Motor Industry Federation

Scottish Chamber of Commerce

Scottish Consumer Council

Scottish Executive

Scottish Motor Trade Association

Scottish Retail Consortium

Small Business Council

Small Business Service

Society of Chief Officers of Trading Standards in Scotland (SCOTSS)

Society of Motor Manufacturers and Traders

Trading Standards Institute

Welsh Assembly

Welsh Consumer Council

Which?