

# **Consumer Credit Act 1974**

## **Review of the group licensing regime**

**A consultation paper**

July 2004

OFT666

The Office of Fair Trading invites comments on this consultation paper. We ask that your comments on the paper are submitted to us no later than 26 November 2004. It may not be possible to take into account any suggested changes or comments after the deadline for receipt. Comments may be sent electronically to [grouplicensing@oft.gsi.gov.uk](mailto:grouplicensing@oft.gsi.gov.uk). Alternatively, please send comments in writing to:

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# 1. INTRODUCTION AND SUMMARY

## Background

- 1.1 In December 2003 DTI published its White Paper 'Fair, Clear and Competitive – The Consumer Credit Market in the 21<sup>st</sup> Century'<sup>1</sup> following a review of all aspects of consumer credit regulation. The White Paper concluded that the “time was right for a thorough-going modernisation of the consumer credit framework; one that encourages and enables innovation and competition in the marketplace yet still provides appropriate protection for today's consumers”<sup>2</sup>.
- 1.2 The changes proposed include strengthening the credit licensing regime to target rogue and unfair business practices, providing enforcers with the powers they need to supervise a fair and effective credit market and ensuring consumers are provided with the right information at the right time.
- 1.3 The Consumer Credit Act 1974 (the Act) makes provision for the licensing of consumer credit and consumer hire businesses by the Office of Fair Trading (the OFT). It provides for the issue of two kinds of licence: a standard licence, issued to a particular trader and covering only that trader's business and a group licence covering 'such persons and activities as are described in the licence'.
- 1.4 The OFT is also undertaking a review of the way in which the group credit licensing provisions operate<sup>3</sup>. The aim of the review is to ensure that group licensing provides an appropriate level of consumer protection which is comparable with that established under the standard credit licensing regime and which reflects the objectives of the DTI White Paper.

## Key findings and proposed changes

- 1.5 The general regulatory rationale behind group licensing is that the group licence holder takes the prime responsibility to monitor the fitness of its members to engage in the activities authorised by the group licence. The key problem identified by our review is inconsistency and possible weaknesses in the stewardship of some group licence holders. A lack of clarity in our guidance on the role of the group licence holder, a reluctance in some organisations to take on the full role and poor information flows to the OFT from some group licence holders have been important contributory factors to these problems. It is not

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<sup>1</sup> Available online at [www.tso.co.uk/bookshop](http://www.tso.co.uk/bookshop)

<sup>2</sup> Forward by Rt Hon Patricia Hewitt MP, Secretary of State for Trade and Industry

<sup>3</sup> The review has not covered the level of fees charged. OFT is required to recover the costs of the credit licensing regime through licence fees – and the level of fees is reviewed periodically to ensure that cost recovery is achieved.

easy to judge whether the weakness in the group licensing regime has led to a widespread adverse effect on consumers. There are well documented regulatory problems in some sectors but these have a more general origin than consumer credit activity. There is less direct evidence of problems in other areas but this may reflect gaps in the systems for capturing complaints. Improvements are needed in these areas if we are to have confidence that the group licensing system is matching the level of protection provided by standard licensing.

1.6 We now have a number of proposals for change on which we wish to consult. The key changes are as follows:

- measures to ensure that group licence holders generally take prime responsibility (where circumstances warrant this) for action on fitness issues taking into account our guidance and, where this action cannot be taken, that relevant information is passed to us
- new annual reporting arrangements to the OFT on the 'regulatory' activity of the group licence holder
- a tighter policy on the circumstances in which a group licence will be issued under the OFT's own motion
- widening the exemption from fees to ensure that we maintain our policy of not levying a charge on organisations that provide services free of any charge, fee or commission.

1.7 It should also be noted that although this consultation sets out criteria and standards that may be taken into account when considering the issue etc of a group licence, this does not fetter our right to have regard to any other circumstances appearing to us to be relevant.

### **The consultation process**

1.8 While we welcome comments from all sources we expect that current group licence holders and their members, consumer organisations and other enforcement agencies will particularly wish to comment on the proposed changes. A full list of the organisations to which this consultation document is being sent can be found in Annexe A.

1.9 The consultation document includes a series of key questions but please feel free to comment on any aspect of the proposals or on the use of group licensing generally that you consider to be relevant. If you are replying as a representative of others please explain briefly on whose behalf you are responding.

- 1.10 Just over three months have been set aside for you to consider our proposals and respond before the deadline of 26 November 2004.
- 1.11 All responses will be analysed and a summary of them will be published. Individual responses may also be made available. If you wish your comments to remain confidential you should make that clear in your response.
- 1.12 We hope that you will play a full part in this consultation exercise and we look forward to receiving your views.

## 2 THE CURRENT GROUP LICENSING REGIME - OVERVIEW

- 2.1 Our policy is to grant group licences in terms that permit those covered by them to carry out specified credit activities, but only within their role as part of the group. They do not acquire the right to carry on those activities outside that role. For example, the group licence granted to the Institute of Chartered Accountants in England and Wales limits the scope of the licence to activities arising in the course of practice of accountancy or acting as an insolvency practitioner. If a person wishes to carry on another licensable activity, they need to apply for a standard licence in their own right in respect of that activity. A group licence can never authorise the canvassing of debtor-creditor-supplier, or regulated consumer hire agreements off trade premises.
- 2.2 Group licences may be issued either when someone applies, or by the OFT at its own initiative<sup>4</sup> (see paragraphs 2.8 and 2.9 for examples of the latter). In deciding whether to grant a group licence, section 22(5) of the Act requires us to conclude that the public interest is better served by doing so than by obliging the persons concerned to apply separately for numerous standard licences (the public interest test).
- 2.3 In addition to the issue of a licence, we have powers under the Act to:
- renew or vary on request the terms of a group licence
  - refuse, revoke or suspend a group licence
  - compulsorily vary the group licence
  - grant a group licence in different terms from those applied for, and
  - exclude individual members from the cover of the group licence.
- 2.4 The Act provides for an applicant, group licence holder and/or group members to make representations where the OFT sets out its intention to refuse, revoke, suspend, grant in different terms or compulsorily vary a licence including a variation to exclude an individual member. This adjudication system is similar to that found in the standard licensing system. In the case of an adverse decision there is a right of appeal to the Secretary of State for Trade and Industry (although this will change as the result of the DTI review which proposes to establish a new consumer credit tribunal, in line with Department of Constitutional Affairs Tribunal Service policy). A further appeal may be made to the High Court on a point of law.

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<sup>4</sup> Under section 22(1)(b) of the CCA the OFT has the power to issue a group licence under its “own motion”.

2.5 We are also required to publish information about the use of our powers and decisions in the form of a General Notice. As well, we place information on the Consumer Credit Public Register<sup>5</sup>. The information is currently published in the London, Belfast and Edinburgh Gazettes.

2.6 Over the last 12 years the number of group licences has hardly changed. Only one new licence has been issued in January 2004 – the Home Computing Initiatives Scheme licence. At 1 April 2004 there were 16 group licences, covering approximately 225,768 individuals and various categories of licensable activities<sup>6</sup>. These are:

Law Society of England and Wales A, C, D, E

Law Society of Scotland A, C, D, E

Law Society of Northern Ireland A, C, D, E

Institute of Chartered Accountants in England & Wales A, C, D

Institute of Chartered Accountants of Scotland A, C, D

Institute of Chartered Accountants in Ireland A, C, D

Association of Chartered Certified Accountants A, C, D

National Association of Citizens Advice Bureaux D

Scottish Association of Citizens Advice Bureaux D

Advice UK D

Approved Local Enterprise Agencies C, D

Institute of Business Advisers C, D

Highlands & Islands Enterprise A, B, C, D

Higher Education Institutions C

Liquidators and Receivers A, B, C, D, E, F

Home Computing Initiative Schemes B

2.7 Most group licences have been issued to bodies that fall into two broad categories - advisory organisations with altruistic aims and professional bodies. The activities of the members of these two categories have the potential to cause material consumer detriment. Effective consumer credit regulation is therefore needed. Group licensing has been generally considered to be an appropriate

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<sup>5</sup> The Public Register contains specified information about licensees under the standard licensing regime and group licence holders and is held by the Consumer Credit Licensing Bureau.

<sup>6</sup> These licence categories cover the following: A-consumer credit, B-consumer hire, C-credit brokerage, D-debt adjusting and counselling, E-debt collecting, F-credit reference agency.

approach on the assumption that there is a controlling body whose processes and procedures provide effective monitoring and control to ensure the fitness of the group. This means defining the group to be covered by the licence and ensuring that it is formed of only those individuals, partnerships or corporate bodies within its control.

2.8 The issue of group licences has not, however, been limited to these types of groups. Licences issued by the OFT's own motion cover groups such as:

- employers participating in the Home Computing Initiative Scheme whereby employees can obtain tax benefits when hiring computer equipment
- higher education institutions providing credit brokerage free of charge or commission when dealing with student top up loans.

2.9 In both these cases there is no defined controlling body 'holding the licence' and taking responsibility to ensure the 'fitness' of members. We consider, however, that a group licence is the right approach because the risk of consumer detriment is very low and to require the issue of standard licences would introduce a regulatory burden and costs (affecting business, OFT and ultimately the consumer) with no commensurate welfare gain.

2.10 We last reviewed the group licensing regime in 1994 and 1995. After consultation, we published a short report entitled 'The Use of Consumer Credit Group Licences' on the operation of group licensing and on the possibility of extending its use. In general, the responses indicated that there was little interest in extending the regime beyond the types of professional or altruistic and advisory organisations already covered.

2.11 A guidance document for consultation with group licence holders entitled 'Terms of Reference for Group Licence Holders' was also produced in 1996 – see Annexe B. This set out the information and documentation required from applicants and licence holders to ensure their ability to meet the standards required. Updating this guidance will form a key part of this review.

### 3 ISSUING A GROUP LICENCE

#### Issuing a licence on application

- 3.1 Although the DTI review does not contemplate any change to the public interest test for the issue of a group licence, the proposed changes to the underlying fitness test and the general objective of more closely matching regulation and risk, points to a need to review OFT policy on the use of our powers to grant a group licence.
- 3.2 The fitness test contained in section 25 of the Act aims to ensure that only 'fit' persons engage in consumer credit activity. In considering fitness under this section we may take into account any circumstances which appear to be relevant. In particular we will consider any evidence that an applicant, licensee or their employees, agents or associates have:
- committed offences involving fraud or other dishonesty or violence
  - failed to comply with the requirements of credit or other consumer legislation
  - practiced discrimination in connection with their business
  - engaged in business practices appearing to us to be deceitful, oppressive or otherwise unfair or improper (whether unlawful or not).
- 3.3 Although the fitness test only applies specifically to the standard licensing regime, we take the view that the public interest test cannot be served unless group licence holders are able to satisfy us that:
- they and their members are fit within the meaning of this section
  - that they will remain fit during the term of the licence, and
  - if any members are not fit, suitable action will be taken against them.
- 3.4 Most group licences have been issued following an application, but a small number have, for a variety of reasons, been issued on the OFT's own initiative.

#### Period of validity

- 3.5 The Act allows us to issue a group licence for any period including, if we think fit, an indefinite period. Currently our policy is that:
- licences granted on the application of a body may only have the same period of validity as a standard licence, which is currently five years, and
  - licences issued by the OFT's own initiative may be issued for any period we think fit.
- 3.6 The DTI review of the credit licensing regime proposes that the OFT should generally grant standard licences for an indefinite period (although periodic

payments will need to be made to maintain the licence), reflecting a tighter control on the issue of licences and stronger enforcement powers. The DTI review does not, however, propose a change in relation to group licences. In view of the fact that a group licence holder carries a significant responsibility with respect to the fitness of the group members, we do not consider that it would be appropriate to grant group licences for an indefinite period where there is an active role for a controlling body. We propose, therefore, to continue the practice of generally issuing a licence for a five year period to enable us to regularly hold a full review of the group licence holder and membership.

- 3.7 In a number of cases in recent years doubts about the stewardship of some group licence holders has led us to conclude that it would not be appropriate to renew a licence for a full 5 year term. In these cases the licences in question have been renewed for a shorter period using the OFT's own powers.
- 3.8 To help ensure that the role of the group licence holder is properly carried out and that we have appropriate options for tackling problems, it is proposed to change this policy so that:
- a licence will generally only be issued or renewed following an application made by that body and not issued or renewed by the OFT's own initiative
  - a licence may be issued or renewed for a period less than 5 years in response to a group licence holder's application.
- 3.9 If we were to issue or renew a licence in terms different from those that are applied for (for example, issuing a licence for two years rather than five years), the applicant would be able to make representations to us through an adjudication process.
- 3.10 Following on from this, a group licence would only be issued by the OFT's own initiative in exceptional circumstances. An example would be where no such controlling body exists and the risk of detriment to the consumer from the activities of the "group" members is negligible and/or the benefits clearly outweigh any such risk. An example is the recent Home Computing Initiative Scheme licence which covers employers for the hire of computer equipment to employees as promoted by the Office of the E-Envoy.
- 3.11 This proposal may affect some licences currently in force. Where this is the case we propose to move to this new position via a process of consultation with interested parties.

## **Key question**

3.12 Is there any reason that the OFT should not follow the revised policies outlined in paragraphs 3.6 – 3.9 on the duration of group licences and in paragraphs 3.8 – 3.10 on issuing a licence following an application and on our own initiative?

## **Fees**

3.13 The current scale of fees payable on application or renewal of a group licence remains unchanged<sup>7</sup> and no fees are payable on licences issued by the OFT's own initiative. We intend that the fee will continue to cover a five year period but in order to facilitate our policy change on licensing periods, we propose that where we issue a licence as a result of an application and it is issued for a period of less than five years, the fee will be levied on a pro-rata basis.

3.14 Currently there is an exemption from payment of a licence fee for those advice organisations licensed only for debt adjusting and debt counselling, where they do not themselves charge, nor receive commission.

3.15 This exemption reflects their non-commercial nature and the limited scope for consumer detriment inherent in the category covered. We now propose to widen this charging exemption to include credit brokerage, where the same conditions apply. This exemption is designed to cover organisations such as enterprise agencies, the majority of whose credit activity is in any event not covered by the Act as the recipients are often limited companies.

## **Key question**

3.16 Are there any reasons why we should not implement the proposed changes to the fee structure?

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<sup>7</sup> Fees will remain as introduced in General Notice No. 50 issued on 16 October 1996, as follows:

- For groups of 1,000 persons or less £4,000
- For groups of between 1,000 and 5,000 persons £10,000
- For groups of more than 5,000 persons £20,000

## 4 'FITNESS' AND COMPLIANCE PLAN

4.1 Where an active controlling body applies for a group licence, the OFT must satisfy itself that the organisation is fit for the role. If the group licence holder cannot ensure the 'fitness' of the group to be covered by a consumer credit licence, then the licence may be refused, revoked, suspended or have its terms varied. Our current guidance (see Annexe B) requires that organisations acting as a group licence holder must provide information which will satisfy us:

- that they have in place adequate means to ensure the fitness of members to engage in the activities covered by the licence
- that they are able to investigate any evidence which casts doubt on the fitness of members, to discipline members and if necessary to remove them from the coverage of the licence. Such procedures must be fair and seen to be fair
- that they can provide us with details of the actions they have taken against members.

4.2 Although we have the power to exclude any person from a group licence, any scheme which relied as a matter of routine on the OFT carrying out investigations into individual cases in order to determine whether a person should be excluded, would negate most of the benefits of group licensing and may not be in the public interest.

4.3 In general we have taken the view that while licence holders need not apply precisely the same criteria in precisely the same way as the OFT in relation to standard licences, the overall approach and the level of consumer protection provided must be similar.

4.4 We consider that each of the above points should continue to characterise the group licensing regime but a number of adjustments and additions, some significant, are needed under these headings. Two general points lie behind the need for these changes:

- the DTI review of the consumer credit licensing regime has pointed to a need for regulation to more closely reflect the risks inherent in the licensed activities; and
- the information we currently receive across the range of group licences is insufficient for a firm conclusion to be drawn on whether the system is achieving the desired level of regulatory control.

## **Fitness and Compliance Plan**

- 4.5 The DTI has proposed changes to the way in which the fitness test operates so that we can, where justified by the potential risks, require an applicant at the time of application to provide evidence to show that it will be able to conduct its credit business activities in a competent manner.
- 4.6 In line with this, we propose that group licence holders should assess the relevant risks for their group and say how those risks will be addressed. This information will then form the basis of a fitness and compliance plan (FCP) for that group. The FCP would form a key part of an application for a licence or its renewal and provide a basis for annual reporting to the OFT.
- 4.7 We will issue guidance on the content of a FCP, but it is proposed that it should cover the following points:
- background information on the organisation's membership and a description of the business activity of the members of the group including the elements covered by the Act
  - membership requirements
  - an assessment of potential risk of consumer detriment arising from the activities of the group and a plan of how those risks will be addressed
  - proposals for the monitoring and maintaining the fitness of the group
  - reporting requirements to the OFT.
- 4.8 It must be stressed that each case will be assessed on its own merits and in consequence these headings must not be considered exhaustive. The FCP will be regularly reviewed in the light of changes to the activities of the group and its history of complaints.

## **Key questions**

- 4.9 Do you consider that other points should be included in the FCP?
- 4.10 What practical difficulties would you face in providing a FCP and how might these be reduced without compromising the regulatory objectives of the proposed change?

## **Background information**

- 4.11 Information on the status of an applicant as detailed in Annexe B will continue to be required but will in future form part of the FCP. This should be updated during the term of the licence should any changes occur. Greater information will now be required on the work carried out by members of the group particularly on how credit activities form part of that work.

- 4.12 Where the credit activity is the group's primary function and members have a strong commercial motive it has been a long held view of the OFT that it is more difficult in such circumstances for us to be satisfied that the public interest is better served by issuing a group licence rather than separate standard licences. This position was reviewed when we consulted previously in 1994. In general, the responses indicated that there was little interest in extending the scope of group licensing beyond the professional or altruistic and advisory organisations that are currently covered. Therefore in order that we may consider whether a group's credit activities are an adjunct to their main business or professional activities, we will expect the nature and extent of those credit activities to be addressed in the FCP.
- 4.13 We continue to expect that group licence holders will maintain an up-to-date register of those of their membership covered by the group licence. Where this licensing register differs from the overall register of the membership it must be possible to differentiate between the two.
- 4.14 Where the membership is made up of individuals the information we require to be held on the register will remain the same except for the addition of the member's date of birth and the dates of birth of business partners where applicable.
- 4.15 Some licences do not cover individuals but groups of organisations, for example, Advice UK. In future, group licence holders will also need to maintain a register of the organisations within their group that must include:
- the name and address of each organisation or body
  - the status of the organisation e.g. limited company etc.
  - names, positions and dates of birth of those individuals who run the organisation and in the case of limited companies the directors and company secretary
  - services provided.
- 4.16 We will expect that a group licence holder will have arrangements in place that will enable it to respond within a reasonable time to enquiries from members of the public and regulatory authorities about whether a person is a member of the body or is covered by the group licence.
- 4.17 The membership register must be updated on a regular basis and with sufficient frequency to take account of changes in membership or in the details of individual members. In order that the timescales match those used by us for updating the standard licensing register we will require the group licence holder to:

- place a requirement on the membership to provide details of such changes to them within 21 working days or less of the change taking place, and
- update the register within 20 working days or less of receipt of these details.

4.18 The applicant must be able to provide us with a hard or electronic copy of their register or any part of the register, on request.

### **Key questions**

4.19 Do you see any benefit to the consumer of issuing group licences to those groups for whom credit forms the main component of their business or profession?

4.20 Are there any reasons why such a membership register cannot be maintained as described and information provided from the register?

### **Risk assessment**

4.21 The assessment of risk of consumer detriment arising from the activities of the group should include consideration of the nature, severity and likelihood of risk associated with members' credit activities. The assessment of the nature and scale of potential risk to consumers need not involve any detailed analysis of individual business activity but should be sufficient to allow a reasoned basis to the proposed strategy to ensure that the group licence only includes persons who are fit to engage in credit activities.

4.22 For example for an organisation whose business purpose is limited to giving advice to consumers, the nature of the risk may be identified as giving the consumer poor or incorrect advice. Consideration should be given to how severe are the consequences of such advice and how frequently there is the potential for this to arise. The strategy for covering this risk might include any or all of the following or other measures with an explanation of how these steps would be used:

- a specific training requirement
- performance appraisal scheme
- paper audit trail
- arranged or ad hoc inspections
- consumer compensation schemes/insurance.

### **Membership requirements**

4.23 Applicants for a standard licence (and those individuals who are named as controllers on a standard licence application) are required to disclose certain

information we regard as relevant to the assessment of fitness. Adverse evidence in any of the categories does not lead to an automatic licence refusal or revocation, but is relevant to fitness and may lead to that conclusion. Information currently required<sup>8</sup> includes whether the individual:

- is an undischarged bankrupt or has been declared bankrupt in the last five years and will in future include whether a bankruptcy restrictions order has been made
- has 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 (currently three years and does not include administration)
- received a county court judgment or, in Scotland, a sheriff's court judgment in the last five years (currently three years)
- has previous convictions against them, or any partner in a partnership or where the applicant is a company, any director, secretary or controller of that company or where they have been in those positions in any other organisation which has been convicted of an offence and which are not spent convictions under the Rehabilitation of Offenders Act or in the case of a company, any conviction more than 10 years old
- has ever been disqualified under the Company Directors Disqualifications Act (new requirement).

4.24 Later this year OFT proposes to introduce a new standard licence application form, which will require better and more detailed information. As a further step, OFT also proposes to strengthen criminal record screening, although, the plans for implementation and the timetable for this are still under discussion.

4.25 It is proposed that a group licence FCP should explain the nature of the background screening carried out by the controlling body and if it provides for different information checks from those in the standard licensing system, it will need to explain why this is appropriate and sufficient in view of the nature of the group's business and licensable activities.

### **Key question**

4.26 What are your views on the proposals for group licence holders to monitor the fitness of applicants for membership of the group?

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<sup>8</sup> These application forms are currently under review and are due to be updated in the autumn

## Monitoring and maintaining fitness of the group

### MONITORING FITNESS

- 4.27 The existing guidance for group licence holders requires procedures for monitoring the continued 'fitness' of their membership and includes complaint handling and disciplinary procedures. We propose a number of changes to this to ensure that monitoring:
- is adequate and proportionate to the risk of detriment to the consumer arising from the activities of the group and as identified in the FCP
  - takes account of relevant OFT fitness guidance.
- 4.28 Under the standard licensing regime the OFT has a duty to continue to monitor the fitness of licence holders. A key part of this is to consider complaint information received from a wide variety of sources. Trading Standard services have an enforcement responsibility under the Act and so pass information to the OFT about convictions and complaints against licensed businesses. Complaints are also received direct from consumers, MPs, advice agencies and other regulatory bodies. Arrangements are also in hand to receive complaint information from Consumer Direct<sup>9</sup>.
- 4.29 The OFT also publishes fitness guidance in relation to areas of particular risk and carries out market wide compliance reviews following the publication of this guidance. These reviews may lead to regulatory action where there is evidence of non-compliance.<sup>10</sup>
- 4.30 As part of the FCP, group licence holders should identify appropriate mechanisms to ensure that they are made aware of consumer problems arising out of the business activities of the members of the group. Where the group operates a formal complaints procedure, information on the scheme should be freely available and where possible it should include an element of independent scrutiny. In addition, where there is an Ombudsman service the group licence holder must make complainants aware of this on conclusion of the complaints procedure or on their withdrawal from the procedure. The FCP should also explain how the group licence holder will satisfy itself, that the group is aware of and is complying with OFT fitness guidance relevant to its activities.
- 4.31 Group licence holders should also consider whether it is appropriate to institute a programme of ad hoc checks on the activities of individual members to

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<sup>9</sup> Consumer Direct is a new national telephone and online consumer information and advice service. More information is available at [www.dti.gov.uk/ccp/cdinfo/](http://www.dti.gov.uk/ccp/cdinfo/)

<sup>10</sup> Debt management compliance review-OFT 684 2003

monitor compliance with the group licence holder's rules and membership requirements.

### Key question

- 4.32 Do you consider that monitoring requirements set out in 4.27-4.31 provide the necessary and proportionate means of ensuring the fitness of members of a group licence?

#### DISCIPLINARY PROCEDURES

- 4.33 Under the standard licensing system adverse evidence may lead to one of four outcomes and should action be taken under group licensing these outcomes will also apply:

- no action as the evidence raises insufficient concerns
- an advisory or warning letter about business conduct
- consideration by an adjudicator to refuse, revoke, compulsorily vary the terms of a licence (or prospective licence) or suspend a licence - but a decision to allow the business to have a licence possibly on the basis of undertakings (informal under current law) about future business conduct
- compulsory variation, suspension, refusal or revocation of the licence (subject to the relevant appeal procedure).

- 4.34 Changes proposed by the DTI review will, if implemented, introduce intermediate sanctions to promote compliance with fitness requirements and if these are not adhered to, to impose fines.

- 4.35 The same powers will also apply to group licensing. In addition, we have the existing power to exclude an individual member from a group licence. OFT policy has been to hold this power in reserve on the basis that where a group licence has been issued the group licence holder has the primary responsibility to act. On this basis we would expect that group licence holders should have the ability to take appropriate and effective action, including exclusion, against a member in response to adverse evidence.

- 4.36 Comments from existing group licence holders suggest that some organisations may have difficulty in excluding a member from the group licence in a number of circumstances where this would be appropriate under the standard licensing regime. This may occur for example where a disciplinary code does not provide separate powers for exclusion from the group licence without exclusion from the profession and exclusion from a professional body is seen as too draconian a step.

- 4.37 This might arise for example from problems such as the failure to deal with complaints or to follow OFT guidance. This might lead to licence revocation in the standard licensing regime but could be considered insufficient grounds to debar an individual from their professional body.
- 4.38 There are two broad responses to this position for the OFT:
- firstly, on the basis that taking responsibility for fitness means the group licence holder must be able to deal with such problems adequately, the organisation should amend its disciplinary code or cease to enjoy the benefit of group licensing
  - secondly, the OFT could agree to take a more active role in these cases such that we would consider on occasion using our powers to bring about the exclusion of a member from a group licence.
- 4.39 The powers that allow us to vary the licence to exclude a named individual or organisation reside in sections 30 and 31 of the Act. The main difference is that under section 30, the variation is at the request of the group licence holder with the consent of the individual. On this basis we may exclude the individual without the need to use the full adjudication procedure. In the case of a compulsory variation of a licence under section 31, a member may be excluded without their consent although a case considered under this section would involve the full adjudication process describe in Annexe C. Under this procedure the OFT is also required to publish a general notice, which outlines why we have reason to believe the individual is not fit to continue to enjoy the benefit of the group licence.
- 4.40 Under both sections 30 and 31, when a person has been excluded and the licence varied a general notice is issued to this effect.
- 4.41 Should we agree to take on part of the role of the group licence holder, it would have clear cost implications for us which would need to be reflected in the group licence fee.
- 4.42 Aside from circumstances where we may have agreed with a group licence holder that we will use our powers under section 30 or 31, we will hold these powers in reserve unless there is a need for urgent action to deal with a high risk of consumer detriment. We expect occurrences to be rare, otherwise they would negate the benefit of group licensing. However, they might arise where:
- an individual has already had a standard licence refused or revoked and the group licence holder is unable to act quickly
  - we do not consider that the outcome of the group licence holder's disciplinary measures are sufficient. An intervention of this kind would normally be made only after the complaint and disciplinary procedures of the

group licence holder have been completed and after discussions with the group licence holder.

### **Key questions**

- 4.43 As a group licence holder does your complaints and disciplinary procedure allow for referral of members to the OFT for Minded to Exclude (MTE) action and if so under what circumstances?
- 4.44 Which of the options detailed in paragraph 4.38 do you feel the OFT should adopt and why?
- 4.45 Is there any reason why we should not implement the MTE procedure under the current licensing regime as proposed in paragraph 4.42?

### **OFT Consumer Codes Approval Scheme**

- 4.46 Organisations who are a code sponsor of a code of practice under our Consumer Codes Approval Scheme may consider applying for a group licence. This scheme promotes the development and implementation of business-to-consumer codes of practice which are a set of rules that a group of businesses commit to follow in order to set higher standards of customer service. The achievement of full codes recognition does not guarantee fitness to act as a group licence holder and approval alone will not mean that all the requirements of that role have been met that are necessary for the public interest test to be satisfied. It will, however, provide relevant positive evidence that we would take into consideration when determining the issue of a group licence.
- 4.47 Nor does it follow that a group licence holder has met all or any of the criteria of the Consumer Codes Approval Scheme. Some groups whose activities pose a low risk of consumer detriment may only require a minimal complaint and disciplinary system with little monitoring necessary in order to meet the public interest test.

## 5 PROVISION OF INFORMATION

- 5.1 Since the introduction of the group licensing regime there has been a requirement on the group licence holder to notify the OFT of any member they exclude from the group. This requirement now needs to be expanded to include other forms of disciplinary action that also affects the licence coverage, namely members who:
- have their membership suspended
  - are due to have their membership reinstated following suspension
  - are otherwise excluded from the scope of the group licence.
- 5.2 Such notifications must include sufficient information to enable us to identify that person under a licensing regime. It should include a date of birth and home address and in the event that the member is a body or organisation we will need the corporate name and any trading name along with both the registered office and trading address. This information is important to ensure consistency between the licensing regimes. For instance, where a member of a group licence has been subject to disciplinary action and also holds a standard consumer credit licence, we will wish to consider the implications of the evidence that gave rise to the disciplinary action for fitness to hold the standard licence.
- 5.3 It is proposed that group licence holders will be required to provide us with relevant information on request. This information will include copies of the case papers<sup>11</sup> which resulted in that disciplinary action. Similarly where we are to consider MTE action or a member's reinstatement following suspension, case papers must be provided with the notification of the findings of the group licence holder.
- 5.4 The DTI review proposes to provide us with powers to require such information at any time during the life of the licence as well as on application and renewal. However, we may wish to implement MTE procedures referred to in paragraph 4.39 and 4.42 prior to these powers coming into force in which case we may need to consider the implications on group licence holders of the Data Protection Act 1998 (DPA).
- 5.5 The DPA provides some restriction on the use to which personal information may be put without the consent of the individual. Group licence holders will need to consider whether any change is required to the group's rules if there is any doubt

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<sup>11</sup> For the purposes of this consultation paper 'case papers' is used to refer to the papers constituting the full investigation and should include such items as letters to and from the member, letters and statements from complainants, forensic evidence, hearing notes, full details of the outcome and sanction imposed and any other material forming part of the case.

as to whether the DPA provision will prevent the required information being provided to us.

### **Key question**

5.6 What restrictions, if any, are there currently to prevent a group licence holder from providing us with the information required for the efficient implementation of the MTE procedure and use of information in action by the OFT against standard licence holders and how may those restrictions be overcome?

### **Publication of general notices**

5.7 All parties who have an interest in a group licence should be made aware of the activities surrounding it. In certain circumstances we are required under the Act to provide information to these parties by publishing general notices including information on:

- licence fees
- the form in which a licence application is to be made
- issue, renewal and variation of group licences
- revocation, suspension of a licence
- MTE notices for group licences.

5.8 All general notices have previously been published in the London, Belfast and Edinburgh Gazettes which are official newspapers of record in the UK.

5.9 When issuing a general notice we are constrained by the wording of section 189 of the Act, so that in publishing a general notice we must ensure that it is seen within a reasonable time by persons likely to be affected by it. In our view, publication in the Gazettes is not the most effective way of achieving this. We propose therefore to widen publication to include posting all general notices that may directly affect individual members (of which MTE notices would only be a subset) in relevant professional publications or group newsletters. We would therefore expect a group licence holder to be willing to accept for publication, on payment of the relevant fee (or otherwise circulate to all members where they have no published magazine), any group licensing general notice in such a manner that it will be brought to the attention of the membership.

5.10 This will ensure that all group members have an opportunity to see, and where appropriate comment, on the action we intend to take and which may affect them as licensees.

5.11 This policy change will have a major implication should the OFT decide to take MTE action as proposed. In order to exclude a member from the licensed group

on the grounds that they are not 'fit' to be covered by the group licence, we may need to publish a general notice which will invite any licensee i.e. other group members to make representations on the proposed exclusion – see paragraphs 4.39 – 4.40.

5.12 In order that the information contained in all general notices issued under the Act is more widely available they will also be published on the OFT website.

**Key question**

5.13 Do you agree with the proposed publication of general notices and are there any other places or publications in which we should place the general notices in order to bring them to the attention of relevant individuals or bodies?

## **A LIST OF CONSULTEES**

Advice UK

Age Concern

Association of Chartered Certified Accountants

Association for Payment Clearing Services

British Bankers Association

British Cheque Cashers Association

Consumers Association

Citizens Advice Scotland

Consumer Credit Association

Consumer Credit Counselling Service

Consumer Credit Trade Association

Corporation of Finance Brokers

Council of Mortgage Lenders

Department of Trade & Industry

Department of Constitutional Affairs

Federation of Stock Exchanges in Great Britain and Ireland

Finance Industry Standards Association

Finance and Leasing Association

General Consumer Council for Northern Ireland

Highlands & Islands Enterprises

Incorporated Association of Architects & Surveyors\*

Incorporated Society of Valuers & Auctioneers\*

Independent Committee

Independent Examiners for the Institute of Chartered Accountants of Scotland

Independent Reviewer for the Institute of Chartered Accountants of England and Wales

Independent Reviewer for the Institute of Chartered Accountants of Ireland

Insolvency Service

Institute of Business Advisers

Institute of Chartered Accountants in England and Wales

Institute of Chartered Accountants of Ireland

Institute of Chartered Accountants of Scotland

Invest Northern Ireland

Local Authorities Coordinators of Regulatory Service

Law Society of England & Wales

Law Society of Northern Ireland

Law Society of Scotland

Lay Observer for Northern Ireland

Legal Services Ombudsman

Mail Order Traders Association

Money Advice Association

Money Advice Scotland

Money Advice Trust

Motor Industry Training Council (Formerly Motor Agent Association)\*

National Assembly of Wales

National Consumer Council

National Debtline

National Federation of Enterprise Agencies

Northern Ireland Association of Citizen's Advice Bureaux

National Pawnbrokers Association

Office of the E-Envoy

Royal Institute of British Architects\*

Royal Institution of Chartered Surveyors\*

Scottish Consumer Council

Scottish Enterprises

Scottish Executive – Business Growth Unit

Scottish Federation of Independent Advice Centres

Scottish Legal Services Ombudsman

Scottish Solicitors Disciplinary Tribunal

Small Business Service

Small Firms Service Counsellors

Trading Standards Institute (including lead officer and chairs of regional groups)

Welsh Consumer Council

## **B THE TERMS OF REFERENCE FOR GROUP LICENSING**

### **Information required on application for a group licence or for renewal of a group licence**

#### **B1 Status of Applicant**

- the status of the applicant body, and the date of establishment or formation
- whether established by statute or royal charter, and whether a registered charity
- the number and types of members
- the nature and extent of licensable activity undertaken by members
- the number of members who might otherwise require individual standard licences
- the categories of business to be covered by the group licence
- the definition of the group to be covered

#### **B2. Register of Members**

- must maintain an up-to-date register of members covered by the group licence
- the location of the register, and the form in which held (eg computer database)
- the information held on the register (eg name, address, trading name, status, names of directors/partners, services provided, date of admission to membership)
- whether the register is readily accessible by members of the public and by regulatory authorities including trading standards officers
- how, and how quickly, the body would respond to enquiries as to whether a person was a member of the body or covered by the group licence
- whether a charge would be made for such information
- the requirements upon members to notify the body 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
- must report to the OFT, at least annually, on the number and types of members covered by the group licence

B3. Applicants for Membership

- must have adequate procedures for establishing the “fitness” of applicants for membership of the body and of individual employees, associates or volunteers (not merely in relation to licensable activities but more generally)
- the categories and descriptions of membership
- the criteria for membership, and whether these are published
- whether membership is dependent upon academic or vocational qualifications, or relevant training and experience, or adherence to minimum standards or guidelines
- the information required in support of applications for membership, eg details of previous employment, convictions or prosecutions
- the steps taken to verify such information, and the extent to which references are required and taken up
- must notify the OFT of any instance where an application is refused because of doubts over the fitness of the applicant or of employees, associates or volunteers, subject in each case to the disclosure rules of the body
- must notify the OFT of any change in membership criteria or entry requirements

B4. Training

- whether there are minimum requirements for training and development
- the nature and extent of training provided or available
- whether there is specific training on credit matters
- the extent of publicity accorded to training requirements and availability

B5. Monitoring Fitness of Members

- must have adequate procedures for monitoring the continued fitness of members and their employees, associates or volunteers
- whether there are periodic or ad hoc checks on the activities of individual members
- how, and how frequently, such checks are made
- the requirements upon members to submit regular returns to the body or to notify it of changes in circumstances
- the arrangements for notification by or to the police or courts of details of convictions or prosecutions of members or of employees, associates or volunteers
- information to consumers and others about the complaints machinery and procedures
- the procedures for receiving, considering and responding to complaints against members in a timely, open and impartial manner

- the nature and composition of any complaints investigatory body, including any lay-observer element
- the availability of remedies to consumers, eg financial compensation
- must report to the OFT, at least annually, on the number of complaints received against members and a breakdown of outcomes, if possible indicating how many relate to consumer credit matters
- must notify the OFT of any convictions or prosecutions of members or of employees, associates or volunteers

B6. Disciplinary Procedures

- must have adequate procedures for disciplining members where fitness is called into question
- the nature and extent of disciplinary policy and procedures
- the nature and composition of any disciplinary body, including any lay-observer element
- the nature and composition of any appeals body, independent of the disciplinary body
- the rights of members to make written and oral representations to the disciplinary and appeals bodies, and to have legal or other advisors present at hearings
- the grounds and procedures for appeal against decisions of the disciplinary and appeals bodies
- the nature and extent of sanctions available, eg withdrawal or suspension of membership, restriction of membership or activities, or conditions attached to continued membership
- the nature and extent of publicity accorded to the outcome of disciplinary actions
- must report to the OFT, at least annually, on the number of disciplinary actions against members and a breakdown of outcomes
- must notify the OFT of any withdrawal or suspension of membership, or limitation of membership, or exclusion from the scope of the group licence
- in each case, must include full details of the name, address and date of birth of the member and a summary of the reasons for the disciplinary action taken
- where possible, should also provide the OFT with copies of papers on individual disciplinary cases, on request, subject to the disclosure rules of the body
- must notify the OFT of any change in policy or procedures on handling complaints and disciplinary actions

## **C THE ADJUDICATION PROCESS**

### **Scope**

- C.1 The process detailed here concerns compulsory variations of a group licence made under section 31 of the Act and which are made in order to exclude a member of the group from the cover of the licence. A similar process applies for variations made under section 28 of the Act to exclude a member of the group from cover of the group licence at the time when the group licence is issued.

### **The adjudication unit**

- C.2 The adjudication unit has been set up within the OFT as 'an independent and impartial tribunal' and was created to exercise the adjudication functions conferred on the OFT by the Consumer Credit Act 1974. The Tribunals and Inquiries Act 1992 requires that this function is taken under the supervision of the Council on Tribunals.
- C.3 The Council on Tribunals has stated that the principal hallmark of any tribunal is that it must be independent, and perceived as such. The tribunal should be able to reach decisions according to law without pressure either from the body or person whose decision is being appealed, or from anyone else.
- C.4 'Chinese Walls' have been established thereby erecting a barrier between the investigatory function of the OFT and the adjudicatory function, so that the adjudicatory function is not tainted in any way.

### **The adjudication process**

- C.5 Adjudicators deal with cases that have been investigated and then put before them by investigation officers within the OFT. Cases are allocated to the adjudicators mainly on a random basis but also following the custom that an individual adjudicator should not deal with the same group member more than once. An adjudicator will only have access to those aspects of the case that have also been disclosed to the group member.
- C.6 If the adjudicator decides that there is a case to answer they will issue as a general notice a 'minded to exclude' (MTE) notice setting out in general terms why those persons should not be covered by the group licence. Once the notice has been published the fact is a matter of public record, and appears on the Public Register as well as in the London, Edinburgh and Belfast Gazettes, professional publication or newsletter of the group and the OFT website.
- C.7 While the adjudication process is taking place the cover of the group licence for the member will remain valid.

- C.8 The adjudication process involves consideration of evidence supplied by investigation officers - much of which will have been received from the group licence holder - and an evaluation of any representations received. Representations may be made in response to the general notice by:
- the member being considered for exclusion
  - other members of the group, or
  - the group licence holder (where the licence was issued on application).
- C.9 Representations may be submitted as written or oral representations or both. In the case of oral representations, the adjudicator will hold a hearing so that relevant persons may attend.
- C.10 After all representations have been made the adjudicator makes a decision on whether to exclude the member or not.
- C.11 If the decision is favourable to the member then the licence will remain unaltered and a Public (Disclosure) Notice or PDN is placed on the Public Register and also published as a general notice as above. However, if the member continues to behave in a manner which indicates that they are unfit to be covered by a consumer credit licence then it is likely that the previous MTE action will be cited in any future case and will strengthen the case for exclusion from the group licence.
- C.12 If the decision is unfavourable to the member then that person or organisation will be excluded from the group licence by varying the licence to include their details in a schedule of excluded group members. In varying the licence a general notice will be published giving details of the manner in which the licence is to be varied and this information will also be placed on the Public Register.

### **The appeal process**

- C.13 Where an adverse determination is made, a letter and a Notice of Determination are sent to the member giving the reasons for this outcome. The member then has the right of appeal currently to the Secretary of State for Trade and Industry although this may change and become the responsibility of other persons as a result of the DTI review of credit licensing.
- C.14 There is then a further right of appeal to the High Court on a point of law.