

Statement of consumer protection enforcement principles

February 2012

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1 INTRODUCTION

- 1.1 The OFT has undertaken to review its statement of consumer protection enforcement principles on an annual basis. This statement replaces the one published in March 2010.
- 1.2 This statement does not replace existing guidance on compliance issues relating to specific areas of enforcement. It is designed to complement it, drawing together the legislative and policy requirements stemming from the better regulation agenda and summarising the key common elements in a coherent form. It should also be read alongside the OFT's prioritisation principles,¹ which apply to a whole range of our activities.
- 1.3 Part 2 of the Legislative and Regulatory Reform Act 2006² requires regulators to have regard to principles of good regulation in carrying out regulatory functions. Relevant enforcement activities should be carried out in a way that is transparent, accountable, proportionate, consistent, and targeted only at cases where action is needed. Enforcers also have a duty under the Legislative and Regulatory Reform Act to comply with the Regulators' Compliance Code which is aimed at embedding the Hampton and Macrory principles into regulatory practice.³ Part 4 of the Regulatory Enforcement and Sanctions Act 2008 (RES Act 2008)⁴ also requires authorities to whom it applies to review the performance of their regulatory functions and remove any unnecessary burdens that they may be imposing. One of the ways in which OFT complies with this duty is by annually reviewing this Statement.

¹ www.offt.gov.uk/advice_and_resources/publications/corporate/general/oft953

² www.opsi.gov.uk/ACTS/acts2006/ukpga_20060051_en_1

³ www.berr.gov.uk/files/file45019.pdf

⁴ www.legislation.gov.uk/ukpga/2008/13/contents

- 1.4 In June 2010 the Government launched a consultation on changes to the consumer landscape including the transfer of some of OFT's consumer functions to Citizen's Advice (Cit A) and Citizen's Advice Scotland (CAS) and Local Authority Trading Standards Services (TSS). The outcome of the consultation is not yet known, but it is resolved that responsibility for providing Consumer Direct will transfer to Citizen's Advice in April 2012. This statement reflects the position on the date of publication.

2 STATEMENT OF CONSUMER PROTECTION ENFORCEMENT PRINCIPLES

2.1 The OFT is the UK's national competition and consumer authority, established in its current form – an independent non-ministerial government department headed by a Board and funded by the Treasury⁵ – under the Enterprise Act 2002.⁶ Our mission is to make markets work well for consumers.⁷ With that aim we exercise a range of statutory functions including:

- enforcement of competition and consumer law
- researching and publishing market studies
- making market investigation references to the Competition Commission
- advising government
- encouraging industry codes and self-regulation
- promoting business and consumer education

⁵ With exceptions of the Credit Licensing and Anti-Money laundering functions which are self funded, by the payment of fees.

⁶ However, the OFT has been in existence as an organisation with broadly the same remit since 1973.

⁷ The OFT has the function of promoting good practice in the carrying out of activities which may affect the economic interests of consumers in www.offt.gov.uk/shared_offt/about_offt/ap12/oft1294.pdf the United Kingdom, S8(1) EA2002. Refer to the OFT's Annual Plan 2001-12 for more details:

- supporting the provision of advice to individual consumers via Consumer Direct.⁸

2.2 The OFT is not primarily a regulator, and in particular is not a rule-making regulator with power to impose new burdens on business at its discretion.⁹ However, the OFT does have legal powers, which fall within the statutory definition of regulatory functions and these are subject to the better regulation provisions referred to in the introduction.¹⁰ These functions are related to consumer enforcement, consumer credit licensing and anti-money laundering supervision.¹¹ The legislation we enforce in these areas is listed in Annexe A. This statement of principles sets out how, particularly when carrying out our functions under this legislation, we seek to comply with the requirements both of the law and of promoting good practice. It reflects our commitment to supporting economic growth, a goal which is fundamental to all our activities and which we pursue using competition and consumer tools.

⁸Outside of Consumer Direct, the OFT does not have the role of providing advice to the public on consumer problems in general, and is unable directly to take up complaints on behalf of individual consumers. Further information on Consumer Direct can be found at paragraph 2.6

⁹ See chapter 2 of OFT's 2009-10 Simplification Plan, which sets out in general terms where our powers stand in relation to the better regulation legislation.
www.of.gov.uk/shared_of/529862/of1067.pdf

¹⁰ The OFT's competition and markets functions were outside the remit of the Hampton Review and are excluded from the scope of related legislation in particular the Legislative and Regulatory Reform Act and the Regulatory Enforcement and Sanctions Act

¹¹ In exercising its supervisory role under the Money Laundering Regulations 2007, the OFT deals with the same business sectors as it does under its consumer powers. However, it uses these powers to supervise compliance with measures aimed at deterring, detecting and disrupting money laundering and terrorist financing, and has therefore developed a separate but complementary set of principles for this area of its work. For further details see www.of.gov.uk/advice_and_resources/resource_base/legal/money-laundering/

Our approach to promoting business compliance with consumer protection law

2.3 Consumers are best served by competitive markets where businesses compete fairly for custom in compliance with the law. We believe that most businesses aim to treat their customers fairly and comply with the consumer protection law that the OFT enforces (see Annexe A). We aim to enable and encourage them to do so, and to take enforcement action only where there is no better route to securing compliance.

2.4 We encourage business compliance by:

- Giving clear, targeted and timely information and guidance on legal requirements relating to our functions, and particularly on changes to those requirements. Staff across the OFT work with businesses and business groups to identify their needs and see how best these can be met in terms of content of information, presentation and means of dissemination. We pay particular attention to the requirements of smaller businesses.
- Providing incentives to improved trading practice: we rely, where appropriate, on our Compliance Partners¹² as a way of dealing with consumer complaints about, for example, misleading advertising¹³

¹² Compliance Partners are established means - bodies able to act in place of the OFT in encouraging compliance with the Consumer Protection Regulations. The OFT has developed principles to apply when working with its partners to enforce both the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and the Business Protection from Misleading Marketing Regulations 2008 (BPRs). For further details, see www.offt.gov.uk/shared_offt/consultations/OFT1043resp.pdf

¹³ While the OFT has powers under the CPRs to take enforcement action in response to a complaint concerning misleading advertising, in practice we give existing organisations, in this case the Advertising Standards Authority (a self-regulatory body which as a compliance partner acts as 'established means' for this purpose) the opportunity to deal with complaints in the first instance.

and we promote the voluntary adoption of good trading practice through our Consumer Codes Approval Scheme (CCAS).¹⁴

- 2.5 The law sets minimum standards for behaviour in markets and we have a range of enforcement options to ensure compliance with them. Where appropriate we encourage higher standards when using tools other than enforcement, such as guidance and training, and in particular through our Codes scheme. The CCAS¹⁵ represents a means of giving businesses an incentive to go beyond the basic requirements of the law. It rewards those who adopt best practice, giving them a competitive edge in attracting and retaining customers. However, when providing advice and guidance, we distinguish between what is necessary to meet statutory obligations and what is desirable for the purposes of achieving improvements above the minimum required by law.
- 2.6 We seek to empower consumers and so reduce the need for enforcement. We do this by running public information campaigns, working with our national and local partners to promote consumer education and consumers' awareness of their rights, and, at present, by managing Consumer Direct, a telephone helpline and online service providing clear, practical and impartial advice and information to consumers across Great Britain.¹⁶

¹⁴ www.offt.gov.uk/shared_offt/Approvedcodesofpractice/oft748.pdf

¹⁵ This scheme is currently under review by BIS.

¹⁶ Consumer Direct can be contacted by telephone on 08454 04 05 06 and on-line at www.direct.gov.uk/consumer. Responsibility for delivering consumer advice and information is scheduled to transfer from the OFT to Citizens Advice and Citizens Advice Scotland by the end of March 2012.

Our approach to Enforcement

- 2.7 When it is necessary to use enforcement action to achieve compliance, we aim to ensure that such interventions deliver high impact results, for example, by changing market behaviour, clarifying laws or providing the necessary level of deterrence to those who would deliberately flout their legal obligations. We take a risk-based approach, prioritising our actions to ensure resources are used to maximum effect and to avoid burdening business with the costs of unnecessary interventions. Our aim is to be as robust as necessary to gain compliance while allowing maximum freedom for effective competition within the law.
- 2.8 Enforcement is used to protect consumers, and particularly vulnerable consumers, from rogue traders, unfair practices and other instances where businesses disregard their legal obligations. We do not hesitate to act where it is clearly appropriate to do so. We expect to prosecute¹⁷ where offences have occurred and there is serious consumer harm or where for example other factors such as fraud or other dishonesty warrant the use of criminal process. We seek to ensure that our choice of enforcement sanctions is consistent with the principles set out in the Macrory report, in particular to:
- aim to change the behaviour of the business and others in the sector
 - aim (where our powers allow this) to eliminate any financial gain or benefit from non-compliance
 - be responsive and consider what is appropriate and proportionate for the particular breach and particular offender which may, or may not, include punishment and a criminal conviction.

¹⁷ www.oft.gov.uk/shared_oft/policy/OFT1273.pdf

2.9 We are committed to the principles of good enforcement, as set out in Chapter 1. We aim to act in such a way that business, consumers, fellow regulators and all other stakeholders are:

- satisfied that decisions on enforcement interventions will be **proportionate** and **consistent**
- able to understand how we **target** our resource for the greatest impact
- **clear** on the factors taken into account when deciding the appropriate enforcement intervention and
- able to hold us to **account** for our interpretation of the law and decisions we take on enforcement action.

Proportionate

2.10 We decide our enforcement approach to any particular case in light of all the facts before us, our current overall priorities¹⁸ and the appropriate legal considerations such as whether we have a duty or power to act.¹⁹

2.11 The OFT generally prioritises its work according to published prioritisation principles.²⁰ Where appropriate the OFT may also take account of other relevant factors.²¹

¹⁸ OFT Annual Plan 11-12 www.offt.gov.uk/shared_offt/about_offt/ap12/oft1294.pdf

¹⁹ Even when we have a duty to enforce, this does not automatically mean that formal (civil or criminal) enforcement action will be taken in respect of each and every infringement. Instead, we interpret the duty as obliging us to take steps to promote compliance by the most appropriate means, in line with enforcement priorities and consistent with available resources.

²⁰ www.offt.gov.uk/advice_and_resources/publications/corporate/general/oft953

²¹ For example, certain credit activities are deemed high risk and will generally require a higher level of scrutiny via the licensing process.

www.offt.gov.uk/advice_and_resources/resource_base/credit-licence/riskcategories

2.12 We fully recognise the need to ensure that our interventions are proportionate. In considering the proportionality of our interventions we take into account issues such as:

- the likely direct effect of enforcement on consumer welfare in the market or sector where the intervention takes place. We may prioritise work because the direct effects would specifically benefit disadvantaged consumers
- the indirect effects of our action, particularly on the working of relevant markets, including deterrence; for example where the practice is new and likely to be repeated or copied, the deterrent effect of enforcement action is likely to be higher
- the likelihood of a successful outcome and the risks of not taking action bearing in mind the seriousness of any breach of the law and any impact on the effectiveness of the consumer protection regime
- the available options, from advice on compliance, compliance partners' intervention, warning letters, undertakings, interim measures, injunctive action or enforcement orders through to criminal prosecution
- the extent of any administrative burdens likely to be imposed by these various interventions, particularly taking account of the size of the business or businesses involved
- the type of action to which the particular business will best respond
- intelligence, including knowledge of the business's intent and past behaviour
- whether the resource requirements of the action are proportionate to achieving the desired results.

2.13 Where we, or our co-enforcers acting on our behalf, carry out routine visits to trading premises, feedback is given as appropriate to encourage and reinforce good practice. We also share information about good practice with our partners.

2.14 The diagram²² below illustrates the range of compliance options available to us.²³ It shows the flexibility of our approach in using education, guidance and advice to secure compliance and enforcement options including civil and criminal powers.



²² The diagram does not replicate the order in which options are considered. For example, informal dialogue could take place before formal guidance is issued and formal advice is provided.

²³ Similarly, the diagram does not reflect the specifics of the licensing regime, where requirements can be imposed and licences refused or revoked. However, the principle of formal action at the top of the enforcement triangle still applies.

Consistent and targeted

- 2.15 Where powers are shared between separate authorities, we work on the principle that action should always be taken by the body that is best placed, following appropriate consultation, particularly where consultation is required, and taking account of both statutory and non-statutory mechanisms.
- 2.16 We have a central coordination role under Part 8 of the Enterprise Act 2002 and the Consumer Protection and Cooperation Regulation (EC) No 2006/2004.²⁴ We also have a Partnership Framework with Trading Standards through their Policy Forum which provides the framework for operational protocols that clarify how the OFT and TSS should best work together.
- 2.17 We have Memoranda of Understanding with partners such as the Financial Services Authority and the Financial Ombudsman Service in areas of common interest.²⁵ The OFT also participates in a forum of consumer enforcers where we share information and best practice on regulatory approaches. Using these means, we seek actively to promote consistency in enforcement between ourselves and other enforcement bodies, and liaise with them to this end. It is our intention to avoid a situation whereby businesses receive multiple approaches on similar or linked issues, or approaches reflecting different interpretations of the law, so they can deal effectively with a single body and expect a consistent approach.
- 2.18 In carrying out our functions, we act fairly and apply our procedures to achieve consistent outcomes in the market. This does not mean that we **always** take the same steps to enforce the law in the same way on apparently comparable cases or use the same legislative option – we aim

²⁴ Of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

²⁵ www.offt.gov.uk/oft_at_work/partnership_working/financial_services/

to tailor the action to the individual circumstances. We administer 'fitness' regimes in consumer credit and estate agency, for example, which offer specific and tailored remedies for use within, but not outside, those sectors.²⁶ But across all our consumer enforcement activities, we assess each case on its own merits, taking account of risk and of the need for proportionality, deterrence and achieving high levels of compliance.

- 2.19 We are committed to working in partnership on the basis of the best available intelligence. We target our work at the most serious and prevalent market problems and instances of rogue trading using complaints data and intelligence from a range of sources.
- 2.20 To meet the challenge of the system of coordination of local authority enforcement established under the Regulatory Enforcement and Sanctions Act, we abide by a Memorandum of Understanding with the Local Better Regulation Office (LBRO) with a view to ensuring consistency of interpretation between TSS who propose to enforce under Part 8 against those businesses who have established a Primary Authority relationship with another TSS.²⁷
- 2.21 The OFT carries out projects that estimate and evaluate the impact of its work which seek to ensure its actions are cost-effective, well targeted and any burdens imposed on legitimate businesses are proportionate to

²⁶ www.offt.gov.uk/advice_and_resources/resource_base/credit-licence/

www.offt.gov.uk/shared_offt/business_leaflets/credit_licences/oft969.pdf

www.offt.gov.uk/advice_and_resources/resource_base/legal/cca/CCA2006/requirements

www.offt.gov.uk/advice_and_resources/resource_base/legal/estate-agents-act/

²⁷ Parts 1 and 2 of the Regulatory Enforcement and Sanctions Act puts the LBRO on a statutory footing and creates a system of Primary Authorities, designed to ensure consistency in local enforcement. A local authority wishing to take enforcement action against a business that has established a Primary Authority relationship with another local authority will be required in most cases to consult the relevant Primary Authority before so doing.

benefits obtained for consumers. The OFT considers the impact of its work in various ways, including, for example, analysis of complaints, soliciting views of trade bodies and businesses effected and independently commissioned research.

Transparency in our consumer enforcement work

2.22 We are committed to the principle of transparency in our consumer enforcement work because it is essential to proportionate enforcement. We start from the position of wanting to give a business an opportunity to put matters right. There will be circumstances where this is not appropriate, but we do not escalate our enforcement decisions unless dialogue is failing or is clearly inappropriate – for example, where it would prejudice the investigation. When we take enforcement action we tell businesses the reasons why. Our practice in normal circumstances is to state clearly:

- the business activity or practice causing concern
- the law(s) allegedly breached and/or the law to be enforced, including OFT's enforcement role
- an invitation to open dialogue
- an explanation of the next steps including timescales and the possible consequences of failure to respond
- the risks OFT has identified which we believe make enforcement necessary
- contact details for key project and case staff, namely the Senior Responsible Officer, Project Director and Team Leader, and
- at the appropriate time information on any right to appeal following the outcome any enforcement action.

2.23 In general, we aim to be as transparent as we can about our enforcement activities to aid consumer and business understanding of how we ensure markets work well. We seek to provide full, clear and timely information and guidance on legal requirements - see above under the heading 'our approach to promoting business compliance with consumer protection law '. In addition, we:

- deal with enquiries about our enforcement activities in line with the requirements of the Freedom of Information Act 2000, while also having regard to legal protections enjoyed by information subjects
- publish information that is in the public interest to disclose, in particular via an approved Information Scheme under the Freedom of Information Act, and the on-line Consumer Credit Licensing and the Estate Agents Registers²⁸
- where possible and appropriate, share or exchange information with other regulators (as far as permitted by legal disclosure restrictions), so as to reduce the burden on business of regulatory interventions.

2.24 In making disclosures to the public we take into account the need to comply with any statutory constraints on the disclosure of information that protect businesses and individuals under Part 9 of the Enterprise Act and under the Data Protection Act 1998, and we have full regard to the importance of the duty of confidentiality.

2.25 Where possible and appropriate, we publicise all outcomes of court or administrative proceedings, undertakings, requirements, determinations, interim measures and orders. From 1 June 2010 we will, where possible and appropriate publish case closure summaries on our website, taking account of the need to:

- deter others from engaging in similar kinds of conduct
- warn consumers about practices that are detrimental to their interests
- increase consumers' awareness of their rights
- facilitate complaints about further breaches, and educate other businesses in the market²⁹

²⁸ www2.crw.gov.uk/pr/Default.aspx

²⁹ www.oft.gov.uk/advice_and_resources/small_businesses

- create open public record of our consumer enforcement work.

2.26 Our policy is not to accept undertakings in lieu of enforcement action on the basis that they are to be kept confidential. We depart from this rule only in exceptional circumstances, where special public interest factors apply, and normally only on a temporary basis, where there is (for instance) a need to avoid prejudice to an ongoing investigation. We reserve the right to publish the undertakings even where no infringement is admitted. However, we aim so far as is practicable to outline the circumstances in which the undertakings were given so as to avoid giving a misleading impression on that or any other issue.

2.27 We published a statement³⁰ outlining our commitment to improved transparency and engagement in relation to our work in the following areas; consumer and competition enforcement, markets studies and reviews of undertakings and orders. The statement outlines what those involved in our work can expect in terms of how we will engage and what information we will provide throughout the life of a case or project.

Accountability

2.28 We are accountable to Parliament, the public and stakeholders through:

- reporting to Parliament – via publishing our Annual Plan after consultation as required by statute, and our Annual Report, including statistics and information on our enforcement and non-enforcement outcomes
- our performance framework agreement with HM Treasury – in particular, we have agreed to provide evidence of how the OFT delivers direct financial benefits to consumers of at least five times its cost to the taxpayer over the same period³¹

³⁰ www.oft.gov.uk/shared_of/consultations/668117/OFT1234.pdf

³¹ www.oft.gov.uk/about-the-oft/of-structure/accountability/business-plan

- cooperating actively with Parliamentary scrutiny both in Westminster and the devolved administrations, that is, through investigations by select committees and, where appropriate with any enquiry by the Parliamentary Commissioner for Administration and similarly cooperating with scrutiny by the National Audit Office³²
- accepting the scrutiny of the Court and relevant tribunals, both under provisions giving rights of appeal against our enforcement actions, and under the administrative law via the mechanism of judicial review as and when invoked
- publishing an annual statement setting out the steps we propose to take to review our regulatory functions, and to remove any unnecessary burdens, and reporting on any steps already taken, in compliance with the Regulatory Enforcement and Sanctions Act (see below)
- commissioning independent research to evaluate the impact of our actions, and publishing the results
- our process of stakeholder engagement, including those organisations representing businesses affected by our regulatory functions
- operating our system for receiving, considering and responding to complaints.

2.29 We are committed to providing a high quality, accessible and responsive service to individuals and businesses. Our policy and practice is to be professional, courteous and helpful in all our contacts and enquiries.³³

³² www.nao.org.uk/publications/1012/protecting_consumers.aspx

³³ www.ofc.gov.uk/about-the-ofc/ofc-structure/accountability/complaint

- 2.30 Our information charter sets out the standards that members of the public can expect from us when we request or hold personal information about them; how they can get access to their personal data; and what they can do if they think standards are not being met.³⁴
- 2.31 Part 4 of the RES Act 2008 imposes on the OFT a duty to keep performance of our regulatory functions³⁵ under review and secure that we do not impose or maintain unnecessary burdens on business. We are committed to adhering to the Regulators Compliance Code.
- 2.32 We recognise the need to remove unnecessary burdens on business since such burdens will typically be passed on to consumers in the form of higher prices, lower quality or reduced choice. Our mission of making markets work well for consumers includes ensuring that our interventions do not impose unnecessary costs on business, subject to delivering our overall objectives.
- 2.33 Our 2010-11 Simplification Plan³⁶ explains how we aim to minimise burdens across all of our work, not just our limited regulatory role and we will continue to do so. Through increased transparency, improved engagement with organisations potentially impacted by our work and independent evaluation of our activities we aim to ensure that we are fully aware of the impact of our work on business. Through such actions and through publishing our plans and reporting on our performance we comply with and will continue to comply with, our Part 4 RES Act 2008 duty.

³⁴ www.offt.gov.uk/about/data-protection-act/charter

³⁵ The OFT is not primarily a regulator, and the majority of our functions are outside the scope of Part 4 of the RES Act 2008. Those functions within scope are: consumer law enforcement, credit licensing and anti-money laundering supervision

³⁶ www.offt.gov.uk/shared_offt/annual_report/2011/annexe-i.pdf

2.34 We will review our practices on an annual basis, in line with the principles of improving regulation and as new legislation is introduced. We do not expect the principles to alter significantly, but will ensure coherence between this statement and our detailed, legislation based guidance on compliance on which we consult publicly.

ANNEXE

A ANNEXE A: LEGISLATION ENFORCED

Legislation enforced

OFT has a number of enforcement duties and a range of enforcement powers derived from consumer protection legislation, notably:

- The Consumer Credit Act 1974 as amended by The Consumer Credit Act 2006
- The Estate Agents Act 1979 (as amended by The Consumers, Estate Agents and Redress Act 2007)
- The Unfair Terms in Consumer Contracts Regulations 1999
- The Consumer Protection (Distance Selling) Regulations 2000 as amended by the 2005 Regulations
- The Consumer Protection from Unfair Trading Regulations 2008 (CPRs)
- The Business Protection from Misleading Marketing Regulations 2008
- The Enterprise Act 2002 (Part 8 and 9)

Part 8 of the Enterprise Act gives OFT the power to enforce a wide range of existing consumer protection legislation, including provisions derived from European Directives and purely domestic legislation - further detail including a full list of community and domestic infringements which can be tackled can be found at on the OFT website on the Enterprise Act Part 8 pages.

Part 9 prohibits the OFT from disclosing 'specified information' except in certain circumstances. For example, to facilitate the performance of its functions under the Enterprise Act 2002 which include its power to enforce consumer protection legislation.

The OFT also has enforcement duties under the Money Laundering Regulations 2007 (it is the supervisory authority for estate agents and consumer credit financial institutions).

More general information on the individual pieces of legislation can be found on the OFT website at: www.offt.gov.uk/advice_and_resources/resource_base/legal.

OFT also has a central coordination role under the Consumer Protection and Cooperation Regulation 2006 (CPC) to coordinate initial requests for information and referrals of cases. The CPC creates a network of public consumer protection enforcers (competent authorities) throughout the European Community. Within the European Community unfair practices should be dealt with by enforcers in

the jurisdiction where the **trader** responsible for the practice is situated. The CPC allows Member States to share information and to request enforcement action to be taken to stop breaches of the legislation implementing the Unfair Commercial Practices Directive (UCPD) (the CPRs in the UK) and other Community consumer protection rules.