

Statement of consumer protection enforcement principles

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1 EXPLANATORY STATEMENT

The implementation of the Unfair Commercial Practices Directive (by the Consumer Protection from Unfair Trading Regulations – CPRs)¹ and of the core reforms of the Consumer Credit Act 2006² from April 2008 make significant changes to the body of UK consumer protection law. Together with the Unfair Terms in Consumer Contracts Regulations 1999, they extend the scope for enforcers to ask the courts to consider the behaviour of a business and whether or not it is fair. They mark a move towards a more principle-based regime and encourage smarter, risk-based enforcement geared to the efficient operation of the market to the benefit of consumers, and customer oriented businesses. At the same time, they also increase the range of enforcement tools available to the Office of Fair Trading (OFT), expanding the scope to take criminal proceedings and to impose financial penalties, sitting alongside existing civil enforcement tools and the provision of advice and guidance.

In light of these changes, the OFT is reviewing its enforcement methods and has drawn up an overall statement of our enforcement principles, linking to other existing guidance on more specific compliance issues.

¹ Link to draft CPRs -

www.berr.gov.uk/files/file39705.pdf?bcsi_scan_A2018E0826464712=0&bcsi_scan_filename=file39705.pdf

Link to UCPD directive - www.berr.gov.uk/files/file27194.pdf

² www.oft.gov.uk/news/press/2007/92-07

2 STATEMENT OF CONSUMER PROTECTION ENFORCEMENT PRINCIPLES

OFT mission

1. The Office of Fair Trading is the UK's national competition and consumer authority. Our mission is to make markets work well for consumers and this directs the approach we take to all our work. Supporting economic progress is integral to our role and by striving to make markets work well, we aim to deliver significant benefits to consumers, businesses and the economy.³

Our approach to compliance and enforcement

2. Consumers are best served by competitive markets where businesses compete fairly for custom in compliance with the law. We believe that most businesses want to treat their customers fairly and to comply with the consumer protection law that the OFT enforces (see Annexe A). We encourage business compliance by providing guidance and liaising with representatives of business stakeholders on how this can be best presented and disseminated. We seek to empower consumers, providing advice through Consumer Direct and running public information campaigns. We also seek to improve trading practices through encouraging effective self-regulation.⁴ We prioritise our interventions so as to ensure our resources are used with maximum effectiveness and to avoid burdening businesses with the costs of unnecessary interventions, aiming to allow maximum freedom for effective competition within the law.⁵ We are committed to better regulation, enforcing in line with the

³ OFT Annual Plan 2007-08: www.oft.gov.uk/shared_of/about_of/349517/ap08.pdf

⁴ OFT Consumer Codes Approval Scheme:
www.oft.gov.uk/advice_and_resources/small_businesses/codes/

⁵ OFT prioritisation principles -
www.oft.gov.uk/advice_and_resources/resource_base/consultations/Prioritisation

Hampton⁶ and Macrory⁷ principles.

3. The law sets the minimum standards in markets: we use enforcement action as a key part of our toolkit, essential for addressing problems where minimum standards are not being reached. We believe we should aim for higher standards when using tools other than enforcement - we aim to do this in many other ways, including guidance, training and the Consumer Codes Approval Scheme.
4. When we need to use enforcement to achieve compliance, our objective is to ensure that our interventions will deliver high impact results, whether in terms of 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 to these enforcement interventions and within that context will be as robust as necessary.
5. Enforcement will be used to protect consumers, and particularly vulnerable consumers, from rogue traders, unfair practices and other instances where businesses disregard their legal obligations. We will not hesitate to act where this is clearly appropriate. We expect to take criminal enforcement action where there is or could be serious consumer harm. We seek to ensure that our use of enforcement sanctions is consistent with the principles set out in the Macrory report, namely 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 for the particular breach and particular offender which may, or may not, include punishment and a criminal conviction.
6. We are publicly committed to the principles of good enforcement, as set out in the Legislative and Regulatory Reform Act 2006⁸ the Enforcement

⁶ Reducing Administrative Burdens: Effective Inspection and Enforcement, Philip Hampton, March 2005 - www.hm-treasury.gov.uk/media/7/F/bud05hamptonv1.pdf

⁷ Regulatory Justice: Making sanctions effective - Macrory, November 2006 - http://bre.berr.gov.uk/regulation/documents/pdf/macrory_penalties.pdf

Concordat⁹ and the Regulators' Compliance Code.¹⁰ We want to act so 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.

To this end, we follow five main principles, namely we will be:

proportionate

consistent

targeted

transparent, and

accountable.

Proportionate

7. **We will decide our enforcement approach in light of our current overall priorities¹¹ and the appropriate legal considerations such as whether we have a duty or power to act.¹²** To ensure that our enforcement action is

⁸ www.publications.parliament.uk/pa/ld200708/ldbills/007/2008007.pdf

⁹ <http://bre.berr.gov.uk/regulation/documents/pst/pdf/concord.pdf>

¹⁰ http://bre.berr.gov.uk/regulation/documents/compliance_code/draft/compliance_code_final.pdf

¹¹ OFT Annual Plan 07-08 - www.oft.gov.uk/shared_of/about_of/349517/ap08.pdf

¹² 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.

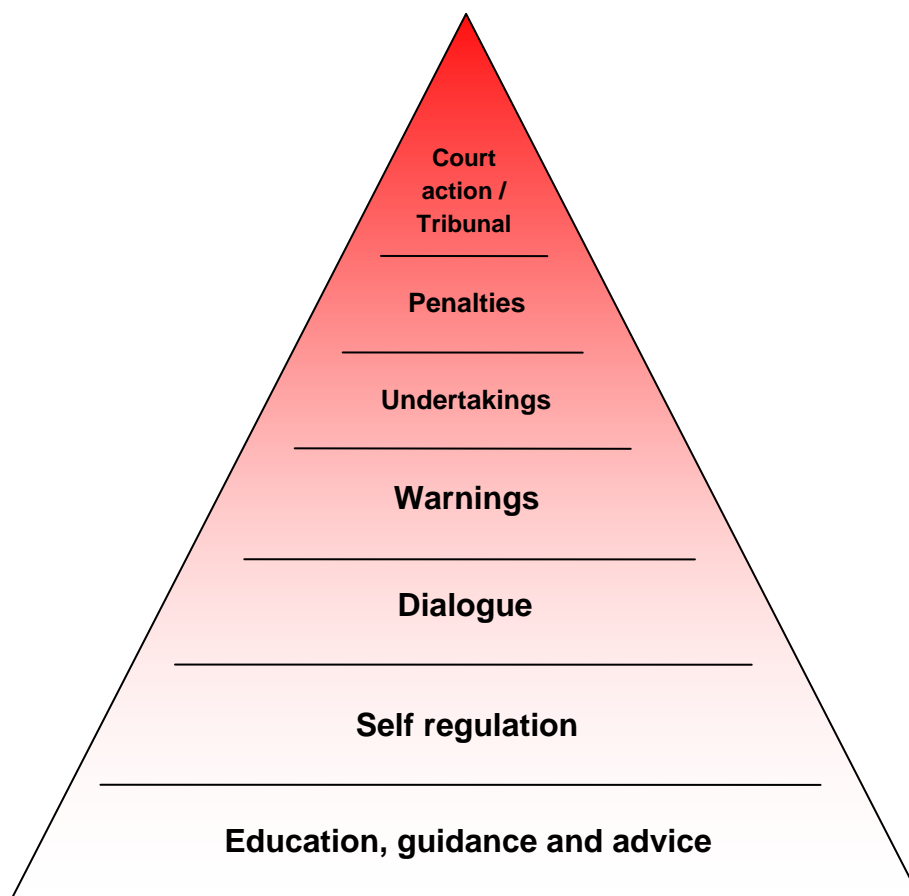
proportionate, we will take particular account of the level of risk¹³ and the specific circumstances of each case. Based on our prioritization principles we focus on the following factors:

- the direct effect 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 enforcement options, from advice on compliance, warning letters, undertakings, injunctive action or enforcement orders through to criminal prosecution
- any administrative burdens likely to be imposed by the various enforcement options and the type of enforcement 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.

¹³ OFT prioritisation principles - www.offt.gov.uk/shared_offt/consultations/oft953con.pdf

The range of compliance and enforcement options

8. The diagram below shows the range of compliance options available to us with the shaded area representing enforcement options. We will generally seek to use compliance options in the first instance unless the factors at paragraph 7 above indicate that formal enforcement action is the appropriate first step: such action may include a criminal investigation and prosecution.



Consistent and targeted

9. We work on the principle that, where powers are shared between separate authorities, action should always be taken by the most appropriate body, taking account of other statutory and non-statutory mechanisms.

- We have a central coordination role under Part 8 of the Enterprise Act 2002 and the Consumer Cooperation Protection Regulation (EC) No 2006/2004.¹⁴
 - We will actively seek to promote consistency in enforcement between ourselves and other enforcement bodies, and will liaise with them to this end. Our intention is that a business will not receive multiple approaches similar or linked issues, but can deal effectively with a single body and expect a consistent approach.
10. **In carrying out our functions, we will act fairly and apply our procedures to achieve consistent outcomes in the market.** This does not mean that we will *a/ways* take the same steps to enforce the law in the same way on apparently comparable cases or use the same legislative option – we will aim 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.¹⁵ But across all our consumer enforcement activities, we will assess each case on its own merits, taking account of risk and of the need for proportionality, deterrence and achieving high levels of compliance.
11. **We are committed to working in partnership on the basis of the best available intelligence.** We will continue to champion the Local Authority Trading Standards Services (TSS),¹⁶ and in particular will work with TSS partners and central government to consolidate the TSS/OFT Regional Intelligence Network and to develop other measures designed to ensure TSS/OFT enforcement action is targeted at the most prevalent problems and rogue traders, as shown by data from Consumer Direct and other sources.

¹⁴ 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.

¹⁵ www.oft.gov.uk/advice_and_resources/resource_base/credit-licence/
www.oft.gov.uk/advice_and_resources/resource_base/legal/cca/CCA2006/requirements/
www.oft.gov.uk/advice_and_resources/resource_base/legal/estate-agents-act/

¹⁶ www.oft.gov.uk/oft_at_work/partnership_working/trading-standards/

12. **We will monitor the effect of interventions to ensure businesses are complying and to measure the impact of such interventions on market sectors.** This may take various forms, such as analysing complaints, monitoring the behaviour of individual traders or sector-wide proactive exercises

Transparent and accountable

13. **We start from the position of wanting to give a business an opportunity to put the situation right. There will be circumstances where this is not appropriate, but we will 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 will tell businesses the reasons why.** We will generally state clearly:

- the business activity or practice causing concern
- the law(s) being or likely to be breached
- an invitation to open a dialogue
- an explanation of the next steps including timescale and
- the possible consequences of failure to respond
- the risks the OFT has identified which we believe make enforcement action necessary.

14. 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 for both consumers and businesses. We will:

- deal with enquiries about our enforcement activities bearing in mind our obligations under the Freedom of Information Act 2000
- aim proactively to put into the public domain information which is in the public interest to disclose

- where possible and appropriate, share or exchange information with other regulators so as to reduce the burdens on business of regulatory interventions.

In making disclosures to the public we will take into account the need to comply with any legal constraints on the disclosure of information and have full regard to the importance of confidentiality to individual businesses.

15. We will, wherever possible and where appropriate, publicise all outcomes of court proceedings, undertakings and orders, taking due 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 market

[\(www.offt.gov.uk/advice_and_resources/small_businesses/\)](http://www.offt.gov.uk/advice_and_resources/small_businesses/)

16. We will not accept undertakings in lieu of enforcement action on the basis that they are to be kept confidential unless special public interest factors apply, such as the need to avoid prejudice to an investigation. We reserve the right to publish the undertakings even where no infringement is admitted. However, we will 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.

17. We will be accountable to the public by

- agreeing performance targets with HM Treasury¹⁷

¹⁷ During 2008-2011 the OFT has agreed with the Treasury that among other targets we will deliver measured benefits to consumers of five times our annual budget.

- consulting on our annual plan and then laying before Parliament both our annual plan and annual report, including performance measures related to outcomes
- cooperating actively with Parliamentary scrutiny both in Westminster and the devolved administrations, for example, through investigations by select committees and, where appropriate with any enquiry by the Parliamentary Commissioner for Administration
- cooperating actively with peer review exercises such as the Hampton Implementation Review, and any comparable processes designed to ensure best practice in enforcement
- cooperating actively with the National Audit Office in its scrutiny of our use of resources.

18. We are committed to providing a high quality, accessible and responsive service to individuals and businesses.

- Our policy and practice is to be professional, courteous and helpful in all our contacts and enquiries.
- The OFT procedures for dealing with complaints are set out on the OFT website - www.of.gov.uk/about/governance/complaint.
- We are, however, subject to disclosure constraints in law and will protect commercial and personal data accordingly.

19. We will review these principles on an annual basis and as new laws are 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

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
- The Estate Agents Act 1979
- The Unfair Terms in Consumer Contracts Regulations 1999
- The Control of Misleading Advertisements Regulations 1988
- The Distance Selling Regulations 2000, and
- The Enterprise Act 2002 (part 8)

Part 8 of the Enterprise Act gives OFT the power to enforce a wide range of existing consumer protection legislation. Part 8 distinguishes between domestic infringements with a scope restricted to UK enforcement and community infringements which allow both UK and European cross-boarder enforcement. The relevant pieces of legislation covered by community infringements are:

- The Consumer Credit Act 1974
- The Control of Misleading Advertisements Regulations 1988
- The Consumer Protection (Distance Selling) Regulations 2000 (and 2005 amendment)
- The Estate Agents Act 1979 and associated legislation, Consumer Estate Agents and Redress Act 2007
- The Unfair Terms In Consumer Contracts Regulations 1999
- Consumer Protection (Cancellation of Contracts away from Business Premises) 1987
- The Electronic Commerce (EC Directive) Regulations 2002
- The Package Travel, Package Holidays And Package Tours Regulations 1992 (and 1998 amendment)
- The Privacy and Electronic Communications (EC Directive) Regulations 2003 (19- 24)
- The Timeshare Regulations 1997

- The Sale and Supply of Goods to Consumers Regulations 2002
- Price Marking Order 1999 / Northern Ireland: Price Making Order 2000
- The Financial Services (Distance Marketing) Regulations 2004.

Further detail and the list of domestic infringement legislation can be found at on the OFT website on the Enterprise Act [part 8](#) pages.

More general information on the individual pieces of legislation can be found on the OFT website at:

www.oft.gov.uk/advice_and_resources/resource_base/legal/

Legislation to be implemented

- **Consumer Credit Act 2006**
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 OFT. We are currently consulting on revised guidance on how it will decide whether a person is fit to hold a Consumer Credit licence, and how the OFT will exercise its power to impose requirements on licensees. Failure to comply with the requirements could result in civil financial penalties - and the OFT statement of policy on financial penalties sets out how the OFT proposes to use this power.
www.oft.gov.uk/shared_of/consultations/oft920con.pdf
www.oft.gov.uk/shared_of/consultations/oft932con.pdf
- **Consumer Protection from Unfair Trading Regulations 2007 (CPRs)** implementing the Unfair Commercial Practices Directive.
The OFT and the Department for Business, Enterprise and Regulatory Reform (BERR) are consulting on draft Guidance on the proposed Consumer Protection from Unfair Trading Regulations. This is in addition to a concurrent, consultation by BERR on the

draft Regulations. The two documents will explain in more detail how and when these powers will be used.

OFT consultation (ends 21 August 2007):

www.offt.gov.uk/shared_offt/reports/consumer_protection/oft931con.pdf

BERR consultation (ends 21 August 2007):

www.berr.gov.uk/files/file39705.pdf

- Money Laundering Regulations 2007 take affect on the 15 November 2007 and impacts on our regulation of Estate Agents and credit institutions. See attached guidance and legislation:
www.offt.gov.uk/shared_offt/business_leaflets/general/oft954.pdf
www.hm-treasury.gov.uk./media/F/1/money_laundering_regulations2007.pdf