

Consumer credit licensing

**General guidance for licensees and applicants on
fitness and requirements**

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1 INTRODUCTION

- 1.1 If your business offers any kind of regulated consumer credit or hire, or if you are involved in regulated activities relating to consumer credit or consumer hire, you must be licensed under the Consumer Credit Act 1974 ('CCA'). The Office of Fair Trading (OFT) is the government department responsible for licensing you if you are engaged in regulated consumer credit activities. We are supported in this by our enforcement partners in Local Authority Trading Standards Services ('LATSS').
- 1.2 To find out if you need to be licensed, see our booklet *Do you need a credit licence?* (OFT147).
- 1.3 Under the CCA, the OFT must be satisfied that when you apply for a credit licence you are a fit person to engage in the activities identified on the licence application before it issues a licence. Once we have granted you a licence, you must maintain the required standard of fitness.
- 1.4 This guidance discusses the range of factors we consider when assessing your fitness. This includes your competence to engage in the activities covered by the licence and any evidence of unfair or illegal business practices.
- 1.5 It also explains how the OFT can obtain information relating to your fitness and the subsequent actions we can take if you fail to meet the appropriate standard of fitness.
- 1.6 You should read this guidance if:
- you are applying for a consumer credit licence
 - you are applying to renew your existing licence
 - you are licensed and want information on:
 - the changes to the scope of the fitness test
 - the OFT's information-gathering powers
 - the OFT's licensing powers.

- 1.7 Licensing is just one part of the regulatory regime relating to consumer credit. Your businesses must also comply with rules on advertising, form and content of agreements and other documentation, default and termination, and other matters. You may also be subject to the new provisions on unfair relationships. We have issued guidance relating to these areas. For a full list of current OFT publications, visit our website at www.of.gov.uk.

2 THE FITNESS TEST

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

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

2.2 In considering fitness, the OFT may take account of any circumstances that appear to us to be relevant, whether you are an applicant or an existing licensee. This includes evidence:

- of any past misconduct
- of the skills and knowledge that you and the people participating in your business have in relation to the licensed activity and any relevant experience, and
- of the practices and procedures that you propose to operate in the running of the business.

Factors relevant to fitness

2.3 The OFT applies a risk-based approach to licensing that involves more scrutiny for high risk applications. The aim is to ensure an appropriate standard of consumer protection that supports a well-functioning market whilst not imposing unnecessary burdens on business. In assessing fitness we focus on:

- evidence that raises doubts about the personal integrity of individuals running or controlling a licensed business, and

¹ Consumer Credit Act 1974, section 25

- business activities that because of either their nature or past association with high levels of complaint have a greater potential for consumer detriment.

2.4 Through the licensing process, the OFT will seek to identify businesses that reflect a higher risk and will apply a higher degree of scrutiny to the application and subsequent monitoring and supervision of such businesses. **Applicants are therefore strongly encouraged to apply for a licence that only covers those activities they propose to carry out. Including a high risk activity in your licence application when you do not need to do so will mean that your application is subject to a more detailed examination and you will have to provide additional information that otherwise may not be required. We may also need to visit you on-site. This will add to the time we need to consider your application.**

Integrity issues

2.5 Concerns about integrity arise where there is clear adverse evidence of past misconduct, in relation to standards of business behaviour as well as non-compliance with the law. This evidence does not have to relate to a licensable activity and consumer credit does not have to be your primary business activity. The way you operate any aspect of a business may well be relevant to your fitness to hold a consumer credit licence. In some instances evidence that does not relate to a consumer credit activity may be relevant, for example a criminal conviction for fraud or violence. In other cases, concerns may arise where there is evidence that an existing licence holder has been engaged in an unfair business practice. Examples of the kind of evidence that may involve integrity issues include the following:

- criminal offences committed by you or your associates, particularly offences involving violence, fraud or dishonesty, whether or not they lead to prosecution or a conviction
- any breach of the CCA, such as the rules relating to default and termination, or joint and several liability for the faults of suppliers under section 75 of the CCA

- any breach of CCA Regulations, such as those relating to advertising, agreements, pre- or post-contract information or early settlement
- any breach of other consumer protection law, including that relating to misleading advertisements, price indications and product descriptions, harassment of debtors, unfair contract terms, and distance selling
- any breach of the rules or principles of the Financial Services Authority (FSA)
- insolvency, bankruptcy or disqualification as a director
- discrimination including on grounds of sex, colour, race or ethnic or national origin, disability, sexual orientation or age in, or in connection with, the carrying on of any business (whether or not involving licensable activities)
- providing false or misleading information to the OFT
- any legitimate complaints about the business whether or not the activity in question is regulated under the CCA, including evidence of persistent breaches of contract with consumers
- adverse information from other regulators, professional bodies, trade bodies, consumer organisations or other businesses, including the Financial Ombudsman Service and the Advertising Standards Authority, and any disciplinary action including by a trade association or the FSA
- unauthorised use of the OFT name or logo, including the OFT Approved consumer code logo, or misrepresenting the business's status to suggest that the business is 'approved' by the OFT or in any other way

- evidence of business practices that appear to the OFT to be deceitful or oppressive, or otherwise unfair or improper², whether unlawful or not and whether arising in relation to the licensed business or otherwise, and with particular regard to any breaches of OFT guidance.³ This could include evidence of irresponsible lending.

Credit competence and high risk business activities

- 2.6 The OFT also takes into account evidence of what we describe as your '**credit competence**'. We consider the skills, knowledge⁴ and experience of you and those participating in your business to carry out the activities covered by your licence to a reasonable standard. We also consider the practices and procedures you propose to operate in connection with your licensable business activities. Our consideration of your credit competence relates only to the credit activities to be undertaken under the credit licence, not competence to run the business generally.
- 2.7 All licensed businesses are expected to be competent to carry out the regulated activities for which they hold a licence. The levels of competence required and the corresponding type and degree of information we will seek from you will differ according to the categories of credit activity you engage in or propose to engage in. As noted above, the OFT considers that some business activities pose greater potential risks to consumers than others. The OFT will focus its resources on the higher risk activities.
- 2.8 Risk assessment also means that the presence of negative factors (see paragraph 2.5 for examples) may trigger closer scrutiny. Conversely, the presence of positive factors may reduce the degree of scrutiny required. More information about positive factors is set out in paragraph 2.21.

² This includes practices that appear to the OFT to involve irresponsible lending.

³ For example, the OFT's Debt Collection Guidance (OFT664).

⁴ This includes the ability and knowledge to comply with relevant legislation.

Negative factors may make it more likely that the OFT or LATSS will monitor your activities more closely, or that the OFT will begin an investigation into your fitness as a licensee.

- 2.9 Businesses that apply for a licence permitting a high risk credit business activity will need to provide the OFT with either a Credit Competence Plan ('CCP') or a Credit Risk Profile ('CRP').

Credit Competence Plan

- 2.10 We will ask you for a CCP if you are engaging or propose to engage in categories of high risk credit activity such as **third party debt collection or fee-charging debt management**, where the OFT has already set out minimum standards in fitness guidance. The CCP will be a summary document that explains the steps you have taken to ensure your business is credit competent. You will need to be ready to substantiate your CCP. In most cases we will ask LATSS to undertake a competence inspection for new applicants to help substantiate the CCP.
- 2.11 Although the OFT's priority is to consider credit competence in relation to new applicants, the standard applies equally to existing licensees. It is advisable for you to prepare a CCP if you hold a licence for an activity the OFT has identified as high risk and for which you would be required to provide a CCP if you were applying for a licence. Preparing a CCP is a practical way of ensuring that you keep your operations under review to comply with best practice and that you meet and maintain credit competency. It will also help ensure that you follow relevant published guidance. As a part of our closer supervision of high risk business activities we may ask you as an existing licensee to provide us with a copy of your CCP and ask LATSS to undertake a competence inspection.

Credit Risk Profile

- 2.12 We will ask you for additional factual information about your business model and activities⁵ through a Credit Risk Profile ('CRP'). We will ask you for this if you engage in or are applying to engage in other types of high risk credit activities with potential for serious consumer detriment. We or LATSS may visit you on site if we have asked you to submit a CRP to clarify information you have supplied or to seek further information.
- 2.13 Business activities for which we are likely to require a CRP include secured sub-prime lending and lending in the home. One of the OFT's main regulatory interests in these areas will be to ensure that lending takes place responsibly. 'Irresponsible lending' is now cited specifically in the fitness test as a business practice that we may consider deceitful or oppressive or unfair or improper. Lending irresponsibly will therefore call into question your fitness to be licensed. When considering your fitness, we may ask you to explain the policies and practices that you intend to follow, for example, in assessing ability to repay a loan.
- 2.14 Lenders may take different approaches to responsible lending in line with variations between the needs of different sectors of the market. However, lenders should always take reasonable care in making loans or advancing lines of credit and should take full account of the interests of consumers in doing so. They should undertake proper and appropriate checks on the potential borrower's creditworthiness and ability to repay the loan and to meet the terms of the agreement. The checks should be proportionate, taking account of the type of agreement, the amounts involved, the nature of the lender's relationship with the consumer, and the degree of risk to the consumer.
- 2.15 The OFT plans to engage in a separate consultation with a wide range of stakeholders on lending practices, with the aim of producing guidance for the credit market identifying practices and conduct that are

⁵ We will also have close regard to mitigating and aggravating factors.

inconsistent with the requirements of responsible lending. Until that work is complete the OFT's Non-Status Lending Guidelines published in 1997⁶ continue to apply and should be followed where relevant.

- 2.16 If you do not satisfy us that you have the necessary degree of competence for all the activities for which you have applied, the OFT can limit your credit licence just to those categories for which we consider you to have the necessary competence. Or we can consider imposing an appropriate s33A requirement (see paragraphs 4.5 to 4.13).
- 2.17 Further guidance on the risk-based approach, our consideration of credit competence, and the content of the CCP and CRP will be made available alongside the new application forms in early 2008.

Current and future guidance

- 2.18 We monitor business practices in the consumer credit market. We may issue specific tailored guidance, in the light of the intelligence and evidence we gather. This is to help you ensure that you meet the appropriate standard of fitness and avoid engaging in unfair practices that may result in detriment to consumers. Knowledge of the guidance may also be relevant to the question of your credit competence.
- 2.19 A list of business practices that we consider are or may be unfair is given in the Annexe to the guidance, but this is not exhaustive because precise circumstances may vary and can often have a significant bearing on whether we consider a practice to be unfair. In addition, products and trading methods may develop and evolve very quickly, so that any list may soon be out of date. But where we consider appropriate, the OFT will publicise industry practices that we consider unfair, for instance by way of press notices or statements.
- 2.20 We have issued specific guidance on:
- debt collection⁷

⁶ Non-Status Lending: guidelines for lenders and brokers (OFT192).

- debt management⁸
- non-status lending.⁹

Positive factors relevant to fitness

2.21 The assessment of fitness will also take account of any relevant positive factors. These may include:

- membership of an OFT-approved consumer code scheme
- FSA authorisation or approval¹⁰
- a record of fair dealing over a significant period, for example evidence of no serious consumer complaints or enforcement action taken against your business, and an active policy of addressing consumer complaints
- a record of co-operating with LATSS, within a Home Authority relationship or otherwise, including addressing any concerns they might have about your business.

Providing false or misleading information to the OFT

2.22 It is a criminal offence for you knowingly or recklessly to provide false or misleading information¹¹ to the OFT when applying for a consumer credit licence.

⁷ Debt Collection Guidance (OFT664).

⁸ Debt Management Guidance (OFT366).

⁹ Non-Status Lending: guidelines for lenders and brokers (OFT192).

¹⁰ Although the OFT will still come to its own view on fitness under the CCA, taking all relevant matters into account.

¹¹ This includes withholding relevant information.

- 2.23 Providing such false information, or withholding information requested by the OFT, or misleading the OFT, can all have a significant impact on the OFT's assessment of your fitness to be licensed.
- 2.24 It is essential that we have correct and up-to-date information about your business. Only in this way can we operate the licensing regime effectively to protect consumers. The OFT has been given a new power to impose civil penalties where your business does not supply information about changes in its circumstances within the time specified. This duty to notify changes in information previously supplied is imposed under section 36A CCA ('s36A requirements') and relates to information that the OFT needs to assess the continuing fitness of licensees. The scope of s36A requirements will be specified in a General Notice, which will be brought to the attention of everybody it applies to. For more on s36A requirements see paragraphs 3.7 to 3.9 of this document.
- 2.25 If the information you provide to us causes us to be in some way dissatisfied, the OFT response may not necessarily be to refuse or revoke your licence. It may be appropriate to address our concerns by imposing requirements on your business under section 33A of the CCA ('s33A requirements – see paragraphs 4.5 to 4.13).

3 GATHERING INFORMATION TO ASSESS AND MONITOR FITNESS

On applicants

- 3.1 Application forms from applicants for new licences and those renewing their licences are a vital primary source of information on which to base licensing decisions. They are designed to give us information about key indicators of your fitness to be licensed. (For a list of some of the key indicators see paragraph 2.5.) We may check some of the information from your application against various databases, for example the Disqualified Directors Register and our own Consumer Credit Licensing database. We can also ask LATSS to provide us with information that may be relevant to your fitness. We may check that the information you have given to us about convictions is accurate if we need to investigate your application.
- 3.2 For overseas applicants, we may contact the relevant regulators in the country in which your main place of business is located.
- 3.3 Depending on the information about you that we collect and the credit activities you wish to be licensed for, we may ask you for additional information to help with our consideration of fitness and competence. Information that indicates a key negative risk factor may prompt us to ask questions requiring written answers from you. Or it may lead us to request a trading standards officer to visit your business premises and ask you questions in person. We may also arrange a visit to consider your credit competence if, for example, you are a new entrant to a market involving higher risk credit activity (see paragraphs 2.6 to 2.17).
- 3.4 Where there are doubts about your fitness, we will continue to gather information until we are satisfied that we can make a fair assessment of your fitness.
- 3.5 If you do not respond to requests for information about your application for a licence, the OFT can decide not to proceed with the application and a licence will not be granted.

On licensees

- 3.6 As a licensee you must inform the OFT, all the time you are licensed, of any material changes to certain information¹² that you provided on your application form. This includes changes to the officers of a company.
- 3.7 In addition, section 36A CCA permits the OFT to impose new obligations on you to update specified information that you have provided to the OFT ('s36A requirements').
- 3.8 We will specify information you will need to update us about in a 'General Notice', and the information may change from time to time. For example, we anticipate issuing a General Notice requiring all licensees to inform us if they or their associates are convicted of a criminal offence.
- 3.9 If you do not provide this information within the specified time the OFT may impose a financial penalty on you of up to £50,000. We will calculate the level of any penalty according to our *Statement of policy on civil penalties* (OFT971).
- 3.10 As well as asking for information from you, the OFT receives information on its licensees from other sources including:
- Local Authority Trading Standards Services
 - the Financial Services Authority
 - consumer bodies such as Citizens Advice
 - complaints data from the national consumer advice service Consumer Direct
 - complaints data from the Financial Ombudsman Service.
- 3.11 Information from these and other relevant sources can trigger fitness investigations during which we can ask you for any information relevant

¹² Consumer Credit Act 1974, section 36.

to your fitness to be licensed. We do this by sending you a notice explaining what we need and why. If necessary, the OFT can issue a notice to you requiring you to produce documents and/or data. If you do not co-operate with an OFT information request, the action we take to obtain it may include legal action. We can also require licensees, by notice, to permit us or our LATSS colleagues to observe how they carry out their business on their business premises. The OFT, or LATSS acting on our behalf, can also enter under a search warrant to carry out an inspection and take copies of documents – but only where it is necessary and proportionate to do so.

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

- 4.1 The OFT encourages businesses to comply with consumer protection law by making extensive use of guidance setting out how we interpret the law and exercise our various powers. We are committed to the fair, effective and proportionate enforcement of consumer law. In practice this means that we will decide on the appropriate enforcement mechanism in the light of the facts and circumstances of the individual case, especially the risk of detriment to consumers. Where concerns about conduct are serious, or there are concerns about your integrity, we may conclude that you are not fit to hold a licence and will act to refuse or revoke a licence.
- 4.2 However, where we think it sufficient to ensure that your conduct is changed, and we do not have concerns about your integrity, we may take a different approach in the first instance and use one of the other enforcement tools available to us.
- 4.3 It may, for example, be appropriate for the OFT to take action under Part 8 of the Enterprise Act 2002¹³ in respect of domestic or Community infringements falling within sections 211 or 212 of that Act. Our approach to the use of these powers is discussed in *Enforcement of consumer protection legislation – Guidance on Part 8 of the Enterprise Act* (OFT512). We also co-ordinate such actions undertaken by other enforcers.
- 4.4 The OFT will be given both civil and criminal enforcement powers when the Unfair Commercial Practices Directive ('UCPD') is implemented in the UK. The UCPD will be implemented through the Consumer Protection from Unfair Trading Regulations 2008, which come into force on 6 April 2008. The scope of the UCPD means that it overlaps with other existing UK consumer protection legislation. As a result, some statutes such as

¹³ Breaches of the Regulations implementing the Unfair Commercial Practices Directive will also be actionable under the Enterprise Act.

the Trade Descriptions Act 1968 and the Consumer Protection Act 1987 are to be repealed or amended.¹⁴

Section 33A requirements

- 4.5 One of the major reforms of the CCA enables the OFT to impose specific requirements on you if you are a licensee or an applicant where we are dissatisfied with certain aspects of your conduct or that of your business. The aim will be to improve the way that licensees conduct the activities covered by their licences. If you fail to comply with a s33A requirement we can impose a financial penalty. We may also compulsorily vary a licence, for instance to limit the activities for which you are licensed, or limit the life of the licence.
- 4.6 The OFT can grant you a licence subject to a s33A requirement or impose a s33A requirement on you at any time during the life of your licence. A s33A requirement obliges you to address any matter causing us dissatisfaction. The requirement will set out the changes that you have to make to address our concerns and to ensure that matters of the same or similar kind do not happen again.
- 4.7 S33A requirements can be used to address concerns that the OFT may have previously addressed by accepting undertakings from you before issuing your licence. The power to impose such requirements better enables the OFT to resolve issues that cause us concern in a more effective and proportionate way. We anticipate that the imposition of s33A requirements will largely replace the use of undertakings.
- 4.8 We can use s33A requirements to address not only dissatisfaction we have about your business activities but any concerns we may have about your associates. Such a requirement must relate to the business that you are carrying on or propose to carry on under your licence. But

¹⁴ The Department for Business, Enterprise and Regulatory Reform and the OFT plan to issue joint guidance on the Consumer Protection from Unfair Trading Regulations 2008 ahead of implementation.

the cause of dissatisfaction leading to the requirement does not have to originate with a related business or activity. Any matter relating to or conduct on the part of the licensee or an associate could give rise to the dissatisfaction that causes the OFT to impose a requirement.

- 4.9 S33A requirements are not limited to any particular activity within your business or the business you propose to carry on since they can address the cause of dissatisfaction in any part of your licensable business. Requirements can therefore relate not only to the licensable activity you carry on but also to the wider activities of the licensed business.
- 4.10 S33A requirements can be framed negatively, to stop you from acting in a particular way. For example, a requirement could restrict the hours during which a debt collector contacts debtors. Requirements can also compel you to take positive steps. For example, we could require a lender to deal appropriately with third parties acting on behalf of consumers (such as Citizens Advice) or to ensure that relevant staff receive appropriate training to ensure that the business operates properly. We could require you to put new procedures in place and to keep proper records to show that you follow these procedures.
- 4.11 Other examples of the circumstances where it may be appropriate to impose s33A requirements include:¹⁵
- to address deficiencies in your competence to carry out the consumer credit activities for which you have applied or are licensed
 - to prevent inappropriate individuals, such as those with convictions for violent offences, dealing face to face with consumers
 - to revise and upgrade existing processes and procedures to ensure your compliance with consumer credit law, and

¹⁵ All these examples assume that the circumstances involved do not justify action to revoke or refuse a credit licence. In other cases the behaviour in question could result in a refusal or revocation.

- to stop you or your staff or agents employing high pressure marketing and sales techniques that take advantage of consumers.

4.12 If the OFT imposes a s33A requirement on you, information about this will be entered on the Consumer Credit Register with the details of your licence.¹⁶ This public database holds information on all consumer credit licensees. The OFT may publicise the requirement more widely if we consider that doing so helps the performance of our functions.

4.13 We can charge you a financial penalty of up to £50,000 if you fail to comply with a s33A requirement. We will impose a penalty and calculate the level of penalty according to our *Statement of policy on civil penalties* (OFT971).

s33A example

There is good evidence that a business has been involved in mis-selling or deals unsatisfactorily with legitimate complaints. However, the mis-selling relates only to one of many products it sells, or the complaints handling is the only business practice that causes us concern. In such circumstances, the OFT may come to the view that the business practices are seriously detrimental to consumers but that it would be disproportionate to refuse, revoke or suspend a licence and that it should instead impose requirements designed to address the problems.

¹⁶ The Consumer Credit Register is accessible to personal callers and by phone and email. It is due to go online in 2008.

5 ENFORCEMENT PROCESSES

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

- 5.1 We are committed to good enforcement policies and procedures in line with the recommendations of the Hampton Report as given effect to by the Legislative and Regulatory Reform Act 2006.¹⁷ We are also committed to the principles of the Cabinet Office's Enforcement Concordat.¹⁸
- 5.2 Part 2 of the Legislative and Regulatory Reform Act requires regulators to have regard to certain principles of good regulation. Regulators should carry out their activities in a way that is transparent, accountable, proportionate and consistent, and should target their activities only at cases where they consider that action is needed. The Act also enables Ministers to issue a statutory code of practice for regulators, and the Government has indicated that it intends to issue a Regulators' Compliance Code to stand alongside the Enforcement Concordat.¹⁹

Refusing or revoking a licence

- 5.3 If we have sufficient doubts about your integrity as an applicant or licensee or the risk you pose to consumers, we may decide that you are unfit to be licensed and refuse to grant you the licence applied for, or revoke your existing licence.
- 5.4 Where we refuse your licence application, you have the right to appeal, as explained below, but you are not able to engage in any licensable

¹⁷ Please see the OFT's statement of enforcement principles at www.offt.gov.uk/oft_at_work/enforcement_regulation/enforcement/

¹⁸ Information on the Enforcement Concordat can be found at http://bre.berr.gov.uk/regulation/reform/enforcement_concordat/enforcement_background.asp

¹⁹ Information on the Regulators' Compliance Code can be found at www.bre.berr.gov.uk/regulation/

consumer credit activity unless and until the decision is overturned on appeal. Where we revoke your licence, you are able to continue to engage in the categories of consumer credit activity covered by your licence until all the appeal processes have been exhausted.

- 5.5 Where we refuse your licence application or revoke your licence, the names of the applicants or licensees will be entered on the Consumer Credit Register, together with brief details of the reasons. The OFT can publicise the reasons for the refusal or revocation more widely if we consider doing so will help us in the performance of our functions.

Process for imposing requirements, or revoking or refusing a licence

- 5.6 If the OFT proposes to impose a s33A requirement on your or a s33B requirement on the supervisory body of a group licence, or proposes to revoke or refuse your licence, we must do this by formal notice. We will issue the notice, which will give reasons for the proposed action, to you. You will then have an opportunity to respond to the notice within 21 days to indicate that you wish to make representations to the OFT. Representations can be in writing and can also be made orally at a hearing in person. An independent OFT adjudicator will consider your representations and make a final decision. Further information about the adjudication process can be found in our leaflet *Licensing – your right to make representations* (OFT661).
- 5.7 Following the final decision by an adjudicator, you will have the further right to appeal the decision against you to the Consumer Credit Appeals Tribunal²⁰ provided that you have appropriate grounds to do so.

²⁰ This replaces the Secretary of State for Trade and Industry as the relevant appeals body from April 2008.

6 GROUP LICENCES AND REQUIREMENTS

6.1 The OFT issues group licences where it decides that the public interest is better served by doing that than by obliging those covered by a group licence to apply separately for standard licences (the public interest test).

6.2 The OFT considers that the public interest test will in general not be met unless the following conditions are met by the group licence holder:

- the holder and its members are fit within the meaning of section 25 CCA
- the holder has mechanisms in place to assess the fitness of the membership throughout the life of the licence, and if any members are not fit to be covered by the licence, suitable procedures are in place to exclude them from the cover of the group licence.

6.3 We consider that group licences are likely only to be suitable for groups where the risk of consumer detriment arising from the credit activities of members of the group is low. Currently, there are two broad categories of applicant that generally meet the criteria:

- advisory organisations with altruistic aims, and
- professional bodies with established disciplinary arrangements, whose members engage in limited, low risk credit activity, as an adjunct to their primary business activity.

6.4 As with standard licences, the OFT has the power to renew a group licence, vary its terms, suspend or revoke it, or refuse an application. The OFT can also exclude individual members from the cover of the group licence.

6.5 The OFT also has the power to impose a requirement on a 'responsible' person in respect of a group licence under section 33B CCA ('s33B requirement'). The responsible person will be the group licence holder who has responsibility for regulating or otherwise supervising the group. S33B requirements can oblige a responsible person to address any aspect of the regulation or supervision of the group that causes the OFT

to be dissatisfied. The requirement must relate to the group licence holder's practices and procedures for regulating or supervising licensees who operate under the cover of the group licence, in connection with their carrying on of businesses under the licence.

6.6 The following are examples of when the OFT may consider imposing s33B requirements:

- the OFT is dissatisfied with some aspect of a group licence holder's or applicant's Fitness and Compliance Plan²¹
- the group licence holder has evidence that members have proved unfit to engage in the credit activities covered by the group licence but has not excluded them from its cover
- a group licence holder is not following the process described in its plan for referring disciplinary matters to the OFT where it is necessary and appropriate to do so
- a group licence applicant's proposed plan does not include a robust membership screening process that ensures that new entrants to the group are fit to engage in the activities covered by the licence.

6.7 Before imposing a s33B requirement, the OFT will discuss its concerns with the group licence holder. Where the OFT imposes the requirement it will do so by notice to the responsible person giving the reasons for imposing it. The responsible person then has 21 days to indicate whether they wish to make representations. Representations can be made in writing and can also be made at an oral hearing in person. Following any representations, the OFT will make a final decision.

6.8 Details of the requirement will be entered on the Consumer Credit Register. The OFT may decide to publicise the requirement more widely

²¹ The Fitness and Compliance Plan should set out how the group licence holder intends to ensure that members of the group are fit to engage in the credit activities covered by the licence.

in the interests of consumers or to promote the integrity of the group licensing system.

- 6.9 Where a person does not comply with a section 33B requirement, the OFT may impose a financial penalty. The OFT's approach to financial penalties is set out in our *Statement of policy on civil penalties* (OFT971).
- 6.10 Alternatively, a failure by a responsible person to comply with a s33B requirement may cause the OFT to review whether or not the public interest continues to be better served by allowing the group to operate under cover of the group licence. It may be appropriate to revoke the licence if the group licence holder is unable to provide the supervision and co-operation required to satisfy the public interest test.

7 FURTHER INFORMATION ABOUT CONSUMER CREDIT LICENSING

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

7.2 If you have any queries about consumer credit licensing, you can contact the OFT at:

Consumer Credit Licensing

Room 1C/5

Fleetbank House

2-6 Salisbury Square

London EC4Y 8JX

Phone: 020 7211 8608

Email: enquiries@oft.gov.uk

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

7.4 For further help and advice you can also contact;

- your Local Authority Trading Standards Service (see local phone book for contact details, or go to www.tradingstandards.gov.uk)
- your trade association, if appropriate
- an independent legal adviser.

ANNEXE

All licence holders must ensure that they adhere to relevant legislation and sector-specific guidance issued by the OFT.

Now available are guidance documents

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

To order copies go to our website www.oft.gov.uk or call our mailing house on 0800 389 3158.

Below is a general list of practices that are unlawful and/or are considered unfair or improper, according to subject (please note that this list is not exhaustive):

Actions prohibited under the Consumer Protection from Unfair Trading Regulations 2008

The Consumer Protection from Unfair Trading Regulations (in force from 6 April 2008) prohibit unfair commercial practices that distort consumers' decisions. They contain:

- a general duty on businesses dealing with consumers not to trade unfairly
- prohibitions against misleading actions and omissions, and aggressive commercial practices
- in Schedule 1 of the Regulations, 31 specific practices that are always considered to be unfair.

Credit brokerage services and fees

- Failing to return fees in excess of £5 when a consumer does not take up a loan or enter into an agreement within six months of an introduction to a lender, for whatever reasons, contrary to section 155 of the Consumer Credit Act 1974.
- Inducing consumers to enter into agreements for mortgage arrangements where the licensee knew or ought to have known that the outcome of the loan application was uncertain.
- Setting terms covering when fees paid as commission become refundable which state that such fees are non-returnable and/or that the consumer would only be entitled to a refund of a proportion of the original fee, contrary to sections 155 and 173(1) of the Consumer Credit Act 1974.

Consumer credit advertising

- Using false or misleading statements in order to induce consumers to enter into a contract, by way of misleading information relating to finance contrary to Regulation 5(2) of the Consumer Protection from Unfair Trading Regulations 2008 or Regulations 3 or 4 of the Business Protection from Misleading Marketing Regulations 2007.
- Advertising in a way that contravenes paragraphs 5, 6 or 7 of Schedule I of the Consumer Protection from Unfair Trading Regulations 2008.
- Hiding important details about credit deals in the small print.
- Failing to include information required under the Consumer Credit Advertising Regulations 2004 (such as the Typical APR and other required financial information).

Consumer credit agreements

- Requiring consumers to enter into credit agreements in a manner not meeting the requirements of proper execution as prescribed by section 61(1)(a)-(c) of the Consumer Credit Act 1974.
- Requiring consumers to sign credit agreements that are not easily legible and are difficult to understand.
- Failing to comply with the information provision requirements of the Consumer Credit Act 1974.
- Failing to include key information required under the Consumer Credit Agreements Regulations 2004.
- Using terms that are unfair contrary to the Unfair Terms in Consumer Contracts Regulations 1999.

Consumer goods and services

- Inducing consumers to enter into contracts for the purchase of goods by making false statements about the description and availability of goods, contrary to the Sale of Goods Act 1968 and/or the Consumer Protection from Unfair Trading Regulations 2008.
- Inducing consumers to enter into contracts for the provision of services by knowingly, recklessly or negligently making false statements as to the nature of those services contrary to the Consumer Protection from Unfair Trading Regulations 2008.
- Failing to carry out work as agreed or with reasonable care and skill.
- Failing to perform contractual obligations to consumers, and failing, when in breach of contract, to give a refund, to pay damages, or to provide the goods or services as agreed.

- Failing to give consumers any or any adequate redress when in breach of any other legal duty owed to them.
- Selling of unroadworthy vehicles, contrary to section 75(5) of the Road Traffic Act 1988.

Responsibilities under the Company Directors Disqualification Act 1986

- Directly or indirectly taking part in the management of a company without leave of the court, contrary to section 1(1) of the Company Directors Disqualification Act 1986.

Business advertisements

- Causing an advertisement to be published that did not make it clear that the goods were being sold in the course of a business, contrary to the Business Advertisements (Disclosure) Order 1977 and paragraph 22 of Schedule 1 of the Consumer Protection from Unfair Trading Regulations 2008.

Handling money in the course of business administration

- Inappropriate or improper dealing with money held in trust for clients.
- Misappropriating business funds without having regard to the interests of creditors.

Companies Act 1985

- Failing to ensure that accounts are prepared and delivered for filing to the Registrar of Companies in accordance with sections 227, 241 and 242 of the Companies Act 1985.
- Failing to ensure that annual returns are delivered for filing with the Registrar of Companies in accordance with sections 363 and 365 of the Companies Act 1985.

- Failure to ensure that the accounting records of a company are sufficient to comply with section 221 of the Companies Act 1985.

Credit repair

- Encouraging consumers to lie to the courts so as to set county court judgments aside, in order to improve credit ratings and thus to obtain loans.
- Publishing advertisements promising to remove negative information from credit reference files even if they are accurate and timely.
- Failing to refund fees paid upfront, where services are not subsequently provided.
- Providing worthless 'money back' guarantees as follow-up literature to consumers in order to induce consumers to continue to proceed with credit repair services.

Non-status lending

- Inducing consumers to borrow on excessive or oppressive terms against the security of their homes without regard to their ability to repay the loan.
- Offers of inappropriate loans that fail to take into account the consumer's ability to repay, sometimes with catastrophic results.
- Marketing or targeting loans explicitly at consumers in debt.
- Failing (as a broker) to act in the best interests of the borrower; a preoccupation with the value of the security rather than the borrower's credit-worthiness ('equity lending').
- Imposing substantial brokerage or other advance fees separately, while failing to explain that such fees could be charged and deducted from the loan.

- Imposing very high interest rates, and increasing interest rates when a loan is in arrears, sometimes in breach of section 93 of the Consumer Credit Act 1974.
- Illegally canvassing agreements in consumers' homes, when not licensed to do so.
- Providing misleading documentation that fails to give, or misrepresents, key information, including misquoting interest rates and APRs.
- Improperly tying-in insurance products that the consumer is unaware of/misled about.
- Falsifying information as to a borrower's income or other aspects of their financial status in order to secure the loan.
- Misrepresenting the form, nature, purpose or long-term implications of loan agreements.
- Using unacceptably high-pressure selling techniques or engaging in any other aggressive commercial practices contrary to Regulation 7 of the Consumer Protection from Unfair Trading Regulations 2008.

Irresponsible lending

- Lending irresponsibly contrary to the provisions of section 25(2B) of the Consumer Credit Act 1974, by failing to take reasonable care in making loans or advancing lines of credit, including making only limited or no enquiries about consumers' income before offering loans, and failing to take full account of the interests of consumers in doing so.