



**dti**

**CONSUMER CREDIT ACT 1974**

GUIDE TO APPEALS  
FROM LICENSING  
DECISIONS OF THE  
OFFICE OF FAIR TRADING

November 2003



The DTI drives our ambition of 'prosperity for all' by working to create the best environment for business success in the UK. We help people and companies become more productive by promoting enterprise, innovation and creativity.

We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

**CONSUMER CREDIT ACT  
1974**

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FROM LICENSING  
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OFFICE OF FAIR  
TRADING

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## INTRODUCTION

1. The Consumer Credit Act 1974 ("the Act") set up a licensing regime for traders carrying on regulated consumer credit or consumer hire business. Licences are granted by the Office of Fair Trading ("the OFT"): it is an offence to engage in such business without one. Guidance on the consumer credit licensing system, including information on how to apply for a licence, is issued by the OFT. The OFT will not grant a licence to anyone it considers is not a "fit person" to engage in the business activities which a licence covers. It also has the power to revoke licences if it considers that the licensee is no longer a "fit person". There is a right of appeal to the Secretary of State for Trade and Industry from licensing decisions of the OFT (these decisions are formally called determinations). A table listing the categories of people who may appeal can be found in the annex to this Guide. In this Guide the people who have a right to appeal to the Secretary of State are referred to as the "appellant" or simply "you". The appellant and the OFT are described as the "parties" to the appeal. The Appeals Secretariat is described as "the Secretariat" or simply as "we".

2. This right of appeal is provided by section 41 of the Act. The procedure for making such an appeal is set out in the Consumer Credit Licensing (Appeals) Regulations 1998 SI 1998/1203 ("the Regulations"). **This booklet is a guide to that procedure, but it is not an authoritative or complete interpretation of the law.**

3. The authoritative version of the Regulations is published by The Stationery Office Limited as the Consumer Credit Licensing (Appeals) Regulations 1998, ISBN 0 11 079037 5. It is available from:

The Stationery Office Ltd  
PO Box 29 Norwich NR3 1GN  
Telephone orders and general enquiries  
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High Street, Cardiff CF1 2BZ  
029 2039 5548 Fax: 029 2038 4347

Publications may also be ordered through agents of The Stationery Office (see Yellow Pages) or any good bookseller.

4. An Internet version of the Regulations is available at:  
[www.legislation.hmso.gov.uk/si/si1998/19981203.htm](http://www.legislation.hmso.gov.uk/si/si1998/19981203.htm)

5. The Human Rights Act 1998 makes it unlawful for public authorities to act in a way which is incompatible with the rights and freedoms guaranteed under the European Convention on Human Rights, and requires legislation to be read and given effect to in a way which is compatible with those rights and freedoms, so far as it is possible to do so. The Secretary of State, who is a public authority under the Human Rights Act, carries out her functions under the Act and Regulations in accordance with these requirements. The same applies to the Appeals Secretariat and the panel of appointed persons.

6. We at the Appeals Secretariat in the Department of Trade and Industry handle the administrative arrangements for appeals on behalf of the Secretary of State. We will help with procedural questions, but we cannot give any legal advice or express an opinion on whether an appeal is likely to succeed. Our address is:-

The Appeals Secretariat  
Department of Trade and Industry  
Legal Services  
Room 131  
10 Victoria Street  
London SW1H 0NN

Telephone: 020 7215 3089

Fax: 020 7215 3238

E-mail: [consumercredit.appeals@dti.gsi.gov.uk](mailto:consumercredit.appeals@dti.gsi.gov.uk)

7. An appeal may be made with or without professional advice. It may be in your interest to seek independent advice in respect of the conduct of your appeal, for example, from your local Citizens Advice Bureau, your trade or professional association, or from a solicitor or other professional adviser.

## TIME LIMITS

8. This Guide refers to time limits that apply at various stages of an appeal. Subject to one exception, **time limits that apply to you (the appellant) cannot be extended.** The exception to this is the 28-day time limit for submitting your Notice of Appeal. If you think you need an extension of this time limit, you should ask the Secretariat for it to be extended, giving your reasons as soon as possible (see paragraph 13 below). Requests to extend this time limit are not granted automatically, but your application will be carefully considered.

## MAKING AN APPEAL

### Notice of Appeal

9. A Notice of Appeal (giving formal notice of appeal to the Secretary of State) must be **received** by the Secretariat **within a period of 28 days that begins with the date when the OFT's notice of determination was given** (but see also paragraph 13). Where the OFT uses first class post to send its notice of determination, the notice is deemed given to you two working days after posting. For example, if the OFT sends the notice by first class post on a Monday, it will be regarded as having been received on Wednesday. Therefore, Wednesday will be day 1 of the 28-day period.

10. You can deliver your Notice of Appeal by hand or send it by post or by fax. **Please note, your Notice of Appeal should be sent to the address stated at paragraph 6 of this Guide: do not send it to the OFT.** If you wish to fax your Notice of Appeal you must telephone us first; we will confirm receipt by telephone once your fax has been received. **Service by fax will not be accepted unless this procedure is followed in its entirety.** Please note, if your fax is received **after 4pm** it will be **regarded as having been received on the next working day.** For example, if we receive your fax after 4pm on a Tuesday, it will be regarded as having been received on the Wednesday. (We are not able to accept a Notice of Appeal by e-mail, but are hoping to

be able to introduce this option in the future.)

11. Your Notice of Appeal must be in writing, and must:

- (i) give your name and address;
- (ii) give the name, address and profession or occupation of your representative if applicable;
- (iii) state whether you wish correspondence concerning your appeal to be sent to you or to your representative;
- (iv) give sufficient information to identify the determination you are appealing against (e.g. the OFT's reference or licence number and the date of the determination);
- (v) set out your grounds of appeal in sufficient detail as to indicate:
  - what in the OFT's determination you disagree with, and why you disagree with it; and
  - any other matter which you are relying upon in your appeal; and
- (vi) be signed by you or your representative.

12. The form at the back of this booklet may be used to make your appeal (and you can continue on separate sheets of paper). Any form of written notice is valid, however, so long as it satisfies all the requirements listed in paragraph 11. You can obtain further copies of the form from the Secretariat. Please enclose with your Notice any documents that you wish to submit in support of your case.

13. As noted in paragraph 9 above, your Notice of Appeal must be received within a period of 28 days that begins with the date when the OFT's Notice of Determination was given. However, if you have decided in

principle to appeal but you consider that the period of 28 days is likely to expire before you are able to give Notice of Appeal, or if it has already expired, you can ask for an extension. In that event, you should inform the Appeals Secretariat in writing of the reasons for the delay and what extension you need. The Secretary of State will then consider your request. Appellants should note, however, that an extension will only be granted if it is considered that, in the circumstances, it would not be reasonable to expect you to meet the time limit, and that not extending the time limit could result in substantial injustice.

14. The Secretariat will acknowledge your notice of appeal promptly and send a copy to the OFT. If you do not receive an acknowledgement promptly, please enquire by telephone, fax or e-mail.

#### **Amendments to your grounds of appeal**

15. You may, at the Secretary of State's discretion, amend or add to your grounds of appeal **before** you have received notice of the time and place of the hearing. To do so you must send the Secretariat a copy of the addition or amendment you wish to make (bearing in mind the requirements of paragraph 11 above) along with any document necessary to explain or support the change that you are seeking. The Secretariat will give the OFT an opportunity to comment on the proposed addition or amendment. Changes will only be permitted if it is considered that the addition or amendment is capable of significantly affecting the outcome of your appeal.

16. The Secretary of State appoints people to hear appeals on her behalf: they are known as "appointed persons" or simply the "panel" (see paragraph 20 below). The panel has discretion to allow amendments or additions to your grounds of appeal for the purposes of the hearing **after** you have received notice of the time and place of your hearing. You should send the material to the Secretariat and we will pass it on to the panel member(s). If the panel member(s) decide

that they would consider hearing arguments about the material at the hearing we will copy it to the OFT. At the hearing, the panel usually asks the OFT's representative to comment on whether the material should be admitted.

#### **Additional material to be provided by the OFT**

17. When the OFT has received a copy of your Notice of Appeal it will send to us, within 21 days, a copy of the determination against which you are appealing and a copy of every document on which it intends to rely in opposing your appeal. Together these are known as the "additional material" or the "appeal bundle". The Secretariat will send a copy of the appeal bundle to you.

18. The OFT can ask for the Secretariat's agreement to additions or amendments to the appeal bundle either before or after it receives notice of the time and place of the hearing. As with amendments to your grounds of appeal, agreement is not automatic (the procedures set out in paragraphs 15 and 16 above apply in a similar way).

#### **Need to seek clarification**

19. The Secretariat may formally invite you to clarify your grounds of appeal and/or ask the OFT to provide further additional material, within 21 days, where it appears that this would help your appeal to be determined more fairly and efficiently. The Secretariat will send a copy of your response to the OFT, and a copy of the OFT's response to you.

#### **Persons appointed to hear appeals**

20. The Secretary of State appoints people to hear appeals on her behalf, the appointments being made from standing panels of suitably qualified independent persons. There are standing panels in place for England and Wales, for Scotland and for Northern Ireland. The panel that is appointed to hear each appeal usually has three members with an experienced lawyer as chairman. Although a government Minister appoints the panel members, they are independent of, and their conduct in respect of your appeal is not

influenced by, the Government. The panel will write a report to the Secretary of State on the hearing, giving its recommendations on the outcome of the appeal (see paragraph 41 below).

### **Withdrawal of appeal**

21. You may withdraw your appeal at any time prior to or during the hearing by giving written notice, including by fax or email, to the Secretariat. When you withdraw your appeal you cannot make a fresh appeal against the same determination.

### **Withdrawal of opposition to appeal**

22. At any time the OFT can give notice in writing that it does not seek to oppose your appeal. If this happens the Secretary of State may give notice to the OFT that she proposes to allow your appeal.

## **THE HEARING**

### **Date and place of the hearing**

23. The Secretariat will arrange a date and place for the hearing when we have received your Notice of Appeal and the appeal bundle. We will normally ask you and the OFT's representative to indicate any dates on which you will not be available to attend a hearing. We will then send you and the OFT a notice giving the time and place of the hearing and information about the way it will be conducted. The date fixed for the hearing will be not less than 21 days and not more than 6 weeks after the date of this notice.

24. The hearing will normally be held at a suitable centre reasonably close to your place of business.

25. You may appoint someone (e.g. a professional adviser or a friend) to represent or assist you at the hearing. It is also acceptable to bring someone to the hearing to provide moral support. The OFT is typically represented by a Legal Adviser from its Legal Division.

26. You must tell the Secretariat, no less than 14 days before the date of the hearing:

- (i) whether or not you will be attending the hearing;
- (ii) who, if anyone, will be representing you at the hearing;
- (iii) the names of any witnesses you or your representative intend to call (see paragraph 35); and
- (iv) whether, and on what grounds you request that the hearing should be held in private (see paragraphs 33 and 34).

This deadline cannot be extended. We will send this information to the OFT and to the members of the panel who are to hear the appeal.

27. Similarly, the OFT must tell the Secretariat who its representative will be, the names of any witnesses it plans to call and whether it wishes the hearing to be in private. The Secretariat will send a copy of this information to you and to the members of the panel.

### **Failure to appear at the hearing**

28. If neither you nor your representative appears at the hearing, the panel may adjourn the hearing; or it may hear the OFT's representative and then proceed to prepare its report in the usual way, without having had the advantage of hearing what you have to say. This could be to your disadvantage. If you are aware that neither you nor your representative can attend, you are strongly advised to tell the Secretariat without delay. Please also see paragraphs 44 - 46 on the issue of costs. Similarly, if the OFT is not represented at the hearing, the panel may adjourn the hearing or may hear you or your representative and proceed to prepare its report.

## **Nature of the hearing**

29. The appeal is in the nature of a rehearing. That is to say, the task of the panel is not to decide whether the OFT's Adjudicator reached the correct conclusion on the evidence before him or her or whether the Adjudicator followed the correct procedure (although these matters may sometimes be relevant to the outcome of the appeal) but whether, on the evidence before the panel at the date of the hearing, you are a fit person to hold or to continue to hold a licence.

30. Like the Adjudicator, the panel is concerned only with fitness to hold a licence and, where the question arises, suitability of the proposed trading name; other factors, such as the fact that not having a licence will damage your business or result in employees being made redundant, are relevant only so far as they help to show that you are willing and able to conduct the business in a fit and proper manner.

## **Procedure**

31. The Chairman will conduct the hearing as he or she thinks fit, taking account of the relevant regulations and this guidance, and will as far as appropriate, seek to avoid formality. Subject to any limits imposed by the chairman, you or your representative will be able to make an opening and a closing statement, to call witnesses and to question witnesses, as will the OFT's representative. The panel itself is likely to question the parties and their witnesses. Evidence may be given orally, or, if the panel permits, by affidavit or written statement. The panel may receive evidence of any fact it thinks is relevant whether or not that evidence would be admissible in a court of law or was available to the OFT when it took licensing action against you. In contrast to proceedings in a court, evidence is not usually given on oath but the chairman has power to administer an oath, or take an affirmation, where this is considered appropriate.

32. The panel may ask for further explanation of a factual point or of a party's case if necessary. It may indicate that it has heard

sufficient evidence on a particular point, but if you think it would be helpful to continue you should say so. As noted in paragraph 37 below, you may be permitted during the hearing to amend your grounds of appeal. The OFT will be able to comment on any amendments you propose. If necessary, the panel may adjourn the hearing to give each party an opportunity to consider any fresh evidence (see paragraphs 44-46 on costs).

## **Hearing to be public**

33. Hearings are normally heard in public. However if the Secretary of State considers that there are good reasons (for example, where the subject matter to be considered is commercially sensitive) the hearing can be held in private. Such requests will be considered by the Secretary of State. As noted in paragraph 26 above, if you think the hearing should be held in private you must let the Secretariat know, giving your reasons, no later than 14 days before the hearing. Otherwise the hearing will be in public.

34. For public hearings the Secretariat will arrange for a notice of the time and place fixed for the hearing to be published, usually in a local newspaper and on the DTI website.

## **Witnesses and evidence**

35. As noted in paragraph 26, if you propose to call witnesses at the hearing, you should inform the Secretariat who those witnesses will be no less than 14 days before the date of the hearing. It is recommended that, at the same time, you also provide a note indicating the main points of evidence you expect your witnesses to give. Similarly, if either you or your representative intends to rely upon any legal authority, such as a case report or specific legislation, you should supply the Secretariat with a copy of that authority as soon as possible.

36. As noted in paragraph 12, you should send any documents you wish to submit in support of your case with your Notice of Appeal. You may also seek leave of the Secretary of State to add to or amend your grounds of appeal up until you receive notice

of the time and place of the hearing. From that point on, further evidence may be admitted for the purpose of the hearing at the discretion of the panel. In order to give the panel and the OFT an opportunity to consider any such further evidence, you should send a copy of it to us at least 14 days before the hearing. It is particularly important that you provide this information in reasonable time before the hearing if the evidence to be presented by witnesses, or in documents, has not previously been brought to the attention of the OFT.

37. It is also possible, during the hearing, for you to ask the panel to admit additional oral or documentary evidence. Depending on the nature of this new evidence, it is possible that this may cause the panel to adjourn the hearing as long as may be necessary for the OFT to consider the information. If it is necessary to adjourn until a future date and if you could reasonably have produced the evidence earlier, costs might be awarded against you (see paragraphs 44 - 46 below).

38. The requirements and guidance relating to the production of evidence and the calling of witnesses apply equally to the OFT.

### **The Welsh language**

39. In accordance with the Department of Trade and Industry's Welsh Language Scheme (prepared in compliance with the Welsh Language Act 1993 and endorsed by the Welsh Language Board) the Secretariat will ensure that, at any hearing in Wales, the Welsh and English languages will be treated on a basis of equality, for example, appellants and witnesses may speak in Welsh if they wish to do so.

### **People with disabilities**

40. Please inform us as soon as possible if you, or someone who is to be your representative or witness, are disabled and you or they are concerned about facilities at the hearing venue. We will do our best to ensure that suitable provisions are in place.

## **DECISION**

### **Report and directions**

41. After the hearing the panel will write its report and make recommendations to the Secretary of State. In considering the report, the Secretary of State will follow her policy of, save in exceptional cases, accepting the recommendations of the panel and will not depart from its recommendations without first inviting the parties to make representations. The Secretary of State will then give directions (the formal notice on the outcome of the appeal) as to whether or not the appeal is to be allowed. These directions and a copy of the panel's report will be sent to you and to the OFT. The directions will include written reasons for the Secretary of State's decision. The directions are the formal means by which the Secretary of State tells the OFT to implement her decision.

42. The OFT maintains a Public Register with details of all licences under the Act, and action taken by the OFT in relation to those licences. The outcome of your appeal will be added to the Register. It is the policy of the OFT to include a brief announcement of the outcome of all appeals in its 'Consumer Credit Licensing Bulletin', in its publication 'Fair Trading' and in its annual report.

43. The Secretary of State has a duty to make appropriate arrangements for the publication of her decision, but must have regard to what disclosures are necessary for this purpose. She must bear in mind any information of a commercial nature, disclosure of which might significantly harm the legitimate business interests of an appellant or information relating to the private affairs of an individual, which might significantly harm that individual's interest. In this context the Secretariat will arrange for a notice of the decision to be published usually in a local newspaper and on the DTI website. The DTI will generally also issue a press release reporting the decision and providing any further information as necessary or appropriate but will generally not issue a press release if the hearing was private. All such press releases are placed on the DTI

website. If the Secretary of State makes documents relevant to her decision available to the press or the public, she will make any necessary deletions from these having regard to the considerations of confidentiality noted above.

### **Costs**

44. Both parties will be given an opportunity at the hearing to make representations as to costs (referred to in Scotland as expenses). Whether either party makes representations or not, the panel will make a recommendation about costs in its report to the Secretary of State. The Secretary of State will, save in exceptional circumstances, accept the panel's recommendations on costs so long as they are consistent with her policy on costs. Further, the Secretary of State will not depart from the recommendations of the panel on costs, without first having invited the parties to make representations on this issue.

45. The Secretary of State's policy on costs is that when your appeal is successful, the OFT is generally ordered to pay your costs; and when your appeal is unsuccessful no order for costs is generally made. This means that if your appeal is unsuccessful you will not generally be required to pay the OFT's costs. Exceptions are only likely where you have acted frivolously or in a vexatious manner or where your conduct was wholly unreasonable in making or pursuing your appeal. If, for example, you did not make representations to the OFT when invited to do so at the time the "Minded to Refuse" or "Minded to Revoke" notice was issued to you, and subsequently decided to appeal on the basis of grounds that could equally have been put to the OFT's Adjudicator at that time, this may warrant an exception to the usual practice. Where this is the case, you may not be awarded your costs in full if your appeal was successful or if your appeal was unsuccessful you may be required to pay some or all of the OFT's costs. When making its judgment about costs, the panel and the Secretary of State will also have regard to the OFT's conduct of the case.

46. If you have been awarded costs your first step is to seek to agree the amount of these costs with the OFT. However, if an agreement cannot be reached, you may make an application to the High Court (or, in Scotland, to the Court of Sessions) asking that the costs award be made an order of the Court. The costs will then be "taxed", meaning the Court will decide on a sum that it regards as fair. Should this arise, you may need to seek legal advice.

### **Further appeal on a point of law**

47. Section 11 of the Tribunals and Inquiries Act 1992 provides that you can appeal to the High Court on a point of law from a decision of the Secretary of State or in Scotland, to the Court of Session. In Northern Ireland the appeal is to a single Judge of the High Court in Northern Ireland by way of case stated. If you are considering making such an appeal it might be in your interest to seek legal advice without delay.

## ANNEX — WHO MAY APPEAL?

Set out below is a list of the determinations (i.e. decisions) of the OFT against which there is a right of appeal to the Secretary of State.

<b>Determination</b>	<b>who may appeal</b>
Refusal to issue, renew or vary a licence in accordance with the terms of the application	the applicant
Exclusion of a named person from a group licence	the person excluded
Refusal to give directions under section 29(5) of the Act authorising a licensee to carry into effect agreements made before the expiry of a licence, renewal of which has been refused	the licensee
Compulsory variation, suspension, or revocation of a standard licence	the licensee
Compulsory variation, suspension, or revocation of a group licence	the original applicant or any licensee
Refusal to end the suspension of a licence in accordance with the application	the applicant
Refusal to make an order under section 40(2) allowing enforcement of agreements made by an unlicensed creditor or owner	the applicant
Refusal to make an order under section 148(2) allowing the enforcement of an agreement for the services of a person carrying on an ancillary credit business when unlicensed	the applicant
Refusal to make an order under section 149(2) allowing the enforcement of agreements made on the introduction of an unlicensed credit-broker	the applicant

## NOTES TO FORM OPPOSITE

Please read these notes carefully before filling in the form.

### **1. Name and address of appellant**

Before completing this section please read the annex to this Guide: "who may appeal?"

Please check that your name appears correctly in the Office of Fair Trading's determination. If not, please state it correctly on the form.

### **2. Name, address and profession or occupation of person (if any) representing the appellant**

If you have a solicitor, accountant or other adviser who is advising you in relation to this appeal please include their name, address and occupation here.

### **3. I/We wish documents concerning this appeal to be sent to:**

Please indicate, with a tick, whether you wish documents to be sent to you at your address, or to your adviser.

### **4. Office of Fair Trading's reference or licence number**

and

### **5. Date of Determination**

These details can be found in the Office of Fair Trading's Determination.

# NOTICE OF APPEAL FORM

## Notice of appeal from a determination of the Office of Fair Trading ("the OFT")

- This form has two sides: please complete all relevant sections
- This form will be photocopied: please complete it clearly in black ink
- Please read the notes on the opposite pages before completing the form

1. I/WE (NAME OF APPELLANT, I.E. PERSON APPEALING)

OF (APPELLANT'S ADDRESS)

2. NAME, ADDRESS AND PROFESSION OR OCCUPATION OF PERSON (IF ANY) REPRESENTING THE APPELLANT

HEREBY GIVE NOTICE OF APPEAL TO THE SECRETARY OF STATE FROM THE DETERMINATION OF THE OFT REFERRED TO BELOW.

3. I/WE WISH DOCUMENTS CONCERNING THIS APPEAL TO BE SENT TO:

MY/OUR BUSINESS ADDRESS:

MY/OUR REPRESENTATIVE:

I/WE APPEAL TO THE SECRETARY OF STATE UNDER SECTION 41 OF THE CONSUMER CREDIT ACT 1974 FROM THE FOLLOWING DETERMINATION OF THE OFFICE OF FAIR TRADING:

4. OFFICE OF FAIR TRADING'S REFERENCE OR LICENCE NUMBER:

5. DATE OF DETERMINATION:

CONTINUED OVERLEAF



## NOTES TO FORM OPPOSITE

### **6. The grounds on which this appeal is based are:**

Please read paragraphs 11(v) and 12 carefully before completing this section.

If necessary you may continue on separate sheets of paper which should be secured to the form and signed and dated. If you wish, you may state all your grounds on a separate sheet, or sheets, which should be similarly signed and dated. In any event, you should enclose any supporting documents.

### **7. Signature:**

You or your representative must sign the form.

### **8. Position or authority:**

Please say in what capacity you are signing e.g. appellant, appellant's solicitor, accountant or representative.

### **9. Date:**

Date the form for the day you post, fax or hand deliver it.

### **10. Telephone No:**

Please give either your daytime telephone number or the daytime telephone number of the person who signs the form.

### **11. Returning your form:**

The means by which you can deliver this form and any supporting documents are set out in paragraph 10 of this guide.



