

The OFT's Principles for online and app-based games

OFT1519

Introduction

These Principles clarify the OFT's view of the online and app-based games industry's obligations under consumer protection law. Following our market investigation in 2013, we had concerns that there were industry-wide practices that were potentially misleading, commercially aggressive or otherwise unfair. The concerns we articulated, and which these Principles address, are:

- a lack of transparent, accurate and clear up-front information relating, for example, to costs, and other information material to a consumer's decision about whether to play, download or sign up to a game
- misleading commercial practices, including failing to differentiate clearly between commercial messages and gameplay
- exploiting children's inexperience, vulnerability and credulity, including by aggressive commercial practices
- including direct exhortations to children to buy advertised products or persuade their parents or other adults to buy advertised products for them
- payments taken from account holders without their knowledge, express authorisation or informed consent.

Principle 1

Information about the costs associated with a game should be provided clearly, accurately and prominently up-front, before the consumer begins to play, download or sign up to it or agrees to make a purchase.

Those costs should be broken down to specify:

- **the initial cost of signing up to, downloading or purchasing the game**
- **any subsequent costs that are unavoidable if the consumer wishes to continue playing the game**
- **optional extra costs, including in-game purchases (see examples)**

If any of these costs cannot reasonably be calculated up-front, an indication as to their nature and information on the manner in which the price is to be calculated should be given.

Whenever he/she will be placed under an obligation to pay, the consumer should be made aware of the item's total cost in a clear and prominent manner directly before the consumer places the order (for example directly before he/she clicks 'buy' or equivalent).

More likely to comply

A game is advertised at a specified, all-inclusive price. The consumer is able to create an account or download that game for that price and no further payments are required to access the game's full content.

Less likely or unlikely to comply

A game is advertised at a specified price without further qualification. However, on creating an account or downloading the game, the consumer may not access a significant portion of the game's content, or continue to play, without making a further payment or series of payments.

A game is advertised as 'free' and clearly and prominently states up-front that it is possible for players to make in-game purchases. The range of (i.e. most and least expensive) payments that may be made in the game and a list of the ten most popular in-game purchases are given up-front. The consumer can access discrete parts of the game that stand alone without the need to make purchases and can make an informed choice as to whether to pay to access additional content, the price of which has been made clear before the consumer begins to play or agrees to purchase the game. For example:

- A game based on collecting horses is advertised in an app store for free, but it is made clear the game offers the ability to make in-game purchases. The listing in the app store states: 'Common breeds of horses are available for free but in-app purchases ranging from 69p to £1.99 for rare breeds of horse are available'. It also provides a list of the most popular purchases made by existing players of the game: 'Most popular purchases: 1. Cleveland Bay horse – 69p; 2. Suffolk horse – 99p; Unicorn- £1.49...' and so on. Screenshots from the game included in the listing in the app store do not misrepresent what a consumer may achieve through gameplay when choosing not to make in-game purchases.

A game is advertised as 'free' and indicates that it is possible for players to make in-game purchases to access additional content. The consumer cannot, however, without making in-game purchases, access content integral to gameplay or play the game in a way that he/she would reasonably expect, given the information provided up-front (also see **Principle 2**). For example:

- A game based on collecting horses is advertised in an app store for free. Screenshots from the game show the stables full with horses. Having downloaded the game, the consumer may access the stables but he/she discovers that horses must be paid for with real money and so has been misled by the use of 'free'.



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- A game based on building a town in which characters live is advertised for free, but it is made clear that the game offers the ability to make in-game purchases to speed up gameplay. The listing in the app store states: 'This game is available to play for free but in-app purchases of between 69p and £29.99 can be made to speed up gameplay and to avoid having to wait while the builders construct houses for you'.

A game is advertised as 'free' to download but expressly states that an in-app purchase is required to continue playing the game after a particular level. For example:

- A game based on finding hidden fairies in a forest is advertised in an app store for free but the listing in the app store states: 'The first 10 levels of this game are available to play for free. An in-app purchase of 69p is required to access the remaining 30 levels'.

A game is advertised as 'free' to download without further qualification. After downloading and playing the game, the consumer finds out that a purchase is required to progress beyond a particular level. For example:

- A game based on finding hidden fairies in a forest is advertised in an app store for free. Having completed the first 10 levels, the consumer discovers that a payment of 69p is required to progress beyond level 10. The consumer had not been told that he/she would not have access to the full game.

Principle 2

All material information about a game should be provided clearly, accurately and prominently up-front, before the consumer begins to play, download or sign up to it or agrees to make a purchase. 'Material information' includes information about the main characteristics of the game and any other information necessary for the average consumer to take an informed decision to play, download or sign up to the game or to make a purchase.

Material information about the main characteristics of a game is likely to include:

- **a short description of the product**
- **where relevant, information about the functionality of the digital content (for example, language, duration, file type, size, resolution, updates, internet connection and geographical restrictions)**
- **where relevant, information about relevant compatibility with hardware and software of which the trader is aware or can reasonably be expected to have been aware**

Depending on context, other material information is likely to include:

- **whether the game contains marketing (i.e. promotion of products or services, either of the trader's own or of those of a third party)**
- **important terms and conditions, including information on how the consumer may cancel any subscription**
- **any restrictions on cancellation once a download has started, which the consumer must explicitly acknowledge**
- **how, and the reasons for which, personal or other data may be collected and processed (information about traders' obligations under the Data Protection Act 1998 is available at www.ico.org.uk)**
- **whether the game contains a social element or may otherwise permit a player to come into contact with other players**

Whenever he/she will be placed under an obligation to pay, the consumer should be made aware of the item's main characteristics in a clear and prominent manner directly before the consumer places the order (for example directly before he/she clicks 'buy' or equivalent).

More likely to comply

Important contract terms, particularly those that might disadvantage consumers, are clear, prominent and actively brought to consumers' attention in a timely manner.

Information readily accessible to all consumers – provided in writing before download, or before the consumer creates an account – outlines that there is third-party advertising within the game.

Once the consumer has downloaded a game and started playing it, an update to the game is released. Irrespective of whether the consumer has changed the settings on his/her device to accept automatic updates for technical fixes for example, he/she is notified that the update would introduce material changes and is given the opportunity to accept or reject those changes. 'Material changes' are unexpected changes and/or changes that affect the main characteristics or any other significant aspect of the game, which the consumer needs to know to be able to take an informed decision as to whether to accept the update.

Less likely or unlikely to comply

No information is supplied to the consumer about: the fact the game contains third-party advertising; cancellation rights; or use of personal data, which is shared with other parties for marketing purposes.

Information is provided in very long terms and conditions without any flagging of important aspects.

Where a contract is made between the consumer and the trader for the supply of the game (for example through membership), it is made clear to the consumer before he/she contracts how the contract can be cancelled and whether and how any refund would be due.

There is also a statement clearly explaining that any personal data supplied by the consumer will not be used for any purposes other than, for example, to communicate with the consumer about the game itself.

Once the consumer has downloaded a game and started playing it, there is an update to the game, resulting in the trader collecting and processing the consumer's personal data. The consumer was not informed of that change or given the opportunity to accept or reject it.

Principle 3

Information about the game business should be provided clearly, accurately and prominently up-front, before the consumer begins to play, download or sign up to the game or agrees to make a purchase. It should be clear to the consumer whom he/she ought to contact in case of queries, complaints or to seek redress. The trader should be capable of being contacted rapidly and communicated with in a direct and effective manner. When placed under an obligation to pay, the consumer should be able to retain that information in a durable medium.

More likely to comply

Information readily accessible to all consumers – provided both before download, or before the consumer creates an account, and in a durable medium allowing the consumer to retain it – outlines how the consumer may contact the relevant trader should he/she have a complaint or query. That information is provided in a form and manner that is easily, directly and permanently accessible.

The information provided includes that required by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (in force from 13 June 2014) and the Electronic Commerce (EC Directive) Regulations 2002; for example: the trader's trading name, geographic address at which it is established, telephone number and an electronic mail address at which the trader can be contacted rapidly and communicated with in a direct and effective manner.

Less likely or unlikely to comply

A game provides little or no adequate information to consumers about the trader, including how they may contact it in case of complaints.

When they attempt to contact the trader, there is no means for consumers rapidly to do so. Consumers' correspondence is blocked or ignored by the trader.

Principle 4

The commercial intent of any in-game promotion of paid-for content, or promotion of any other product or service, should be clear and distinguishable from gameplay. The younger he/she is, the more difficult it is likely to be for a consumer to identify the commercial intent of a commercial practice in certain contexts, and the language, design and structure of the game should take that into account.

More likely to comply

A game contains substantial free-to-play content. While consumers may pay to obtain premium content or features, information about the ability to do so is separated from gameplay. Consumers are not prompted while playing the game to pay for additional content or features. Any messages with a commercial intent are clearly identifiable and distinguishable from gameplay. For example:

- In a part of the game clearly delineated from gameplay, information is given: 'Super Pirate membership includes special swashbuckling features – click here to find out more!'

That information appears in the form of an advertisement that is distinguishable and separate from gameplay. Comprehensive information about membership benefits is given on a separate page (note: the game does not directly exhort the consumer to buy membership or upgrade his/her account: see **Principle 7**).

Less likely or unlikely to comply

A game contains substantial free-to-play content. Gameplay, and commercial messages intended to encourage consumers to pay for access to premium content or features, are intertwined and indistinguishable from each other. Consumers may undertake an aspect of the game but ultimately cannot complete it or derive the anticipated benefit from it without making a payment. For example:

- 'Find the pieces of silver on the Treasure Hunt to become a Super Pirate!' The consumer completes the Treasure Hunt, finds the pieces of silver but cannot become a Super Pirate without upgrading his/her account, which requires a payment. On completion of the Treasure Hunt, the game states: 'Become a Super Pirate – upgrade your account now!'

A game allows consumers to exchange in-game currency for game features and to purchase in-game currency for real money. Descriptions of the use of either in-game currency or real money are clear; for example:

- 'Use 30 bones to get a Dachshund puppy' and, on another screen:

'Buying extra bones costs real money'.

A game allows consumers to purchase in-game currency for real money in a shop, which is accessed via an icon displayed at all times at the side of the screen. Consumers are not prompted while playing the game to pay for additional content or features, but if they try to do something for which they do not have enough in-game currency, both free to play and paid-for options are presented with equal prominence. For example:

- 'You don't have enough bones to get the Dachshund puppy. You can wait to earn more bones for free or buy them for real money in the shop'. Under that, two equally prominent buttons are displayed:

'Go to shop'

'Cancel and wait'

A game uses similar language to describe the exchange of in-game currency for game features and the purchase of in-game currency for real money, for example:

- 'Buy a Dachshund puppy' (where the puppy is 'bought' with in-game currency) and, on another screen:

'Buy extra bones' (where bones are a form of in-game currency bought for real money).

A game allows consumers to purchase in-game currency for real money in a shop. There is an indistinguishable transition between gameplay and the shop when the consumer has insufficient in-game currency to carry out an action in the game. For example:

- 'You don't have enough bones to get the Dachshund puppy. Click here to get more'. It is not apparent that getting more will involve making a purchase; the consumer is then taken to the shop.

Options to get different amounts of bones are presented, for example: 'Get 10 more bones / 50 more bones / 100 more bones'. On clicking any of those options, the purchasing process is initiated. It had not been clear to the consumer until that point that a purchase would be necessary to get more bones.

Principle 5

A game should not mislead consumers by giving the false impression that payments are required or are an integral part of the way the game is played if that is not the case.

More likely to comply

Consumers may either pay, wait for a specified period of time or earn sufficient in-game currency (or similar) in a game to progress. Both paid-for and non-paid-for options are presented clearly and given equal prominence to consumers (notwithstanding those Principles applicable specifically in relation to children: see **Principles 6 and 7**).

A game gives equal prominence to options to spend in-game currency – which is available to buy for real money – and to wait for a specified period to progress in that game. For example:

- 'This plant takes 30mins to grow: FINISH NOW by using a seed or WAIT'.



Less likely or unlikely to comply

Consumers may either pay, wait for a period of time or earn sufficient in-game currency (or similar) in a game to progress. Little or no prominence is given to the free-to-play option and the average consumer is likely to assume they must pay if they wish to progress and/or continue to play the game.

A game does not make clear that the consumer may progress either by spending in-game currency – which is available to buy for real money – or by waiting for a specified period. For example:

- 'USE A SEED to finish growing the plant now'. It is not clear the consumer has the option to wait for 30mins for the plant to finish growing and without the need to use in-game currency.

Principle 6

Games should not include practices that are aggressive, or which otherwise have the potential to exploit a child’s inherent inexperience, vulnerability or credulity or to place undue influence or pressure on a child to make a purchase. The younger a child is, the greater the likely impact those practices will have, and the language, presentation, design and structure of the game should take account of that.

More likely to comply

A game provides information to consumers about premium content or features available for payment. That information is given in an objective, clear, accurate and non-exploitative way. For example:

- ‘Your seagull is hungry! Feed him sardines or ice cream to make him strong’. Sardines are available to earn in the game and are in frequent supply. Ice creams are scarcer and are available to buy for real money.



Less likely or unlikely to comply

A game implies that other players or characters within the game are relying on the consumer to do something that ultimately is likely to require a payment. For example, particularly for younger consumers:

- ‘Your seagull is hungry! Feed him ice cream or he will be unhappy’. The purpose of the game is to care for the seagull and to keep him happy. The consumer has insufficient ice cream to feed the seagull and the only way he/she can avoid him becoming unhappy is to buy more.

Alternatively, the game implies that a consumer is in some way inferior if he/she does not do something that necessitates a purchase. For example:

- A game allows a player to choose his/her own character, which represents that player in the game. The player can dress up the character by selecting items of clothing from a menu. The game says that a character will not be popular if it does not have a green hat. The green hat can be obtained only by making a payment.

A game informs the consumer that a limited edition feature is available. The game states for how long that feature is available and how it can be acquired. If in-game currency or real money need not be used to get that feature, that fact is made clear. For example:

- 'There's a new LIMITED EDITION REINDEER! She's available until 25 December, either to buy from the shop or you might be lucky and breed her for free!'

A game informs the consumer that a limited edition feature is available. The game implies that feature is scarcer than it actually is, for example by not stating for how long the feature is available or that the player can only get it or is significantly more likely to get it if he/she makes a purchase. For example:

- 'Get the LIMITED EDITION REINDEER now! You'd better be quick – she's only around for a short time! Get her in the shop now before she goes!' The reindeer is actually available for a month and may be acquired through gameplay as well as from the shop.

Also see **Principle 7**.

Principle 7

A game should not include direct exhortations to children to make a purchase or persuade others to make purchases for them.

More likely to comply

A game that is likely to appeal to children (see note ii.) requires the consumer to 'spend' in-game currency, which may be either earned through gameplay or bought for real money. When the consumer runs out of that in-game currency, there is no prompt or in-game encouragement or incitement to buy more. The game may nevertheless give information about what may be bought and how the payment mechanism operates. For example:

- 'You have run out of cherries. Cherries are available to buy in the shop for real money or you can earn them by completing challenges'.



Less likely or unlikely to comply

A game that is likely to appeal to children requires the consumer to 'spend' in-game currency, which may be either earned through gameplay or bought for real money. When the consumer runs out of that in-game currency, he/she is prompted – or encouraged or incited through in-game statements or images – to, for example, 'buy more', visit the shop to 'get more' or 'become a member'. For example:

- 'You have run out of cherries. BUY MORE NOW from the shop!'. A link takes the consumer directly to the shop.
- Or:
- 'Join now to become a member!' or 'Upgrade your account!' where doing so would require the consumer to make a payment (also see the pirate game example under **Principle 4**).

A trial version of a game that is likely to appeal to children is available for free and gives a sample of a fuller game available at a cost (such trial versions are often referred to as 'lite' or 'demo' versions). At the end of the trial version, the consumer is informed that a full version is available to purchase but does not directly prompt, encourage or incite him/her to buy it. For example:

- 'Well done – you've finished the free game! A full version with 200 extra levels is available to purchase in the app store'.

While playing a game likely to appeal to children, a consumer, clicks on an icon labelled 'Shop'. The shop includes items available for purchase displayed alongside a button with the word 'buy'. The 'buy' button forms part of the payment mechanism and equal prominence is given to an alternative 'cancel' button. The consumer is not instructed or incited to make a purchase but is rather provided with a mechanism by which to make a purchase.

A trial version of a game that is likely to appeal to children is available for free, which gives a sample of a fuller game available at a cost. Intermittently during gameplay, the game directly prompts, encourages or incites the consumer to buy or upgrade to the full version. For example:

- 'Level 1 complete – well done! Get the full version of this game now! Click here to buy now from the app store'.

During gameplay in a game likely to appeal to children, a message that interrupts gameplay says, 'Click here to buy a magic sword!'. If the consumer clicks on the link, he/she is taken to the in-game 'shop', where the magic sword may be purchased.

Principle 8

Payments should not be taken from the payment account holder unless authorised. A payment made in a game is not authorised unless express, informed consent for that payment has been given by the payment account holder. The scope of the agreement and the amount to be debited should be made clear. Consent should not be assumed, for example through the use of opt-out provisions, and the payment account holder should positively indicate his/her express, informed consent.

Traders must ensure that, at the point of each purchase, the consumer explicitly acknowledges his/her obligation to pay.

More likely to comply

Each time a consumer makes a purchase on a device, a default setting means that entry of the payment account holder's password is required to confirm the purchase. That ensures that the payment account holder has specifically agreed and consented to each individual amount to be taken from his/her account and that the payment is authorised.

The payment account holder may change that default setting. For example, he/she may select an optional setting so that password entry is not required each time a purchase is made, providing that the trader ensures at the point of each purchase the consumer explicitly acknowledges the obligation to pay and is given the relevant pre-order information as required by law. Such an optional setting might allow the consumer a 'window' after an initial password entry, during which time further entry of the password is not necessary. That 'window' operates only when selected by the consumer and is not an automatic or default setting.

Less likely or unlikely to comply

A payment account holder enters his/her password into his/her device to download an app or make a one-off purchase. For the next 20 minutes, a default setting means that the password need not be re-entered to make purchases. That default setting was not chosen by the payment account holder and he/she was not made aware of it. The payment account holder has not given consent to any payments made in that 20-minute period; those payments may not have been authorised.

Alternatively, on creating an account, the payment account holder is given settings to choose between. Those options allow the payment account holder:

- to permit the 'window' described above to operate
- to require a password to be entered each time a purchase is made, or
- to allow the consumer to select a threshold so that each time the total spend would exceed that threshold, he/she will be prompted to enter the password (for example, to require the password at £20 intervals).

It is then easy and intuitive for the consumer to amend these settings if at any time they wish to change them.

See also the OFT's [Principles for use of Continuous Payment Authority](#).

When making a purchase, the consumer is required to click on a button, which is labelled clearly, unambiguously and in such a way as to ensure that the consumer explicitly acknowledges the obligation to pay.

A payment account holder has selected a setting on his/her device to allow a 20-minute payment 'window' to operate. Within that window, the trader has not ensured that the consumer, when placing orders, explicitly and unambiguously acknowledges the obligation to pay. For example, a payment is taken from the consumer when he/she clicks on a button that states 'Get more fruit'. It has not been made clear to the consumer that that entails an obligation to pay.

General notes

i. Regulatory context

The proposed Principles set out the OFT's view of how the law is likely to be applied to traders in this industry. They are designed to assist traders by indicating behaviours that are more or less likely, in the OFT's view, to comply with relevant consumer protection law. They are not intended to be a comprehensive statement of the law in this area, and traders should familiarise themselves with their relevant legal obligations, including those under the Consumer Protection from Unfair Trading Regulations 2008, the Unfair Terms in Consumer Contracts Regulations 1999, the Electronic Commerce (EC Directive) Regulations 2002, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and, in some cases, the Payment Services Regulations 2009. The fact that a commercial practice is not given as an example in these Principles does not necessarily mean that it is acceptable under this legislation.

General guidance on the CPRs, the UTCCRs and other consumer protection legislation can be found on the [OFT's website](#).

In addition to these Principles, traders should be aware of their legal obligations and refer to relevant rules and guidance from [the Committee of Advertising Practice](#), [the Broadcasting Committee of Advertising Practice](#), [PhonpayPlus](#), [Ofcom](#), [the Information Commissioner's Office](#) and [the Gambling Commission](#).

ii. 'Games likely to appeal to children'

For the purpose of these Principles, the OFT considers that a child is likely to be considered a person under the age of 16. However traders should be aware that, under contract law, contracts entered into with people under 18 can be set aside in some circumstances.

It may be reasonably foreseeable that a game is likely to appeal to children through its content, style and/or presentation. Consideration should be given to the likely audience before designing commercial messages communicated to consumers and deciding whether a direct exhortation is to be included. A significant determinative factor is whether children are known to play the game or if the game is

marketed to children. However, other factors or attributes that may mean a game is likely to appeal to children are set out in this indicative and non-exhaustive list:

- inclusion of characters popular with or likely to appeal to children
- cartoon-like graphics
- bright colours
- simplistic gameplay and/or language
- the game concerns an activity that is likely to appeal to or be popular with children
- the game is available to be downloaded, signed up to or purchased by anyone and is not age-restricted
- the game is featured in a children's section of an app store

iii. Note on responsibility for compliance: Principles 1-3

Games businesses should provide the clear and accurate information required by Principles 1-3, either directly to the consumer or via platform operators. Platform operators should enable games businesses to comply with the requirements of Principles 1-3 by giving them the means by which they can provide the required information. Platform operators should enable games businesses to provide the information required under Principles 1-3, satisfy themselves that there are no conspicuous omissions and ensure that the information is displayed to the consumer before download or equivalent. If it is brought to their attention that the information is not fully and accurately displayed, the platform operator should take reasonable steps to remedy the situation. Games businesses should provide the information required under Principles 1-3, check that it is being fully and accurately displayed by the platform operator, and take reasonable steps to correct the information if it is not. Liability for any inaccuracies or omissions in the information displayed may be attributable to a games business and/or platform operator depending on which party is responsible for the failure to provide the information clearly to consumers.

Any material information that significantly changes after the consumer first downloads a game or creates an account – for example, when an update is released – should be brought to the consumer’s attention, allowing him/her to take an informed decision as to whether to accept or reject the changes.

Under Regulation 6 of the CPRs, a commercial practice is a misleading omission if, in its factual context, taking account of, among other things, limitations of the medium used (including limitations of space or time), it omits, hides or presents in an unclear or untimely manner material information and causes or is likely to cause the average consumer to take a transactional decision he/she would not have taken otherwise. The OFT considers that, although online and app-based games may be accessed by the consumer on devices with small screen sizes, that is unlikely to amount to a significant limitation of space because the nature of the medium means that it is possible to provide the necessary material information through, for example, pop-up boxes, links from a main menu, drop-down lists and the like.

Traders should also be aware that, under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, certain information must be given to consumers in a durable medium when they are placed under an obligation to pay.

iv. Note on responsibility for compliance: Principles 4-7

Responsibility for compliance with Principles 4-7 is likely to fall almost entirely to games businesses. Nevertheless, platform operators that are aware of a breach of those Principles by a games business operating on their platform are expected to take prompt action to minimise the risk of consumer harm. Such action may include issuing a warning to the games business, or temporarily or permanently removing that game from the platform.

v. Note on responsibility for compliance: Principle 8

Compliance with Principle 8 requires businesses that take payments from payment account holders to ensure that those payments are authorised and that the consumer explicitly acknowledges the obligation to pay when placing his/her order. Platform operators should take reasonable steps to remove games where in-game purchases may be made without the consumer explicitly acknowledging their obligation to pay.

Web references

OFT's Principles for use of Continuous Payment Authority

www.offt.gov.uk/business-advice/treating-customers-fairly/cpa-principles

OFT's general guidance on the CPRs, the UTCCRs and other consumer protection legislation

www.offt.gov.uk/business-advice

Rules and guidance from:

The Committee of Advertising Practice

www.cap.org.uk/Advertising-Codes/Non-broadcast-HTML.aspx

The Broadcasting Committee of Advertising Practice

www.cap.org.uk/Advertising-Codes/Broadcast-HTML.aspx

PhonepayPlus

www.phonepayplus.org.uk

Ofcom

www.ofcom.org.uk

The Information Commissioner's Office

www.ico.org.uk

the Gambling Commission

www.gamblingcommission.gov.uk

Annexe

Annexe to the OFT's Principles for online and app-based games - relevant legislative provisions – OFT1519a

www.offt.gov.uk/shared_offt/consumer-enforcement/oft1519a.pdf