

# **Children's Online Games**

report and consultation



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# Introduction

In April 2013, the OFT announced the launch of an investigation into the ways in which online and app-based games encourage children to make purchases. We investigated whether there was general market compliance with consumer protection law, in particular the Consumer Protection from Unfair Trading Regulations 2008 ('CPRs'), the Unfair Terms in Consumer Contracts Regulations 1999 ('the UTCCRs') and the Electronic Commerce (EC Directive) Regulations 2002 ('the ECRs'). We explored whether online and app-based games included commercial practices that may be considered misleading, aggressive or otherwise unfair under that legislation.

## Our investigation

As part of the investigation, we scrutinised commercial practices in 38 web and app-based games that we considered were likely to appeal to children. The games we examined are produced by businesses in the UK, Europe and the rest of the world. We also received around 200 submissions in response to our call for information, approximately 160 of which were from parents, the rest mostly from industry stakeholders.

We met several industry stakeholders – including individual businesses and trade associations – to discuss our concerns. In July 2013, we hosted a meeting with around 45 industry stakeholders to share an early draft of the proposed Principles contained in the Annexe to this report. We used feedback received at that meeting to refine and clarify the Principles.

## Proposed remedy

This report outlines the main issues we identified through our investigation and our proposed remedy: to produce a set of industry-wide Principles to make clear the OFT's views on businesses' obligations under consumer protection law and what they should do to avoid being the subject of targeted enforcement action.

Please see [the Annexe](#) to read the proposed Principles in full.

The OFT considers that commercial practices of this nature are likely to breach consumer protection law. Many of the games we examined contained, in our view, at least one of the commercial practices described in this report. As such, we consider it necessary for market participants to implement changes to ensure full compliance with their legal responsibilities.

## Our concerns

The concerns we uncovered during our investigation mainly fall into these categories:

- 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 identify the practice's commercial intent
- 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

# Proposed remedy: industry- wide principles

The OFT has considered different approaches to tackle the potentially unfair commercial practices uncovered by our investigation. We propose to consult on a set of Principles to clarify our view of the industry's obligations under consumer protection law. The proposed Principles are included in the Annexe to this report and you are invited to provide your opinions on them.

We consider that producing a set of Principles would be beneficial for these reasons:

- Principles will allow us to provide guidance to the industry as a whole so as to coherently address the range of issues we have identified.
- We recognise that the industry is relatively new and highly innovative. We understand from our discussions that guidance on the industry's legal obligations would be welcomed.

- Principles should act as a guide to the industry on the OFT's view of obligations under consumer protection law. They should also provide an indication of what practices may be the subject of subsequent enforcement action once the Principles are finalised.
- We intend to share the Principles with our international consumer enforcement counterparts to achieve consistency – as far as possible and where jurisdictional differences permit – in compliance and enforcement strategies.

## How the Principles are likely to be used

The proposed Principles set out the OFT's view of how the law is likely to be applied to businesses in this industry. They are designed to assist businesses by indicating behaviours that are more or less likely, in the OFT's view, to comply with relevant consumer protection law. The examples given are illustrative of the features of some games about which we have concerns and are not intended to represent any actual game. Neither are the Principles intended to be a comprehensive statement of the law in this area, and businesses should familiarise themselves with their relevant legal obligations, including those under the CPRs, the UTCCRs, the ECRs and, in some cases, the Payment Services Regulations 2009 ('the PSRs'). 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.](#) That guidance gives further explanation of key terms used throughout this report including, for example, 'average consumer' and 'transactional decision'. We have also set out in the General notes at the end of the Annexes whom we see as having significant responsibility for compliance.

In addition to the Principles, businesses 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](#), [PhonepayPlus](#), [Ofcom](#), [the Information Commissioner's Office](#) and [the Gambling Commission](#). We have engaged with those regulators when drafting the Principles for consultation.

# Proposed Principles: provision of clear, accurate material information

## The issue

The OFT considers that consumers need clear, accurate and prominent information up-front to enable them to take informed transactional decisions and to be able to compare products. Without clear, accurate and timely information relating to, for example, the costs associated with a product or service and/or how they are calculated, its main characteristics, unusual or onerous contractual terms or how to contact the business if things go wrong, the consumer may take a decision that he/she would otherwise not have taken, such as buying, downloading or signing up for something. The omission of such information can therefore have the potential to mislead consumers.

## Consumer behaviour

One particular feature of a number of games reviewed that has the potential to mislead consumers is 'drip pricing'. Drip pricing occurs when a price is advertised up-front but additional charges are 'dripped' to the consumer at a later stage. [The OFT's Advertising of Prices study](#) found that drip pricing makes it time-consuming and difficult for consumers to understand exactly what a business is offering and at what price.

## How this applies to online and app- based games

The OFT considers that this rationale applies to consumers' decisions about whether to buy, download or sign up to online services, such as web and app-based games. The absence of material information may cause the consumer to take a transactional decision that he/she might not otherwise have taken. The OFT considers that that includes a decision whether to download or sign up to a free game that has costs subsequently associated with it, as well as paying for a game up-front.

In addition, consumers may focus on a piece of pricing information that they receive up-front and which they believe is most important. In particular, a consumer who is not aware of any additional charges, whether unavoidable or optional, may make a decision based on the primary cost presented up-front, usually the initial cost to download or sign up to a game. In such circumstances, consumers' likelihood to reassess whether to continue playing the game based on additional costs that are presented after they have made a decision to download or sign up to a game may be reduced. It is therefore important to have all the necessary information on price, including the up-front cost, unavoidable costs and optional costs, clearly shown to the consumer before he/she decides to play, download or sign up to a game.

### **Consumer protection law**

Under the CPRs, information should be given to consumers in a clear, intelligible and timely manner. If businesses give misleading information to consumers or fail to provide them with important information, that may result in a breach of the CPRs. Having reviewed a selection of web and app-based games, the OFT considers that the information provided before purchase, download or the creation of an account is in some cases inadequate – and therefore misleading under Regulations 5 and/or 6 of the CPRs – in that it could cause, or be likely to cause, the average consumer to take a transactional decision that he/she would otherwise not have taken.

Under CPRs Annex Practice 20, it is in all circumstances considered unfair to describe a product as 'free' if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item. A game that is advertised as 'free' but requires the consumer to pay to access content integral to gameplay may therefore be in breach of CPRs Annex Practice 20.

Regulation 6(1)(d) of the CPRs states that a commercial practice is a misleading omission if it fails to identify its commercial intent, unless already apparent from the context (taking into account, among other things, the limitations of the communication medium used). The OFT considers that that provision may be relevant where a consumer's personal data are obtained by a business, for example for marketing or research purposes, but this commercial intent is not clearly disclosed to the consumer.

In addition, certain information is required under the ECRs – such as the trader's geographical address and electronic mail address – and it is likely to be a misleading omission not to include this.

The UTCCRs require standard contract terms to be in plain and intelligible language, meaning that the consumer must be able to understand what rights and obligations the term actually creates. Important contract terms, particularly those which may disadvantage

consumers, must be clear, prominent and actively brought to consumers' attention. Businesses must not take advantage of a consumer's weaker bargaining position or lack of experience and terms should be drawn up in a way that respects a consumer's legitimate interests.

## Consumer protection law: the 'average consumer'

Regulations 5 and 6 of the CPRs refer to the effect of a commercial practice on the 'average consumer'. In general, the average consumer is taken to be 'reasonably well informed, reasonably observant and circumspect', as well as possessing such other material characteristics as are relevant to the commercial practice (Regulation 2(2)). However the test is different where a commercial practice is directed to a particular group of consumers (Regulation 2(4)). The test is also different where a clearly identifiable group of consumers is particularly vulnerable to a commercial practice or product because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee, and that commercial practice is likely to materially distort the economic behaviour only of that group (Regulation 2(5)). In either of these cases the average consumer is taken to be the average member of this group.

The OFT considers that most of the games it has examined are either directed at or likely to appeal to children (and that traders can foresee this). As such, we consider that Regulation 2(4) and/or (5) are likely to apply. The OFT is therefore likely to interpret the 'average consumer' in respect of commercial practices contained in those games as referring to the average child.

For those reasons, the OFT proposes these three Principles to address what information should be provided to consumers before they decide whether to purchase, download or sign up to a web or app-based game.

# 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 (see examples)

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

Examples under this Principle: more examples are included in the full proposed Principles in the Annexe.

## More likely to comply

A game is advertised as 'free' and expressly 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:

## Less likely or unlikely to comply

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 a consumer would reasonably expect, given the information provided up-front (also see Principle 2). For example:

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- 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 additional to the initial cost of 69p.

- 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'.



## Principle 2

**All material information about the game should be clear, accurate, prominent and provided up-front, before the consumer begins to play, download or sign up to it or agrees to make a purchase. 'Material information' includes any information necessary for the average consumer to make an informed decision to play, download or sign up to the game or to make a purchase.**

Examples include:

- information about the main characteristics of the game
- 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 agreement
- how, and the reasons for which, personal or other data may be collected and processed

### 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.

### 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.

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Where a contract is made between the consumer and the business for the supply of the game (e.g. 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.

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Once the consumer has downloaded the game and started playing it, there is a change to the terms and conditions meaning that the trader will start collecting and using the consumer's personal data.

## Principle 3

**Information about the business should be clear, accurate, prominent and provided 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 who he/she ought to contact in case of queries or complaints. The business should be capable of being contacted rapidly and communicated with in a direct and effective manner.**

### More likely to comply

Information readily accessible to all consumers – provided in writing before download, or before the consumer creates an account – outlines how the consumer may contact the relevant business 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 Electronic Commerce (EC Directive) Regulations 2002; for example: the business's name, geographic address at which it is established and an electronic mail address at which the business 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 business, including how they may contact it in case of complaints.

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

# Proposed Principles: clear commercial intent

## The issue

If consumers are unable to identify the commercial intent of a commercial message, the OFT considers that that is likely to be a **misleading omission** under the CPRs if it is likely to cause the average consumer to take a transactional decision that he/she would not have otherwise taken. Consumers may place more trust in a message or believe it to be objective if they come across it in a context in which they would not normally expect to see marketing.

## Consumer behaviour

We consider that such practices may exploit consumers' behavioural biases, in particular loss aversion. Loss aversion refers to people's tendency to strongly prefer avoiding losses to acquiring equivalent gains. In the context of online and app-based games, our view is that if a consumer is not aware of the commercial intent of a message within the game – for example a message to complete a task within a game that the consumer later finds out can only be completed by making a payment – he/she may expect to be able to complete that task without making a payment. Time and effort may be invested by the consumer so when the consumer finds out that a payment is required, he/she may strongly prefer not to lose the progress already made through the

## How this applies to online and app-based games

When we scrutinised a selection of games, we found that many games included commercial messages that were not identified as having commercial intent. We consider that such a practice is likely to cause consumers – particularly younger, more vulnerable consumers – to take a transactional decision that they would not have otherwise taken.

Some games also stated or implied that making a purchase was necessary if the player wished to continue playing, or was simply part of gameplay. If it is possible to progress in a game by waiting or 'grinding' through a game – albeit at a slower rate than if a purchase were made – businesses should not mislead consumers into thinking that a purchase is necessary to progress.

time and effort invested. Their willingness-to-pay to complete the task may well be higher at this later stage of the game than if they were making an informed decision at the outset.

### Consumer protection law

Regulation 6(1)(d) of the CPRs states that a commercial practice is a misleading omission if it fails to identify its commercial intent, unless already apparent from the context (taking into account the limitations of the communication medium used and any measures taken by the trader to make the information available by other means). Commercial practices that imply purchases are necessary when that is not the case may constitute misleading actions or omissions under Regulation 5 and/or 6 of the CPRs, with reference to the effect on the 'average consumer' (see above). Such practices may also be prohibited under Regulation 3 of the CPRs.

Regulation 3 of the CPRs places a general prohibition on unfair commercial practices. Unfair commercial practices include where a business fails to act in accordance with the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers commensurate with honest market practice in the trader's field or the general principle of good faith. To be unfair, the dealings must materially distort or be likely to materially distort the economic behaviour of the average consumer. 'Honest market practice' and 'good faith' represent an objective standard, meaning it is not determined by how other businesses are acting. If you fail to meet this standard, you could still be in breach of the law even if the practice you adopt is widespread in the industry.

To address those issues, the OFT proposes two Principles relating to potentially misleading actions or omissions featuring in-game.

## 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.**

Examples under this Principle: more examples are included in the full proposed Principles in the Annex.

### 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!'

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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 or buy them for real money in the shop’. Under that, two equally prominent buttons are displayed:

‘Go to shop’

‘Cancel and wait’



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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.**

Examples under this Principle: more examples are included in the full proposed Principles in the Annexe.

### More likely to comply

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

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.

## How this applies to online and app-based games

Although all consumers may suffer detriment as a result of aggressive or otherwise unfair commercial practices, the OFT considers younger consumers are particularly at risk when these commercial practices are included in web and app-based games. Of the games we examined, some implied that consumers who did not make a purchase would let others down – either other players or characters in the game. The OFT considers children are more susceptible than older consumers to such practices, which have the potential to impair children's freedom of choice because of their inexperience, vulnerability and/or sense of credulity. In our view, the younger a child is, the stronger the likely impact of certain aggressive or otherwise unfair practices will be.

# Proposed Principles: aggressive or exploitative commercial practices

### The issue

The OFT considers that consumers may be unable to take informed transactional decisions when subjected to aggressive or otherwise exploitative commercial practices. For children, that might take the form of exploitation of their inherent inexperience, vulnerability and/or sense of credulity.

### Consumer behaviour

The OFT considers it likely that younger consumers are more susceptible to particular forms of aggressive or otherwise unfair commercial practices: what may be acceptable for certain audiences will not be acceptable for others.

## Consumer protection law

Regulation 7 of the CPRs provides that a commercial practice is aggressive if it significantly impairs or is likely significantly to impair the average consumer's freedom of choice in relation to a product through the use of harassment, coercion or undue influence, and if that commercial practice is likely to cause the consumer to take a transactional decision he/she would not have otherwise taken.

Regulation 7 of the CPRs defines 'undue influence' to mean 'exploiting a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the consumer's ability to make an informed decision'. Regulation 7 states that in determining whether a commercial practice uses harassment, coercion or undue influence, account shall be taken, for example, of its timing, location, nature or persistence; the use of threatening or abusive language or behaviour; and the exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer's judgement and of which the trader is aware. The OFT considers that some practices used in games may amount to undue influence, particularly bearing in mind the timing and nature of these practices, and the circumstances that children are in. Regulation 7 of the CPRs refers to the effect of a commercial practice on the 'average consumer' (see above).

Such practices may also be prohibited under Regulation 3 of the CPRs (see above).

Under CPRs Annex Practice 7, it is in all circumstances considered unfair to state falsely that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice. While it is always unfair to engage in such a practice, the OFT considers the likely impact of that practice would be greater on a child than on an adult in certain contexts, for example in a game likely to appeal to children.

The CPRs include a specific prohibition on directly exhorting children to buy advertised products or to persuade their parents or other adults to buy advertised products for them (CPRs Annex Practice 28). Although this provision is relatively untested in the Courts, especially in the UK, the OFT considers that some of the games it reviewed are likely to be in breach of this prohibition. The OFT considers that, where it is reasonably foreseeable that a game will be likely to appeal to children, traders should avoid directly encouraging or enticing players to make a purchase.

The OFT proposes two Principles relating to aggressive commercial practices and the specific prohibition on directly exhorting children.

## 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. The younger a child is, the greater the likely impact those practices will have, and the language, design, visual interface and structure of the game should take account of that.**

Examples under this Principle: more examples are included in the full proposed Principles in the Annexe.

### 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:

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- 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.
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## Principle 7

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

Examples under this Principle: more examples are included in the full proposed Principles in the Annex.

### More likely 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, 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**).

# Proposed Principles: unauthorised payments

## The issue

The OFT considers that it must be clear to consumers when they agree to make a payment **what exactly it is they are agreeing to**.

## Consumer protection law

If the amount the consumer reasonably expects to pay is different to that which is taken from his/her account – or if the consumer unknowingly gives authorisation for subsequent sums to be taken from his/her account – there is likely to be insufficient transparency in the agreement and the business taking money from the consumer is potentially in breach of the requirements of **professional diligence** under Regulation 3 of the CPRs. A contractual term that has the effect of enabling such practices may also be unfair under the UTCCRs.

The OFT has previously published [Principles for the use of Continuous Payment Authority](#) ('CPA'), which in-game purchases appear sometimes to be made under. Those Principles set out the need for transparency when using a CPA. It is particularly important that the scope of the agreed authority should be clear and that the consumer

## How this applies to online and app-based games

We are aware of instances in which consumers have entered their password on a device – for example, to download an app or to make a one-off purchase – but, for a subsequent period, re-entry of that password was not necessary to make other purchases. In some cases, parents, unaware that payments could be made on their device without re-entering their password, have passed their device to their child. The child has then clicked 'buy' in a game and money has been taken from the parents' account without their knowledge or permission. The OFT considers that, in such cases, the parents have not given informed consent for the subsequent payments to be taken from their accounts if the scope of the agreement or authorisation had not been made clear when they initially entered their password.

should specifically agree to the amounts to be debited, the timing / frequency of payment attempts and the account to be debited. Consent to a CPA should not be assumed and the consumer must positively indicate his/her informed consent to the use of a CPA. All relevant terms of the CPA agreement should be prominent and set out clearly and in plain, intelligible language; they should not just be contained in terms and conditions.

We consider that the basis for the Principles for the use of CPA – particularly the need for transparency and clarity – are relevant and applicable to in-game purchases. As stated above, it should be made clear to consumers what they are agreeing to, how much money is to be taken from their account and the scope of that agreement. For that reason, transparency and clarity over payments to be taken from consumers through in-game purchases are important.

The OFT therefore proposes a Principle to ensure such information is clearly disclosed to consumers to enable them to give informed consent to in-game purchases.

## Principle 8

**Payments should not be taken from the payment account holder unless authorised. A payment made in a game is not authorised unless 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 to the consumer so he/she can give informed consent. Consent should not be assumed, for example through the use of opt-out provisions, and the consumer should positively indicate his/her informed consent.**

### More likely to comply

Each time a consumer makes a purchase on his/her device, a default setting means entry of the consumer's password is required to confirm the purchase. That ensures that the consumer has specifically agreed and consented to each individual amount to be taken from his/her account and that the payment is authorised. The consumer 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. 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 consumer enters his/her password into his/her device to download an app or make a one-off purchase. For the next twenty minutes, a default setting means that the password need not be re-entered to make purchases. That default setting was not chosen by the consumer and he/she was not made aware of it. The consumer has not given consent to any payments made in that twenty-minute period; those payments may not have been authorised.

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

- 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](#)



# Consultation: process and timing for responses

This consultation will run for eight weeks, given that the OFT has engaged in pre-consultation with relevant stakeholders before the publication of this document. We therefore welcome comments on the proposed Principles, in the Annex, by **5pm on 21 November 2013**. You can submit a response, and contact us with a query:

By email: [childrensonlinegames@oft.gsi.gov.uk](mailto:childrensonlinegames@oft.gsi.gov.uk)

By post: Children's Online Games consultation  
Office of Fair Trading  
Fleetbank House  
2-6 Salisbury Square  
London  
EC4Y 8JX

We intend to publish a finalised version of the Principles in late January / early February 2014. There will then be a period of grace until 1 April 2014, after which point enforcement action may be taken against businesses likely to be in breach of consumer protection law.

# Consultation questions

Please find the proposed Principles in the Annexe

1. Do you agree that the Principles make clear how games should work to protect consumers?
2. Do you agree that the Principles clarify businesses' obligations under relevant consumer protection law, as outlined in this report?
3. Are the Principles worded well? If not, what wording would be better?
4. Do the examples help to make the Principles clear? If not, how could we improve them?
5. Do the notes to the Principles help to make the Principles clear? If not, how could we improve them?
6. Are there any problems with online and app-based games that the Principles do not cover? If so, what are they and how could the Principles solve them?

# Annexe

[Annexe A - The OFT's proposed Principles for online and app-based games](#)

# References

A full list of the weblinks in this document, by page

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

[www.offt.gov.uk/business-advice](http://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](http://www.cap.org.uk/Advertising-Codes/Non-broadcast-HTML.aspx)

From the Broadcasting Committee of Advertising Practice

[www.cap.org.uk/Advertising-Codes/Broadcast-HTML.aspx](http://www.cap.org.uk/Advertising-Codes/Broadcast-HTML.aspx)

From PhonepayPlus

[www.phonepayplus.org.uk](http://www.phonepayplus.org.uk)

From Ofcom

[www.ofcom.org.uk](http://www.ofcom.org.uk)

From the Information Commissioner's Office

[www.ico.org.uk](http://www.ico.org.uk)

From the Gambling Commission

[www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

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The OFT's Advertising of Prices study

[www.offt.gov.uk/shared\\_offt/market-studies/AoP/OFT1291.pdf](http://www.offt.gov.uk/shared_offt/market-studies/AoP/OFT1291.pdf)

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OFT's Principles for the use of Continuous Payment Authority

[www.offt.gov.uk/business-advice/treating-customers-fairly/cpa-principles](http://www.offt.gov.uk/business-advice/treating-customers-fairly/cpa-principles)