

# Online Sponsored Links

A joint FSA and OFT guide to advertisers of financial products and services



# Contents

1. Why have we published this guide?
2. Who regulates advertising for retail financial products and services?
3. Regulatory requirements for sponsored links
  - OFT
  - FSA
  - ASA
4. Dual regulation of sponsored links
5. Examples of compliance failings in mock advertisements for sponsored links – OFT rules
6. Examples of compliance failings in mock advertisements for sponsored links – FSA rules
7. Action for firms – how to ensure search terms are clear, fair and not misleading

## Why have we published this guide?

Following the publication of the FSA's review<sup>1</sup> into sponsored links we wish to remind advertisers of their responsibilities, and to raise standards of practice in this area. We also want to ensure that consumers are treated fairly and not misled when they use keywords to search for information on financial products and services.

The guide contains:

- Assistance on how to ensure that links returned from a search on key words do not mislead.
- Information on which products or services come under the two regimes.
- Examples of mock advertisements for sponsored links which would give rise to regulatory concern.

This guide will help online advertisers of financial products and services understand their obligations under the Financial Services and Markets Act (FSMA), which is regulated and enforced by the Financial Services Authority (FSA), and the Consumer Credit Act (CCA), as regulated and enforced by the Office of Fair Trading (OFT), local authority trading standards services (LATSS) and the Department of Enterprise, Trade and Investment in Northern Ireland (DETINI).

As such, the guide is for advertisers only and makes no reference to any requirements the regulations may place on the publisher.

This guide uses the abbreviated "OFT" to refer to "OFT, LATSS and DETINI".

The advertising regulations under FSMA and CCA only apply provided the sponsored links are regulated advertisements.

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1 [www.fsa.gov.uk/Pages/Doing/Regulated/Promo/index.shtml](http://www.fsa.gov.uk/Pages/Doing/Regulated/Promo/index.shtml)

# Who regulates advertising for retail financial products and services?

## OFT

The OFT regulates consumer credit advertisements issued by, or for, the following types of business:

- businesses that lend money or offer other forms of credit, whether secured or unsecured;<sup>2</sup>
- businesses that act as credit brokers by introducing consumers to sources of credit, for example, retailers or motor dealers.

## FSA

The FSA regulates advertising for:

- **pensions;**
- **savings and investments** – such as cash savings and bank accounts; bonds, gilts, company shares, collective investment schemes, individual savings accounts (ISAs);
- **insurance** – such as household and motor, travel, payment protection or critical illness; and
- **mortgages** (including Islamic and equity release mortgages) and reversion plans

## ASA

Matters concerning “non-technical” elements of advertisements otherwise regulated by the FSA or OFT, such as taste and decency and social responsibility, are regulated by the Advertising Standards Authority (ASA): the ASA regulates both technical and non-technical elements of financial advertisements that are not regulated by the FSA or the OFT. Internet advertising in paid-for-space (for example banner ads) and website sales promotions are both covered by the CAP code.

<http://www.asa.org.uk/asa/about/Guided%20Tours/Advertisers>

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<sup>2</sup> The OFT does not regulate advertisements for qualifying credit. These are instead regulated by the FSA and are secured credit advertisements where the provider of the credit is authorised by the FSA to enter into, or administer, regulated mortgage contracts. Regulated mortgage contracts are first charge mortgages meaning the charge holder has first claim over the security in the event the borrower defaults.

## Regulatory requirements for sponsored links

### OFT

The key requirements of the CCA (and specifically for advertising - the Consumer Credit (Advertisements) Regulations 2004 (the Regulations)) are that:

- credit advertisements must not contain false or misleading information;<sup>3</sup>
- credit advertisements must be clear and use language which is not difficult to understand; and
- key information such as the typical APR, where triggered, is easily identifiable and placed with other important information.

For more information on the Regulations, you can download:

- answers to frequently asked questions (FAQs): **Consumer Credit (Advertisements) Regulations FAQs;**
- a general guide to the credit advertising regime: **Credit advertising;** and
- sample advertisements and a flowchart illustrating the requirements of the Regulations: **Sample advertisements and flow chart.**

The Regulations define an advertiser as anyone identified by the advertisement as willing to enter into transactions to which it relates.

In the case of a brokerage advertisement, this would include the broker and also any relevant lender identified in the advertisement. It is the advertisers' responsibility to ensure their advertisements comply with all requirements of the Regulations and manage the content within the space available.

The Regulations apply to all forms of advertising including advertisements that appear on web pages as banner advertising and sponsored links.

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<sup>3</sup> Section 46 of the Consumer Credit Act 1974 has been repealed by the Consumer Protection from Unfair Trading Practices Regulations 2008 (CPRs).

## FSA

The FSA rule (made using powers under the FSMA regime) is that communications must be clear, fair, and not misleading. This rule covers all consumer communications made by an authorised firm and includes advertising (or “financial promotions” under FSMA).

Financial promotions are defined as “invitations or inducements to engage in investment activity”<sup>4</sup>. Unless there is a relevant exemption<sup>5</sup>, financial promotions should conform to requirements as laid out in the advertising sections of the FSA’s Handbook.

So, even if a sponsored link falls outside the FSA’s regime (that is, it is exempt or is not a financial promotion), it still needs to be clear, fair, and not misleading if communicated by an authorised firm. For example, a sponsored link could be viewed as misleading if key information, used to clarify a prominent headline claim, is not immediately accessible to the reader.

### **The links below will take you to the relevant advertising sections of the FSA Handbook:**

#### **For savings and investment products and services (including pensions):**

<http://fsahandbook.info/FSA/html/handbook/COBS/4>

#### **For general insurance products and services:**

<http://fsahandbook.info/FSA/html/handbook/ICOBS/2/2>

#### **For mortgages (including Islamic and equity release mortgages) and home reversion plans:**

<http://fsahandbook.info/FSA/html/handbook/MCOB/3>

<http://fsahandbook.info/FSA/html/handbook/MCOB/2/2>

#### **You can also find more help on the FSA’s special web pages for advertising**

[www.fsa.gov.uk/Pages/Doing/Regulated/Promo/index.shtml](http://www.fsa.gov.uk/Pages/Doing/Regulated/Promo/index.shtml)

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4 [www.fsa.gov.uk/Pages/Doing/Regulated/Promo/regime/index.shtml](http://www.fsa.gov.uk/Pages/Doing/Regulated/Promo/regime/index.shtml)

5 For guidance on the exemptions in the FSA Handbook – see PERG 8 and COBS 4.  
<http://fsahandbook.info/FSA/html/handbook/PERG/8>  
<http://fsahandbook.info/FSA/html/handbook/COBS/4>

## Examples of compliance failings in mock advertisements for sponsored links

### OFT's Consumer Credit Act requirements

The following mock advertisement breaches the Regulations on several counts:

#### **Lowest Cost Secured Loans**

Pay nothing for 3 months

No tenants

- It omits the typical APR, which is triggered by both the first line – as this indicates that credit is available on better terms than those of other lenders, and the second line, which would be viewed by the OFT both as an incentive and as Schedule 2<sup>6</sup> information.
- Line two also triggers the requirement to include all other relevant financial information contained in Schedule 2 as the OFT would consider this a repayment amount.
- As the sponsored link is advertising secured loans, it should indicate what the loans are to be secured against. If the answer to the above is the debtor's home, it should also include the appropriate prescribed security warning.

In this next example:

#### **Loans for Bad Credit**

Get a TV on credit today

Apply for instant credit approval

- The advert targets consumers in the sub-prime market, who would consider their access to credit restricted but omits to include the required reference to the typical APR.
- The third line constitutes an incentive to apply for credit, once again, triggering the typical APR.

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<sup>6</sup> Schedule 2 refers to item of financial information, for example, deposit, amount or frequency of repayment.

# Examples of compliance failings in mock advertisements for sponsored links

## FSMA requirements

### Mortgages

The FSA review<sup>7</sup> into sponsored links identified areas where firms' practice fell short of the required standards. For mortgages, key concerns were:

- links returned from an impaired credit search lacking any APR information;
- low interest rates which were either unavailable or subject to extremely onerous conditions which were not disclosed;
- instances where mortgage advice or independent advice was advertised as being free when it was not.

In the first example below, the advertisement lacks information on the APR. There is a requirement to show an APR if the advertisement indicates credit is available to those with impaired credit histories (or more generally to those who would consider their access to credit restricted).

#### **Watchout Mortgages**

CCJs? Bad Credit?

All circumstances considered.

[www.watchoutmortgages.co.uk](http://www.watchoutmortgages.co.uk)

In the second example below, the landing site subsequently made it clear that the low interest rate advertised was either unavailable or subject to very onerous conditions, so the sponsored link was misleading.

#### **954 Mortgages**

Easy on-line application

Rates from 2.4%

[www.954mortgages.co.uk](http://www.954mortgages.co.uk)

7 Review carried out July-October 2007

# Examples of compliance failings in mock advertisements for sponsored links

## FSMA requirements

### General insurance

The two simple examples below give an idea of how a sponsored link can breach the fair, clear and not misleading requirement.

In both cases, the offers in question lead consumers to believe they would be eligible to receive the offers. This is frequently not the case in reality – often only a few consumers may be eligible.

For promotions to be fair, clear, and not misleading, there should be no mismatch between the general impression the promotion creates and the experience the consumer has when responding to it. So we would not want the advert to give the impression that most customers will be eligible for the price or saving when neither of these is representative of the target audience of the promotion, or when only a small proportion of customers likely to respond to the promotion will receive the claimed price or saving.

For example, the claim 'Save up to £160 on your home insurance' could mislead the target audience if only 10% of applicants are expected to qualify for the saving.

You can read more about headline claims in general insurance on the FSA web pages:

[www.fsa.gov.uk/Pages/Doing/Regulated/Promo/thematic/savings\\_claims.shtml](http://www.fsa.gov.uk/Pages/Doing/Regulated/Promo/thematic/savings_claims.shtml)

[www.fsa.gov.uk/Pages/Doing/Regulated/Promo/thematic/home\\_motor.shtml](http://www.fsa.gov.uk/Pages/Doing/Regulated/Promo/thematic/home_motor.shtml)

[www.fsa.gov.uk/Pages/Doing/Regulated/Promo/rules/icobs/index.shtml](http://www.fsa.gov.uk/Pages/Doing/Regulated/Promo/rules/icobs/index.shtml)

You can also get specific help with FSA rules for describing pricing claims in the general insurance rulebook at:

<http://fsahandbook.info/FSA/html/handbook/ICOBS/2/2>

### Search term: Car insurance

<p><b><u>Car Insurance Direct</u></b></p> <p>With our award-winning cover you could save up to £155</p> <p><a href="http://www.cidinsurance.co.uk">www.cidinsurance.co.uk</a></p>	<p><b><u>ABG Car Insurance</u></b></p> <p>Save Up to £200 on Car Insurance</p> <p>10% Online discount.</p> <p>Visit our Website:</p> <p><a href="http://www.abg.co.uk">www.abg.co.uk</a></p>
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Across the range of financial products where claims are made using superlatives such as 'biggest', 'top', or 'cheapest', such claims should be substantiated. We would expect the landing page to prominently display such substantiation in order to be fair, clear and not misleading.

## Investments

Firms need to be mindful of the requirements in the Conduct of Business Sourcebook (COBS 4)<sup>8</sup>. They should ensure advertisements are balanced – that they avoid misleading headline claims, small print, and give sufficient prominence given to key risks; that they are clear, giving a fair and realistic impression of the product or service, with sufficient product information, and do not mislead consumers by, for example:

- showing overly prominent or cherry-picked data on past performance;
- creating unrealistic expectations; or
- making savings claims which are misleading for the target market.



8 <http://fsahandbook.info/FSA/html/handbook/COBS/4/2>

## Dual-regulation of sponsored links

Some firms may produce sponsored links containing elements that are regulated by both the FSA and OFT – for example, secured and unsecured credit. They may also offer a range of secured loan products - some from providers who enter into, or administer, regulated mortgage contracts, and some from providers who do not - and again may want to advertise these in the same sponsored link.

In such cases it is likely the resulting advertisement will need to comply with both the CCA and FSMA (so called dual regulated advertising). The advertisement will in any case need to comply with the CPRs and so must not be misleading, whether by content or omission.

The FSA and OFT have jointly produced some frequently asked questions to help firms identify when an advertisement may be dually regulated and to address some of the common issues that firms may encounter when creating a fully compliant advertisement.

Download the [joint FAQs](#) or view them on the [FSA website](#).

## Action for firms – ensuring search terms are fair, clear, and not misleading

Where the sponsored link is not in line with the search term used and the website returned by the sponsored link does not accurately reflect the expectations created by the search term used, the sponsored link would not be fair, clear and not misleading. The following examples explain this point.

- The phrase 'independent financial advisers' produced firms which were not independent. This could give rise to the risk that consumers are misled into dealing with firms which are not independent.
- The phrase 'guaranteed returns', returned firms whose investment products are linked to the performance of stocks and shares where returns could not in fact be guaranteed.
- The term 'free advice' included links to firms whose advice was not free.

Firms should be mindful of this when purchasing – or instructing media agencies to purchase – search terms on their behalf from search engine providers. They should also have adequate systems and controls in place to ensure they do not buy keywords or terms which result in misleading return results.

The use of 'broad matching' technology by search engines means that the terms which an advertiser purchases may be different to those the user has typed in before viewing their advert as the broad matching expands the range of words which might potentially show up. Thus if we take 'car insurance' as an example of the key words searched on, the search may return 'cheap car insurance' or 'car insurance at a great price'. Or the search term 'loan' may result in 'credit-impaired loans'.

Search engine providers also offer firms the facility to negatively exclude terms in the search terms they purchase. Firms should give careful consideration to these to help ensure that their sponsored links do not mislead consumers, and work with search engine providers to use these facilities responsibly.

We would also remind firms not to bid on the names of other firms/competitors if this could result in misleading the consumer or creating an expectation that their firm is the same as the one the consumer has searched on.

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