

FINANCIAL SERVICES AND MARKETS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part II: Regulated and Prohibited Activities

Section 30: Enforceability of agreements resulting from unlawful communications

76. When a customer enters into an agreement or exercises any rights as a result of a communication in breach of the financial promotion prohibition, the agreement will be unenforceable against him. The customer will also be entitled to recover any property transferred and to receive compensation for losses incurred, but if he chooses to recover property transferred or not to continue the contract, he must return any money received.
77. However, in certain circumstances the courts may enforce agreements made in contravention of the prohibition and allow money and property transferred under the agreement to be retained if it is satisfied that this would be just and equitable, having regard to whether:
- where the person seeking to enforce the agreement was the illegal promoter, that he reasonably believed that the promotion had not been made in breach of the prohibition; or
 - where the contravention was by a third party, that the person seeking to enforce it did not know that the agreement resulted from an illegal promotion.