



Trading Standards Institute

Consumer Codes Approval Scheme

New codes approval criteria - consultation paper

Date: 24 October 2012

Foreword



We are delighted to announce our proposals for strengthening the criteria for approval of consumer codes of practice.

In April 2012, the government asked TSI to develop a successor to the Office of Fair Trading's Consumer Codes Approval Scheme (CCAS) and to have it ready for market by April 2013. We are on course to do so, and will shortly publish our proposals for the future governance and funding of the successor scheme.



This consultation paper is about the codes approval criteria and is relevant to businesses of all sizes, trade associations, consumers, consumer law enforcers, and consumer organisations.

In developing our proposals for the new codes approval criteria, **we have sought to strike the right balance between reducing consumer detriment and broadening the reach of the scheme.** We aim to **reduce consumer detriment for more transactions, by more consumers, in more circumstances, and help create growth for those businesses who trade on fairness and conscience rather than price alone.**

Our proposals enjoy sufficient synergy with those adopted by the Office of Fair Trading to enable all existing approved code sponsors to seamlessly transfer to the new scheme if they wish to do so.

We are keen to learn the views of all stakeholders on our proposals and we urge you to respond to this consultation paper.



Ron Gainsford OBE, Chief Executive

Consumer Codes Approval Scheme

Our vision is to establish a scheme that has a primary objective of reducing consumer detriment and which is inclusive, independent, sustainable, visible, and understood.

Responding to the consultation



How to respond

When responding, please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents and where applicable, how the views of members were assembled.

In accordance with good practice, TSI intends to publish all responses to the consultation on our website. Responses from individuals will be anonymised, but we will publish the names of organisations that have responded to the consultation. Please indicate if you would not like your response to be published.

By post, email or online

A consultation questionnaire has been developed to assist you in submitting your views; it accompanies this document. You should feel free to answer as many or as few questions as you wish. The questionnaire can be viewed and completed online at <http://www.tradingstandards.gov.uk/cccc/> or downloaded from the Trading Standards Institute website at <http://www.tradingstandards.gov.uk/cccc/>

Responses must be received no later than 12.00 on 14 December 2012 and should be posted to the address below or emailed to tonya@tsi.org.uk

Tony Allen
Project transition manager
Consumer Codes Approval Scheme
Trading Standards Institute
1 Sylvan Court
Sylvan Way
Southfields Business Park
Basildon
Essex SS15 6TH

Telephone: 0845 608 9670

A list of those organisations and individuals consulted is in the annex at the back of this document. We would welcome suggestions of others who may wish to be involved in this consultation process.

Additional copies

A printed copy of the consultation document is available from the offices of the Trading Standards Institute (contact details as above).

Help with queries



Questions about the policy issues raised in the document can be addressed to Tony Allen (contact details as above).

If you have any comments or complaints about the way this consultation has been conducted, these should be sent to:

Jacqui Guerreiro
Trading Standards Institute
1 Sylvan Court
Sylvan Way
Southfields Business Park
Basildon
Essex, SS15 6TH

Email: jacquig@tsi.org.uk

What happens next?

We intend to publish a consultation response as soon as possible after the close of the consultation. This response will take the form of decisions made relating to the codes criteria of the Consumer Codes Approval Scheme in light of the consultation, a summary of the views expressed and reasons given for decisions finally taken. This document will be published on the Trading Standards Institute website with paper copies available on request.

Purpose of the consultation



A new 'codes approval body' will take over responsibility for the existing Office of Fair Trading (OFT) managed Consumer Codes Approval Scheme (CCAS) from April 2013. A separate paper on the governance and funding of the new 'codes approval body' has also been published alongside this consultation paper.

This consultation paper is seeking views on the proposed changes to the codes approval criteria under the new Scheme.

The consultation is being conducted in line with government consultation principles and will be published soon.

Scope

The new 'codes approval scheme' is intended to be inclusive, independent, sustainable, visible, and understood.

The scope of this consultation document includes the core criteria a code sponsor must meet in order for their application to be accepted. The governance of CCAS, the approval process, the scheme logo, and fees and charges relating to the scheme, are outside the scope of this consultation and will be consulted on separately.

Background information

The OFT has been operating CCAS since 2001. The scheme aims to raise consumer service standards through the approval and promotion of self-regulatory business-to-consumer codes of practice. The OFT has statutory powers to approve and promote consumer codes of practice, under part 1, section 8 of the Enterprise Act 2002. The two stage approval process includes the code sponsor meeting set code criteria including the provision of clear pre-contractual information, monitoring procedures, protection of prepayments, and independent dispute resolution schemes. There are currently 12 approved codes, with a further three working towards approval.

In June 2011 the Department for Business, Innovation and Skills (BIS) published a consultation document entitled Empowering and Protecting Consumers. The consultation included a review of the existing OFT run CCAS.

BIS published its response to the consultation in April 2012 and invited TSI to establish a successor to the CCAS on a self-funding basis from April 2013. The OFT will continue to maintain the CCAS for the existing members and to progress well-advanced applications, until the handover to the new scheme.

Why change the core criteria?



We intend to use the existing OFT CCAS as the basis for the new codes approval scheme. In order to speed up the application process and encourage businesses to join, it is proposed that the existing OFT core criteria be modified and simplified. Additionally, it is proposed that some areas of the core criteria be strengthened to encourage businesses to raise consumer service standards.

Purpose of the Consumer Codes Approval Scheme

Consumer Codes Approval Scheme

To raise consumer service standards and reduce consumer detriment.

Guiding principles

The three main principles behind the proposed changes to the CCAS application process and core criteria are set out below:

1. Consumers are at the heart of business

The approved codes must focus on raising consumer service standards and reducing consumer detriment. Code approval is the start not the end of the process. This is an ongoing commitment for code sponsors and their members.

2. The Consumer Codes Approval Scheme is inclusive

The scheme is open to all code sponsors who have a definable 'membership', be it by trade sector, geographical location or other definable trading sector or practice.

3. The focus is on the outcomes, not the process

The proposed changes to the application process, core criteria, and approval process aim to reduce the burden on businesses, by reducing the time and cost associated with compliance with the scheme. Whilst still focusing on the key objectives of raising consumer service standards and reducing consumer detriment via a robust and valued code approval scheme.

OFT current core criteria



The proposed changes to the existing core criteria are set out below.

Each existing OFT criterion is summarised alongside any proposed changes, which are looked at in detail from page 13 onwards.

The full OFT core criteria and guidance can be found on the OFT website:

http://www.offt.gov.uk/shared_offt/Approvedcodesofpractice/oft390.pdf

1

Organisational criteria 1a - 1c

Criterion	Requirement	Amendment
1a	Code sponsors should have a significant influence on the sector.	amend see page 13
1b	Codes should include a provision that compliance with the code is mandatory. Code sponsors must be able to demonstrate that members are prepared to observe the code's provisions.	no change
1c	Code sponsors shall have adequate resources and funding to ensure the objectives of the codes are not compromised.	no change

2

Preparation of the code criteria 2a - 2b

Criterion	Requirement	Amendment
2a	Code sponsors shall be able to demonstrate that organisations representing consumers, enforcement bodies and advisory services have been adequately consulted throughout the preparation of the code.	no change
2b	Code sponsors shall be able to demonstrate that organisations representing consumers, enforcement bodies and advisory services are being adequately consulted throughout the operation and monitoring of the code.	no change

OFT current core criteria continued



3

Content of the code criteria 3a - 3l

Criterion	Requirement	Amendment
3a	The code shall include measures directed at the removal or easing of consumer concerns and undesirable trade practices arising within the particular sector.	no change
3b	The code shall require that code members ensure that their relevant staff know about and meet the terms of the code as well as their legal responsibilities. Appropriate training is to be provided.	no change
3c	The code shall address clear and truthful marketing and advertising as appropriate to the sector.	no change
3d	The code shall address clear and accessible pre-contractual information as appropriate to the sector.	no change
3e	The code shall address high-pressure selling as appropriate to the sector.	no change - but an additional criterion added to address sales in the home see page 15
3f	The code shall address clear terms and conditions of supply and fair contracts as appropriate to the sector.	no change
3g	The code shall address delivery and completion dates as appropriate to the sector.	no change

OFT current core criteria continued



3

Content of the code criteria 3a - 3l

Criterion	Requirement	Amendment
3h	The code shall address cancellation rights as appropriate to the sector.	no change
3i	The code shall address guarantees and warranties as appropriate to the sector.	no change
3j	The code shall address protection of deposit or prepayments as appropriate to the sector.	amend see page 17
3k	The code shall address customer service provisions as appropriate to the sector.	no change
3l	The code shall address the additional effort/help to be provided to vulnerable consumers as appropriate to the sector.	no change

OFT current core criteria continued



4

Complaints handling criteria 4a - 4d

Criterion	Requirement	Amendment
4a	The code shall include a requirement that code members shall have in place speedy, responsive, accessible and user friendly procedures for dealing with consumer complaints. A specific reasonable time limit for responding to complaints shall be prescribed.	no change
4b	The code shall include a requirement that code members will offer the same level of cooperation with local consumer advisers or any other intermediary acting on behalf of a consumer when making a complaint as they would to the complainant.	no change
4c	The code shall include procedures for dealing with complaints including the availability of conciliation services directed at arranging a decision acceptable to both parties.	delete - 4c & 4d to be replaced by one new criterion see page 18
4d	<p>The code shall include the availability of a low-cost, speedy, responsive, accessible and user-friendly independent redress scheme to act as an alternative to seeking court action in the first instance.</p> <p>The scheme shall be binding in respect of code members who shall not be able to refuse to allow a complaint to go before the scheme if a customer so chooses.</p> <p>The code member shall be bound to accept a decision made under the scheme. Any such scheme shall be able to take into account possible breaches of the code where relevant to the complaint.</p>	delete - 4c & 4d to be replaced by one new criterion see page 18

OFT current core criteria continued



5

Monitoring criteria 5a - 5f

Amendment

Criterion	Requirement
5a	The code sponsor shall develop performance indicators, e.g. mystery shopping exercises and independent compliance audits, to measure the effectiveness of the code.
5b	The code sponsor shall implement the performance indicators and make available the results of their monitoring procedures and satisfaction surveys to demonstrate the effectiveness of the code.
5c	<p>The code sponsor shall provide a written report annually to the OFT on the operation of the code to include:</p> <ul style="list-style-type: none"> • changes to the code agreed with the OFT and implemented • numbers and types of complaints including information on outcomes from the conciliation process and the independent redress scheme • results from monitoring, satisfaction surveys and the disciplinary process <p>It would be preferable if the report were compiled by an independent person or body with powers to recommend actions.</p>
5d	The code sponsor shall provide copies of the annual reports to the OFT.
5e	The code sponsor shall regularly review the code and update its provisions in the light of changing circumstances and expectations.
5f	Consumer satisfaction shall be regularly assessed.

amend
see page 21

amend
see page 22

amend
see page 23

**delete - covered
by 5c**
see page 25

no change

**delete - covered
by 5a**
see page 21

OFT current core criteria continued



6

Enforcement criteria 6a - 6b

Criterion	Requirement
6a	Code sponsors shall establish a procedure for handling non-compliance by members with the code. The procedure shall include independent disciplinary procedures and reasonable timescales for action.

Amendment

delete - 6a & 6b
replaced with one
new criterion
see page 26

Criterion	Requirement
6b	The code sponsor shall also set out a range of sanctions, e.g. warning letters, fines, termination of membership, for dealing with non-compliance.

delete - 6a & 6b
replaced with one
new criterion
see page 26

OFT current core criteria continued



7

Publicity criteria 7a - 7f

Criterion	Requirement	Amendment
7a	Code sponsors and members shall ensure that their customers are aware of the code.	amend see page 29
7b	Code members are to make clear, e.g. in advertising, point of sale, their adherence to a code of practice.	no change
7c	Copies of codes shall be available without charge to customers, to members, to local consumer advisers and to others with a legitimate interest.	no change
7d	Copies of any code related publicity generated by the code sponsor shall be provided to the OFT in advance of publication.	no change
7e	Code sponsors and members shall publicise the fact that the OFT has approved the code by using the CCAS logo in the prescribed manner.	delete - covered by 7a & 7f see page 30
7f	Code sponsors shall comply with the terms of the standard copyright licence, disseminate the terms to their members and monitor their members use of the CCAS logo. Appropriate action shall be taken by the code sponsor against a member for non-compliance with the copyright licence.	no change

TSI proposed core criteria



OFT core criterion 1a

Code sponsors should have a significant influence on the sector.

The OFT will accept applications from code sponsors that can show at least one of the following:

- membership that includes a majority of firms in their sector
- a code that contains some of the more progressive elements in the industry
- a code of practice in a sector where one does not already exist
- a code of practice that provides more benefits for consumers than other codes in the same sector

Proposal

It is proposed that criterion '1a' is expanded and is no longer sector specific to make the CCAS more inclusive and encourage a wider range of businesses to join. As long as the code sponsor can define the scope of influence for its code and potential membership, it will be considered. For example, scope could be based on a geographical location, such as a shopping centre; local authority area; a conglomerate that has multiple businesses across the UK; or any other space in the marketplace that can be defined.

The requirement that the code sponsor has a significant influence over their defined space in the marketplace will remain.

TSI proposed core criteria

Code sponsors should define the scope of influence for their code and potential membership.

Code sponsors should demonstrate how they exercise significant influence over their members.

**Examples:**

A landlord of a local shopping centre could identify the boundaries of their space in the market place as the boundaries of their shopping centre. They could then demonstrate significant influence over the space by having a requirement in tenancy agreements for tenants to comply with a code of practice. That could be an eligible code provided it meets the other requirements for approval.

**Example:
a landlord
of a local
shopping
centre**

A local authority could identify its administrative boundary as its space in the marketplace and then demonstrate significant influence over it by its role as regulator and its focus on accreditation and vetting of locally based traders. Again, its code of practice could be eligible.

**Example:
a local
authority**

Question 1:

What is your view on the proposed changes to open up the membership of CCAS to more businesses?

Question 2:

What is your view on where to define the boundaries for eligibility to apply for code approval? (For example, should an individual company be eligible to present their own code for approval and what are the potential issues this may present?)

Question 3:

What is your view on individual businesses potentially being eligible to display the 'approved badge' by multiple scheme membership? (For example, through a sector scheme and through a local authority-sponsored scheme.) How do we resolve potential conflict between the codes?

3. Content - New Criterion - 3e (ii)



Proposal

We propose a significant strengthening of the codes approval criteria to address the specific detriment caused when dealing with consumers in their own home.

Code members should understand that when conducting business at a consumer's home, the consumer does not have the option to walk away; therefore the onus is on the trader to walk away if the consumer indicates that they do not want to proceed with the purchase. Members must also have regard to the vulnerability of some consumers, and this is particularly an issue when they are in their own homes.

The requirements of this criterion take account the banned practices in the Consumer Protection from Unfair Trading Regulations 2008, schedule 1, many of which relate to high pressure sales.

Additionally, it is proposed that codes address the issue of cold calling. For example, codes should require members to respect both 'no cold calling' zones, and individual properties that display a sticker or notice, or consumers that indicate in any way that they do not wish to be cold called.

TSI proposed new core criterion

The code shall address the important responsibilities of members whilst dealing with people in their own home.

Examples:

The code shall require that members respect a consumer's expressed wish that they do not want to receive unsolicited visits, canvassing, mailshots or telephone calls at their home. This will include householders that:

- have subscribed to recognised mailing or telephone preference services
- have clearly displayed notices on their property declining doorstep cold calling traders
- live in a 'no cold calling zone' or 'cold calling control zone'
- have given any other clear indication to the member that they do not wish to conduct business in their own home

**Example:
cold calling**

The code shall require that, where the representatives of members are invited into a consumer's home, they must:

- not engage in any high pressure selling techniques (see examples below)
- leave immediately if requested to do so or if it becomes apparent that the consumer is not interested in the goods or services the business is selling

**Example:
working in
consumers'
homes**

The code shall address specific issues relevant to the sector when dealing with vulnerable consumers in their own homes.



The definition of 'vulnerable' could include physical disability or health problems; mental health and other cognitive problems; low income; older people; consumers in isolated locations; consumers with poor basic skills; consumers with limited financial capabilities; consumers for whom English is not their first language; or consumers who have suffered a recent bereavement.

This is by no means an exhaustive list and businesses must ensure their staff are aware of consumer vulnerability, particularly when conducting business at a consumer's home. (31 refers to the core criterion relating to vulnerable consumers in all situations).

The code shall require that members must not create, obtain, distribute or maintain lists of specific consumers that are susceptible to responding to cold calling approaches.

Examples of 'high pressure' sales techniques include:

- repeatedly visiting or contacting a consumer, even if they have indicated that they do not want the goods or services on offer
- refusing to leave a consumer's home when asked, or subjecting them to lengthy 'presentations' in order to secure a sale
- falsely claiming that the salesperson faces financial difficulty or will lose their job if they don't achieve a sale
- stating inflated prices for goods or services, then offering a sizeable discount, or 'special one day offer prices', which aren't true
- befriending vulnerable consumers in order to sell them goods or services at a later date
- frightening consumers into buying goods or services, by telling them they are at risk unless they buy your goods or services, when they are not. For example, referring to national crime statistics, which do not reflect the local low crime levels, in order to sell house alarms

**Examples:
'high
pressure'
sales
techniques**

Question 4:

What is your view on the additional criterion relating to business conducted in a consumer's own home?

Question 5:

What is your view on adding a requirement for code members to respect no cold calling zones and consumers who have indicated that they do not wish to be cold called?

OFT core criterion 3j

The code shall address protection of deposit or prepayments as appropriate to the sector.

Proposal

It is proposed that a more pragmatic approach is taken when addressing the issue of deposit or prepayment protection, and a wider range of evidence be acceptable from code sponsors on how they meet the requirements of this criterion, taking into account sector-wide trade practices and risks. For example, it is recognised that tying up working capital can be an issue for some businesses, and may not be appropriate for all trade sectors. One option may be to limit upfront deposits to a maximum percentage of the value of the goods or services.

However, the onus remains on the code sponsor to present their suggestions on how they meet this criterion, and for the governing body overseeing the scheme to decide if their proposals are robust enough and mitigate any unacceptable risks to consumers.

Looking more widely at suitable insurance products could be considered, possibly linked to limits on the amount a consumer can claim back, and how long they have to make this claim.

TSI proposed core criterion

The code shall address protection of deposit or prepayments as appropriate to the sector.

Question 6:

What is your view on the proposal to widen the acceptable evidence relating to the protection of deposits or prepayments? We welcome all suggestions on how we can achieve this, while still protecting deposits and prepayments.

4. Complaints



OFT core criterion 4c

The code shall include procedures for dealing with complaints including the availability of conciliation services directed at arranging a decision acceptable to both parties.

OFT core criterion 4d

The code shall include the availability of a low-cost, speedy, responsive, accessible and user-friendly independent redress scheme to act as an alternative to seeking court action in the first instance.

The scheme shall be binding in respect of code members who shall not be able to refuse to allow a complaint to go before the scheme if a customer so chooses.

The code member shall be bound to accept a decision made under the scheme. Any such scheme shall be able to take into account possible breaches of the code where relevant to the complaint.

Proposal

We propose deleting the requirement that code sponsors maintain a conciliation service. This is in order to provide codes sponsors and their members with space to find the most efficient and effective mechanism for informal resolution of complaints. However, this space will be time-limited to eight weeks, after which a consumer will be able to insist on the complaint being referred to alternative dispute resolution.

TSI proposed core criterion

The code shall include the availability of low cost, speedy, responsive, accessible and user-friendly alternative dispute resolution (ADR) for consumer disputes.

Pre-approved alternative dispute resolution



Businesses have had some difficulty in providing a low cost independent redress scheme in the past, so it is proposed that code sponsors may establish their own ADR scheme or subscribe to one of two pre-approved ADR options.

We recognise that there is a spectrum of retail markets to be served by the ADR schemes with which code sponsors will need to engage. We are also aware that there will be a range of types of resolution that individual or multi-company codes require – such as arbitration, mediation or straightforward decision by an independent person (an ombudsman, for example). It is also clear that, to some extent, the resolution-type may depend on whether the complainant is an individual or a micro- or small business.

Consequently, we have decided not to pre-approve a single model, but to identify two potential models that we are content will meet the requirements of codes approval. We have confined our recommendations to two bodies – one arbitrator and one ombudsman – that are working in several sectors, and therefore have experience of dealing with a wide range of complaints and technical areas.

We feel that these bodies will be able to provide initial guidance to a large cross-section of code sponsors, that can then decide which ADR scheme-profile is appropriate for them – whether it be to set up their own scheme, join one of the two recommended schemes or any of several others.



Ombudsman
Services ●●●●●
Resolving Consumer Disputes

Ombudsman Services operate
Telecommunications, Energy,
Property, Green Deal and other
Ombudsman schemes.



CEDR
solve

CEDR Solve operate a
broad range of consumer facing
arbitration, conciliation and
mediation schemes.

**The ADR scheme must:**

- be free-of-charge or at moderate cost to the consumer. Any costs incurred by a consumer must be returned if, in the opinion of the ADR decision maker, the complaint is determined to have at least some merit
- be established in accordance with the provisions of the [new EU directive](#) on alternative dispute resolution of consumer disputes
- allow a consumer to refer their complaint to the ADR provider if 56 days have elapsed since the consumer complained to the code member, or sooner with the code member's agreement
- allow the ADR decision maker to take into account possible breaches of the code, alongside any other relevant industry standards the ADR decision maker considers appropriate when considering the details of the complaint
- ensure the decision made under the scheme is binding, and the code member shall be required, by the code, to implement the remedy directed by the ADR decision maker
- allow for the ADR decision maker to refer a code member to the code sponsor's disciplinary and sanctions panel if the code member either:
 - (a) fails to implement the remedy determined by the ADR decision maker within a reasonable time (as determined by the ADR decision maker); or
 - (b) fails to settle the relevant fees as determined by the contractual relationship between the ADR provider, the code sponsor, and the code member

**Example:
features
of the ADR
rules**

Question 7:

What is your view on removing criteria 4c and 4d and replacing them with one criterion requiring the provision of an alternative dispute resolution scheme?

Question 8:

What are your views on establishing a right for consumers to insist on referral to the ADR provider if eight weeks elapse before their complaint is resolved?

5. Monitoring



OFT core criterion 5a

The code sponsor shall develop performance indicators, e.g. mystery shopping exercises and independent compliance audits, to measure the effectiveness of the code.

Proposal

It is proposed that the criterion 5a is strengthened, to include not only a requirement for measuring the effectiveness of the code, but also to measure the code's impact on the key objectives of raising consumer service standards and reducing consumer detriment. There is also a proposed requirement to analyse complaint data to establish the root causes; and address any patterns or trends as part of the ongoing cycle of code review and redevelopment, to ensure the code is still fit for purpose.

TSI proposed core criterion

The code sponsor shall develop measures of the effectiveness of the code.

These 'measures of success' shall cover (as a minimum):
(a) compliance with the code; (b) reducing consumer detriment;
(c) complaint trends; (d) customer satisfaction and (e) member audits.

Question 9:

What is your view on the additional monitoring requirements proposed in criterion 5a?

OFT core criterion 5b



The code sponsor shall implement the performance indicators and make available the results of their monitoring procedures and satisfaction surveys to demonstrate the effectiveness of the code.

Proposal

We intend to shift the focus of performance measurement onto the outcomes and 'measures of success' highlighted in our proposed new criterion 5a. Our principal interest is in how the codes are working well to reduce consumer detriment. We propose significantly reducing the monitoring burden on code sponsors by placing greater reliance upon scientifically robust statistical sampling techniques. As a general principle, we will expect results of any performance measurement and monitoring to be expressed:

- (a) to a 95% confidence interval;
- (b) to a 5% margin of error;
- (c) with a response distribution of 50%

These requirements drive the size of sample and, therefore, the burden placed on code sponsors to monitor performance of their code and their code members.

TSI proposed core criterion

The code sponsor shall apply its measurement of the effectiveness of the code using statistically significant methods and make the results available on its website.

Currently, a code sponsor is required to audit 50% of code members annually. This is an arbitrary approach and is not based on scientific statistical principles. The effect of this proposed change is to introduce a more efficient approach to sampling and audit. As an example, if a code sponsor has 2,000 members, in order to achieve a 5% margin of error to a 95% confidence interval, the code sponsor would need to sample or audit 323 members. It should be noted that this is not a linear relationship. For instance, the sample size for 3,000 members would be 341 and for 1,000 members would be 278 members.

Statistically significant monitoring means a sample size that produces results within a 5% margin of error to a 95% confidence interval with an equal response distribution.

**Example:
sampling
member
audits**

Question 10:

What is your view on the introduction of statistical sampling techniques to monitoring and performance measurement of codes?

OFT core criterion 5c



The code sponsor shall provide a written report annually to the OFT on the operation of the code to include:

- changes to the code agreed with the OFT and implemented
- numbers and types of complaints including information on outcomes from the conciliation process and the independent redress scheme
- results from monitoring, satisfaction surveys and the disciplinary process

It would be preferable if the report were compiled by an independent person or body with powers to recommend actions.

Proposal

It is proposed that criterion 5c no longer requires code sponsors to report to TSI. It is more important to us that the code sponsors are transparent with the general public than that they keep us informed of their performance. Whilst we would expect code sponsors to send us a copy, publishing the results in their annual report will build consumer and stakeholder confidence in the code sponsor, their code, and their members' conduct.

It is proposed that instead of preferring that the report be independently compiled, the report should be evidence based, and this evidence be freely available to all stakeholders, and stand up to scrutiny.

It is proposed that the report clearly demonstrates where analysis of complaints data, customer feedback and other monitoring is linked to improvements and changes to the code to further improve levels of customer service and reduce consumer detriment.

TSI proposed core criterion

The code sponsor shall produce a written report annually on the operation of the code to include:

- changes to the code agreed with TSI and implemented
- numbers and types of complaints including information on outcomes from the ADR scheme

Continued on next page

TSI proposed core criterion



Continued from previous page

- results from monitoring, customer satisfaction feedback, and the disciplinary and sanctions panel process
- details of the review of the code and how they link to changes made as a result of this review

The report would need to be evidence based and this evidence would need to be freely available - if required by either TSI or stakeholders - to ensure the report stands up to external and independent scrutiny.

Question 11:

What is your view on the proposal to require code sponsors to produce an annual report?

OFT core criterion 5d



The code sponsor shall provide copies of the annual reports to the OFT.

Proposal

It is proposed that this criterion be deleted. An explicit requirement to provide copies of annual reports is deemed no longer necessary, as TSI intends to have an ongoing relationship and open dialogue with code sponsors. Any reports produced under criterion 5c above would be required to be freely available to all stakeholders and published on the internet.

TSI proposed core criterion

To be deleted - covered by 5c.

Question 12:

What is your view on deleting the requirement for copies of annual reports to be sent to TSI and, instead, to simply require that reports be published?

OFT core criterion 5f

Customer satisfaction shall be regularly assessed.

Proposal

It is proposed that this criterion is deleted, as the requirements to assess customer satisfaction have been incorporated into criterion 5a.

TSI proposed core criterion

To be deleted - covered by 5a.

Question 13:

What is your view on criterion 5f being deleted and the assessment of customer satisfaction incorporated into the monitoring requirements of criterion 5a?

6. Enforcement



OFT core criterion 6a

Code sponsors shall establish a procedure for handling non-compliance by members with the code. The procedure shall include independent disciplinary procedures and reasonable timescales for action.

OFT core criterion 6b

The code sponsor shall also set out a range of sanctions, e.g. warning letters, fines, termination of membership, for dealing with non-compliance.

Proposal

It is proposed that criteria 6a and 6b are replaced by the requirement for each code sponsor to establish an independent disciplinary and sanctions panel, to make sure that any breach of a code of practice is dealt with as effectively, impartially, and quickly as possible, and that code members face real sanctions for breaching the code. Codes of practice will be brought into disrepute if they fail to have appropriate sanctions when members are found to be in breach of them. The confidence consumers and stakeholders place in approved codes of practice will be undermined if code members can ignore their provisions without sanction.

In particular, it is proposed to strengthen the role of local trading standards services in triggering disciplinary procedures against code members. As a part of utilising the trusted 'trading standards' brand, we consider it important that trading standards services have a direct means of securing enforcement of core criteria. We, therefore, propose that the independent disciplinary and sanctions panel be empowered to consider direct complaints from trading standards services in a similar manner to the way local licensing authorities might review an alcohol licence.

TSI proposed core criterion

Code sponsors shall establish a 'disciplinary and sanctions panel' for handling code members' non-compliance with the code.

The panel is not an alternative to the ADR provider. The panel does not preclude the code sponsor from taking informal action to secure ongoing compliance with the code by its members.

Characteristics of the panel



Code sponsors will be expected to strike the right balance between providing help and assistance to code members on compliance with the code and taking them through a formal disciplinary process. We expect code sponsors to demonstrate how they will strike this balance. A decision to refer a code member to the disciplinary and sanctions panel is a serious step and must not be taken lightly.

It is important to note that the disciplinary and sanctions panel is not intended to deal with individual complaints, but to maintain the overall integrity of the code.

We do not propose requiring time limits on proceedings, although the code sponsor may wish to do so. However, we would consider it to be exceptional for a disciplinary case to take more than six months to resolve.

The 'disciplinary and sanctions panel' shall be empowered to consider any allegation of a breach of the code referred to it by:

- (a) the code sponsor
- (b) the ADR provider
- (c) a local authority trading standards service
- (d) a sector regulator
- (e) such other persons as provided for in the code

The panel shall be independent of the code sponsors, chaired by an independent person and have a surplus of independent persons over code member persons in any decision making. No panel members may be connected to any parties in the matter. Any decisions shall be on the balance of probabilities.

The panel proceedings shall be open, in public, and the outcome published, unless, in the public interest, the panel determines otherwise. We anticipate that such decisions will be exceptional. The panel proceedings shall be concluded within a reasonable time and notified to all interested parties including the applicant and any individual consumers directly affected by the outcome.

**Access,
openness
and
independence**



The code shall establish the powers of sanction available to the panel. As a minimum these must include:

- (a) the issue of a formal warning
- (b) the suspension of code membership for a fixed period
- (c) a requirement for the code member to take additional measures (either temporarily or permanently) as a condition of continued code membership
- (d) a requirement to change, modify or establish an operating practice as a condition of continued code membership
- (e) a requirement to provide remedies to an identified group of consumers (but not an individual case – that is a matter for the ADR provider) as a condition of continued code membership
- (f) a requirement to implement a remedy as directed by the ADR provider and/or to settle fees due to the ADR provider as a condition of continued code membership
- (g) a requirement to pay a financial penalty up to a maximum figure or percentage of turnover as identified in the code
- (h) expulsion from code membership

Sanctions

A code member shall be given a fixed period of time, determined by the panel, to implement a decision. If the code member fails to implement the decision to the satisfaction of the panel within that time, the code shall require that they be expelled from membership.

The panel shall conduct its proceedings in accordance with the generally accepted principles of natural justice to secure fairness to all parties. The code sponsors shall establish suitable procedures to ensure fairness in the process.

The code sponsor shall make best endeavours to encourage compliance with the code and implementation of panel decisions by code members.

If a local trading standards service or sector regulator has reasonable grounds to believe that a code member is in breach of the provisions of a code, the code shall provide a mechanism for that authority to make a complaint directly to the disciplinary and sanctions panel. Code sponsors must have procedures for dealing with such complaints seriously and expeditiously, and any failure to do so could result in revocation of approval for the code as a whole.

Any code member that ceases to be a code member as a result of a sanction imposed by the panel shall have not more than 28 days to return or destroy all uses of the approved code logo on all materials, vehicles, premises or other outlets.

Natural justice

Question 14:

What is your view on the requirement for code sponsors to create a disciplinary and sanctions panel?

Question 15:

What is your view on allowing trading standards and other regulators to refer code members to the disciplinary and sanctions panel?

7. Publicity



OFT core criterion 7a

Code sponsors and members shall ensure that their customers are aware of the code.

Proposal

It is proposed that the criterion 7a is amended to not only focus on promoting the benefits the code offers consumers in simple terms, but also to raise consumer awareness of the businesses' complaints procedure and access to alternative dispute resolution schemes.

TSI proposed core criterion

Code sponsors and members shall ensure that their customers understand the benefits the code offers them and are aware of the members' complaints procedures, including access to alternative dispute resolution.

Question 16:

What is your view on the proposed amendments to criterion 7a, including the requirement for businesses to publicise their complaints procedure?

7. Publicity



OFT core criterion 7e

Code sponsors and members shall publicise the fact that the OFT has approved the code by using the CCAS logo in the prescribed manner.

Proposal

It is proposed that the criterion 7e is deleted.

It is felt that the requirement to publicise membership of a code - of which the 'approval' logo is a key part - is covered by criteria 7a. The requirements to use the logo in the prescribed manner set out in the terms of the copyright licence, is covered in criterion 7f.

TSI proposed core criterion

To be deleted - covered by 7a & 7f.

Question 17:

What is your view on deleting the criterion 7e?

Annex



Stakeholders consulted as part of this consultation

Advertising Standards Authority	Institute of Professional Will writers
Age UK	Local Authority Assured Trader Schemes Network
Association of Charitable Foundations	
Association of Chief Trading Standards Officers	Legal Services Board
Better Regulation Delivery Office	Local Government Association
Bosch Car Service	Motor Codes Limited
British Allied Trades Federation	National Consumer Federation
British Association of Removers	National Trading Standards Board
British Chambers of Commerce	Ofcom
British Healthcare Trades Association	Office for the Scottish Charity Regulator
British Franchise Association	Office of Fair Trading
British Independent Retailers Association	Ofgem
British Retail Consortium	Ofwat
British Standards Institution	Ombudsman Association
Buy with Confidence	Ombudsman Services
Cabinet Office	Potential Code Sponsors
The Carpet Foundation	The Property Ombudsman Limited
Citizens Advice	Renewable Energy Association
Citizens Advice Scotland	Resolver
Charity Commission	Safebuy
Charity Commission for Northern Ireland	Society of Chief Officers of Trading Standards in Scotland
Civil Aviation Authority	
CEDR Solve	Trade Association Forum
Confederation of British Industry	Trading Standards Institute members, branches and sections
Consumer Council for Northern Ireland	Trading standards services
Consumer Council for Water	Trustmark
Consumer Focus	UK European Consumer Centre
Consumerline (Northern Ireland)	Vehicle Builders and Repairers Association Limited
Convention of Scottish Local Authorities	Welsh Heads of Trading Standards
Cornwall Energy Associates	Water UK
Debt Managers Standards Association (DEMSA)	Which?
Department for Business, Innovation & Skills	
Department of Energy and Climate Change	
Department of Enterprise, Trade and Investment Northern Ireland	
Department of Transport	
Direct Selling Association	
Energy Networks Association	
Energy Retail Association	
Federation of Small Businesses	
Financial Services Authority	
Good Garage Scheme (Forte Lubricants)	
IDRS Limited	

About TSI



The Trading Standards Institute was founded in 1881. It represents Trading Standards professionals in the UK, and overseas - in local authorities, business and consumer sectors and in central government.

TSI exists to promote and protect the success of a modern economy. It aims to safeguard the health, safety and wellbeing of citizens. We achieve this by supporting our members to empower consumers, encourage honest business and target rogue traders.

- We lobby and inform central UK and European Government and local government and their agencies, the local communities, businesses and consumers.
- We monitor the high standards of conduct essential for those in a public role, for those who enforce the legislation must be seen to be beyond reproach.
- We aim to sustain and improve consumer protection, health and wellbeing, offering the current Fair Trading Award and fostering business competitiveness and regulatory compliance.
- We encourage the exchange of ideas, professional views, experience and lively debate for their mutual benefit and greater effectiveness. To this end we commission debate through College of Fellows research in appropriate fields of study and publish reports of the findings.
- We regularly meet and work with other bodies which share our ideals and objectives.
- We educate consumers, through running events such as National Consumer Week and the Young Consumers Competitions.
- We host the annual Consumer Affairs & Trading Standards Conference & Exhibition. The largest event of its type in Europe.
- We publish TS Today, which aims to keep practitioners and students up-to-date with consumer affairs and trading standards news. It incorporates topical issues, briefings, interviews and much more.



Trading Standards Institute

1 Sylvan Court, Sylvan Way, Southfields Business Park, Basildon, Essex SS15 6TH
T: 0845 608 9421 E: institute@tsi.org.uk

www.tradingstandards.gov.uk