

Consumer Codes Approval Scheme – update of core criteria

**OFT's response to the
consultation**

June 2006

OFT855resp

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1 INTRODUCTION

- 1.1 The Consumer Codes Approval Scheme (CCAS) was launched to business in February 2003 and to consumers in October 2005. The scheme is intended to raise standards of business practice and provide a signpost to consumers so that they can identify businesses that will provide them with excellent service and protection over and above the law.
- 1.2 The core criteria, which set out the standards we expect a code sponsor and its members to achieve in order to be approved by the OFT, were developed in consultation with both business and consumer groups. They are intended to be challenging but also attainable.
- 1.3 With five codes now having achieved approval and more than a dozen more in the pipeline, we believed that the time was right to revisit the core criteria to ensure that they were as clear as possible.
- 1.4 We issued a consultation paper on 30 November 2005 in which we invited stakeholders to comment on a number of recommendations and questions relevant to our review of the core criteria. We also sought comments on a number of recommendations, that we set out as a result of reviewing the core criteria against the requirements of the Race Relations Act 2003.
- 1.5 We received a total of 29 responses to our consultation representing views from a wide range of stakeholders listed at Annexe C. We are grateful to all respondents to our consultation.

2 SUMMARY OF RESPONSES

Q.1 Are there any criteria other than 3j¹ which you believe are difficult for code sponsors to meet? If so, why?

2.1 From the responses there were no consistent messages regarding particular criteria (other than 3j) that were difficult for some code sponsors to meet. A number questioned whether a mandatory conciliation service was necessary in addition to complaints handling procedures and redress mechanisms (criterion 4c²). Others queried whether criterion 4b³ (maximum co-operation with consumer advisers) was appropriate or practical in all circumstances. Several respondents also suggested that we need to provide additional guidance on a number of core criteria, in particular for the consultation with advisory bodies' process (criteria 2b⁴ + c⁵) and staff awareness (criterion 3b⁶).

¹ Criterion 3j – 'The code shall address protection of deposit or prepayments as appropriate to the sector.'

² 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.'

³ Criterion 4b – 'The code shall include a requirement that code members shall offer maximum co-operation with local consumer advisers or any other intermediary consulted by a consumer when making a complaint.'

⁴ Criterion 2b – 'Code sponsors shall demonstrate that organisations representing consumers, enforcement bodies and advisory services have been adequately consulted throughout the preparation of the code.'

⁵ Criterion 2c – '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.'

⁶ Criterion 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.'

- 2.2 There was also a particular concern raised regarding the requirement for independence in the disciplinary procedures (criterion 1c⁷). The key issue here was a lack of clarity and a general request for more guidance as to what was meant by 'independent'. It was also proposed that we should be more flexible in our interpretation, especially regarding the requirement that a disciplinary committee or board has to have at least 50 per cent independent representation. Comments were also made about the difficulty some code sponsors face in identifying suitable independent people with the necessary expertise to sit on their disciplinary board or panel.
- 2.3 The cost of meeting some of the criteria was also raised as a problem, particularly for smaller code sponsors in relation to implementing performance indicators such as mystery shopping (criterion 5a⁸).
- 2.4 An issue raised by several respondents was the problem faced by local trader schemes in meeting some of the core criteria, especially the multi-sector schemes regarding addressing sector specific requirements under criterion 3a⁹. Also the difficulties for such schemes

⁷ Criterion 1c – 'Code sponsors shall have independent disciplinary procedures available to deal effectively with cases of non-compliance.'

⁸ Criterion 5a – 'The code sponsor shall develop performance indicators, for example, mystery shopping exercises and independent compliance audits, to measure the effectiveness of the code.'

⁹ Criterion 3a – 'The code shall include measures directed at the removal or easing of consumer concerns and undesirable trade practices arising within the particular sector.'

in setting up an independent redress mechanism (criterion 4d¹⁰) and finding 'independent' persons for their disciplinary procedures (criteria 1c¹¹ and 6a¹²).

- 2.5 One respondent also asked whether the OFT could provide a suitable database of independent people for code sponsors to use, for inclusion on such things as disciplinary panels, or whether the OFT could liaise with an external institution over establishing such a list.

OFT response:

- 2.6 Regarding the provision of a conciliation service (criterion 4c), we appreciate that some code sponsors may consider it to be unnecessary to have a three stage complaints handling process. We have considered the arguments put forward, but maintain that it is important that consumers are given the opportunity of having their complaint resolved within a less formal mechanism, without the need to go directly to the independent redress mechanism which may also involve a cost to the consumer.
- 2.7 Our response to the issues raised in respect of criterion 4b (co-operation with intermediaries) is set out in paras 2.36 to 2.38.

¹⁰ 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 judgement made under the scheme. Any such scheme shall be able to take into account possible breaches of the code where relevant to the complaint.'

¹¹ Criterion 1c – 'Code sponsors shall have independent disciplinary procedures available to deal effectively with cases of non-compliance.'

¹² Criterion 6a – 'The code sponsor shall establish a procedure for handling non-compliance by members with the code. The procedure shall include reasonable time limits.'

- 2.8 We also acknowledge the requests for additional guidance for a number of the core criteria and will consider these when revising the guidance.
- 2.9 We recognise the significant benefits to the local community offered by local trader schemes, but recognise the major difficulties they may face in meeting the core criteria. We wish to provide support and recognition for such schemes and have therefore prepared proposals to set up a Local Authority Assured Trader Scheme Network. The Network will be operated and run by the national trading standards community with support from the OFT. We are currently discussing these proposals with relevant interested parties within the trading standards community and more widely. Our plans will be announced shortly.
- 2.10 We acknowledge the difficulty some code sponsors have had in finding suitable independent people for their disciplinary procedures and will take forward the suggestion to investigate the best way to set up a database of suitable individuals.

Q.2 Do you agree with the proposed amendments to criteria 5b¹³ and 5c¹⁴? Is it clear what information is required here?

- 2.11 Overall the majority of respondents agreed with our recommended amendments to the wording for criterion 5b and 5c.
- 2.12 However, several respondents said they were confused about what was meant by 'interested parties' and how widely the information should be made available in the proposed amended wording for 5b. It was suggested that more guidance on this was required. It was also

¹³ Criterion 5b – 'The code sponsor shall implement and publish the results of the performance indicators to demonstrate the effectiveness of the code.'

¹⁴ Criterion 5c – 'The code sponsor shall publish a report annually on the operation of the code including in particular the numbers and types of complaints referred for conciliation and to the independent redress system. It would be preferable if the report were compiled by an independent person or body with powers to recommend actions.'

suggested there was a lack of clarity over the definition of 'performance indicators', 'monitoring procedures' and 'satisfaction surveys'.

- 2.13 Under criterion 5c¹⁵, concerns were also raised about the need to include changes which had been considered but not implemented. Several respondents felt that only those changes which had been agreed with the OFT should be included here.
- 2.14 More guidance was also requested on when the annual reports should be provided. The need for more clarification that the annual report should be sent to the OFT was also highlighted.
- 2.15 There was also concern about the suggestion in 5c that it would be preferable if code sponsors used an independent person or body to compile the annual report.

OFT response:

- 2.16 We will clarify and give examples in the guidance about who the 'interested parties' are in each case. We will also provide additional guidance regarding the format and timing of when annual reports should be produced and forwarded to us. In response to the concerns regarding the use of the independent person or body to compile the annual report, we will clarify that this is regarded as **preferable** and not obligatory. In our view, it is preferable for the annual report to be compiled by an independent body, as this would provide an objective view on the operation of the code and recommendations for actions.

¹⁵ Criterion 5c – 'The code sponsor shall publish a report annually on the operation of the code including in particular the numbers and types of complaints referred for conciliation and to the independent redress system. It would be preferable if the report were compiled by an independent person or body with powers to recommend actions.'

2.17 We will also clarify the guidance regarding which changes need to be notified to us and will further expand the guidance relating to performance indicators, monitoring procedures and satisfaction surveys.

Q.3 Do you believe that the protection of prepayments and deposits should remain as a criterion within the CCAS despite the difficulties some code sponsors have in meeting it? If so, why? Should criterion 3j¹⁶ be amended? If so, how? (recommendation 2)

2.18 Many respondents to this question agreed that protection of prepayments and deposits is an important element of consumer protection and should remain as part of the criteria, although a number also suggested that it should be amended to allow a more flexible interpretation of what is acceptable. Other respondents argued that the criterion should be removed altogether because of the levels of costs involved.

2.19 Some believed that the costs involved in setting up prepayment protection schemes were often disproportionate to the risk involved in consumers losing money. Such costs had to be passed on by the code sponsor to its members, and this could lead to members leaving the association. It was also pointed out that this criterion should perhaps only be applied to a code sponsor where there was objective evidence of problems with prepayments and deposits in that sector, rather than based simply on whether a code sponsor's members take deposits or not. There was also concern that the continued inclusion of this criterion would put off code sponsors from applying and therefore hamper the expansion of the CCAS to additional sectors.

¹⁶ Criterion 3j – 'The code shall address protection of deposit or prepayments as appropriate to the sector.'

2.20 Measured against these concerns are a considerable number of responses where it was felt that the inclusion of this criterion was essential as a protective tool for consumers. Many consumer bodies felt that it was important for consumer confidence to have prepayment protection in place, especially as the overarching message of the CCAS is that consumers can have confidence in transacting with a business that adheres to an OFT approved code.

Q.4 Can you provide suggestions for how code sponsors could meet criterion 3j¹⁷ within sectors where prepayments/deposits are routinely taken?

2.21 Respondents suggested several options may be open to code sponsors to enable their codes to meet criterion 3j, including:

- the use by member businesses of low cost insurance, indemnity, bond or warranty
- the use of some form of independent trust account
- encouraging members to set up separate client accounts, and
- code sponsors underwriting protection by putting aside and ring-fencing a percentage of their members' fees.

2.22 Other responses suggested some alternatives to help meet the criterion, such as:

- the code sponsor limiting the maximum amount of deposit/prepayment that can be taken by its members

¹⁷ Criterion 3j – 'The code shall address protection of deposit or prepayments as appropriate to the sector.'

- more emphasis placed on the use of protection of payments through use of credit cards, and
- changes in bankruptcy and insolvency legislation.

OFT response:

- 2.23 We regard deposit/prepayment protection as a key safeguard for consumers and this has been confirmed by the responses to the consultation. However, we have also taken on board the very real concerns expressed about the potential costs involved for code sponsors and members in putting such safeguards in place. We understand that code sponsors can sometimes find it difficult to identify an appropriate mechanism, although a number of suggestions are in the current guidance and have also been put forward from respondents to this consultation.
- 2.24 Having weighed up the responses, and considered both the issue of costs to participants and our aim of ensuring that consumers are protected above the requirements of the law, we believe it is important to keep this criterion. We are however also aware that the risk of loss of some prepayments/deposits is higher for some sectors/transactions than for others and we intend to take this into account in the guidance on how this criterion can be met. We propose to set out a list of non-exhaustive factors relating to risk, which we will take into consideration when assessing whether a sector needs to have protection mechanisms in place, and the level of protection we would regard as reasonable for consumers in the sector to expect.

Q.5 Do the proposed amalgamations of criterion 1b¹⁸ and 2a¹⁹ and 1c²⁰ and 6a²¹ help clarify what is required? (recommendations 3 and 4)

2.25 Nearly all respondents agreed that the suggested amalgamations of criterion 1b and 2a and of 1c and 6a would clarify what is required.

OFT response:

2.26 We are pleased to note that respondents are generally in agreement that our suggested amalgamations of the above criteria will be helpful and we will therefore amend the core criteria and guidance in line with the amended wording as set out in recommendations 3 and 4.

¹⁸ Criterion 1b – 'Compliance with the code shall be mandatory on code members'.

¹⁹ Criterion 2a – 'Code sponsors shall be able to demonstrate that members are prepared to observe its provisions.'

²⁰ Criterion 1c – 'Code sponsors shall have independent disciplinary procedures available to deal effectively with cases of non-compliance.'

²¹ Criterion 6a – 'The code sponsor shall establish a procedure for handling non-compliance by members with the code. The procedure shall include reasonable time limits.'

Q.6 Do you agree with the proposed amendments to the wording of the specific criteria as set out in Chapter 5 of the consultation document? (recommendations 5,6,7,8,9,10 and 11)

Recommendation 5 – criterion 1d²²

- 2.27 In order to clarify the existing requirement under this criterion the wording should be amended to read: 'Code sponsors shall have adequate resources and **funding to ensure** the objectives of the code are not compromised.'
- 2.28 There was general agreement from respondents to the suggested amended wording to criterion 1d. However, some concerns were raised regarding the possibility of small code sponsors being deterred from applying because of the funding obligation placed by this criterion. There was also a concern that the suggested change may compromise funding, by allowing the possibility of creating bias if funding was sought from outside the code sponsor. It was suggested that more guidance could be offered to code sponsors to meet this criterion.

OFT response:

- 2.29 The general consensus is for criterion 1d to be amended as suggested and we will make this change. We will also revise the guidance on funding for this criterion.

²² Criterion 1d – 'Code sponsors shall have adequate resources and be funded in such a way that the objectives of the code are not compromised.'

Recommendation 6 - criterion 3k²³

- 2.30 In order to reflect more accurately the existing wider definition of the term 'after-sales', the wording of criterion 3k should be amended to read: 'the code shall address **customer** service provisions as appropriate to the sector'.
- 2.31 The majority of respondents agreed to the suggested amended wording for criterion 3k.

OFT response:

- 2.32 We will amend the wording of criterion 3k in line with recommendation 6.

Recommendation 7 - criterion 4b²⁴

- 2.33 In order to clarify the existing requirement under this criterion, the wording should be amended to read: 'The code shall include a requirement that code members shall offer maximum co-operation with local consumer advisers or any other intermediary consulted by **and/or acting on behalf of** a consumer when making a complaint.'
- 2.34 There were concerns raised regarding the suggested amended wording to criterion 4b. Some felt that the obligation to offer maximum co-operation to 'any other intermediary' may not always be in the best interests of the consumer or the business, because of the unknown quality of the advice provided, and that it may require businesses to deal

²³ Criterion 3k – 'The code shall address after-sales service provisions as appropriate to the sector.'

²⁴ Criterion 4b - 'The code shall include a requirement that code members shall offer maximum co-operation with local consumer advisers or any other intermediary consulted by a consumer when making a complaint.'

with frivolous or vexatious complaints with an activist agenda. Suggestions were also made that there should only be a requirement to deal with formally appointed representatives and for code sponsors to have written confirmation from the consumer that the intermediary is authorised to act on their behalf. Some also felt unsure as to what the word 'maximum' meant. It was therefore suggested that the word 'maximum' be replaced with 'satisfactory' and that 'intermediary' should be preceded by the words 'formally appointed'.

OFT response:

- 2.35 The aim of this criterion is to ensure that consumers can choose the most appropriate person/organisation to consult with and/or to act on their behalf. By limiting such representations to those who are 'formally appointed' we believe this would unnecessarily restrict consumers' choice and allow members to select those who they were prepared to deal with. We therefore do not intend to amend the criterion to include the words 'formally appointed'.
- 2.36 The existing guidance to this criterion explains that we require members to provide the same level of co-operation to an intermediary as they would to the complainant themselves.
- 2.37 We will therefore amend the criterion to read: 'The code shall include a requirement that code members will offer the same level of co-operation with local consumer advisers or any other intermediary consulted and/or acting on behalf of a consumer when making a complaint as they would to the complainant.'

Recommendation 8 - criterion 4d²⁵

- 2.38 To amend the wording in the criterion to read: 'The code member shall be bound to accept a **decision** made under the scheme'.
- 2.39 There were no objections to the suggested amended wording to criterion 4d.

OFT response:

- 2.40 We will amend the wording of criterion 4d as proposed under recommendation 8.

Recommendation 9 - criterion 6a²⁶

- 2.41 To amend the wording to read: 'The procedure shall include reasonable **timescales for action**'.
- 2.42 There were no objections to the suggested amended wording to criterion 6a. However, one respondent suggested that the wording '.....at each stage by the code sponsor and code members as appropriate' be added at the end to ensure additional clarification. Another respondent suggested that the word 'reasonable' would not be helpful to consumers and suggested changing this to 'specified'.

²⁵ 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 judgement made under the scheme. Any such scheme shall be able to take into account possible breaches of the code where relevant to the complaint.'

²⁶ Criterion 6a – 'The code sponsor shall establish a procedure for handling non-compliance by members with the code. The procedure shall include reasonable time limits.'

OFT response:

- 2.43 We will amend the wording of criterion 6a as suggested under recommendation 9. We consider that this wording is sufficiently clear to ensure that individual steps within the procedures must also be time bound and therefore do not intend to make further amendments.

Recommendation 10 - criterion 7d²⁷

- 2.44 In order to clarify the existing requirement under this criterion the wording should be amended to read: 'Copies of any code related publicity generated by the code sponsor shall be provided to the **OFT in advance of publication.**'
- 2.45 Our suggested amendments to the wording of criterion 7d were generally accepted, although there were some concerns that more guidance was required as to which publicity material this criterion referred to and the reasons why the OFT wished to see it prior to publication. It was also suggested that some guidance could be given as to when the OFT would expect to see the publicity material and also the timescale the OFT would work to in giving its views to the code sponsor on the material. A few respondents also questioned the need for the OFT to see such publicity material, as it was felt this showed a mistrust of the code sponsor.

²⁷ Criterion 7d – 'Copies of any code related publicity generated by the code sponsor shall be provided to the OFT'.

OFT response:

- 2.46 We believe that it is important for the credibility of the CCAS to ensure that messages given in publicity/promotional material are clear and consistent. We therefore believe that the obligations to provide code related publicity material to us prior to publication should remain. We will amend the wording of criterion 7d as suggested in recommendation 10 and also provide additional guidance regarding which material we wish to see prior to its publication and also clarify timescales.

Recommendation 11 - criterion 7e²⁸

- 2.47 To update the criterion as follows: 'Code sponsors and members shall publicise the fact that the OFT has approved the code by using the CCAS logo in the prescribed manner'.
- 2.48 Concerns were raised by respondents about the mandatory use of the OFT Approved code logo by the code sponsor and each of its members on approval of the code. Several respondents suggested that the use of the Approved code logo should be decided by individual members, as mandatory use could place an undue burden and could be confusing for consumers due to 'logo overload'. There was also some concern about the length of the copyright licence. However there did seem to be general agreement that where the logo was used, there should be compliance with the provisions of the licence.

OFT response:

- 2.49 We view building widespread recognition by consumers of the 'Approved code logo' brand as one of the keys to the success of the CCAS. Our message to consumers is to buy with confidence when they see a

²⁸ Criterion 7e – 'Code sponsors and members shall publicise the fact that the OFT has approved the code by using the agreed OFT logo.'

business using the logo. It is therefore essential for the CCAS that the logo is used by sponsors of approved codes and their members and we believe that the use of the Approved code logo should remain mandatory.

- 2.50 It is not a requirement that members should use the logo on **all** of their publicity material. It is for code sponsors in discussion with members to decide on the most effective/appropriate usage, so as to ensure that consumers are aware they have signed up to an OFT approved code.
- 2.51 With regard to the licensing system, we have taken on board comments from code sponsors and members that the current licensing system is too burdensome. We are currently reviewing the system with the aim of simplifying the process.

Q.7 Are there other criteria which could be amended in order to improve clarity? If so please provide your reasoning and suggested amendments.

- 2.52 There was little comment received in respect of this question. One respondent highlighted that criterion 4d²⁹ is too long, and made the suggestion that the criterion wording should just read 'The code shall provide an independent redress scheme as an alternative to Court action. The scheme, and any decision made under it, shall be binding on the code member'. It was suggested that the rest of the detail under 4d could be included within the guidance.

²⁹ 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 judgement made under the scheme. Any such scheme shall be able to take into account possible breaches of the code where relevant to the complaint.'

OFT response:

2.53 Criterion 4d is key to the CCAS and we believe it is important that the wording reflects the importance of all of the components that must be met. We do not therefore intend to amend this criterion.

Q.8 Do you agree with the proposed wording for the new criterion 7f³⁰? (recommendation 12)

2.54 As with some of the responses to recommendation 11, there was comment that it should not be mandatory for all members of an Approved code to use the Approved code logo, especially as it is difficult for some code sponsors to get all members to sign a copyright licence. Views were also expressed that it was the OFT's duty to monitor the use of the Approved code logo and take action for any breaches of the copyright licence, as this requirement is too burdensome for code sponsors (in terms of both resource and cost).

2.55 There were also specific comments made regarding the requirements placed on code sponsors highlighted in the bullet points under 'More information'. Some respondents felt that the timescales within which code sponsors are required to provide the OFT with member information are too onerous. Some were opposed to the suggestions that it should be the code sponsor's responsibility to conduct regular checks to ensure members' adherence to the copyright licence terms, take action as appropriate and notify the OFT if any of their members 'trigger' consideration of their licence being suspended or terminated.

³⁰ Proposed New Criterion 7f – 'Code sponsors shall comply with the terms of the standard copyright licence and shall monitor and supervise their members' usage of the CCAS logo in compliance with the terms of the standard copyright licence and take appropriate action where there is suspected non-compliance'.

- 2.56 One respondent also queried the implication that a sponsor of an Approved code may potentially have its approval status withdrawn as a result of a member or members' non-compliance with the terms of the copyright licence.
- 2.57 There were, however, other responses that supported the additional criterion and felt that it clarified what was required from the code sponsor.

OFT response:

- 2.58 As the CCAS is a self regulatory scheme, we view the monitoring of the use of the Approved code logo in line with the terms of the copyright licence as predominantly being the responsibility of the code sponsor. But we also monitor its use ourselves. We regard code sponsors as being well placed to advise members on correct usage and propose remedial changes if necessary. Ensuring members meet the licensing requirements should, in our view, be a part of code sponsors' monitoring of members' Approved Code compliance.
- 2.59 As stated in our response to recommendation 11, we recognise that the current licensing system may be a significant burden for code sponsors and their members and we are therefore currently in the process of reviewing the requirements and procedures. Criterion 7f and its guidance will be amended to reflect these changes.

OFT'S Race Equality Scheme 2003

Q.9 Do you agree with recommendations 13 to 19 arising from the Race Equality Impact assessment? If not, please give your reasons and suggestions.

Recommendation 13 – guidance for criterion 1a³¹

- 2.60 The guidance for criterion 1a should be amended under 'Typical Evidence' to include examples of an organisation's previous involvement in raising standards in a sector with significant community group or ethnic minority presence.
- 2.61 Much concern was raised by respondents that amending the 'Typical Evidence' under criterion 1a to include examples of an organisation's previous involvement in raising standards in a sector with significant community group or ethnic minority presence would place an additional burden on code sponsors. It was also pointed out that use of the term 'significant community group' could include groups that fall outside the scope of race equality, and that there should be more guidance as to what the definition of 'significant community group' is.

OFT response:

- 2.62 We acknowledge the concerns raised by respondents. Our aim with this proposal was to give code sponsors with a history of involvement with ethnic minority groups within their sectors the opportunity to include this as part of their evidence for meeting the requirements of Criterion 1a. The proposed amendment does not mean that we are expecting **all** code sponsors to provide evidence that they had some previous involvement in raising standards in a sector with a significant community group or ethnic minority presence. We are keen to encourage a wide variety of

³¹ Criterion 1a – 'Code sponsors should have a significant influence on the sector.'

code sponsors to apply, particularly those who can demonstrate attempts to address issues specific to ethnic minority groups within their trade or sector.

Recommendation 14 – guidance for criteria 2b³² and 2c³³

- 2.63 It is important that representative groups are consulted if there is consumer detriment concerning particular communities or ethnic groups in the sector. The guidance for criteria 2b and 2c should be amended under 'Typical Evidence' to include confirmation from code sponsors that they have considered, and where appropriate taken action, to include representatives of ethnic minority and community groups during the consultation process with advisory bodies.
- 2.64 There was general agreement from respondents for the suggested amendment to 'Typical Evidence' for criteria 2b and 2c to include confirmation that code sponsors have considered, and where appropriate taken action, to include representatives of ethnic minority and community groups during the consultation process with advisory bodies. This however was on the proviso that it related to **relevant** ethnic minority and community groups, that it was only where detriment to such groups had been identified, and that it was also at the discretion of the code sponsor.
- 2.65 Again, the concern was raised as to what was defined as a 'community group' and whether including such groups would go beyond the scope of racial equality.

³² Criterion 2b – 'Code sponsors shall demonstrate that organisations representing consumers, enforcement bodies and advisory services have been adequately consulted throughout the preparation of the code.'

³³ Criterion 2c – '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.'

OFT response:

- 2.66 We believe that the consultation process should be as comprehensive as possible, in order to ensure that appropriate issues affecting the widest range of groups are included within OFT approved codes. The proposed amendment suggests that code sponsors provide evidence that they have considered consulting with representatives of ethnic minority and community groups. We would consider it to be appropriate that codes in sectors where products/selling methods are targeted at ethnic minority groups should be sent to advisory bodies best placed to advise on specific consumer detriment for those groups.
- 2.67 We will amend the guidance for criteria 2b and 2c to clarify the requirement for code sponsors to suggest appropriate bodies for consultation where appropriate.

Recommendation 15 – guidance for criterion 3a³⁴

- 2.68 The guidance for criterion 3a should be amended under 'Typical Evidence' to include confirmation from code sponsors that their codes include measures to address problems affecting ethnic minorities and other communities, if there is identified detriment to these groups in the sector covered by the code.
- 2.69 Again, there was general agreement from respondents to the proposed amendment to 'Typical Evidence' for criterion 3a. The importance of the wording 'identified detriment' was highlighted, as it clarifies when the requirement is triggered. There were however still reservations regarding the use of the wording 'other communities' as suggesting going beyond the scope of racial equality.

³⁴Criterion 3a – 'The code shall include measures directed at the removal or easing of consumer concerns and undesirable trade practices arising within the particular sector.'

OFT response:

- 2.70 We are pleased with the overall agreement to this recommendation and will amend the guidance for criterion 3a. In order to improve clarity and consistency we will also replace the term 'ethnic minority and community groups' with 'ethnic minority groups'.

Recommendation 16 – guidance for criteria 3d³⁵, 3f³⁶, 3h³⁷, 3i³⁸ and 3l³⁹

- 2.71 The guidance for criteria 3d, 3f, 3h, 3i and 3l should be amended under 'Typical Evidence' to include confirmation from code sponsors that there is a requirement within their code that copies of literature will be made available to individual consumers on request in alternative formats as appropriate (other languages, Braille and audio) - where advisory bodies have indicated there is consumer detriment affecting one or more groups within a sector.

³⁵ Criterion 3d – 'The code shall address clear and accessible pre-contractual information as appropriate to the sector.'

³⁶ Criterion 3f – 'The code shall address clear terms and conditions of supply and fair contracts as appropriate to the sector.'

³⁷ Criterion 3h – 'The code shall address cancellation rights as appropriate to the sector.'

³⁸ Criterion 3i – 'The code shall address guarantees and warranties as appropriate to the sector.'

³⁹ Criterion 3l – 'The code shall address the additional effort/help to be provided to vulnerable consumers as appropriate to the sector.'

Recommendations 17 and 18 – guidance for criterion 3l

- 2.72 The guidance for criterion 3l should be amended under 'More Information' to broaden the scope of the definition of vulnerable consumers to also include: **'where English is not the first language and English is the only language in which material is available.'**
- 2.73 The guidance for criterion 3l should be amended under 'Typical Evidence' to include confirmation from code sponsors that race equality issues have been considered **and included as appropriate within the code.**
- 2.74 These recommendations were made to try and address instances where language may provide a specific barrier for consumers and therefore make them vulnerable. Some respondents agreed with these recommendations. Others raised reservations regarding the costs of producing literature in other languages or other formats, especially for smaller code sponsors and/or smaller member businesses. Others questioned whether those whose first language was not English would actually deem themselves as vulnerable.

OFT response:

- 2.75 The recommendations are not aimed at placing an obligation on **all** code sponsors and members to produce **all** their literature in other formats to that of printed English. The recommendations were aimed at suggesting that code sponsors and members provide material in other formats in circumstances where was a likelihood that they were going to be asked for it on a regular basis from a particular group or groups within the sector in which they operate. They could also provide such material where advisory bodies may have indicated that individuals within these groups have suffered detriment, as a result of literature not being available in relevant alternative formats.
- 2.76 We will amend the guidance for 3d, 3f, 3h, and 3l to reflect recommendations 16-18.

Recommendation 19 – guidance for criteria 5c⁴⁰ and 7a⁴¹

- 2.77 The guidance to criteria 5c and 7a should be amended to include a requirement under 'Typical Evidence' that code sponsors and members will ensure that copies of the annual report/publicity literature will be made available to individual consumers on request in alternative formats as appropriate (other languages, Braille and audio), where advisory bodies have indicated there is consumer detriment affecting one or more groups within a sector.
- 2.78 Most respondents accepted the suggested recommendation. However, there were again some reservations highlighted, regarding costs involved in code sponsors producing their annual report/publicity literature in forms other than printed English. Some believed that the annual report should only be made available to the OFT, not the general public.
- 2.79 The costs involved for code sponsors to produce their annual report/publicity literature was again raised as a significant issue, along with the question as to whether such a requirement goes beyond the scope of racial equality.

OFT response:

- 2.80 The recommendation suggests that we would only expect literature to be available in these forms in circumstances where advisory bodies have indicated, **(and provided evidence)**, that consumer detriment is affecting significant portions of consumers in one or more groups within a sector. This is to ensure that awareness of the code and information on its

⁴⁰ Criterion 5c – 'The code sponsor shall publish a report annually on the operation of the code including in particular the numbers and types of complaints referred for conciliation and to the independent redress system. It would be preferable if the report were compiled by an independent person or body with powers to recommend actions.'

⁴¹ Criterion 7a – 'Code sponsors and members shall ensure that their customers are aware of the code'.

operation is effectively communicated by the code sponsor and its members to all relevant consumers.

- 2.81 We will amend the guidance under criterion 7a to reflect the recommendation. As stated in the consultation document, the amendment for criterion 5c will not be implemented as, following the acceptance of recommendation 1, the proposed amendment is no longer applicable.

3 TIMETABLE FOR FURTHER ACTION

- 3.1 In line with our recommendations and the responses we have received, we will make the appropriate amendments to the core criteria and guidance, and publish the amended guidance document in September 2006.

ANNEXES

A SUMMARY OF RECOMMENDATIONS SET OUT IN THE CONSULTATION DOCUMENT

Challenging criteria

Recommendation 1

- A.1 We should amend the wording of criteria 5b and 5c.

Criterion 5b

- A.2 The code sponsor shall implement the performance indicators and make available to all interested parties the results of their monitoring procedures and satisfaction surveys to demonstrate the effectiveness of the code.

Criterion 5c

- A.3 The code sponsor shall provide a written report annually to the OFT on the operation of the code to include changes to the code implemented or considered, the numbers and types of complaints including information on outcomes from the conciliation process and the independent redress scheme. The results from monitoring, satisfaction surveys and the disciplinary process should also be included. It would be preferable if the report were compiled by an independent person or body with powers to recommend actions.

Recommendation 2

Criterion 3j

- A.4 We acknowledge that criterion 3j may be difficult for some code sponsors to meet, but there remains the ongoing risk of consumers losing money by unprotected prepayments in a number of sectors. As, at first consideration, the situation appears to have changed little over the 20 years since the OFT first considered this issue we believe the requirement for code sponsors to meet this criterion still remains. However we are keen to obtain the views of advisory bodies, code sponsors and other interested parties on this issue to obtain a wider perspective of its relevance and importance now. Consideration may also be given to repeating the OFT consumer surveys of 1984 and 1992, to provide as up to date picture as possible of the prevalence and effect of prepayments.

Amendments to structure

Recommendation 3

- A.5 Criteria 1b and 2a should be amalgamated to read: 'Codes shall 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.'

Recommendation 4

- A.6 To move criterion 1c from its existing location in Organisation and combine with the existing criterion 6a. The new criterion (6a) would read: 'Code sponsors shall establish a procedure for handling non-compliance by members with the code. The procedure shall include independent disciplinary procedures and reasonable time limits.'

Recommendation 5

Criterion 1d

- A.7 In order to clarify the existing requirement under this criterion the wording should be amended to read 'Code sponsors shall have adequate resources and funding to ensure the objectives of the code are not compromised.'

Recommendation 6

Criterion 3k

- A.8 In order to reflect more accurately the existing wider definition of the term 'after-sales' the wording of criterion 3k should be amended to read: 'The code shall address customer service provisions as appropriate to the sector.'

Recommendation 7

Criterion 4b

- A.9 In order to clarify the existing requirement under this criterion, the wording should be amended to read: 'The code shall include a requirement that code members shall offer maximum co-operation with local consumer advisers or any other intermediary consulted by and/or acting on behalf of a consumer when making a complaint.'

Recommendation 8

Criterion 4d

- A.10 To amend the wording in the criterion to read: 'The code member shall be bound to accept a decision made under the scheme.'

Recommendation 9

Criterion 6a

- A.11 To amend the wording to read: 'The procedure shall include reasonable timescales for action.'

Recommendation 10

Criterion 7d

- A.12 To amend the wording to read: 'Copies of any code related publicity generated by the code sponsor shall be provided to the OFT in advance of publication.'

Recommendation 11

Criterion 7e

- A.13 To update the criterion as follows:

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

Recommendation 12

Criterion 7f

- A.14 Introduce a new criterion to set out the obligations under the CCAS copyright licensing procedures.

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Recommendation 13

- A.15 The guidance for criterion 1a should be amended under 'Typical Evidence' to include examples of an organisation's previous involvement in raising standards in a sector with significant community group or ethnic minority presence.

Recommendation 14

- A.16 It is important that representative groups are consulted if there is consumer detriment concerning particular communities or ethnic groups in the sector. The guidance for criteria 2b and 2c should be amended under 'Typical Evidence' to include confirmation from code sponsors that they have considered, and where appropriate taken action, to include representatives of ethnic minority and community groups during the consultation process with advisory bodies.

Recommendation 15

- A.17 The guidance for criterion 3a should be amended under 'Typical Evidence' to include confirmation from code sponsors that their codes include measures to address problems affecting ethnic minorities and other communities if there is identified detriment to these groups in the sector covered by the code.

Recommendation 16

- A.18 The guidance for criteria 3d, 3f, 3h, 3i and 3l should be amended under 'Typical Evidence' to include confirmation from code sponsors that there is a requirement within their code that copies of literature will be made available to individual consumers on request in alternative formats as appropriate (other languages, Braille and audio) where advisory bodies have indicated there is consumer detriment affecting one or more groups within a sector.

Recommendation 17

- A.19 The guidance for criterion 3I should be amended under 'More Information' to broaden the scope of the definition of vulnerable consumers to also include 'where English is not the first language and English is the only language in which material is available.'

Recommendation 18

- A.20 The guidance for criterion 3I should be amended under 'Typical Evidence' to include confirmation from code sponsors that race equality issues have been considered and included as appropriate within the code.

Recommendation 19

- A.21 The guidance to criteria 5c and 7a should be amended to include a requirement under 'Typical Evidence' that code sponsors and members will ensure that copies of the annual report/publicity literature will be made available to individual consumers on request in alternative formats as appropriate (other languages, Braille and audio), where advisory bodies have indicated there is consumer detriment affecting one or more groups within a sector.

B QUESTIONS WE POSED IN THE CONSULTATION

Q.1

Are there any criteria other than 3j which you believe are difficult for code sponsors to meet? If so why?

Q.2

Do you agree with the proposed amendments to criteria 5b and 5c? Is it clear what information is required and when?

Q.3

Do you believe that the protection of prepayments and deposits should remain as a criterion within the CCAS despite the difficulties some code sponsors have in meeting it? If so why? Should 3j be amended – if so how?

Q.4

Can you provide suggestions for how code sponsors could meet criterion 3j within sectors where prepayments/deposits are routinely taken?

Q.5

Do the proposed amalgamations of criterion 1b, 2a, 1c and 6a help clarify what is required?

Q.6

Do you agree with the proposed amendments to the wording of the specific criteria as set out in Chapter 6?

Q.7

Are there other criteria which could be amended in order to improve clarity? If so please provide your reasoning and suggested amendments.

Q.8

Do you agree with the proposed wording for the new criterion 7f?

Q.9

Do you agree with the recommendations 13 to 19 arising from the race equality impact assessment? If not, please give your reasons and suggestions.

C LIST OF RESPONDENTS

ABTA – Association of British Travel Agents

BVRLA – British Vehicle Rental and Leasing Association

Cattles Plc

CBI

Citizens Advice

Consumer Credit Association

DMA – Direct Marketing Association

DSA – Direct Selling Association

DTI - Department of Trade and Industry (2 separate responses)

ERA – Energy Retail Association

FLA – Finance and Leasing Association

Howard Price (Robert Bosch Limited)

LACORS

Laila Benfaida

LEIA – Lift and Escalator Industry Association

MOTA – Mail Order Traders Association Limited

NAFD – National Association of Funeral Directors

National Caravan Council

National Consumer Federation

OEA – Ombudsman for Estate Agents Company Limited

Qualitas

Safebuy

SMMT – Society of Motor Manufacturers and Traders Limited

The Carpet Foundation

Trading Standards South East

TSI – Trading Standards Institute

VBRA

Which?