
Consumer Codes Approval Scheme

Withdrawal of Approval - Policy and Procedure

Withdrawal of approval

Factors relevant to the exercise of OFT's discretion when considering withdrawal of approval

The OFT has the power to withdraw approval from any code it has approved under s8 of the Enterprise Act 2002. The overriding principle for a code to maintain approval is that all of the relevant core criteria are met and that the code is effective in protecting and promoting consumers' interests. When exercising its discretion, the OFT may take the following factors into account, although this is not an exhaustive list.

- 1 The code sponsor's overall effectiveness in monitoring the operation of the code as agreed when OFT approval is granted.
- 2 Where the OFT is aware that a criterion/criteria may no longer be met:
 - the importance of the criterion/criteria in relation to its direct effect in reducing/eliminating consumer detriment eg the elements in Criterion 4 (Complaints Handling) could be considered to have high importance in this respect. Material changes of circumstances in the sector could also be important
 - the seriousness of the failure to comply with the core criterion/criteria eg whether it is an ongoing occurrence or a single lapse
 - whether the failure has occurred despite warnings and/or advice from the OFT.
- 3 Effectiveness of any previous remedial action undertaken by the code sponsor to rectify the failure.
- 4 Statements made by the code sponsor to the OFT during the application process relating to how they intend to meet the core criteria. If any such statement proves to be incorrect, we will take this into account.

The OFT will consider each case on its own merits, taking into account the nature and seriousness of the failure to meet the criterion/criteria and its effects. We may also take into account factors other than non-compliance with the core criteria, for example, misuse of the OFT approved code logo.

Procedures for withdrawal of approval

Possible key trigger events

- 1 Serious breaches of the core criteria.
- 2 Failure of remedial action undertaken by the code sponsor to rectify non-compliance with the core criteria/criterion following correspondence with the OFT case manager. The seriousness of the non-compliance and failure to remedy it will be considerations here.
- 3 Misuse of the approved code logo by the code sponsor or its members. Failure by the code sponsor to discipline members who misuse the logo. Failure by the code sponsor or its members to comply with the licence governing use of the approved code logo.
- 4 Actions by the code sponsor or its members which could bring the OFT or the CCAS into disrepute.
- 5 Failure by the code sponsor to effectively monitor the operation of the code.

Procedures

- 1 OFT receives and/or gathers information that the code is not working effectively either by monitoring or by representations from external parties. Initial findings compiled by the case manager.
- 2 Formal notice/letter sent to the code sponsor highlighting:
 - that the OFT is considering taking withdrawal of approval action and the reasons why
 - the potential seriousness of the action
 - that the procedures may not lead to withdrawal if the code sponsor can show the code continues to be effective
 - if considered by the OFT to be appropriate, an invitation to the code sponsor to make proposals for remedial action - this will not necessarily avoid withdrawal of approval
 - a request for further information from the code sponsor if appropriate
 - an invitation for oral and/or written representations by the code sponsor.
- 3 Code sponsor to be given a reasonable opportunity taking into account all the circumstances including the possibility of continued consumer detriment to respond to the notice/letter in writing and/or orally.
- 4 Meetings/discussion with the code sponsor if appropriate.
- 5 Appointment of external person, to assist the codes team to evaluate the evidence provided by the code sponsor if appropriate.
- 6 Following consideration of the representations, the OFT shall decide, whether to proceed to taking the action described in paragraph 9 or whether to send a

formal letter to the code sponsor setting out the OFT's concerns and any agreements/undertakings/timescales agreed from the discussions. Undertakings/remedial action are not a right, but an opportunity that may be granted by the OFT if considered appropriate in the circumstances.

- 7 Sponsors will be given a reasonable opportunity to respond in writing. The implications of not complying with any agreed remedial action will be set out to the code sponsor.
- 8 Assessment and monitoring of agreed actions by the case manager within the agreed timescales. If all agreed actions by the code sponsor are met satisfactorily and there are no other concerns, no further action to be taken, although the file will be marked for early review to ensure continuing compliance.

Agreed actions not met

- 9 If agreed actions have not been met within the timescales, or on a later review it is found that they are no longer being met, the case manager will consider whether an extension of the deadline is appropriate and negotiate/agree with the code sponsor. Further meetings to be arranged if necessary.
- 10 If actions are still not met, or allowing more time is inappropriate, or if, following the representations referred to in paragraphs 3 to 6 above, upon consideration by the OFT that it is appropriate to do so and a decision is made to withdraw approval, the case manager will prepare a submission to the Head of approved Codes recommending withdrawal of approval.
- 11 'Notice of intention to withdraw' will be sent to the code sponsor with a reasonable deadline for response taking into account all the circumstances including the possibility of continued consumer detriment to allow them to provide further oral and/or written representations to officials or to the OFT Board, before it is sent to the full OFT Board for a decision.
- 12 Consider and action any points raised/evidence provided by the code sponsor on the notice.

- 13 If decision confirmed by OFT Board, formally notify the code sponsor of the decision setting out the requirements for notifying members, terminating the copyright licence etc.

The OFT reserves the right in exceptional circumstances to shorten the procedures outlined above, eg where the code sponsor ceases to exist, or following conviction for serious criminal offences or if the risk of consumer detriment is such that in the opinion of the OFT immediate withdrawal is required in the interests of consumers.