

Compliance partnerships

Response to consultation

July 2009

OFT1043resp

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1 INTRODUCTION

- 1.1 Between December 2008 and March 2009, the Office of Fair Trading (OFT) conducted a public consultation on a draft set of principles that it proposes to apply when working with its partners to promote compliance with the Consumer Protection from Unfair Trading Regulations (CPRs) and Business Protection from Misleading Marketing Regulations (BPRs) (the Regulations).¹ This response should be read in conjunction with the consultation which provides background, including the legislative framework, and explains the rationale for the policy.
- 1.2 The policy seeks to encourage bodies such as OFT Approved code sponsors and other trade associations to act as a first port of call for resolving compliance issues in addition to recognised statutory bodies such as the Advertising Standards Authority (ASA) and PhonepayPlus. It looks at alternative ways of bringing about compliance outside of the traditional statutory framework for enforcing the law. Rather than dealing with matters always through the criminal or civil courts, we will look to other bodies, which we refer to as our **compliance partners**, with tried and tested systems for dealing with non-compliance.
- 1.3 This document summarises the main issues raised by respondents on the proposed approach and the OFT's response to them. It includes a revised set of principles that the OFT will apply in developing the use of 'established means'² through compliance partnerships. The principles will be revised if necessary in light of our experience of dealing with issues under the Regulations.
- 1.4 The consultation was carried out in accordance with the Code of Practice on Consultation (available from

¹ http://www.offt.gov.uk/shared_offt/consultations/offt1043con.pdf

² This term appears in the Regulations. It means the systems and mechanisms outside the OFT which have the effect of encouraging the control of unfair commercial practices under the Regulations.

www.berr.gov.uk/files/file47158.pdf). Stakeholders were notified of the consultation exercise by email and the OFT also had preliminary discussions with a selection of stakeholders ahead of the formal consultation period. A full list of respondents to the consultation is at Annexe A.

- 1.5 On the basis of responses received to the consultation, we have considered where we may be able to improve upon and provide greater clarity as to the operation of the principles.
- 1.6 The OFT would like to thank all respondents for their constructive engagement in this consultation.

2 RESPONSE TO CONSULTATION QUESTIONS

Overview

- 2.1 We received 24 responses to the consultation. The majority of responses were from trade associations or other bodies representing industry, but responses were also received from regulators and enforcement bodies. Respondents supported the OFT's proposed approach to developing the use of 'established means' through compliance partnerships and felt the draft principles provided a strong foundation. Respondents made a number of helpful suggestions for improving both the content and clarity of the draft principles, details of which are set out below.

Question 1: Is there a requirement for a separate set of principles for the BPRs?

There were no stakeholders who felt there was a need for a separate set of principles for the BPRs. Many stakeholders did not offer a response to this question as the BPRs do not impact on them. One respondent felt that as the vast majority of UK businesses were small they deserved the same protection as consumers. Two respondents felt that the accompanying detail provided to explain the principles was slightly weighted in favour of the CPRs.

- 2.2 We agree that one of the factors listed at Principle 2 for deciding which partner is best placed to resolve a problem did not lend itself well to instances of non-compliance with the BPRs. We have therefore taken on the suggestion to amend the factor 'degree of compliance partner's alignment with consumer interests' to 'degree of compliance partner's alignment with the public interest'.

Question 2: Is the draft set of principles sufficiently clear?

There was general agreement that the principles themselves were reasonably clear, with the exception of Principle 3 (now merged with Principle 2 – see paragraph 2.13). However, there were a number of calls for detail on how the policy would be applied in practice and some respondents would welcome more detailed guidance for compliance partners themselves. Respondents felt that this would aid a common approach amongst partners and help promote a sound understanding of the OFT's enforcement responsibilities.

- 2.3 The aim of the consultation document was to elicit views on the high level principles to be applied. We will review in the light of experience whether procedural guidance is necessary.

Some respondents felt that because the approach is principles-based and multiple agencies could be potential compliance partners then there could be inconsistency, particularly given the complex and uncertain nature of some definitions in the CPRs.

- 2.4 The OFT recognises the importance of promoting a consistent approach amongst partners. We have produced separate guidance³ on the CPRs which should assist partners in interpreting the law. We have also added '**systems for staying abreast of the law**' to the list of qualities/systems it would be desirable for partners to display.

Some respondents welcomed further information on the due diligence the OFT will apply in selecting partners and felt the selection process should be transparent and open to challenge.

- 2.5 The OFT intends to adopt a transparent approach to the selection of compliance partners by publicising a list of those bodies we have worked with within a two-year period (also see paragraph 2.20). We will rely on

³ www.offt.gov.uk/shared_offt/business_leaflets/cpregs/oft1008.pdf

a combination of available data and our own intelligence to satisfy ourselves that a body is able to address the non-compliance in question. In the absence of established protocols, the OFT will where necessary require a compliance partner's assurance that it has the resources and capability to take on an issue prior to referral. There is no obligation for bodies to act as compliance partners in any particular case.

Some respondents expressed the view that the relationship between sponsors of OFT approved codes and compliance partners is not sufficiently clear. They questioned the concept that a body that had failed to meet the requirements for OFT approval of its code might be considered an effective compliance partner.

- 2.6 The Consumer Codes Approval Scheme (CCAS) is a separate initiative from the development of compliance partnerships. A code sponsor's role under the CCAS is to set standards for its members that go above and beyond legal requirements; whereas the role of a compliance partner is to help bring about compliance with statutory requirements. It is therefore entirely feasible that the two roles might be distinct. For example, in our consultation document we referred to action taken to address misleading advertising in the travel industry by The Travel Association (ABTA), whose code is not approved under the CCAS.

Similarly, some respondents felt that a sponsor of an OFT approved code should automatically 'qualify' as a compliance partner and deal with any non-compliance by its member businesses.

- 2.7 Sponsors of OFT approved codes are one of the groups in which we expect to identify compliance partners. In practice, we envisage that in the vast majority of cases businesses facing allegations of non-compliance with the Regulations that are signed up to an OFT approved code are likely to fall within the jurisdiction of the code sponsor and are unlikely to be the subject of investigation by an alternative non-public body. However, it is not possible to state categorically that consideration of an issue by a code sponsor would be appropriate in all circumstances. For example, it might be the case that only a minority of those businesses facing allegations were signed up to a code.

- 2.8 Also, as described at Principle 4, the OFT continues to be under a duty to enforce legislation. Membership of an OFT approved code will not protect businesses from OFT action if that is considered appropriate.

On a similar theme, one respondent felt that serious cases of consumer harm should always be dealt with by a regulator and that Principle 2 should be amended to reflect this.

- 2.9 The OFT targets its own enforcement activity towards cases that are likely to have a high impact on consumer welfare, in line with its prioritisation principles⁴. Where matters are considered appropriate for referral to a partner we intend to adopt a flexible approach and will attempt to refer the matter to the body best placed to act in that particular instance, taking into account all the circumstances of the case.

Question 3: Do the principles summarise all relevant legal provisions clearly and accurately?

Most respondents did not directly answer this question, but the majority of those who did felt the principles summarised the relevant legal provisions clearly and accurately. One respondent pointed out that the lack of a definition in the Regulations of the phrase “established means” makes it difficult to determine whether or not the principles properly reflect the legal position.

A number of respondents felt that the principles did not adequately address the necessity for a body to safeguard confidential information it obtains in the course of its role as a compliance partner. Similarly, some stakeholders questioned the OFT's willingness to disclose the necessary degree of information to a non-public body for it to take action.

- 2.10 We agree that the principles would be strengthened by making the following addition to the list of qualities/systems at Principle 3 (formerly

⁴ www.offt.gov.uk/advice_and_resources/publications/corporate/general/oft953

Principle 4) that a compliance partner must be able to demonstrate - **'adequate controls in place for the safeguarding of confidential information provided to them'**. The OFT is able to disclose information to non-public bodies (in appropriate circumstances) under Part 9 of the Enterprise Act 2002 and recognises the importance of this issue in establishing and maintaining effective partnerships. However, extra care must be taken when disclosing information to non-public bodies and the extent of the disclosure necessary will be assessed on a case by case basis.

One respondent questioned whether there would be merit in the OFT exploring the application of similar principles to its enforcement of other legislation falling within its remit. In contrast, another respondent questioned how we will ensure compliance action will be restricted to the areas covered under the Regulations.

- 2.11 Specific reference to the use of 'established means' is formally limited to the Regulations. Where there are multiple issues, those matters that clearly should be addressed by other legislation will not be referred to a compliance partner inappropriately.

- 2.12 At the same time, we are keen to ensure that this approach does not restrict the OFT from using the most appropriate tool to resolve consumer protection issues that are not covered by the Regulations. The OFT will retain its discretion to work in a less formal way with bodies, including compliance partners, in order to secure compliance with wider legal obligations. For example, sometimes the best way to tackle issues of unfair contract terms is to work with a trade body to produce guidance or model terms in order to change their members' behaviour.

Question 4: Are there any substantive aspects of the draft set of principles with which you disagree?

The only substantive concern raised by several respondents was with Principle 3 (now merged with Principle 2). This addresses the fact that in certain circumstances there may be multiple mechanisms for addressing non-compliance. While there was some support for the use of parallel actions by different compliance partners, a large number of respondents expressed concerns with this principle in its current form. They felt that the proposed approach gave rise to the potential for a duplication of effort and inconsistency in approach on the part of partners, leading to a risk of confusion, double jeopardy and increased costs for business.

- 2.13 We accept that Principle 3, as drafted, gave rise to the concerns mentioned and that further clarity is required to bring it in line with the principles of better regulation. We think that there may be occasions where it is appropriate for more than one mechanism to act, but accept that this should be limited to those instances where there are multiple issues to consider rather than a single issue, such as the example of misleading advertising that was used to illustrate this point. We also accept the view of the respondent that suggested Principle 3 was more a sub-set of Principle 2. Accordingly, it has been revised and merged with Principle 2.

Some respondents have also called for clarity over the interaction between compliance partnerships and the Primary Authority scheme as set out under the Regulatory Enforcement and Sanctions Act 2008. For example, whether it will be possible for Local Authority Trading Standards Services (TSS) to take action even where there has been a referral to a compliance partner thus increasing the likelihood of double jeopardy; or whether referral to a compliance partner would prevent a TSS from also investigating the matter.

- 2.14 We will alert the relevant home or primary authorities when making a referral to a non-TSS compliance partner in order to minimise the risk of duplicating efforts.

One respondent suggested that another possible scenario was a joint approach between the OFT and a compliance partner, whereby the compliance partner took the lead on the matter but looked towards the OFT for support and guidance by way of legal expertise.

- 2.15 A key quality that the OFT will look for in potential partners is the ability to use existing mechanisms or systems to bring about compliance with the Regulations independently in order to allow us to target our resources towards those cases that are likely to deliver high impact results for consumers. We would expect our published guidance on the CPRs⁵ and BPRs⁶ to provide sufficient support in the vast majority of cases.

Some respondents felt that the OFT should require a compliance partner to possess all of the typical characteristics we listed, rather than a combination of them.

- 2.16 The OFT wishes to retain its discretion to take a holistic view of potential compliance partners, rather than automatically discount them if they fall down in one area. For example, while it would be desirable for a compliance partner to provide a route for the public to communicate with it, provided a partner had alternative means of staying abreast of issues relating to the performance of those within its community, this would not be essential. However, we are persuaded that a number of characteristics are always necessary and we have therefore divided the list at Principle 3 (formerly Principle 4) into sets of 'essential' and 'desirable' qualities/systems that compliance partners should have, or be working towards having, in place. What is necessary and what is desirable in a particular instance might depend on the facts of each case, so we need to retain some discretion.

⁵ www.offt.gov.uk/shared_offt/business_leaflets/cpregs/oft1008.pdf

⁶ www.offt.gov.uk/shared_offt/business_leaflets/general/oft1056.pdf

Question 5: Does the draft set of principles have any significant omissions?

A minority of respondents felt that there were significant omissions from the principles. One respondent felt that the principles should include a meaningful right of challenge for businesses if they consider that a decision taken by a compliance partner is inequitable or unfair.

- 2.17 It is not the OFT's intention that a body should have to introduce significant changes to its arrangements, such as an appeal process, in order to act as a compliance partner. While the OFT will look for partners to have systems to bring about compliance with the Regulations, prescribing the exact make-up of those arrangements is not in line with the flexible, principles-based approach we are seeking to adopt. If a body needs to make considerable changes then it probably is not in a position to act as an effective compliance partner. The purpose of the policy is to use existing resources to increase consumer benefit and not to create burdensome new challenges and administrative systems for business.

One respondent felt the principles did not address the potential for conflict of interest arising between interested parties and would appreciate some guidance in this area.

- 2.18 This concern should be addressed adequately by the requirement that partners should be able to demonstrate qualities such as an appropriate degree of independence and objectivity in governance.

Question 6: Does the draft set of principles make clear the factors we will consider in deciding whether to refer cases to other bodies to deal with breaches under the Regulations?

The majority of respondents felt that the factors we will consider in deciding whether to refer cases were clear. Two respondents felt that it was not clear when the OFT will pass on a matter to 'established means' as opposed to dealing with the matter itself or through other enforcers and that it would be regrettable if the OFT used this approach as a way of referring everything to 'established means' as a first step.

- 2.19 While the OFT will target its enforcement activity towards those cases that are likely to have a high impact on consumer welfare, we will also exercise discretion in the application of this policy and place realistic expectations on our compliance partners.

Question 7: Do you have any other suggestions for improvement to the draft set of principles?

A number of stakeholders had suggestions as to how the principles could be improved. While there was broad acceptance that the OFT would not be introducing a formal accreditation scheme, a number of respondents felt that the OFT should publicise in some way which bodies we consider our compliance partners. Respondents felt this would increase transparency and also have the effect of strengthening the partner's standing amongst its community.

- 2.20 The OFT's aim is to adopt a dynamic approach to partnership working, under which bodies will be called upon with varying degrees of frequency. We believe that publishing a list of recognised compliance partners would in effect create an accreditation scheme and may undermine those bodies that are potential partners but are yet to compile a 'track record' of action. Further, it is important to stress that we envisage partners will be able to raise compliance through their existing systems and ability to influence their communities, rather than be required to introduce major systemic changes or rely on any form of

endorsement by the OFT in order to act. The aim of this policy is not to increase any partner's standing in its community, as such standing should already be established for a body to be considered capable of acting as a compliance partner. However, we fully acknowledge stakeholders' concerns about transparency on this issue. Accordingly, the OFT undertakes to maintain on its website a list of those bodies that have acted as compliance partners within a period of two years and details of the types of matters that were referred.

On a similar theme, one respondent suggested that transparency as to the bodies we consider compliance partners is particularly important given that they will be responsible for co-enforcing legislation.

- 2.21 The OFT does not consider that compliance partners will be acting as 'co-enforcers'. We will be looking to partners to increase compliance through their own existing functions.

One respondent pointed out that the principles only refer to OFT's role in passing matters to compliance partners, and that they would be strengthened if they applied to statutory or designated enforcers in general.

- 2.22 The OFT will continue to act as the lead UK enforcer and has responsibility for the co-ordination of action by all enforcers under Part 8 of the Enterprise Act 2002. The principles represent the OFT's interpretation of the Regulations with regard to 'established means'. We hope that they will serve as guidance for other enforcers wishing to adopt a similar policy.

Question 8: Is our rationale for the draft principles sufficiently clear?

A majority of respondents did not directly answer this question. A majority of those that did felt the principles were for the most part clear, but there were some suggestions as to how greater clarity could be achieved. For example, one respondent sought clarification as to whether the OFT envisaged there being more than one compliance partner per sector.

- 2.23 The OFT believes there may be circumstances where this would be the case. For example, in any sector with multiple trade associations, each body could feasibly be called upon to address compliance issues affecting its own community (see also paragraph 2.4 on consistency of approach).

Another respondent felt that the rationale did not mention the fact that in some cases it may be in an individual consumer's interest for a compliance partnership to be used (if it provides access to an alternative dispute resolution) because this may be quicker and more effective than court action.

- 2.24 The focus of our approach is on raising compliance levels across the board to the benefit of consumers and businesses at large. While the potential for consumers to gain from wider access to redress may of course be a welcome additional benefit (though provision of an alternative dispute resolution is not a prerequisite for acting as a compliance partner) it is not central to the rationale for the approach.

Some respondents felt there was a lack of clarity over the circumstances under which the OFT would intervene in a case following referral to a partner.

- 2.25 The OFT will refer matters only to those bodies that have demonstrated they are willing and able to effectively address non-compliance, or have the potential to do so. The OFT therefore expects the need for its intervention following referral to be exceptional. However, if intelligence suggests that action taken by a partner has not remedied a particular problem, the OFT retains its discretion to take appropriate remedial action. The OFT's decision on whether to act will also be guided by its prioritisation principles.

Question 9: Is the explanation of the characteristics compliance partners are likely to display sufficiently clear?

Most respondents did not answer this question directly. Of those that did, a majority felt the explanation of the characteristics partners are likely to display was for the most part clear. One respondent felt that a compliance partner's staff resources need not be excessive. They should be able to 'call on' or have access to appropriate resources such as a law firm. By contrast, another respondent felt that the financial strength of a partner was a particularly important factor in addressing non-compliance.

- 2.26 The principles have been amended to make it essential for a compliance partner to have adequate resources to address instances of non-compliance within its community. However, the OFT supports a flexible approach to how compliance partners meet this requirement and we agree it may be appropriate for some compliance partners to buy in resource as needed rather than to have standing resources such as for legal advice.

Question 10: How should the requirement for accountability be demonstrated by potential compliance partners? Should it include the publication of decisions? How or when, or with what frequency?

A number of respondents felt that partners should be able to demonstrate accountability through their normal governance arrangements. There was strong support for regular reporting by compliance partners to the OFT, backed up by aggregated reporting by the OFT and only limited support for the publication of individual decisions.

- 2.27 The OFT is persuaded by the majority view that the emphasis should be on compliance partners undertaking regular and timely reporting to the OFT. Reporting arrangements will be made on a case by case basis with partners and are likely to be dictated by the volume and complexity of the work. The OFT will keep under review the possibility of publishing its own aggregated report and this is also likely to be dependent on the volume of work. The OFT will also explore the potential for publishing

individual decisions where this would be likely to benefit the public at large.

Question 11: Do you have any views on how the final version of the principles should be disseminated to those who may need to see it?

By far the most common suggestions were that the principles be displayed on the OFT website and distributed directly to potential compliance partners.

2.28 The OFT agrees with the suggested approach. This document has been sent to all identified stakeholders and is available on the [OFT website](#).

Question 12: Do you have any general comments at this stage on potential issues relating to procedures, for example how the OFT should monitor the effectiveness of the principles?

Only a minority of respondents answered this question directly. The most common suggestions were that the OFT should carry out a review after a year of operation and consult annually on an ongoing basis. One respondent also questioned how the OFT intends to exclude compliance partners who do not deal with OFT referrals in a transparent, proportionate, robust, or timely way. It felt that any decision to discontinue the use of a compliance partner should be transparent, in order that other compliance partners, or potential compliance partners, can re-examine their own processes.

2.29 The OFT does not intend to introduce an accreditation scheme under which partners would gain formal 'approved' status which could also be withdrawn. As Principle 2 states, we will not pass on an issue to a body that has shown itself unwilling or incapable of controlling unfair commercial practices. The OFT may consider publishing, without reference to individual compliance partners, details of inadequate or ineffective action so as to enable existing or potential partners to re-examine their own processes.

3 PRINCIPLES THE OFT WILL APPLY IN WORKING WITH COMPLIANCE PARTNERS

- 3.1 The OFT will use the following principles in identifying and working with appropriate compliance partners.

PRINCIPLE 1

In circumstances where the OFT is aware of or suspects non-compliance with the Regulations, it may deal with the matter itself, or seek to refer the matter to compliance partner(s), in line with its prioritisation principles.

- 3.2 The OFT targets its enforcement activity towards cases that are likely to deliver high impact results for consumers, in line with its prioritisation principles. The OFT will continue to intervene in those cases where it is appropriate for us to do so, but using appropriate 'established means' as a first port of call for resolving compliance issues will expand the reach of the Regulations and in so doing bring benefits to consumers, business and enforcers alike.

PRINCIPLE 2

The OFT will seek to refer a matter to the compliance partner best placed to resolve the problem. The OFT may consider it appropriate in some circumstances for different partners to tackle different elements of an issue.

- 3.3 When assessing which partner may be best placed to deal with the issue we will satisfy ourselves that the chosen partner has an effective way of bringing about the control of unfair commercial practices. We will therefore not pass on an issue to a body that has shown itself unwilling or incapable of controlling unfair commercial practices. We will consider and engage with those partners that are relevant to the circumstances of the particular case. So what is appropriate in one case may not necessarily be appropriate in another.

- 3.4 In a minority of instances the OFT may consider it appropriate that more than one partner tackle separate elements of a problem. Where appropriate, the OFT will seek to nominate a 'lead partner' which may in turn seek to liaise with other interested parties. In making this assessment we will have regard to the principles of better regulation, any protocols that are in place between the OFT and its partners and the principle of who is best placed to act.
- 3.5 Factors we will take into account in referring to a compliance partner or partners may include:
- degree of detriment
 - geographical location of detriment
 - sector in which the detriment is arising
 - nature and seriousness of the unfair commercial practice
 - complexity of the issue
 - history of the trader in dealing with compliance requests, and
 - degree of compliance partner's alignment with the public interest.
- 3.6 The OFT will use its discretion to decide who is best placed meet the circumstances of each particular case. We may approach a different body or use a different set of arrangements from those used on a previous occasion. This is not to say we will be inconsistent in our referrals and in most cases it will be clear who is best placed to act.

PRINCIPLE 3

Compliance partners that may be considered to be effective means of addressing non-compliance will demonstrate certain characteristics (see chapter 4 for more detail):

3.7 The characteristics that we expect to see in compliance partners are divided into sets of essential and desirable qualities/systems.

Essential qualities/systems

3.8 A body, or set of arrangements, will be able to demonstrate the following:

- it has adequate resources to address instances of non-compliance within its community
- it is law abiding in its own operation
- it is recognised by its community
- it is properly incentivised to act
- it has systems to place requirements on its community
- it has systems to enforce those requirements within its community
- there is an appropriate degree of independence in governance
- there is an appropriate degree of objectivity in governance
- it has regard for principles of better regulation and the Human Rights Act with regard to the rights of consumers and traders/businesses
- adequate controls in place for the safeguarding of confidential information, and

- it is willing to report to the OFT on its compliance partnership activity.

Desirable qualities/systems

3.9 Compliance partners will also be able to display some or all of the following:

- systems for providing information/communication within markets
- a public facing element that may incorporate a complaint handling facility, and
- systems for staying abreast of developments in the law

PRINCIPLE 4

Ultimately, the OFT continues to be under a duty to enforce the Regulations

3.10 The OFT wishes to foster trust with its compliance partners. However, we will only consider making referrals to compliance partners that appear to us to meet the qualities described in chapter 4 to a sufficient degree. If a body fails to address an unfair commercial practice in a market speedily and successfully, the OFT may refer a matter to another compliance partner or take action itself to prevent continued harm to consumers. The OFT expects action taken by a compliance partner will be successful in the vast majority of cases. However, we will always retain our discretion to refer or not to refer to a compliance partner and whether to intervene in any case following referral.

4 CHARACTERISTICS OF COMPLIANCE PARTNERS

- 4.1 In this chapter we provide further details on the characteristics that we would expect to see in compliance partners. These are divided into a set of essential and desirable qualities/systems. It is important to reiterate, however, that the OFT is not seeking to implement an accreditation scheme (see also paragraphs 2.20 and 2.29).

Essential qualities/systems

- 4.2 Compliance partners will be able to demonstrate the following:

Adequate resources

- 4.3 In order to ensure the compliance partner is able to tackle non-compliance speedily and effectively, it must be adequately funded. Staff resources would need to be proportionate to the nature of the issue in question.

Law abiding in its own operation

- 4.4 In order to ensure the compliance partner is appropriately qualified to ensure compliance within its own particular community it must be able to demonstrate that its own operations are carried out lawfully.

Recognition within its community

- 4.5 A compliance partner will be able to demonstrate that it is recognised within the relevant community as having expertise or influence within a market in order to bring about the desired changes.

Properly incentivised to act

- 4.6 A compliance partner should be able to demonstrate that it acts through a legitimate self-interest, for example, to address a problem that is impacting negatively on the reputation of the community it represents. It should also be able to demonstrate that its interests are aligned with the public interest.

Systems to place requirements on its community

- 4.7 A clear set of rules that at the very least reinforce legal obligations, for example, but not exclusively, through rules or codes of conduct.

Systems to enforce those requirements within its community

- 4.8 This includes having a range of sanctions available to it for dealing with non-compliance and procedures that are fast and effective, particularly for informal interventions.

An appropriate degree of independence in governance

- 4.9 In order to ensure a sufficient degree of confidence from all parties, the compliance partner should be able to demonstrate an appropriate degree of independence from those within its control. This will vary by case, but factors to take into account include whether the partner has a designated structure (separate from existing industry bodies), whether the system of funding is consistent with the need for independent decisions and most importantly that, over and above its structure, it can demonstrate independence in practice.

Appropriate degree of objectivity in governance

- 4.10 A compliance partner should be able to demonstrate this quality, thus enabling respect and support for decisions within the community they police. Firms are likely to resist complying with any system that is seen to favour one group of firms over another and indeed we would not wish to condone any such body, not least for reasons of potential anti-competitive effect. We would vigorously oppose any body attempting to act as 'established means' in such a way that might distort market behaviour.

Regard for principles of better regulation and the Human Rights Act

- 4.11 Compliance partners are likely to be able to demonstrate their actions are in line with the requirements of better regulation, in that that they are proportionate, consistent, transparent, targeted and accountable. It will also need to have regard to or respect the rights of both consumers and traders/businesses both in terms of the human rights and natural justice.

Adequate controls in place for the safeguarding of confidential information

- 4.12 Compliance partners should have systems in place for protecting any sensitive information that is handled in the course of these activities.

Reporting to the OFT

- 4.13 A compliance partner should be willing to provide regular and timely reports to the OFT on its compliance partnership activity. The OFT will also explore the potential for publishing individual decisions where this would be in the public interest.

Desirable qualities/systems

- 4.14 The types of systems that we would expect compliance partners to display some or all of include:

Systems for providing information/communication within markets

- 4.15 A compliance partner should have effective systems in place for disseminating advice and guidance relating to compliance issues to those within its community.

A public facing element that may incorporate a complaint handling facility

- 4.16 A compliance partner is likely to provide a route for the public to communicate with it about the performance of those within its community.

Systems for staying abreast of developments in the law

- 4.17 A compliance partner should be able to demonstrate competency by ensuring that it is up to date with current case law and other legal developments within its community.

A LIST OF RESPONDENTS

Advertising Association

Advertising Standards Authority

Banking Code Standards Board

British Cheque Cashers Association

British Retail Consortium

Building Societies Association

Carpet Foundation

Citizens Advice

Confederation of British Industry

Council for Licensed Conveyancers

Credit Services Association

Direct Marketing Authority

Federation of Master Builders

Finance and Leasing Association

Glasgow City Council

Institute of Professional Willwriters

Market Research Society

National Federation of Property Professionals

Ofgem

PhonepayPlus

Property Codes Compliance Board

Royal Bank of Scotland

The Voice of British Advertisers

Trading Standards Institute