




28 April 2009

Kate Damania
Policy Group – 3C16
Office of Fair Trading
Fleetbank house
2-6 Salisbury Square
London
EC4Y 8JX

Level 12, City Tower
40 Basinghall Street
London
EC2V 5DE

Telephone : 
Facsimile : 
E-mail: 

Dear Ms Damania

**OFT discussion paper
Business leadership in consumer protection**

The Banking Code Standards Board (BCSB) welcomes the opportunity to comment on the issues outlined in the OFT's discussion paper on self regulation and industry-led compliance.

The BCSB, formed in 1999, is the independent, not-for-profit company set up to monitor compliance with and enforce the provisions of the Banking Code and Business Banking Code. These are voluntary codes of practice covering conduct of business in respect of current accounts and overdrafts, personal loans, savings, payment services and credit cards. A majority of the directors of the BCSB are public interest representatives. The BCSB is not a trade association or representative body.

Our responses to the specific questions raised in the discussion paper are set out below. All answers are given within the context of the regulation of retail banking.

1. What types of market problems are most likely to be suitable for an industry-led solution?

- Primarily conduct of business where there is a desire to raise standards beyond statutory minima.
- Where statutory regulation provides only high level principles e.g. obligation to treat customers fairly or lend responsibly, industry codes can provide more detailed guidance for firms and consumers.
- Where regulatory gaps develop/emerge as a result of product or service innovation.
- To meet public interest objectives e.g. financial inclusion – albeit political 'encouragement' may be required.
- Rebuilding the trust and confidence in a market damaged by mis-selling or poor customer service.

Industry led solutions are not suitable for dealing with:

- Commercial issues e.g. pricing or risk management
- Competitive issues e.g. product design

2. In which market conditions is self regulation more likely to be an effective solution than legislation and enforcement?

- Self regulation can be effective in all types of market conditions but has a particular advantage over statutory regulation in markets that are subject to rapid change, as generally, industry codes and guidance can be updated and enhanced more quickly than statutory rules.
- In booming markets, self-regulation can reduce the risk of mis-selling.
- In difficult or recessionary times, self-regulation can protect vulnerable consumers.

3. What type of support from the OFT would be appropriate to encourage more self-regulatory solutions to market problems?

- Extension and public promotion of the 'established means'/'compliance partnership' concept to place greater onus on the industry to deal with concerns before regulatory intervention is called upon.
- Greater public recognition for codes of practice even if they are not (yet) approved under CCAS.
- "Closure" agreements when industry solutions are achieved i.e. protection against regulatory action - 'safe harbours'?
- Willingness to comment on guidance/illustrative case studies and confirm they are fit for purpose. Possible replication of 'FSA confirmed industry guidance'?
- Increased scope for and use of information gateways between the OFT and code monitors (such as the BCSB).

4. How will the current economic climate impact on the role of self regulation as a solution to market problems?

- Could lead to firms retreating to just doing the legal minimum as they seek to reduce costs. Firms could resign from existing codes and new entrants may be unwilling to participate.
- The industry may be reluctant to improve existing codes due to cost of compliance and/or a concern that their competitors may not participate.
- There may be diminished confidence in 'lighter touch' regulation (often one of the characteristics of self-regulation) as the economic recession deepens?

We would be happy to meet to discuss these comments further if this would assist.

Yours sincerely,



Robert Skinner
Chief Executive