

Email response from Laila Benfaida

Many thanks for the opportunity to participate in this discussion. The materials and conference event were well prepared and helpful in initiating further thought and engagement with relevant issues.

I hope some of the following comments may be of interest to OFT when considering potential involvement in self-regulation initiatives. Any views given here are my own, and are not intended to be representative of Hampshire.

One of the key issues to emerge is that there is unlikely to be a 'one size fits all' approach which may be successfully applied to self regulation (as identified by the model in the discussion document). Not only is the nature of detriment variable across different sectors, but the awareness and resources of consumers differs to the extent that they should perhaps not be considered as a single group. It could be that the term 'consumer' includes separate groups whose purchasing behaviour may be influenced in different ways by the introduction of self regulation schemes.

Some relevant considerations have been raised in parliamentary debate about the effects of regulation on competition and consumer choice. Hansard notes have proved to be useful from a scheme operator's perspective:

<http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080219/halltext/80219h0011.htm>

The debate highlights the importance of consumer awareness - the empowerment of consumers to make informed choices and allow the market to control itself organically is seen as preferable to setting an industry benchmark which may be too high. One of the key points which seems to emerge is that legislation should be introduced only where the detriment to be addressed is so severe that it should not be possible for businesses to operate outside a compulsory regulatory framework.

5.15 (i.) What types of market problem are most likely to be suitable for an industry-led solution?

It is offered that self regulation may be appropriate where

- some or all businesses within a sector are identified as pursuing a course of conduct which creates adversity for consumers and falls below a standard which may be considered reasonable. And;
- where the sector specific detriment identified is other than to health or safety and, is not 'catastrophic' to any individual in terms of proportion - these issues being more suited to legislative controls.

In addition, the causal factors leading to detriment should be within the control of businesses in the sector, individually or collectively - and critically, the cost of eliminating detriment should not outweigh the advantage of adherence to the self-regulatory code. Businesses may knowingly breach legislation to gain a greater market share where the sanction is proportionately small (sanction

here may refer to enforcement action or reputational damage) - in much the same way, businesses may not adhere to a code which 'costs' more than it provides. This does not necessarily mean they will choose not to subscribe however.

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

and,

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

In addressing these questions the nature of the self-regulatory scheme is important - i.e. whether the 'brand' primarily suggests high quality, (which can be desirable but may be expendable), or safety from risk.

If consumer spending is reduced, then a code which offers a competitive advantage is more likely to succeed, however, there is an antagonistic factor whereby consumers seeking to save money may choose to take risks knowingly by avoiding regulated or 'badged' businesses.

It is foreseeable that members of a code will charge more. If the risk within the sector is not proportionately high in terms of the likelihood or severity of detriment, the self-regulatory mechanism may be less successful in a challenging environment.

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

Issues to consider may include that there is an apparent paradox - it is probable that for any given sector it may be more effective if there is a single 'self-regulatory body'. This allows a clear message to be given to consumers and helps maintain consistency of regulation. Where multiple regulators exist, businesses will seek accreditation which offers greatest consumer recognition, lowest subscription fees and minimum regulatory burdens. In this situation, the action of competition between regulators is partly detrimental - i.e. aggressive marketing practices and reduction in standards could be encouraged.

A further aspect to explore regarding levels of OFT involvement, is whether (or to what degree) the directing minds of a self-regulatory organisation should have an interest invested in the dominant businesses within the sector concerned. It is often the case that directors of industry-leading business are the same individuals which are involved in running trade associations. This has advantages in terms of expertise and influence, however, it may be considered that the self-regulatory system is open to potential mis-use in terms of distorting competition, thereby placing a greater burden on monitoring processes.

The effect of CPRs might also be an area which warrants closer inspection. Where membership is claimed, failure to adhere to a code is a banned

commercial practice under schedule 1. This may potentially create a perceived enforcement responsibility. In addition, where the requirements of a self-regulatory framework can be enforced through the criminal courts, this may be viewed as contrary to the light touch approach - particularly if the requirements of the framework are for 'high quality'.

While there are some negatives to consider as outlined above, it remains true that self regulation may be able to target specific areas of detriment much more quickly and effectively than legislative steps, and that the involvement of a Regulator-proper is likely to be beneficial in terms of providing guidance and/or governance.

v. What does effective self regulation require?

.....a few thoughts including:

- Consumer awareness of the risks/detriment in the sector, recognition of the self-regulatory scheme and trust in its efficacy.
- The requirements upon business to be proportionate
- Suitable governance mechanisms
- Allowance for variation in business size and quality of product/service to be represented within the trade sector (whether inside or outside the self regulatory system) so that consumers retain the right to choose 'inferior' quality - subject to reasonable minimum standards and adequate transparency. This may also help to ensure competition issues are avoided.

Regards
Laila