



# Business Leadership in Consumer Protection

OFT Discussion Document 2009

Response of  
The Trading Standards Institute

May 2009



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Discussion Paper: Business Leadership in Consumer Protection  
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15 May 2009

Dear Sirs

Thank you for extending the deadline for the Trading Standards Institute to submit its comments on the Discussion Paper 'Business Leadership in Consumer Protection'.

As you will be aware, but of the benefit of others reading this response, the Trading Standards Institute is the professional body for Trading Standards professionals working in the private and public sectors.

It is the national body responsible for representing, supporting, lobbying, and championing Trading Standards to a range of stakeholders including government, business, consumers, and the media.

We look to provide innovative solutions across the regulatory arena; to administer and award professional qualifications; to accredit and certify training and ensure the ongoing competence of members; and to influence and lobby on behalf of the profession as a whole.

We aim, through our actions and our members' actions, to empower consumers and reputable business to contribute to a vibrant economy.

We strive to eliminate rogue traders and unfair trading practices from the marketplace, to promote environmental sustainability, and to make an effective contribution to the health and social wellbeing of citizens and communities.

If you require clarification on any of the points raised in the response, please do not hesitate to contact me at email [rong@tsi.org.uk](mailto:rong@tsi.org.uk) or by telephone on 0845 608 9402.

In conclusion, please note that TSI does not regard this response to be confidential and is happy for it to be published.

Yours faithfully



Ron Gainsford  
Chief Executive

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## Business Leadership in Consumer Protection

### Trading Standards Institute Response – May 2009

Self-regulation in business is a fact of life. It cannot be avoided but it exists because of the impact of criminal and civil law. A retailer has a duty of care to every customer who enters his premises. He has a duty of care to his customer, as does his supplier, for the quality of goods supplied. The civil liability for death or personal injury can be extremely costly. In Consumer Protection law within UCPD there is a professional diligence test. In other legislation there is a requirement for due diligence to avoid criminal sanction.

The trader, therefore, must have regard to his own conduct to avoid a charge of negligence or to avoid the imposition of criminal sanction.

To the occasionally jaundiced eye of the regulator, self-regulation exists only because of the law. The better the law, the better the self-regulation.

To the legitimate trader, it may appear that his greatest asset is his reputation. To the consumer, reputation has a greater impact upon his transactional decision than a trader's guarantees or his membership of a trade association with its attendant rules of self-regulation. Nevertheless, such schemes do provide the basis for building that cherished reputation. Ultimately, reputation will be based upon setting self-imposed standards and meeting them. Such is the essence of competition.

We have seen all too clearly in recent months what a lack of regulation can lead to. In this case this was not so much a lack of law but a lack of enforcement. In our own field we have examples of such consequences of a lack of enforcement with product safety. We have amongst the highest legal standards for the safety and quality of goods. And yet it is surprising that more consumers have not been killed or maimed.

One excuse for the lack of resources to effectively protect consumers from harm through enforcement is the Hampton Rules. We should not enforce unless consumers tell us there is an enforcement issue. But the dead do not complain. By then any action is too late for the consumer, the enforcer, and the reputation of the enforcement service.

Good regulation and good enforcement underpin consumer confidence. "Confident consumers" is our mission statement. Confident consumers take for granted that goods are safe and fit for purpose. They then look for reputation. Self-regulation is an important ingredient in building this most precious commodity.

However, for the protection of consumers and for the protection of those businesses to whom reputation is so important, there is no substitute for good law and good enforcement.

Enforcement and self-regulation are not incompatible. Self-regulation is a way of life for the trader to avoid both civil and criminal liability. Incompatibility could be borne of mistrust and therefore the key is transparency. The key is a co-regulatory relationship between statutory and self-regulation.

It is important that both business and regulator work together. Perhaps the RES Act will assist in this, especially if “primary authority” effectively materialises. It is, however, appropriate for the OFT to raise the self-regulation issue. The DTI (now BERR) strategy document “A Fair Deal for All” called for good trader schemes with ADR backing. It is timely for OFT to look at self-regulation because of the economic situation. Companies must emerge from recession appearing more attractive, and thus more competitive, to customers than before. Again it’s all about reputation. If a company can show that it is now listening and can show that customer complaints will be addressed positively, it will be well placed to improve market share.

TSI supports self-regulation that delivers added value to the consumer, promotes a dialogue with home and primary authorities, and provides transparency and certainty to consumer redress.

This support does not translate into any ill-advised weakening of the statutory regime that we believe provides the underpinning momentum for improving business practices by whatever means. We recognise that a good company trades on its reputation and TSI will support any initiative that strives to build and sustain a good reputation.

We are pleased to see this OFT discussion document. A timely reminder to all enterprises and sectors that it is in their interest, especially at present, to be more attractive to customers who will be more discerning as to where to spend their increasingly stressed income.

It will be important for the OFT to modernise and adapt its self-regulatory thinking, language, presentation and purpose to the economic climate that the country, consumers, businesses and regulators are now operating in. This will be key to its perceived relevance and relationship to the new regulatory framework and environment the UK and other countries are now having to adapt to. Public expectations have changed as the recession and the post financial collapse bite.

We do not consider that the OFT CCAS regime has reached its potential in driving the self regulated market nor in its recognition by and relevance to consumers. This requires reassessment and adaptation. Links with 'Buy with Confidence' etc schemes remain unfulfilled together with, for example, the TSI Fair Trading Award scheme underpinning employee empowerment and consumer rights.

As with the OFT, Trading Standards Services have to work harder to ensure their individual and collective resources are used efficiently and to best impact. The co-regulatory agenda is critical to this as is the effective alliance between the OFT and LATSSs.

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