

Policy statement

The role of self-regulation in the OFT's consumer protection work

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1 INTRODUCTION

1.1 This policy statement sets out the OFT's belief that self-regulation offers benefits for consumer protection and adds real value to the functioning of efficient markets. The OFT has extensive experience of working with self-regulation and will continue to do so where it offers the best solution for resolving consumer issues.

1.2 In this document we explain:

- our commitment to supporting and working with self-regulation, and how it can complement our other work
- the potential that is offered by self-regulation, through its flexibility, to benefit consumer protection in a wide range of circumstances
- the form that our engagement with self-regulation may take, and the limits of such engagement
- the key points that we will always consider in determining our engagement with any individual self-regulatory initiative or existing scheme.

1.3 When referring to 'self-regulation' in this document we mean initiatives by groups of businesses¹ within an industry to modify their behaviour in order to improve quality standards². The term does not, for the purposes of this document, cover industry-led initiatives aimed at achieving or improving compliance with competition law. The OFT provides separate

¹ 'Initiatives by groups of businesses' may include those by industry bodies, professional bodies and coalitions from industry including a range of stakeholders and businesses.

² 'Quality standards' should be taken as having a very broad meaning in this context. We use the term to refer to the whole of the consumer experience so that it includes, but is not limited to the quality of the product or service itself, customer service, information provided and after sales care.

guidance on competition law for industry bodies³ and has recently established a working group with business representatives to better understand how to shape our competition compliance messages.

- 1.4 Self-regulatory initiatives may aim either to achieve compliance with consumer law⁴ or to go beyond what the law requires. Self-regulation is usually achieved through a set of rules (such as a code of practice), through voluntary standards, or through accreditation. It may also include arrangements for the provision of industry guidance material and for action to address particular compliance problems.
- 1.5 The OFT believes in avoiding unnecessary regulatory burden. We acknowledge the benefits of businesses seeking to regulate themselves to deliver high standards for consumers, and that self-regulatory initiatives have an important place alongside our own toolkit. However, for self-regulatory initiatives to be a viable tool they must not produce adverse effects for competition, or for consumer welfare as a whole.
- 1.6 Since its establishment in 1973, the OFT has been involved with a variety of self-regulatory initiatives. We have, for example:
 - developed the Consumer Codes Approval Scheme (CCAS) which actively supports self-regulation
 - worked with self-regulatory bodies who address complaints and can provide alternative ways of bringing about legal compliance outside the statutory framework
 - developed partnerships with industry bodies to change the behaviour of firms where consumers are experiencing detriment

³ Trade associations, professions and self regulating bodies (OFT408, December 2004) gives further guidance on competition law applicable to the activities of self-regulatory bodies www.of.gov.uk/shared_of/business_leaflets/ca98_guidelines/of408.pdf.

⁴ Industry-led compliance.

- encouraged self-regulatory solutions when examination of a market has uncovered problems.

- 1.7 Our longstanding commitment to self-regulation is reflected in our statement of enforcement principles⁵ which outlines the OFT's approach to compliance with, and enforcement of, consumer protection legislation. This commitment is also reflected in our policy on compliance partnerships,⁶ published in July 2009. The policy (and the consultation⁷ which preceded it) outlines principles that the OFT applies when working with other bodies, including self-regulatory ones, which provide alternative ways of bringing about compliance with the Consumer Protection from Unfair Trading Regulations 2008 (CPRs)⁸.
- 1.8 The better regulation agenda has stimulated increasing interest across government, regulators and business in the use of innovative approaches to achieving compliance with consumer protection legislation and resolving problems in markets. Like all government bodies, the OFT has to ensure that its limited resources are used effectively. With this in mind, we need to consider carefully the circumstances in which it may be appropriate for the OFT to work with, monitor and support self-regulation and industry-led compliance, and the extent of any engagement.
- 1.9 In order to provide a sound basis for the development of this policy statement we initiated a debate on the wider self-regulatory landscape. Our policy is therefore informed not only by our own experience but also

⁵ Statement of consumer protection enforcement principles (OFT964, December 2008) www.of.gov.uk/shared_of/reports/consumer_protection/oft964.pdf.

⁶ Compliance partnerships: Response to consultation (OFT1043resp, July 2009) www.of.gov.uk/shared_of/consultations/OFT1043resp.pdf.

⁷ Compliance partnerships: An OFT consultation on developing the use of 'established means' (OFT1043con, December 2008) www.of.gov.uk/shared_of/consultations/oft1043con.pdf.

⁸ Relevant also to the Business Protection from Misleading Marketing Regulations 2008.

by the perspectives of many different stakeholders with an interest in self-regulation.

- 1.10 In March 2009 we published two papers on self-regulation to stimulate thought and debate. The first was a discussion paper examining the range and opportunities for consumer protection offered by self-regulation.⁹ The second was an economic paper examining the economics of self-regulation in solving consumer quality issues.¹⁰ Both these papers offer additional background and context to this policy statement and are a valuable source of information.
- 1.11 We followed these with a conference,¹¹ which was attended by a wide range of key stakeholders. Their contributions to the conference and the written responses to our discussion paper were valuable in testing and crystallising our thinking (and that of others) in this important area.
- 1.12 In our discussion paper we gave a commitment to publish a policy statement which would address the following:
- the circumstances in which self-regulation and industry-led compliance can offer potential solutions to market problems (covered in Chapter 3 and Annexe A)
 - the principles which underpin successful self-regulation (see the factors described in Annexe A)

⁹ Business leadership in consumer protection - a discussion document on self-regulation and industry-led compliance (OFT1058, March 2009). The discussion document and stakeholder responses can be found at: www.ofat work/current-cases/self-regulation.

¹⁰ The economics of self-regulation in solving consumer quality issues (OFT1059, March 2009) www.ofat.gov.uk/advice and resources/resource base/economic-research/completed-research.

¹¹ Business Leadership in Consumer Protection - An OFT conference on self-regulation and industry-led compliance (Hilton London Tower Bridge, 18 March 2009). For a summary of key messages and feedback from the Conference, see our evaluation documents which are accessible on the OFT website: www.ofat work/current-cases/self-regulation.

- the circumstances in which the OFT's consumer law compliance work is likely to be assisted by working with self-regulation (covered in Chapter 2 and Annexe A)
- what type of support from the OFT might be appropriate in encouraging self-regulatory and industry-led initiatives in achieving and raising standards and helping markets to work well (covered in Chapter 2).

2 SELF-REGULATION AND THE WORK OF THE OFT

- 2.1 We are committed to working with self-regulatory solutions where they add value to our consumer protection work. This reflects the real benefits we believe such solutions offer consumer markets and the consumers they serve. We will do this by:
- continuing to engage with existing self-regulatory mechanisms wherever it is appropriate for us to do so (for example through CCAS¹² and our work with compliance partners)
 - giving early consideration to the potential for self-regulatory solutions when seeking to address identified market problems
 - being open and receptive to credible ideas for new self-regulatory solutions that could help to make markets work well for consumers
 - sharing our knowledge and expertise concerning self-regulatory matters with others as this continues to build (including business, regulators, enforcers, and other stakeholders with an interest in self-regulation).
- 2.2 The mission of the OFT is to make markets work well for consumers. Markets work well for consumers when businesses compete vigorously and fairly to win customers' business. In well-functioning markets consumers have confidence that market processes deliver excellent outcomes for them in terms of price, quality, variety, innovation and service. When markets work well for consumers, efficient businesses are rewarded and productivity growth is higher.
- 2.3 We support the development of competitive, efficient and innovative markets and have a range of preventive, diagnostic, advocacy and

¹² Further information is available on the OFT website www.offt.gov.uk/advice_and_resources/small_businesses/codes/ and www.offt.gov.uk/advice_and_resources/resource_base/approved-codes/

enforcement tools to address market failures. Self-regulation has an important place alongside our own internal toolkit. When markets are not working well for consumers and problems cannot be resolved naturally our role may involve intervention, using competition or consumer law. Our work with self-regulation complements this approach because there are occasions where encouraging and supporting the development of market-based solutions may be the more appropriate response. However, the tools are not mutually exclusive and self-regulation can be used in parallel with other forms of intervention.

- 2.4 We need to maintain flexibility in our decision-making and respond appropriately to changes in market conditions, resources and other relevant circumstances. This requires that our decision-making should be principles-based, and that it should be carried out on a case-by-case basis.
- 2.5 We do recognise that the need for flexibility is balanced by some desire for certainty. We have tried to go some way to explain what the principles might mean in terms of practical action by the OFT by including below some **illustrative** indicators as to the form that our engagement with self-regulation may take, and the likely boundaries of such engagement based on current circumstances including resourcing.

Scope of engagement - illustrative indicators

- 2.6 Although there are few hard and fast rules governing the scope of our engagement, we should state at the outset that OFT engagement will always be dependent on there being sufficient alignment of private interests with public interests to ensure that there is benefit for consumers.
- 2.7 Our policy will be to do the following:
- continue to build the OFT CCAS brand¹³ as a robust and effective scheme that delivers real benefits to consumers through a promise of

¹³ www.of.gov.uk/news/campaigns/consumercode/

legal compliance and a commitment to offering higher customer service standards

- develop compliance partnerships with self-regulatory bodies to deal with issues under the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), and give consideration, where it appears to us appropriate, to the potential of compliance partnerships for addressing consumer protection issues that fall outside the CPRs¹⁴
- support the Local Authority Assured Trader Scheme Network¹⁵ to facilitate an increase in the number of consumers and businesses with access to local authority trader schemes that meet nationally agreed minimum standards
- undertake one-off projects working with industry to solve specific consumer protection issues in given markets, where we consider it to be an appropriate and proportionate response that is likely to be effective
- help to raise the understanding and profile of self-regulatory solutions by publicising those instances where self-regulation or successful partnership working has provided solutions to market problems
- where appropriate, consider self-regulation in our recommendations for remedies in market studies
- engage in dialogue with stakeholders such as industry, self-regulatory bodies and others

¹⁴ This excludes considerations in relation to licensing issues under the Consumer Credit Act. See footnotes 6 and 7 for additional information on compliance partnerships.

¹⁵ The Local Authority Assured Trader Scheme Network (LAATSN) is supported by the Local Authorities Coordinators of Regulatory Services (LACORS), Trading Standards Institute (TSI) and the OFT. The OFT facilitated its establishment in 2006 in recognition that local authority trader schemes deliver a number of benefits to local communities.

- share lessons learned with other regulators, other government departments and business
- advise and educate consumers on the potential benefits offered by self-regulation and on actions that they can take to avoid or reduce risks.

2.8 Conversely, our policy means **we will not**:

- formally approve a self-regulatory body's rules by the delegation of OFT duties or give 'safe harbours' from potential OFT action
- sign binding memoranda of understanding (MoUs) with self-regulatory bodies restricting the OFT's ability to fulfil our consumer protection duties or removing flexibility from how we work with industry
- establish a formal approval scheme for compliance partners¹⁶
- give alternative formal approval outside of the OFT's CCAS, for example by developing any additional badges of OFT support or dilute the CCAS standard by splitting the CCAS into a two (or more) tier system
- make recommendations for industry to develop new self-regulatory solutions where industry does not demonstrate an active willingness to put consumer protection considerations at the centre of its solution
- in any way support self-regulatory initiatives which show evidence of anti-competitive behaviour
- commit to assisting a self-regulatory body develop its scheme where the issues do not forward our own consumer protection priorities.

¹⁶ For links to previous compliance partnership work see footnotes 6 and 7.

OFT considerations

2.9 When considering whether OFT engagement with self-regulation is appropriate we will follow the OFT's prioritisation principles.¹⁷ These principles are based on balancing the impact of the work on consumers, and its strategic significance, against the risks and the resources involved. The principles act as a guide and will be applied using balance and judgement on a case-by-case basis. However, when considering working with self-regulation specifically, the following will also be taken into account:

- We want to maximise opportunities for engagement that have a positive impact on the welfare of consumers. To do this we need to understand the scale of any problem and the level of detriment.
- Opportunities for holistic solutions to market problems should be maximised. The strategic fit of working with self-regulation will be considered against current work being undertaken.
- All considerations of engagement with self-regulation will be compared against the option of statutory enforcement or other regulatory activity.
- The work we take on should provide maximum impact so we will consider the potential benefits and risks of the scheme or initiative, to both the market in question and consumer protection. Analysis to be informed, in part, by the factors in Annexe A (introduced in Chapter 4).
- Our engagement with self-regulation should enhance the overarching OFT strategy so when considering engagement with particular schemes we will consider the direct benefits and risks to the OFT.

¹⁷ The OFT prioritisation principles (OFT953, October 2008) can be found at: www.of.gov.uk/advice_and_resources/publications/corporate/general/oft953.

3 THE NATURE AND VALUE OF SELF-REGULATION

- 3.1 We believe that self-regulation in the area of consumer protection can, in appropriate circumstances, add real value to the functioning of efficient markets.
- 3.2 Although there can be clear benefits in the adoption of self-regulatory mechanisms, both for business and for consumers, there are also risks of which proper account must be taken.

Benefits of self-regulation

- 3.3 Key benefits to business flow from the flexibility and adaptability of self-regulatory mechanisms, and their ability to harness specialist industry knowledge to ensure a good 'fit' with the problems they need to address. Self-regulation allows business to take control, and provides an opportunity for sharing the costs of reputation-building. It can also be a valuable tool for businesses seeking to improve the reputation of an entire industry or sector.
- 3.4 Self-regulation can, in some instances, reduce regulatory burdens and obviate the need for more heavy-handed and formal controls.
- 3.5 For consumers, key benefits flow from the degree of commitment that industry control engenders. This helps to increase compliance with the law, and may in some cases encourage business to 'raise the bar' and reach higher standards.
- 3.6 Self-regulatory mechanisms often provide the means by which consumers can identify businesses that are committed to delivering high standards, thus helping to build consumer confidence. They may also provide efficient resolution of consumer complaints, and an effective means of consumer redress.

Risks of self-regulation

- 3.7 Self-regulatory mechanisms cannot provide a complete solution to all problems within a market. Their largely voluntary nature means that they are unlikely to provide full coverage.
- 3.8 Protection for consumers afforded by the rules may not, for a number of reasons, prove to be as effective as intended or claimed.
- 3.9 Self-regulation may raise standards to a level higher than some consumers actually want. This can reduce consumer choice and make the market inaccessible to some groups of consumers.
- 3.10 Self-regulation can provide businesses with the opportunity to restrict competition, whether intentionally or not. Co-operation may lead to anti-competitive practices¹⁸ such as creating barriers to entry or allowing the coordination of decisions on output or pricing. Self-regulatory initiatives must be designed and maintained in such a way as to avoid anti-competitive consequences.

Effective statutory backstop

- 3.11 Self-regulation cannot remove the need for a credible and effective statutory backstop or 'safety net', with powers of enforcement by statutory authorities, to ensure mandatory adherence, by all businesses, to minimum acceptable standards.
- 3.12 Voluntary systems of self-regulation, although subject to incomplete coverage and the other risks referred to above, may still add value by helping to achieve adherence to statutory standards.

¹⁸ Trade associations, professions and self regulating bodies (OFT408, December 2004) gives further guidance on competition law applicable to the activities of self-regulatory bodies www.offt.gov.uk/shared_offt/business_leaflets/ca98_guidelines/oft408.pdf.

3.13 For maximum effectiveness it is essential that self-regulation, to the extent that it reflects minimum statutory standards, is backed up by a credible threat of enforcement by statutory regulators.

Where self-regulation can add value

3.14 Although there are significant benefits from using self-regulation, not all self-regulation works equally well. There is no perfect formula for success, and nor are there any clear cut or easy answers as to the particular market circumstances in which self-regulation may be considered to be the right response.

3.15 However, our economic analysis and comments from stakeholders identified some situations where industry may develop self-regulatory solutions which the OFT would consider engaging with:

- where quality of a product or service is not readily discernible so that consumers cannot judge exactly what they are getting
- where there is a relatively large proportion of small suppliers in the market, as small businesses may struggle to build reputation without a collective means of doing so
- where market players have concern that the reputation of the whole industry could be harmed by the bad behaviour of a few and want to change the incentives for, and police their behaviour of, those who have less to lose¹⁹
- where harm to consumers would be high without the introduction of some form of regulation (or further regulation) in the market concerned

¹⁹ Likely to be a collection of businesses in a market and may include larger businesses often concerned over the behaviour of smaller firms.

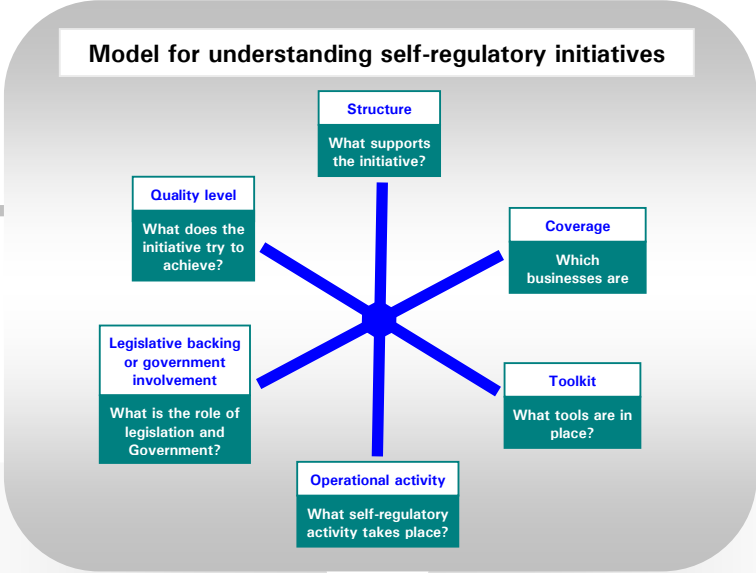
- where there are sufficient checks and balances in place to mitigate against risks, so that self-regulatory promises are met.
- 3.16 These situations are, however, no more than potential indicators. They are no guarantee of the appropriateness of OFT involvement, which can only be assessed following a full and careful consideration of all the circumstances of any given situation.
- 3.17 There are many factors affecting the potential effectiveness of self-regulatory mechanisms. The level of risk varies in different situations, thus it is essential to adopt a flexible approach, underpinned by sound risk-based analysis using market intelligence.
- 3.18 Whilst we were able to identify some factors likely to favour the success of self-regulation, we have found nothing to suggest that there are any specific market conditions in which self-regulation could not be effective. Success will depend on there being sufficient favourable factors (see indicators in Annexe B), and ultimately on the determination of the market players to make such a solution work, by finding creative ways to overcome barriers.
- 3.19 We would not, therefore, make predictions for success based solely on market conditions.

4 TOOLS FOR ANALYSIS AND ASSESSMENT OF SELF-REGULATORY SOLUTIONS

- 4.1 There is a very wide range of possible self-regulatory mechanisms and structures, each with different levels and types of engagement, allowing scope for flexible tailored solutions. The potential risks to self-regulatory effectiveness are extremely varied. Our experience and analysis of this diversity, reinforced by the views we have heard from others with an interest in self-regulation, have led us to the conclusion that there is no simple way of defining essential criteria for successful and effective self-regulation. We therefore recommend a principles-based flexible approach to questions concerning the 'best' or 'most appropriate' model in any particular circumstances.
- 4.2 We have devised a model to consider two different aspects of self-regulation and assist with the analysis and assessment of the likely success and effectiveness of schemes or initiatives. (This is shown in Figure 4.1).
- 4.3 On the left of Figure 4.1, the version of the model labelled 'Self-regulatory components' can be used to better understand the components and characteristics of an existing or proposed self-regulatory scheme. It was introduced in the OFT discussion document on self-regulation²⁰ and gives a purely descriptive footprint. A fully labelled version of this model can be seen in Annexe B.
- 4.4 On the right of Figure 4.1, the version of the model labelled 'Factors that contribute to success' presents objective factors that can play a part in ensuring self-regulatory schemes function effectively. This is not a check list as even the most successful scheme may not tick all the boxes. Instead, the factors should be considered as a whole and considered

²⁰ Business leadership in consumer protection (OFT1058, March 2009)
www.oft.at.work/current-cases/self-regulation.

Figure 4.1

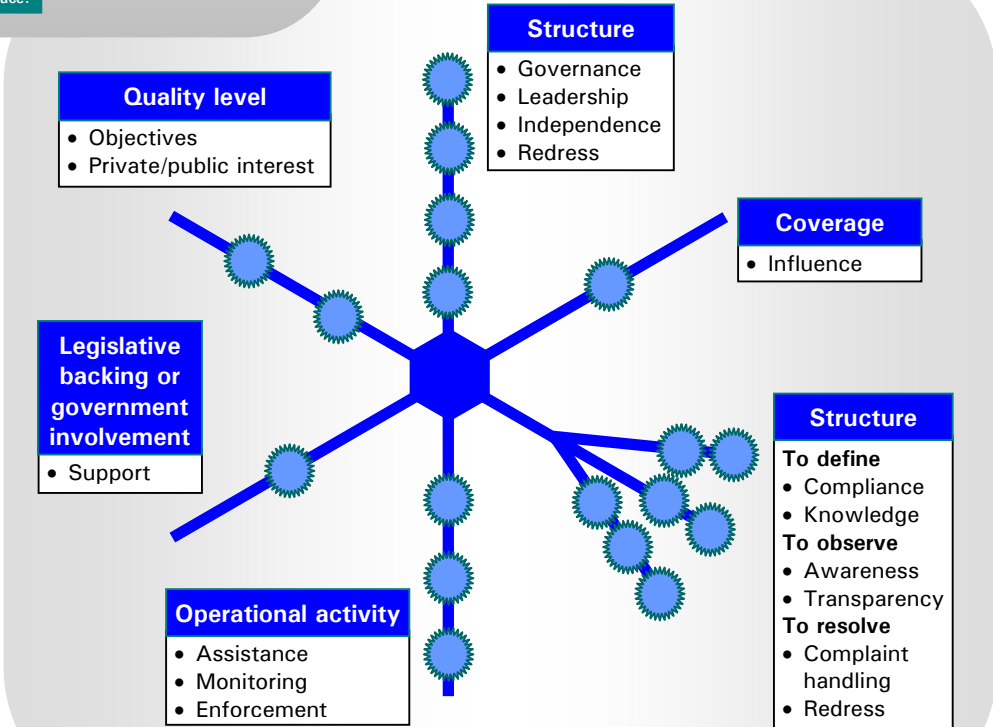
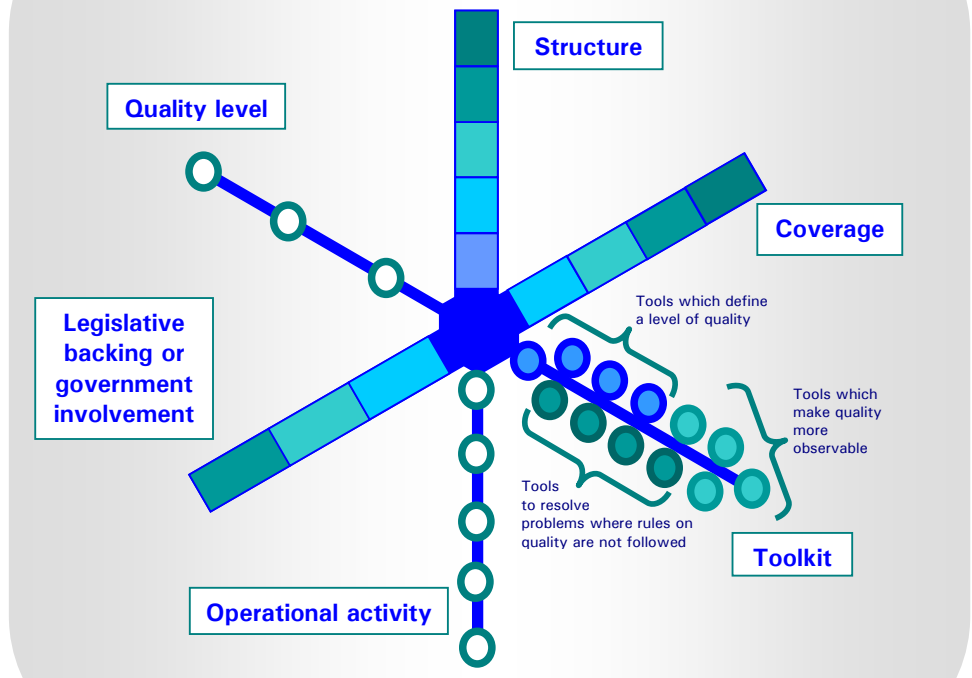


1. Use to understand the design and operation of a scheme

Self-regulatory components

2. Use to consider the likely success of a scheme

Factors that contribute to success



A fully labelled version of this model can be seen in Annexe B.

For full details of the factors see Annexe A.

against the characteristics of a particular market, the issues causing problems, and the risks that may result.

- 4.5 We will use these tools to help with our analysis and assessment. However, we hope that they will also be used more widely by industry, other regulators and consumer groups and that they will prove useful aids to understanding and working with self-regulation for all with an interest in it.
- 4.6 We already have other detailed tools and methodologies which remain the primary guide for interactions with CCAS (the CCAS core criteria)²¹ and compliance partnerships (a set of principles)²². The new factors introduced here are in alignment with these other tools, but provide more flexibility allowing consideration of a wide range of different types of self-regulatory activity.

²¹ The CCAS core criteria are explained in Consumer Codes Approval Scheme: Core criteria and guidance (OFT964, March 2008).

www.offt.gov.uk/shared_offt/Approvedcodesofpractice/oft390.pdf.

²² The principles the OFT will apply in working with compliance partners are outlined in Compliance partnerships: Response to consultation (OFT1043resp, July 2009).

www.offt.gov.uk/shared_offt/consultations/OFT1043resp.pdf.

A FACTORS THAT CONTRIBUTE TO SUCCESS

- A.1 The following factors are intended as an aid to objective consideration of self-regulatory initiatives. They provide a framework to assist the design of self-regulatory solutions, the assessment of their likely success, and the effectiveness of any alternatives that are available.
- A.2 The presence of the factors will indicate that the solution may be successful in delivering positive benefits to individual businesses, the market within which they operate, and the consumers they serve. Analysis and risk assessment must be on a case-by-case basis as the relative importance of the different factors will vary depending on the context.

Quality level

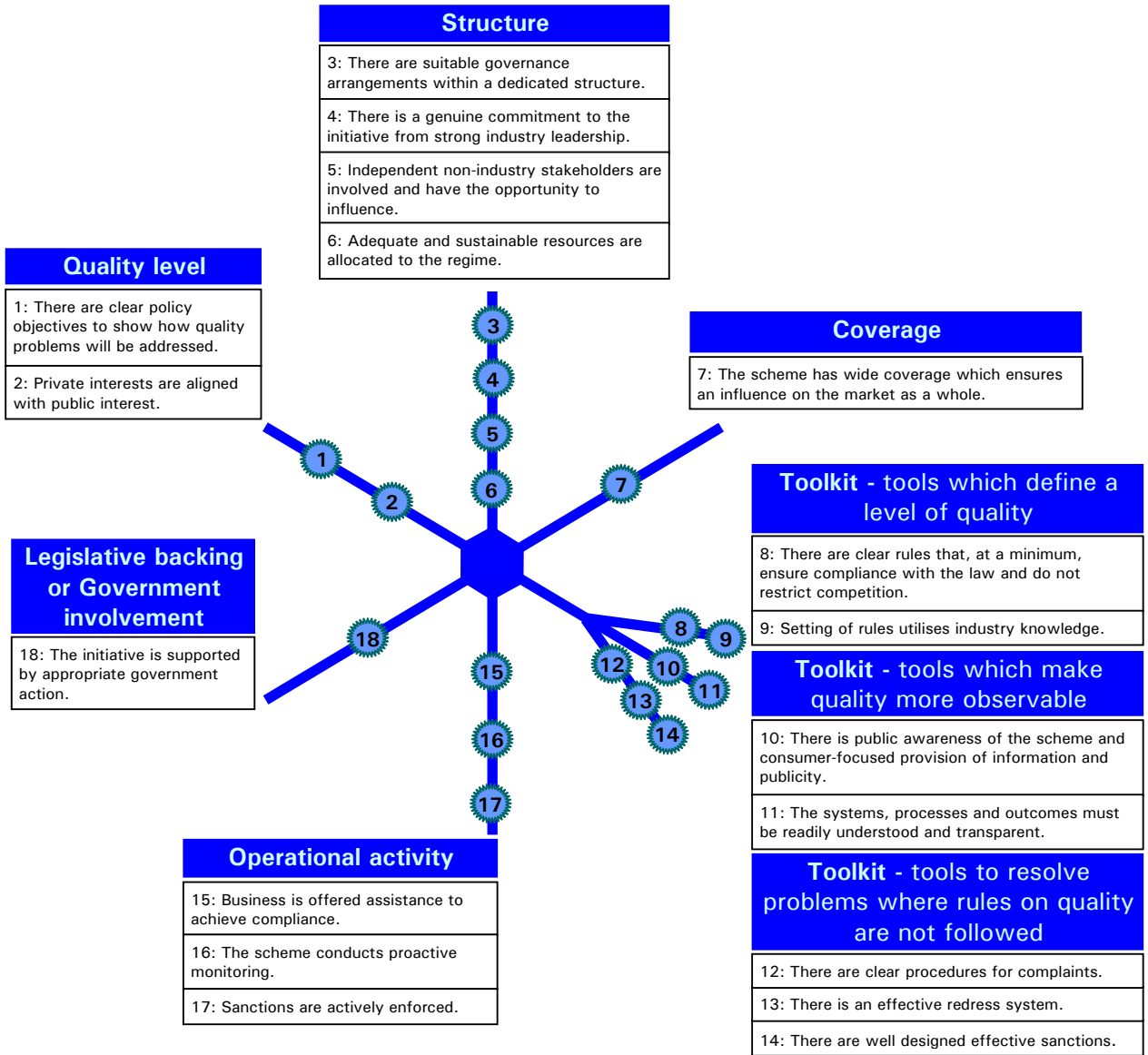
Factor 1: There are clear policy objectives to show how quality problems will be addressed

- A.3 Clear policy objectives will set out the overall aims of the scheme, indicate the quality level it intends to achieve, and the areas of detriment to be addressed. Regular review of objectives allows the scheme to adjust to changing market conditions or emerging practices leading to consumer detriment.
- A.4 **This is important in circumstances where problems relate to quality being particularly difficult, or even impossible, for consumers to assess.**

Factor 2: Private interests are aligned with public interest

- A.5 Self-regulatory initiatives that exhibit a high degree of alignment between private interests of businesses and the public interests of consumers are likely to be effective in delivering benefits to individual businesses, solving market problems and offering added value to consumers. Alignment will occur when the individual elements of a scheme (such as the rules) are designed to meet both private and public interests. A key economic driver for industry to buy

Figure A.1 Factors that contribute to success



into, and fully participate in, self-regulation is the opportunity to become more profitable. Thus a self-regulatory scheme that seeks to improve profitability by improving the consumer's experience is likely to incorporate a high degree of alignment. It is also important that the benefits to participating businesses are greater than any compliance costs.

A.6 This is an important consideration for all OFT involvement.

Structure

Factor 3: There are suitable governance arrangements within a dedicated structure

A.7 A dedicated, and separate, structure for any self-regulatory activity minimises the risks of conflicts of interest arising, particularly where self-regulation is led by industry bodies with a mix of functions including lobbying. However, where a totally separate structure is not feasible, separation of functions (such as rule-writing or monitoring activity and enforcement rulings) can minimise risks.

A.8 This is important in circumstances where an entire market is covered, or a large proportion of one, or where membership of a scheme spans trade bodies.

Factor 4: There is a genuine commitment to the initiative from strong industry leadership

A.9 Strong industry leadership committed to effecting real change can ensure sustainability of an initiative, by considering the long term performance of a market not just short term solutions. Leadership is important to drive the initiative forward, garner support from industry and encourage involvement from all stakeholders.

A.10 This is relevant in diverse markets with limited industry consensus.

Factor 5: Independent non-industry stakeholders are involved and have the opportunity to influence

- A.11 The involvement of external non-industry participants allows the knowledge and opinions of industry to be balanced by alternative perspectives and helps ensure objectivity. Involvement of consumer representatives can help schemes build reputation and improve public confidence. Government representatives or experts from other industries can provide varied experience and offer an alternative perspective.
- A.12 **This is of particular importance where a market suffers from high levels of consumer detriment or in dynamic markets which experience rapid change.**

Factor 6: Adequate and sustainable resources are allocated to the regime

- A.13 Long term viability of a self-regulatory mechanism is dependent on a financing model which provides adequate resources to support its objectives. Self-regulatory schemes are usually resourced by membership levies on industry. The benefits to business should be greater than the costs because costs which outweigh benefits will be passed on to consumers.
- A.14 **It is important to understand the relationship between initial set up costs and long term operational sustainability. Some activities will continue to incur costs throughout the life of the scheme.**

Coverage

Factor 7: The scheme has wide coverage which ensures an influence on the market as a whole

- A.15 Links to real change in a market are most easily seen where schemes cover the full market. However, mandatory schemes with full coverage are not a panacea and are quite rare. Voluntary schemes are simpler and quicker to develop and are less likely to have adverse consequences

such as anti-competitive effects.²³ They can signify a healthy market where member businesses are able to signal specific benefits to consumers whilst still allowing choice of alternative options. Importantly, voluntary initiatives can also effect real change in a market, influence consumer purchasing decisions, and help drive out rogue businesses.

- A.16 **Full coverage or significant influence is particularly important in circumstances where problems relate to widespread and serious detriment caused by business behaviour across a market.**

Toolkit: tools which define a level of quality

Factor 8: There are clear rules that, at a minimum, ensure compliance with the law and do not restrict competition

- A.17 Where self-regulation covers areas that have legal force it is important that rules, at a minimum, ensure compliance. The Consumer Protection from Unfair Trading Regulations 2008 prohibit codes of practice from promoting unfair practices and any self-regulator would face potential civil enforcement action were they to promote unfair practices through their rules. It is good practice for the rules to set behavioural standards of customer care.
- A.18 Self-regulatory schemes must not infringe competition law. It is important to ensure that firms do not use self-regulatory meetings to make anti-competitive agreements and that rules do not unfairly influence competition, unfairly restrict market entry, or lead to excessively high prices.²⁴ The OFT would consider intervening where a self-regulatory scheme is acting in a way that promotes or encourages anti-competitive behaviour.

²³ See factor 8.

²⁴ Trade associations, professions and self regulating bodies (OFT408, December 2004) gives further guidance on competition law applicable to the activities of self-regulatory bodies www.offt.gov.uk/shared_offt/business_leafllets/ca98_guidelines/offt408.pdf.

A.19 **This is an important consideration for all OFT involvement.**

Factor 9: Setting of rules utilises industry knowledge

A.20 When developing solutions, industry is best placed to take into account the types of business model, associated costs and incentives which are relevant to the particular market. Rule setting by industry fosters a greater sense of ownership than government imposed legislation and the rules are more likely to be accepted, thereby encouraging sign-up. Rules should be adjusted in the light of experience and as changes in the market occur.

A.21 **This is important in markets with complex products or dynamic markets undergoing technological advances.**

Toolkit: tools which make quality more observable

Factor 10: There is public awareness of the scheme and consumer-focused provision of information and publicity

A.22 Public awareness of the benefits of dealing with businesses which belong to a self-regulatory scheme can help consumers to make informed choices. This drives reputational benefits, increases trust in the market and reduces the scope for free-riding. Consumers may be unaware of the implications of doing business with those outside a scheme, so proactive publicity helps ensure that member businesses reap the rewards of publicly committing themselves to certain levels of quality.

A.23 **This is important in markets for credence²⁵ goods or services, or where consumers' purchases are infrequent.**

²⁵ Credence goods or services – these are goods or services whose quality cannot be ascertained by consumers even after they have been purchased and used. For example, a complex product for which the consumer does not have the knowledge to check the technical specification, or a service where an expert knows more about the quality the consumer needs than the consumer himself.

Factor 11: The systems, processes and outcomes must be readily understood and transparent

- A.24 Public accountability and transparency demonstrate that quality promises made by self-regulatory schemes are genuine. This is integral in building the trust and confidence of informed consumers and other stakeholders who in turn may have influence over broader consumer decision making. Accountability will give Government and regulators a better opportunity to understand the benefits of self-regulation and, where it demonstrates a positive influence in the market, it is likely to reduce the probability of alternative state intervention.
- A.25 **This is particularly important in markets where there are high degrees of consumer detriment or where consumer confidence has been damaged resulting in a high degree of public concern and media scrutiny.**

Toolkit: tools to resolve problems where rules on quality are not followed

Factor 12: There are clear procedures for complaints

- A.26 Robust complaints procedures win consumer trust in the willingness of the scheme to resolve problems where things go wrong. It is important that best practice in complaint handling is embedded at all levels of member businesses. Where intelligence about complaints is fed back, schemes can ensure that they correctly address areas of concern that most affect consumers and the market.
- A.27 **This is important for all consumer-facing schemes and good signposting is particularly important where there are complex governance arrangements.**

Factor 13: There is an effective redress system

- A.28 Consumers can find court action a cumbersome and unsatisfactory experience, and the existence of a well-publicised independent redress system can give them the confidence to deal with businesses with

whom they are unfamiliar. Businesses can reduce costs, where mistakes are made, by avoiding court action and limiting damage to their reputation. The self-regulatory scheme itself can gain credibility, and redress systems act as an additional driver for compliance. Redress mechanisms should be well publicised, quick, fair and cheap for the consumer to access.

- A.29 **This factor is most important in markets with high levels of consumer complaints and financial detriment.**

Factor 14: There are well designed effective sanctions

- A.30 Well designed sanctions which are specific to the market and the problems within it can act as a real deterrent against non-compliance and are important for the credibility of a scheme. The ultimate sanction is expulsion, although this has drawbacks including the loss of influence over expelled businesses. There should therefore be a range of sanctions, such as warnings, fines or publicity to ensure responses to non-compliance are proportionate.

- A.31 **This is a key consideration for all OFT involvement.**

Operational activity

Factor 15: Businesses are offered assistance to achieve compliance

- A.32 Self-regulation involves a more persuasive stance on achieving compliance by comparison with statutory regulation. Support to business can take various forms for example, written guidance or training courses, and should underline the benefits of scheme membership as an incentive for compliance. Supporting materials should be targeted at the practical experiences of business with particular emphasis on the areas of most common consumer dissatisfaction. Staff training is important to ensure the principles of the self-regulatory scheme are embedded throughout member organisations.

- A.33 **This is particularly important where self-regulatory solutions are focused on systemic problems within an industry, where rules represent a departure from accepted trading practices or where rules are complex.**

Factor 16: The scheme conducts proactive monitoring

- A.34 An active commitment to ensure that the rules are adhered to requires proactive monitoring that can capture instances of non-compliance even where there is a lack of complaint evidence. Customers will not always complain, because they may lack understanding of the self-regulatory rules or be sceptical about whether or not complaints will be resolved. Also, some aspects of quality may be unobservable to consumers and can only be detected through monitoring. Monitoring should be risk-based and include a range of methods to ensure non-compliance is identified together with possible actions to resolve problems which do occur.
- A.35 **This is particularly important in markets for 'credence'²⁶ goods or services where consumers may not be able to assess whether businesses have delivered good quality and upheld the self-regulatory promises.**

Factor 17: Sanctions are actively enforced

- A.36 Visible enforcement of credible sanctions underpins self-regulation by showing that breaking the rules is considered unacceptable. A lack of enforcement leads to reduced incentives for other member businesses to abide by self-regulatory rules. By contrast, prompt, firm action sends a clear message that non-compliance is unacceptable and increases trust from customers and other stakeholders. All forms of non-compulsory self-regulation face problems imposing penalties as businesses may prefer to simply leave the scheme rather than accept the penalty. Self-regulatory bodies can be put under pressure from members not to act (or to take only limited action) and there can be concerns that highlighting

²⁶ See footnote 25 for explanation of credence goods or services.

problems may ultimately undermine the regime. These issues should be actively managed, rather than ignored, through positive action highlighting the overall benefits to business, and the commitment to fulfilling the objectives of the scheme.

A.37 This is a key consideration in all circumstances.

Legislative backing or government involvement

Factor 18: The initiative is supported by appropriate government action

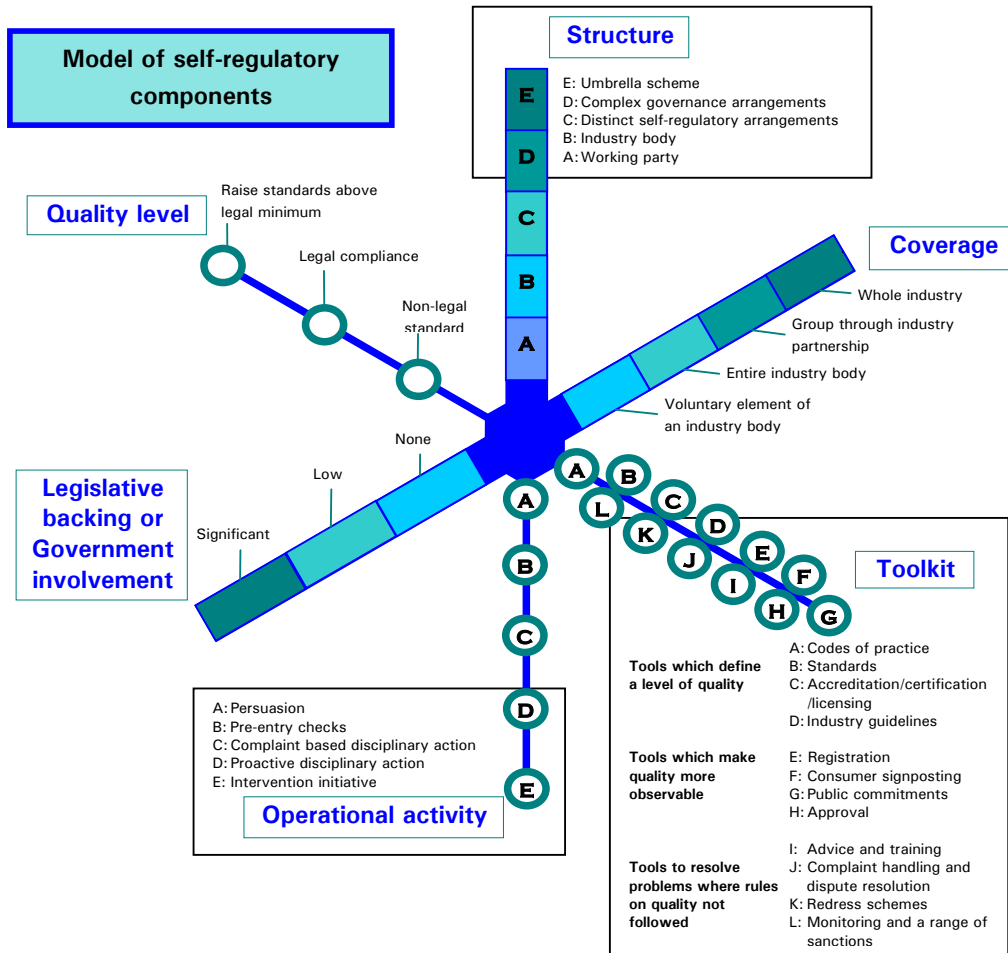
A.38 Recognition through schemes such as the OFT's CCAS, government engagement with self-regulatory consultations or publicity given to successful partnership working can help schemes achieve credibility and thus improve consumer confidence.

A.39 Voluntary self-regulation generally works best when those businesses who operate outside the self-regulatory scheme are unable to gain a competitive advantage by breaching consumer protection legislation. Law enforcement by regulators acts as a deterrent and reinforces minimum standards from which self-regulation can develop. The likelihood of appropriate enforcement also minimises risks where a self-regulatory body finds itself unable to enforce instances of non-compliance with legal obligations.

A.40 The importance will depend on the degree to which the problems in the market fit with the priorities of Government and statutory regulators.

B MODEL OF SELF-REGULATORY COMPONENTS

Figure B.1



B.1 For further detail on how this model can be used refer to the OFT's discussion document 'Business leadership in consumer protection' (OFT1058).