# CODES OF PRACTICE THAT BITE

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**January 2001**

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## Introduction

Codes of practice play an important part in the overall framework of consumer protection in Britain.

However, there is universal dissatisfaction with present arrangements. Codes are of varying quality, and compliance with them is even more variable. Codes do not protect the consumer in some areas where protection is most needed, and the consumer has no way of knowing how meaningful a particular code is.

The government is seeking to address the issue but is making slow progress. This paper suggests a more radical approach which concentrates on seeking to change the climate of opinion. It advocates a political rather than a legal approach to secure some quick wins in areas of major concern to consumers and an across the board improvement in the usefulness of codes.

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## Executive summary

**The need for self regulation**
It is not feasible for legislation to cover every area of consumer expenditure with specific regulation and complaints procedures. Where the consumer needs some protection but specific legislation is not an option then industrywide codes of practice are a realistic alternative. Codes of practice are particularly appropriate where there is an imbalance of information between the customer and the producer or retailer.

**How codes of practice work**
Codes of practice are generally "owned" by trade associations. Drawing them up is a tortuous process. A government department or agency often plays a role. Typically, codes have some general statements about acting with integrity, complying with the law etc and then some specific points relevant to the sector. Compliance with a code may be a condition of membership of a trade association, but membership of an association is voluntary. There are huge differences in respect of compliance with and enforcement of codes from no meaningful compliance arrangements at all to comprehensive (and expensive) arrangements including mystery shopping, annual compliance statements and ombudsman schemes.

**Problems with codes of practice**
The economy does not fall into neat compartments, each represented by a strong trade association. In many sectors there are competing or overlapping trade associations. This makes it difficult to identify a suitable "owner" for a code covering a meaningful area of consumer expenditure.

Members of a trade association will have very different views about why they want a code – from getting rid of the cowboys to giving the cowboys an aura of respectability. Reconciling these competing objectives is difficult. Sometimes, government pressure can help.

Trade associations have a major resource problem in drawing up and policing codes of practice.

A major difficulty with the concept of codes is that often they cannot be made to work in areas where they are most needed.

Many codes of practice are full of meaningless platitudes and do not deal with major issues. Most associations take only modest steps to ensure compliance with codes and often there is virtually no monitoring. This means that codes of practice which look good of paper can be useless in practice.

**What a good code of practice should do**
A good code of practice should meet six tests –
- It should cover a significant proportion of the activity that is subject to the code.

- It has to be meaningful, dealing with matters that properly concern consumers. This means it must be drawn up on the basis of extensive research and consultation.
- The existence of the code needs to be effectively publicised.
- The operation of the code should be overseen by a committee comprising industry representatives and outsiders.
- Each adherent to a code should submit a formal statement each year demonstrating how it has complied with the code and there should be independent monitoring.
- The code should make provision for a comprehensive complaints mechanism.

**Policy towards codes of practice**

The Office of Fair Trading has a specific responsibility for codes of practice. The Office initiated a review in February 1996. This has concluded that the current regime does not command support. The White Paper on consumer policy, published in July 1999, set out core principles for codes and referred to an approval scheme. However, work seems to have stalled. The OFT has taken a rather legalistic approach, arguing that its needs new legislation which is not likely to be forthcoming in the foreseeable future.

**The need for a political approach**

The government should take a political approach with ministers or the Director General of Fair Trading using their positions to "encourage" relevant industries to develop new codes or improve existing codes. No new legislation is required.

There should be one general initiative – a letter to each trade association drawing attention to the core principles and asking the association to respond with a copy of any code it operates and an assessment of the extent to which this meets the core principles. The letter should also ask for a second response giving the proposals of the association to bring the code into line with the core principles.

There should also be specific initiatives in areas of concern. These should cover cross-sectoral issues – such as service calls and delivery times and Yellow Pages advertisements, and specific problem sectors such as car repairs and servicing and building work.

# Chapter 1

## The need for self-regulation

There is a natural imbalance of power between an individual consumer and a retailer or producer. To redress this imbalance a variety of tools is used to protect the consumer.

At national level there are laws and regulations applying to the production and distribution of all goods and services. These are designed to ensure, for example, that goods are safe (for example motor cars and electrical equipment), that they are fit for purpose and that advertising is not misleading.

National laws and regulations can be enforced through the civil courts. For example, someone purchasing any good or service that does not work according to the marketing literature of the producer can go to court to seek a remedy. However, this is a not a realistic option for most people, particularly in the case of relatively small value goods and services. The Small Claims Court is a help but no more than that. Local trading standards officers provide an important enforcement mechanism against "rogue traders", that is those traders who persist in wrongful practices. Often, however, little can be done to help those who have purchased a good or service that fails to do what was expected of it.

In some sectors, such as financial services and the privatised utilities, there are specific laws and regulations. Regulators have powers to make regulations and are responsible for enforcing them. Consumers who feel they have not got a fair deal can complain to the regulator who can take action on their behalf. In most such sectors there is provision for an independent adjudication arrangement, generally an ombudsman, that can be used at little or no cost by those consumers with complaints.

Specific regulation applies to only a relatively small part of the economy and even then it is often incomplete. The norm throughout the economy is no specific regulation but rather reliance on the common law backed up by trading standards officers.

It is fair to add that media pressure is also important and indeed the media can choose to run campaigns regardless of the merits of the case. Naturally, such campaigns concentrate on high profile targets such as supermarkets, car manufacturers and banks. It is unusual to find any concerted media campaign dealing with more mundane matters which affect consumers, such as car repairs, particularly if there are no "big names" involved.

It is not feasible for legislation to cover every area of consumer expenditure with specific regulations and complaints procedures. Legislation takes a long time to put in place and is inflexible. The case also has to be made as to its effectiveness.

Where the consumer needs some protection but specific legislation is not an option then industrywide codes of practice are a realistic alternative. They may not be

perfect, but then nor is legislation, and generally they can be better than nothing. Properly constructed and enforced codes of practice can increase significantly the protection afforded to consumers by changing behaviour, making it more difficult for rogue traders to stay in business and providing redress where a consumer is treated unfairly.

Codes of practice are particularly appropriate where there is a significant imbalance of information between the customer and the producer or the retailer. This applies, for example, to almost any form of repair or building work (whether on cars, houses or human bodies). It also applies where consumers pay up front for services or goods to be delivered over a period of time, which is why financial services are properly singled out for special treatment.

## Chapter 2

## How codes of practice work

Most codes of practice work in a fairly similar way although, as will be discussed later, there are huge variations in their effectiveness.

Codes of practice are generally drawn up by a trade association, that is the representative body for companies in a sector. Sometimes, the codes may cover more than one sector and may therefore be drawn by more than one trade association, and sometimes a small number of companies get together to devise a code.

The drawing up of a code by a trade association is always a fairly tortuous process as the members of the association will have differing views, and the overall purpose of an association is to protect the interests of the members rather than to regulate them.

In some cases a government agency or a regulator will be influential in requiring a code to be drawn up and also in determining its content. For example, the Banking Code of Practice, drawn up by a number of trade associations, has had to satisfy Treasury officials and therefore has a semi-official status. The OFT has specific power to recognise codes but this power has been used in respect of only a small minority of codes, and the current position is not regarded as satisfactory. It is fair to say that the majority of codes are drawn up by trade associations without significant external intervention.

Typically, industry codes of practice have fairly general statements about acting with integrity, observing all known laws and complying with other codes of practice such as that of the Advertising Standards Authority. There are then specific points dealing with the sector in question.

Associations often make compliance with a code of practice a requirement of membership but of course they have no power to require companies to belong to them. The association has a balancing act to perform. If it makes its code too onerous, companies will not only not comply with it but they will also leave the association, costing it subscription income.

There are significant differences between the content of codes, but far greater differences between compliance arrangements. At one extreme there is no mechanism at all for ensuring compliance. The most onerous form of compliance comprises annual compliance letters, regular auditing and mystery shopping exercises.

Where mystery shopping has taken place (there is a recent good example in respect of the mortgage code in a survey conducted by trading standards officers) compliance is generally seen to be fairly modest, as often is knowledge of the existence of the code. It is reasonable to assume that where compliance arrangements are even more lax and

there is no mystery shopping then adherence to the code and knowledge of it is even more limited.

Beyond compliance is enforcement. This operates at both the customer level and the trader level. For the customer the best schemes have an easily accessible complaints mechanism that culminates in an arbitration or ombudsman scheme. For the trader most schemes have a disciplinary mechanism that culminates in expulsion from the scheme and the association. However, this is relevant only if there is some means of checking whether traders are complying with the code.

# Chapter 3

## Problems with codes of practice

### Identifying meaningful codes

It is impossible to say just how many codes of practice there are. The OFT officially recognises codes in 24 sectors operated by 43 trade associations. A questionnaire to trade associations revealed 73 associations that operated 171 codes, although some of these were business to business codes. A trawl of the Yellow Pages revealed the names of no fewer than 216 associations that were mentioned by advertisers. Of these 84 associations carried their own display advertisements with 35 of these advertisements referring to codes of practice. However, the Yellow Pages concentrate on services not generally available on the high street and do not mention many codes. A reasonable estimate is a total of over 300 codes, and perhaps as many as 500.

The existing codes vary from those that are totally meaningless to those that bite very effectively and are a more than adequate substitute for legislation. An immediate problem therefore is that there is no accepted definition of what a code of practice is, nor is there any method for the consumer, or anyone else, to distinguish between those codes of practice which exist in theory only and those which are rigorously enforced, perhaps at a cost of several million pounds a year.

### Problems for trade associations

The previous chapter briefly mentioned problems that trade associations have in drawing up codes of practice. This point needs expansion.

It would be convenient if for each sector of the economy, particularly those sectors dealing directly with consumers, there was a trade association representing all of the companies. It would therefore be ideal if there was, for example, a single trade association for all car repairers, all companies which undertake building work, all dry-cleaning companies, all travel agents or all independent financial advisers. In very few sectors is there such an arrangement. The best trade associations can claim 80-90% coverage of their sectors but very few can claim 100% coverage. Associations have no way of forcing companies to be members. In many sectors there are competing trade associations.

More typically, however, the problem is not competing trade associations but rather that the economy simply does not lend itself to neat compartmentalisation. This is particularly true of retailing. Is the appropriate trade association for shoe shops the "Shoe Shop Association" or is it a more wide ranging association covering all retailers? If it is a shoe shop association then what about department stores that sell shoes and lots of other goods? Are they supposed to belong to a hundred different trade associations with a hundred different codes of practice? The same applies in the building industry. Should there be separate trade associations for each discipline, for example, plumbers, electricians and landscape gardeners, or should there be a single association for the whole sector, bearing in mind that some companies are very

specialist while others offer a wide range of services? In practice most sectors have both types of association, often in competition with each other.

This problem is accentuated because industrial boundaries are changing over time and the trade association structure is often very slow to catch up. The explosive growth of the Internet is particularly important here. Where do e-retailers fit into the structure, particularly where they are located (inasmuch as they have a location at all) outside the United Kingdom? There may be a code of practice for booksellers but does it apply to Amazon.com? There may be a code of practice for travel agents but does this apply to Expedia or Travelocity? There is even the emergence of an e-health industry with medical advice being available over the Internet. Are the mobile phone companies providing merely a telephone service or are they also providing a range of other services with the technology now available?

Even where there is a sensible trade association structure, drawing up a code of practice is still difficult. The point was made in the previous chapter that an association has to face a number of conflicting objectives. Some members will want a code of practice because they believe that current practices damage the reputation of the whole industry and therefore their own business. Also, where they are operating to high standards they are concerned about unfair competition from firms which undercut them, but by providing a much poorer service which the customer will not value in the longer term. At the other extreme, there are companies that simply want to get rich quick and see a code of practice as being an important marketing tool. It is sometimes unkindly said that the most dubious businesses are the fastest to latch on to any code of practice and to advertise in large print that they are regulated by all and sundry and subject to codes of practice.

If a code of practice is made too onerous then some companies will leave the association. If a code is not sufficiently onerous then there is the opposite risk of companies leaving the association, publicly saying that its code of practice is of no use and establishing their own more onerous code.

Where there is outside pressure on an association from a regulator or a government department or even the media then it is possible to develop a tighter code of practice, perhaps on the understanding that the only alternative is legislation which would be very much worse. In many trade associations the comment has been made that “we must regulate ourselves or the government will do it for us and that would be much worse”. This is highly misleading, as in most cases the government would actually have no wish to regulate and certainly no ability to do so. Even then there is an argument that with legislation one is entitled to play by the letter of the law whereas self-regulation would be more effective because it is the spirit which is more important; also, if there is a loophole it can be closed quickly.

Trade associations also have a resource problem in drawing up and policing codes of practice. Unless codes are separately funded, the money needed to establish, and most importantly enforce, a code of practice has to compete with other expenditure which may be more valued by members of the association.

**Covering problem sectors and areas**

A major problem with codes of practice is that they cannot be made to work in areas where they are most needed. Many of the codes recognised by the Office of Fair Trading are in sectors that do not feature greatly in surveys of customer dissatisfaction, such as footwear manufacture and repairs and photography. Other than double-glazing the OFT does not recognise a single code in the building industry, a major problem area.

In fact there is an almost perverse situation in that codes of practice are most likely to be drawn up and to be enforced in areas where they are least needed because the companies are on the whole fairly respectable and there is a strong trade association. The Office of Fair Trading has publicly admitted that it has not made progress in some areas because of the absence of a strong trade association with which it can deal. This is the problem in the building sector. The nature of the sector, with much work being done by very small contractors, some of it in the "black economy", makes it difficult to have an effective trade association representing a whole sector let alone one capable of running a meaningful code of practice.

Even where codes of practice do apply across the whole sector and are reasonably enforced they are often still inadequate because they do not deal with the major issues. Most codes of practice contain a number of meaningless platitudes, in particular that firms will act in accordance with the highest standards of integrity, and also long sections saying that firms will comply with legislation, advertising regulations and so on. However, codes can sometimes be silent on key points that most concern consumers, for example about sensible arrangements for deliveries and service calls and compensation. It is possible to have a code of practice with universal application in a sector and rigorous enforcement and compliance arrangements, but which fails to protect the consumer because it does not address the major issues.

**Compliance and enforcement**

Perhaps the major problem with codes of practice is that the arrangements for compliance and enforcement are inadequate. Most associations seem to believe that it is sufficient to have a code of practice; it is naively assumed that the mere existence of the code of practice will somehow automatically ensure its enforcement. This is not the case. Surveys by the Consumers' Association and also regulators show that codes of practice are not well observed, and if they are not well observed then enforcement becomes almost meaningless. Many associations have in place half-hearted arrangements which require their members to have a complaints procedure and with provision for customers to complain to the trade association.

However, at the end of the day, what is a trade association going to do with what seems to be a valid complaint against one of its largest members that the member does not accept? If the association finds that the complainant was correct it is in danger of losing a member. In any event the company can simply say that it has a different view and that the only remedy which the consumer has is to take legal action which the company will rigorously defend. Where a trade association tells a complainant that his complaint is not justified then it can legitimately be accused of being biased.

The half hearted compliance and enforcement arrangements were demonstrated in a Trade Association Forum survey, conducted in 1999. This showed that of those associations with codes –

- Only 26% had independent representatives and only 14% consumer representatives on the organisation managing the code.
- Only 23% had independent monitoring of their codes and 22% produced a report on compliance with the code.
- For 26% of codes there was no redress mechanism at all; 45% offered independent arbitration and 7% an ombudsman scheme.

# Chapter 4

## What a good code of practice should do

A good code of practice should meet a number of tests.

The first is that it should **cover a significant proportion of the activity** that is subject to the code and that all adherents to the code should publicise the code in all their consumer literature.

The second point is that the code has to be **meaningful**, dealing with the matters that properly concern consumers, and is not simply a mixture of platitudes, commitments to adhere to legislation and meaningless flannel. A proper code should be drawn up only on the basis of extensive consumer research, for example using focus groups, and also involving an outside agency or agencies such as consultants or, where these are appropriate, any consumer bodies. There should also be discussions with any regulators, trading standards officers, the Office of Fair Trading and relevant government departments. A code of practice drawn up solely by the industry with no outside involvement is virtually worthless. An association must be able to demonstrate that the code does actually meet consumer concerns.

A third requirement is that the **existence of the code needs to be effectively publicised**. Too often attention is focused on whether the consumer is given a copy of the code. This is important but is often not the major point. It is important that Citizens Advice Bureaux, regulators, trading standards officers and relevant media know of such a code, and particularly important that everyone in the sector knows about it. Copies of the code should be readily available, for example on the trade association website and on request from companies in the sector. Depending on the nature of the sector it could be a requirement that the customer is given a copy of the code. This would be particularly appropriate for high value transactions.

Fourthly, **the operation of any code should be overseen by a committee comprising industry representatives and outsiders** who may or may not be classed as consumer representatives. Ideally, the committee should have a majority of outsiders and certainly an outside chairman who commands respect. It would be unwise to specify mathematical proportions on such a committee. A majority of consumer representatives is of no use if those representatives are unable to have an impact, either because they are the wrong people or they are not given the opportunity to have an impact. The body overseeing the code should publish an annual report which again should be available on the association's website.

Fifthly, there must be **comprehensive compliance arrangements**, at a minimum –

- Initially, each company subscribing to a code should sign a specific document (not a general membership application form which refers to the code) confirming that they have in place arrangement to meet each point in the code, these points being listed in the document itself. After a period of, say, three, months the company

should be asked to confirm that in practice its compliance arrangements are working.

- Each adherent to the code should each year submit a formal statement in prescribed form confirming that it has adhered to each item in the code and identifying any instances where it has failed to do so. That statement should be signed by the chief executive of the organisation. This may be seen by some to be unimportant. In reality, however, it is a very strong compliance mechanism. Chief executives will not lightly sign a letter unless they are satisfied that it is correct. Where chief executives sign such a document knowing it to be incorrect or without taking sufficient care to ensure that it is correct, then they are taking a great risk with their own reputation and career and laying themselves open to legal action.
- There should be regular inspections of all signatories to the code to ensure that the compliance arrangements are effective. How frequently these inspections should be will depend on the nature of the sector. Annual inspections are probably the ideal, but simply not feasible in many sectors.

Ideally there should also be mystery shopping exercises conducted on a regular basis. These can identify trends in compliance with the code and can pinpoint particular areas that need attention. Summary information from regular inspections and mystery shopping should be fed back to code signatories.

The final requirement of a good code is **adequate enforcement**. There should be a requirement on each adherent to the code to have their own internal complaints mechanism which is documented and available to the consumer. There then needs to be an independent element which, depending on the sector, could be a trade association, an arbitration scheme or an ombudsman arrangement. An ombudsman scheme is the ideal but is expensive and is not feasible in many sectors. Arbitration is a reasonable substitute. A conciliation service operated by a trade association may sound weak but in practice, if well run, should be capable of sorting out over 90% of complaints against traders. Where there is an ombudsman or arbitration scheme it should be a condition of membership of the scheme that companies must give notice of resignation and must undertake to meet any adjudications resulting from complaints while they were members of the scheme. Companies must not be allowed to get out of their obligations under a code by resigning from membership of it.

It is not sufficient just to leave it to the consumer to seek to enforce a code of practice. Most people do not complain and a company may find it worthwhile to advertise that is a member of a scheme while not complying with it, and to meet any awards against it. A code of practice must have a disciplinary mechanism that should draw on the results of mystery shopping exercises, regular inspections and complaints. The disciplinary mechanism should be able to give warnings, to require appropriate arrangements to be put in place and ultimately to expel a member from the scheme.

Enforcement is also helped when there is a good working relationship between the sponsor of the code, generally a trade association, and trading standards officers and appropriate regulatory bodies. Where there is confidence in a code of practice then this can be helpful to trading standards officers and citizens advice bureaux who can

tell people how they can pursue a complaint, and they can also give confidence to consumers looking for a company with which to deal.

Where there are companies which do not comply with the code of practice that is generally seen to be effective there may be a case for them being targeted by the appropriate regulatory body, whether it be a trading standards department, the Office of Fair Trading or a specific regulator.

In practice, very few codes of practice meet the tests described in this chapter. Most of those that do are in sectors which are subject to significant regulation and where there has been strong official pressure to develop a code of practice. The Banking Code and the code of practice for the selling of general insurance are good examples.

# Chapter 5

## Policy towards codes of practice

Given the importance of codes of practice and their relatively cheap cost in terms of public expenditure compared with legislation it is surprising perhaps that they receive so little priority and that there has been no effective government action.

The Office of Fair Trading is charged with responsibility for codes of practice. It has the power to recognise codes. However, this power has been relatively little used. The major codes, particularly those in financial services and utilities, have been drawn up largely independently of the Office of Fair Trading. There is no requirement for codes to be approved by the OFT and, indeed, much of the interest of the OFT in codes has come from the competition part of the Office which has been concerned about potential anti-competitive practices. This problem with codes of practice is outside the scope of this paper.

Over the last few years the OFT has been reviewing its policy on codes of practice. In February 1996 it published a consultation paper *Voluntary Codes of Practice.*

In February 1998, after considering responses to the consultation paper, the OFT published *Raising Standards of Consumer Care*, subtitled "progressing beyond codes of practice". This drew two conclusions –

- The overall regime for codes does not command sufficient support from all interested parties. A new regime is needed.
- The OFT would arrange a conference to seek to establish a degree of consensus for its proposals and to act as a springboard for a new regime. (OFT reports often conclude that there should be a task force or conference.)

The OFT report made 12 recommendations –

1. There is a need for a 'core standard' to cover the generality of trader behaviour towards consumers and mutual responsibilities.
2. A suite of sector-specific standards, based on the terms and principles of the 'core standard', should be drawn up, focusing first on known problem sectors.
3. The standards should be drawn up under the auspices of an independent, authoritative body, with input from traders and consumers.
4. The standards to be introduced to replace the current codes of practice regime should be made under the auspices of the BSI.
5. A new approval body needs to be set up if the standards-based regime, to replace codes of practice as the primary means of improving the levels of trader behaviour, is to function effectively.
6. Registration to the scheme, to the 'core standard' or to the sector specific standard where this exists, could be allowed both to firms formally accredited or by annual public self-certification, using an itemised pro forma compliance letter signed by the chief executive or equivalent. This should bind the firm to abide by the standard in all its business dealings with consumers, and to accept promptly judgments made by the alternative redress mechanism.

7. Regulatory bodies could be told of all applications for membership, or at least those where there was no third-party accreditation, and should be able to object to membership being granted, subject to appeal.
8. The scheme could be funded by annual subscription from registered traders.
9. A single cross-sectoral, high profile 'better trader' logo could be developed and marketed to enable consumers to identify traders registered with the scheme.
10. A continuously updated directory of firms registered with the scheme could be published together with the standards, including a brief synopsis of consumer law.
11. The standards must include an independent scheme for redress, perhaps under the auspices of an ombudsman, to remedy problems which cannot be resolved by the trader and consumer.
12. Traders who generate either serious or numerous complaints could be deregistered by the approval body, subject to appeal, and their misdemeanours and expulsion made public.

The conference was duly held in September 1998 and the conference report was published five months later in February 1999. It is fair to say that the proposals met with a fairly critical response. The report summarised the discussion: "There was little consensus on the nature of this change [to the regime for codes] and many delegates were clearly concerned about additional costs and burdens for business. Business representatives generally favoured modification of the existing mechanisms to achieve improvements, whereas consumer representatives generally favoured a much more radical approach, broadly in line with the completely new system suggested by the OFT."

The OFT proposals were flawed in four major respects –

- There was no obvious mechanism for keeping track of traders.
- The relationship between the OFT's proposals and other codes developed in response to the requirements of regulatory bodies and government departments was not clear.
- It was difficult to see how the proposed approvals body could be established or financed.
- The difficulty of establishing the necessary ombudsman arrangements – particularly in industries with a large number of small traders and without a strong trade association.

The OFT has since been silent on codes of practice. However, the issue was covered in the White Paper *Modern markets: confident consumers* published in July 1999. The White Paper recognised the value of codes of practice: "Codes of practice can play an important part in protecting consumers' rights and in offering a higher level of consumer protection and service than the basics set down in law." The White Paper also recognised that "There are also some unsatisfactory codes that are little more than sales devices, do not provide effective redress and are not properly enforced by their issuers." The White Paper said –

> "The government intends to create a climate where consumers' natural choice is to seek out a business that meets the terms of a good code or has its own reputation for equal or higher standards.

This means enabling customers to know whether a code is a good one – before they find out the hard way that it is not effective when something goes wrong."

The White Paper went on to say that the government proposed to –

- Provide core principles for effective codes of practice.
- Encourage trade associations to tailor the principles to the specific circumstances of their industries or selling methods, ensure that members stick to them and take effective action if they do not.
- Enable the OFT to approve codes which are effective in protecting consumer interests.

The White Paper outlined core principles for codes. These are set out below.

**Consumers should see**:

- truthful adverts
- clear, helpful and adequate pre-contractual information
- clear, fair contracts
- staff who know about and meet the terms of the code as well as their legal responsibilities
- an effective complaints handling system run by the business
- if problems cannot be resolved in-house, an effective and low cost redress mechanism
- publicity about the code from the business and the sponsors, including a report on the operation of the code.

**Behind the scenes**

- the sponsor should have a supervisory body for the code made up of people from the sector and consumers, with some independent members
- the sponsor should tailor the core principles to develop its own code, taking into account the needs and characteristics of the sector such as the size of businesses within it, and keep it up to date
- businesses in the sector should agree to deliver on the principles in the tailored code and report regularly to the sponsor on the operation of the code
- the sponsor should provide an effective and low cost redress mechanism in the event of an unresolved dispute between a member and a consumer
- the sponsor should put into place an effective system to underpin compliance and to address breaches by members
- the redress and compliance systems should wherever necessary or possible, include an independent element
- the sponsor should publish a report on compliance with the code and on complaints about its operation.

These principles are broadly in line with the proposals in the previous chapter but do include the platitudes such as "truthful adverts", "clear, fair contracts" and "staff who

know about and meet the terms of the code as well as their legal responsibilities". The more important part of the core principles are the "behind the scenes" proposals which include the existence of a supervisory body with an independent element, a requirement on businesses to report on the operation of the code and a requirement to have an effective low-cost redress mechanism.

The DTI has also been relatively silent since the White Paper. It published (albeit on its website only and without significant publicity) a policy paper on codes of practice in May 2000 which sought to develop how the regime set out in the White Paper would work in practice. Subsequently, in a speech on 21 September 2000, the Secretary of State for Trade and Industry said –

> "Consumers need to know which are the companies they can trust. Brands, past experience and recommendations from friends and families all play a role. So too can good codes of practice, with quick and simple ways of helping people get problems sorted.
>
> We are continuing our work with OFT on a new approval scheme for such codes of practice.
>
> We aim to give a progress report on our work in the autumn, with two or three codes being given early approval in the spring."

There was no progress report in the autumn and as associations have been given no indication of the basis of a new approvals regime it is difficult to see how any codes can be approved in the spring of 2001.

The government has also taken action or has been involved in codes for a number of sectors although as yet it is not clear with what, if any, success. One development is a code of practice for e-commerce which has been devised by the Alliance for Electronic Business (a coalition of five trade associations) working with the government and the Consumers Association. A new body, TrustUK, has been established to accredit e-commerce codes and a "hallmark" has been devised that accredited codes may use on their websites or incorporate into their logos. This is seen to be a valuable initiative particularly in a rapidly growing new area where the existing trade association structures are not really appropriate. However, at first sight the initiative has not caught on. Other than the sponsors the only "big name" association to have signed up is the Association of British Travel Agents. Most of the companies that have signed up are relatively small businesses that have affiliated to the Consumers Association "webtrader" scheme. Public awareness of this initiative generally is probably low.

A second area where the government has been working is in respect of cowboy builders – a problem which has existed for years and which so far has defied almost all attempts to deal with it. There are codes of practice and various warranty schemes but enforcement is varied and most importantly there is no obligation on any builder to join any of the schemes. The consumer still cannot be confident about retaining anyone to do building work. The government's action in this area has tended to be

more of the same rather than a radical initiative. The "Quality Mark" scheme has been devised for which firms will assessed under a range of criteria. There will be an insurance backed warranty, a national "approved list" of builders and a high profile publicity campaign. The scheme is currently operating on a pilot basis in two areas. The scheme will fail in its objective of dealing with cowboy builders. The registration criteria are too onerous. The scheme is constructed so as to give a seal of approval to the "good boys" and will do nothing whatever to deal with cowboys. This is a classic example of "the best being the enemy of the good". Also, the early signs are that builders have been very slow to sign up; press reports indicate that by the beginning of 2001 only two builders had joined the scheme.

The government has also announced the creation of a Task Force to deal with the problem of car servicing and repairs. This followed on from an OFT report into the issue. The Task Force will report by Easter 2001.

**Why is progress so slow?**

Virtually no progress has been made since the issue was first raised in February 1996, nearly five years ago. One problem seems to be the approach taken by the OFT. It has constantly pointed to the need for new legislation to give it stronger powers and seems reluctant to adopt a more flexible approach, using the authority of the Director General combined with appropriate use of the media and the necessary political backing.

The possibility of a Consumer Bill in the 2000/2001 Session of Parliament actually slowed down progress as some were waiting for the "promised land". However, it was clear by the summer of 2000 that there would be no legislation in the next session. It is also not clear what the legislation could have achieved. Some "consumerists" want the OFT or trading standards officers to be given a power either to make binding codes of practice or to close down or prosecute businesses not because they have broken a law but rather because they are not "trading fairly". It is difficult to see how these concepts could work in practice, particularly now that the Human Rights Act is in force.

The issue also suffers from a lack of joined-up government. It is not clear whether the OFT or the DTI is in the driving seat, and other departments are doing their own thing in an uncoordinated way. It is not apparent that there has been any cross fertilisation of ideas between the DTI/OFT and the DETR (which has led on cowboy builders) and the Treasury (which has led on the Banking Code).

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## Chapter 6

## The need for a political approach

The government has taken a very political approach in respect of some consumer matters, typically berating companies either directly, by summoning them for lectures and using the media, or by commissioning special reviews such as that by Don Cruikshank on the banking industry. It is therefore perhaps surprising that the government is being so timid in respect of codes of practice. It appears to be adopting a policy of "more of the same" with the OFT having the power to recognise codes and setting out a defined list of criteria that codes should meet. Progress however is remarkably slow.

What is missing from the government's strategy are energetic steps to ensure that the areas of most concern to consumers are in fact addressed through codes of practice, that effective codes are drawn up and enforced and that those companies which choose not to adhere to codes of practice are targeted by trading standards officers and other regulators. The objective should be to ensure that relevant businesses do adhere to substantive codes of practice whereas at present the government seems more concerned with ensuring that codes of practice are substantive than that they actually change behaviour where it is most needed.

There needs to be a political approach with either DTI ministers or the Director General of Fair Trading taking the lead on key issues, involving industry leaders, and encouraging them to devise effective codes and ensuring that the whole of the sector is covered.

The following chapter gives examples of the sort of areas where government action is needed and how the issue can be approached.

The OFT should also take steps to improve the quality of codes across the board and get the issue firmly up the agenda of trade associations. It can do so at very little cost. The Director general should write to each trade association and any other organisations which "own codes". The letter should set out the principles published in the White Paper and should ask the association to respond enclosing any code of practice which it "owns" and any literature about the code together with its assessment of the how it meets each of the core principles. The letter should request a further response on the proposals the association has for bringing the code up to the requirements set out in the guidelines. This approach would stimulate associations to at least consider the issue. Some may decide to dispense with their worthless codes, which would be a good thing.

This exercise would also give the OFT a much clearer picture of the codes that current exist and their content.

The OFT or the DTI probably needs to give some guidance to associations about what is required to meet the criteria set out in the White Paper. There is no need to reinvent the wheel here. A great deal of information is already available –

- The National Consumer Council has published a helpful guide to businesses and associations seeking to draw up codes (*Better business practice*, NCC, 2000).
- The work on cowboy builders, while probably a failure in itself, has produced some useful material such as a guidance sheet on complaints handling.
- The comprehensive codes in the finance sector (in particular the mortgage code, the banking code and the general insurance selling code) provide useful models that can be drawn on.

One problem area for many sectors is securing the necessary independent element on the supervisory bodies for codes and in the complaints handling arrangements. There is almost certainly scope for associations to co-operate by sharing information and even people. The National Consumer Council should also be able to provide a service by identifying appropriate people.

One question to be resolved is that of "approval" of codes of practice. The current OFT regime has the confidence of no one. Some codes still carry the "OFT approved" label that is seen by some associations as a valuable marketing tool. However, the OFT does nothing to check that the codes are being properly complied with. It would be sensible for the OFT to give notice that it is withdrawing approval from codes currently approved with effect from a certain date.

If the OFT is to continue approving codes then it must have in place a mechanism to ensure that codes reach the proper standards and are properly complied with. This is expensive and Office probably does not have the necessary resources. However, there seems to reason why the OFT should not charge associations for vetting and monitoring codes or alternatively require external monitoring. At present OFT approval means very little. Under a new regime it should mean that a code gives consumers meaningful protection.

# Chapter 7

## Big issues that need to be addressed by codes of practice

This chapter uses the analysis in this paper to illustrate how a political approach could be adopted in some problem areas, two sectoral and two cross sectoral.

**Service calls and delivery times**
Given modern technology, in particular mobile phones and the use of post code data, arranging deliveries and managing service calls should now be highly sophisticated. In practice little progress has been made. Many companies (Argos is one example) require people to be available for a whole day just to take delivery of an item. BskyB is another company which arranges its visits for engineering work on a whole day basis. Any consumer can recount occasions when appointments have not been kept without any warning. People do understand, particularly in respect of a service call, that the contractor can be delayed because the previous call took longer than anticipated particularly where it was an emergency. But there is no excuse for not communicating this information.

In the utilities there has been a marked improvement in respect of the time slots for service calls, stimulated by the regulators. Normal practice is now to offer a morning or afternoon appointment (and in some cases a two hour slot on request) with automatic compensation of £20 if the appointment is not kept.

There are examples of excellent practice but these are few and far between. Domestically, Tesco now aims to deliver within a two hour slot but even this is well short of the standards of other countries. *The Economist* survey of e-commerce, published on 26 February 2000, noted that Cozmo.com, a firm operating in New York and San Francisco, is trying to guarantee delivery of basic snacks and groceries within an hour of being placed. Webvan, which operates in the San Francisco Bay area, delivers groceries within half-hour slots and claims that its drivers miss only 2% of these slots.

This is an area where the consumer is poorly treated and an area that lends itself to government intervention. DTI ministers should invite the major companies involved (utilities, retailers and delivery companies) to set up a high level working group and properly fund it and, within three months, draw up a code of practice to which they would all adhere. At the very least that code of practice should specify maximum slots for deliveries of two hours and for service calls half a day, and with automatic compensation being paid where time slots are not met and where no prior notice has been given. Once these important principles have been firmly established the government should then use political means and the media to secure widespread application of the standards.

**Yellow Pages**
People use the Yellow Pages to find traders, particularly for services that are used infrequently. Many traders refer in their advertisements to membership of a trade

association and a number of trade associations have their own advertisements, some of which refer to codes of practice. The Yellow Pages are therefore a mechanism by which trade association membership and codes of practice are communicated to the public.

An analysis of Yellow Pages advertisements shows up a major problem in that many of the names of trade associations are illegible. In the London NW Directory, about 40 come into this category including one major organisation, the National Inspection Council for Electrical Installation Contracting. In other cases an association was identified only by its initials or by a logo.

Another general problem is that trade association membership is signified even when the association is irrelevant to the service being offered. A good example is an advertisement by a company offering fireplaces that indicated that it was a member of the Institute of Plumbing. There are also a number of trade associations and other organisations that are identified in Yellow Pages entries in all sectors that are of questionable value to potential purchasers. These include the Federation of Small Businesses (a reputable trade association but which does not purport to offer any protection to consumers) and the Guild of Professional Craftsmen and the League of Professional Craftsmen which have attractive logos but again are not relevant to consumer protection.

It seems reasonable to suggest that if a company chooses to refer to membership of a trade association then the public should be able to identify and contact that association to enquire what membership means.

This suggests that Yellow Pages should be persuaded to adopt the following policy -

- Not to accept any advertisement unless references to a trade association (or other protection scheme) include its full name in a type size that is legible and the trade association is relevant to the service being offered. Initials only should be acceptable only if the association itself has a display advertisement with its full name in the same section.
- Contact details should be required of each trade association (or other code sponsor) whose logo or name is used. These could be either in a display advertisement or a separate listing of trade associations. Where an association has a display advertisement or listing this should give a telephone number and indicate whether members follow a code of practice.

**Car repairs and servicing**

The repair and servicing of cars meets all of the criteria for an issue that merits action by the government –

- Surveys suggest that about 40% of repair and servicing work is unsatisfactory.
- The issue is high in the league table of complaints to CABx and trading standards departments.
- Low income consumers are particularly adversely affected.
- Malpractice in this area is connected with wider public policy issues including crime and road safety.

- The market is large (£9bn a year) and therefore consumer detriment in total is substantial – probably in excess of £2 billion a year.

The very nature of car repairs and servicing explains why there is a problem. There is a huge imbalance of knowledge between the customer and the provider, and each transaction is different. The provider is able to say that certain work needs to be done; very few consumers are in a position to know whether this is correct. And when the transaction is complete the consumer has no way of knowing that the work has been done properly if at all. At one extreme, a consumer can be told that some work needed to be done and that the work has been done, when in fact there was no problem and no work had been done. In such a case a consumer may be very satisfied even though he has been ripped off. In fact, surveys show a high level of customer satisfaction.

If the problem were easy to deal with it would have been dealt with by now. It is a very difficult problem. Perfection will not be achieved. The most that can be done is to reduce substantially the element of consumer detriment.

The second problem is that the industry is fragmented. This is, in fact, a natural consequence of the nature of the industry. There is still a substantial "cottage industry" element about the industry. Many of the participants in the industry do not even belong to a trade association. It is therefore very difficult for the regulatory authorities to have a dialogue with the industry.

The strategy for dealing with the problem should be –
- To seek to improve the standard of performance of the better part of the industry.
- To seek to make life very difficult for the poorly performing part of the industry – pushing them up to the better performing part or out of the business totally.

The key element of the strategy should be a code of practice and accreditation system which will be much tougher than anything now in place. The major trade bodies in the sector (the Retail Motor Industry Federation, the Society of Motor Manufacturers and Traders and the Vehicle Builders and Repairers Association) should be persuaded to agree the following steps to make their existing codes more effective –
- The monitoring of the codes should be put into the hands of a council with a majority of independent members and a big name as chairman. The budget of the Council should be guaranteed by the associations to be at least £4 million a year.
- The accreditation system, to be managed by the Council, should include a regular programme of mystery shopping, an annual letter of compliance and an ombudsman scheme.
- When the new arrangements are fully operational the Council should begin an extensive advertising campaign, financed by the industry, to promote accredited businesses and discourage the use of unaccredited businesses.

The consumer would be much more confident that they could deal safely with accredited business. This should, in itself, reduce the volume of business going to less reputable part of the business.

However, it is recognised that these actions would not deal fully with the problem. Indeed they would increase it in two respects –

- The cost of participating in the accreditation system would be substantial; many small firms would be discouraged from joining. They may shift from the modestly regulated sector which they are currently in to the unregulated sector.
- The cost of compliance would have a modest upward effect on prices. The unregulated sector would be able to charge lower prices by cutting corners, charging for work that is not done etc.

To reduce demand in the unregulated sector, the following measures should be taken –

- Motor insurers should agree to pay for work only if it is done by accredited businesses.
- Trading standards officers should target unaccredited businesses by mystery shopping exercises and vigorous pursuit of complaints. Where the law has been broken (and charging for work not done constitutes theft), legal action would be taken. The industry should provide substantial funding to LACOTS, the central body for trading standards officers. This would be used to fund mystery shopping exercises, to facilitate the sharing of experience and to fund enforcement action. It is envisaged that the agency that did mystery shopping for the accreditation body would also do it for the trading standards departments.
- Trading standards officers should always notify the police where there is evidence of criminal activity and the police should agree to follow up such information and prosecute wherever possible.

**Building work**

The DETR Quality Mark initiative on cowboys builders has already been noted. It will fail in its objective. However, there are some elements of it that should be salvaged – not only for the building industry but for other sectors as well.

The solution in this sector should be similar to that for car servicing and repairs, given that the nature of the problem is very similar. However, there is an additional problem. The building industry is far more fragmented than the car repair industry. There are more sub-sectors and many more smaller traders, some of which operate in the black economy. There are many trade associations (over a dozen) and many codes of practice, but a large proportion of activity in the sector is undertaken by traders that are not in any association.

The strategy here should be to analyse the existing codes of practice and seek to persuade the trade associations to amalgamate and strengthen their codes. The overall objective should be to have a small number of meaningful codes, perhaps sharing some elements such as complaints mechanisms and monitoring and perhaps operating under a common logo. The next stage would be to seek to encourage take up of the codes and to publicise them.

It is possible that the Quality Mark scheme could be adapted to become an umbrella arrangement for trade association codes. Instead of having builders as direct members

it would seek to improve the quality of trade association schemes and would have a monitoring and supervisory role in respect of them.

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