

Business Leadership in Consumer Protection

An OFT conference on self regulation and industry-led compliance

Welcome and opening comments

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Good Morning Ladies and Gentlemen. I'd like to welcome you and to formally open this OFT conference on Business Leadership in Consumer Protection.

As the UK's consumer and competition authority we have the ongoing challenge of identifying and developing appropriate and proportionate responses to solve the wide variety of problems that consumers encounter in markets. And we have to do so against the background of markets that are constantly changing and evolving in response to increasingly rapid technological change and development of new business models. We also have to do so now, of course, at a time of serious economic crisis when consumers are likely to both feel and actually be more exposed.

We have a range of powers in our toolkit to do this but it is important that we think innovatively and continue to look for new and effective ways of tackling problems. It is also important also that we engage actively and constructively with our stakeholders to find out what they think works best and listen to what they have to say.

So, today we want to hear your views on the extent to which self-regulation and industry-led compliance can assist in making markets work well for consumers. The purpose of this conference is to open up the debate about how self regulation can help to achieve compliance and to solve problems in markets.

You will hear about the work that the OFT has done to date, and I hope that many of you will already have had an opportunity to read our policy and economics discussion papers which we published a few weeks ago.

We need to review what has been done so far and how well it has worked in order to decide where we go next. It is not a foregone conclusion that self regulation can in fact play a greater role. I expect we will hear both sides of the discussion today. Certainly in the economic downturn there are understandably some reservations about the extent to which self regulation can give consumers the protection that they really need, most obviously of course in financial markets. But our canvas is and has to be much wider than that. We're also looking, of course, at the longer term. So the current economic climate, while of course highly relevant, cannot be the single determining factor in how OFT develops its policy on self regulation.

Given that self regulation has attracted some discussion recently – not all of it complimentary - I think it is important that we are clear from the outset about what we mean when we use the term self regulation. When we use self regulation in the consumer protection field we mean 'initiatives by groups of businesses within an industry to modify their behaviour in order to improve quality standards, either to achieve compliance with consumer law or indeed to go beyond what the law requires.'

At the OFT we have a history of involvement with self regulation and we've always tried to take a flexible approach to resolving consumer protection issues. We have a strong record in taking enforcement action under consumer law. But like any organisation, we need to consider carefully how best to use our resources. It is simply not possible for us to deal with every issue through enforcement action nor indeed would we want to do so. There can be better ways of responding appropriately and proportionately to problems faced by consumers. In some circumstances intervention may not be necessary at all if the industry is capable of resolving the issue itself. We have here today Colin Church from the BRE and you will shortly hear about the BRE's view of the role self regulation can play.

At the OFT we have always looked for opportunities to allow business to keep its own house in order. The most visible way in which we have done

this is through our Consumer Codes Approval Scheme. Those of you of a certain age, like me, and whose memories stretch back into the 1970s, may recall that there was originally a codes scheme set up under the Fair Trading Act 1973 which was the Act that actually established the OFT. The scheme ran for about 20 years with, I think its fair to say, varying success, and that scheme was ultimately replaced by the current Consumer Codes Approval Scheme set up under the Enterprise Act 2002. Under this current scheme, the OFT approves consumer codes of practice that meet our criteria on matters such as the use of clear contracts, procedures for dealing with consumer complaints, low-cost and independent redress mechanisms and prepayment protection amongst others. Those codes that meet the criteria and can demonstrate that they actually work in practice, can display the OFT Approved Code logo. This helps consumers identify trustworthy businesses with whom they can be confident in making purchases. As our criteria and approval processes are rigorous and challenging, only the elite of customer service codes will get approval. We are proud of the codes approval scheme and what it has achieved. However, we recognise that it will not necessarily suit all businesses and the approval process cannot provide the rapid response which some consumer problems need. There are situations which will demand something else and something other than enforcement action. For example we have recently carried out a consultation exercise on the development of what we have termed, 'Compliance Partnerships'. These are relationships that the OFT has with those bodies that provide – and this is the legal term in the legislation - 'established means' for the control of unfair commercial practices under the Consumer Protection Regulations and the Business Protection Regulations. We are seeking to encourage bodies such as trade associations, statutory enforcers, OFT approved code sponsors, and other self-regulatory bodies to act as a first port of call for resolving compliance issues and to look at alternative ways of bringing about compliance outside of the traditional statutory framework for enforcing the law. Rather than dealing with matters always through the criminal or civil courts, we will look to other bodies, which we refer to as our compliance partners, having tried and tested systems for dealing with non-compliance. This, therefore, is another example of OFT working with self regulation to solve consumer problems.

The extent to which we can and perhaps should go further in working with business - beyond the statutory mechanisms of the Consumer Codes Approval Scheme and the Compliance Partnerships - is something we'll

find a little clearer by the time we get to the end of today. I also hope we will hear views on the factors which make self regulation more – or indeed less – likely to succeed and, also perhaps, those markets or kinds of market which are best suited for this type of approach.

However, self regulation carries risks. Firstly, of course, there is the obvious risk of failure. Not all initiatives will succeed and I am sure we will hear views and examples on that point today.

But secondly, and as the UK competition authority it is only right that we highlight this to you, firms coming together for self regulation carry the risk of creating a climate, or an actual framework, for not only hardcore' anti-competitive conduct such as price fixing, market sharing and bid rigging but also arrangements and practices within the self-regulated sector which raise significant barriers to entry into a market. This is an issue of which I am acutely aware having been a lawyer in a private practice. When businesses work together they need to ensure they comply with competition law. The rules are clear and they're simple. We advise parties to take independent legal advice to assess the possibility of a breach of the Competition Act 1998 or Article 81 of the Treaty of Rome. We also publish a range of guidance material.

Now, after that word of warning, what have we got for you in our programme today?

You will hear about some examples of the wide range of self regulation which exists in the consumer protection field. This diversity reflects the variations of problems which government and regulators are trying to solve. Some reflection on what has gone before and is happening now is essential and our first panel discussion will give you the chance to become familiar, if you are not familiar already, with the way in which the OFT has developed partnerships with business to deal with consumer problems. The second session - 'a tool for modern markets' – will look at the extent to which self regulation might have a greater role going forward. In the afternoon we will hear about the international perspective with Mary Engle, our speaker from the US Federal Trade Commission, who we are pleased to welcome here today. Then there will be an opportunity for you to discuss issues arising from what you have heard so far through our interactive workshops.

So, today is your opportunity to influence the development of our policy. I would encourage you to contribute and let us know what you think. It's an opportunity for open and frank expression of views and for dialogue. We want you, and expect you, to be honest in your views as well as be able to support those views with evidence rather than assertion. And we want to hear both the good news and the bad, and where the views are bad, whether there are ways in which the bad can be addressed. The UK already has some of the most advanced thinking on self regulation globally and the people who know it best are at this conference. This is an opportunity to take the debate forward and to lay out the positive opinions as well as some of the more awkward home truths.

Finally, I should mention the next steps in our work after the conference today. We will carefully reflect on the discussions today and on the reactions to the papers we have published. In September we will publish a policy statement on the OFT's approach to self regulation to provide clarity for business and for consumers. I hope you have an enjoyable and stimulating day, and thank you very much for attending and for contributing your views.