

Consultation response

TSI: New codes approval criteria

Overview

1. **There is a significant and growing unregulated sector in legal services that might benefit from CCAS.**
 2. **Opening up CCAS to more businesses would build consumer awareness of the scheme, but this must not be achieved at the expense of less robustness. While we see some situations where allowing individual businesses to present a code for approval would be helpful, there are key risks in relation to TSI assessing the suitability of business structures and consumer confusion when businesses offer a wide range of services, not all of which would be covered by the code.**
 3. **Proposals to strengthen code criteria relating to business conducted in the consumer's home are welcome; this was a key area of detriment in the Panel's will-writing investigation.**
 4. **Legal services businesses often and quite reasonably receive payment for services in advance of delivery, but there are risks of fraud and insolvency – and the sums involved can be huge. TSI should have the flexibility to assess proposals on prepayment protections based on the risks and practices specific to each sector. However, pragmatism should not be allowed to remove vital**
- consumer protections. Failure could have severe reputational consequences.**
5. **TSI should require redress schemes to publish the names of businesses subject to complaints, in line with government expectations of all public bodies. Code sponsors should not establish their own schemes as consumers would not trust that they operated independently. The eight week complaint deadline mirrors rules in legal services and is welcome. Our experience suggests that TSI might need to be prescriptive in relation to signposting customers to ADR schemes.**
 6. **Demonstrating that code members are delivering on their promises in practice is crucial to the success of CCAS. The Panel supports the shift towards measurement of outcomes and impact based on a wide range of evidence. This should not rely solely on customer feedback as in legal services people cannot always judge the quality of work. The emphasis on statistically significant reporting methods is welcome, although qualitative insight is also valuable.**

The proposals

7. The government has asked the Trading Standards Institute (TSI) to develop a successor to the Office of Fair Trading's Consumer Codes Approval Scheme (CCAS) and to have it ready for market by April 2013.
8. This consultation is about the criteria a code sponsor must meet in order for their application to be accepted. The governance of CCAS, the approval process, the scheme logo, and fees and charges relating to the scheme, are to be consulted on separately.

The Panel's response

9. The Legal Services Consumer Panel is the statutory body which represents the interests of legal services consumers in England and Wales. We wish to ensure that TSI's proposals take account of the peculiar features of the legal services market and the challenges facing its consumers.
10. The vast majority of legal services are unregulated activities which may be offered by anyone. This is because only a limited number of activities, for historic reasons, are reserved to the legal profession. One of the most significant examples is will-writing; approximately 12% of wills are prepared by unregulated providers. The size of the unregulated sector across this and other unreserved activities may grow as the competition reforms in the Legal Services Act take hold. Furthermore, new business models, such as solicitor marketing collectives, are developing. Therefore, there may be considerable appetite in the sector to take advantage of a revised CCAS.

11. The Institute of Professional Willwriters is an existing code sponsor. In addition, the Legal Services Board has a role to facilitate self-regulatory solutions to reduce consumer detriment, whilst it will always assess the prospect of self-regulation before recommending that new activities are reserved. The Panel stands ready to assist TSI in developing its understanding of the market generally and in assessing code applications as necessary.
12. The Panel has published a report on accreditation schemes in the legal services market. This may assist TSI in developing the new arrangements – we have included a copy of our report with this response.

Q1. What is your view on the proposed changes to open up membership of CCAS to more businesses?

13. Opening up CCAS to more businesses would help build awareness of the scheme among consumers, and reward individual businesses that wish to demonstrate their commitment to consumer protection. However, this must not be achieved at the expense of less robustness, which would undermine the credibility of CCAS among consumers and businesses. This is where it would have been helpful to assess TSI's proposals on governance alongside the code criteria. For example, how does TSI intend to prioritise its resources should it receive more applications than expected?
14. In some respects, the exclusivity of CCAS is a strength, as it signals to consumers, who are generally sceptical of accreditation schemes, that it is a genuine differentiator. We support the criteria that code sponsors should contain more progressive elements

in the industry, or provide more benefits than other codes in the same sector. If TSI sticks closely to these criteria, this should ensure that only high quality code sponsors succeed in their applications.

Q2. What is your view on where to define the boundaries for eligibility to apply for code approval? (For example, should an individual company be eligible to present their own code for approval and what are the potential issues this may present?)

15. The Panel can envisage some situations where allowing individual businesses to present their own code for approval would be useful, such as emerging sectors where there are pioneering providers but no trade association has been organised. This might happen in legal services where the sector is in a state of flux. Against this, enabling individual businesses to apply could lead to TSI becoming overwhelmed or undermine the credibility of the scheme, as discussed in response to Question 1.
16. One feature of the legal services market is individual high-street solicitor practices forming marketing collectives or bringing their businesses within an umbrella brand – QualitySolicitors is a case in point. CCAS would provide an opportunity for such local businesses to compete better with national companies. However, this sort of business structure highlights challenges for TSI in assessing the extent to which the code sponsor can exert sufficient control over its individual component parts. Of course, there are a wide variety of business structures – TSI needs to assure itself that CCAS remains manageable to administer.

17. Another challenge we foresee with respect to large national businesses is defining the scope of the code and thus the risk of consumer confusion. For example, legal services are now provided by multi-channel businesses such as The Co-operative. Would the code apply to all the services of such businesses, which are potentially very wide ranging, or just one or some? If the latter, how will TSI ensure that consumers are not misled about the reach of the code?

Q3. What is your view on individual businesses potentially being eligible to display the ‘approved badge’ by multiple scheme membership? (For example, through a sector scheme and through a local authority-sponsored scheme.) How do we resolve potential conflict between the codes?

18. While there are some risks of consumer confusion, this is primarily a commercial decision for individual businesses, and indeed for local authorities. Should CCAS achieve wide national recognition as the logo that consumers should look out for when engaging a business, the value of local schemes would appear diminished. Even so, it would be helpful to have a clear relationship between the various schemes.

Q4. What is your view on the additional criterion relating to business conducted in a consumer’s own home?

19. The Panel welcomes a strengthening of the code criteria in this area. Our investigation into will-writing uncovered evidence of bait tactics where providers deliberately induced consumers to invite them into their homes by advertising wills at low price, but where the final price turned out much higher or the

appointment was used to sell lucrative additional services. As consumers tend to lack knowledge of legal services, they may struggle to assess the suitability and value for money of the services offered, while the unique home environment – with its emotional context – means consumers can feel pressured to sign up before having the opportunity to reflect or explore alternatives. Therefore, while consumers, including the elderly, may benefit from in-home delivery of legal services, there is also a greater risk of exploitation. We welcome the inclusion of these elements within the code criteria, although they do not impose any additional requirements than general consumer law.

Q5. What is your view on adding a requirement for code members to respect no cold calling zones and consumers who have indicated that they do not wish to be cold called?

20. The Panel supports this proposal.

Q6. What is your view on the proposal to widen the acceptable evidence relating to the protection of deposits or prepayments? We welcome all suggestions on how we can achieve this, while still protecting deposits and prepayments.

21. It is common in the legal services market for businesses to receive payment for services in advance of delivery. Lawyers often carry out a significant amount of work that is tailored to the individual client's needs which would represent sunk costs should the client default on payment. However, there are significant risks to consumers from fraud and insolvency. Businesses may be entrusted with substantial sums of client money, for example administering an estate

(estate administration is an unreserved activity, although this may soon change). In some situations there is a long time lag between payment and delivery of services – an extreme example is pre-paid probate and estate administration where consumers pay some or all of the costs of dealing with the estate themselves, rather than these being organised by the family after the death and paid out of the estate.

22. The Panel is aware that prepayments are a contentious feature of the current CCAS. It must be right that TSI has the flexibility to make an assessment based on the risks and practices specific to each sector. However, pragmatism must not be at the expense of adequate consumer protection. Failure here would not only cause massive detriment for legal services consumers, but have fatal consequences for the reputation of CCAS and, indeed, TSI.
23. The Legal Services Board has recently requested advice from the Panel on the adequacy of financial protection regimes operated by legal services regulators. As part of this, we are also considering the wider question of how much risk consumers should bear in the market. This work is at an early stage, but we would be happy to share the emerging findings with TSI.

Q7. What is your view on removing criteria 4c and 4d and replacing them with one criterion requiring the provision of an alternative dispute resolution scheme?

24. The Panel supports this proposal as we agree that businesses should have freedom to design complaint-handling arrangements as long as these satisfy minimum criteria.

The key point is that consumers should have access to an independent dispute resolution service should a complaint not be resolved through in-house procedures.

25. The suggested criteria for redress schemes are sensible, although we suggest some limited additions. It is especially important for the criteria to be robust and consistently applied when there are competing redress schemes in order to avoid a race to the bottom, as has been a concern in the communications market. TSI should closely inspect redress arrangements other than the two pre-approved schemes, as we presume the two schemes were selected on the basis that they should be accessible to the vast majority of potential code sponsors. In this context, we note that the Legal Ombudsman plans to start work on commencing the voluntary jurisdiction in the Legal Services Act; this would be an obvious home for code sponsors operating in the legal services market.
26. We would be suspicious of code sponsors, which may include individual businesses, wishing to create their own bespoke ADR scheme. This raises serious concerns about the independence of schemes from industry, and we doubt that consumers would have confidence in them.
27. The BIS consumer empowerment strategy includes a commitment to open up regulatory data by encouraging ombudsmen and regulatory bodies to publish the complaints and performance data they collect about businesses. It sets a clear expectation that this should be the default position of public bodies. This plays an important role in informing consumer

choice and deterring bad business practice. We strongly encourage TSI to make this a requirement for all redress schemes. Although the two pre-approved schemes do not currently publish (Ombudsman Services does in energy only) there is no reason why they could not do so just for code sponsors. Any code sponsor genuinely committed to consumer protection, as all applicants should be, would not object to this proposal. Indeed, should TSI not introduce this measure, it risks undermining initiatives by statutory redress schemes which are now publishing complaints data.

28. Finally, it should be an explicit criterion that redress schemes collect anonymised data on complaints and share this with the code sponsor. This is implicit within the section of the code criteria on monitoring, but it would be helpful if this was made an explicit part of the approval criteria for redress schemes.

Q8. What are your views on establishing a right for consumers to insist on referral to the ADR provider if eight weeks elapse before their complaint is resolved?

29. The Panel supports this proposal as there is evidence that consumers abandon complaints the longer the process drags on. It is desirable to harmonise the criteria for ADR schemes with operating norms in statutory redress schemes – we note that the Legal Ombudsman also enables consumers to complain after eight weeks.

Q9. What is your view on the additional monitoring requirements proposed in criterion 5a?

30. The shift towards measurement of outcomes and impact, based on a wide

range of evidence, is very welcome. TSI should agree with code sponsors in advance of approval what outcomes the code is seeking to achieve and revisit these periodically. This must be targeted in the sense of reflecting evidence of where consumer detriment exists or can be expected to happen, and the design of monitoring activities should flow from this. We note that in legal services it is not always possible for consumers to judge the quality of work, even after the event. Therefore, it is important for code sponsors to demonstrate that good outcomes for consumers are being achieved in practice and not rely solely on performance which is observable by consumers.

31. Assembling a reliable evidence base may prove challenging for code sponsors, and require some investment. However, it is crucial to the credibility of CCAS that code sponsors demonstrate member businesses are delivering on their commitments; paper promises are all too easy to make. This was the key difference between CCAS and the previous OFT code scheme, so it is vital that TSI gets monitoring right.
32. We encourage TSI to look at the Panel's Consumer Impact Report, which uses a basket of indicators approach to assess the impact of the legal services reforms on consumers drawing on evidence from surveys and other data sets. This may provide some ideas about measures which TSI and code sponsors might use to monitor performance. A copy of the most recent edition of the report is attached to this response.

Q10. What is your view on the introduction of statistical sampling techniques to monitoring and performance measurement of codes?

33. The greater rigour afforded by statistically significant methods is welcome. In addition, it is important that TSI does not discount non-numerical sources of evidence, such as qualitative research or customer feedback websites, which may offer rich insight into the consumer experience.
34. We also support transparency requirements to publish performance monitoring data on code sponsors' websites, which can only add to consumer confidence.

Q11. What is your view on the proposal to require code sponsors to produce an annual report?

35. This should be a requirement, but we do not support the caveat this should only be the case if required by TSI or stakeholders. We do not see how stakeholders could require this in practice and consider this is a reasonable expectation for all codes.

Q12. What is your view on deleting the requirement for copies of annual reports to be sent to TSI and, instead, to simply require that reports be published?

36. This is supported, although annual reports should be published on an easy to find part of code sponsors' websites.

Q13. What is your view on criterion 5f being deleted and the assessment of customer satisfaction incorporated into the monitoring requirements of criterion 5e?

37. The Panel supports this proposal.

Q14. What is your view on the requirement for code sponsors to create a disciplinary and sanctions panel?

38. The Panel supports this proposal and considers the range of available sanctions to be consistent with the Macrory principles. We also support the transparent working practices envisaged for the panels.

Q15. What is your view on allowing trading standards and other regulators to refer code members to the disciplinary and sanctions panel?

39. The apparent unwillingness of trade associations to discipline members has long been a weakness of self-regulatory schemes and so enforcement is a critical part of CCAS. Trading standards and other regulators will receive valuable intelligence about possible infractions by businesses and it is important they are both able, and actively encouraged, to share this. Code sponsors should also actively encourage intelligence from a wider range of sources, such as redress schemes who may receive complaints about businesses which fall outside of their jurisdiction, and Citizens Advice which receives substantial volumes of contacts through its Consumer Service.
40. TSI proposes that local trading standards services should have powers to trigger disciplinary procedures against code members with a direct line of contact to the independent panels. We agree that trading standards and possibly other regulators, as recognised bodies who hold sensitive data and have an important stake in successful self-regulation, should have such powers.

Q16. What is your view on the proposed amendments to criterion 7a, including the requirement for businesses to publicise their complaints procedure?

41. Our research shows that consumers face significant barriers to complaining about legal services providers, and we suspect the same is true in many other sectors. Signposting rules are an important way to inform consumers about their right to complain to providers and access ADR. However, a reading of ombudsman annual reports suggests that a minority of people recall being told about the redress scheme by their provider despite rules requiring providers to inform consumers. This suggests that compliance is likely to be an issue for code sponsors.
42. In legal services, signposting rules require providers to inform consumers in writing about routes to redress, including access to the Legal Ombudsman, at the time of engagement. Therefore, TSI may wish to be more prescriptive in this area than in other parts of the code criteria.

Q17. What is your view on deleting the criterion 7e?

43. The Panel supports this proposal.

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