

CODES OF PRACTICE

General

Office of Fair Trading approved Codes of Practice are used in several business sectors in England and Wales. Voluntary Codes of Practice are promoted by Trade Bodies for promotional and quality purposes. Many voluntary codes have been approved by the OFT. The codes do not have the force of law but are binding on traders who subscribe to them through membership of a trade body or association. To some extent, the OFT codes have been reduced in importance by the more general Unfair Trading Practices legislation.

Unfair trading legislation was introduced in 1973 to encourage associations to prepare codes of practice for guidance and for the promotion of the interests of consumers. The OFT supported codes in a variety of areas including cars, electrical appliance, travel, mail order and double glazing. The codes were voluntary. Trading associations were to ensure that their members followed the code. The codes often restate existing law and recommend best practice.

In many cases, adherence to the code is a condition of membership of a trade association.

Trade associations often have powers under their membership rules to enforce codes including powers of fining and expulsion from the association. Others would have lesser sanctions in their trade association agreement. The existence of sanction is a crucial factor of the trade if the code is to become an approved OFT code.

Voluntary codes only apply to trade association members. The terms and provisions of a code may become part of a contract with a customer depending on the terms of trading.

OFT Approval of Codes

The Enterprise Act 2002 gave the OFT new powers to approve consumer codes and specified criteria for approval. There is a two stage approach to the adaptation of trade codes of practice under the Enterprise Act. Under the first stage the sponsor of the trade association develops the codes. It complies with criteria. Once stage one status has been achieved they are invited to take part in the second stage whereby they must show they have fulfilled the promises made at the first stage.

If approved, the OFT will endorse and promote the code which then can be used in the business marketing by displaying the OFT approved code logo. The process of approval of codes under the new legislation has been slow to date.

The codes must comply with certain criteria. There must be rights for consumers to go beyond their existing rights rather than just restating the statutory position. There must be real sanctions against members for non compliance. There must be an auditing procedure to check compliance by members. A number of codes have been approved under the new legislation including codes in the following areas:

- Direct selling association
- Omnibus man for Estate Agents
- Vehicle, builders and repairs association

The core principles which must be included in the codes include the following:

- independent disciplinary procedures
- enforcement to ensure compliance by their members
- speedy response of accessible and user friendly compliant handling procedure
- conciliation should be available and this may through the trade associations
- there must be redress at low cost through an independent third party or panel
- where arbitration is provided for the customer is liable to pay a small refundable fee only

- the decision must be binding in the business but not in the consumer who is dissatisfied

The Codes must be publicised. The OFT has the function of giving advice and information to the public.

Unfair Trading Practices Legislation

The Unfair Commercial Practices legislation which has been enacted under a European Directive provides for a general duty to trade fairly. See our separate note on this legislation.

This legislation does not replace OFT approved codes. It has specific provision in relation to how businesses may promote their adherence to Trade codes.

Financial Services

Under Financial Services legislation, the Financial Services Authority has issued detailed codes of conduct for various sectors. These codes effectively have the force of law. There are severe sanctions and liability under an ombudsman scheme for breaches of the codes. These codes are mandatory for the relevant sectors.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.