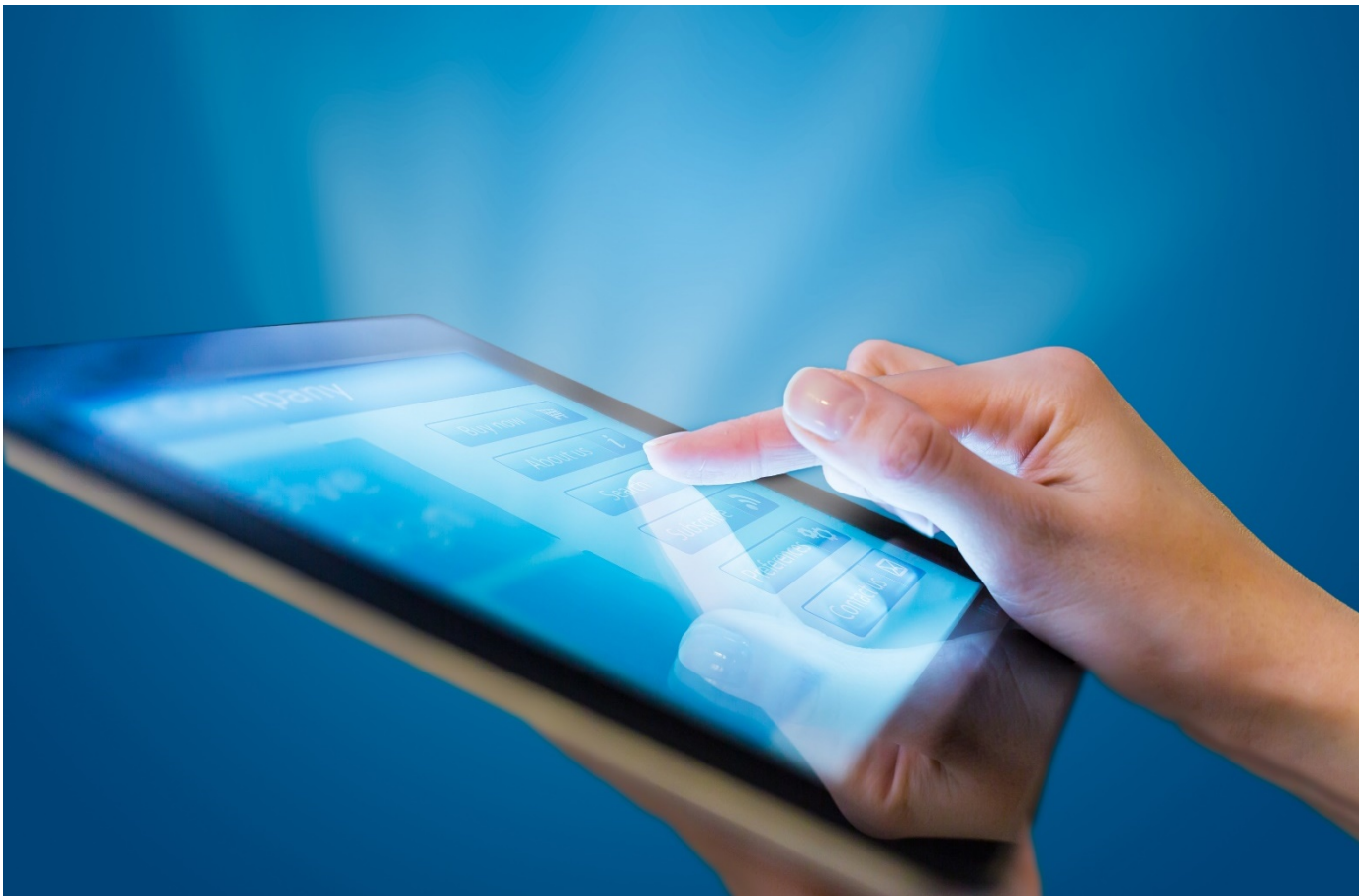


Digital comparison tools market study

Final report

Paper C: The application of the law and
regulation to digital comparison tools



26 September 2017

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The application of the law and regulation to digital comparison tools

Introduction

1. DCTs help to improve consumer engagement and exert competitive pressure on suppliers.¹ They play a growing and significant role in influencing important, high-value purchase decisions in sectors where the products can be hard for consumers fully to understand. In our survey, 71% of internet users had used a DCT in the last year.²
2. Our survey also found a high level of satisfaction with the experience of using comparison sites, with 96% of recent users very or fairly satisfied. DCT users were also more likely to be very satisfied with their experience of shopping around than non-DCT users,³ and most users (83%) believed that using comparison site(s) meant that they made a better choice.⁴ Two thirds (65%) of recent users considered that the results presented on the main site they had used fully matched their needs, with only 2% saying that the results did not match their needs.⁵
3. Nearly a third of DCT users relied solely on DCTs the last time they shopped around and 74% said it was either their main or only source.⁶ DCTs also place themselves in a position of trust with users – by offering to find them better deals and in gathering, retaining, processing, analysing and sharing with third parties large volumes of their personal data.
4. DCTs' behaviour should ensure consumers can trust them and can make informed choices about which DCTs to use and subsequently which suppliers' offers to select. A well-functioning market for DCTs should deliver these outcomes through competition; and where there are risks to this being so, regulation can help – by ensuring businesses compete fairly and consumers are empowered, confident and able to exercise informed choice. However, regulation that is not well designed has the potential to lead to negative outcomes.
5. As part of this study we therefore considered whether current regulation of DCTs is fit for purpose or whether alternative approaches would deliver better

¹ A supporting Glossary is [available on our case page](#).

² Page 37 in Kantar, *Digital Comparison Tools: Consumer Research Final Report*, March 2017.

³ Page 163 in Kantar, *Digital Comparison Tools: Consumer Research Final Report*, March 2017.

⁴ Page 159 in Kantar, *Digital Comparison Tools: Consumer Research Final Report*, March 2017.

⁵ Page 133 in Kantar, *Digital Comparison Tools: Consumer Research Final Report*, March 2017.

⁶ Page 30 in Kantar, *Digital Comparison Tools: Consumer Research Final Report*, March 2017.

outcomes. We considered parties' responses to our Statement of Scope⁷ and Update Paper⁸ and explored these issues in bilaterals and workshops with a range of stakeholders, including DCTs, suppliers, regulators and trade and consumer bodies. We have also drawn on our evidence of consumer views, behaviour and experiences (see Paper A) and DCT behaviour (see Paper B).⁹

6. This Paper expands on the assessment in our Final Report, addressing:
 - (a) The current regulatory framework and developments.
 - (b) The role of regulation for DCTs.
 - (c) The effectiveness of the current regulation of DCTs.
 - (d) Improving the regulation of DCTs.

(a) The current regulatory framework and developments

General regulation

7. General law applies to DCTs in the same way as it does to other businesses.¹⁰ Key pieces of general consumer and competition law include, respectively, the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and the Competition Act 1998 (CA98).¹¹ These laws may be enforced by a range of national bodies, including the CMA and sector regulators such as the Financial Conduct Authority (FCA), Ofgem and Ofcom.¹² The CPRs, summarised in Box 1 and Appendix 2, are particularly relevant to our consideration of DCTs.¹³

⁷ CMA, *Market study of digital comparison tools – statement of scope*, September 2016.

⁸ CMA, *Digital comparison tools market study – update paper*, March 2017.

⁹ See also GfK, *CMA Digital Comparison Tools Mystery Shopping and Websweep Research Report*, September 2017.

¹⁰ By 'general law', we mean law that applies to all businesses regardless of the sector in which they operate.

¹¹ For this Final Report, we are providing a brief summary of the key elements of the regulatory framework, rather than a comprehensive overview. Our focus is on the issues that have been raised with us as well as key developments. Other potentially relevant legislation includes the Consumer Rights Act 2015 (CRA), the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs), and the Electronic Commerce (EC Directive) Regulations 2002 (ECRs).

¹² Local authority Trading Standards Services (TSS) also have enforcement powers in relation to consumer protection law.

¹³ More detailed information can be found in OFT, *Consumer Protection from Unfair Trading Regulations - traders* (OFT1008), August 2008.

Box 1: The CPRs

The CPRs provide consumers with protections against a range of unfair commercial practices which distort their decision making. They include a general duty not to trade unfairly, and ban certain specified practices in all circumstances.

Regulation 3 of the CPRs contains a general prohibition of unfair commercial practices. A commercial practice is unfair if it is not professionally diligent and it materially distorts, or is likely to materially distort, the economic behaviour of the average consumer.

Regulations 5 to 7 of the CPRs prohibit commercial practices that are misleading (whether by action or omission) or aggressive, and that cause or are likely to cause the average consumer to take a transactional decision they would not otherwise have taken.

Schedule 1 of the CPRs lists 31 commercial practices, which because of their inherently unfair nature, are considered unfair in all circumstances and are prohibited ('banned practices'). There is no need to consider the impact of these practices on the average consumer.

8. Like other businesses, DCTs are also subject to other general legislation, including:
 - the Data Protection Act 1998 (DPA), enforced by the Information Commissioner's Office (ICO);¹⁴ and
 - Equality Act 2010, overseen by the Equality and Human Rights Commission.¹⁵
9. Advertising in the UK, including by DCTs, is also subject to a well-established system of self-regulatory rules, administered by the Advertising Standards Authority (ASA).¹⁶

¹⁴ The ICO also enforces the Privacy and Electronic Communications Regulations (PECR) which relate, among other things, to the use of cookies and similar technologies. References to data protection law should be taken as referring also to PECR where applicable. See Appendix 2 for more information on data protection regulation.

¹⁵ The Equality and Human Rights Commission has powers to enforce the provisions of the Equality Act 2010. Further guidance on the Commission's legal powers, its regulatory approach and how it takes action can be found on the [Equality and Human Rights Commission's website](#).

¹⁶ The ASA administers the Committee of Advertising Practice's (CAP's) mandatory *UK Code of Non-broadcast Advertising, and Direct Marketing & Promotional Marketing* (the CAP Code). The UK Advertising Codes will apply to a DCT's own advertising or marketing, both broadcast and non-broadcast. This could include claims made by a DCT on its own website about the service it provides. 'Paid-for' listings (ie any listing where a supplier pays for prominence or preferential positioning within the results) are also within the scope of the CAP Code. However, misleading/inaccurate 'natural' results would fall outside ASA's remit. If a DCT purports to be independent, but is actually very closely connected to the suppliers it is comparing, then all listings could potentially fall within the scope of the CAP Code (see ASA, *Remit: Search engines and price comparison websites*, September 2016).

10. In some cases, guidance or advice specifically aimed at DCTs on how to comply with general law has also been produced at a national and European level. Examples include the Office of Fair Trading's 2012 report on price comparison websites¹⁷ and the European Commission's 2016 key principles for comparison tools.¹⁸

Sector-specific regulation for DCTs

11. DCTs are also subject to some sector-specific regulation, the nature of which varies by sector and product.

Financial services

12. The Financial Services and Markets Act 2000 (FSMA) broadly requires firms to be **authorised by the FCA** before conducting any regulated financial activities.¹⁹ Although the operation of a DCT itself is not a specified activity, DCTs may engage in regulated activities, and if so they must be authorised (or exempt) and comply with the requirements of the FCA Handbook applying to those activities.²⁰
13. The FCA Handbook sets 11 high-level principles for all businesses conducting regulated activities – including to treat customers fairly (Principle 6) and communicate information in a way which is clear, fair and not misleading (Principle 7).²¹
14. In addition to the principles, the FCA Handbook contains sets of specific rules which vary according to the activities addressed. For example:
 - (a) In consumer credit, if DCTs communicate a financial promotion in relation to credit broking they must comply with specific rules, including that comparisons must be accurate and presented in a fair, balanced way.²²

¹⁷ Office of Fair Trading, [Price Comparison Websites: Trust, choice and consumer empowerment in online markets](#), November 2012.

¹⁸ The CPRs implement the Unfair Commercial Practices Directive (UCPD), and in May 2016, the European Commission produced a set of '[Key Principles for Comparison Tools](#)' to assist the operators of comparison tools in complying with their obligations.

¹⁹ The FCA determines applications for authorisation to carry out regulated activities, as defined by the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the [Regulated Activities Order](#), RAO), and takes action against those it considers to be carrying out regulated activities without authorisation. More detailed guidance on what is within the FCA's 'perimeter' can be found in the FCA's [Perimeter Guidance Manual](#) (PERG) within the [FCA Handbook](#). Ultimately only a court can decide whether an undertaking is carrying out a regulated activity.

²⁰ The [FCA Handbook](#).

²¹ The [FCA Principles](#).

²² For consumer credit, the rules are set out in the FCA's [Consumer Credit Sourcebook](#) (CONC). This is not the only section of the FCA Handbook applicable to this sector, and other regulatory obligations are relevant

(b) In insurance, if a DCT carries out certain regulated activities,²³ for example where it 'arranges' or 'advises' (eg provides recommendations) on contracts of insurance it must meet specific requirements – for instance, to treat customers fairly (which could mean, for example, taking reasonable steps to ensure that a customer only buys a policy under which they are eligible to claim benefits), explain whether it is financially interested or linked to a given insurer, and provide procedures for making complaints (including the availability of the Financial Ombudsman Service, FOS).²⁴

15. These financial services rules have developed for their specific sectors over time and, since DCTs are only one type of intermediary, have not generally been driven by how DCTs operate. While there are some differences between the rules for different financial services, the FCA's 'Principles for Businesses' provide a general level of protection and effectively act as a safety net where there is uncertainty or new products are developed for regulated activities.

Energy and telecoms

16. In contrast, in the communications and energy sectors, firms are regulated on the basis of being communications providers and licensed energy suppliers respectively. DCTs comparing energy and telecoms providers are therefore **not directly regulated** by Ofgem and Ofcom under their sector-specific rules (who regulate only the suppliers DCTs compare). Instead, these regulators have sought indirectly to help consumers to make informed choices, build consumer confidence in comparison tools as a service and to influence the nature and quality of comparison sites, by establishing badged **voluntary accreditation schemes** for DCTs listing energy and telecoms suppliers.²⁵
17. However, suppliers may need to place requirements on DCTs. For example, Ofgem's Domestic Standards of Conduct require suppliers and any organisations that represent them, such as third party intermediaries like

depending on the circumstances, eg *Dispute Resolution: Complaints* (DISP) sets out the rules and guidance for handling of complaints.

²³ The requisite Part 4A FSMA permission for a general insurance intermediary may include the regulated activities of agreeing to carry on a regulated activity, advising, arranging or bringing about deals, making arrangements with a view to transactions in investments and dealing in investments as agent for non-investment contracts.

²⁴ For non-investment/general insurance, the rules are set out in the FCA's *Insurance: Conduct for Business* (ICOBS). This is not the only section of the FCA Handbook applicable to this sector, and other regulatory obligations are relevant depending on the circumstances.

²⁵ See Ofgem, *Compare gas and electricity tariffs: Ofgem-accredited price comparison sites*. And Ofcom, *Accreditation scheme for price calculators*. In the legal services sector, the Legal Services Consumer Panel also established a voluntary code in May 2013 against which comparison sites can self-assess. At the time of this report, the LSCP site reported that 12 DCTs had assessed themselves against the code. See *Good Practice Standards for Comparison Websites*.

DCTs, to ensure that each domestic customer is treated fairly.²⁶ As a result, although participation in Ofgem's 'confidence code' scheme for DCTs is voluntary, it appears that most DCTs with particular interest in energy comparisons have signed up to it because the largest suppliers have required them to do so as a means of assurance that the DCTs will meet the licensing standards. In contrast the reach of Ofcom's scheme is relatively limited.²⁷

18. These two voluntary schemes require members to follow a set of prescriptive rules, the key elements of which are summarised in Appendix 1. For example, Ofgem's code has, until recently, required its members to show all tariffs available (ie the Whole of the Market, WoTM), and DCTs in Ofcom's scheme are expected to show 90% of suppliers. Both schemes set minimum requirements for the number of results DCTs should show on their first page. For some comparison tools, the schemes' requirements may be incompatible with their model. For instance, requirements to show at least 10 results on a page means that concierge services like Flipper, or collective switching schemes like BigBroadbandSwitch, cannot join the schemes.

Flights

19. If DCTs make available flights plus other services (for example accommodation or car hire), as opposed to just providing consumers with information about them, then they will require an Air Travel Organiser's Licence (ATOL), administered by the Civil Aviation Authority.²⁸ Applicants for ATOL must meet certain financial criteria and satisfy the CAA that they are fit and competent to hold a licence.
20. The CAA can also take enforcement action under the Air Services Regulation (ASR), which sets out legal obligations relating to the display of prices for air services and covers intermediaries such as DCTs.²⁹ The ASRs require travel agents and intermediaries to display the final inclusive price at all times, including all unavoidable taxes, fees and charges, as well as the costs of all

²⁶ Ofgem's licence conditions for domestic energy suppliers include mandatory [Standards of Conduct](#), requiring suppliers to treat consumers fairly. In order to meet their obligations, suppliers must ensure that any organisations that represent them also comply with the relevant standards. Telecoms providers are authorised to provide services as long as they comply with Ofcom's [General Conditions of Entitlement](#). Telecoms providers must ensure that they comply with their obligations even where third parties sell or market their services.

²⁷ For example, uSwitch, the largest DCT by revenue in the broadband market is not a member of the Ofcom scheme but is a member of Ofgem's scheme.

²⁸ Under The [Civil Aviation \(Air Travel Organisers' Licensing\) Regulations 2012](#) (ATOL Regulations). The ATOL scheme applies to the provision of flights and accommodation (including a cruise), or flights and car hire, and flights, accommodation and car hire. It also applies to flights where a ticket is not given immediately. It does not apply to flights or holidays booked direct with scheduled airlines.

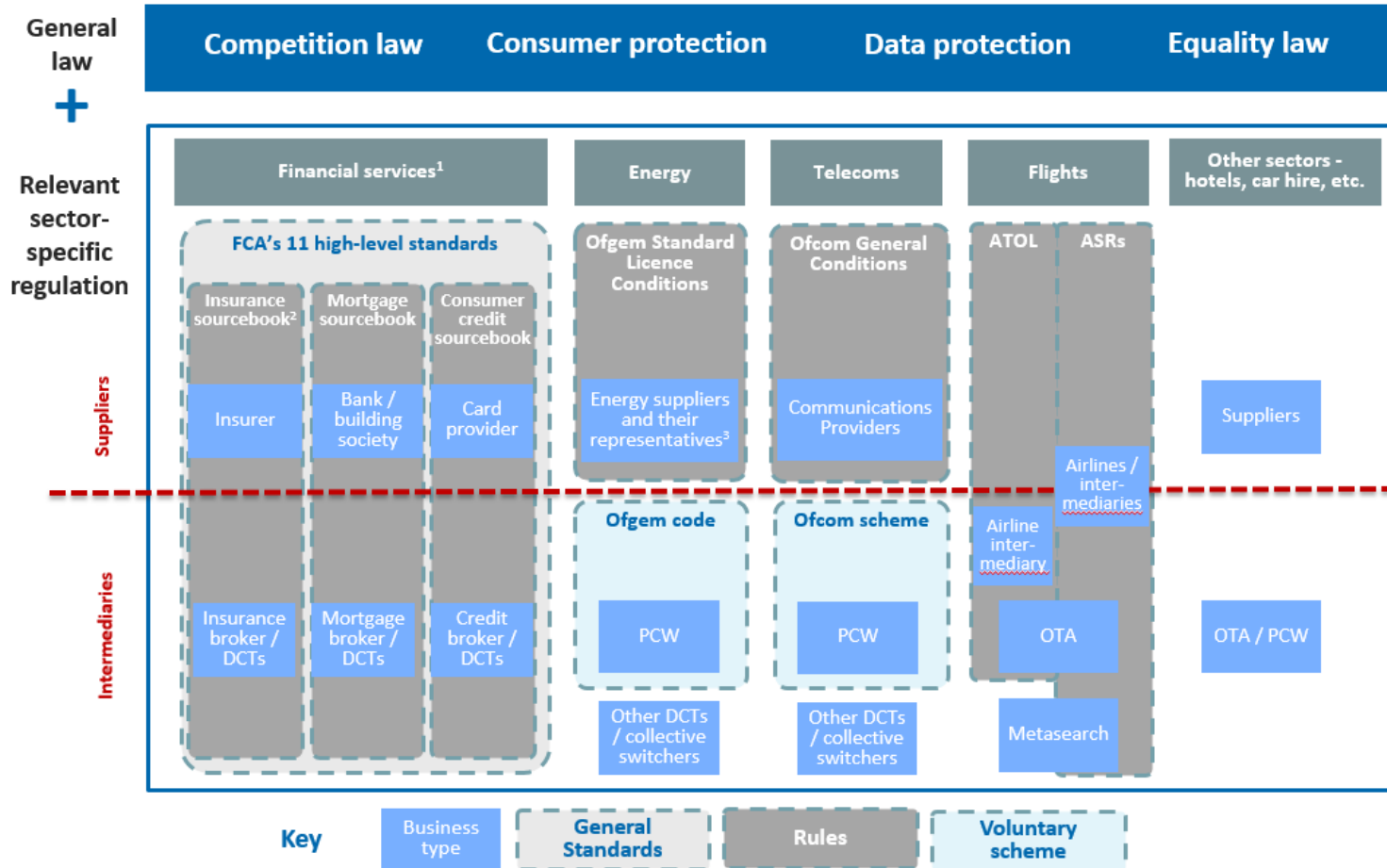
²⁹ Air Services Regulation EC Regulation No 1008/2008 ('ASR'). The ASR provisions apply to anyone offering flights to consumers. They relate to air fares or rates which are available to the public – flights that are only sold as part of a package are not covered. For further information, see OFT/CAA, [Guidance on the requirements of consumer law applicable to the sale and advertising of flights and holidays](#), March 2013.

optional extras offered by an airline at the start of the booking process in a clear, transparent and unambiguous way.

The overall regulatory framework

21. The regulatory framework for DCTs appears relatively complex (Figure C1). In particular, DCTs that operate in multiple sectors and offer different products may need to take into account a range of voluntary and mandatory regulatory requirements – from self-regulation through to voluntary accreditation, licensing and statutory regulation.

Figure C1: Overview of the regulatory framework for DCTs in a range of sectors



Source: CMA analysis.

1 There are a number of other sections of the FCA Handbook not listed here to which DCTs are subject. For example, in insurance, DCTs would also be subject to the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU), Dispute Resolution: Complaints (DISP), Consumer Credit Sourcebook (CONC) and Client Assets (CASS). The sectors also may not always sub-divide as neatly as this diagram suggests. Many mortgage or credit brokers will also distribute insurance, making them insurance intermediaries. There will also be other firms such as banks that provide mortgages.

2 The FCA does not have a single insurance rulebook: the rules for insurance firms come from a number of different parts of the FCA Handbook.

3 Standards of Conduct apply to the actions of suppliers and their representatives.

Recent and future developments

22. The regulatory environment for DCTs is changing. Government and sector regulators have taken forward a range of initiatives recently that directly or indirectly seek to improve consumer outcomes when engaging with DCTs:
- (a) The FCA has for example introduced additional standards for high cost short-term credit DCTs,³⁰ worked to improve the availability and quality of information on add-ons in general insurance³¹ and as a result of its credit card market study³² cross-sector work is being undertaken by the industry to develop improved quotation search tools. It is also conducting a market study on competition in the mortgage sector, which includes consideration of PCWs as a tool for consumers to make effective decisions.³³
 - (b) As a result of the recommendations made by the CMA following its energy market investigation, Ofgem recently consulted on whether to amend the 'Whole of Market' (WoTM) requirements for DCTs in its Confidence Code³⁴ and in July 2017 announced that it had decided to amend its code to a 'partial view'.³⁵ Ofgem also plans to trial and consult on the full removal of the WoTM Requirement at the end of 2017.
 - (c) BEIS has conducted a consultation on possible improvements to Midata in the energy sector.³⁶
 - (d) The Digital Economy Act 2017 provides Ofcom with greater ability to obtain and, as appropriate, secure publication of data (including property-specific speed information) in a specified format.³⁷

³⁰ Following the CMA's investigation of Payday Lending (see CMA, [Payday lending market investigation: Final report](#), February 2015), the FCA implemented new rules setting out how High Cost Short Term Credit (HCSTC) products are displayed on DCTs (see FCA, [PS16/15: Feedback on CP15/33 - Consumer credit: proposals in response to the CMA recommendations on high-cost short-term credit](#), May 2016).

³¹ FCA, [General insurance add-ons market study](#), July 2014.

³² FCA, [Credit card market study – final findings report](#), July 2016.

³³ FCA, [Mortgages market study – terms of reference](#), December 2016.

³⁴ Ofgem, [CMA Remedies Implementation Plan](#), November 2016.

³⁵ Ofgem, [Decision on the partial implementation of the CMA's Whole of Market remedy and consulting on new Code requirements](#), July 2017. Under a 'partial view', accredited PCWs can have their default results page only show tariffs that can be entered into directly through their site provided consumers can easily access a results page which also includes tariffs which can be switched to outside of their site. PCWs will also need to be clear about the market coverage and list tariffs in price order unless the consumer specifically asks for them to be ordered in some other way.

³⁶ Department for Business, Energy & Industrial Strategy, [Call for evidence: implementing midata in the energy sector](#), December 2016.

³⁷ UK Parliament, [Digital Economy Act 2017](#).

- (e) The CAA is reviewing the information provided to consumers by holiday price comparison websites and the degree to which the deals advertised are available in practice.³⁸
 - (f) The European Commission is currently considering restrictions on the ability of DCTs to access flight data, together with a number of other issues relating to the distribution of airline tickets.³⁹
23. In terms of improving consumer outcomes, as we note in Paper A, the sector regulators have also been conducting work to address the needs of vulnerable consumers:
- (a) Ofcom has a range of measures in place to protect vulnerable consumers in communications markets. It has published a guide to powers of attorney and third party bill management, which enable consumers to nominate a trusted friend or relative to act on their behalf when accessing markets.⁴⁰
 - (b) Ofgem has announced plans to protect vulnerable consumers, including a possible safeguard tariff.⁴¹
 - (c) The FCA issued occasional papers on Consumer Vulnerability⁴² and Access to Financial Services;⁴³ and recently announced call for input on access to travel insurance for consumers who have, or have had cancer.⁴⁴
24. Stakeholders also highlighted various general and sector-specific regulatory developments which are likely to have an effect on DCTs:
- (a) Reforms to the data protection regime under the General Data Protection Regulation (GDPR) will take effect in May 2018.⁴⁵ Of particular relevance to DCTs will be the introduction of new rights for individuals to access and control their data, including a right of data portability; enhanced transparency requirements which should mean individuals being better informed about how their data is to be used; new accountability requirements on organisations; and the strengthening of key areas of the

³⁸ CAA, [How the CAA protects consumers and promotes the legal rights of UK air passengers](#), February 2017, page 3.

³⁹ MLex, [Airline ticket pricing, distribution face EU scrutiny](#), April 2016.

⁴⁰ Ofcom, [Powers of attorney and third party bill management](#), June 2016.

⁴¹ Ofgem, [Ofgem announces plans to deliver a fairer, more competitive market for all consumers](#), July 2017.

⁴² FCA, [Occasional Paper No. 8: Consumer Vulnerability](#), February 2015.

⁴³ FCA, [Occasional Paper No. 17: Access to Financial Services in the UK](#), May 2016.

⁴⁴ FCA, [Call for Input on access to insurance](#), June 2017.

⁴⁵ See ICO, [Overview of the General Data Protection Regulation \(GDPR\)](#).

law such as a higher standard of consent (where consent is the condition for processing).

- (b) The European telecoms rules are currently under review, and the European Commission has proposed a new European Electronic Communications Code.⁴⁶ The proposals are aimed at ensuring end-users in every member state have access to at least one free and independent comparison tool for communications services, which must meet certain requirements. National regulatory authorities would be required to certify, upon request, that a comparison tool fulfilled the requirements set out in the Code. DCTs would also have rights to use information published by telecoms providers for the purposes of making available such comparison services.
- (c) The Insurance Distribution Directive came into force in February 2016 and must be transposed into national law by February 2018. It includes information and conduct requirements which will apply to DCTs carrying out insurance distribution activities within the scope of the Directive. The FCA has published consultation papers on its proposals to implement the Directive.⁴⁷
- (d) The Payment Accounts Directive requires member states to ensure that consumers have access to at least one free and independent comparison website, which must meet certain requirements, where they can compare the fees charged by payment service providers for a number of services linked to payment accounts. The Directive has been implemented in the UK by the Payment Accounts Regulations 2015.⁴⁸ To ensure that the UK meets this requirement the Money Advice Service will be required to operate a website comparing fees charged for a number of payment account services. The provisions relating to the Money Advice Service are likely to come into force in 2018.

⁴⁶ European Commission, *Proposed Directive establishing the European Electronic Communications Code*, September 2016.

⁴⁷ FCA, *CP17/7: Insurance Distribution Directive implementation – consultation paper I*, March 2017; and *Insurance Distribution Directive implementation – Consultation Paper II*, July 2017.

⁴⁸ See FCA, *Payment Accounts Directive*.

(b) The role of regulation for DCTs

Regulation can play a role in helping consumers secure good outcomes

25. DCTs' behaviour should support three outcomes:
- (a) **Trust.** Consumers need sufficient trust and confidence in DCTs to be prepared to use them at all.
 - (b) **Choice between DCTs.** Consumers need to be able to make sufficiently well-informed choices between DCTs, both for the sake of their individual decisions and to support effective competition between DCTs.
 - (c) **Choice between suppliers.** Consumers need to be able to use DCTs to make well-informed choices between suppliers – again both for their individual decisions and to support effective competition, this time between suppliers.
26. A well-functioning market for DCTs should deliver these outcomes through competition. Competition should push DCTs to compete on factors important to consumers, such as ease of use and trustworthiness; and to react to pressure from suppliers to provide the best possible service.
27. As we report in Chapter 4 of our Final Report, much of what we have seen suggests positive outcomes from DCTs. But we have also identified some practices that give rise to concerns that these outcomes might not always be delivered. In Paper B we set out in more detail some of the practices which might undermine the positive outcomes that DCTs can deliver for consumers.

(c) The effectiveness of the current regulation of DCTs

Introduction

28. Ideally, regulation should support the outcomes described in paragraph 25 in a proportionate way, if the market is judged not to deliver them. It should not itself cause problems in the market. However, during our study a range of parties raised various concerns about the regulatory framework for DCTs – in particular some suggested that it is fragmented, burdensome, complex and unclear for DCTs, suppliers and consumers, as well as being inflexible for

new business models and technology and in some cases distortionary. Some parties also identified a lack of regulatory coordination and enforcement.⁴⁹

29. As we noted above, general law applies to all DCTs in all sectors. In addition, in some sectors there are additional legal rules which DCTs must comply with – notably in financial services where the rules apply to DCTs engaged in specific activities.
30. Some sector regulators such as Ofgem and Ofcom, who do not regulate DCTs directly under their sector-specific rules, have sought to influence the nature and quality of DCTs by establishing voluntary accreditation schemes. Although these schemes do not have the same status as legal rules, they can affect the way DCTs behave.
31. Regulators' approaches to DCTs vary, reflecting different underlying frameworks. The requirements of these specific legal rules and voluntary schemes varies across sectors, both in terms of their level of detail and their level of specificity to DCTs, and in the strength of enforcement mechanisms.⁵⁰ This is also unsurprising given their development independently of one another.
32. In financial services, the FCA sets both broad principles and detailed rules, applicable to different types of activity, including those carried out by DCTs; it then has tough sanctions to back these up, providing a clear deterrent.
33. In energy and telecoms, where DCTs are not within the regulators' legal perimeter, Ofgem and Ofcom have voluntary accreditation schemes with quite detailed requirements specifically for DCTs, but without formal sanctions other than suspension or exclusion for non-compliance.
34. In other sectors, with the exception of the ASRs and the CAA's ATOL licensing of travel agents selling packages including flights, there are no rules specific to DCTs. For example, in sectors such as hotels, legal services and car hire, only the general law applies to DCTs.
35. We have reviewed the different approaches to form a view on what works well, and what less well.

⁴⁹ See paragraphs 8.13–8.42 of our Update Paper. CMA, [Digital comparison tools market study - update paper](#), March 2017.

⁵⁰ See paragraphs 8.17–8.24 of our Update Paper. CMA, [Digital comparison tools market study - update paper](#), March 2017.

Financial services

36. We heard few concerns from stakeholders about the regulation of DCTs in relation to **financial services** and from what we have seen, the FCA's approach to regulating DCTs appears largely effective.
37. DCTs are covered by regulation in the same way as other financial services intermediaries or brokers, all based on the activities they carry out. The fact that intermediaries of various types have long been a feature of financial services appears to have helped the sector to become broadly comfortable with DCTs. The presence of the broad requirement to 'treat customers fairly' has attracted some positive comment from regulated firms, as has the FCA's work to become more familiar with the DCTs model.⁵¹
38. The wide range of enforcement powers – criminal, civil and regulatory – available to the FCA and presence of tough sanctions also creates a significant deterrent effect. For example, the FCA can withdraw a firm's authorisation; suspend firms and individuals from undertaking regulated activities; issue fines and publish details of warning, decision and final notices.⁵²
39. The FCA's 'Principles for Businesses' are a set of high level principles which apply to all regulated businesses and provide a general level of protection, even where there are no detailed rules (for example product specific rules in the Specialist Sourcebooks). This means they act as a safety net, and help to 'future-proof' the FCA Handbook. For instance, a new financial product might not be addressed by the detailed rules, but firms would still be subject to the requirements in the principles (eg to be clear, fair and not misleading in how they communicate it).
40. Where specific rules are introduced by the FCA, they can be scrutinised and challenged by the parties affected. The FCA also provides a regulatory 'sandbox'⁵³ to enable firms to test the compliance of new proposals, which a number of stakeholders suggested is valuable.

⁵¹ The FCA is also considering the implications of new developments, such as the use of artificial intelligence (AI) in financial services, which represents a challenge to the traditional separation of 'guidance' and 'regulated advice', with their differing regulatory requirements. See: [FCA, CP17/28: Financial Advice Market Review \(FAMR\): implementation Part II and insistent clients](#), August 2017.

⁵² See [FCA Enforcement](#), April 2016.

⁵³ The FCA's [regulatory sandbox](#) allows businesses to test innovative products, services, business models and delivery mechanisms in the real market, with real consumers.

Energy

41. The regulatory framework for DCTs in **energy** looks less settled than in financial services (where the FCA regulates them directly). The context makes this perhaps not that surprising; intermediaries are a much newer feature in energy, and regulation is set up around licensed suppliers rather than DCTs.
42. The impact of the rules in Ofgem's scheme is increased because the scheme, while nominally voluntary, becomes quasi-mandatory where suppliers require accreditation from DCTs to help assure their own compliance with the regulations that fall on them. And despite being quasi-mandatory, the scheme is not subject to the same types of external scrutiny, challenge and review as statutory regulation.
43. This situation comes about because DCTs engage in some of the same activities as suppliers (such as marketing) but are not subject to the same regulatory requirements, because the scope of Ofgem's powers is limited to the suppliers rather than addressing activities irrespective of who undertakes them (as is the case for the FCA). We consider this issue of the regulators' scope further in paragraphs 79 to 80 below.
44. Some of the specific rules in Ofgem's Confidence Code are likely to cause problems. The WoTM requirement in energy, which Ofgem is now in the process of removing,⁵⁴ is the main one. Unlike for insurance or products in other sectors, comparison tools in the energy sector were until recently required to show prices from every company on the market.
45. At first sight, a requirement to show all suppliers might appear beneficial for consumers by creating 'one-stop shops' for energy and reducing the need to shop around. However, such requirements can undermine the benefits that DCTs can bring to consumers, because DCTs are unable to negotiate with suppliers. Suppliers know that they will automatically be listed by every DCT even if they do not integrate their systems with the DCTs or reimburse the DCTs for the business they bring to them. First, this can lead to poorer consumer experience on DCTs (eg consumers are not able to click-through to the provider's website). Second, it undermines the incentive for DCTs to

⁵⁴ As we note at paragraph 18, in July 2017 Ofgem announced that it had decided to amend its code to a 'partial view'. See Ofgem, [Decision on the partial implementation of the CMA's Whole of Market remedy and consulting on new Code requirements](#), July 2017. Under a 'partial view', accredited PCWs can have their default results page only show tariffs that can be entered into directly through their site provided consumers can easily access a results page which also includes tariffs which can be switched to outside of their site. PCWs will also need to be clear about the market coverage and list tariffs in price order unless the consumer specifically asks for them to be ordered in some other way. Ofgem also plans to trial and consult on the full removal of the WoTM Requirement at the end of 2017.

invest in energy comparison services and it reduces their ability to exert competitive pressure on suppliers. In addition, DCTs also cannot vet providers and choose not to list those that may provide a poorer service to consumers.

46. In terms of investment, a number of DCTs present in other sectors are only present in the energy sector through white-label arrangements⁵⁵ and DCT usage by consumers is lower in the energy sector than in a number of other sectors, such as insurance (see Figure A2 in Paper A). In the absence of WoTM, DCTs are still likely to facilitate entry – including for small and niche providers⁵⁶ and may have incentives to do so to strengthen their negotiating position with larger suppliers.⁵⁷ Indeed, data and views from stakeholders show that in insurance, where there is no market coverage requirement in place, DCTs aim to list a comprehensive panel of suppliers to be able to provide a good comparison service to consumers.
47. Moreover, most consumers do not appear to see DCTs as a one-stop shop, although some commentators have suggested this is the case.⁵⁸ We found that only 11% of DCT users said that they expected all suppliers to be listed on the last DCT they visited and the large majority (82%) were happy with the amount of choice they were offered.⁵⁹
48. However, while we do not consider that DCTs should be required to show a fixed proportion of the market (whether this be the whole of the market or less than 100% of it), a lack of information about coverage could adversely affect consumers' decisions about which and how many DCTs to use, as well as undermining consumer trust if users find coverage is not what they expected. It is important, therefore, that consumers can make informed choices about which DCTs to use and how to interpret the results on the basis of a clear explanation from DCTs about their coverage. As we note in Paper B, many of the sites we examined in our websweep appeared to be silent on their coverage and those that did explain it did so in varying ways.
49. More generally, any prescriptive set of rules such as the one that applies in energy is likely to be hard to get right in a changing sector such as DCTs, and

⁵⁵ See Table 3.1 in CMA, [Digital comparison tools market study – update paper](#), March 2017.

⁵⁶ We have observed this in the motor insurance market: See CMA, [PMI Final Report](#), September 2014, paragraph 8.4.

⁵⁷ Supplier concentration in energy is higher than in other sectors we looked at – see Figure 2.12 in Paper E. This implies that supplier negotiating strength in the energy sector is higher.

⁵⁸ For instance, see the House of Commons Energy and Climate Change Committee, [Changes to price comparison websites will undermine trust and competition](#), July 2016. Energy and Climate Change Committee Chair Angus MacNeil MP said: 'Price comparison websites must do what they say on the tin. Consumers expect price comparison sites to shine a light on the whole market, not keep them in the dark and push them into commission earning deals.'

⁵⁹ See Paper A, paragraphs 43–47.

may hamper innovation.⁶⁰ A rule that is right for the traditional ‘PCW’ model may not work for a newer app or concierge service. Collective switching schemes have grown in importance, but cannot sign up to the scheme’s requirements – denying them the potential opportunity to build consumer trust.

50. Prescriptive requirements, such as preventing DCTs from being owned by an energy supplier, rather than simply requiring them to be transparent, go beyond a desire that DCTs should present information in an unbiased manner and could hinder new models and investment.
51. Another distortion may arise from the different rules and weight of enforcement that applies to different firms carrying out competing activities – in this case the sales and marketing of retail energy services. As we note above, Ofgem’s scheme is quasi-mandatory because suppliers require DCTs to join it. However, this leads to a situation where licensed suppliers are subject to detailed rules with strong enforcement; accredited DCTs are subject to detailed rules, but with no strict enforcement other than removal of accreditation; and other, non-accredited DCTs such as newer apps or collective switchers are not covered by any specific rules. This lack of a level playing field potentially means consumers may experience different service quality depending on who they buy through.

Telecoms

52. The picture in telecoms, particularly **broadband**, is more mixed. A similar ‘comprehensiveness’ rule exists in Ofcom’s voluntary accreditation scheme – albeit set at 90% of suppliers by market share (as opposed to 100% in energy). Were many DCTs to sign-up to the scheme, we would expect it to have a similar distorting effect as that we describe above for energy.
53. In some respects, a requirement to show just less than the whole of the market could in fact have a worse effect than a requirement to show 100%, because it could mean the largest providers are guaranteed to be listed but may mean new entrant and niche providers are at a disadvantage and have to negotiate to be listed.
54. Some of the other detailed prescriptive rules are likely to raise similar risks as in energy and potentially limit the appropriateness of the scheme to some types of comparison tool. For instance, requirements in both the energy and

⁶⁰ In its recent report on Next Generation Intermediaries (NGIs), Citizens Advice noted examples of comments from some NGI representatives that, while the benefits of accreditation were recognised, the codes did not fit well with their models. See Citizens Advice, [Game Changers? A review of Next Generation Intermediary Services for Citizens Advice](#) by Richard Bates, August 2017.

telecoms schemes to show a minimum number of results on a page may not suit apps used on mobile devices with small screens.

55. Similarly, the requirement in Ofcom's scheme that DCTs rank offers by price by default may not suit concierge or other models that suggest offers on a range of factors, or tailored offerings based on known or inferred preferences.
56. As in energy, the initial and primary purpose of Ofcom's scheme was to achieve good practice and help build consumer confidence in comparison tools as a service – allowing such tools to become established. And similarly, the scheme is not subject to the same types of external scrutiny, challenge and review as statutory regulation.
57. However, the impact, positive or negative, of the rules is likely to be lower in broadband than energy, because many DCTs, including the biggest two, covering more than 70% of DCT sales,⁶¹ do not sign up. This raises a different question however: that of the effectiveness of Ofcom's scheme in protecting against the potential poor outcomes set out above.

(d) Improving the regulation of DCTs

A principles-based, cross-sector approach

58. Our assessment is that improvements could be made to the current regulatory framework for DCTs. Our starting point is that there should be clear ground rules that apply to all DCTs and address behaviours of potential concern.
59. An approach that takes a set of principles as a basis, as is the case in financial services, has the benefit of being adaptable to wide varieties of circumstances, business models and technologies. Principles can help to combat the main risks to consumers and ensure parties do not use legalistic loopholes to avoid compliance. Providing clear high-level principles is also in keeping with Ofgem's plans to rely more on general standards of conduct rather than detailed rules.⁶²
60. As we note at paragraph 21, many of the businesses offering DCTs do so across sectors, and may as a result have to deal with several different sets of regulatory requirements. We have heard arguments that this creates confusion for consumers,⁶³ undue compliance burden for DCTs, and creates challenges for DCTs showing multi-utility bundles. While we have not seen

⁶¹ CMA analysis of seven major broadband DCTs' sales data in the third quarter of 2016.

⁶² Ofgem, *Future Retail Regulation Stakeholder Workshop - 7 July 2015*.

⁶³ See for example, Citizens Advice Bureau, *The real deal: how do price comparison websites measure up?*, January 2015.

evidence of a significant negative impact, we see general benefits from bringing clarity and consistency to how DCTs should behave, and what consumers should expect.

61. Given that many of the same issues arise in the different sectors in which DCTs operate, it makes sense as far as possible to adopt a high-level regulatory approach that is common to all sectors. Having such an approach should bring clarity to what ostensibly seems a complex regulatory picture and should also support and promote greater regulatory liaison and coordination.

The CARE principles

62. In our Update Paper, we set out initial proposals for high-level principles and received a range of responses.⁶⁴ A number of parties considered that such principles should be mandatory and many were supportive provided they were well-framed, addressed consumer outcomes and reflected existing legal requirements. Some were concerned that principles might add to regulatory burdens, add complexity or be hard to develop to address all sectors.
63. In our Final Report, we recommend a set of cross-sector high-level principles intended to deliver the outcomes we identified above in paragraph 25 for consumers, by addressing the potential concerns we identified in Paper B. All DCTs should follow these **CARE** principles (**Figure C.2**) and **treat people fairly**, by being **Clear, Accurate, Responsible** and **Easy to use**.

⁶⁴ These responses are published on the [case page on our website](#).

Figure C2: The CARE principles



64. DCTs being **Clear** about the nature of service they offer supports trust and informed choice between DCTs. Being **Accurate** supports well-informed choice between suppliers. Being **Responsible** with data, openness to contact by consumers and handling complaints supports trust; and being **Easy to use** supports engagement and access by as many consumers as possible. Figure C3 sets out what we mean by the principles.

Figure C3: What the CARE principles mean in practice

DCTs should treat people fairly	
	Explain their services and how they make money
Clear	<ol style="list-style-type: none"> 1. Prominently provide a general explanation of how they make money. 2. Clearly explain how much of the market they cover. 3. Explain any ownership links with the suppliers they show. 4. Clearly explain how they have ranked the results presented. 5. Clearly state when and how commercial relationships have affected the results presented. 6. Make the total costs, including any compulsory charges, clear to consumers. 7. Clearly explain promotional offers. 8. Ensure all advertising is clearly identifiable.
	Provide information that is complete, correct, relevant, up-to-date and not misleading
Accurate	<ol style="list-style-type: none"> 1. Include in each result all the information consumers need, including price and main characteristics. 2. Ensure information is correct, up-to-date and not misleading. 3. Address inaccuracies promptly. 4. Ensure results presented are relevant to the search criteria. 5. Clearly set out assumptions made in generating the results presented. 6. Explain limitations in the availability of the results presented.
	Protect people's details and be easy to deal with
Responsible	<ol style="list-style-type: none"> 1. Comply with all obligations under data protection and privacy law. 2. Explain their collection and use of consumers' data and what controls consumers can exercise. 3. When showing reviews, have processes in place to ensure users see the full picture and be clear about how reviews are collected and checked. 4. Deal with complaints professionally and fairly; and provide clear information about how to complain.
	Make information easy to find and understand
Easy to use	<ol style="list-style-type: none"> 1. Present all key information in a clear, prominent and timely way. 2. Provide contact details, including postal and e-mail addresses. 3. Comply with all obligations under relevant equality law.

The scope of the principles

65. The principles are relevant to digital intermediary services used by consumers to compare and potentially to switch or purchase, products or services from a range of businesses.
66. This includes traditional Price Comparison Websites (PCWs), app-based comparison tools, comparison services that proactively provide switching advice and may carry out the switch ('concierge models'), voice-based comparison tools and online 'collective switching' services. All such tools

effectively do the same thing – albeit in different ways. They aggregate products and present one or more options to consumers.

67. Although our study has focused on consumer users of DCTs, adhering to the principles should benefit other types of DCT user, including micro-businesses who may use consumer-facing DCTs and by helping to maintain standards of DCT behaviour more generally.⁶⁵

The status of the principles

68. As well as ensuring positive outcomes for consumers, these principles also reflect the CMA's view of how general law applies in the specific case of DCTs, and what all DCTs should do to help them comply with their existing legal obligations – in particular under the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), data protection and privacy legislation and equality legislation.⁶⁶ The principles also provide a guide as to how we are likely to consider cases for enforcement action.
69. They set out what all DCTs, regardless of the sector(s) they cover, should do to help ensure they comply with general law. The principles reflect existing legal requirements and therefore do not create additional regulatory burdens for DCTs. If DCTs do not comply with the general law, then the relevant enforcer can take action against them.
70. We recommend that DCTs self-assess against these principles.⁶⁷ If they meet the standards set out in them then we are less likely to prioritise enforcement against them. But if they breach consumer law, we may take action.
71. In our Update Paper, we set out a number of potential enforcement options – including the potential development of a cross-cutting code scheme which might be enforced by a third party. However, the law underpinning the principles is already enforceable by a number of different regulators. We do not, therefore, see the need for such a scheme, which would add a layer of regulation.

⁶⁵ DCTs should also be mindful of the Business Protection from Misleading Marketing Regulations 2008, which prohibit businesses from advertising goods/services in a way that misleads other businesses and set out conditions under which comparative advertising, to consumers and businesses, is permitted.

⁶⁶ The principles and our discussion of them are not a substitute for legal advice, and should not be relied on as such.

⁶⁷ We also think it would be helpful if DCTs provide a link to them on their sites.

72. We instead recommend that other enforcers have regard to these principles on a case-by-case basis when assessing compliance with the general law by all DCTs⁶⁸ in their sectors.⁶⁹
73. We also recommend that regulators continue to work together to maintain the principles, keep progress under review, and ensure consistent treatment of cross-sector DCTs where appropriate. In the first instance, the UK Regulators Network (UKRN) is well-placed to assist with helping to coordinate such liaison.
74. The principles do not cover every legal requirement that DCTs must comply with, and it should also be noted that in some cases DCTs may be subject to additional sector-specific legal requirements (for instance, in financial services). As we note above, in some sectors, such as energy and telecoms, DCTs may also participate in voluntary accreditation schemes run by sector regulators to show that their practices meet certain standards. The requirements of some voluntary schemes may go further than the requirements of the general law (we consider this issue further below).
75. Some parties questioned the powers available to enforce the CPRs. We have already said in other contexts that there would be value in strengthening consumer enforcement powers with civil fines.⁷⁰ Doing so would give the law underlying the principles extra force and ensure better consumer protection; we recommend that the government legislate to introduce civil fining powers for breaches of consumer protection legislation, as the need for strong consumer protection powers in the context of DCTs is just one illustration of a wider issue.⁷¹
76. It should also be noted that not all of the principles relate to the powers enforced by sector regulators – in particular breaches of the DPA are dealt with by the ICO and the EHRC leads on enforcement of the Equality Act 2010. However, we have liaised with both these bodies to ensure the principles

⁶⁸ Including apps and collective switchers as well as PCWs.

⁶⁹ Although it should be noted that the CMA's views are not binding on the courts or other enforcers. The principles are not a substitute for legal advice, and should not be relied on as such. Ultimately, only a court can decide whether a particular practice is unlawful.

⁷⁰ In 2016 the government carried out a call for evidence in to investigate whether fair competition between businesses could be better supported by a wider range of enforcement tools including the provision of civil fining powers for breaches of consumer protection legislation. As noted in CMA's response to the call for evidence, limitations in the current consumer enforcement regime, in particular the powers available to enforcers, mean that non-compliant behaviour may be insufficiently deterred. See CMA, [Response to 'Terms and conditions and consumer protection fining powers: BIS call for evidence'](#), April 2016.

⁷¹ The European Commission's current proposal for the reform of the Consumer Protection Cooperation Regulation would require the UK government to introduce fining powers for some breaches of consumer protection law. See European Commission, [Proposal to replace CPC Regulation 2006/2004](#), May 2016.

accurately reflect the legal obligations on DCTs and to secure their support for those that relate to them.

77. We set out in Appendix 2 more detail about our views on how the law applies to the practices we have seen and heard about, and when we are likely to have concerns.

The principles and regulators' existing approach to DCTs

78. The way the principles will interact with sector-specific rules varies by sector. In financial services, these requirements are broadly consistent with the FCA's rules, but we anticipate that the FCA would primarily use its sector-specific powers.⁷² We recommend however that it has regard to these principles.

Extending regulators' scope to include intermediaries

79. In other regulated sectors, notably energy and telecoms, we recommend that the government look to bring intermediaries within regulators' scope to ensure a level playing field for firms engaged in similar activities. This would allow regulators to set and enforce the rules more effectively; they could better monitor compliance, as well as enforce more firmly and more quickly, creating a bigger deterrent effect.⁷³
80. Where regulation of suppliers' sales and marketing activities is judged necessary, as is currently the case in energy and broadband, there is a case for applying similar rules to other firms doing these activities – such as DCTs. This would create a level playing-field for all firms carrying out a similar activity. It would also address the 'boundary issues' we have heard about where suppliers may need to place requirements on DCTs who are acting on their behalf,⁷⁴ but may do so with different interpretations of the same regulations.

⁷² Although the Unfair Commercial Practices Directive is a full harmonisation Directive (ie member states cannot impose more or less stringent provisions) it contains a specific exception for financial services, which allows member states to impose a higher level of protection in this area. This means that, for example, the FCA may impose additional regulatory requirements in relation to the provision of financial services.

⁷³ There may be parallels between the sectors we have looked most closely at and others. In particular, if and when the household water retail market is opened to competition, it is possible that intermediaries may come to play a significant role. There may also be similarities between consumers, who have been the focus of our study, and small businesses.

⁷⁴ For example, Ofgem's licence conditions for domestic energy suppliers include mandatory [Standards of Conduct](#), requiring suppliers to treat consumers fairly. To meet their obligations, suppliers must ensure that any organisations that represent them, such as third party intermediaries like DCTs, also comply with the relevant standards. Telecoms providers are required to comply with Ofcom's [General Conditions of Entitlement](#). Telecoms providers must ensure that they comply with their obligations even where third parties sell or market their services.

81. The more consumers move to having their primary relationship with intermediaries like DCTs as opposed to suppliers – as seems possible with newer models of DCT like ‘concierges’ or similar – the more important it is likely to be to consider resetting the scope of retail regulation. It might prove more effective to bring it closer to the framework in financial services, where rules apply based on the activity a firm carries out, rather than the type of firm it is and whether it holds a regulatory licence.
82. However, it might be some time before it is possible to make changes to the scope of regulation. In light of this, we recommend in the interim a number of more incremental improvements to the frameworks in energy and telecoms.

Reviewing Ofcom’s and Ofgem’s voluntary schemes

83. Voluntary accreditation schemes can also help to raise standards of business practice and provide a signpost to consumers so that they can identify businesses that will provide them with excellent service and protection over and above the law. In some cases, extra steps taken by member businesses to reassure their customers can encourage trust and satisfaction within a market.⁷⁵
84. Many of the CARE principles are already reflected in Ofcom’s and Ofgem’s existing schemes – for example, the need for DCTs to be accurate and up-to-date; to ensure that assumptions and limitations are explained; to make clear where there are commercial relationships with providers presented in results and to be clear how they make money. Where they are not, consumers may still be protected under the general law; for example, the requirement to provide contact details.
85. There are also some specific requirements in Ofcom’s and Ofgem’s schemes that go beyond the general law. As we note above, some of these prescriptive requirements may have distortionary effects (such as setting coverage requirements), while others may not be appropriate to particular types of DCT (such as establishing a minimum number of results to be shown on a page). There are also some requirements that might be expected to be delivered best by competition than by specific rules – for instance filtering and sorting requirements.
86. However, there may be some specific aspects of the schemes where it is helpful for regulators to go beyond the law and signal their expectations – for

⁷⁵ See, for example, research commissioned by the OFT which found increased customer satisfaction in some sectors with a well-developed OFT-approved consumer code, [Codes Approval Scheme: Evaluating consumer experiences \(OFT 1247\)](#), July 2010.



instance, in relation to particular methodologies for carrying out comparisons (eg what metrics, such as the components of telephony call pricing, to take into account).

87. While regulators may therefore decide to retain their schemes, we recommend in the interim that Ofcom and Ofgem should:
 - (a) Consider ensuring that voluntary schemes remain truly voluntary, for example as a way of assuring best practice; or if quasi-mandatory as in energy, ensure that the requirements are not too prescriptive.
 - (b) Consider removing the most distorting requirements – particularly ‘whole of market’ / comprehensiveness; instead relying on making coverage clear to consumers so they can choose.
 - (c) Consider paring back some of the more prescriptive rules – such as establishing a minimum number of results on a page, or setting default rankings – so that the codes can be made more applicable to all types of DCT and avoid hampering innovation.
88. More broadly we suggest regulators continue to work together to ensure that they take a consistent approach to DCTs where appropriate, for example through the UK Regulators Network.

Appendix 1: Summary of Ofcom and Ofgem schemes

1. In this appendix we provide some further background on Ofcom's and Ofgem's accreditation schemes.

Table 1: Summary of Ofcom's and Ofgem's schemes

	Ofgem Confidence Code	Ofcom Price Comparison Accreditation Scheme
		
Established	<ul style="list-style-type: none"> • 2000 	<ul style="list-style-type: none"> • 2006
Last revised	<ul style="list-style-type: none"> • 2015 	<ul style="list-style-type: none"> • 2013
Current members (on 16 August 2017).	<ul style="list-style-type: none"> • 12 (of which 2 are in the Big 5). • Quotezone, The Energy Shop, Runpath, Simply Switch, My Utility Genius, Switch Gas and Electric, Energylinx, Unravel It, uSwitch, MoneySupermarket, Energy Helpline 	<ul style="list-style-type: none"> • 7 (of which none are in the Big 5). • HandsetExpert, BillMonitor, BroadbandChoices, Broadband.co.uk, Ctrlrio, MobilePhoneChecker, and SimplifyDigital
Affiliate members	<ul style="list-style-type: none"> • No white labels at present. DCTs need to maintain their own tariff database and calculator to be accredited. 	<ul style="list-style-type: none"> • Some also provide white-label services to other sites: where affiliated sites (currently over 50 – three of which are in the Big 5) use a mirror image they can display the logo.
Fees for members?	<ul style="list-style-type: none"> • No. DCTs do not currently bear the cost of audits. • Following audit. 	<ul style="list-style-type: none"> • No. DCTs pay for audits, with fees dependent on their turnover. • Following audit.
Assessment		<ul style="list-style-type: none"> • Reaccreditation 12 months after initial accreditation then every 18 months.
Enforcement	<ul style="list-style-type: none"> • One external audit per year and a number of internal audits, as well as ad hoc checks for compliance. Audit reports are confidential. 	<ul style="list-style-type: none"> • Audits as above. • Quarterly spot checks.
Publishes decisions	<ul style="list-style-type: none"> • No. 	<ul style="list-style-type: none"> • No, although Ofcom has published summaries of issues encountered in past audits.
Sanctions	<ul style="list-style-type: none"> • Ultimately, removal of accreditation. No DCT sites have had accreditation removed. 	<ul style="list-style-type: none"> • Removal of accreditation. Ofcom has suspended one site, which subsequently left the scheme.
Requirements placed on DCTs		
Accessibility		<ul style="list-style-type: none"> • Be accessible by all consumers (including disabled users). • Offer advice offline.
DCT charging policy		<ul style="list-style-type: none"> • Be free or only impose a reasonable charge on consumers.

	Ofgem Confidence Code	Ofcom Price Comparison Accreditation Scheme
Updating requirements	<ul style="list-style-type: none"> • State when offers were last updated. • Add new tariff information as soon as possible (and no later than 2 working days). 	<ul style="list-style-type: none"> • Be updated at least every 2 weeks and say when last updated.
Accuracy of results	<ul style="list-style-type: none"> • Be accurate. • DCT takes responsibility for obtaining, updating and ensuring the accuracy of all data. • Must not be misleading or confusing. 	<ul style="list-style-type: none"> • Calculate accurately: the methodology must be internally consistent, appropriate and correctly implemented. • Take account of consumer location. • Ensure assumptions and limitations are clearly set out. • Reflect special offers and upfront costs. • Must alert consumers that providers may increase the cost of monthly deals and that they can exit if so.
Quality of service	<ul style="list-style-type: none"> • Can assign ratings to suppliers (but methodology must be reviewed by Ofgem), or use ratings by a recognised consumer organisation eg Citizens Advice. 	<ul style="list-style-type: none"> • Results must include limits on data usage. • Must display 'up to' broadband speeds and explain that actual speeds may vary from these. • Provide a link to tools to assess speeds. • Explain that traffic management may apply.
Independence	<ul style="list-style-type: none"> • Must manage and control own service. • Must be independent of suppliers and provide impartial advice. • Must clearly identify commission arrangements. • Commission must not influence information provided. • Where switching through the chosen supplier is not possible, must not recommend an alternative. 	<ul style="list-style-type: none"> • Commercial links or agreements with providers must be clear. • Selections of packages should not be biased or unfair.
Business model	<ul style="list-style-type: none"> • Must describe business model if they take commission; and explain if arrangements influence tariffs displayed. 	<ul style="list-style-type: none"> • Must be clear how they make money – including whether they receive commissions (but not the amount).
Advertising	<ul style="list-style-type: none"> • Supplier advertising must not be on the home or comparison page. 	<ul style="list-style-type: none"> • Advertising is allowed but only one clearly differentiated sponsored deal is allowed at the top of the ranking.
Default presentation		<ul style="list-style-type: none"> • Default ranking must be price-related and Ofcom would expect it to be always a total price metric (eg first-year costs or average monthly costs).
Presentation requirements	<ul style="list-style-type: none"> • List on a single page at least 10 of the cheapest tariffs available in the region. 	<ul style="list-style-type: none"> • A reasonable number of results (at least 10) to be shown on the default page.

	Ofgem Confidence Code	Ofcom Price Comparison Accreditation Scheme
	<ul style="list-style-type: none"> The length of the comparison period defaults to 12 months from the date of comparison. 	
Filtering	<ul style="list-style-type: none"> May provide opt-in filters so that consumers may search results based on different criteria selected by the consumer. 	
Sorting	<ul style="list-style-type: none"> If sorted by price, this must be by the best price. 	<ul style="list-style-type: none"> Default ranking must be price-related. At least sorting by provider and total price metric must be available, and ideally it should be possible to sort by other relevant metrics. Ofcom expect sorting to be in the order most likely to be attractive to consumers (eg from low to high total costs).
Supplier coverage	<ul style="list-style-type: none"> All reasonable endeavours to include all available domestic tariffs (with some exclusions – eg social tariffs) and historic tariffs. Advise Ofgem if asked by a service provider to remove a tariff that still exists. 	<ul style="list-style-type: none"> Reasonably comprehensive number of providers, including key players (expectation that providers' collective share exceeds 90% of subscribers). A reasonably comprehensive number of tariffs from included providers.
Supplier selection (for inclusion on the DCT)	<ul style="list-style-type: none"> Not applicable – the current WoTM requirement means DCTs must show all suppliers. 	<ul style="list-style-type: none"> Must be transparent to the auditor and not discriminate.
Complaints handling	<ul style="list-style-type: none"> Effective consumer complaint and enquiry handling procedure and respond within 7 working days. Where a complaint is referred by Ofgem, Ofgem must be copied into any response to the consumer. 	<ul style="list-style-type: none"> Fair and timely processes. Link to Ofcom comparative data on customer service and complaints.
Other	<ul style="list-style-type: none"> Provide signposting to independent sources of advice on energy efficiency matters. 	

Source: CMA analysis.

Appendix 2: Consumer Protection, data protection and equality law

1. As we set out in Chapter 4 of our Final Report, DCTs' behaviour should support trust, choice between DCTs, and choice between suppliers.
2. However, we have heard about and seen some practices that might undermine the positive outcomes that DCTs can deliver for consumers (see Paper B). We also think that these practices may not comply with the general law, in particular the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), Data Protection Act 1998 (DPA), Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR) and Equality Act 2010.
3. We have identified four high-level principles for how DCTs should behave – to support the good outcomes described above. DCTs should treat people fairly, by being **Clear, Accurate, Responsible** and **Easy to use (CARE)**.
4. As well as ensuring positive outcomes for consumers, these principles also reflect our view of how general law applies in the specific case of DCTs, and what DCTs should do to help them comply with their existing legal obligations.
5. All DCTs, regardless of the sector(s) they cover, must comply with the general law. We consider that the CARE principles reflect existing legal requirements and therefore do not create additional regulatory burdens for DCTs.
6. The principles do not cover every legal requirement that DCTs must comply with, and it should also be noted that in some cases DCTs may be subject to additional sector-specific legal requirements (for instance, in financial services).
7. We set out below our views on how the law applies to the practices we have seen and heard about, and when we are likely to have concerns. Our main focus has been on the CPRs, although other consumer protection legislation may apply to the activities of DCTs.⁷⁶ The examples given are for indicative purposes, and whether a particular practice breaches the CPRs will require a case-by-case assessment. We do not cover every situation or practice in which a breach of the CPRs may occur.
8. The CMA's views are not binding on the courts or other enforcers. This appendix is not a substitute for legal advice, and should not be relied on as

⁷⁶ In particular, DCTs should ensure that their contractual terms and consumer notices are fair under the Consumer Rights Act 2015. The CMA has produced guidance for businesses to help them understand what makes terms and notices unfair, and what the risks are if they use unfair wording. It also gives advice about how they can make sure contract terms and notices are fair and clear. See: CMA, [Unfair contract terms guidance](#), July 2015.

such. Ultimately, only a court can decide whether a particular practice is unlawful under the CPRs.

The Consumer Protection from Unfair Trading Regulations 2008 (CPRs)

9. Broadly speaking, the CPRs prevent businesses (described as ‘traders’ in the CPRs) from treating consumers unfairly. Businesses can include companies and individuals. Businesses are also responsible for the commercial practices of anyone who acts on their behalf or in their name. Both the business and those acting on their behalf may be held liable for breaches of the CPRs.
10. The CPRs apply to a wide range of commercial practices which might affect consumers. Commercial practices may include matters such as advertising, marketing, sales, supplies and after-sales services. A commercial practice is governed by the CPRs if it is directly connected with the promotion, sale or supply of goods or services (both described as ‘products’ in the CPRs) to consumers. This means that although a business may not be selling to consumers themselves, or advertising their own products, they may still have to comply with the CPRs.⁷⁷
11. There are 31 practices listed in Schedule 1 to the CPRs, which because of their inherently unfair nature, are prohibited in all circumstances.
12. Regulations 3, and 5 to 7, also prohibit unfair practices; however, to be in breach of those regulations the business must exhibit the conduct specified in the prohibition and the practice must have, or be likely to have, an effect on the transactional decisions of the average consumer.
13. The average consumer is generally assumed to be reasonably well informed and reasonably observant and circumspect. Average does not mean a statistically average consumer. Where a commercial practice is targeted at a particular group or it is reasonably foreseeable that a group of consumers will be particularly vulnerable to that practice,⁷⁸ then the average consumer refers to the average member of that group.
14. Regulations 3 and 5 to 7 prohibit unfair practices which affect a wide range of decisions taken by consumers in relation to products before, during or after a commercial transaction (if any). This is not simply confined to a consumer's decision whether or not to purchase a particular product but could also include, for example, a consumer's decision to view a product, contact a

⁷⁷ See *Verband Sozialer Wettbewerb eV v DHL Paket GmbH* Case C-146/16.

⁷⁸ Because of their mental or physical infirmity, age or credulity.

business or visit a shop, as well as a decision not to purchase a particular product or to exercise a contractual right.

Generally unfair commercial practices (Regulation 3)

15. Regulation 3 of the CPRs contains a general prohibition on unfair commercial practices. This prohibits practices that contravene the requirements of professional diligence (meaning honest market practice and good faith) and materially distort or are likely to materially distort the economic behaviour of the average consumer. Material distortion means that a practice appreciably impairs the average consumer's ability to make an informed decision, causing them to take a different transactional decision.
16. Professional diligence is an objective standard which will vary according to the context. It is intended to reflect what a reasonable person would expect from a business in their field of activity. However, poor current practice that is widespread in an industry or sector cannot amount to an acceptable objective standard.

Misleading actions (Regulation 5)

17. A misleading action occurs when a business gives consumers false information (about a wide-range of things listed in the CPRs), or is deceptive in the presentation of that information even if it is factually correct, and causes or is likely to cause the average consumer to take a different decision. The deception can occur in any way, including the overall presentation of the commercial practice. It is not necessary to show that a business deliberately or negligently misled consumers,⁷⁹ and a business may breach the CPRs even if it took steps to ensure the information was correct.⁸⁰
18. The list of information in the CPRs includes the main factors consumers are likely to take into account in making decisions in relation to products. It includes information about the price and main characteristics of the product, the motives for a commercial practice and a business's affiliations or connections.
19. A commercial practice may also be misleading if a business indicates that it is bound by a code of practice but fails to comply with its requirements, and the average consumer takes, or is likely to take, a different decision as a result.

⁷⁹ See *Nemzeti Fogyasztóvédelmi Hatóság v UPC Magyarország Kft.* Case C-388/13.

⁸⁰ See *CHS Tour Services GmbH v Team4 Travel GmbH* Case C-435/11.

Misleading omissions (Regulation 6)

20. Practices may also mislead by failing to give consumers the information they need to make an informed choice in relation to a product. This occurs when practices omit or hide 'material information', or provide it in an unclear, unintelligible, ambiguous or untimely manner, and the average consumer takes, or is likely to take, a different decision as a result.
21. Material information is information the average consumer needs to have, in the context, in order to make informed decisions. It also includes any information required by European (EC) derived law. What information is required will depend on the circumstances.
22. When deciding whether a practice misleads by omission, the courts will take account of the context, including any limitations of the communication medium used (of space and time) that make it impractical to give the necessary information.
23. The CPRs make special provision for certain kinds of commercial practice known as 'invitations to purchase', and specify information that is automatically regarded as material unless it is apparent from the context (in addition to any other material information). This includes information about the main characteristics of the product and the price. The CPRs define an invitation to purchase as 'a commercial communication which indicates characteristics of the product and the price in a way appropriate to the means of that commercial communication and thereby enables the consumer to make a purchase'. In order to qualify as an invitation to purchase the commercial practice does not need to provide the consumer with a mechanism to actually make a purchase.⁸¹
24. Given that the results shown on DCTs usually contain information about a product's characteristics and price, then they are likely to constitute 'invitations to purchase'.⁸²
25. A misleading omission can also occur where a business fails to identify the commercial intent of a practice, if it is not already apparent from the context.

⁸¹ See *Konsumentombudsmannen v Ving Sverige AB* Case C-122/10.

⁸² See *Konsumentombudsmannen v Ving Sverige AB* Case C-122/10.

Aggressive practices (Regulation 7)

26. The CPRs also prohibit aggressive commercial practices. These are practices that, in the context of the particular circumstances, intimidate or exploit consumers, restricting their ability to make free or informed decisions.
27. A commercial practice is aggressive if it significantly impairs, or would be likely to have this impact on, the average consumer's freedom of choice in relation to the product concerned, due to the use of harassment coercion or undue influence. When considering whether a commercial practice is aggressive one must consider the factual context and take account of all of the features of the practice and the circumstances relating to it. Aggressive practices could involve physical or non-physical (including psychological) pressure.
28. In order for an aggressive practice to be unfair it must cause or be likely to cause the average consumer to take a different transactional decision.

Banned practices (Schedule 1)

29. Schedule 1 to the CPRs lists 31 commercial practices (also known as banned practices) which are considered unfair in all circumstances and which are prohibited. There is no need to consider the likely effect on consumers. Breaches of these provisions may also breach the other prohibitions in the CPRs. Of particular relevance to DCTs are the outright prohibitions on:
 - 'Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply, or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising)' (schedule 1, paragraph 5);
 - 'Making an invitation to purchase products at a specified price and then —
 - (i) refusing to show the advertised item to consumers,
 - (ii) refusing to take orders for it or deliver it within a reasonable time, or
 - (iii) demonstrating a defective sample of it,with the intention of promoting a different product (bait and switch)' (schedule 1, paragraph 6)

- 'Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer' (schedule 1, paragraph 22).

Enforcement

30. Enforcers, including local authorities, the CMA and sector regulators, may take civil enforcement action in respect of breaches of the CPRs as Community infringements (breaches of EU-derived legislation) under Part 8 of the Enterprise Act 2002 (EA02). Under the Part 8 procedure, enforcers may apply to a court for an enforcement order to prevent Community or domestic infringements (breaches of a range of specified domestic law) where the requirements of EA02 are met, which include demonstrating that the interests of consumers collectively are harmed. Breach of an enforcement order could be contempt of court which could lead to imprisonment and/or an unlimited fine.
31. Most breaches of the CPRs also carry criminal sanctions, including a fine and/or imprisonment. Local authorities and the CMA can bring criminal proceedings under the CPRs for offences including:
 - (a) contravention of the general prohibition on unfair commercial practices;
 - (b) misleading actions (except 5(3)(b) – code commitments);
 - (c) misleading omissions (including the omission of specified information in invitations to purchase); and
 - (d) banned practices in Schedule 1 (apart from numbers 11 and 28).
32. Further guidance on the CPRs can be found in Consumer Protection from Unfair Trading Regulations - traders: OFT1008.⁸³
33. The CPRs implement the Unfair Commercial Practices Directive (UCPD), and the European Commission has produced a set of key principles for comparison tools,⁸⁴ to assist the operators of DCTs in complying with their obligations under the UCPD (although it should be noted that the key principles for comparison tools are not legally binding).

⁸³ OFT, [Consumer protection from unfair trading](#), August 2008.

⁸⁴ The CPRs implement the Unfair Commercial Practices Directive (UCPD), and in May 2016, the European Commission produced a set of '[Key Principles for Comparison Tools](#)' to assist the operators of comparison tools in complying with their obligations.

34. The European Commission has also produced a guidance document on the application of the UCPD as a whole, which contains specific guidance on its application to DCTs.⁸⁵

Further guidance on the law as it relates to the C.A.R.E principles

(a) The way in which important information is presented to consumers

35. The CPRs prohibit businesses from misleading consumers by action or omission (or both). These prohibitions aim to ensure that consumers get the information they need to make informed decisions in a clear and timely fashion. As a result, DCTs which omit or hide important information, or provide it in an unclear, unintelligible, ambiguous or untimely manner may breach the CPRs.
36. DCTs should therefore present all key information in a clear, prominent and timely way (see **'Easy to use'** and **'Accurate'** in the CARE principles). All information should be easy for consumers to find. Where applicable, DCTs should provide all the information required by regulations relevant to their sector.

(b) Information about how DCTs make money and if they have links to suppliers

37. Consumers may take a transactional decision based on the perceived independence of a DCT, such as a decision to visit the DCT in the first place, to enter details or to act on the results presented. Failing to provide information about how a DCT makes money may therefore breach the CPRs. Similarly, misleading consumers about a DCT's commercial nature may also be unlawful under the CPRs. The importance of information about DCTs' business and financing models was also highlighted by participants in the European Commission's Multi-Stakeholder Dialogue on Comparison Tools.⁸⁶ It should also be noted that DCTs may breach the CPRs if they fail to provide information about the effects of commercial relationships on ranking (see paragraphs 46 to 49 below).
38. In some contexts it is clear that a business is acting for commercial purposes. However, our qualitative consumer research suggested that not all consumers may appreciate that DCTs are typically commercial undertakings, with some characterising them as being for the benefit of consumers.⁸⁷ We are unlikely

⁸⁵ See section 5.2.7: European Commission, [Guidance on the application of the Unfair Commercial Practices Directive](#), May 2016.

⁸⁶ Page 19, European Commission, [Comparison Tools: Report from the Multi-Stakeholder Dialogue](#), March 2013

⁸⁷ Page 80 in Kantar, [Digital Comparison Tools: Consumer Research Final Report](#), March 2017.

to be concerned where a DCT makes clear its commercial nature and gives a general explanation of its revenue sources (for example stating that they received a fee or payment from a supplier if a consumer clicked through to the supplier's site or switched to their product) and this information is prominently explained up-front (for example on the DCT's homepage or on an easily accessible and clearly labelled 'About Us' page). We are likely to be concerned where DCTs are silent about how they make money or the information is hidden in lengthy terms and conditions or privacy policies with little or no signposting. We set out in paragraphs 46 to 49 below our views on the importance of providing information about the effect of commercial relationships on ranking.

39. DCTs should therefore prominently provide a general explanation of how they make money (see '**Clear**' in the CARE principles). We would not expect this explanation to include the value of the remuneration (eg commission levels), but it should include a general explanation of the DCTs revenue sources. Particularly in our workshop discussions, some stakeholders felt DCTs should inform consumers of not just where a supplier paid them commission, but also the level of commission. We are sceptical of the value of this; indeed it seems more likely to be counterproductive – a 2004 Federal Trade Commission (FTC) experiment found that disclosure of mortgage broking fees led consumers to focus unduly on commission, at the expense of more important factors, such as interest rates, leading to worse consumer outcomes.⁸⁸
40. As noted above, consumers may take a transactional decision based on the perceived independence of a DCT. Failing to provide information about any ownership links with suppliers, or providing misleading information about a DCT's independence may therefore breach the CPRs.
41. DCTs should therefore explain any ownership links with the suppliers they show (see '**Clear**' in the CARE principles).
42. We are unlikely to be concerned where DCTs give a clear and prominent explanation of any links to suppliers (for example explaining on the home page or an 'About Us' page that they are part of a wider corporate group which included suppliers but were a separate business). We are likely to be concerned if we find evidence that a DCT is not being not transparent about links to a parent company which also owned a number of suppliers.⁸⁹

⁸⁸ See Federal Trade Commission, *The Effect of Mortgage Broker Compensation Disclosures on Consumers and Competition: A Controlled Experiment*, February 2004.

⁸⁹ For example, in 2011 the OFT carried out an [investigation into the practices of heating oil companies and price comparison websites](#). The investigation followed an OFT market study into the supply of energy to the four million

43. The Electronic Commerce (EC Directive) Regulations 2002 (ECRs)⁹⁰ require DCTs to provide details of the identity of the DCT provider, including their name and address, and an email address so that consumers can contact them quickly and easily.⁹¹ Knowing the identity of the DCT provider and where they are based may also affect consumers' transactional decisions about whether to use that DCT. Misleading consumers about the identity of the DCT provider, through either action or omission, may also breach the CPRs.
44. DCTs should therefore provide contact details, including postal and e-mail addresses (see '**Easy to use**' in the CARE principles).
45. We are unlikely to be concerned where a DCT provides clear and prominent information about the business which operates it (for example where a DCT operating under a trading name also provided its registered name and contact details). We are likely to be concerned where a DCT only provides its trading name, or contact details are missing or difficult to find.

(c) Information about whether a DCT favours any suppliers

46. A lack of information about the effect of commercial relationships on the top ranked results, or clear labelling around advertising, could distort consumers' transactional decisions, for example which products or offers to view or purchase. DCTs may breach the CPRs if they do not provide clear information upfront about the effects of any commercial relationships on the ranking of results. Creating the misleading impression that results are ranked impartially may also breach the CPRs. DCTs may breach the CPRs if they fail to clearly identify and distinguish those results which are affected by commercial relationship with a supplier (for example results which appear higher or more prominently because of a fee paid by a supplier). Misleading consumers about the motives for a commercial practice may also breach the CPRs.⁹²

households who are not connected to the mains gas grid. The OFT took action under the CPRs against a heating oil company which operated a website which claimed to make price comparisons but only quoted prices for its own products and services; and a price comparison website which compared heating oil distributors, but was not transparent about links to its parent company, which owned the largest heating oil distributor in the UK.

⁹⁰ The ECRs apply to 'information society services', which are any services normally provided for remuneration, at a distance, by means of electronic equipment. A service which is provided for free to end users will still fall within the scope the ECRs if it generates revenue for the service provider, for example through advertising revenue or commissions (See *Sotiris Papasavvas v O Fileleftheros Dimosia Etairia Ltd, Takis Kounnafi, Giorgos Sertis* Case C-291/13). Most DCTs will therefore fall within the definition of an information society service provider. If businesses are providing an information society service, then under the ECRs they must supply certain specified information. This information must be easily, directly and permanently accessible and includes details about the trader, a contact email address and information about the prices they charge.

⁹¹ See Regulation 6 ECRs.

⁹² DCTs comparing financial products may be subject to additional obligations when they receive fees, commission or other benefits from someone other than a customer. In particular, the Insurance Distribution Directive, which must be transposed into national law by February 2018, includes requirements relating to

47. DCTs should therefore clearly state when and how commercial relationships have affected the results presented and ensure all advertising is clearly identifiable (see ‘**Clear**’ in the CARE principles).
48. To the extent that commercial relationships *do* affect ranking, we are unlikely to be concerned if, on its results pages, a DCT makes clear to consumers that results are not ranked solely by relevance to the consumer’s search criteria, and if it clearly and prominently explains the effect of commercial relationships on the way results are ranked as well as clearly labelling results which appear higher or more prominently because of a commercial relationship with a supplier.⁹³ For example, DCTs could include a statement at the top of the page explaining that some suppliers appear higher based on the amount of commission they pay and labelling results as ‘sponsored’, ‘promoted’ or ‘advertisement’ if they appear higher because of a fee paid by the supplier. It may be helpful generally for DCTs to make clear if commercial relationships do *not* affect how results are ranked.
49. We are likely to be concerned if consumers are not told that, for example, fees or the amount of commission paid by a supplier affected their ranking, or if this information is not prominently provided (for example it only appeared in the DCT’s terms of use as opposed to on the results page). We would also be concerned if a DCT suggested results were ranked solely on relevance to the consumer’s search criteria, when commercial relationships with the supplier also affected where they appeared. We are also likely to be concerned if it is not possible to easily distinguish between ‘sponsored’ and ‘organic’ results, particularly where the ‘sponsored’ results appear first on the results page.

(d) Information about how much of the market a DCT covers

50. The comparison service provided by a DCT is itself a ‘product’ for the purposes of the CPRs. Information about coverage is likely to relate to the ‘main characteristics’ of that product, which include, for example, benefits and risks, specification and results to be expected from its use. Information about coverage (or a lack thereof) may affect consumers’ transactional decisions, such as whether to use a particular DCT, whether to look at other sources of information and whether to act on the results presented. Misleading consumers or failing to provide information about how much of the market a DCT covers may therefore breach the CPRs. The European Commission

inducements which will apply to DCTs carrying out insurance distribution activities within the scope of the Directive. The FCA is [consulting on its latest proposals to implement the Directive](#).

⁹³ The same would also apply to more traditional forms of advertising (for example clearly distinguishing banner adverts which appear on the results page).

guidance on the implementation of the UCPD also highlights the need for DCTs to be transparent about their coverage.⁹⁴

51. DCTs should therefore clearly explain how much of the market they cover (see '**Clear**' in the CARE principles).
52. We are unlikely to be concerned if a DCT gives clear and detailed information up-front about the number of suppliers it compared (for example stating the total number compared and providing their names), although the level of detail that a DCT is able to provide may vary depending on the sector. We are likely to be concerned if a DCT gives a vague statement about the extent of its coverage or fails to provide any details about how many suppliers it compares or who they might be.

(e) Information about how DCTs present results

53. A lack of transparency about how results are ranked may harm consumers by causing them to take poorer decisions, particularly about which products or offers to view or purchase. The way in which results are ranked is likely to be a main characteristic of the comparison service provided by a DCT. A lack of transparency, or misleading information, about how results are ranked may breach the CPRs.
54. DCTs should therefore clearly explain how they have ranked the results presented (see '**Clear**' in the CARE principles). This includes all forms of ranking, as well as where only one result is presented.
55. Depending on the criteria used it may be obvious from the context how results have been ranked. However, where results are ranked based on a combination of factors or subjective criteria, this may be less clear. We are unlikely to be concerned if a DCT provides a clear and prominent explanation on the results page about the way results are ranked (for example a statement at the top of the page explaining what factors the DCT has used to rank the results). We would not expect DCTs to provide detailed information about the algorithms they use to rank results, but they should provide consumers with sufficient information to assess whether the results are ranked in a useful way for them. We are likely to be concerned if a DCT uses subjective criteria (for example 'popularity' or 'our favourite'), without providing a clear and prominent explanation of what factors are taken into account.

⁹⁴ See section 5.2.7: European Commission, [Guidance on the application of the Unfair Commercial Practices Directive](#), May 2016.

DCTs should also note the concerns set out above about disclosing the effect of commercial relationships on the ranking of results.

56. The way in which prices are presented has the power to influence, and sometimes mislead, consumers.⁹⁵ Had a consumer been aware that the headline price shown in the comparison results was subject to additional compulsory charges they may have made different transactional decisions. Displaying a price that is not the final price that is likely to be paid by consumers, or failing to provide upfront information on compulsory charges (for example one-off switching or set-up fees), may breach the CPRs. Presenting the price in an unnecessarily confusing and/or complicated way (even if factually correct) may also breach the CPRs.⁹⁶
57. DCTs should therefore include in each result all the information consumers need, including price and main characteristics (see '**Accurate**' in the CARE principles). They should make the total costs, including any compulsory charges, clear to consumers, for example by including compulsory set-up fees in the total shown. DCTs should also clearly explain promotional offers, for example 'six months extra free' (see '**Clear**' in the CARE principles).
58. We are unlikely to be concerned if any mandatory charges are included in the headline price shown on the results page (particularly in the case of one-off purchases). The price should reflect what a consumer will actually have to pay. Where consumers pay monthly but will be subject to mandatory one-off charges at the start of their contract, we are unlikely to be concerned if such charges are clearly displayed up-front with the monthly price.
59. Depending on the circumstances (for example whether the consumer can purchase or switch through the DCT), information about any optional products that are offered (and their prices) should be made clear at an early stage of the purchasing/switching process, and the final price stated should include all mandatory charges and any additional optional products selected by the consumer. We are likely to be concerned if mandatory charges are not included in the headline price or, where appropriate, displayed up-front (ie with the headline price), for example if consumers had to take further steps to

⁹⁵ The OFT carried out a study which looked at various practices that are used in the advertising of prices. The study concluded that certain pricing techniques, when used in a misleading way, can result in consumers making purchasing decisions they would not have made were prices more clearly advertised, or to spend more than they need to: OFT, [Advertising of Prices \(OFT1291\)](#), December 2010.

⁹⁶ Given its importance for consumers' purchasing decisions, failing to include important information in the results about the products compared, for example their main characteristics, may also breach the CPRs. Similarly, failing to provide key information about the terms of a price promotion, such as the duration of any promotional pricing period, may breach the CPRs.

find out about the amount or existence of mandatory charges, such as clicking on a link.

60. We have been working with intermediaries in the car hire sector to improve the information they display. In 2016 we wrote to leading businesses that operate as car rental brokers or meta-search providers setting out our expectations under consumer protection law and requiring them to make any changes necessary to ensure that consumers get clear prices when they search and book car rental through an intermediary.⁹⁷

(f) The accuracy of results

61. Consumers take decisions based on the results they are shown. Providing inaccurate information about the products compared may breach the CPRs. Both DCTs and the suppliers who advertise their products on DCTs must comply with the CPRs.
62. We are unlikely to be concerned if a DCT has taken steps to ensure that its results are accurate (for example monitoring the accuracy of results, investigating and rectifying problems they find or are told about, placing contractual requirements on suppliers to provide accurate and up-to-date information and removing listings from non-compliant suppliers), although even if they have taken precautions DCTs may still breach the CPRs if they display inaccurate information. We are likely to be concerned if a DCT fails to put in place processes to ensure it displays accurate information.
63. DCTs should therefore ensure information is accurate and up-to-date and address inaccuracies promptly (see '**Accurate**' in the CARE principles). The CMA takes the view that a number of the parties involved in providing the information presented on a DCT may share responsibility for ensuring that it is complete and accurate. This might include the DCT, white label providers, affiliates and suppliers. Depending on the circumstances all or some those involved may be liable for breaches of the CPRs.
64. Displaying results which do not match the consumer's search criteria or failing to make clear any differences between the parameters the consumer entered in their search and those used by the DCT, or any assumptions made in carrying out the search, may breach the CPRs.
65. We are unlikely to be concerned if a DCT makes clear that certain assumptions or limitations apply to the results (for example a clear and prominent statement on the results page explaining that the results were

⁹⁷ CMA, [Drivers to benefit as CMA takes action on car hire websites](#), July 2016.

generated on the basis of certain assumed characteristics or that availability might be subject to further checks by the supplier). We are likely to be concerned if the DCT creates the impression that a product would definitely be available to the consumer (either at all or on particular terms) when this cannot be guaranteed.

66. DCTs should therefore ensure results presented are relevant to the search criteria. In the event of there being no directly matching results, the DCT should be clear it is presenting the closest possible match(es). They should clearly set out assumptions made in generating the results presented, for example assumptions about average mileage or the person having no criminal convictions. They should also explain limitations in the availability of the results presented for example eligibility limitations (see '**Accurate**' in the CARE principles).

(g) Complaints handling

67. The CPRs can apply to commercial practices after a consumer receives a service,⁹⁸ and prohibit unfair practices which affect a wide range of decisions taken by consumers, in particular how and when to exercise their rights if they encounter a problem after using a DCT.
68. Incorrect or inadequate information about how to complain, and the way in which complaints are handled, may discourage or prevent consumers from exercising their rights and thereby affect their economic decision-making. Omitting, or providing misleading information, about how consumers can complain may breach the CPRs. In addition, failing to have in place proper complaints handling or customer service systems is likely to breach the requirements of professional diligence, and may appreciably impair consumers' ability to make informed decisions. As a result, this may also breach the CPRs.
69. DCTs should therefore deal with complaints professionally and fairly and provide clear information about how to complain (see '**Responsible**' in the CARE principles).

(h) Reviews and quality ratings

70. In 2015 the CMA carried out a call for information in relation to online reviews and endorsements.⁹⁹ The CMA concluded that online reviews and endorsements can play an important role in helping consumers to make

⁹⁸ See *UAB 'Gelvora' v Valstybinė vartotojų teisių apsaugos tarnyba* Case C-357/16.

⁹⁹ CMA, [Online reviews and endorsements: Report on the CMA's call for information](#), June 2015.

shopping decisions. They can be particularly helpful when consumers buy goods or services whose quality they may find hard to assess before it has been experienced. The information that reviews and endorsements provide can help consumers to make faster and more confident decisions. They have the potential to boost competition between businesses on their products' reliability or on the quality of service that they offer.

71. However, the way reviews and quality ratings are managed and presented also has the potential to mislead consumers, and may breach the CPRs. The CMA has published guidance for businesses on how to comply with consumer protection law.¹⁰⁰ DCTs should have regard to this advice when including reviews and quality ratings in their results. In particular, DCTs which include reviews should:

- be clear about how reviews are collected and checked;
- publish all reviews, even negative ones, provided they are genuine and lawful, and explain the circumstances in which reviews might not be published or might be edited (eg swearing, abusive language or defamatory remarks);
- make sure that there is not an unreasonable delay before reviews are published;
- disclose any commercial relationships with businesses that appear on their site, and explain how this might affect businesses' ratings and/or rankings;
- clearly identify all advertising and paid promotions, including when reviews have been paid for; and
- have in place appropriate procedures to detect and remove fake reviews, and act promptly in response to reports of suspected fake reviews.

72. DCTs should therefore be clear about how reviews are collected and checked, and have processes in place to ensure users see the full picture (see '**Responsible**' of the CARE principles), for example by showing all relevant, genuine and lawful reviews and taking steps to detect and remove fake reviews.

¹⁰⁰ See [Online reviews and endorsements: advice for businesses](#).

(i) How DCTs collect and use people's personal information

Data protection and privacy

73. Data protection law regulates the way in which DCTs obtain and handle personal data about consumers, and requires DCTs to do so fairly and lawfully. Of particular relevance are the DPA and PECR.
74. The Information Commissioners Office (ICO), which enforces the DPA and PECR, has produced guidance for businesses on how to comply with their legal obligations.¹⁰¹
75. The CMA has previously carried out a call for information in relation to the commercial use of consumer data.¹⁰² Chapter 5 of this report sets out the CMA's views on the potential application of consumer law, in particular the CPRs and the Consumer Rights Act 2015 (CRA), to the collection and use of consumer data.

Data Protection Act 1998 (DPA)

76. Under the DPA:
 - (a) Businesses must collect and process personal data fairly and lawfully, and they must have an appropriate legal basis for this.
 - (b) Where consent is the legal basis for the collection and use of personal data then it should be freely given, specific and informed.
 - (c) Data controllers should provide information about their identity, the purpose(s) for which the data is to be processed, and any other information that is necessary in order to make the collection and use of the data fair.
 - (d) Personal data which has been collected for one purpose should not be used for a different and incompatible purpose. If a data controller wishes to use data in such a way they need to be transparent, inform individuals and may need to seek consent.
 - (e) Personal data must be held securely and not retained for longer than necessary.

¹⁰¹ Information Commissioner's Office, [Guide to data protection, privacy notices, transparency and control](#). See also: Information Commissioner's Office, [Direct Marketing Guidance](#), November 2016.

¹⁰² CMA, [The commercial use of consumer data](#), June 2015.

- (f) Data subjects have a number of other rights: the right to obtain their data; the right to prevent processing likely to cause damage or distress; the right to prevent processing for direct marketing; rights in relation to automated decision making; and, in appropriate cases, rectification, blocking, erasure and destruction.
- (g) There are additional protections for the processing of sensitive data. Sensitive personal data includes, among other things, physical or mental health or condition, and racial or ethnic origin.

Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR)

- 77. Under PECR, businesses in many cases will need to obtain consent (specific, informed and freely given) to send electronic marketing communications and to use 'cookies'.

Data protection, privacy and DCTs

- 78. We are concerned that some of the practices we have seen could disempower consumers and may result in a loss of trust. Some may also breach consumer protection law. Consumers value their privacy and are concerned about what happens to their information.¹⁰³ The way a DCT handles personal data has the potential to influence consumers' decisions, such as whether to use that DCT. A lack of transparency, or misleading information, about the use and collection of data may therefore breach the CPRs. Binding consumers to third party privacy terms (suppliers or third parties) which they do not have an opportunity to review may also be unfair under the CRA.
- 79. In relation to control over unsolicited marketing, some of the practices we have seen may be contrary to ICO best practice which is to provide a separate unticked opt-in box, prominently displayed. Where data is processed for a range of purposes, best practice is also to list the different purposes with separate unticked opt-in boxes for each, or Yes/No buttons of equal size and prominence.¹⁰⁴ Failing to provide information about what controls consumers can exercise over their data may also breach consumer protection law.
- 80. DCTs should therefore comply with all obligations under data protection and privacy law; and clearly explain their collection and use of consumers' data

¹⁰³ See paragraphs 53–55 and 59–66 in Paper A.

¹⁰⁴ Information Commissioner's Office, [Guide to data protection, privacy notices, transparency and control](#).

and what controls consumers can exercise (see ‘**Responsible**’ in the CARE principles).

81. DCTs perform a particularly important role because they operate as a gateway to large numbers of suppliers with which data is shared. We consider that they should take steps to increase consumer confidence in how they and third parties collect and use consumer data, and to ensure legal compliance:
- (a) DCTs should review the effectiveness of their existing ‘notice and consent’ mechanisms. As set out in Paper B (paragraphs 52 to 56), existing mechanisms on some sites to inform consumers about how their data is collected and, in particular, shared with third parties, does not appear to be effective at informing consumers or allaying their concerns. We are aware that DCTs are currently reviewing their practices to meet the more stringent requirements of the GDPR. We recommend they take this opportunity to address the concerns identified in Paper B, to increase transparency and consumer control to build trust, for example through granular control mechanisms, ‘just in time’ notices etc.
 - (b) We recommend that, where they are not doing so already, they communicate more effectively the safeguards they have in place to handle data responsibly – for example, through clear statements about contractual and other protections in place with third parties to secure and safeguard consumer data. Some DCTs told us that the responsible use of data helps build trust and that enhanced protections could be an important competitive differentiator. This aligns with evidence in our review of the commercial use of consumer data,¹⁰⁵ which suggested that raising awareness and improving controls might increase consumer confidence:
 - Boston Consulting Group (2012) reported that consumers who are able to manage and protect their privacy are up to 52% more willing to share information than those who are not;¹⁰⁶
 - Consumer Focus (2012) reported that 72% of its survey respondents agreed that they would be more willing to share their information if the recipient was clear how it would be used and if permission could subsequently be withdrawn;¹⁰⁷ and

¹⁰⁵ CMA, *The commercial use of consumer data*, June 2015.

¹⁰⁶ Boston Consulting Group, *The Value of our Digital Identity*, November 2012. Note that these findings were based on a survey in three European countries that did not include the UK (Netherlands, Germany and Poland).

¹⁰⁷ Consumer Focus, *Consumer Focus Digital Behaviour Survey*, March 2012.

- Deloitte (2013), reported that some individuals were content for organisations to share their data with other organisations, where otherwise they would not have been, provided they were informed of how their data would be used for their or the public benefit.¹⁰⁸

(c) Finally, DCTs need to prepare more generally for the introduction of GDPR, which will have potentially significant implications for what information they need to provide to consumers about the collection and use of their data, as well as the controls they need to make available to them. In particular, from May 2018, the GDPR will introduce:

- A higher standard of consent where consent is the basis for the processing (and increased rights to withdraw consent).
- A new accountability requirement (to show how compliance with data protection principles is achieved) and a requirement for data protection by design and default.
- A requirement for transparent and easily accessible ‘fair processing’ information.
- A right, with exceptions, not to be subject to automated decision making and personal profiling.
- A right in some cases to the erasure of personal data.
- A right of data portability in certain cases enabling individuals to require businesses to transfer to them or a third party a free copy of the data held about them in a commonly used reusable, electronic format.

(j) Accessibility

Equality law and DCTs

82. All UK businesses providing goods, facilities or services to members of the public must comply with the Equality Act 2010, irrespective of whether a service is provided for free or they charge for it.
83. Under the Equality Act 2010, they should not discriminate directly or indirectly against disabled users and are required to make reasonable adjustments to ensure their website can accommodate them. Failure to make reasonable

¹⁰⁸ Deloitte, *Data Nation 2013 – Balancing growth and responsibility*, August 2013.

adjustments may result in a court claim and compensation as well as being required to make the reasonable adjustments.

84. DCTs should therefore comply with all obligations under relevant equality law (see '**Easy to use**' in the CARE principles).
85. Guidance provided by the Equalities and Human Rights Commission¹⁰⁹ states that sites must be accessible to all users including people with visual impairments who use text-to-speech software, people with manual dexterity impairments who cannot use a mouse and people with dyslexia and learning difficulties. For example, DCTs should consider how their website works with screen readers and other accessibility tools used by the visually impaired. If a DCT's website has all its text embedded within graphics this may place those with a visual impairment at a disadvantage because they cannot change the font size or apply text-to-speech recognition software. As a result, they cannot access the website. As well as giving rise to an obligation on the DCT to make a reasonable adjustment to its website, their practice will be indirect disability discrimination unless the DCT can justify it.¹¹⁰
86. There is no specific legal requirement to comply with any particular set of website accessibility guidelines, but the Web Content Accessibility Guidelines 2.0 (WCAG) have been recognised as an ISO International Standard¹¹¹ since 2012.
87. In December 2010, the British Standards Institute (BSI) also launched the first British Standard to address web accessibility and the challenge of digital inclusion (BS 8878 Web accessibility – Code of Practice). BS 8878 is consistent with the Equality Act 2010 and is referenced in the UK government's e-Accessibility Action Plan as the basis of updated advice on developing accessible online services.¹¹²
88. If a website does not meet the minimum website accessibility standards in the WCAG or BS 8878, this may indicate that it does not comply with the requirements of the Equality Act 2010.

¹⁰⁹ Equality and Human Rights Commission, *What equality law means for your business*, April 2014.

¹¹⁰ Equality and Human Rights Commission, *Services, public functions and associations: Statutory Code of Practice*, January 2011.

¹¹¹ See [ISO/IEC 40500:2012 \(W3C\)](#).

¹¹² See [BS 8878:2010 Web accessibility – Code of Practice](#).