

Responses to BIS Consultation - Empowering and protecting consumers: A consultation on institutional changes for provision of consumer information, education, advocacy and enforcement - F to O.

Financial Ombudsman Service.....	3
Financial Services Consumer Panel.....	4
Food Standards Agency	5
Forensic & Litigation Consulting	6
FRESH – smoke free North East.....	7
Fundraising Innovations Ltd	8
Furniture Ombudsman.....	9
Gemserv Ltd	10
Glasgow CC.....	11
Gloucestershire CCTS*	12
Hampshire CCTS*	13
Haringey Council TS.....	14
Hertfordshire CCTS*	15
Highland Council.....	16
Holmes, Gwen	17
Home Retail Group.....	18
Hunt, Paul	19
ICPB – International Consumer Policy Bureau	20
Institute of Professional Willwriters.....	21
Islington Council TS.....	22
Joint WP of the Bars & Law Societies of the UK on competition law	23
Jones, Tom	24
KGB (operates 118 118 directory service)	25
Kingston-upon-Thames TS.....	26
Law Society of England & Wales.....	27
Law Society of Scotland	28
LBRO (Local Better Regulation Office).....	29
Legal Services Board.....	30
Legal Services Consumer Panel	31
Lennon, Peter	32
Local Government Group	33
Local Government Ombudsman.....	34
LSE – London School of Economics	35
Lyle, Ken.....	36
Manchester Metropolitan University	37
McCulloch, David.....	38
MD Insurance Services Ltd	39
Mills, Sharon	40
Milne, Claire.....	41
Mobile Broadband Group	42
Money Advice Scotland	43
Money Advice Service	44
Money Advice Trust.....	45
Motor Codes	46
National Caravan Council.....	47
NCF – National Consumer Federation	48
NEA - National Energy Action	49
NETSA – North East TS Association.....	50
Newport City Council TS.....	51
NFOPP – National Federation of Property Professionals	52
North Lanarkshire Council TS	53
North Yorkshire CC.....	54
Nottinghamshire CCTS*	55
Npower	56
OFCOM	57
OFGEM.....	58
OFT.....	59
OFWAT	60
Ogg, Dr Neil.....	61

Ombudsman Services 62
ORR – Office of Rail Regulation..... 63

Financial Ombudsman Service

Consultation on Empowering and Protecting Consumers

Memorandum from the Financial Ombudsman Service

8 August 2011

Summary

The Financial Ombudsman Service welcomes the consultation paper.

We write specifically in response to Question 17: *What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?*

As indicated in our response to the Ministry of Justice's consultation "*Solving disputes in the county courts*", we support the wider use of ombudsman schemes. We believe they have an important part to play in improving consumer empowerment and confidence, although there would be benefit in ensuring that any new ombudsman schemes are created as part of an integrated and aligned redress landscape which reflects the needs of consumers, rather than the regulatory framework.

About the Financial Ombudsman Service

The Financial Ombudsman Service was established under the Financial Services and Markets Act 2000. Its statutory function is to resolve, independently, quickly and with minimum formality, disputes between financial businesses and their customers, as an alternative to the courts. Our ombudsmen are required to decide each complaint on the basis of what they deem is fair and reasonable, taking in to account the law, rules and good practice in the industry. The ombudsman decides each case impartially on its individual facts and merits. We are free to consumers, funded by industry.

The Government has recently endorsed the basis of our model in its white paper "*A new approach to financial regulation: the blueprint for reform*". Specialist expertise allows the ombudsman service to resolve individual disputes effectively.

Key Facts

- The Financial Ombudsman Service is the largest ADR scheme in the world, and the model on which a number of other schemes have been based, in the UK and internationally.
- We handle over 200,000 cases a year – that represents 200,000 consumers who would otherwise have had the expense of going to court or been denied access to justice.
- Since we were set up in 2000 we have received over 1.2 million cases.
- Last year we handled 1,012,371 initial enquiries and complaints from consumers - around 4,000 each working day.
- Our average cost per case resolved over the last three years is between £500 and £640 – this is paid for by a levy on the financial firms we cover and a case fee of £500.
- The service is free to consumer and small business complainants.

- In 2010/11 we provided information and handled enquiries in 49 different languages and formats – from British Sign Language to Sinhala, mpeg to Braille.
- We handle a wide variety of complaints, from low to very high value claims – our award limit is currently £100,000 but is rising to £150,000 in 2012.
- 74% of people whose complaints we handled said they would recommend using the ombudsman service to family and friends.

The redress landscape

The ombudsman model is working effectively to deliver dispute resolution and consumer redress (where appropriate) in an impartial, proportionate and effective manner. However, there is scope to do more to deliver an accessible, joined up and efficient ombudsman service to consumers.

The Financial Ombudsman Service, through its existing jurisdiction, is dealing with an increasingly wide range of consumer disputes across the economy – including in areas outside our traditional financial services remit. For example, we consider complaints concerning "connected travel insurance" policies, which are sold alongside the provision of a travel service, such as a packaged holiday. We also consider complaints concerning extended warranty insurance policies, which are sold to consumers alongside a wide range of products and services, including electronic and white goods and utility services. And the use of consumer credit and, more recently, electronic money means that we are increasingly involved in disputes about purchases across the whole economy.

This reflects fundamental changes in the way that businesses are operating, with fewer staying within traditional sectoral boundaries (such as financial services, telecommunications, property or legal services) and more seeking to provide a diverse portfolio of linked products and services. Yet ombudsman services continue to be structured within those traditional sectoral boundaries. This has meant both that an increasing number of businesses now come under the jurisdiction of more than one ombudsman scheme and that an increasing number of consumer disputes cannot be resolved by one ombudsman scheme alone. This can be confusing both for potential complainants and for businesses, and may act as a barrier to bringing a complaint to an ombudsman. Quite apart from the inadequacy of the resulting gaps and overlaps between ombudsman schemes, this is not good public service.

Therefore, to answer the consultation question, we believe that the scope of ombudsman schemes should be widened to fill the current gaps in coverage across the economy. However, we also believe that, in doing this, more should be done to integrate and align existing ombudsman schemes in order to address the increasing overlaps and gaps between them. This would in turn remove unnecessary duplication and improve operational effectiveness and efficiency.

Dafydd Evans, Policy Unit

📍 Financial Ombudsman Service, South Quay Plaza, 183 Marsh Wall, London, E14 9SR

✉️ dafydd.evans@financial-ombudsman.org.uk 📞 020 3222 9196

Financial Services Consumer Panel

Financial Services Consumer Panel response to BIS consultation:

‘Empowering and protecting consumers:
Consultation on institutional changes for
provision of consumer information, advice,
education, advocacy and enforcement’

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

The Financial Services Consumer Panel welcomes the opportunity to comment on the questions posed in the consultation on Empowering and Protecting Consumers¹. As a statutory body under the Financial Services and Markets Act 2000 the Panel advises the FSA on the interests and concerns of consumers and reports on the FSA's performance in meeting its objectives. This response focuses in particular on the consumer representation, empowerment and protection aspects of the consultation.

Key points

- We can see the merit of reducing the potential for duplication, strengthening the evidence base, and concentrating scarce resources on a trusted and universally known 'brand', but are concerned that reducing the number of consumer advocates may limit the extent to which the range of consumer views and concerns are represented. Whilst Which?, Age UK, and Shelter will still be in the environment, Consumer Focus has been an effective advocate on financial services issues.
- We have great respect for the quality and depth of Citizens Advice's evidence-based advocacy and the major contributions it has made to improving protection for the consumers of financial services. However, whilst recognising that some change may be necessary, we are not convinced that the case has been made for concentrating future resources for consumer advocacy on Citizens Advice.
- Its current work, drawing on evidence from its client base, focuses on the needs of the most vulnerable. The consultation document is silent on how it will reposition its work in order to provide effective consumer advocacy for the whole range of consumers.
- The consultation is also silent on the subject of resources. Citizens Advice is a charity and its membership consists of Citizens Advice Bureaux which are under considerable financial pressure in the current environment and will look to their national body for support. An overall reduction in resources may lead to financial services consumer advocacy being sidelined. This is particularly likely for subject areas which are not of central concern to those who currently use CABs. The document provides no information on how to protect against this happening.
- We believe the Government should start from the point of view of asking what structure would best represent the consumer advocacy needs of all customers, and resource it appropriately.
- In the light of the abolition of the OFT and the creation of the CMA, we believe that the best way of ensuring effective protection for consumers of financial services is give the forthcoming FCA both concurrent competition powers and responsibility for the sort of market studies carried out by the OFT.

¹ <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/e/11-970-empowering-protecting-consumers-consultation-on-institutional-changes.pdf>

Introduction

The Consumer Panel is not convinced that the current consultation addresses the fundamental issues relating to the consumer landscape. It believes that the Government should consider the following three objectives before agreeing which bodies are appropriate to achieve these objectives.

Representation

- Any review of the consumer landscape should address the need to retain diversity of voice, reflecting the diversity of consumers in all socio-demographic sectors, whilst using resources more effectively by removing duplication. It is important to at least retain, if not improve, the depth and breadth of advocacy available in the current consumer landscape.
- There is little evidence in the consultation document that 'simplifying and streamlining' the consumer landscape will produce better outcomes for consumers. If the current landscape is perceived as too complex, and we would welcome evidence that this is the case, the document should have evaluated the benefit for consumers of a range of possible solutions.
- The Panel is concerned that there is little detail of how the Citizens Advice and Consumer Focus advocacy functions will be combined, and how they will be resourced. We would wish to see a commitment that mainstream financial services issues will remain an explicit priority and will be adequately resourced, including both at domestic and international (particularly EU) levels.
- The merging of the CAB and Consumer Focus bodies may have the potential to improve consumer representation. This is likely to be best achieved by building on the strengths of both organisations. There is not enough detail in this document to see how this will be achieved and without it the Panel is not in position to make a judgement about the likely outcomes for all consumers.

Empowerment

- Although financial services are not explicitly included in the remit of this review, the Panel believes that financial wellbeing is part of the consumer wellbeing agenda, and that failing to consider consumer financial education, alongside information, advice and advocacy, in this document, is a missed opportunity
- The Panel has frequently warned of the danger that increased consumer education can be seen as a panacea for the problems consumers face in purchasing financial products. However, there is room for improvement in this area and this review offers an opportunity to achieve greater impact by improving coordination.
- This could be done by means of a consumer education liaison group, incorporating organisations such as Citizens Advice, FSA/FCA, Money Advice Service and the Office of Fair Trading (OFT). Such a liaison group would help to avoid duplication and ensure adequate coverage of all sectors.

Financial Services Consumer Panel

- Given forthcoming policy decisions in the consumer credit and competition regimes, it's difficult to make specific recommendations, but we are keen to see outcomes from these decisions that maintain or improve on current levels of consumer power.

Protection

- The Panel has concerns that other initiatives in the consumer environment raise questions about consumer protection that this review does not address. The starting point should be that it is crucial that at least the same level of enforcement is maintained in the future as is in place now. It is not possible to conclude that this will be the outcome of the review.
- It is currently proposed that the FCA will not have concurrent competition powers, but will have a duty to promote competition and may take responsibility for the regulation of consumer credit. Currently the OFT carries out market studies; the document proposes that this function will pass to the Competition and Markets Authority (CMA). We are concerned that because of the wide range of the CMA the sort of market studies carried out in the past by the OFT are unlikely to happen. We therefore propose that the FCA should have concurrent competition powers with the CMA and will therefore be able to conduct market studies in financial services.
- The Panel believes in future that in order to encourage effective enforcement the FCA should be represented at the Trading Standards Policy Board.

Comments on specific questions:

QUESTION 7. Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of CCAS (Consumer Codes Approval Schemes) with effective alternative systems of accreditation?

QUESTION 8. What are the lessons learned from the operation of CCAS which may help in establishing (or revising) voluntary schemes in the future?

QUESTION 9. What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?

QUESTION 10. What characteristics would a Kitemark-based code certification process need to have to meet industry requirements?

QUESTION 11. What is your view on extending the Primary Authority concept to code certification?

The Panel believes there is a risk that the consumer codes process will disappear under the new regime. As a specialised and focused regulator of financial services in future the FCA should have a role in approving any relevant codes of practice. This will become particularly pertinent if it becomes responsible for the regulation of consumer credit.

QUESTION 12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

The Panel believes its own consumer advocacy function is effective because, although independent, it is embedded within the FSA. It also benefits from being backed by statute. We are pleased to note there is no suggestion that this should change. We understand the reluctance of other sectoral advocacy functions to be included with the Regulated Industries Unit. We are concerned that the exclusion of financial services advocacy from the Regulated Industries Unit may lead to financial services issues, which can be complex and technical, not receiving the attention or level of scrutiny they require within the new body, however it is configured.

QUESTION 14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?

As outlined in our introduction, the Panel believes it is not appropriate to say at this stage whether Consumer Focus should be retained or abolished. First of all, questions have to be answered about what is best for consumers. The proposals in this consultation have jumped straight to the solution without considering other options, and without conducting a robust cost benefit analysis of the impact of abolishing Consumer Focus. A properly-functioning consumer landscape needs to address the issues of representation, empowerment and protection we have discussed above.

In order to ensure synergy, explicit memoranda of understanding should be in place between such organisations as remain with a consumer advocacy remit.

Additionally, the Panel believes that whatever the ultimate structure, and particularly if there are to be fewer representative bodies, that channels of communication between smaller interest groups and the consumer advocate function are maintained. It is also important that Government continues to maintain an open dialogue with other smaller representation or advocacy groups which may operate in a similar sphere, be pioneering new service methods or reaching previously unreached groups.

QUESTION 15. What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

Whilst consumer affairs and policy in areas like financial services are reserved matters for the UK Government, it is right that it funds consumer advocacy, in a way that reflects the full UK experience. The Panel believes that it is vital, whatever approach is taken, that UK-wide consumer advocacy bodies have appropriate structures within their governance to represent consumers from devolved administrations and that devolved consumer advocacy bodies build and retain appropriate links with their counterparts elsewhere. Any devolved bodies also need to be involved with UK-level consumer institutions, to reflect the fact that many organisations operate on a cross-border basis.

QUESTION 37. Do you agree that the current Supercomplaints system to the OFT should be retained in respect of the CMA if the proposed changes go ahead?

It is important that all the current facilities of the Supercomplaints system remain in the new regime, and that the ability to raise non-competition-related Supercomplaints relating to financial services is still possible. We would recommend that, along with concurrent competition powers, the FCA should have the duty to receive and act upon relevant Supercomplaints. There should also be provision to extend the range of organisations able to raise super-complaints to include representative bodies for small business as proposed in the earlier competition regime consultation ('A Competition Regime for Growth: A Consultation on Options for Reform', BIS, March 2011).

QUESTION 39. Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?

We are concerned that if that a lead local authority were to take on the OFT's estate agency and related anti-money laundering functions, these would be weakened. It is not clear how this would work in practice, and the idea, in particular, of requiring a local authority to deal with money laundering functions which may need to be national or international in scale (and require detailed knowledge of the operation of different types of money transmission mechanisms, for example), calls into question whether local authorities would have the resources or expertise to do this.

Food Standards Agency

David Evans
Consumer and Competition Policy Directorate
3rd Floor
1 Victoria Street
London
SW1H 0ET

15 September 2011

Our reference: NBO-36331



**FOOD STANDARD AGENCY'S RESPONSE: BIS CONSULTATION:
EMPOWERING AND PROTECTING CONSUMERS**

The Food Standards Agency (FSA) is an independent non-ministerial Government Department with responsibility for protecting public health and the interests of consumers in relation to food. Strong consumer advocacy groups are very important to our work.

As an organisation that was established to protect and put the consumer interest first, the FSA values the work that Consumer Focus in both England and Wales has done to promote good practice in involving consumers in the development of policy. Within that context it is important in the future for consumers to have a credible advocacy mechanism and that the process of involving and engaging with consumers continues.

Consumer Advocacy

The FSA acknowledges that engaging and involving consumers in some of the issues that affect their lives can be complex and difficult to get right. The organisation that has the responsibility for representing consumer interests will need to demonstrate the ability to engage and represent consumers across a wide range of issues. There will also be a need to challenge established practices that may disproportionately affect consumers especially those who are vulnerable or disadvantaged.

The FSA has the following concerns about the consumer advocacy elements of the proposal. We would question how the current Citizen's Advice structure will provide

a sound foundation for building an advocacy service, given that it would require a substantial core of people with skills in analysis, policy and lobbying. In addition, there may be a tendency for any advocacy work to be directed at services that are subject to economic regulation (such as utilities and transport). These areas have funding arrangements in place via industry levies and may tend to draw more attention. As a result food safety may receive less attention. Consumer advocacy is hugely important, including in relation to food issues, and it is vital that this be made a priority by whichever organisation is given this remit in the future.

Your consultation acknowledges that 'Even where policy issues are reserved, the [UK] Government recognises and respects the need for a distinctive consumer voice from the devolved nations.' In our experience, as a Government Department working with administrations in all four UK countries on devolved policy matters, the priorities of consumers and of civil society more generally may differ between countries. In Wales, the serious outbreak of foodborne illness related to *E. coli* O157 in South Wales in 2005 continues to inform public debate and public policy and we feel the active role that Consumer Focus Wales has taken in advocacy and in monitoring improvements in public protection has had a real benefit, for consumers and for Government. We would not wish to lose this national responsiveness.

Trading Standards Model

The FSA recognises weaknesses of the current model, which apply equally to environmental health. We have work underway to review the current delivery of Official Controls for food hygiene, consider the scope for improvements to that model and compare it to an alternative model involving four national bodies. We note that the BIS proposals concerning Trading Standards are not intended to capture the areas of enforcement in relation to food and feed standards that we ask Local Authorities to undertake. However, our concern is whether the proposed changes will result in any further reductions in the resources being made available to trading standards delivery by Local Authorities. We seek reassurance that the proposals will not result in Trading Standards Officers having less capacity or, in time, expertise to carry out their functions of enforcing food and feed law.

As you may be aware, a priority of the Welsh Government is to create a national trading standards service for Wales. We would like to understand better how your proposals for a new centralised trading standards model would sit with this priority. The role of the Trading Standards Policy Board (TSPB) raises two further questions for the FSA. Firstly, would the TSPB be in a position to dictate the priorities of individual Trading Standards Departments, with the risk of feed/food law enforcement getting lower priority? Secondly, if the TSPB system works well, will there be opportunities for it to be involved in other areas such as food law, and how would that fit with the FSA's current role? The role of the proposed TSPB which has a national remit is potentially positive, particularly to disseminate information and highlight cases of potential national significance. This would require that the TSPB

has rapid communication routes. Care would be needed to not divert resource from actions and enforcement at the local level.

We should like to press to retain the facility for major potential food fraud cases of national or regional significance potentially to be part of the new arrangements. This is because the Consumer Law approach could provide an improved and alternative mechanism to deal with such issues and the availability of such experienced Trading Standards Officers investigators would help to bolster consumer protection in relation to food safety.

We would be grateful to be kept informed about further developments as and when the details are worked out.

A handwritten signature in black ink, appearing to read 'Jeff Rooker', with a large, stylized initial 'J' and 'R'.

JEFF ROOKER

Forensic & Litigation Consulting

POWER TO THE PEOPLE?

FORENSIC AND LITIGATION
CONSULTING

CORPORATE FINANCE/
RESTRUCTURING

► **ECONOMIC CONSULTING**

TECHNOLOGY

STRATEGIC COMMUNICATIONS

SUMMARY

This paper provides our thoughts on BIS's consultation on empowering and protecting consumers. Our view is that there is an excessive focus on the "how" and not enough on the "what". Importantly, given this is a consultation about consumers, it is not apparent that consumers have been asked about what really matters to them.



F T I[™]
CONSULTING

CRITICAL THINKING
AT THE CRITICAL TIME[™]

POWER TO THE PEOPLE

Introduction

The government believes in handing power over to people ...

This paper provides some thoughts on the Department for Business, Innovation and Skills' ("BIS") consultation on institutional changes for the provision of consumer information, advice, education, advocacy and enforcement, "empowering and protecting consumers" ("the Consultation"). The Consultation asks forty questions; in this paper we focus on just a few of these.

We believe that it is always right to try continuously to improve consumer information, advocacy and enforcement. In doing that we should start from where the consumer is. Our guess is that they want a system that is clear and works, where they know where to go to with a complaint, that delivers back to them in terms of a remedy and is a system that is tough and speedy where wrong-doing has been found. They need to have confidence that the system works. In that sense BIS's objectives for change are sensible; it wants to:

- reduce complexity;
- increase strength by improving consumer enforcement; and
- make provision for more cost effective and efficient delivery, closer to the consumer front-line.

However, we are also clear that government should not re-design the architecture unless it is sure that things will improve. As is the case with most organisational redesigns, something is typically lost so much care is needed when proposing and implementing change.

...but does not appear to have asked the people what they would like to see

There is a danger that this is yet another reorganisation proposal, coming very soon after others. Did these fail – what is the evidence? The National Consumer Council, Consumer Voice (ultimately called Consumer Focus), Energywatch, Postwatch, Water Councils, and Ofcom Consumer Panel – a list of organisations that were the subject of previous reviews. We therefore need to be sure of the need for further change following previous appraisals and reorganisations of the consumer policy landscape in 2004 and 2008. Overall, we consider that the Consultation has too much about the "who" rather than about the "what". And, we were surprised that there appears to have been little systematic consultation with consumers on some of the matters. Perhaps BIS would have benefited from running a few focus groups with real consumers rather than solely consulting with stakeholder organisations and other professionals. A plain English summary consultation document aimed directly at consumers would also be useful.¹

Overall the policy feels a little like a rationale for a pre-decided reduction in quangos and a need to cut spending

Overall the policy feels a little like a rationale for a pre-decided reduction in quangos and a need to cut spending, allied with the real politick of Whitehall (so that somewhat irrationally - from a consumer point of view - financial services, health and other public services - are outside the proposals).

Citizens Advice

Perhaps the most daring of the proposals is to put all consumer information and advocacy functions under Citizens Advice (along with abolishing Consumer Focus). Citizens Advice has a great brand but it is, as it describes itself,

"...the charity for your community".

Regarding its functions, it states:

"The Citizens Advice service helps people resolve their legal, money and other problems by providing free, independent and confidential advice, and by influencing policymakers."

Much has been debated on the differences between consumers and citizens and we do not focus on such debates here but we do note that there are such differences and ask whether BIS should be inserting consumer matters into an institution that primarily deals with citizen matters.²

More practically we conjecture that most people see Citizens Advice as a place to get advice on welfare,

¹ BIS may have held focus groups and/or commissioned a consumer survey but this is not apparent in the consultation.

² Ofcom, for example, was subjected to significant criticism from many stakeholders in its early days after it referred to the "citizen-consumer".

Any measures that streamline access points and increase brand awareness will be beneficial. However, this objective could surely be met simply by developing a simple one-stop front end called "consumer-rights.gov.uk"

housing, finance, and so on, with a bit of small claims as well. It does not have a brand associated with consumerism nor is that a particular specialism of its personnel and management. Indeed the structure of CAB (strong local branches with a degree of autonomy) means it is good at dealing with very local issues and interacting with local agencies (as well as the Department for Work and Pensions etc.) but perhaps less well resourced when the issue revolves around the behaviour of a major corporate at a national scale.

Clearly, at the end of the day it is important that consumers know where to turn to for advice and that that route is simple. Arguably today's regime doesn't make the grade – it is confusing for those not in the know. Any measures that streamline access points and increase brand awareness will be beneficial. However, this objective could surely be met simply by developing a straightforward one-stop front end called "consumer-rights.gov.uk" which then directed consumers easily to the right, specialised agency or institution.

The Consultation also refers to reinforcing a simple message to consumers,

"If you need publicly-funded information or advice, go to Citizen's Advice".

In our view, this may already be complicating matters – will consumers understand the difference between public vs. private in respect of funding the information and advice?

Finally, it will be imperative not to undermine or confuse the public in respect of the role that Which? plays in such provision. Which? probably has the strongest brand name of all in this area.

Regulated industry unit

While the Communications Consumer Panel (previously Ofcom Consumer Panel) managed to fight off its transfer, along with others, into Consumer Focus during the last reform of the consumer landscape in 2008, this time its days are numbered.

May the Regulated Industry Unit lead to the atrophy of important sector expertise?

The Consultation advocates the transfer of all regulated sector consumer advocacy and information functions to a "Regulated Industries Unit" and then placing that within Citizens Advice. This proposal may be the most controversial. That we have sector-specific regulators demonstrates the need for specialist knowledge and skills. What is most important: synergies and critical mass in consumer matters or the sector itself? We would argue the latter. While expertise in consumer matters is extremely important, we believe that sector expertise should be maintained within sector-specific organisations. While much depends on institutional design, funding and even personalities, the consumer voice is in real danger of having less effect if it is all swallowed up in a larger, amorphous body with plenty of other tasks and priorities. Arguably, the consumer voice may be louder within a sector-specific unit. Moreover, how will those in the Regulated Industry Unit ensure that their sector skills are maintained?

Consumer protection and enforcement

The National Audit Office ("NAO") was extremely critical about the provision of consumer enforcement – that the current system does not deliver value for money; that it is fragmented, does not function properly, lacking accountability and good governance.³ Moreover, the NAO also stated that compared to the scale of consumer detriment, expenditure on enforcement is low.

The NAO makes the case for improvements to the enforcement regime

The current system of consumer enforcement involves Trading Standards ("TS") officers and the Office of Fair Trading ("OFT"). These deal with, respectively, local and national matters, although TS does handle some national cases. BIS also provides some support with regional and national schemes. Accountability for cross-boundary and national matters is considered by some to be unclear. As the system is primarily funded by Local Authorities, currently, owing to austerity measures, such funding is threatened with cuts – an estimated reduction in spending of at least £49 million by 2014. BIS' view is that cross-boundary and national matters may be disproportionately affected and that a strategy for the longer term is required.

What should not be forgotten is that the enforcement landscape is extremely complex; many organisations may be involved – not just government institutions and local authorities but also others such as the police and the Serious Organised Crime Agency.

³ See http://www.nao.org.uk/publications/1012/protecting_consumers.aspx

The Consultation considers several organisational structures to Improve enforcement

BIS is considering transferring most or all of the OFT's enforcement powers (and its estate agency function) to TS. The key question here is whether enforcement will be stronger or not as a result of this change? Launching the consultation Consumer Minister Davey claimed that:

*"Trading Standards are trusted by the public to do a good job in enforcing consumer law and standing up for consumers"*⁴.

While TS does have some brand recognition amongst consumers, we doubt that most of the public has a detailed understanding of what TS does. However, a key issue is whether TS has the capability to do a good job; as Robert Peston said:

*"The big question is whether local trading standards offices will have the resources or expertise to really challenge the behaviour of giant businesses"*⁵.

It may be that the bringing together of the various TS groups (the local authority trading services, the Trading Standards Institute, the Association of Chief Trading Officers etc.) will help, but the case is not made.⁶

Government has considered a range of structural options and favours the creation of a new Trading Standards Policy Board ("TSPB"), led by Chief Trading Standards Officers representing their regions. This would be accountable to BIS and ensure that national and cross-border matters are referred to (presumably strengthened) TS and that structural market matters go to the newly created Competition and Markets Authority ("CMA"). The TSPB, CMA and Citizens Advice would form a partnership and share resources. Throw in some clear lines of accountability and at the end of the day, TS builds up long-term credibility. These all sound fine, although, as we discuss in the "people" section below, we do have some concerns about how this may work out in practice.

The second choice option is the less intrusive and well-intentioned creation of the Joint Enforcement Board (JEB). This is not a new institution as such, but it does add another layer to the landscape. Here both CMA and TS would retain their existing powers but the JEB will decide whether CMA or Trading Standards should pursue cases. May this just add to existing confusion? Or indeed delays, particularly if its operation in the early days was not as smooth as expected.

A practical problem emerges from the splitting of consumer from competition policy which is whether consumers and other potential complainants know where to go

Any opportunities between enforcement agencies to cut costs should be welcomed; by taking advantage of shared back-office functions including call centre synergies; although the quality of call centre communications must not be undermined. One possibility could be for Which? to become involved; its brand and reputation as a consumer champion makes it a possible candidate for having a principal role in enforcement, at least at the front end.

Given the criticism of the NAO, the threatened cuts to funding together with the inherent complexity of the current regime, this is a key area for consumers and one that BIS has to get right. This is an area where more consideration of both the "what" and the "who" is required, sequentially.

It is hoped that maintaining the market function within the competition authority will help the authority think more about consumers. This we believe is important – we do not want a regime that is competition for competition's sake. Our view is that consumer and competition matters are intertwined. If they are separated, may there be a loss of synergies and increased costs?

For example, it may be important to retain skills in behavioural economics at the CMA to ensure the consistent application of consumer remedies to competition problems. Not all agree – an alternative view is provided by Mark Armstrong:

"Robust competition is the best single means for protecting consumer interests."^{7,8}

However, a practical problem emerges from the proposed splitting of consumer from competition policy which is whether consumers and other potential complainants know where to go if they are not getting a

⁴ BIS press notice 21 June 2011

⁵ BBC Business news online 14/10/10.

⁶ See Hansard Ministerial Statements, 21 June 2011, column 3WS

⁷ Mark Armstrong, "Interactions between Competition and Consumer Policy", Competition Policy International, Volume 4, No.1 (Spring 2008).

⁸ Timothy Muris, "The Interface of Competition and Consumer Protection", Paper presented at Fordham Corporate Law Institute's 29th Annual Conference on International Antitrust Law and Policy, New York (Oct. 31, 2002).

service they think is decent. Indeed will those eligible to make a super complaint have to decide in advance who to complain to – and what happens if it turns out that the solution to the problem they complained about lies in the hands of the other leg of the system? Will the distinction between structural market conditions vs. consumer law matters always be obvious? Indeed, may such distinctions always be possible, thereby delaying complaint investigations as they arrive at the “wrong” institution.

Consumer Codes

It is disappointing that the proposals for consumer codes have not been developed further

Perhaps not one of the most eye-catching proposals in the Consultation, but BIS’s proposal on consumer codes is a very important one. Since 2001, the OFT has operated a system of consumer codes – the Consumer Codes Approval Scheme (“CCAS”). Around ten codes are in process and ten have been approved. OFT approval is perceived to be valuable to the companies that are members of the scheme.⁹

BIS states that given its other proposal, to create a single competition authority, the CMA,

“A continuing role in consumer codes approval does not seem appropriate for the CMA.”

This reinforces BIS’s view that the CMA’s focus is more competition; less consumer. BIS has yet to come up with a preferred option for the future – it is considering developing further its “Kitemark” scheme, a scheme operated by TS or the possibility that Which? gets involved. Consumer codes in our view are a simple and effective way of giving consumers confidence and have gained traction partly through having such a strong, semi-governmental brand as the OFT associated with them and it is disappointing that this area has not been developed further.

People

In proposing changes to organisations – their design, their powers, responsibilities and accountability - it is important that the “people” angle is not relegated down the list. How effective the various functions are will depend, to a large extent, the leadership and its supporting personnel. Consideration needs to be given to possible clashes of cultures, skills, career paths and the attractiveness of the various organisations to professional economists, lawyers, and policy experts. Will TS offer a good career path? How best to deliver adequate training and ensure cross-fertilisation of ideas, skills and sectoral knowledge. Pay structures may also be a thorny issue, particularly when merging front-line Citizens Advice people with back-office professionals. Moreover, what is the brand appeal of Citizens Advice and TS to the requisite professionals? Again, we do not question the capabilities and professionalism of these organisations; we just note that they are very different to those additionally required under the proposed future regime.

Conclusions

Making sure that our consumer framework works as effectively as possible is crucial for consumer and citizen welfare but also for ensuring that we can pursue economic growth - empowered and informed consumers drive innovation, and the proper allocation of resources. Such a policy is so important and the potential gains so large, that this, rather than targets on the number of quangos, or some small up-front cash savings should dominate policy development.

So far BIS has not shown that this is the case despite some of the proposals having potential to improve the situation. We look forward to the government making its case more strongly, as we go forward.

We are not convinced that Citizens Advice is the best place for consumers to go for consumer information, advocacy and education nor the professionals that serve them. This is not to disrespect the excellent job that Citizens Advice does. But it is a very different type of service. Moreover, it would be a disaster if the quality of its current service was negatively affected as a result of the implementation of BIS’ proposals. At the end of the day, the big question is whether the proposed new system improves the experience of consumer following an over-priced car repair or some sub-standard building work?

At the end of the day, will the proposed new system improve the experience of consumer following an over-priced car repair or some sub-standard building work?

September 2011. The views herein are those of the authors alone and are not necessarily the views of FTI Consulting, Inc., its subsidiaries and affiliates or the other professionals at FTI Consulting, Inc., its subsidiaries and affiliates.

⁹ Arguably the OFT also has a strong brand amongst consumers, even if they are not completely sure about what the OFT does.

About the authors



Alison Sprague D.Phil

Entertainment & Media, Economics
FTI Consulting
+ 44 (0)20 7632 5133 (office)
+ 44 (0)7876 217131 (mobile)
alison.sprague@fticonsulting.com

has input to defining markets, presented of submissions to competition authorities merger in the Netherlands TV market, EU JK newspaper and magazine distribution, r, EU local loop and leased lines, GSM e experience of regulatory and consumer sure that it takes into account adequately cy career, Alison has assisted clients in a ions, electricity, gas, television and radio , sports, advertising, lotteries, football,



Dan Corry

Policy, Economics
FTI Consulting
+ 44 (0) 20 7632 5061 (office)
+ 44 (0) 7798 820219 (mobile)
dan.corry@fticonsulting.com

nior levels of government in the UK. He g for the Prime Minister, first as Head of i 2006-7 he was Chair of the Council of the chancellor on many issues including to that, he worked as a special adviser, 1997 and 2002, he was a special advisor, Industry where he worked on the 1998 ; industrial policy, corporate governance, ;port, Local Government and the Regions

FTI in economics

Public policy
Regulation
Competition policy
Business strategy
Litigation and arbitration



About FTI Consulting

FTI Consulting is a global business advisory firm dedicated to helping organizations protect and enhance enterprise value in an increasingly complex legal, regulatory and economic environment. With more than 3,000 professionals located in most major business centers in the world, we work closely with clients every day to anticipate, illuminate, and overcome complex business challenges in areas such as investigations, litigation, mergers and acquisitions, regulatory issues, reputation management and restructuring.
www.fticonsulting.com

CRITICAL THINKING
AT THE CRITICAL TIME™

FRESH – smoke free North East



Empowering and Protecting Consumers: Consultation on institutional changes for the provision of consumer information, education, advocacy and enforcement Response from FRESH- Smoke Free North East

FRESH- Smoke Free North East was set up in 2005 as the UK's first dedicated regional comprehensive tobacco control programme. It is a partnership between local authorities, health services, business, the voluntary sector, unions and civil society working towards a vision of making smoking history for the North East through creating an environment in which smoking becomes less attractive, acceptable and accessible. Adult smoking rates have fallen further and faster in the North East than in any other region in England, from 29 per cent in 2005 to 22 per cent in 2009.

FRESH has worked closely with all 12 local Trading Standards departments in the North East on range of tobacco control issues including reducing the availability and supply of tobacco products, reducing tobacco promotion and increasing tobacco regulation. Since 2009, a dedicated Trading Standards Tobacco Control Programme Manager has been in place to oversee the deployment of funding to support this activity, coordinated through the North East Trading Standards Association (NETSA).

FRESH recognises that this consultation focuses primarily on institutional changes for the provision of consumer information, education, advocacy and enforcement. We feel it is important to use this opportunity to highlight the important role that the Trading Standards service currently plays in the delivery of public health and we would ask that this consultation takes account of the enhanced public health role that local authority staff, particularly Trading Standards colleagues, will be given through 'Healthy Lives, Healthy People,' the Government's vision for public health, and its associated Tobacco Control Plan for England.

The latter is explicit in its recommendation that "local areas may wish to commission and deliver tobacco control initiatives over larger geographical areas in order to achieve greater levels of effectiveness and efficiency." Tackling illicit tobacco, a key priority for all 12 local Trading Standards departments in the North East and for NETSA as a whole, is cited as an issue in which this would work particularly well. We therefore welcome this consultation in its recognition of the local, regional, national and international levels on which services such as Trading Standards must operate in order to deliver effective enforcement action. We also welcome the proposal to deploy national funding to facilitate an integrated approach to national and cross-boundary issues, of which tobacco is undoubtedly one, to ensure that enforcement gaps do not arise and that overall activity is better targeted. Regarding **question 20**, we welcome the proposal of the Department for Business, Innovation and Skills to achieve an outcome that offers the best prospect of improving leadership and coordination of Trading Standard enforcement across local authority boundaries but we ask that this does not come at the expense of effective and evidence-based tobacco regulation.

We look forward to seeing the results of this consultation and hope that it will help contribute to the FRESH vision of making smoking history for the North East.

For more details, please contact
Richard Ferry, North East Trading Standards Association Tobacco Control Programme Manager
0191 387 2139
ferryrs@hotmail.com

Fundraising Innovations Ltd

From: Julie Lawton
Sent: 29 September 2011 13:41
To: Evans David (CCP)
Cc: Paul Green
Subject: TRIM: transfer of Consumer Focus Energy Code of Practice

Dear Mr Evans,

Apologies to this late submission for your consultation about the transfer of responsibilities for Consumer Focus. I note that there is some suggestion that Which? Should take on some responsibilities for Consumer Focus, and this may include Codes of Practice.

Please be aware that Consumer Focus runs a Code of Practice for energy Price comparison Services that has been running since the days of energywatch, so this Code of Practice has been in existence for around 10 years and has been a successful code of practice.

It would not be appropriate for the functions to be taken over by Which? Because of conflict of interest. Which? Runs and energy price comparison service and derives income from this rather like all of the others!! I do suggest that the Code of Practice was instrumental in Which? Increasing the quality of their price comparison tool.

My suggestion is that this Confidence Code is transferred to Ofgem. The reasons for this are:

- There is already great knowledge about the industry and expertise within Ofgem
- Although CF talked to Ofgem, the global energy companies were not obliged to follow guidance, so Ofgem would have more 'teeth'
- The energy market is not just consumer led, but is also highly regulated so it would aid Ofgem in knowing how the broker market is working.

I hope this helps your process.

Kind Regards,

Julie

Julie Lawton, Fundraising Innovations Ltd,

Furniture Ombudsman

Empowering and Protecting Consumers

BIS Consultation Response

by

The Furniture Ombudsman

1) How do you think the provision of consumer information to consumers can be improved upon?

The Furniture Ombudsman (under its former name, Qualitas) was established in 1992 by the Office of Fair Trading. Since then it has provided consumer information by telephone, email and via its web pages.

We believe that the provision of consumer information should be streamlined and centralised wherever possible. This ensures a consistent and accessible service delivered in the most cost effective manner. While there are many positive aspects to the work of all the agencies that currently feature in the landscape, it is true that there are significant examples of overlapping remit and this is both inefficient and confusing for consumers.

We also believe, however that in order to improve the provision of consumer information, there should be closer relations between generic advice providers, specialist providers and industry experts. As an example, we work closely with a significant number of furniture and home improvement retailers, and are ideally positioned for undertake investigation of complaints regarding our members. This would relate not only to their compliance with The Furniture Ombudsman's Code of Practice but also to our experience and expertise within the industry. It would seem logical therefore for our involvement to commence as early as possible once the consumer has sought advice or support from within the consumer landscape.

Once the streamlining has taken place, it could be that the consumer pages on Directgov become a hub that maps out not only the various bodies that remain in the landscape, but also illustrates how they interact with one another and where the natural hand-off points occur. This ensures the consumers understanding of the various bodies and channels for complaint are transparent and clear from the outset.

We believe that consumer information should be provided in a range of formats that meet the needs of the modern consumer. We also recognise that there will be some consumers able to assimilate this information once and make use of it in the future, while others require more in the way of ongoing support.

Furthermore, it is essential that the most vulnerable consumers (who are potentially likely to suffer from detriment far more regularly) are catered for in a manner that best meets their unique requirements. While work has been undertaken in this area in the past to good effect, as the statistical measurement of success has borne out, there is still a greater opportunity for more support to be offered though the impending landscape alterations. As with other areas, sectoral bodies are likely to also be in a position to play their part here.

2) Do you agree that the OFT's consumer information role should be transferred to the Citizens Advice Service?

We have very strong working links with the OFT. We were established by them in 1992, and currently continue to administer a payment protection scheme (which is OFT endorsed) for our members within the home improvement industry.

In recent years we have formed strong and lasting links with OFT's Consumer Direct service and have enjoyed a very positive relationship, including being able to visit centres and educate front-line advisors on the work that we undertake and how this can be of benefit to consumers. We are also aware that satisfaction rates for the service, and the detriment reduction in comparison to funding costs are particularly compelling.

Therefore we have some concern that the potential dissolution of the OFT may be detrimental in the eyes of consumers and businesses because their position and brand is well known to consumers and businesses. In addition the Consumer Direct service is still in its relative infancy, and as such finally appeared to be reaching its potential. Further changes to the advice provision so soon to removing front-line advice from Trading Standards could potentially further undermine consumer confidence.

However, given that the Citizens Advice brand is particularly well known and trusted amongst consumers, we believe they are a natural incumbent to undertake the consumer advice role should it be transferred. In addition the potential for an extension of the service to allow for face-to-face advice (previously not offered in the Consumer Direct model) is a considerable positive, particularly in regards to vulnerable consumers.

Nonetheless, we are interested to observe if the expertise and experiences that has been accumulated at the OFT during their tenure in this role will be transferred to the CAB model.

Furthermore, we would welcome an opportunity to ensure that all sectoral bodies (and particularly those who have or are working toward CCAS status) have a chance to work more closely with Citizens Advice, in order to better appreciate their various roles and responsibilities within their respective industries.

4) Do you agree that the OFT's consumer education roles should be transferred to the Citizens Advice Service? What are your views about the types of consumer education activity that are most valuable and how they should these be managed and co-ordinated?

Firstly we believe that prevention is better than cure, and as a result raising awareness of consumer rights, which in turn allows consumers to be savvy, proactive and most importantly empowered prior to contracting, should be the ultimate goal. This is preferential to reactive advice once the breach has occurred. Informed initial consumer decision making will always outweigh retrospective corrective action in terms of benefit.

It is understood that this will always prove a challenge, as consumers will tend to only seek support from the consumer landscape once an issue has occurred, however the benefits of such an approach in the long term are obvious and clear; namely more confident consumers, increased standards within businesses, and a stronger economy with significantly reduced detriment.

We are tireless in our pursuit to raise the profile of The Furniture Ombudsman to consumers and in doing so we believe that consumers are better informed with regards to purchasing in the furniture and home improvement industry. We believe that consumers who are empowered with knowledge before purchase are better placed to make more purchasing informed decisions.

It seems logical to transfer the education and advice provision together – and therefore based on our earlier response, Citizens Advice would be the logical home for this role.

Through our work, and that of our members who have voluntarily signed up our Code of Practice to afford consumers greater levels of protection and reassurance, we have strived to raise standards within the industry. For consumers, the dispute resolution channel gives them access to independent oversight and decision making on their issue, for which all members have agreed to abide by any decision we reach.

While we of course take steps to publicise our service, as do our members, it is still essential that all consumer facing bodies have an awareness of the work of sectoral bodies such as ours. This ensures that the remit and responsibilities of both organisations dovetail appropriately within the consumer landscape. It is noted that in Figure 2 of the consultation document, the diagram shows sectoral bodies within the same bubble as Citizens Advice. This implies a less nebulous approach within the landscape and suggests even closer working arrangements which we would welcome. In so doing, as mentioned before, the consumer journey is streamlined to ensure that they reach the best placed organisation to assist them in the fewest possible steps.

5) Do you agree that the proposed Trading Standards Policy Board and the TSI should coordinate and support business-facing educational activities?

In principal we agree with this proposal, given the comprehensive understanding and expertise that the Trading Standards Policy Board and TSI have in regards to legislation and enforcement activity.

It is recognised, however, that Trading Standards resource is potentially likely to be stretched with the proposals to increase their responsibility for enforcement activity.

Therefore, while we believe fully that TSI and the Policy Board are best placed to oversee the delivery of business education, the potential involvement of sectoral bodies, who are able to combine not only legislative education with industry knowledge and experience, should be strongly considered

In terms of The Furniture Ombudsman for instance, we believe we are well placed with regards to industry knowledge and the application of consumer law to industry scenarios. We already advise our members of legal compliance in a number of areas (while of course recognising the statute based role of Trading Standards in enforcing these areas) through a number of training courses and also a legal advice line service. Through initiatives such as these, we have helped raise industry standards, as a greater number of staff employed by our members than ever before have an appreciation of the legal requirements in the context of their own day-to-day activities. It should be noted that we refer not only to smaller enterprises but also national level retailers including Tesco, Homebase, B&Q, Magnet, Laura Ashley and DFS.

We are currently piloting consumer law road shows for furniture retailers, with a view to increasing understanding of basic legislative requirements. Aimed to give an introductory understanding of consumer law, in the context of the furniture industry, these have been very well received. We have opened these up to non-member furniture retailers, to ensure that as many businesses as possible can play their part in increasing industry standards through knowledge and understanding of their legal requirements.

An ideal approach from our perspective would therefore be a partnership in the delivery of education within the furniture industry. Given our existing links with TSI (we are corporate affiliate members, and have both Guy Pratt and Jim Potts – two senior Trading Standards figures – on our Standards Board) it would seem a logical and welcome step for us to be involved in further discussion on how this might best be achieved.

Equally, where other sectoral bodies have both the capability and resource to support such initiatives, it would seem sensible for them to be involved in some capacity in the education of their industry.

6) What are the best options for current and prospective CCAS to consider in the event that the Government's proposed consumer and competition landscape are adopted?

We are a prospective CCAS code sponsor – our application is currently being held with the OFT while all bodies take the time to understand how the proposed changes to the landscape may affect CCAS.

We welcome the government's support of self-regulation and co-regulation. We also welcome the fact that it is recognised that many businesses are voluntarily willing to undertake to meet higher consumer welfare standards. The defining principle of The Furniture Ombudsman is that it administers a voluntary code of practice which bestows greater protection on consumer – retailers who are members under this code include Tesco, B&Q, Homebase, Magnet, Marks & Spencer, DFS, Wickes, Laura Ashley, House of Fraser and Dreams together with a raft of other local, regional and national retailers. They all welcome the opportunity to demonstrate to consumers that they are responsible retailers through our scheme, and we all consider that the CCAS would act as an extension of our current code.

In our opinion, as an organisation who has already invested in the preparation and application of a CCAS, we believe that it has an important role to play and are committed to finishing it. Part of our decision to begin the CCAS code was driven by our members – Homebase in particular – who were very keen on the concept of self and co-regulation for the industry and for us to play a role in this through the CCAS. We also wanted to have the CCAS to add extra recognition to our own brand – which in turn would help us with a programme of consumer outreach.

However if no such CCAS is to form part of the new landscape we would welcome other ways in which our existing code could gain official government endorsement.

7) Do you think that the private and voluntary sectors together with local authorities will respond to any winding down of CCAS with effective alternative systems of accreditation?

We firmly believe that the other sectors have the capability and potential to provide accreditation. Our scheme is one such example and already represents one of the largest industries in the UK. As per the consultation document, we aim to work with our members to raise industry standards, protect consumers and offer an alternative to regulation. We believe our existing scheme could be used as a benchmark for developing other schemes and as a pathfinder for closer working relations within the consumer landscape. Our scheme was formed by the OFT twenty years ago and has outlived a number of Quangos and other such initiatives. It continues to attract major retailers who sign up to our Code of Practice and agree to be bound by our dispute resolution scheme.

Of course, any private sector scheme would need to have the appropriate level of controls and recognition in order for it to be officially positioned within the consumer landscape. In our case, we have provided this in many ways, such as the aforementioned Standards Board (and the Trading Standards presence on this via Guy Pratt and Jim Potts), our official recognition by the European Commission as the only recognised dispute resolution service for furniture in the UK, and our ongoing working relationships with other public sector bodies (such as TSI and the OFT) and also other ombudsman schemes to name but three.

It should be noted however that while the private and third sectors could most certainly fill the gap left by the dissolution of CCAS, we believe there is still tremendous value in some form of government endorsement of any scheme. No matter how strongly worded and effectively managed a code is, consumers need to put their faith in such schemes. There can be no more powerful endorsement in their eyes therefore than that of the state. Equally for businesses who are either part of, or prospective members of such a code, government backing is a powerful message to them in terms of compliance and being seen as a responsible retailer.

Should it therefore not be considered feasible or desirable to continue with CCAS in its current incarnation we would be pleased to discuss how our current scheme might act as a template for other industries though our experiences and best practice.

8) What are the lessons learned from the operation of CCAS which may help in establishing (or revising) voluntary schemes in the future?

It is clear that the premise behind CCAS is a positive and much needed addition to the consumer landscape. By establishing a minimum level of practice, consumers feel more reassured, and have a greater understanding of what they can expect from a member organisation when they enter into a contract with them. Furthermore for schemes such as ours that already set out a code of practice within an industry, the CCAS gives the opportunity for this code to effectively carry government endorsement, which is a powerful message to both consumers and businesses. As potential code sponsors within the scheme, it should be noted that we are strong advocates of its objectives and remain keen to complete our application.

We recognise, however that the realisation of such schemes is not without certain challenges, some of which have been mentioned in the consultation document.

Examples of this include the lengthy timescales involved, the relatively low take-up for CCAS from code sponsors (and as a result it is likely public awareness of the scheme and its benefits is also likely to be low) and the potential overlap with other existing schemes (again this is likely to be at least partially due to lack of consumer understanding of the benefits of CCAS).

While some may express concern with the strict criteria that is applied in order to be certified as a code sponsor, and in turn reason that a new CCAS would benefit from less stringent controls, our belief is that this would dilute the benefits to a material degree. We would not be in favour of this.

While entry requirements should not prove unwieldy or cumbersome, there must nonetheless be a significant body of evidence presented to support a code sponsor's application. This ensures that only legitimate and appropriate bodies are appointed, which in turn benefits not only other code sponsors based on the strength and reputation of the CCAS brand, but also all the associated businesses registered with these sponsors.

If the awareness of such schemes could be raised, and timescales for accreditation reduced, it would allow for the effective government endorsement of self-regulation within industries such as ours, where it is currently undertaken without this endorsement.

9) What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?

From our perspective, continuation of CCAS in some form or another is important. It validates the work of sectoral bodies that are already playing a role in self-regulating industries, and raises standards, which in turn increases consumer confidence.

A move to BSI would therefore be welcomed to a degree, particularly as there is little doubt that they would have the necessary experience and resource to design and accredit an analogous scheme in a timely and efficient manner.

It should be noted, however, that one of the great attractions of CCAS in its current form is the association with OFT (and thus government). It is not clear whether in this proposal BSI would administer the scheme but government would still endorse it. The consultation refers in point 3.6 to the importance of OFT approval being negated by potential lack of consumer awareness of the CCAS logo particularly where codes are voluntary. While that may be true in a strict sense, the OFT brand (and its role as a non ministerial government department) is well recognised and this alone adds great weight, and a great incentive to businesses, to the CCAS scheme.

We believe therefore that for the value of these schemes to be realised, the backing of either government or Trading Standards would be a pre-requisite, as this further increases the perceived credibility and reassurance offered by sectoral bodies that already have their own codes of practice in place. Without such endorsement, some bodies may consider their own code to be sufficient rather than seeking further approval.

Secondly it is not clear from the proposals in the consultation how bodies that were applying for, or had already achieved CCAS status, would feature in any new scheme. If the standards were to be transferred, then it might be logical to assume that the accreditations and progress would also be transferred. If this was not the case, or if the details of the code were significantly altered, then it may act as a disincentive for organisations that have already invested a significant amount of time in resource in initial application.

Furthermore, some sectoral bodies have structurally altered their scheme to comply with CCAS (such as making changes to their codes of practice) and are likely to find it difficult to then make further amendments to satisfy new criteria.

10) What characteristics would a Kitemark based code certification process need to meet industry requirements?

It is not immediately clear if BSI Kitemark have any service that is currently analogous to CCAS. While they could of course create such a framework based on their experience, it would first seem sensible to consider existing schemes, and whether these can be accredited through current approval channels (either with or without CCAS).

We recognise that the Kitemark standard enjoys high levels of consumer awareness which can only be positive for any CCAS scheme as mentioned previously. Nonetheless, it could be argued that the Kitemark standard is more strongly associated with safety rather than quality and standards. This may therefore require further education of the consumer, which could affect awareness and understanding of any CCAS scheme being transferred in the short to medium term.

If the decision was made to transfer CCAS to an alternative body such as BSI, our view would be that the current framework should provide a strong basis for any future scheme. Areas such as clarity of contracts, high standards of service, expedient and thorough complaint management and independent escalation of disputes act as remedies to the vast majority of consumer concerns or issues.

On this basis they must be considered mandatory elements of any new code, as while it is likely they also form part of the sectoral bodies voluntary codes (as they do with our own), they should feature in all schemes such is their importance.

In addition, schemes must be able to demonstrate an appropriate level of checks, balances and controls in how they operate. This prevents any allegations that such bodies are acting as industry advocates, or are behaving unreasonably or unfairly. Independence is an essential requirement to ensure consumer confidence, and it is vital that code sponsors are not only fair, but seen to be fair.

11) What is your view on extending the Primary Authority concept to code certification?

We would strongly support the involvement of Trading Standards as an alternative to the OFT in terms of code certification and approval.

As mentioned in the consultation document, there should be a sense of challenge in the application process to ensure high standards are consistently achieved. Furthermore, it would allow for one authority and the code sponsor to work closely and develop a greater understanding and appreciation of the code and its practical application in each industry.

By closing the divide between voluntary compliance and statutory enforcement, there is potential for greater intelligence sharing (for example, we produce benchmarking figures for our members, highlighting general complaint trends and outcomes within the furniture industry), joint responsibility for business education (as mentioned earlier) and also the opportunity to deal with minor infringements on behalf of Trading Standards through support and recommendation to code members.

In addition, industry members who do not yet comply with any voluntary code of practice may see this move as an incentive to do so, given businesses regular contact with Trading Standards and awareness of their role and objectives. From an economic, industry and consumer perspective, the more retailers that are conforming to an approved code of practice the better.

Consideration will of course need to be given to where appropriate resource from Trading Standards can be obtained, and also on the choice of relevant authority where there is a strong understanding of the code sponsor and how they operate. It is not clear how code sponsors would be assigned to authority and we would welcome the opportunity to discuss this proposal further. Moreover, based on our strong relations with Trading Standards, and the presence of a number of high profile national level retailers in our scheme, we would be pleased to act as a pathfinder with regards to this concept.

In summary, we would favour the existing scheme (or a very similar alternative) being overseen by Trading Standards through the Primary Authority principle. This would not only allow for the opportunity to further increase standards and consumer protection, but also to form closer working relations with the statutory enforcement body of consumer legislation.

This in turn may allow industry to be shaped and managed through a “same side of the table” approach, whereby the relevant code sponsor and Trading Standards could (in appropriate circumstances) work in conjunction where apparent breaches of the code or lack of compliance come to light.

Gemserv Ltd



27th September 2011

David Evans
Consumer and Competition Policy Directorate
3rd Floor
1 Victoria Street
London SW1H 0ET

Dear Mr Evans,

**Empowering and Protecting Consumers:
Consultation on institutional changes for provision of consumer information, advice,
education, advocacy and enforcement: June 2011**

Gemserv welcomes the opportunity to respond to the above consultation and is fully supportive of BIS's strategic objective to reduce the complexity of the consumer landscape.

Gemserv specialises in the development and management of efficient and effective industry-wide governance arrangements. Since October 2008, Gemserv has been the appointed Licensee of the Microgeneration Certification Scheme (MCS). MCS is the industry-led scheme, owned by the Secretary of State for Energy and Climate Change, that puts in place standards for small-scale, low and zero carbon generating technologies, and for the companies that install them.

Under MCS, the technical standards against which products and installation companies are certified are based on accepted international standards. Certification against those standards is carried out by Certification Bodies accredited by the United Kingdom Accreditation Service (UKAS) in line with EN45011.

A central feature of MCS is consumer protection. The microgeneration industry has chosen to require all MCS-certificated companies to be members of, and compliant with, an Office of Fair Trading approved Consumer Code of Conduct. The standards against which MCS installation companies are certificated state:

"The Contractor shall be a member of and, when dealing with domestic consumers, comply with a code of practice (consumer code), which is relevant to the scope of their business in the microgeneration sector and which is approved by the Office of Fair Trading (OFT). In the absence

of any approved codes the MCS will accept codes that have completed stage 1 of the OFT approval process (e.g. REAL Code).”

A key part of Gemserv’s role as the MCS Licensee is to ensure that the Scheme, including the consumer protection aspect, is fit-for-purpose. Gemserv works closely with REAL Assurance to ensure a co-ordinated approach to protection and enforcement. Having a recognised accreditation behind the REAL Assurance Code gives the consumer protection aspect of MCS credibility with both the consumer and installation companies. This mirrors the way the Scheme’s technical standards derive credibility from conformity to internationally agreed standards.

Gemserv’s role also involves working with local Trading Standards officers in enforcement actions that go beyond what can be achieved within the bounds of the certification Scheme.

Gemserv is responding to this consultation based on its experiences of consumer protection and enforcement through its role as the MCS Licensee.

This response focuses on those consultation questions most directly relevant to that experience and role, specifically Chapter 3 – ‘Consumer Code Approvals’. The answers to Questions 6-11 of that Chapter are attached.

Should you have any further questions, please do not hesitate to contact me on 0207 090 1000 or brendan.mcgarry@gemserv.com

Yours sincerely



Brendan McGarry | Delivery Manager - Environment

Tel: +44 (0)20 7090 1000

Email: brendan.mcgarry@gemserv.com

www.gemserv.com

Chapter 3: Consumer Code Approvals

Question 6: What are the best options for current and prospective CCAS members to consider in the event that the Government's proposed consumer and competition landscape proposals are adopted?

In the case of the micro-generation sector, from which perspective this response is written, MCS is aware of several organisations that are interested in providing CCAS-accredited codes, and so in the absence of this function, an alternative would need to be either identified or developed.

While there are several options open, it would be of enormous benefit to MCS as a scheme, and to those who have already signed up to the REAL code, to continue to be able to look to an independently-accredited consumer protection scheme. It is independent accreditation and Government endorsement that lends the required legitimacy, and ultimately aids enforcement of the Code.

In the event of the proposals being adopted, Gemserv would encourage current and prospective CCAS members in the microgeneration sector to collaborate in identifying alternative common standards or accreditation, but the preferred option remains a system of independent, Government-backed accreditation.

Question 7: Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of CCAS with effective alternative systems of accreditation?

Gemserv concurs with BIS that it is not clear that the full value of the OFT CCAS scheme would be recreated by the commercial and voluntary sector and by the existing local authority network in the event of CCAS being discontinued.

Gemserv, in its role as MCS Licensee, would play a central part in MCS's response to the winding down of CCAS. Alternative systems of accreditation might be identified. Alternatively, MCS might develop its own consumer protection standard, to be enforced by the existing UKAS-accredited MCS Certification Bodies.

However, this would not necessarily fit with the core competencies of the Scheme's technical experts and Certification Bodies. As important to MCS as consumer protection is, the Scheme

would not claim an 'in-house' expertise in the area. Any new standard would likely in practice be based upon current OFT CCAS guidelines. This raises the question of how best practice can continue in future to be incorporated, if CCAS is not in a position to co-ordinate into its accreditation the lessons learned across the various codes it has accredited.

The operation of a consumer protection scheme is not one that would fall within the traditionally recognised skill-set of all the UKAS-accredited MCS certification bodies, each of whom could at that stage be required to play a role in enforcing the new scheme / standard. This would require extensions to the scope of their accreditations, and potentially require them to develop new systems and processes for providing this service. This could prove cost-ineffective for the consumer, who ultimately bears the costs of maintaining such schemes.

Question 8: What are the lessons learned from the operation of CCAS which may help in establishing (or revising) voluntary schemes in the future?

Gemserv has limited direct experience of the operation of CCAS. However, we would comment that while within the consultation, BIS notes some participants having expressed frustration with the 'all or nothing' approach to accreditation, MCS has in fact been able to work with CCAS's multi-stage approach by recognising codes that had reached Stage 1 of the approval process.

Question 9: What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?

In the absence of the OFT's current CCAS role, Gemserv supports the principle of agreeing standards at sectoral level. It could be that BSI develop a general standard against which codes are measured. However, moving specific codes to BSI might not be the most efficient governance method.

If BSI were to be the route, it would need to be done in a manner sensitive to the fact that, as mentioned in the consultation, BSI is also an accredited Certification Body for MCS, operating in a competitive marketplace. It would be important to ensure no conflict between code oversight and enforcement activities.

It might be that if the code for microgeneration is itself to be made a standard, that is more appropriately done within MCS than BSI.

Question 10: What characteristics would a Kitemark® based code certification process need to have to meet industry requirements?

Gemserv supports the principle of aiming for brand recognition amongst consumers, as that is at the heart of the quality scheme we operate for MCS. A brand with recognition levels like those of Kitemark could potentially add value to any code.

However, the recognition of consumer codes is not traditionally core to the Kitemark role. Further, the CCAS concept involves recognition of trade bodies, which would not necessarily fit with the Kitemark approach. Therefore if Kitemark is to be the chosen route, it would be important that a tailored approach is taken, recognising the different type of challenge that consumer code certification would bring.

Question 11: What is your view on extending the Primary Authority concept to code certification?

Like BIS, Gemserv supports national recognition and standardisation of codes, although within MCS we are increasingly beginning to look at tailored solutions within the devolved administrations, where required.

Gemserv has worked with Trading Standards officers across Britain to deal with specific enforcement actions beyond what the MCS certification process can achieve. Our experience of Trading Standards has been unfailingly positive. However, the prospect of better national co-ordination is extremely welcome, as it will aid both Trading Standards and Gemserv / MCS to be more effective.

Extensions to the Primary Authority role may bring benefits for the new post-CCAS consumer landscape, but we would be keen to see the details before commenting.

Glasgow CC

*Response by Glasgow City Council to the Consultation entitled
"Empowering and Protecting Consumers - Consultation on institutional changes for provision of
consumer information, advice, education, advocacy and enforcement"*

QUESTION 1. How do you think the provision of consumer information to consumers can be improved upon?

Consumers should be able to get a range of consumer information and advice. This advice should be available face to face, as well as via the telephone and online. The internet provides a valuable resource of information to empower consumers to take action or seek information. However, some consumers, particularly the more vulnerable, are often happier speaking to someone face to face and this service should still be available in the new model, either directly via their Trading Standards Service or through specific local partnership arrangements with local Citizens Advice Bureaux.

It is important that the high level of consumer advice is maintained. Pre-shopping advice for consumers, such as the product and business reviews that Which and other bodies provide can be helpful. As can the national advice campaigns on the television, in the press and via various social media networks. There should be continued engagement through these information provisions.

Each individual enquiry should be dealt with by an officer who provides bespoke advice and guidance relevant to the complaint. We do not believe that 'pick-lists' could be used to answer queries effectively as many complaints have the potential to be complex in their nature. We would not support any reduction in the standards of advice from that currently provided.

We believe that it is vital that the Trading Standards Service should continue to be involved in the direct provision of consumer advice and intervention in order to support consumers as well as provide the basis for a more effective enforcement and business advice service. There are clear operational links between the provision of advice and enforcement, both through the criminal justice system and the civil courts, in relation to the intelligence that Trading Standards Service require to enable them to effectively deal with unfair trading.

QUESTION 2. Do you agree that the OFT's consumer information role should be transferred to Citizens Advice?

It is accepted that the OFT's consumer information role will be transferred to Citizens Advice, providing Citizens Advice works with Trading Standards Service both nationally and locally in the provision of this consumer information service, as the OFT has previously done. However, we are conscious that where Citizens Advice Bureaux exist they are under intense funding pressures. In some areas of Scotland there are no Citizens Advice Bureaux. Therefore some of the envisaged improvements at local level may be difficult to achieve and gaps in provision may still exist.

However, whatever the final arrangements may be this emphasises the crucial importance of developing close working relationships between local Bureaux and Trading Standards Service.

At a national level, heads of trading standards should be represented by SCOTSS, ACTSO and WHoTS on a governance board for the replacement for Consumer Direct services. We would also expect SCOTSS to be represented in any Scottish governance arrangement.

The referrals and Consumer Direct data provide an invaluable evidence base for the Trading Standards Service. Access to this information must continue and be improved where possible. It currently provides an efficient and effective reporting line that enables Trading Standards Services to identify problem traders, consumer detriment, scams and any other problems that may require them to take enforcement action or provide advice to businesses or consumers.

*Response by Glasgow City Council to the Consultation entitled
"Empowering and Protecting Consumers - Consultation on institutional changes for provision of
consumer information, advice, education, advocacy and enforcement"*

Trading Standards Services should be able to continue to receive and act on timely referrals from Consumer Direct and there should be no reduction in the quality and quantity of information they currently receive from Consumer Direct. Trading Standards Services should be able to access the data from a single source of information.

QUESTION 3. Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service?

It makes sense that the 'Extra Help Unit' for vulnerable consumers should continue under the new arrangements and that the unit and associated finance should be transferred to Citizens Advice, provided that other related advice services are transferred.

QUESTION 4. Do you agree that the OFT's consumer education roles should be transferred to Citizen's Advice? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?

It is accepted that the Government's proposal that the OFT's publicly-funded consumer education role at national level will be transferred to Citizens Advice, if other related advice services are transferred. We believe that Citizens Advice will need to work closely with the Trading Standards community to ensure that education provision is well coordinated, including the distribution of educational materials and sharing of best practice.

Areas for improvement could include financial literacy, helping consumers complain, educating them on what consumer rights exist and what to do with faulty goods. The OFT has done a lot of good national work in relation to scams, code approval schemes, etc and it will be important to ensure that any campaigns that Citizens Advice deliver have a high media profile, where necessary, to get the messages out to a wide audience. TSI and its Consumer Education Liaison Group (CELG) are already active in this area.

As the UK Government notes, consumer education activities for the public at a local level are usually carried out by Trading Standards Services, sometimes using materials developed by the OFT. Consumer education and advice are both part of a system that benefits consumers and businesses - making markets work better. Trading Standards Services and Citizens Advice should coordinate, where possible, national road shows, national newspaper campaigns and national schools programmes, in the same way that the OFT and Trading Standards Services currently coordinate road shows, press releases etc.

The primary role for overall co-ordination probably sits with Citizens Advice if they are given the key national responsibility for this work area. However they will need to link closely with Trading Standards Services to ensure an effective link between local, regional and national consumer education activities in the most appropriate way.

QUESTION 5. Do you agree that the proposed Trading Standards Policy Board and the TSI should coordinate and support business-facing educational activities?

At a local level, most business facing educational activity is carried out face to face with local businesses by Trading Standards Service staff or by localised training initiatives etc. Nationally there are several existing website resources including, TS Broadcast and Everything Regulation When It's Needed (ERWIN) and Business-Gateway. TSI's role to date has been to provide very valuable educational materials for the Trading Standards Service to use and also they provide business training such as their fair trading award. It will be important that at a strategic level these are joined up as appropriate.

*Response by Glasgow City Council to the Consultation entitled
"Empowering and Protecting Consumers - Consultation on institutional changes for provision of
consumer information, advice, education, advocacy and enforcement"*

QUESTION 6. What are the best options for current and prospective CCAS members to consider in the event that the Government's proposed consumer and competition landscape proposals are adopted?

QUESTION 7. Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of CCAS with effective alternative systems of accreditation?

QUESTION 8. What are the lessons learned from the operation of CCAS which may help in establishing (or revising) voluntary schemes in the future?

QUESTION 9. What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?

Question 10. What characteristics would a "kitemark" based code certification process need to have to meet industry requirements?

Question 11. What is your view on extending the Primary Authority concept to code certification?

Response to questions 6 to 11

The concept of having a mechanism to separate codes that meet certain key requirements from others is quite right, recent history has shown us that it is not in high demand from code owners and as such its impact has been limited.

If a scheme is to continue, there must be an opportunity for Trading Standards Services to feed into the application process as they have done in the existing OFT Consumer Codes Approval Scheme, so that any concerns or issues can be raised with those seeking code approval.

Many local authority schemes already give consumers a method for finding trustworthy businesses via various Local Authority Assured Trader Schemes. These schemes have been very successful and well received by local consumers and businesses. They are associated with a much stronger brand than the CCAS model i.e. Trading Standards itself. There are great opportunities to build on these existing Local Authority Assured Trader Schemes when developing any new code certification, however, this would need to be adequately funded, supported by the Government and nationally recognised.

We would suggest that if the scheme continued that TSI may be an appropriate organisation that could have a role in administering and operating the CCAS.

The OFT process for approving codes has proved to be a very long and relatively labour-intensive, although it has been very stringent with rigorous requirements. Those CCAS approved codes have been very valuable but it is essential that whatever new scheme is developed the process for code approval should be completed in a timelier manner.

QUESTION 12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

QUESTION 13. Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?

*Response by Glasgow City Council to the Consultation entitled
"Empowering and Protecting Consumers - Consultation on institutional changes for provision of
consumer information, advice, education, advocacy and enforcement"*

QUESTION 14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?

QUESTION 15. What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

Response questions 12 to 15

Consumer advocacy is an important part of the modern market however anyone taking on the coordinated, publicly-funded, consumer advocacy function needs to have real teeth to be able to take on cases that would not otherwise be taken.

Consumer Focus Scotland has contributed to the following consumer advocacy campaigns:

- Consumer Focus Scotland campaigned for many years for the introduction of the Home Report in Scotland, and was closely involved in its implementation, leading to greater certainty and better upfront information for those buying or selling a home in Scotland.
- Consumer Focus Scotland called repeatedly for greater choice and protections for people who use legal services, to increase their access to justice. The Legal Services (Scotland) Act 2010, which opens up the legal services market by removing restrictions on ownership of legal firms, paves the way for the development of a legal services market which better meets the needs of the public.

On that basis and the interaction between Consumer Focus Scotland and the Scottish Government and the differences in the landscape in Scotland make it essential that Consumer Focus Scotland be retained rather than transferring consumer advocacy to Citizens Advice.

QUESTION 16. What are your views on these options for the transfer of information gathering powers? Which is preferable and why? Are there any other options for information-gathering powers?

In view of the response to question 15 it is assumed that Consumer Focus Scotland should retain its existing information gathering powers and therefore make no further comment on this question.

QUESTION 17. What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?

We believe this seems sensible, and will enable Citizens Advice to sort complaints on receipt and to direct them down particular redress routes rather than for general advice.

QUESTION 18. Do you support the transfer of the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland and agree that as a result Consumer Focus Post Northern Ireland be abolished?

QUESTION 19. Do you agree that the Postal Services Redress Scheme should continue to apply in Northern Ireland to ensure that Northern Irish consumers retain the same access to redress as consumers elsewhere in the United Kingdom?

Questions 18 and 19 are matters for those who represent Northern Ireland to comment on.

*Response by Glasgow City Council to the Consultation entitled
"Empowering and Protecting Consumers - Consultation on institutional changes for provision of
consumer information, advice, education, advocacy and enforcement"*

QUESTION 20. Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?

In principle we support the transfer of the majority of the OFT's consumer enforcement functions to trading standards with some functions (for cases involving structural market problems remaining with the CMA. Rather than the governance being dealt with by the TSPB, we would support the Society of Chief Officers of Trading Standards in Scotland (SCOTSS) proposal for an alternative option for Scotland (see question 21). However, it is with the very clear proviso that adequate funding has to accompany this alternative option for reform in Scotland.

As well as helping local consumers and businesses, TRADING STANDARDS Services already do consumer protection work which has a regional and/or national impact. Numerous examples can be provided to demonstrate this. For example Trading Standards Services provide Home Authority / Primary Authority support for businesses; deal with e-crime, internet scams and national pricing rip-offs; work at ports and airports; deal with rogue traders who act outside their local council areas targeting some of the most vulnerable consumers; and help to support legitimate businesses, who comply with the law but face unfair competition from those who do not).

QUESTION 21. In relation to Option 3, do you agree with the Government's principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

SCOTSS would like to propose an alternative solution to Option 3 for Scotland. This could involve the development of a '**Scottish Reaction Team**' to deal with the majority of the OFT's national consumer enforcement functions in Scotland, whilst retaining some functions (for cases involving structural market problems) with the CMA. This 'Scottish Reaction Team', would have a team of skilled trading standards staff as well as other relevant experts, who would operate as a 'centre of excellence' across Scotland.

Political oversight and scrutiny

The Scottish Reaction Team could be delivered through a suitable governance structure that would have political oversight. The operational oversight would be provided through an executive board of SCOTSS. This would ensure that the Team had the ability to act across local authority boundaries.

As with Option 3 it would provide a greater influence for Scottish the Trading Standards Service over regional and national work. It would provide resilience for existing local and regional infrastructures. There would also be the opportunity for transformational change within Scottish Trading Standards Service in terms of leadership and influence.

There would not be the risk of undertaking any cases requiring expertise in structural market reform studies, as these functions would remain with CMA

Governance

As noted, the consultation paper suggests that the UK Government is keen for the Trading Standards Service to provide the delivery mechanism and governance structure for all future regional and national consumer protection work moving from the current landscape to a new consumer landscape (see Figure 2).

*Response by Glasgow City Council to the Consultation entitled
 "Empowering and Protecting Consumers - Consultation on institutional changes for provision of
 consumer information, advice, education, advocacy and enforcement"*

Figure 2: Proposed Future Consumer Landscape

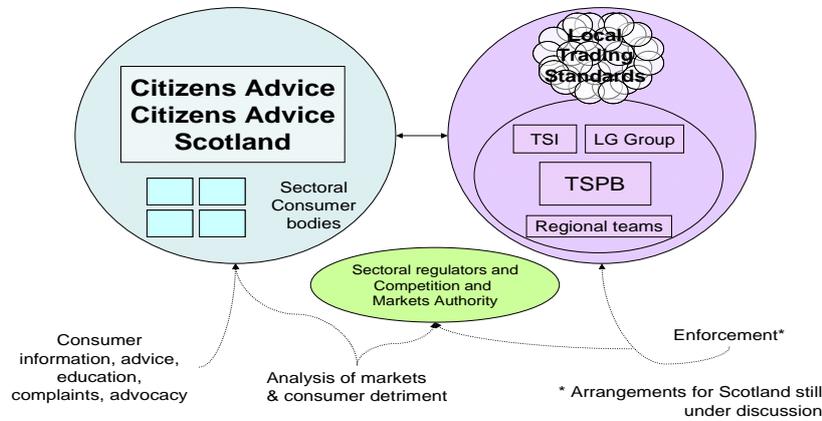
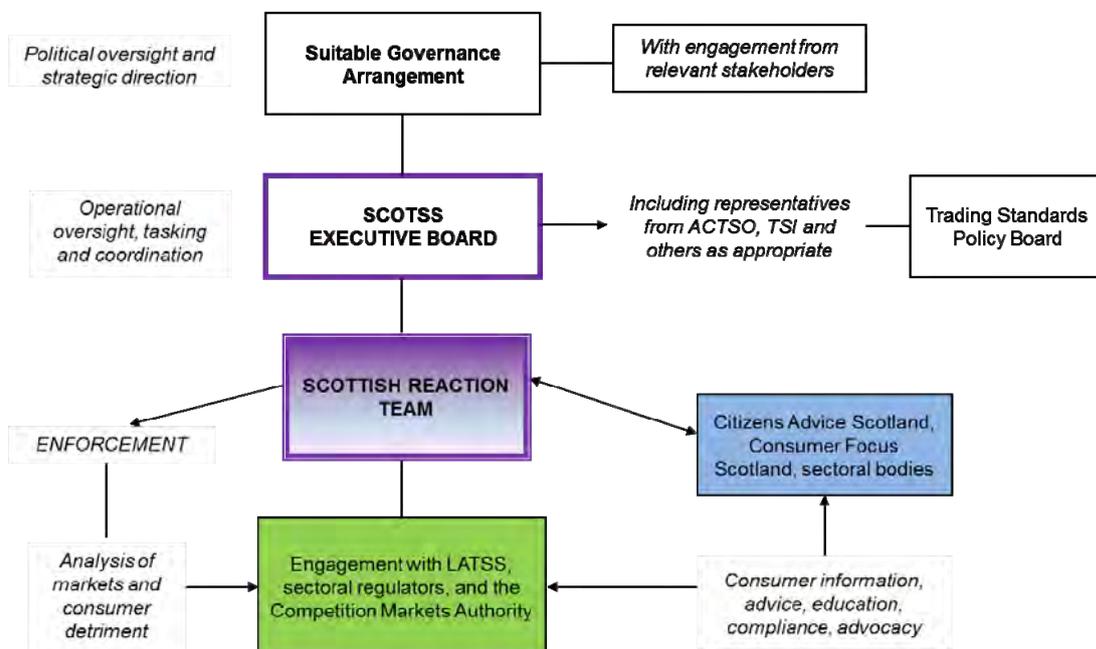


Figure 2 makes it very clear that arrangements for Scotland are still under discussion. The consultation paper states that *"In Scotland, BIS will work with COSLA, SCOTSS, the Local Government Improvement Service and the Scottish Government to identify suitable governance and operational models. This work is still ongoing to develop models for the delivery of these functions in Scotland."*

Figure 3 shows how the alternative solution for Scotland could operate

Figure 3: Scottish Alternative Solution



It is crucial for there to be an effective governance structure. At this time however, SCOTSS are not in a position to identify the detailed membership of these arrangements. However, if this alternative model is agreed for Scotland, then the governance role of SCOTSS will be vital.

*Response by Glasgow City Council to the Consultation entitled
"Empowering and Protecting Consumers - Consultation on institutional changes for provision of
consumer information, advice, education, advocacy and enforcement"*

The report of the Scottish Working Group on UK Reform of Consumer and Enforcement Bodies (final) says on implementing the UK Government's new model in Scotland that *"COSLA remains committed to supporting local service delivery with arrangements that allow economies of skill or scale to be captured. As such, subject to political consideration and approval within COSLA, the Improvement Service will, over the coming months, work with BIS and other stakeholders to fully develop a system which builds on what locally, we already have in place. This should mitigate the need for large start-up costs allowing any additional funding to be used to benefit Scottish consumers and business. As a starter it would seem appropriate to work through each of the functions which are proposed for transfer, identify any which are, in practice, already being delivered by local Trading Standards and those which will require some sort of supra-local (or national) arrangements to be put in place. Services which are better delivered at a national level will be delivered as a shared local government service, accountable through COSLA to all local authorities. COSLA already has this approach developed within other areas e.g. Business Gateway, myjobscotland. This will necessarily also involve ensuring delivery arrangements balance local flexibility with support for consistent service provision within Scotland and the UK as a whole."*

The Scottish Reaction Team should be given centralised authorisations to act in all Scottish local authority areas. Resources would be available to cover the cost of the staff, accommodation and equipment, and investigations.

Delivery mechanisms

At an operational level, Scottish Heads of Trading Standards would be responsible for the operational governance and oversight of the project. SCOTSS could provide an executive management board with additional representatives from BIS, ACTSO, and TSI.

We envisage that the Scottish Reaction Team would be able to deliver effective enforcement against large businesses tempted to break the law.

The SCOTSS Executive Board would direct the work currently done nationally in Scotland and be responsible for allocating government funding to the Scottish Reaction Team for specific activities to deliver many of the functions currently provided by the OFT. This would be led by effective intelligence analysis. It is anticipated that, if required, service level agreements could be signed between the SCOTSS Executive Board and individual Scottish local authorities to undertake work. If this is the case then there would be contractual arrangements to require an authority to fulfil any 'national' role.

The SCOTSS Executive Board would need a chairman, who would play a pivotal role. This could be the existing Chair of SCOTSS or the person could be elected from its members. The Chair would need to have significant experience of running Trading Standards Services. There would also need to be a small secretariat, not simply to facilitate the meetings but also to ensure the smooth running of the delivery of services, discussion with government, lobbying etc. Decisions will need to be made as to who should deliver the secretarial function for the SCOTSS Executive Board.

As with the TSPB in England and Wales, effective co-ordination across Scotland and the UK will be essential. Once the SCOTSS Executive Board has agreed that work is allocated to the Scottish Reaction Team then it is essential that no Trading Standards Service in Scotland or in England or Wales should undermine that decision. If there are any concerns these must be expressed by their regional/national trading standards representative on the SCOTSS Executive Board or TSPB. They should not express their concerns separately via any Government departments or agencies as this would undermine the whole governance and operational arrangements.

*Response by Glasgow City Council to the Consultation entitled
"Empowering and Protecting Consumers - Consultation on institutional changes for provision of
consumer information, advice, education, advocacy and enforcement"*

There should also be continued links at the Head of Service level between the agreed governance mechanisms in England, Wales and Scotland. In order to ensure that there is a consistency of approach, one suggestion is that a member of SCOTSS and ACTSO should sit on each other's boards.

There would need to be links between the CMA work on structural market problems and individual breaches, especially in dynamic markets. The SCOTSS Executive Board could consider at each meeting, intelligence/information from the CMA (to reflect structural market problems) and Citizens Advice/Consumer Focus Scotland/Which (on consumer detriment problems) to enable the Board to set national enforcement priorities.

There could be complex issues relating to employment and contracting that may need to be worked out but ACTSO and SCOTSS have received assurances directly from the BIS Minister that they view this as a partnership, not an outsourcing exercise, and will work through the issues.

The detail of any delivery mechanisms will depend entirely on final decisions as to what functions are to be delivered by trading standards under the governance of SCOTSS Executive Board. It will also be dependent on adequate funding accompanying this alternative option for reform in Scotland.

SCOTSS believe that a key strand of the SCOTSS Executive Board must be to commission a strategic assessment in order to decide where the priorities lie for tackling cross boundary detriment. This was in the past provided by the OFT. This will provide the basis of evidence to help priorities regionally and nationally delivered work and will also help Trading Standards Services with their local prioritisation of work.

In terms of the current scambuster and illegal money lending teams, SCOTSS would expect these to continue using the same delivery mechanisms but under the governance of the SCOTSS Executive Board.

We understand that, to date, all cross-boundary referrals that have come to the OFT via the Consumer Protection Co-operation mechanism, have been passed by OFT to be dealt with by Trading Standards Services. If a CPC referral needed some form of national response then the SCOTSS Executive Board could commission this.

Financial Oversight

Clear financial oversight and auditing is crucial. A decision will have to be taken as to who would hold the funding and provide the necessary accounting and audit services to ensure total transparency and probity. All decisions about the spending of any money would come directly from the SCOTSS Executive Board in accordance with its agreed terms of reference and accountability structures.

Indemnity Fund

It will be essential that the resources are available to cover all the costs of the investigations and legal liabilities are underwritten. There must be an indemnity fund in relation to civil cases, particularly those at the Court of Session. In Scotland the indemnity fund would not normally be required for criminal cases, as these are pursued by the Lord Advocate, Crown Office.

QUESTION 22. Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards? If so, would one of the JEB models be the best solution? Which one and why?

*Response by Glasgow City Council to the Consultation entitled
"Empowering and Protecting Consumers - Consultation on institutional changes for provision of
consumer information, advice, education, advocacy and enforcement"*

QUESTION 23. In relation to the various JEB models, how would you ensure effective Trading Standards participation in the JEB? Do you think that this option would deliver integration of enforcement across local, regional and national levels? Should other organisations be involved in the JEB, either as members or as participants in discussions? Would retention of such unrestricted consumer enforcement powers and responsibilities affect the CMA's singularity of purpose and distract it from its core competition remit?

QUESTION 24. How can your preferred new model best work with businesses?

Response to questions 22 to 24.

SCOTSS would not prefer to maintain the status quo in terms of powers and responsibility as this would be provide additional bureaucracy and costs associated with a new organisation but few clear benefits.

As the Government identifies in the consultation paper there would not be the resources to create national and regional enforcement infrastructure in Trading Standards Services. The JEB would also not be controlled by heads of trading standards and could not be held accountable in the same way.

SCOTSS believes that this option would make it far more difficult to achieve the leadership role that the Government had hoped to create and without investment in Trading Standards infrastructure, the ability of the network to come together effectively in a national body such as JEB would also be much less certain. We also feel that there would continue to be far more confusion and overlap of powers and responsibility. Without this clarity of responsibility as well as control of substantial, national enforcement resources within the Trading Standards network, it would be much harder to engage Trading Standards Services in cross-boundary enforcement in any integrated national system.

QUESTION 25. Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

QUESTION 26. In an Option 3-based model, should this enforcement role be subject to procedural limitations?

QUESTION 27. Do you agree that the CMA should enjoy significant discretion over when a market has structural problems, such as to give rise to its consumer enforcement powers?

QUESTION 28. Do you agree that the CMA should retain responsibility for mixed market studies where there may be competition and consumer issues (supply and demand side market failures) present on the relevant market?

QUESTION 29. Do you agree that in an Option 3-based model, the Citizens Advice service should in future be responsible for pure consumer detriment analysis and that the CMA should not perform pure consumer market studies? In such a case, do you agree that the CMA should stop performing market studies once it identifies that there is no structural problem in such markets and do you think there should be a duty on the Trading Standards Policy Board to prioritise cases referred by the CMA?

Response to questions 25 to 29

There are benefits for CMA to retain a consumer enforcement role only in those cases where a potential breach of consumer law is connected to a structural market problem (e.g. the bank charges type cases). Where there are consumer cases that have a competition implication, we understand that the CMA will want to

*Response by Glasgow City Council to the Consultation entitled
"Empowering and Protecting Consumers - Consultation on institutional changes for provision of
consumer information, advice, education, advocacy and enforcement"*

retain the resources to deal with cases that reflect structural market problems but we remain concerned that this may reduce the resources for Trading Standards Services to deliver the new consumer landscape under the proposals.

There must be effective communication and a good working relationship between the Scottish Reaction Team, TSPB and CMA to ensure that intelligence can be shared and assurance received that cases can be dealt with appropriately.

The Scottish Reaction Team, TSPB and the CMA should follow a National Intelligence Model (NIM) or similar approach to take an intelligence-led, problem solving approach to consumer protection issues. NIM promotes partnership working and uses the management of information and intelligence to operate at three levels of work; level 1 – locally, level 2 – regionally and level 3 nationally/internationally. This approach can help promote consistent enforcement and effective intelligence sharing between the Trading Standards Services and the CMA.

Consideration of intelligence from CMA, Consumer Focus Scotland and Citizens Advice on consumer detriment will be a vital element of the Scottish Reaction Team's future work on setting enforcement priorities and this could be a standing item for discussion at each Scottish Reaction Team meeting. However, we do not believe that there should be a duty on the Scottish Reaction Team to automatically take on cases referred to them by the CMA.

QUESTION 30. Do you agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies in the proposed new landscape?

QUESTION 31. Do you agree that it would be helpful to have some resource that required joint agreement between the CMA, TSPB and consumer advocacy bodies for its release, to be used to investigate or address consumer and market issues that would otherwise risk an enforcement or advocacy gap? If so, at what level should such funds be set and how best should they be administered?

Response to questions 30 and 31

It is agreed that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies.

It would be helpful to have some resource that required joint agreement between the CMA, SCOTSS Executive Board, TSPB and the consumer advocacy bodies for its release to be used to investigate or address consumer and market issues that could risk an enforcement or advocacy gap. The exact mechanism required would depend on the amount of funds allocated for this and who "held" the funds. However we would want to minimise the bureaucracy associated with any such scheme. Whilst SCOTSS welcomed the "Fighting Fund" that BIS made available to support Trading Standards Services enforcement activity, we felt that the bureaucracy associated with the application and decision process was disproportionate to the funds available.

QUESTION 32. Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not, how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?

We do not believe that branding is as important as the consultation document suggests. We believe that the threat of enforcement can help to deter non-compliance. We would envisage that the Scottish Reaction Team would deal with this work.

*Response by Glasgow City Council to the Consultation entitled
"Empowering and Protecting Consumers - Consultation on institutional changes for provision of
consumer information, advice, education, advocacy and enforcement"*

The current consultation does not address the issue as to how those rogue traders and businesses who are based overseas will be dealt with.

QUESTION 33. Do you agree the TSI would be the appropriate home for the OFT's professional guidance and training functions in the event of creation of a new single Competition and Markets Agency?

TSI have considerable experience of training staff in the trading standards community and producing professional guidance. TSI could be the appropriate home for the OFT's professional guidance and training functions. However, we need to find a model that ensures trading standards professionals have access to good quality low cost training and materials.

QUESTION 34. Do you agree that the TSI is the most appropriate home for the OFT's international liaison and general policy functions in the event that the CMA has only a limited consumer enforcement role?

We are aware of TSI's strong role and expertise in relation to European and international work in areas such as food and product safety and they could undertake this work. Ultimately this will depend on what European and international representation the UK Government want and the amount of resources they wish to have devoted to it. For example if BIS already attend a forum or group, as the UK representative, then it may not be necessary for a Scottish Reaction Team / TSPB nominated representative to attend as well. This would avoid duplication of effort and reduce costs to the UK.

Ultimately decisions will have to be made once we are clear what functions are being transferred and what the Government's expectations are in this area.

QUESTION 35. Do you think the requirement for 'TRADING STANDARDS SERVICE' and other designated bodies' (under Part 8 of the Enterprise Act 2002) court orders to be directed by a central body needs to be retained in the new consumer enforcement model and if so, why?

We do not believe that there will be any difficulties if the requirement for Trading Standards Services and other designated bodies (under Part 8 of the Enterprise Act) is removed. This requirement was neither necessary nor helpful to enforcement or compliance.

If there are any concerns regarding the possibility of businesses being subjected to multiple interventions for the same issue we believe that these problems could be resolved by use of a centralised database to record the information, such as the Consumer Regulation Website (CRW).

QUESTION 36. Do you think that responsibility for chairing the consumer concurrencies group should transfer to Trading Standards Policy Board or TSI or to the CMA and why?

It may be helpful for a review to take place to better understand the full work of the consumer concurrencies group before proposing who should chair the group.

QUESTION 37. Do you agree that the current supercomplaints system to the OFT should be retained in respect of the CMA if the planned changes in the landscape go ahead?

*Response by Glasgow City Council to the Consultation entitled
"Empowering and Protecting Consumers - Consultation on institutional changes for provision of
consumer information, advice, education, advocacy and enforcement"*

Question 38. Do you think that the supercomplaints process should be extended to require the Trading Standards Policy Board to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?

Response to questions 37 and 38

These proposals seem sensible, however consideration would need to be given to whomever is the most appropriate body to respond to the supercomplaint.

QUESTION 39. Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?

This would be dealt with by the Scottish Reaction Team in Scotland.

QUESTION 40. Do you agree that the proposed changes to the consumer landscape should go ahead in April 2013 regardless of whether the CMA is created by then or not? If not, why not?

It is critical that the timing of any of the proposed changes are matched to ensure effective service delivery.

Gloucestershire CCTS*

Empowering and Protecting Consumers

Consultation response from Gloucestershire Trading Standards Service.

Gloucestershire Trading Standards Service generally agrees with the response made by ACTSO regarding this consultation. **In addition, however, we would make the following comments.**

Chapter 2

Q2

It is difficult to comment when we don't know what the infrastructure and training is in place for the CAB operating model for providing advice. We are worried that there will be lack of recognition of the problems which should be passed to trading standards services.

Local CABS are themselves under budgetary constraints. It is unclear as to whether there will be sufficient resource available to maintain their current level of service.

Chapter 4

Q12

With respect to combining of advocacy schemes; we have difficulty with this if it means that there will be a 'generalist' advocate rather than just bringing the specialist advocates under one roof.

Q14

It is difficult to comment without the detail. Any advocate needs to have real teeth and take on cases that would not have been pursued previously. There needs to be a proper structure in place so that people know where to go to and have someone from a particular sector to help them. We cannot see that current CAB local structure will allow this. CAB may collect together an overview of what's happening in a sector but we are not sure if CAB will be able to help individuals other than providing general advice.

Chapter 5

Q21

Any TSPB needs to be independent of ACTSO. We would expect the people involved in the TSPB to be trading standards professionals who understand the issues and are able to act quickly and decisively.

Q30-31

We are concerned as to how complex enquiries with overlapping legislative issues will be dealt with if they do not fit into discreet pots of funding.

Q 36

We would question how the intelligence is to be shared (a common database?) and whether every enforcement action will be registered. There needs to be some coordinating role for the collation of previous convictions for LATS convictions.

Q39

The service is of the opinion that the OFTs estate agency and related anti-money laundering functions would sit better with a regional team than with a single trading standards authority.

Hampshire CCTS*

BIS Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement.

Response by Hampshire County Council

Consultation Question	Response
1	<p>Provision of consumer information can be improved by:</p> <ul style="list-style-type: none"> • Disengaging Consumer Direct from the DrectGov website and re-establishing it as a free-standing brand. Then developing the information content to enhance advice provision for consumers (perhaps Which? would be willing to assist with this?). • Rationalising the number of outlets from which consumers can glean information (Which?; local authorities; TSI; sectoral regulators; trade associations etc etc). <p>We note there is no provision for comments on the proposal to transfer the functions of Consumer Direct to CAB. We wish to record our concerns about the implications of the CAB's announced intention to provide part of this service through its local Bureaux.</p> <p>Our concerns are twofold: (1) local centres are completely autonomous and intensely independent and (2) local Bureaux guard information passed to them by their clients as a Doctor would patient records. We are therefore very worried that the vital flow of intelligence from Consumer Direct to LATSS which provides a key guide to LATSS work, will be in jeopardy if Bureaux are unable (for whatever reason) to transmit this intelligence to LATSS.</p>
2	<p>In principle we support the transfer of OFT's information role to CAB. However, we are concerned at the generally <i>local</i> focus of Bureaux and that OFT's grip on national issues (and the need for education which flows from them) may be lost.</p> <p>We would like to see the adoption of the concept of an account manager to deal with trading standards liaison issues within CAB.</p> <p>We also wish to emphasise the vital nature of the intelligence data currently produced for LATSS by the Consumer Direct database in leading work in trading standards enforcement. Any diminution of</p>

	<p>this provision, post transfer to CAB of Consumer Direct, would be disastrous.</p>
3	<p>Yes, though we think it is important CAB maintains strong links with local authority Adult Services departments over the use of this fund.</p>
4	<p>See our answer to Q2. We believe education should be focused on the most vulnerable groups, namely the elderly, children and young people (NEETS in particular). Educating a new generation to be confident consumers should be a key aim of this aspect of consumer protection. Again our key concern is that a <i>locally</i> focussed CAB will be unable to deliver a national programme of consumer education. Surely there is a key role here for the Department for Education to embed consumer education as a key life skill into the national curriculum?</p>
5	<p>While we agree with the TSPB and TSI playing a role in business education, it is important to recognise that the local delivery of such education is most likely to be done by local authority Trading Standards departments who already foster close links with local businesses and provide business advice and training where appropriate.</p>
6	<p>While robust, well-written codes of practice have a role to play in the consumer protection landscape, the level of protection offered is dependent not on the code, but on whether specific businesses comply with it. We would rather see an enhanced role for local authority approved business schemes such as the trusted Buy With Confidence scheme which already covers the south of the country with over 2,500 members. Membership of such schemes (with independent vetting by Trading Standards) provides more reassurance to consumers than an untested claim by a business of compliance with a code.</p> <p>We remain concerned who will fill the role currently undertaken by OFT in producing advice to businesses on consumer legislation and of the potential for lack of consistent advice in future if this is not addressed.</p>
7	<p>We do not have any specific view with regards to the proposal to wind down the Consumer Codes Approval Service (CCAS), but we are of the view that any replacement must have the benefits of the CCAS and none of the negatives. The concept of CCAS was a good one, yet we note that only 10 codes have been approved in 10 years with a further 10 at various stages in the approval process. The approval process currently, in our view, is too long with an average approval taking two years. We further note that the range of industries that have sought code approval is very limited with some notable gaps, e.g. holiday providers. Whilst it is acknowledged that these industries may well have their own codes of practice, e.g. ABTA, for which CCAS approval has not been sought, the question must be asked was anything fundamentally wrong with CCAS that prevented such industries from seeking approval? If the answer is 'yes', then lessons need to be learned in order to ensure that any replacement retains the confidence of both industry and consumers. If a replacement is not robust and completed in a timely fashion, then it</p>

	<p>is our view that the private and voluntary sector will not seek to respond to the winding down of CCAS.</p> <p>We are also firmly of the view that the importance of local authority trader approval schemes, such as <i>Buy With Confidence</i>, with their inherent independent vetting, cannot be underestimated. Such schemes inspire consumer and business confidence on national, regional and local levels. Accordingly, any replacement for CCAS must work with such schemes in a cohesive and practical manner.</p>
8	See answer to Qu 7
9	<p>We are of the view that it is important to maintain recognition for any consumer codes which have already received OFT CCAS approval, but, are firmly of the view that any set of standards or documents that they are transposed into, e.g. BSI, must be readily accessible in one place and freely available to all. Simply having documents available for viewing at reference libraries does not help those who are housebound; payment of a subscription for access does not assist those (be it consumers, businesses or enforcement bodies alike) who are already dealing with the challenge of a very difficult economic climate; publication on the internet alone does not assist those without the ability/knowledge to research such items.</p> <p>Overall we believe it is naive to expect consumers' buying decisions to be influenced in any meaningful way by whether there is an approved code for a particular type of business. Such a process is just too complicated to be of use to most consumers.</p>
10	<p>We are of the view that in order to be fit for purpose, any such proposed Kitemark code certification process must have a facility for engagement with local authority trading standards services; in the same way that the such authorities have had the ability to contribute to those codes seeking existing CCAS approval. It is acknowledged that BSI operate a full public consultation exercise whenever it seeks to consider publishing a new standards, and that it has a Consumer and Public Interest Network that includes representatives from various consumer organisations that it can refer to. We would support the use of such a network in any proposed Kitemark code certification process as long as such a network included appropriate representatives of local authority trading standards services.</p> <p>Overall, however, we still feel this is an overly complex process of very limited value to consumers. Much easier to be able to recommend to consumers to use local trading standards approved businesses.</p>
11	<p>Whilst we do not have any specific views against extending the Primary Authority concept to code certification, we are concerned about the practicalities, and binding legalities, of a contract with a trade association and the effect on its members. In addition, we would wish to be satisfied that the application process for a business wishing to join the respective trade association was robust enough if the trade association were to enjoy the benefits of having Primary</p>

	<p>Authority status. The payment of a membership fee alone must never be sufficient to join a trade association that enjoyed Primary Authority status; any applicant must be subject to stringent checks, audits and satisfactory references from past customers.</p> <p>Furthermore, we note that the proposal contained within paragraph 3.13 to ‘channel’ complaints must be backed by the ability of the Primary Authority to seek full cost recovery from the respective trade association, as part of the Primary Authority agreement, with regards to this aspect of the relationship.</p> <p>We feel there is a disparity currently in the implicit provision of advice to businesses who have a Primary Authority relationship and the many millions of businesses (SMEs in particular) who have no such access to advice. This is increasingly true as LATSS pull out of offering free business advice in favour of charging for Primary Authority relationships</p>
12	<p>We generally agree with the proposal to combine as many sectoral advocacy schemes as possible in the Citizens Advice Service, if that is where most consumer advice type provision is to be located. We do however feel that a process of indemnity for CAS will be needed in this role.</p> <p>Anyone taking on the coordinated, publicly-funded, consumer advocacy function, needs to have real teeth to be able to take on cases that would not otherwise be taken. For example, Consumer Focus Wales helped to secure £70 million for Npower customers across the UK. Whatever the outcome, the level of consumer detriment, the intentions of traders and availability of potential damages (i.e. financial health of errant business) should all be considered before any action is taken.</p> <p>Hampshire County Council currently offers second tier advice and advocacy for consumer complaints. Accordingly we are of the view that it is still important to maintain a level of support for our local businesses and consumers. We would not wish any change to undermine any locally delivered support.</p>
13	Yes.
14	See response to question 12.
15	No comment.
16	CAB have a massive challenge ahead, so we believe it would be wise to absorb some of the skills, knowledge and people from the energy, post and telecom regulators (many whom are part of Consumer Focus). Having these all under one roof will make it easier for consumers and a more efficient/streamlined process would be welcome.
17	We believe this seems sensible, and will enable CAB to sort complaints on receipt and direct them down particular redress routes rather than for general advice.
18	No comment.

19	No comment.
20	<p>We prefer Option 3, the transfer of the majority of the OFT's consumer enforcement functions under Part 8 of the Enterprise Act to LATSS with a Board comprising Heads of Service (TSPB) to direct the cross boundary and larger work and the funding.</p> <p>78% of consumer detriment is attributed to cross border activity. The NAO report was critical of regulators and identified a gap, and the EU has recently expressed concerns about e-market surveillance on product safety. LATSS are funded locally and with cutbacks in budgets work on local issues is rising in priority.</p> <p>LATSS already do work which has a regional and/or national impact. For example Home/Primary Authority work; work within ports/Docks/ERTS on imports of unsafe goods (currently BIS funded); product safety market surveillance (BIS funded); work on counterfeiting; work with internet suppliers (e.g. toys, cosmetics, tobacco supplies). All have national benefit.</p> <p>It is unclear if the TSPB will be expected to direct cross border animal health, feed or food matters as this work is accountable to Defra and FSA, not BIS. We feel that it is vital the new landscape arrangements apply across the full spectrum of TS law.</p> <p>We believe the TSPB mechanism should direct and task all national Trading Standards legislative area threats, irrespective of Government department. However this will need joined up funding arrangements from the various Government regulators.</p> <p>We are concerned that if LATSS apparently get 86% of the current enforcement budget, how much more will be available for the extra national/regional work and functions previously undertaken by the OFT? The success of this option depends on sufficient resources being diverted.</p>
21	<p>Yes.</p> <p>We support the proposal for a TSPB formed of Heads of Service, BIS, TSI, ACTSO, (with CAB, CMA, Which?, Electrical Safety council, invited to input/present on request). We believe the Chair of the Board would need to be full time and that consideration should be given to an independent chair. We feel the Chair of each current TS regional group should be on the Board.</p> <p>Delivery mechanisms are likely to focus on commissioning groups of authorities or lead authorities with support from their regional groups, to provide a national centre of excellence and deliver certain functions, using funding allocated to that function. This is likely to really benefit small unitary authorities who are not always able to resource larger investigations, and may help larger ones who can be paid to do work for regional or national benefit if they can divert</p>

capacity from local issues.

What also needs to be considered when dealing with cross-border issues and legal issues is the overriding issue of Section 222 of the Local Government Act 1972 which indicates that a local authority can only institute legal proceedings if it is in the interest of their inhabitants to do so. The case of *Donnachie* reiterated that authorities can use this to take offences out of area but it may on occasion be preferable for Section 101 delegated authority agreements. Some authorities will insist on Section 101 agreements, whilst others refuse to grant them. This causes practical difficulties that we could do without. In order to deal with cross border (and potentially national) issues effectively and efficiently, it is my view that legislation needs to be in place to make it abundantly clear that a local authority Trading Standards service can institute proceedings for offences out of area even if the illegal practice in question does not directly, and adversely, affect their inhabitants.

We further believe the TSPB will need a secretariat to facilitate meetings, ensure decisions are enacted, provide a contact point for heads of service and government for TSPB related issues, prepare reports, deal with media, support any political oversight mechanism etc.

Do you think this model would deliver effective enforcement against large businesses tempted to break the law?

Without the detail it is difficult to comment on this. A large business receiving an investigatory letter from one LA, acting on behalf of 'TS UK', may initially be less likely to react and comply than if investigation came from an OFT or equivalent. But if the enforcement body for national threats was named 'TS National' it may carry more weight. We doubt small local authorities will engage with this.

Which areas of enforcement activity should warrant specialist national teams?

It is difficult to be specific at this stage, but we would envisage such areas as e-commerce (distance selling of tobacco, product safety goods, age related goods knives, counterfeit good, etc); national/regional media adverts (e.g. selling gold by post, webuyanycar.com), national/regional home repairer/improvement businesses; counterfeiting; Homeworking schemes; Import docks/airports, ERTS product safety issues.

Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

Yes, absolutely. Legal actions have to be proportionate, but

	sometimes cases do need to be pursued and without the indemnity fund, LATSS are unlikely to undertake these national high risk cases. This is recognised in the NAO report.
22	Our preference would be <i>not</i> to maintain the status quo in terms of powers and responsibility, as this would be likely to lead to additional bureaucracy and costs. The responsibility, as well as control of substantial, national enforcement resources needs to be within the Trading Standards network.
23	It follows from the above that any of the JEB models would add further bureaucracy and difficulties that are an unnecessary imposition on Option 3. The JEB would not be controlled by heads of trading standards and could not be held accountable in the same way.
24	This question would not be relevant in the absence of a JEB model.
25	<p>Yes, such investigations are very specialised and deal with economic modelling and require a specific type of investigation. However there remains a concern that this may reduce the resources available to LATSS.</p> <p>We agree that there are benefits for CMA to retain a consumer enforcement role only in those cases where a potential breach of consumer law is connected to a structural market problem (e.g. bank charges type cases). Where there are consumer cases that have a competition implication, we understand that the CMA will want to retain the resources to deal with cases that reflect structural market problems, but we remain concerned that this may reduce the resources for LATSS to deliver the new consumer landscape under the proposals.</p> <p>We believe there must be effective communication and a good working relationship between the TSPB and CMA to ensure that intelligence can be shared and assurance received that cases can be dealt with appropriately.</p> <p>Consideration of intelligence from CMA and Citizens Advice on consumer detriment will be a vital element of the TSPB's future work on setting enforcement priorities and this could be a standing item for discussion at each TSPB meeting. However, we do believe there should be a duty on the TSPB to consider and prioritise cases referred to them by the CMA.</p>
26	Yes, to avoid confusion where potential overlaps occur there would need to be some procedural limitations.
27	Yes, they will need this discretion because of the complex marketplace that exists in the UK. Also, effective communication and a good working relationship between TSPB and CMA is vital to ensure that intelligence can be shared, and that cases are dealt with appropriately.
28	Yes.
29	See response to question 25.
30	<p>Provided Option 3 is chosen, then we would agree. We agree the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies.</p> <p>It would be helpful to have some resource that required joint</p>

	<p>agreement between the CMA, TSPB and the consumer advocacy bodies for its release to be used to investigate or address consumer and market issues that could risk an enforcement or advocacy gap. The exact mechanism required would depend on the amount of funds allocated for this and who “held” the funds. However we would want to see the bureaucracy associated with any such scheme minimised. For example, while we welcomed the “Fighting Fund” that BIS made available to support LATSS enforcement activity, we felt that the bureaucracy associated with the application and decision process was disproportionate to the funds available.</p>
31	See response to question 30.
32	<p>LATSS already have many years of enforcement experience of dealing with rogue traders and illegal behaviour within their own communities including many with a national impact. LATSS take far more prosecutions than the OFT and are confiscating tens of millions of £s of assets from serious criminals in the consumer protection field. We believe that their threat of enforcement can help to deter non-compliance and can effectively back up self-regulatory schemes. LATSS have always used a wide range of tools to ensure compliance over the years such as warning letters, cautions, fixed penalty notices, civil orders, injunctions etc. We do not believe there will be any problems with an enforcement model branded as run by LATSS.</p> <p>We are concerned, however, that the consultation does not make clear who would take on the OFT’s role in pursuing enforcement action against rogue overseas businesses targeting UK consumers. If, as suspected, responsibility for pursuing such matters was to rest with LATSS, it would be crucial for these cases to be discussed at the TSPB. A decision could then be made on whether the matter warranted action, and if so, agreement sought as to which LATSS had the capacity and necessary skills and experience to pursue the matter. Appropriate funding would of course need to be made available to that LATSS in order for them to take on such cases.</p>
33	TSI could be the appropriate home for the OFT’s professional guidance and training functions. TSI have considerable experience of training staff in the trading standards community and producing professional guidance. However this is where advice by BIS on procurement rules would be crucial, as the TSPB would need to understand if and via what mechanism any funds can be provided to bodies other than public authorities.
34	We agree that the TSI is the most appropriate home for the OFT’s international liaison and general policy functions given its already strong role and expertise in relation to European and international work.
35	We believe that there does need to be co-ordination regarding the use of enforcement powers under Part 8 of the Enterprise Act and the TSPB would be the most appropriate body to carry out this role.
36	Responsibility for chairing the consumer concurrencies group should remain with the CMA.

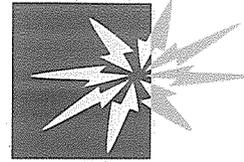
	<p>Currently the OFT chairs a consumer concurrencies group consisting of the relevant regulators with concurrent consumer enforcement powers and Which? (designated enforcers under Part 8 of the Enterprise Act) with the aim to improve clarity of overlapping areas of responsibility and to learn lessons from international best practice. The types of consumer enforcement cases likely to be considered by the sector regulators are similar to the sorts of structural market problems which the CMA would address. It makes sense therefore for the CMA to continue with this role rather than create a new body to do this.</p> <p>TSI is another option, but if parts of the OFT will become the CMA, the expertise will already be there, so the CMA is a better option in our view. TSI is not a regulator.</p> <p>Assuming there will be regular meetings between the TSPB and CMA, there should be effective communication to ensure the right body deals with the right type of complaint.</p>
37	<p>The current supercomplaints system should continue, therefore the proposal makes sense.</p> <p>The majority of supercomplaints are used to highlight market failings where further analysis is necessary, and as a result, should therefore be retained by the CMA. It may be necessary to also have a fast track process by which the designated bodies could request enforcement action from the TSPB or a response as to why it will not be taken.</p>
38	See response to Question 37
39	<p>Could a lead authority take on responsibility for the OFT's estate agency and related money laundering functions? Yes.</p> <p>Fraudulent activities or activities where consumers are misled by estate agents are being dealt with by LATSS under current legislation such as the Fraud Act, the Property Misdescriptions Act, and the Consumer/Business Protection from Unfair Trading Regulations.</p> <p>We do believe LATSS could take on the OFT responsibility for estate agency and money laundering work. However, sufficient financial resource would need to be made available by central government for that work. Such funding must be ringfenced for that purpose, and any authority seeking to take on the responsibility must demonstrate a real ability to do the work. It is unlikely in our view that it would fall to a small authority due to lack of the necessary resources.</p> <p>Transfer of this responsibility to LATSS would inevitably be focussed on dealing with the more serious known breaches and providing appropriate advice and support to businesses who may seek advice on compliance. General oversight of this could be the TSPB to ensure consistency of approach and in line with Hampton requirements.</p>
40	<p>Even if there is a delay in setting up the CMA, the changes to the consumer landscape should still go ahead. This would provide an enhanced leadership and coordination function at a national level within Trading Standards which it currently lacks and it would help</p>

	<p>with greater efficiencies across the enforcement system as a whole. Many crimes do not respect local authority boundaries, therefore the sooner this is set up the better. The changes would help bridge the gap between LATSS activity at a local level and OFT national activity.</p> <p>If there is to be a delay from the proposed date of 2013, the changes should go ahead with a date when it will be set up.</p>
--	---

Haringey Council TS

Trading Standards

Technopark, Ashley Road, Tottenham, London N17 9LN
Tel: 020 8489 5134 Fax: 020 8489 5554
www.haringey.gov.uk



Haringey Council

Group Manager Regulatory Services Eubert Malcolm

**FOR A LARGE PRINT VERSION OF THIS LETTER PLEASE RING
020 8489 5537**

David Evans
Consumer & Competition Policy Directorate
Third Floor
1 Victoria Street
London
SW1H 0ET

Your
ref:

Date: 20 September 2011

Our ref: PB/ FTA 8

Direct 020 8489 5537
dial:

Dear Mr. Evans

BIS CONSULTATION DOCUMENT
EMPOWERING AND PROTECTING CONSUMERS

I enclose the response from the London Borough of Haringey.

Yours sincerely

A handwritten signature in black ink that reads "Paul Boeuf". The signature is written in a cursive, flowing style.

Paul Boeuf
Team Leader (Trading Standards)

THIS PAGE IS INTENTIONALLY BLANK

APPENDIX 1

LONDON BOROUGH OF HARINGEY RESPONSE TO BIS CONSUMER LANDSCAPE REVIEW PROPOSALS

The London Borough of Haringey welcomes the opportunity to comment on the proposals. We are a small London authority, whose Trading Standards service is therefore smaller than those operated on a county basis, and whose perspective is therefore sometimes different to that of larger authorities.. In particular we have had a good working relationship with the Office of Fair Trading, which is based in London. We would want to be sure that any changes in the Consumer Landscape effectively replace that level of support. We are aware of the national response from ACTSO (Association of Chief Trading Standards Officers).

Our responses to individual questions are as follows:

QUESTION 1. How do you think the provision of consumer information to consumers can be improved upon?

Consumers should be able to access consumer information and advice from a range of sources, formal and informal, depending on the situation.(Informal sources in this context might be Which? or websites like moneysavingexpert.com .)The Consumer Direct telephone advice line and the internet provide valuable sources of information to help consumers take action or seek information.

Nevertheless one improvement would be to provide 'official' consumer information via a well publicised single source that offers information in a range of formats from written to verbal and in alternative languages. This should be presented in a range of styles from simple points as currently provided by Consumer Direct to something more detailed, quoting legislation, as previously provided by the Community Legal Service leaflets. The simple style will suit first step requirements and the more detailed one would be for those consumers who need and are able to take their complaints to the next stage, such as writing more formal letters.

In addition some consumers, particularly the more vulnerable, are often happier speaking to someone face to face and this service should still be available in the new model. Local Citizens Advice Bureaux have traditionally offered this service and we believe that the proposals for Citizens Advice to deliver the 'Consumer Direct' consumer advice helpline and associated website will present an opportunity to integrate these services with their traditional local bureaux facilities which will be of benefit to consumers. It is important that Citizens Advice are able to provide specialist consumer advice staff eg at Head Office level, who can support frontline Bureau staff.

QUESTION 2. Do you agree that the OFT's consumer information role should be transferred to the Citizens Advice service?

This can only work if it is supported with sufficient resources such as skilled staff and databases, and there must be arrangements which allow close collaboration with Trading Standards.

It is important that Trading Standards are able to continue to receive and act on timely referrals from Consumer Direct and there should be no reduction in the quality and quantity of information they currently receive from Consumer Direct. We would expect the proposed arrangements to result in an increased level of intelligence and referrals to Trading Standards. At present only a few referrals from Citizens Advice are currently received by Trading Standards through Consumer Direct.

Local trading standards services should be represented at a national level on a governance board for the replacement for the Consumer Direct service as it is at present. The proposals already recognise how important the Consumer Direct data is for Trading Standards. Trading Standards use intelligence as part of their approach to enforcement and the referrals and Consumer Direct data provides an invaluable evidence base for this. Access to this information must continue and be improved where possible. It currently provides an efficient and effective reporting line that enables Trading Standards to identify problem traders, consumer detriment, scams and any other problems that may require them to take enforcement action or provide advice to businesses or consumers.

We already have close liaison with our local Citizens Advice Bureaux, but it may be helpful for Trading Standards to have a similar mechanism in place at a regional level for discussions with Citizens Advice.

QUESTION 3. Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service?

The 'Extra Help Unit' for vulnerable consumers should continue under the new arrangements and we agree that the unit and associated finance should be transferred to Citizens Advice if other related advice services are transferred.

This might enable a customer to receive more "holistic" support, as Citizens Advice may be able to help with any extra issues beyond consumer needs.

QUESTION 4. Do you agree that the OFT's consumer education roles should be transferred to the Citizens Advice service? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?

Transferring the OFT education role to Citizens Advice would only be successful if it is properly resourced.

It needs to cover basic needs as well as the more in depth matters. Previously the OFT has been able to carry out extensive market research covering different trade sectors which also assesses customer behaviour. The OFT's legal experts have provided a large number of detailed reference materials on fair contract terms covering specific sectors such as tenancy agreements, gym and mobile phone contracts. That is partly for practitioners

but also for consumers. At present it is uncertain as to whether Citizens Advice would have the skills or resources to carry on such valuable research work that would enable it to design and target advice to specific groups of people, e.g. teenage, young adults, older people.

If Citizens Advice are to take on this role it is important that they work closely with the proposed TSPB, or whatever alternative arrangements are put in place, to ensure an effective link between local, regional and national consumer education activities in the most appropriate way.

QUESTION 5. Do you agree that the proposed Trading Standards Policy Board and the TSI should coordinate and support business-facing educational activities?

The answer to this depends very much on what is included by the expression 'business-facing educational activities'. At a local level, most business-facing educational activity is currently carried out face to face with local businesses by Trading Standards staff. Nationally, there are websites such as 'Business Link' and 'Everything Regulation When Its Needed' (ERWIN). TSI's role to date has been to provide valuable materials for Trading Standards to use. In terms of providing guidance on new legislation however this currently is often prepared by the OFT or BIS in tandem with the drafting of regulations. The advice has an input from the legislature. This means the advice is a solid interpretation of the law and less likely to be challenged by the courts. There is not the same certainty that TSI or the TSPB would have such a close working relationship with the drafters.

Unless TSI or the TSPB receive adequate support from the centre the formal responsibility for business education and advice should remain with a government body in order to provide accountability and assurance. Trading Standards services would be able to identify gaps in business education needs but may not be able to produce agreed guidance quickly.

In any event there needs to be a very clear steer from government as to how Business Link intends to develop and the need, or expectation for it to engage in a structured way with Trading Standards, which it has not done in the past.

QUESTION 6. What are the best options for current and prospective Consumer Codes Approval Scheme members to consider in the event that the Government's proposed consumer and competition landscape proposals are adopted?

The OFT has wide experience and knowledge of what constitutes a fair contract term and links to information such as the Consumer Direct database, to help identify which issues in a trade sector cause the most problems. It will be difficult to recreate this know how. Codes need to be compulsory for the sector they cover not just for members.

It is essential that whatever new arrangements are made for existing and future CCAS members, they must maintain the status of the current OFT approval, with its nationally recognised independent status. There must continue to be an opportunity for Trading Standards to feed into the application process as they have done in the existing OFT Consumer Codes

Approval Scheme, so that any concerns or issues can be raised with those seeking code approval.

QUESTION 7. Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of CCAS with effective alternative systems of accreditation?

The private sector already has a range of codes of practice, but many of them do not meet the very high standards required by the OFT for approval. Our concern is that standards of protection for consumers would fall without the very stringent requirements of the OFT scheme, which is the highest standard for consumer codes of practice. A private sector scheme of approval will always be subject to commercial pressure which could lead to a lowering of standards. Resources will be an issue for local authorities and the voluntary sector in running an alternative system of accreditation. It is unlikely that a private or voluntary sector solution would be an effective alternative to the integrity of the OFT approved codes scheme.

QUESTION 8. What are the lessons learned from the operation of CCAS which may help in establishing (or revising) voluntary schemes in the future?

The cost of entering a scheme is a deterrent to smaller businesses. There is a danger if only the larger players can afford to enter a scheme and therefore benefit from marketing of that scheme the smaller firm will be squeezed from the market.

Perhaps there could be levels of code, ranging from minimum standards (basic consumer rights covered) up to a superior more detailed code where scheme members offer extras. This could cut down on the time taken to draft schemes.

There are some successful ombudsman schemes such as Financial Services Ombudsman, The Property Ombudsman. Both examples do have 100% sector involvement (TPO due to the redress scheme) and are good examples of co-regulation. Similar arrangements could encourage code development.

QUESTION 9. What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?

QUESTION 10. What characteristics would a Kitemark® based code certification process need to have to meet industry requirements?

A scheme of BSI approval or accreditation of Consumer Codes, possibly through their 'Kitemark' scheme, is an attractive option because the BSI 'Kitemark' is recognised by both businesses and consumers as being an indication of a high quality product and a mark of trust. They have well established procedures in place for approving and revising products and service standards, which involve representatives of both businesses and consumers, and should be capable of being adapted for approving codes of practice.

QUESTION 11. What is your view on extending the Primary Authority concept to code certification?

This is not likely to work as well as the suggestion of linking codes to British Standards.

QUESTION 12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

QUESTION 13. Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?

QUESTION 14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?

Response to questions 12, 13 & 14.

If as proposed, most consumer advice and advocacy provision is to be located within the Citizens Advice Service, it would make sense to combine as many sectoral advocacy schemes as possible into the organisation.

Anyone taking on the coordinated, publicly-funded, consumer advocacy function needs to have significant status and combining these functions into one organisation would give it sufficient authority to be able to take appropriate action against major companies that would not otherwise be taken. As to alternative or additional approaches, consideration could be given to organisations such as OFWAT and OFGEM doing more for consumers, and possibly an advocacy role for ombudsman schemes.

QUESTION 15. What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

We have no comment to make.

QUESTION 16. What are your views on these options for the transfer of information gathering powers? Which is preferable and why? Are there any other options for information-gathering powers?

Business and others may well be reluctant to provide information directly to a body such as Citizens Advice which is known to mainly represent consumers. Even with protections provided by Part 9 of the Enterprise Act there may be concerns. Transferring the power to sectoral bodies would give the appearance of an independent buffer, but might also cause delays to investigations and would lose any streamlining created by bringing the advocacy under one body. Perhaps the sectoral bodies could be brought in only if there is a dispute between a business and the "regulated industries unit". They would not need to channel every request, just mediate those under dispute. Any organization responsible for this work should be

accountable to Parliament, as Consumer Focus and the sectoral advocacy bodies have been in relation to their statutory functions and powers.

QUESTION 17. What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?

Redress schemes should be extended to other sectors. Schemes would be able to identify common or frequently arising issues which might point to industry wide problems. This might fill gaps left when the OFT no longer looks at industry-specific contractual problems. Schemes can provide a convenient and cost effective alternative to litigation, to the benefit of both consumers and businesses.

QUESTION 18. Do you support the transfer of the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland and agree that as a result Consumer Focus Post Northern Ireland be abolished?

Page 50

No comment

QUESTION 19. Do you agree that the Postal Services Redress Scheme should continue to apply in Northern Ireland to ensure that Northern Irish consumers retain the same access to redress as consumers elsewhere in the United Kingdom?

Page 50

No comment

QUESTION 20. Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?

Option 1 – Trading standards take on all OFT enforcement functions. This is not a realistic option. As each Trading Standards service is differently funded and answerable in the first instance to their own councils, it would fragment enforcement. It would not be possible to ensure that an issue would be acted on in the same way in any two authorities. External agencies such as other EU enforcers would not have a single point of contact. It would be unclear who should represent the voice of enforcement in arenas such as parliament and the EU.

Option 2 – Competitions & Markets Authority take on all but local enforcement. At first sight this appears to be an attractive option as it provides a clear single place for business and others to go to. On the other hand it would have a substantial weakness in that it involves taking some current funds from Trading Standards, as they would no longer be involved in cross border enforcement. What exactly is meant by cross border enforcement' and indeed 'local' enforcement? This is not entirely clear from the consultation document. Based on the Home Authority principle Trading Standards do currently advise local traders who are giving rise to complaints elsewhere, using the part 8 of the Enterprise Act as well as criminal sanctions. Is this local or cross-border?

What about cases where Trading Standards prosecute traders based outside the Borough for offences committed inside them ? The main problem in terms of 'cross-border enforcement' is a reluctance to prosecute some national companies where there is limited local detriment.

The proposal talks of establishing regional offices which would bring additional costs. To avoid the expense of this the CMA could commission and fund regional enforcement work through the Trading Standards regional networks. Specialist teams modelled on the Illegal Money Lending teams and Scambusters could also be commissioned and funded in the same way. In practice this might lead to a result not much different to Option 3 in terms of who does the work. If that is how the service is going to be delivered it would make more sense to go for Option 3, which is specifically designed for that method of delivery.

Option 3 – the majority of OFT functions are passed to Trading Standards. This could have a weakness in that this option loses the benefit of a single national point for consumer enforcement issues. On the other hand, as well as helping local consumers and businesses, Trading Standards already do a considerable amount of consumer protection work which has a regional and/or national impact. There are many examples of this happening at present, which includes work undertaken to combat counterfeiting, dealing with e-crime, internet scams and rogue traders targeting vulnerable consumers across the country. These are areas the OFT have generally declined to get involved with to date. Trading Standards also provide Home Authority and Primary Authority support for businesses; who operate regionally or nationally. Option 3 also gives Trading Standards greater freedom and flexibility to be able to work together nationally, regionally and locally and does not impose top down targets and strategies.

On balance this seems the best option, but further work may be needed in relation to governance and finance issues, depending on which organizations are willing to become involved. It is essential that adequate resources are transferred to Trading Standards in order for them to undertake this work.

QUESTION 21. In relation to Option 3, do you agree with the Government's principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

If the ultimate choice is Option 3, then the idea of a TSPB or JEB (as suggested in paragraph 5.65 of the consultation) seems reasonable. A leadership comprising practitioners will help ensure the right decisions are made on which cases and issues should be prioritised for investigation. However it should be working with the CMA rather than be completely stand alone.

In terms of effective enforcement against large businesses breaking the law, the backing of a national agency could well give greater impact. Sorting out funding for expensive cases would be easier through a "CMA with TSPB" body.

Some form of indemnity fund is in any case essential, as otherwise it is unlikely that any authority would take on cases which posed a substantial financial risk if they were lost. There is also a risk in cases which are won but where the full cost cannot be recovered from the defendants. This applies particularly in civil proceedings under the Enterprise Act.

Specialists should also provide support and guidance to Trading Standards for their more local cases. In addition to existing teams for illegal money lending, specialist teams would be useful for Enterprise Act work, including fairness of contracts, e commerce and rogue builders.

QUESTION 22. Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards? If so, would one of the JEB models be the best solution? Which one and why?

This would be a possible option but not the preferred one. We would need to overcome the perception that the OFT has appeared to be slow or overcautious in taking enforcement action on national trading standards type cases where both agencies share enforcement responsibilities. In any event a joint forum to discuss cases of a national and regional nature could be helpful in allowing current enforcement gaps to be filled. The main disadvantage is that keeping the status quo would not release any money to create regional enforcement infrastructures in Trading Standards and as indicated above there are areas of work which the OFT does not get involved in.

QUESTION 23. In relation to the various JEB models, how would you ensure effective Trading Standards participation in the JEB? Do you think that this option would deliver integration of enforcement across local, regional and national levels? Should other organisations be involved in the JEB, either as members or as participants in discussions? Would retention of such unrestricted consumer enforcement powers and responsibilities affect the CMA's singularity of purpose and distract it from its core competition remit?

If there were to be a JEB, the Trading Standards representatives could come from the already established Trading Standards regions in the same way as the TSPB. The use of initial email discussions to speed up the process thus requiring some sort of secretariat. There would need to be reimbursement to the officer's employer to cover time spent. The option could deliver a degree of integrated enforcement, although not as well as Option 3, and should not adversely affect the CMA. As far as participation of other organisations is concerned, that should be restricted to enforcement bodies, and it should be on an organisation by organisation basis as found necessary. Any operational discussions would need to be kept confidential.

QUESTION 24. How can your preferred new model best work with businesses?

At present most consumer law issues with businesses are dealt with by Trading Standards, who have a good working relationship with business. Whichever option is chosen it is likely that Trading Standards staff will continue to be the people who will deal with businesses most often.

QUESTION 25. Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

Yes.

QUESTION 26. In an Option 3-based model, should this enforcement role be subject to procedural limitations?

There should not be limitations but a requirement to discuss the proposed enforcement actions with the TS community to ensure the best enforcement strategy has been adopted. This will ensure future compliance and an improved consumer environment with fair market competition.

QUESTION 27. Do you agree that the CMA should enjoy significant discretion over when a market has structural problems, such as to give rise to its consumer enforcement powers?

Yes, but in discussion with other enforcement agencies.

QUESTION 28. Do you agree that the CMA should retain responsibility for mixed market studies where there may be competition and consumer issues (supply and demand side market failures) present on the relevant market?

Yes.

QUESTION 29. Do you agree that in an Option 3-based model, the Citizens Advice service should in future be responsible for pure consumer detriment analysis and that the CMA should not perform pure consumer market studies? In such a case, do you agree that the CMA should stop performing market studies once it identifies that there is no structural problem in such markets and do you think there should be a duty on the Trading Standards Policy Board to prioritise cases referred by the CMA?

No. Both CMA and Citizens Advice should be able to carry out consumer market studies and the need for a study may arise through different strands of intelligence. Citizens Advice have a supercomplaint role and this in itself will require a consumer market study. Trading Standards have no background in carrying out market studies.

QUESTION 30. Do you agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies in the proposed new landscape?

QUESTION 31. Do you agree that it would be helpful to have some resource that required joint agreement between the CMA, TSPB and consumer advocacy bodies for its release, to be used to investigate or address consumer and market issues that

would otherwise risk an enforcement or advocacy gap? If so, at what level should such funds be set and how best should they be administered?

We would support the ACTSO view that:

The Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies.

It would be helpful to have some resource that required joint agreement between the CMA, TSPB and the consumer advocacy bodies for its release to be used to investigate or address consumer and market issues that could risk an enforcement or advocacy gap. The exact mechanism required would depend on the amount of funds allocated for this and who "held" the funds. However we would want to see minimal bureaucracy associated with any such scheme, unlike the BIS 'Fighting Fund', available to support Trading Standards enforcement activity, where the application and decision process is disproportionate to the funds available.

QUESTION 32. Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not, how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?

Yes

QUESTION 33. Do you agree the TSI would be the appropriate home for the OFT's professional guidance and training functions in the event of creation of a new single Competition and Markets Agency?

It would only be appropriate if TSI were able to take on the OFT's and LGR's existing know how and resources in the area of professional guidance. Currently the OFT is able to provide advice to Trading Standards on credit, contract terms and enterprise act within quite a short turn around time as the employ experts in these field. Trading Standards staff tend to be generalists. The LGR system of specialist groups previously provided guidance on wider issues, not always as quickly but through a system of consultation and consensus. It would be detrimental to businesses and consumers to lose or lessen either system. There would be a risk that disputes over interpretation of the law could only be decided through the courts; this is a slow and expensive option that may not be taken up by Trading Standards.

QUESTION 34. Do you agree that the TSI is the most appropriate home for the OFT's international liaison and general policy functions in the event that the CMA has only a limited consumer enforcement role?

International liaison should be provided by an agency that represents the UK's elected government and is clearly accountable to that government. If

the government is satisfied that arrangements with TSI can achieve that, TSI would be a competent body to do it as long as they were properly funded.

QUESTION 35. Do you think the requirement for Trading Standards and other designated bodies' (under Part 8 of the Enterprise Act 2002) court orders to be directed by a central body needs to be retained in the new consumer enforcement model and if so, why?

A single point to record enforcement orders is necessary. Businesses can move location and it is important that their history can be found by other agencies.

Otherwise we agree that coordination of Enterprise Act actions would naturally fall within the remit of the TSPB and therefore see no reason to retain the formal requirement for them to be directed by a central body. There is already a mechanism in place for Trading Standards to notify the Home Authority or, where appropriate, the Primary Authority, before taking any action, and the TSPB would be in a position to deal with any issues should they arise.

QUESTION 36. Do you agree that responsibility for chairing the consumer concurrencies group should remain with the CMA?

We agree that the Chairmanship of the consumer concurrencies group should pass to the CMA. Though the relevance to the CMA is likely to be limited if most consumer protection functions are removed from it, it is a publicly accountable body. If on the other hand there is to be a JEB, The group should be linked to this and be housed wherever the JEB goes.

QUESTION 37. Do you agree that the current supercomplaints system to the OFT should be retained in respect of the CMA if the proposed changes go ahead?

Yes.

QUESTION 38. Do you think that the supercomplaints process should be extended to require the Trading Standards Policy Board to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?

If the TSPB option goes ahead – yes.

QUESTION 39. Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?

A model exists in terms of the Ministry of Justice and claims management firms, so this could be possible.

QUESTION 40. Do you agree that the proposed changes to the consumer enforcement landscape should go ahead if the creation of the CMA is delayed? If not, why not?

Not if there would be a gap in consumer and business protection. We would suggest that if there is a delay that causes such a gap the best option would be to improve the status quo in the short term and ensure there is some sort of joint enforcement board attached to the OFT. This would improve liaison and ensure regional and national issues are effectively dealt with, pending final arrangements.

Hertfordshire CCTS*

Hertfordshire County Council Response to the Department for Business Innovation and Skills (BIS) “Empowering and Protecting Consumers - Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement”

Hertfordshire County Council (HCC) is pleased to be able to contribute to this consultation. The Authority has recently established a Community Protection Directorate. This brings together Trading Standards, Resilience and Herts Fire & Rescue Services under the leadership of the Chief Fire Officer as its Director. The Directorate has, as one of its core drivers, the aim of improving services for citizens and businesses within the county and, in so doing, maximizing joint working between these services. The importance of consumer information, advice, education, advocacy and enforcement is vital in providing a safe Hertfordshire and protecting its citizens and businesses, and this Authority is well placed to comment on the proposals.

BACKGROUND

1.1 This response has been produced by Hertfordshire County Council, and reflects the views of this Authority.

1.2 In formulating this response, HCC currently anticipates that there is likely to be one solution for England and Wales, and a different separate structure for Scotland. This is driven by the broader political agenda, not any desire by local authorities or local authority Trading Standards Services (LATSS).

1.3 The consumer landscape proposals focus on the fair trading elements of the work of Trading Standards. It should be noted that LATSS also answer to other central government departments and agencies and local politicians for other enforcement issues. As an authority we do not separate the fair trading elements of the work of our TSS from that of its other work. The Services delivers across many of HCC’s priorities, and a further improvement would be to better coordinate and simplify arrangements between central government departments and LATSS.

1.4 The consumer landscape proposals are to be welcomed, and in particular Option 3 (the creation of a Trading Standards Policy Board (TSPB)). It is important however, that any transfer of powers or responsibilities to a TSPB (if this is the Government’s decision) needs to be with the very clear proviso that (additional) funding has to accompany any additional responsibilities.

2. SPECIFIC CONSULTATION QUESTIONS

Chapter 2 – Information, advice and education

Key Proposals

- Citizens Advice to lead on all information and advice for consumers (outside health and financial services).
- The Citizens Advice service to take over responsibility for Consumer Direct.
- The Extra Help Unit for vulnerable consumers of energy and postal services to be transferred to the Citizens Advice service.
- Citizens Advice service to take on national co-ordination of consumer education

(except on financial services). Coordination of consumer education activities locally to be done by collaboration between Citizens Advice and the Trading Standards community.

QUESTION 1. How do you think the provision of consumer information to consumers can be improved upon?

Consumers should be able to get a range of consumer information and advice. This advice should be available face to face, as well as via the telephone and online. The internet provides a valuable resource of information to empower consumers to take action or seek information. However, some consumers, particularly the more vulnerable, are often happier speaking to someone face to face and this service should still be available in the new model, either directly via their LATSS or through specific local partnership arrangements with local Citizens Advice Bureaux.

It is important that the high level of consumer advice is maintained. Pre-shopping advice for consumers, such as the product and business reviews that Which and other bodies provide can be helpful, as can the national advice campaigns on the television, in the press and via various social media networks. There should be continued engagement through these information provisions.

QUESTION 2. Do you agree that the OFT's consumer information role should be transferred to Citizens Advice?

HCC would be happy for the OFT's consumer information role to be transferred to Citizens Advice, providing Citizens Advice works with LATSS both nationally and locally in the provision of this consumer information service, as the OFT has previously done. However, we are conscious that Citizens Advice Bureaux are under intense funding pressures and in some areas are threatened with closure due to lack of funding. Therefore some of the envisaged improvements at local level may be difficult to achieve and gaps in 2nd tier provision may still exist.

However, whatever the final arrangements may be, this emphasises the crucial importance of developing close working relationships between local bureaux and LATSS.

At a national level in England and Wales, heads of trading standards should be represented by ACTSO/WHoTS on a governance board for the replacement for Consumer Direct services. We would expect heads of trading standards in Scotland to be represented in the same way in any Scottish solution.

HCC would like to see each trading standards service have an 'account manager' within Citizens Advice to deal with any problems, issues or concerns and vice versa.

The proposals already recognise how important the Consumer Direct data is for LATSS. LATSS have an intelligence-led approach to enforcement and the referrals and Consumer Direct data provides an invaluable evidence base for LATSS. Access to this information must continue and be improved where possible. It currently provides an efficient and effective reporting line that enables LATSS to identify problem traders, consumer detriment, scams and any other problems that may require them to take enforcement action or provide advice to businesses or consumers.

LATSS should be able to continue to receive and act on timely referrals from Consumer Direct and there should be no reduction in the quality and quantity of information they currently receive from Consumer Direct.

QUESTION 3. Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service?

It makes sense that the 'Extra Help Unit' for vulnerable consumers should continue under the new arrangements and that the unit and associated finance should be transferred to Citizens Advice, if other related advice services are transferred.

QUESTION 4. Do you agree that the OFT's consumer education roles should be transferred to Citizen's Advice? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?

HCC is happy with the Government's proposal that the OFT's publicly-funded consumer education role at national level be transferred to Citizens Advice, if other related advice services are transferred. We believe that Citizens Advice will need to work closely with the Trading Standards community to ensure that education provision is well coordinated, including the distribution of educational materials and sharing of best practice.

Areas for improvement could include financial literacy, helping consumers how to complain, educating them on what consumer rights exist and what to do with faulty goods. The OFT has done a lot of good national work in relation to scams, code approval schemes, etc and it will be important to ensure that any campaigns that Citizens Advice deliver have a high media profile, where necessary, to get the messages out to a wide audience. TSI and its Consumer Education Liaison Group (CELG) are already active in this area.

As the Government notes, consumer education activities for the public at a local level are usually carried out by LATSS, sometimes using materials developed by the OFT. Consumer education and advice are both part of a system that benefits consumers and businesses - making markets work better. LATSS and Citizens Advice should coordinate, where possible, national road shows, national newspaper campaigns and national schools programmes, in the same way that the OFT and LATSS currently coordinate road shows, press releases etc.

HCC welcomes the recognition that local authorities should remain responsible for direct delivery of education to consumers at local level. 'No Cold Calling Zones' have been very successful. We believe the Government must agree the right balance of funding between Citizens Advice and local authorities to properly support both national and local consumer education.

The primary role for overall co-ordination probably sits with Citizens Advice if they are given the key national responsibility for this work area. However they will need to link closely with the proposed TSPB to ensure an effective link between local, regional and national consumer education activities in the most appropriate way.

QUESTION 5. Do you agree that the proposed Trading Standards Policy Board and the TSI should coordinate and support business-facing educational activities?

At a local level, most business facing educational activity is carried out face to face with local businesses by LATSS staff or by localised training initiatives etc. Nationally there are several existing website resources including, TS Broadcast and Everything Regulation When It's Needed (ERWIN) and Business-link. TSI's role to date has been to provide very valuable educational materials for LATSS to use and also they provide business training such as their fair trading award.

It will be important that at a strategic level these are joined up as appropriate under the scrutiny of the TSPB. However for any of this aspect to work effectively there needs to be a very clear steer from the Government as to how Business Link intends to develop and the need or expectation for it to engage in a structured way with trading standards, which it has not done in the past.

Chapter 3 – Consumer Code Approvals

Key Proposals

- Competition and Markets Authority will not continue operation of the OFT's current Consumer Codes Approval Scheme.
- Alternative options for future accreditation of Consumer Code Approvals to be explored further, including BSI roles, Trading Standards, LBRO and private and/or third sector organisations.

QUESTION 6. What are the best options for current and prospective CCAS members to consider in the event that the Government's proposed consumer and competition landscape proposals are adopted?

QUESTION 7. Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of CCAS with effective alternative systems of accreditation?

QUESTION 8. What are the lessons learned from the operation of CCAS which may help in establishing (or revising) voluntary schemes in the future?

QUESTION 9. What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?

Question 10. What characteristics would a "kitemark" based code certification process need to have to meet industry requirements?

Question 11. What is your view on extending the Primary Authority concept to code certification?

Response to questions 6 to 11

HCC has no strong preference on the future of CCAS. Whilst the concept of having a mechanism to separate codes that meet certain key requirements from others is quite right, recent history has shown us that it is not in high demand from code owners and as such its impact has been limited.

If a scheme is to continue, there must be an opportunity for LATSS to feed into the application process as they have done in the existing OFT Consumer Codes Approval Scheme, so that any concerns or issues can be raised with those seeking code approval.

Many local authority schemes already give consumers a method for finding trustworthy businesses via various Local Authority Assured Trader Schemes. HCC currently approves local businesses under the 'Trustmark' scheme, and this scheme has been very successful and well received by local consumers and businesses. They are associated with a much stronger brand than the CCAS model i.e. Trading Standards itself. HCC believes that there are great opportunities to build on these existing Local Authority Assured Trader Schemes, particularly Trustmark when developing any new code certification.

The OFT process for approving codes has proved to be a very long and relatively labour-intensive, although it has been very stringent with rigorous requirements. It is essential that whatever new scheme is developed the process for code approval should be completed in a more timely manner.

Chapter 4 – Consumer Advocacy

Key Proposals:

There should be a single focus for the coordination of publicly-funded consumer advocacy functions. A single unit, run by Citizens Advice and acting in partnership with other expert providers as appropriate, should take over responsibility for:

- *All Consumer Focus functions in relation to gas, electricity and (except Northern Ireland) postal services*
- *Key, non-sector specific advocacy functions of Consumer Focus*
- *Sectoral consumer bodies for water (in England and Wales), transport, communications and legal services, if the relevant Departments and Devolved Administration responsible for those bodies so decide*
- *Redress schemes could be set up by business for consumers in the water, rail, coach, bus and tram sectors to mirror those in the energy and postal services sectors, if the relevant Departments and Devolved Administrations so decide.*
- *Consumer Focus's functions in respect of postal services consumers in Northern Ireland, undertaken by its committee known as Consumer Focus Post, should be transferred to the General Consumer Council for Northern Ireland.*

QUESTION 12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

QUESTION 13. Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?

QUESTION 14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?

QUESTION 15. What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

Response questions 12 to 15

HCC generally agrees with the proposal to combine as many sectoral advocacy schemes as possible in the Citizens Advice Service, if that is where most consumer advice type provision is to be located.

Anyone taking on the coordinated, publicly-funded, consumer advocacy function, needs to have real teeth to be able to take on cases that would not otherwise be taken. For example, Consumer Focus Wales helped to secure £70 million for Npower customers across the UK. Whatever the outcome, the level of consumer detriment, the intentions of traders and availability of potential damages (i.e. financial health of errant business) should all be considered before any action is taken.

HCC currently offers second tier advice and advocacy for consumer complaints, particularly the most vulnerable consumers. HCC would not wish any changes to undermine any locally delivered support.

HCC would be happy to work with local Citizens Advice to maximise the benefits that the new regime may bring for consumers and businesses.

QUESTION 16. What are your views on these options for the transfer of information gathering powers? Which is preferable and why? Are there any other options for information-gathering powers?

HCC has no strong views on this however we do believe that the unit should be accountable to Parliament, as Consumer Focus and the sectoral advocacy bodies have been in relation to their statutory functions and powers.

QUESTION 17. What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?

We believe this seems sensible, and will enable Citizens Advice to sort complaints on receipt and to direct them down particular redress routes rather than for general advice.

QUESTION 18. Do you support the transfer of the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland and agree that as a result Consumer Focus Post Northern Ireland be abolished?

QUESTION 19. Do you agree that the Postal Services Redress Scheme should continue to apply in Northern Ireland to ensure that Northern Irish consumers retain the same access to redress as consumers elsewhere in the United Kingdom?

Questions 18 and 19 are matters for those who represent Northern Ireland to comment on.

Chapter 5 – Enforcement of Consumer Protection Legislation

Key Proposals:

- *To establish a Trading Standards Policy Board (TSPB) to lead the prioritisation and coordination of national, regional and cross local authority boundary consumer enforcement work in England and Wales.*
- *In England and Wales, national enforcement to be undertaken by Primary or Home Authorities and by expanded regional teams supported by a small number of lead regions and/or authorities with specialist areas of expertise. Money for enforcement against national and cross boundary threats to be ring-fenced for this purpose.*

- *The proposed new Competition and Markets Authority (CMA) to retain a market studies role in relation to markets where there may be both structural competition issues and consumer-related (demand-side) market failures.*
- *The CMA to retain powers to take action against breaches of consumer law wherever these breaches may inhibit the effective functioning of competition in markets.*
- *Powers to make supercomplaints to CMA to be retained by existing bodies.*
- *The TSPB, CMA, Citizens Advice service and Which? to be transparent about enforcement and market analysis priorities and to share work plans as far as possible, working in partnership on cases which risk crossing over the boundaries between them.*
- *The TSI to take on the OFT's current guidance, training, international liaison and policy functions.*
- *"Established Means" code of practice promoters to be able to formally request action against businesses breaking the relevant laws which the TSPB would have a duty to consider.*
- *If the creation of the CMA is delayed, these consumer enforcement landscape changes should go ahead with OFT taking the role proposed for the CMA.*

Options for reform

QUESTION 20. Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?

HCC supports Option 3 which envisages the transfer of the majority of the OFT's consumer enforcement functions to LATSS with some functions (for cases involving structural market problems) remaining with the CMA. HCC believes that LATSS have the skills, experience and willingness to deliver the outcomes the Government wants to see. However, such transfer needs to be with the very clear proviso that funding has to accompany this option for reform.

As well as helping local consumers and businesses, LATSS already do consumer protection work which has a regional and/or national impact. Numerous examples can be provided to demonstrate this, and HCC's TSS provides Primary Authority and Home Authority support for businesses; deals with rogue traders within Hertfordshire (who will also act outside of Hertfordshire) targeting some of the most vulnerable consumers; and help to support legitimate businesses, who comply with the law but face unfair competition from those who do not. HCC's TSS also work in partnership with the other LATSS in the East of England, with EETSA (East of England Trading Standards Authorities) delivering excellent value outcomes for consumers and businesses in the region

Option 3 enables LATSS to have a greater influence over regional and national work. It will enable the development of better resilience for existing regional infrastructures which are crucial to effective engagement and delivery between the local and national levels. It will also enable transformational changes within LATSS in terms of strengthening leadership and influence in order to support more effective action against cross-boundary threats. We would like to add that whilst we recognise that the scope is currently limited to BIS policy areas, the proposed model provides the potential to be widened to embrace a broader range of trading standards functions. In future this could offer significant improvements to the current infrastructure and coordination areas such as food and animal health, giving clearer accountability and greater flexibility in delivery, response and use of resource

It is also worth noting that HCC do not believe Option 3 undermines the principles of the localism agenda. It gives LATSS greater freedom and flexibility to be able to work together nationally, regionally and locally. Furthermore, given that Citizens Advice also run their services at all levels, this model will make engagement between trading standards and Citizens Advice at a local, regional and national level much more cogent.

Clearly the success of Option 3 will be dependent on the amount of funds available to do the work required.

QUESTION 21. In relation to Option 3, do you agree with the Government's principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

Effective organisation of the TSPB will be the most crucial element of ensuring that the changes to enforcement work effectively. As such we have broken our response to this question down into separate elements.

Principle

HCC agrees with the Government's principles for the operation of the new TSPB to co-ordinate and lead the enforcement effort against regional and national threats and to deploy national funding to support such efforts.

This Board must be comprised of heads of trading standards and must be the key decision making body for the agreement of: priorities; allocation of funds to those priorities; the necessary delivery mechanisms; and appropriate means to monitor performance for the work carried out via BIS allocated funds. We envisage that the TSPB would be responsible for allocating Government funding, under a service level agreement or similar, for specific activities to deliver many of the functions currently provided by the OFT. This would be led by effective intelligence analysis. Clearly this does not (and must not) change the appropriate democratic decision making processes within local authorities for locally funded core trading standards services.

The TSPB will need to meet regularly to provide the strategic and operational oversight in a co-ordinated manner. The Government can establish principles but it must empower the TSPB to take operational decisions, based on evidence of consumer detriment, and this may be provided by bodies such as Citizens Advice, Which and the CMA etc. BIS will clearly want to ensure that national consumer protection issues are dealt with in a timely and effectively manner, but the Government must not dictate what action should be taken.

Political Oversight and Scrutiny

There needs to be effective political accountability and oversight. Ideally we feel that this role should be similar to an oversight and scrutiny role within local authorities, but done at a national level, whereby a group of councillors take responsibility to hold the TSPB to account for the decisions it has made and the work that has been carried out on its behalf. There may be other alternatives such as reports to relevant Boards within the LG Group and WLGA or via another mechanism. This would be in addition to any oversight provided

by BIS, who will remain accountable for the use of these monies via the National Audit Office and Public Accounts Committee processes.

Financial Oversight

Clear financial oversight and auditing is also crucial. A decision will have to be taken as to who would hold the funding and provide the necessary accounting and audit services to ensure total transparency and probity. However no matter which organisation provides this service, all decisions about the spending of any money would come directly from the TSPB in accordance with its agreed terms of reference and accountability structures.

Membership

Heads of trading standards must be responsible for the operational governance and oversight of the project. It seems sensible that any such board should be based on a similar format of the Trading Standards Policy Forum which has demonstrated added value in supporting the national coordination of policy and operational activity to date.

The TSPB must have effective representation and leadership from each English region and from Wales. The Welsh/ English regional representatives would need to be nominated via their relevant chief officer groups and be mandated to take decision at the TSPB on behalf of their areas. We recognise that effective co-ordination at a regional level is essential to achieve this and envisage that a small part of the overall funds would go to support a small sustainable infrastructure in each English region and in Wales. In addition we would expect there to be representation from HCC, WHoTS, SCOTSS and TSI on that Board plus other representatives such as BIS.

Others would be invited to attend meetings to share information, intelligence and advice (e.g. Citizens Advice, CMA etc), as required, but they would not form part of the decision making process of the board. If the remit of the Board widens to include other trading standards functions then also other relevant government departments and agencies would be invited as appropriate.

Scotland and Northern Ireland

There will need to be further discussions between SCOTSS, CoSLA and the Scottish Government on how this could work in Scotland. We are assuming at this stage that a separate Scottish solution is likely. In this case HCC would like to ensure that there is effective information exchange and would like to see a member of SCOTSS to participate in the TSPB to help ensure this.

These proposals do not extend to Northern Ireland. However we believe it will still be essential for the Department of Enterprise Trade and Investment (DETI) also have strong links to the governance arrangements that are established.

Chairman

The TSPB will need a Chairman, who will play a pivotal role. This person could be elected from its members (in the same way as the policy forum does currently), or it could be an

independent person. If it is determined that an independent chairman is required, then we believe it must be someone with the relevant skills, knowledge and experience that would enable them to effectively drive the newly formed TSPB forward. Depending on the amount of time required to fulfil this role, it may be appropriate for funds to be made available to pay for a Chairman role. If the Chairman was an existing head of trading standards, then funds would need to be provided to their employing authority.

Secretariat

The TSPB will need some form of programme office and secretariat to facilitate the meetings, ensure decisions are enacted, provide a contact point for heads of service and Government for TSPB related issues, prepare reports, deal with media, support any political oversight mechanism etc. Decisions will need to be made as to who should deliver the secretarial function for the Board. HCC would wish that the secretariat and all other “back office” functions are done in the most cost effective way possible to ensure that as many resources as possible are devoted to the delivery of front-line work.

Support required from BIS

Transformation of this type cannot be achieved if the relationship between BIS and the TSPB is seen as some form of outsourcing or procurement arrangement. It can only work as a partnership. This will be necessary both to get the arrangements set up and working and also to carry them forward to deliver what both central and local government desire.

In terms of any transition, the TSPB will be extremely reliant upon BIS providing detailed and robust advice, that the TSPB can rely on, in terms of matters relating to procurement rules, what and how any TUPE arrangements will be managed, any contractual or legal matters etc.

Delivery Mechanisms

The detail of any delivery mechanisms will depend entirely on final decisions as to what functions are to be delivered by trading standards under the governance of TSPB and more importantly the amount of funding associated with the functions.

Based on our understanding at present, we feel that the delivery mechanisms are likely to focus on commissioning groups of authorities or lead authorities with support from their regional groups, to provide a national centre of excellence and deliver certain functions, using funding allocated to that function.

It may also be appropriate that other functions may be done by other organisations such as TSI, training institutions, ACTSO or others.

HCC believe that a key strand of the TSPB must be to commission a strategic assessment in order to decide where the priorities lie for tackling cross border detriment. This was in the past provided by the OFT. This will provide the basis of evidence to help priorities regionally and nationally delivered work and will also help trading standards services with their local prioritisation of work.

HCC believe that expanded regional teams or national centres of excellence will provide sufficient investigative capacity to take on the larger cases.

The types of lead regions or national centres of excellence could work for any of the functions that are currently done by OFT. In particular we see them working for issues such as:

- Unfair Contract Terms,
- National consumer protection cases,
- National estate agents issues,
- Distance selling issues,
- Homeworking schemes,
- Issues relating to import docks/airports etc.

HCC welcomes the current opportunity that BIS has given regional trading standards groups to apply for national funding to deliver e-crime facilities and internet enforcement.

In terms of the current scambuster and illegal money lending teams, HCC would expect and wish these to continue using the same delivery mechanisms but under the governance of the TSPB.

Indemnity Fund

There is a particular concern that any individual local authority taking on a national case must not be put at significant financial/legal risk, and HCC would not wish to be put at any financial risk with these proposals. As such BIS, working with ACTSO and the trading standards policy forum, need to find a method of underwriting or insuring against any such risk.

It will be essential that the resources are available to cover all the costs of the investigations and legal liabilities are underwritten. Without the indemnity fund HCC would not recommend that any council should undertake any of these national high risk cases.

QUESTION 22. Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards? If so, would one of the JEB models be the best solution? Which one and why?

QUESTION 23. In relation to the various JEB models, how would you ensure effective Trading Standards participation in the JEB? Do you think that this option would deliver integration of enforcement across local, regional and national levels? Should other organisations be involved in the JEB, either as members or as participants in discussions? Would retention of such unrestricted consumer enforcement powers and responsibilities affect the CMA's singularity of purpose and distract it from its core competition remit?

QUESTION 24. How can your preferred new model best work with businesses?

Response to questions 22 to 24.

HCC would not prefer to maintain the status quo in terms of powers and responsibility as we feel that LATSS delivering via the model outlined in Option 3 will provide better outcomes for consumers and businesses than at present. Any model based around a JEB would be provide additional bureaucracy and costs associated with a new organisation but few clear benefits.

The JEB would also not be controlled by heads of trading standards and could not be held accountable in the same way, and would not have the democratic political links to individual local authorities through their regions and individual heads of trading standards.

HCC believes that this option would make it far more difficult to achieve the leadership role that the Government had hoped to create. We also feel that there would continue to be far more confusion and overlap of powers and responsibility. Without this clarity of responsibility, as well as control of substantial, national, enforcement resources within the Trading Standards network, it would be much harder to engage LATSS in cross-boundary enforcement in any integrated national system.

The role of the proposed Competition and Markets Authority

QUESTION 25. Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

QUESTION 26. In an Option 3-based model, should this enforcement role be subject to procedural limitations?

QUESTION 27. Do you agree that the CMA should enjoy significant discretion over when a market has structural problems, such as to give rise to its consumer enforcement powers?

QUESTION 28. Do you agree that the CMA should retain responsibility for mixed market studies where there may be competition and consumer issues (supply and demand side market failures) present on the relevant market?

QUESTION 29. Do you agree that in an Option 3-based model, the Citizens Advice service should in future be responsible for pure consumer detriment analysis and that the CMA should not perform pure consumer market studies? In such a case, do you agree that the CMA should stop performing market studies once it identifies that there is no structural problem in such markets and do you think there should be a duty on the Trading Standards Policy Board to prioritise cases referred by the CMA?

Response to questions 25 to 29

HCC agrees that there are benefits for CMA to retain a consumer enforcement role only in those cases where a potential breach of consumer law is connected to a structural market problem (e.g. the bank charges type cases). Where there are consumer cases that have a competition implication, we understand that the CMA will want to retain the resources to deal with cases that reflect structural market problems but, we remain concerned that this may reduce the resources for LATSS to deliver the new consumer landscape under the proposals.

HCC believes there must be effective communication and a good working relationship between the TSPB and CMA to ensure that intelligence can be shared and assurance received that cases can be dealt with appropriately.

The TSPB and the CMA should follow the National Intelligence Model (NIM) or similar approach to take an intelligence-led, problem solving approach to consumer protection

issues. NIM promotes partnership working and uses the management of information and intelligence to operate at three levels of work; level 1 – locally, level 2 – regionally and level 3 nationally/internationally. This approach can help promote consistent enforcement and effective intelligence sharing between LATSS and the CMA.

Cases that cross over institutional boundaries

QUESTION 30. Do you agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies in the proposed new landscape?

HCC agrees that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies.

QUESTION 31. Do you agree that it would be helpful to have some resource that required joint agreement between the CMA, TSPB and consumer advocacy bodies for its release, to be used to investigate or address consumer and market issues that would otherwise risk an enforcement or advocacy gap? If so, at what level should such funds be set and how best should they be administered?

It would be helpful to have some resource that required joint agreement between the CMA, TSPB and the consumer advocacy bodies for its release to be used to investigate or address consumer and market issues that could risk an enforcement or advocacy gap. The exact mechanism required would depend on the amount of funds allocated for this and who "held" the funds. We would not wish to see funds diverted purely from the TSPB alone, and would wish to see proportionally similar funds diverted from the CMA if the Government decide to resource in this way. HCC would also wish that the bureaucracy associated with any such scheme is minimised.

Other current OFT roles

QUESTION 32. Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not, how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?

LATSS already have years of enforcement experience of dealing with rogue traders and illegal behaviour within their own communities including many with a national impact. Councils take far more prosecutions than the OFT and are confiscating tens of millions of pounds of assets from serious criminals in the consumer protection field. We believe that their threat of enforcement can help to deter non-compliance and can effectively back up self-regulatory schemes. LATSS have always used a wide range of tools to ensure compliance over the years such as warning letters, cautions, fixed penalty notices, civil orders, injunctions etc. HCC do not believe that there will be any problems with an enforcement model branded as run by LATSS.

The current consultation does not address the issue as to how those rogue traders and businesses who are based overseas will be dealt with.

Guidance and training

QUESTION 33. Do you agree the TSI would be the appropriate home for the OFT's professional guidance and training functions in the event of creation of a new single Competition and Markets Agency?

TSI have considerable experience of training staff in the trading standards community and producing professional guidance. TSI could be the appropriate home for the OFT's professional guidance and training functions. However, we need to find a model that ensures trading standards professionals have access to good quality low cost training and materials.

Most international liaison and OFT's general consumer policy work

QUESTION 34. Do you agree that the TSI is the most appropriate home for the OFT's international liaison and general policy functions in the event that the CMA has only a limited consumer enforcement role?

HCC is aware of TSI's strong role and expertise in relation to European and international work in areas such as food and product safety and they could undertake this work. Ultimately this will depend on what European and international representation the UK Government want and the amount of resources they wish to have devoted to it. For example if BIS already attend a forum or group, as the UK representative, then it may not be necessary for a TSPB nominated representative to attend as well. This would avoid duplication of effort and reduce costs to the UK.

It may also be appropriate if a lead region or authority is providing certain aspects of national delivery, that they would also fulfil the European or international work. For example if a lead region is to take a national enforcement role on unfair contract terms then it might be more appropriate for them, rather than a representative from the UK Government, to attend any European or international forum meetings.

Ultimately decisions will have to be made once we are clear what functions are being transferred and what the Government's expectations are in this area.

QUESTION 35. Do you think the requirement for LATSS' and other designated bodies' (under Part 8 of the Enterprise Act 2002) court orders to be directed by a central body needs to be retained in the new consumer enforcement model and if so, why?

HCC does not believe that there will be any difficulties if the requirement for LATSS and other designated bodies (under Part 8 of the Enterprise Act) is removed. This requirement was neither necessary nor helpful to enforcement or compliance.

If there are any concerns regarding the possibility of businesses being subjected to multiple interventions for the same issue we believe that these problems could be resolved by use of a centralised database to record the information, such as the Consumer Regulation Website (CRW).

QUESTION 36. Do you think that responsibility for chairing the consumer concurrencies group should transfer to Trading Standards Policy Board or TSI or to the CMA and why?

It may be helpful for a review to take place to better understand the full work of the consumer concurrencies group before proposing who should chair the group.

QUESTION 37. Do you agree that the current supercomplaints system to the OFT should be retained in respect of the CMA if the planned changes in the landscape go ahead?

Question 38. Do you think that the supercomplaints process should be extended to require the Trading Standards Policy Board to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?

Response to questions 37 and 38

These proposals seem sensible. In terms of responding to supercomplaints, HCC would assume that the responsible body would be whomever the TSPB has commissioned to deliver the enforcement function in that area. For example if the supercomplaint related to a problem with estate agents licensing, then the body that TSPB has commissioned to undertake the work, would be responsible for responding to the supercomplaint and they would be accountable to TSPB for doing this work.

QUESTION 39. Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?

HCC has no doubt that a lead local authority, or group of authorities, could take on the OFT's estate agency and related anti-money laundering functions, however it is essential that monies from BIS are made available to undertake this work, and that the funding does not come from core local authority monies. However HCC is also of the view that any fraudulent activities or activities where consumers are misled by estate agents are being dealt with by LATSS under current legislation such as the Fraud Act, the Property Misdescriptions Act and the Consumer/Business Protection from Unfair Trading Regulations.

The enforcement of anti-money laundering regulations appears to be dealt with in a "light touch" way by the OFT, and any transfer to LATSS would be focussed on dealing with serious known breaches and providing appropriate advice and support to businesses who may seek advice on compliance. This could be delivered via the Primary Authority Scheme for those businesses that have a scheme.

QUESTION 40. Do you agree that the proposed changes to the consumer landscape should go ahead in April 2013 regardless of whether the CMA is created by then or not? If not, why not?

HCC believes that it is essential that the proposed changes to the consumer landscape should go ahead in April 2013. This would avoidance continued confusion in the current landscape and deliver financial efficiencies by streamlining the processes and structures.

3. FURTHER INFORMATION

If you have any queries about the content of our response and wish to discuss the matters further, please do not hesitate to contact our Assistant Director of Community Protection, Guy Pratt on 01992 507535.

Richard Thake
Executive Member for Environment and Community Safety

Highland Council

**Empowering and Protecting Consumers:
Department for Business, Innovation and Skills Consultation on institutional
changes for provision of consumer information, advice, education, advocacy
and enforcement**

Response by The Highland Council

The final details of how the consumer protection landscape will look after the current review is complete have not yet been determined. However, it is clear that two principal players have been identified, namely Trading Standards and Citizens Advice. The Highland Council welcomes this development and takes the view that these two organisations have the necessary range of skills and experience to provide the full gamut of consumer protection activities i.e.: consumer information, advice, education and assistance; business advice and law enforcement; consumer policy and advocacy. To ensure the success of the proposed transition of responsibilities, their respective capacities to effectively undertake these new or extended roles needs to be carefully assessed and resourced.

(Note that in this response we will use the phrase "CAB" to refer to the full spectrum of the CA "family" i.e. Citizens Advice, Citizens Advice Scotland (CAS) and the Citizens Advice Bureaux network throughout the UK; The acronym LATSS is also used to represent Local Authority Trading Standards Services.)

It is clear that CAB and Trading Standards will require to work closely together to provide a consumer protection landscape that protects consumers and reputable businesses. In Highland, this process has already begun with initial discussions and plans being drawn up between The Highland Council's Trading Standards Service and CAB, including the local bureaux. We have already identified areas where services can be improved by this new enhanced partnership. For example, we think that CAB may be able to "reach" a wider range of consumers than Trading Standards, thus enabling both organisations to work together to directly assist a larger section of Highland society. Further, information received by bureaux could provide important intelligence for Trading Standards investigations and enhance the intelligence provided via the national consumer telephone helpline.

Recognition has been given in the Consultation Document and is reinforced by the views of Highland Council that for any partnership between LATSS and CAB to work for the benefit of consumers by protecting them from undesirable and/ or illegal business practices, that LATSS as the enforcement bodies must as far as is reasonably practicable be provided timeously with detailed information about consumer complaints received by whatever route that exists in the new advice framework. This principle is one that already clearly exists within the relationship between LATSS and Consumer Direct and will be central to our negotiations with CAB. Other services in the Council who have a relationship with CABx through the procurement of advice and information services have experienced high levels of bureaucracy arising from CAS' insistence on strict confidentiality, even when sharing of information would be beneficial to the client. If this approach is taken it could render the proposed new partnership ineffective in meeting consumer needs and the Council would urge that work is carried out to ensure that information flows freely from CAB to LATSS.

We see Trading Standards taking the lead with regard to the provision of regulatory advice to business and enforcement, with CAB leading on consumer advice and

consumer information provision. There are however areas of unavoidable “overlap” and we warn against the establishment of rigid and artificial distinctions or demarcations being drawn and identify the continued need for Trading Standards to be involved in the delivery of elements of advice provision consistent with current practices in Highland. The following example illustrates where such undesirable demarcations could be created unless great care is taken during the implementation of the proposed changes:-

- **“CAB do advice and Trading Standards do enforcement”**

“Conciliation” (also sometimes referred to as “Intervention” or “Stage 2 Advice”) is where traders are contacted by Trading Standards to raise a particular individual case on behalf of a consumer who thinks they have received unsatisfactory goods or services. It can be seen as a “consumer advice” function and an extension of the provision of consumer information and advice. In practice, however, it is often much more than that. When carried out by officers of The Highland Council, the “conciliation” also involves elements of enforcement activity. The circumstances of the case or cases will often raise issues about compliance with the law which will be important for informing the business how to comply in the future, regardless of the final outcome of the case in hand. The issues will often be “civil law” matters such as sale of goods or provision of services, but the duties placed on the Council by the Enterprise Act 2002 clearly make these enforcement issues just as much as traditional “criminal law” enforcement matters such as false descriptions, short weight or dangerous products. “Enforcement by advice” of this kind is central to promoting compliance and in practice inextricably linked to consumer advice and conciliation. So, while initial advice will usually be provided solely by CAB, when a case escalates to Conciliation, the best outcomes are achieved by CAB and Trading Standards working together. In order to achieve position our view is that Trading Standards must retain a role, albeit a role in close partnership with CAB, in consumer advice provision.

Given the likely transfer of various enforcement functions from central government to Trading Standards, whilst recognising that the strengthening and expansion of existing cross-boundary units such as Scottish Scambusters and the Scottish Illegal Money Lending Unit to provide Scotland with the capacity to take on and/or co-ordinate some major investigations and act as a Scottish Intelligence Hub, we strongly support the concept of “lead local authorities” where Trading Standards Services with appropriate specialist skills and experience are given national or regional responsibilities in their field of expertise. Subject to appropriate funding being provided and there being no reduction in the existing Service provided to Highland consumers and businesses, The Highland Council is well placed to be an active partner in such an arrangement and would consider any appropriate proposals for participation by its Trading Standards Service in a lead authority network.

As detailed below, the impact of this review on Highland will be significantly affected by the detail of what changes to the operational and governance arrangements are put in place Scotland to reflect the transfer of enforcement functions from the OFT to LATSS, which at present are unclear. However, regardless of the nature of the outcomes that emerge, The Highland Council will continue to be committed to providing a fair and safe trading environment for consumers and businesses in Highland. We will continue to deliver on a wide range of functions, and with particular emphasis on the key themes of e-Commerce, doorstep crime and tourism.

QUESTION 1. How do you think the provision of consumer information to consumers can be improved upon?

QUESTION 2. Do you agree that the OFT's consumer information role should be transferred to Citizens Advice?

QUESTION 4. Do you agree that the OFT's consumer education roles should be transferred to Citizen's Advice? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?

Response to Q1-2 and 4

The Highland Council views the provision of consumer information and education as both an important public service and a significant contributor to crime prevention and consumer empowerment. We aim to ensure that consumers know their rights when buying goods and services, and are alerted to any particular "scams" or other misleading or dangerous trading activities. While we will take enforcement action when necessary, our aim is to minimise the number of consumers being mistreated in the first place and believe that good quality consumer information and education plays a key role.

We support the transfer of the OFT's consumer information and education roles to CAB and we look forward to working closely with CAS and the Highland CABx on these matters in the future. Consumer education can be provided in a number of ways and we would stress the continuing importance of each of these mechanisms. While on-line content is increasingly the leading forum and so attention to its quality and quantity is crucial, we must not neglect other formats. Many consumers, particularly some of those in vulnerable or disadvantaged groups, still prefer advice given over the phone or in person. Further, while recognising that printed "glossy" leaflets can be an unsustainable luxury, we think that in order to reach the widest audience it is important that some key leaflets (e.g. "Buyers Guide") continue to be supplied in this form.

We would also stress the importance of developing different strategies to provide consumer information and education as widely as possible. Traditional methods are still valid: we regularly use news releases, talks to groups and public displays. We are also developing other strategies: for example providing articles for community publications and participating in "peer-speaking" programmes where senior citizens are trained to pass on information about consumer rights to their peers. In all these activities, key support has come from the OFT and we look forward to receiving similar assistance from CAB in the future, and developing joint CAB/Trading Standards consumer information and education activities locally.

We are also strong supporters of the Young Consumers of the Year Competition. We think that the provision of consumer information and education to young people is very important and there may be scope for CAB and Trading Standards to work on this in future.

QUESTION 3. Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service?

Yes.

QUESTION 5. Do you agree that the proposed Trading Standards Policy Board and the TSI should coordinate and support business-facing educational activities?

As we explain below in the “Enforcement” section, our main concern regarding such coordination issues is to ensure that there is a satisfactory “Scottish” dimension that can work with any TSPB in England & Wales... We support this proposal, subject to the establishment of an effective Scottish equivalent which has the support of COSLA and the Scottish Government and the participation of the members of the Society of Chief Officers of Trading Standards in Scotland {SCOTSS}

QUESTION 6. What are the best options for current and prospective CCAS members to consider in the event that the Government’s proposed consumer and competition landscape proposals are adopted?

QUESTION 7. Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of CCAS with effective alternative systems of accreditation?

QUESTION 8. What are the lessons learned from the operation of CCAS which may help in establishing (or revising) voluntary schemes in the future?

QUESTION 9. What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?

QUESTION 10. What characteristics would a Kitemark® based code certification process need to have to meet industry requirements?

QUESTION 11. What is your view on extending the Primary Authority concept to code certification?

Response to Q6-11

We do not welcome a “winding down” of the CCAS, which we think was the best mechanism for boosting the effective use of Codes of Practice. The CCAS enabled a “light touch” regulatory approach to traders who followed approved codes, while also maintaining high standards. We are not confident that the private and voluntary sectors will provide appropriate alternatives and fear that standards will be patchy and vary widely between different code operators.

QUESTION 12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

QUESTION 13. Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?

QUESTION 14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general

advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?

QUESTION 15. What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

QUESTION 16. What are your views on these options for the transfer of information gathering powers? Which is preferable and why? Are there any other options for information-gathering powers?

QUESTION 17. What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?

QUESTION 18. Do you support the transfer of the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland and agree that as a result Consumer Focus Post Northern Ireland be abolished?

QUESTION 19. Do you agree that the Postal Services Redress Scheme should continue to apply in Northern Ireland to ensure that Northern Irish consumers retain the same access to redress as consumers elsewhere in the United Kingdom?

Response to Q12-19

The Highland Council recognises the importance of consumer advocacy and its effective delivery. The Council also believes that anyone taking on the coordinated, publicly-funded, consumer advocacy function needs to have real teeth to be able to take on cases that would not otherwise be taken and recognises the significant contribution Consumer Focus Scotland has made to a number of consumer advocacy campaigns:

The Highland Council therefore believes that the differences in the landscape in Scotland make it essential that Consumer Focus Scotland be retained rather than transferring consumer advocacy to Citizens Advice.

QUESTION 20. Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?

QUESTION 21. In relation to Option 3, do you agree with the Government's principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

QUESTION 22. Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards? If so, would one of the JEB models be the best solution? Which one and why?

QUESTION 23. In relation to the various JEB models, how would you ensure effective Trading Standards participation in the JEB? Do you think that this option would deliver integration of enforcement across local, regional and national levels? Should other organisations be involved in the JEB, either as members or as participants in discussions? Would retention of such unrestricted consumer enforcement powers and responsibilities affect the CMA's singularity of purpose and distract it from its core competition remit?

QUESTION 24. How can your preferred new model best work with businesses?

Response to Q20-24

As a Scottish local authority, The Highland Council's response to these questions is heavily dependent on the successful formulation of suitable models for Scotland. As the consultation document states at section 5.53:

"In Scotland, BIS will work with COSLA, SCOTSS, the Local Government Improvement Service and the Scottish Government to identify suitable governance and operational models. This work is still ongoing to develop models for the delivery of these functions in Scotland."

Accordingly, it is difficult for us to be specific in terms of the options presented, as significant elements of them do not directly apply to Scotland, and the equivalent Scottish alternatives are not yet clear. Instead, we would seek to set out what we perceive as the main principles that we think should be embedded in any restructure of enforcement. These are as follows.

1. Any structures that are put in place for enforcement in Scotland must be appropriately-funded to be effective. A full and realistic assessment must be carried out of the resources required to provide the services.
2. Any enforcement solution for Scotland must encompass the needs of consumers and businesses throughout Scotland. In particular, the needs of rural communities such as in Highland should not be overlooked in arrangements which overly focus on the main centres of urban population.
3. There must be appropriate mechanisms and resources to deal with "Level 2" cases, i.e. those which cross local authority boundaries.
4. Recognition needs to be given to the existence of criminal activity that although serious does not have any relevant cross boundary aspect. Enforcement must therefore retain an appropriate local base to ensure that attention is given to issues important to localities.
5. The Scottish Government is having an increasing role in legislating on matters relevant to Trading Standards, e.g. the sale of knives; and tobacco products. Petroleum licensing and regulation, unlike in the rest of the UK, is predominantly carried out by Trading Standards in Scotland. Underage sales detection procedures are in Scotland driven by the Crown Office rather than by Home Office procedures. Mechanisms therefore need to be in place to deal with Scotland-specific issues, i.e. issues which affect all Scottish residents (and therefore all Scottish TSS) but not those in England and Wales, perhaps due to differences in Scots law or procedure.

6. In addition to its traditional role in criminal law enforcement, Trading Standards in Scotland must be centrally involved in using civil enforcement mechanisms (such as the Enterprise Act) to ensure consumers are protected. Appropriate and accessible legal advice and assistance must be available to officers to facilitate this. The Scottish model must take account of civil enforcement cases on all levels: local, cross-local authority and Scotland-wide.
7. While we support self-regulatory and co-regulatory models where these are effective, there must also be sufficient legal requirements to ensure a fair and safe trading environment for Scottish consumers and businesses.
8. Trading Standards must retain sufficient powers to enable officers to investigate effectively.

Taking into account the principles set out above, and their application to existing structures leads us to conclude that in order to provide for the effective regulation of the law that lies within the remit of Trading Standards there is a need for three specific requirements to be met: -

1. A strong executive body which has COSLA and Scottish Government support capable of effectively assessing and prioritising the threats to Scottish communities; to drive the co-ordination of operational activities and allocate operational funding, where available, to where these threats can best be addressed. Representatives from this body would also represent Scottish interests on the UK TSPB.
2. Building on the existing cross-boundary teams i.e. Scottish Scambusters and the Scottish Illegal Money Lending Unit, the existence of a single effective central unit, properly resourced and capable of taking on/ facilitating the co-ordination of selected Level 2 & 3 cases and which would act as the Scottish Intelligence Hub.
3. The continued existence of a geographically spread / local authority based inspectorate capable of the gathering of intelligence; investigation and enforcement of criminal and civil law breaches; advising business and protecting consumers against all levels of criminal activity across Scotland and encompassing a network of geographically spread centres of expertise, based within individual LATSS or regional groups of LATSS upon which all LATSS could call on for advice or assistance.

QUESTION 25. Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

QUESTION 26. In an Option 3-based model, should this enforcement role be subject to procedural limitations?

QUESTION 27. Do you agree that the CMA should enjoy significant discretion over when a market has structural problems, such as to give rise to its consumer enforcement powers?

Response to Q25-27

We agree that the CMA should retain a consumer enforcement role in cases involving structural market problems. We also agree that CMA should have significant discretion over judging whether there are structural market problems in any case, although we would expect there to be mechanisms in place for appropriate consultation and liaison with other regulators including Trading Standards.

QUESTION 28. Do you agree that the CMA should retain responsibility for mixed market studies where there may be competition and consumer issues (supply and demand side market failures) present on the relevant market?

There is an obvious logic in giving CMA responsibility for a market study that involves *any* competition issues, given its unique expertise in such matters. However, we fear that this may skew the way in which some market studies are handled. If the study is mostly about consumer problems, with a small element of competition problems, we think it would be better dealt with by a specialist consumer organisation, i.e. CAB. Therefore, we think that an assessment of each proposed market study must be carried out to determine the preponderance of either competition or consumer matters and then “allocated” to the appropriate agency accordingly. We trust that in most cases this can be determined by consensus by CMA and CAB together. CAB may need to take specialist advice – perhaps from CMA – on the competition aspects of the market studies for which CAB has responsibility.

QUESTION 29. Do you agree that in an Option 3-based model, the Citizens Advice service should in future be responsible for pure consumer detriment analysis and that the CMA should not perform pure consumer market studies? In such a case, do you agree that the CMA should stop performing market studies once it identifies that there is no structural problem in such markets and do you think there should be a duty on the Trading Standards Policy Board to prioritise cases referred by the CMA?

We would stress the important role that detailed market studies play in the consumer protection landscape. They provide vital insights for enforcement planning in a variety of ways: providing tangible and statistical evidence that a suspected area of consumer detriment exists; “debunking myths” about perceived problems; alerting enforcers to new problems. We support the proposal to give responsibility to CAB for consumer market analysis and we trust that CAS would be integral to these processes. The TSPB and whatever Scottish solution is put in place should have the opportunity to influence the prioritisation of cases rather than any specific duty.

QUESTION 30. Do you agree that the Government’s proposed approach is a sensible way of ensuring effective collaboration between the various bodies in the proposed new landscape?

QUESTION 31. Do you agree that it would be helpful to have some resource that required joint agreement between the CMA, TSPB and consumer

advocacy bodies for its release, to be used to investigate or address consumer and market issues that would otherwise risk an enforcement or advocacy gap? If so, at what level should such funds be set and how best should they be administered?

Response to Q30-31

No comments.

QUESTION 32. Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not, how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?

We think that the “Trading Standards” “brand” already has status and as such should be used prominently in the new consumer protection landscape. As such, we think the “brand” can have a strong deterrent effect.

As stated above, we support the use of self- and co-regulation where it is effective and our officers already routinely apply the “established means” test when considering possible “CPRs” cases. At the same time, we would seek to emphasise the importance of there being an enforcement option even across industries that may in general be appropriately controlled by self-regulation. The mechanisms put in place to provide this option must be strong, well-defined and deal fully with the situation in Scotland.

QUESTION 33. Do you agree the TSI would be the appropriate home for the OFT’s professional guidance and training functions in the event of creation of a new single Competition and Markets Agency?

We agree that TSI is an appropriate “home” for the important functions of professional guidance and training and we are confident that TSI will provide these effectively. We would prefer that the functions were also underpinned by a strong and authoritative contribution from central government, although this would appear unlikely in light of plans to give the CMA a very limited involvement in consumer enforcement.

QUESTION 34. Do you agree that the TSI is the most appropriate home for the OFT’s international liaison and general policy functions in the event that the CMA has only a limited consumer enforcement role?

We think that the international functions are best done, as now, by an arm of central government. While we expect that TSI will rise to the challenge of carrying out these functions, we question whether a professional body can carry the same “weight” and authority as central government when dealing with public and private organisations from abroad, and so we have some concerns about this proposal.

QUESTION 35. Do you think the requirement for LATSS’ and other designated bodies’ (under Part 8 of the Enterprise Act 2002) court orders to be directed by a central body needs to be retained in the new consumer enforcement model and if so, why?

Yes, the central direction is required. The Highland Council values its independence in deciding whether to take enforcement action of any kind within its jurisdiction. The current co-ordinating role of the OFT does not threaten this, but instead ensures coordination and some level of consistency across the UK. We value the OFT's Consumer Regulations Website (CRW), and where necessary the advice and assistance of OFT staff to determine which authority is best to take forward any cross border case. In some cases, it is very clear which authority should be the "lead" on a case and the OFT need do little. However, we perceive that there are regularly cases where the OFT's input is crucial in assuring that the case is taken forward in an appropriate manner and that there is minimal duplication. This is also good for the businesses involved.

QUESTION 36. Do you agree that responsibility for chairing the consumer concurrencies group should remain with the CMA?

No comments.

QUESTION 37. Do you agree that the current supercomplaints system to the OFT should be retained in respect of the CMA if the proposed changes go ahead?

QUESTION 38. Do you think that the supercomplaints process should be extended to require the Trading Standards Policy Board to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?

Response to Q37-38

We agree that the supercomplaints system should be retained, but we do not think it appropriate to simply transfer the OFT's current responsibilities to the CMA as this may cause a loss of the consumer protection angle. There must be involvement of both CAB and Trading Standards, including their Scottish dimensions.

QUESTION 39. Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?

As stated above, in the context of the proposed new landscape, we support the concept of "lead local authorities". We are insufficiently au fait with the details of the OFT's anti-money laundering functions to give a definite answer to this question, but if appropriate funding and legal powers are available, in principle we do not see why a lead authority could not carry this out.

QUESTION 40. Do you agree that the proposed changes to the consumer enforcement landscape should go ahead if the creation of the CMA is delayed? If not, why not?

Yes. If the CMA is to have minimal involvement in consumer matters, then the other changes can go ahead.

Holmes, Gwen

I am a volunteer with Portsmouth City Council Trading Standards. The department manager, Robert Briggs has shown us the proposal to transfer a lot of the TS work over to the CAB and we are completely mystified & more than a little concerned that this should be even considered.

The CAB has difficulty coping with the work they do now. IF you can finally manage to contact them by telephone, an appointment can take anything up to three weeks. If you are desperate enough to drop in, the wait can take several hours and the advice given is not always correct (I speak from experience on all of these issues). The CAB do no 'outreach' work, whereas Portsmouth Trading Standards send their Community TSOs to schools, neighbourhood forums and residents associations, they have a regular slot on local radio, work with local people who have learning disabilities to ensure they are treated with respect by local traders and have input with Portsmouth University on the Law Degree courses. This year the Portsmouth team, working with pupils from Portsmouth Grammar School, won the Young Consumer of the Year competition. We also run consumer education campaigns for Scamnesty, National Consumer Week, Rogue Traders, Loan Sharks etc and this year are launching a Safe Shopping Area in the local shopping precinct and holding drop-in sessions in a local library as well as other regular community education events in the town centre and other local shopping areas - I could go on! These all mean that we are pro-active rather than re-active - people only go to the CAB after a problem arises - we are there to let them know how to prevent it happening. The volunteers organise events, 'mystery shopping' & price checking amongst themselves - we have all had regular training in Consumer Law, shoppers rights etc and are CRB checked. We are regarded as part of the team - not 'token' cheap labour and our volunteer system is envied by many city & county councils who come to ask for advice on how to set up a similar system. The CAB do none of this - neither do they have a Rapid Action Trading Standards (RATS) scheme or do home visits to elderly & vulnerable people.

Why take away all this good work from the experts - who really know what they're doing - and give it to an organisation who cannot cope with the capacity now and especially one that seems to have no accountability whatsoever.

Our system really shows David Cameron's Big Society in action and I would like to invite anyone who is interested to attend one of our events to see how well it works.

PLEASE, PLEASE, PLEASE reconsider this ludicrous proposal and let the people who know what they are doing get on with the job!

Yours sincerely

Gwen Holmes (Mrs)

Home Retail Group



PD/Consultation/270911

27th September 2011

David Evans
Consumer And Competition Policy Directorate
3rd Floor
1 Victoria Street
London
SW1H 0ET

Home Retail Group plc
Avebury
489-499 Avebury Boulevard
Milton Keynes
MK9 2NW

Tel: 0845 124 0044
Fax: 01908 692 301

Dear David

**Empowering and Protecting Consumers.
Consultation on institutional changes for provision of consumer information,
advice, education, advocacy and enforcement.**

Thank you for the opportunity to comment on the above consultation.

Our comments are as follows.

QUESTION 1. How do you think the provision of consumer information to consumers can be improved upon?

Consumer information is key to the market working well – there is too much misinformation, rumour, and myth.

Consumers that are accurately informed about their rights and obligations can clearly have a more constructive discussion with businesses, which generally are also well informed and understand their obligations.

I think the first part of the process of any improvement is to take a serious look at legislation that gives rise to consumer's statutory rights.

An example is Sale of Goods legislation, where existing UK law has been layered with aspects of European law, and there is a complex labyrinth to navigate.

Simplifying the regulatory framework would assist greatly in the facilitation of consumers becoming well informed.

Delivery of consumer information needs to become engrained in the culture – it should become an issue that is covered by the national curriculum in schools. Making information available to consumers at an early age will help their development with the issues and assist in busting some of the myths about consumer's rights that exist within society at large.

With regards to providing information when consumers need it, when they are active in the market place we have seen an excellent model of a platform for consumer information in the SOGA hub created by the OFT.

We would advocate the expansion of that platform.

Its scope is limited being a web based platform, however the material is designed and built to be portable and can be used in other mediums.

QUESTION 2. Do you agree that the OFT's consumer information role should be transferred to the Citizens Advice service?

It is difficult to answer this question without knowing the facts about the capability of the Citizens Advice service.

In many other walks of life, the passage of a function, service or item to a new owner would be the subject of rigorous scrutiny, the higher the risk the greater the scrutiny.

We have no issues about the passage of the OFT's functions to Citizens Advice service provided the recipient has passed scrutiny.

In particular there is adequate resource, funding, skill set, vision, governance and engagement to deliver an appropriate service.

QUESTION 3. Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service?

Same response as 2.

QUESTION 4. Do you agree that the OFT's consumer education roles should be transferred to the Citizens Advice service? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?

Same as response 2.

Education is clearly a more proactive process than merely making information available.

As suggested at point 1 the national curriculum should fully accommodate the enlightenment of youth to the tough reality of being a consumer.

Beyond that, it is difficult to see how consumers can be educated – adults are unlikely to surrender themselves to formal education, the delivery must be more subtle and delivered through means that modern consumers are familiar with – TV, social media, magazines.

QUESTION 5. Do you agree that the proposed Trading Standards Policy Board and the TSI should coordinate and support business-facing educational activities?

It is essential that business has an adequate feed of information to ensure it keeps abreast of new legislation, and important developments in existing legislation.

This is really important for Small and Medium Enterprises (SMEs) where there may not be any internal resource, and even large businesses may not have internal legal and compliance resource, advice and guidance material is useful as it often provides information beyond the legislation itself.

Whilst the Policy Board will coordinate this, we would still expect BIS to take a leading role in the publication or endorsement of guidance notes for all business.

One certain route to ensuring businesses stay on top of developments is entering a Primary Authority (PA) Partnership, and even in this scenario the enforcement

professionals that provide the PA service need good quality material to refer to when giving advice to business.

The planned extension of PA into additional areas (e.g. working with trade bodies) will help ensure that business advice is delivered effectively.

QUESTION 6. What are the best options for current and prospective CCAS members to consider in the event that the Government's proposed consumer and competition landscape proposals are adopted?

We have no strong views on this other than we are wary of schemes that are put in place to drive compliant behaviour and are not law but end up being viewed by the regulators, the public and possibly even the courts as law.

QUESTION 7. Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of CCAS with effective alternative systems of accreditation?

The market will decide – if products are made available that help drive a competitive advantage then businesses will buy into them – an example quoted in the document that demonstrates this can happen is “buy with confidence schemes” well administered and advertised schemes can make a difference locally, by allowing customers to differentiate accredited tradesmen from non accredited and reduce the risk of using a rogue trader.

This does also need an element of effective enforcement to ensure non registered businesses that present themselves as registered when they are not, for example by using the logo without authority are caught and punished.

QUESTION 8. What are the lessons learned from the operation of CCAS which may help in establishing (or revising) voluntary schemes in the future?

No view on this

QUESTION 9. What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?

This would be a robust way of dealing with this issue, if BSI believed they had a role to play in this arena.

QUESTION 10. What characteristics would a Kitemark® based code certification process need to have to meet industry requirements?

As with the response to 7 the market will decide. If the product is good and drives a competitive advantage then business will engage with that scheme. A good benchmark is the kitchen industry – the norm is now for businesses that supply and fit kitchens to seek external accreditation to drive up customer satisfaction (reduces costs of resolving issues after the event) and to use as a marketing tool. A customer looking for a kitchen can choose to go to a business that has no accreditations, some accreditations or “top class” accreditations – schemes often offer Bronze/Silver/Gold type accreditations.

The benefit of the Kitemark scheme is that it is a recognised scheme (for example the police recommend it as the accreditation mark that people should look for when choosing locks and security devices)

It would have that advantage of being established if it was extended it into other areas of consumer products.

There is a challenge to the enforcement community, where claims of accreditation could be made falsely by traders to create the impression of being a reputable trader, or schemes that are “made up” or are genuine but are insubstantial in that they lack adequate validation processes may distort the market.

These are matters that will require adequate policing – again it places the focus on rogue traders, as it is only they who would falsely claim accreditation or support bogus or insubstantial schemes.

QUESTION 11. What is your view on extending the Primary Authority concept to code certification?

Not sure that Primary Authority is a suitable place to put scheme accreditation, not without a significant re-vamp of the skill set and training within the Primary Authority.

There is an element of auditing and assessment skills within TSDs, but not to the level that would be required if they were to adopt such a role.

There is a strong argument that there is a need to deliver “earned recognition” – which codes would perhaps form a part of through other means other than Primary Authority.

For example for national regulatory bodies it is unclear how the existing Primary Authority scheme would work (as there is only one regulator, not several).

Here some mechanism to earned autonomy is required and that mechanism could also be the path for the delivery of scheme accreditation.

QUESTION 12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

The expression “jack of all trades master of none” springs to mind.

We completely support the idea of reducing costs, making the process simple and uncomplicated, however the matter the Government needs to address is sectoral specialisms that would be compromised by any “one size fits all” approach.

QUESTION 13. Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34? 45

Clearly the principles would be required to be followed if a new unit was to be built that was capable of delivering the Governments decision.

The challenge is in there it talks about “powers” – business would be anxious about the creation of a body that may put burdens in the way of legitimate business, and also “resources” – in the current climate resources are scarce and becoming scarcer.

QUESTION 14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?

The business community appreciates the dilemma the Government has – it wants to provide the service it believes is required, and consumers have come to expect, and possibly expand these activities, but with less money.

It is therefore inevitable that changes have to be made – and moving responsibilities sitting in a number of organisations under one roof makes commercial sense.

The Government has identified Citizens Advice as the appropriate home for this, and we have no reason to doubt the logic behind that conclusion, provided that the Government has satisfied itself of the adequacy of the organisation to meet the task.

QUESTION 15. What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

We agree with the consultation that for a number of areas the approach must be UK wide – businesses operating across the UK find devolution a major challenge and burden, resource being required to ensure that local deviations and requirements are accommodated.

QUESTION 16. What are your views on these options for the transfer of information gathering powers? Which is preferable and why? Are there any other options for information-gathering powers?

The CEAR was used by Consumer Focus to gather information about the safety of pushchairs – a report as far as I am aware was never forthcoming.

The use of the CEAR was a revelation to us and we were astounded at the powers it offered Consumer Direct.

We would suggest that if this Government is serious about the burdens that are placed on business it should consider repealing this legislation or at least amending it, not transferring the powers as they stand to the Citizens Advice service.

The consultation alludes to these concerns and we would concur with those concerns.

Compliant business will always strive to assist the public bodies where it is appropriate.

The rogues will not comply with any request for assistance or information, whether formal or informal.

QUESTION 17. What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?

We have concerns about imposing redress schemes onto retailers.

We would challenge that there is evidence for a need for such schemes, responsible retailers look after their customers and work hard to address any detriment – this is reflected in the number of transactions that lead to a complaint and the number of those complaints that end up in formal litigation – very few.

We do not accept that there is a vast untapped body of dissatisfied consumers seeking the creation of redress systems.

The concern is that the people that would use redress schemes are people that would already engage with the business, they would relocate to an alternative means of concluding the same complaint. Potentially with additional cost for the business

Clearly in some sectors there may well be detriment and consumer risk that does merit a redress scheme being created, but this must be done on a sector by sector basis.

The focus should not be on redress but on directing consumers away from the rogues and into the arms of business that has the capability to deliver the appropriate quality goods or services and have the capability to remedy that situation if it goes wrong.

A big piece of this is consumer education to ensure that the quality of the debate between trader and consumer is based on a correct understanding of the rights and obligations of both parties.

Perhaps the cause being lobbied for here is an overhaul (simplification, clarification, qualification) of the consumer rights regime.

QUESTION 18. Do you support the transfer of the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland and agree that as a result Consumer Focus Post Northern Ireland be abolished?

No strong views on this

QUESTION 19. Do you agree that the Postal Services Redress Scheme should continue to apply in Northern Ireland to ensure that Northern Irish consumers retain the same access to redress as consumers elsewhere in the United Kingdom?

No strong views on this

QUESTION 20. Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?

We would favour the proposal to establish the CMA, have TSDs pick up the consumer enforcement remit and create the TSPB to coordinate that activity.

This appears to provide a clear demarcation, of two primary enforcement bodies created out of the current three.

We believe that the end product needs to reflect upon the existence of measures that already help direct and drive consistency in the area of consumer law enforcement – in particular the Primary Authority principle and the LBRO that supports that principle.

The LBRO (or as they are proposed to become the BRDO) and Primary Authority scheme should be at the centre of the process involved closely with the TSPB.

There is a concern that this arrangement may not adequately be equipped to deal with national issues, which would be currently addressed by the OFT.

A Trading Standards service delivered locally would need support to step up to deal with issues of national significance.

QUESTION 21. In relation to Option 3, do you agree with the Government's principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

As with the answer to Q 20 the existence of the PA scheme and the LBRO /BRDO needs to be reflected in these proposals.

The need for specialist national teams is important. Focus will obviously fall on nationwide scams/fraud and other activity covered by the Consumer Protection from Unfair Trading Regulations – this is more about intelligence sharing and the ability to act across border rather than the need for centres of excellence and specialist knowledge for complex areas of law.

Both scenarios will need to be accommodated in this process.

We see it as a big retailer in our interactions with trading standards – some areas require a depth of specialist knowledge which may simply not be available in the local authority.

The level of knowledge is often driven by local need – the Home/Primary authority office for Mothercare never intended to become an expert on nursery product safety, but that is the way it developed.

With regards to the "fighting fund" we would not support this.

QUESTION 22. Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards? If so, would one of the JEB models be the best solution? Which one and why?

The JEB feels like another body, another level of bureaucracy and administration (and cost) in a space that the Government should be simplifying.

The implication is if it needs these additional resources to ensure the new scheme operates well, was the old system so broke that it needed fixing?

The new bodies appear to be capable of talking to each other to manage any overlap.

QUESTION 23. In relation to the various JEB models, how would you ensure effective Trading Standards participation in the JEB? Do you think that this option would deliver integration of enforcement across local, regional and national levels? Should other organisations be involved in the JEB, either as members or as participants in discussions? Would retention of such unrestricted consumer enforcement powers and responsibilities affect the CMA's singularity of purpose and distract it from its core competition remit?.

See Q 22

QUESTION 24. How can your preferred new model best work with businesses?

Again citing the LBRO as a model, they appear to have “got” how the regulators can talk to business and gauge views in order to challenge the traditional ways of delivering enforcement.

There needs to be a similar willingness to engage with business and the creation of suitable forums to allow this to happen.

QUESTION 25. Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

This is one option to address issues that are market wide, and may be more effective than the option of the TSPB having to marshal local TSD resources to deal with a national sector wide issue.

QUESTION 26. In an Option 3-based model, should this enforcement role be subject to procedural limitations?

No strong view on this.

QUESTION 27. Do you agree that the CMA should enjoy significant discretion over when a market has structural problems, such as to give rise to its consumer enforcement powers?

Discretion is not a concept that sits well in this space – actions should be based on clear irrefutable evidence of there being a problem that requires intervention.

Enforcement should be the last resort when all other available established means have been exhausted.

QUESTION 28. Do you agree that the CMA should retain responsibility for mixed market studies where there may be competition and consumer issues (supply and demand side market failures) present on the relevant market?

No issue with this proposal.

QUESTION 29. Do you agree that in an Option 3-based model, the Citizens Advice service should in future be responsible for pure consumer detriment analysis and that the CMA should not perform pure consumer market studies? In such a case, do you agree that the CMA should stop performing market studies once it identifies that there is no structural problem in such markets and do you think there should be a duty on the Trading Standards Policy Board to prioritise cases referred by the CMA?

The OFT market studies were informative exercises but often did not lead to any output that made a real difference – therefore we would not have an issue with the end of market studies.

What must be accommodated in the new structure is that robust transparent evidence gathering is an absolute requirement to substantiate any concern about the functioning of a market or market sector, prior to any action.

QUESTION 30. Do you agree that the Government’s proposed approach is a sensible way of ensuring effective collaboration between the various bodies in the proposed new landscape?

Thought has gone into the proposals. Whether the proposal can be crafted into something that is workable and has a proportionate impact on compliant business is the challenge.

QUESTION 31. Do you agree that it would be helpful to have some resource that required joint agreement between the CMA, TSPB and consumer advocacy bodies for its release, to be used to investigate or address consumer and market issues that would otherwise risk an enforcement or advocacy gap? If so, at what level should such funds be set and how best should they be administered?

This is an opportunity to ensure that there is complete coverage in this space – there should be no gaps, indeed this process will have failed if there are gaps left by this reshuffle.

Contingency should be made to ensure that this does not happen. The level of these funds and how they should be administered is not something we are placed to comment on.

QUESTION 32. Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not, how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?

The “trading standards” brand is widely known and has adequate resonance amongst business. You only have to watch the TV to see the media coverage that trading standards receive to assure their place up with Police, customs and excise etc.

From a business point of view the threat of TSD activity has a resonance that has leverage in compliance discussions.

QUESTION 33. Do you agree the TSI would be the appropriate home for the OFT’s professional guidance and training functions in the event of creation of a new single Competition and Markets Agency?

Yes, provided they received adequate funding and skilled staff to deliver on this.

QUESTION 34. Do you agree that the TSI is the most appropriate home for the OFT’s international liaison and general policy functions in the event that the CMA has only a limited consumer enforcement role?

TSI may be a home for this, but it is a professional body, therefore some further thought will need to go into how this will work effectively.

QUESTION 35. Do you think the requirement for LATSS’ and other designated bodies’ (under Part 8 of the Enterprise Act 2002) court orders to be directed by a central body needs to be retained in the new consumer enforcement model and if so, why?

The reality is that any action by Trading Standards under the Enterprise Act is something that would have to be scrutinised by the Primary Authority if one exists (and LBRO if the matter is in scope of the RES Act) so there already is in principle if not in practice some element of central control.

The use of the Enterprise Act could have serious consequences for the business on the receiving end of its use, as well as implications for other traders in that sector, so a central body giving guidance on such matters should ensure a proportionate

response where the full implications of any action are considered and contingencies put in place (e.g. for further activity/awareness raising across that sector)

QUESTION 36. Do you agree that responsibility for chairing the consumer concurrencies group should remain with the CMA?

No issue with this proposal but the TSPB would require a presence.

QUESTION 37. Do you agree that the current super complaints system to the OFT should be retained in respect of the CMA if the proposed changes go ahead?

There would appear to be some merit in the CMA absorbing the responsibility for super complaints. See the response to Q 38 as to whether that should be shared.

QUESTION 38. Do you think that the super complaints process should be extended to require the Trading Standards Policy Board to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?

If the objective of this process is to reduce duplication having two bodies doing the job of one previous body does not sound sensible on paper. There would have to be clarity as to which super complaints are dealt with by CMA and which go to TSPB.

Clearly the governance of the process of dealing with super complaints where there is a consumer law enforcement element has to be well defined – which matters make the cut of being classified as super complaints and how they are dealt with once identified as being a super complaint.

There is no reason why the Trading Standards Policy Board would not be able to deal with this matter – it may mean they have to meet on an ad hoc basis to make these deliberations and respond, which may be a challenge to the members of the board who will clearly have their “day job” to do.

The other issue with the TSPB issuing the response is their ability to muster adequate resource within the trading standards community to deliver any enforcement action that is deemed appropriate.

The TSPB would therefore probably need some powers to direct local authorities similar to those that currently exist within the RES Act for the LBRO.

QUESTION 39. Do you think that a lead local authority could take on the OFT’s estate agency and related anti-money laundering functions?

This is possible; if a suitable authority with the necessary skill set could be identified (I suspect there are already TSI lead officers on these – at least on estate agency?)

My concern is that an authority would volunteer for this role and receive any additional funding, but that additional funding would not be spent on the lead status topic, it would be blended into the rest of the department budget to help balance the books.

It is common practice for TSDs to appoint people to special status, but still retain the right to use that person (that resource) to lead on and support other more routine trading standards activity as the need arises.

QUESTION 40. Do you agree that the proposed changes to the consumer enforcement landscape should go ahead if the creation of the CMA is delayed? If not, why not?

No strong view on this – clearly the transition into the new age needs to be seamless, it would cause difficulties if there was an incomplete transition.

The worst case scenario would be the OFT passes the consumer enforcement piece to the trading standards service and the trading standards service are not ready to receive it – that would not occur if the CMA was delayed – more likely the OFT would be left in limbo, with its consumer responsibilities gone and the CMA not ready to receive its competition elements.

General Observation

The comment on page 31

“The Advertising Standards Authority – the independent body responsible for resolving complaints about advertisements across all media and tacking non compliance. Its advertising codes **supplement** legislation **and fill gaps where the law does not reach** – for example they ensure that advertisements are tasteful, decent and contain measures which display a social responsibility”

is wrong.

The ASA code reflects and duplicates legislation that relates to misleading advertising, and we have seen recent examples where the CAP code is being rewritten to closely mirror other legislation (energy use regulations) in effect setting the ASA up as a primary enforcer of the legislation which was never the intention of the European Commission, the Government or the Regulator.

This is touted as an example of co regulation, which it could be if the code and enforcement of the code replaced public enforcement and if people truly were able to opt for which regime they chose to be regulated by.

I hope you find these comments useful.

Yours sincerely



Paul Downhill
Consumer Affairs Manager
Home Retail Group

Hunt, Paul

SUBMISSION BY PAUL HUNT¹ ON “EMPOWERING AND PROTECTING CONSUMERS: Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement”, Dept. for Business, Innovation and Skills, June 2011.

Submission Date: 27 September 2011

Introduction

The opportunity to make a submission as part of this important consultation is very welcome. The Government's declared intent to rationalise the 'patchwork quilt' of agencies and bodies dealing with consumer advocacy and representation is also very welcome. This submission focuses on Chapter 4 – Consumer Advocacy and the questions posed there for consultation. There is a more detailed focus on the regulated energy sectors so as to illustrate the principal contentions of this submission. A recommended course of action concludes.

However, prior to addressing these issues some observations are made on the nature of these 'public consultations' - using this exercise as a typical example.

The Nature of Public Consultations

The process of public consultation – whether by Government or regulatory agencies – follows a predictable pattern. A broad policy stance is adopted with considerable working out of the details 'behind closed doors' which are then presented in a document for public consultation. This consultation document is a typical example. The impression is conveyed that some details have not been finalised and the views of interested or concerned parties are welcome to assist Government to make final decisions.

At first sight, this willingness by Government to engage should be welcomed. And there is no question that a duly elected government is not entitled to decide on the broad policy thrust. The policy change under consideration may have been included in its election manifesto (or included in the Coalition agreement or the programme for government).

But this is not what causes concern. What is at issue is how these solicited submissions are treated. Given the extent to which Government has already decided its proposed policy in quite considerable detail, there is limited, if any, scope for respondents to query the broader policy context or to assess the impact of these proposed policy and institutional changes on policy and regulation in other sectors that will be affected.

¹ Paul Hunt is an independent energy sector consultant. He has 25 years of energy sector experience having begun his career as Corporate Economist for Bord Gáis Éireann in 1986. In early 1989 he moved to Britain and has worked since then as an energy sector consultant both with major engineering and economic consultancies and, since 1997, as an independent consultant. His major areas of work are gas industry structure and regulation with a specific interest in gas transmission and distribution. Increasingly, he has become involved in broader energy industry restructuring matters and in how the process of democratic governance impacts on the resolution of the issues that arise. Beginning with significant involvement in the UK's gas market liberalisation from the late 1980s the geographical scope of his work has expanded and he has considerable international experience throughout Europe, Africa, the Middle East, East Asia and Russia.

This unwitting or deliberate narrowing of the scope of the consultation allows Government to ignore or dismiss submissions that question the ‘received wisdom’ it is propagating. In addition, the questions posed for consultation reduce considerably the ability to question and contest the ‘line’ being advanced by Government. And so it is the case in this consultation. There is no opportunity to engage in adversarial disputation based on evidence and analysis, to allow for rebuttal and counter-rebuttal, to identify common ground and to facilitate deliberation in an open and transparent manner that would lead to sensible decisions being made in the public interest.

There will always be conflict in any society or economy between the interests of individual citizens or groups of citizens in commercial or civil society associations. It is unavoidable, but it is healthy and productive if there are transparent, agreed and binding procedures to resolve these conflicts – with the courts as a final recourse. For example, there will always be conflict between the interests of the owners/managers of firms and unions/workers. And there should be civilised, but robust, conflict between Parliament and Government. The House of Commons should be more than the ‘electoral chamber’ for the Prime Minister with a majority of the Members, following faux debate and the insertion of frequently inconsequential amendments, subsequently rubber-stamping Government bills that are drafted in almost final form. The relatively rare Parliamentary revolts are the exceptions that prove the rule. And, in this instance, there will always be conflict between the interests of consumers and the interests of firms supplying them with goods and services.

But the current process of governance and public consultation seeks to suppress and smother any conflict that might arise. Expressions of dissent may be invited, but they are ignored. Various vested interests are squared – often behind the scenes – and every effort is made to project a warm, woolly and fuzzy ‘consensus’. This may look like one, but it is not a ‘dialogue of the deaf’; the deafness and blindness are all on one side.

All of this constitutes a major deficiency in the process of democratic governance and public consultation and simply reinforces the executive dominance of government. And furthermore, in this instance, it damages the interests of consumers. The big decisions that benefit those who exercise market power or exert political influence or both have already been made (or will be made via a separate, and often hidden, process); and the interests of consumers are considered as an afterthought. However, Government would be unwise to ignore the growing, but poorly articulated, public discontent and resentment at the behaviour of large firms that provide goods and service to the general public.

Having been involved in numerous public consultation over the years where I have sought to question the ‘received wisdom’ in the interests of citizens and consumers – and been totally ignored or dismissed – I can safely predict that this submission will receive the same treatment. However, a civic duty remains to present the case.

Consumer Advocacy – Questions for Consultation

The focus here is on four questions, (12), (13), (14) and (16), in this chapter. The remaining three questions – about extending redress schemes, (17), the arrangements for the devolved administration, (15), and consumer advocacy regarding postal services in Northern Ireland, (18) and (19) - are important, but of much less concern than the issues raised in these four questions. The responses to these questions are presented under three headings. Consideration of the design principles for the regulated industries, (13), should logically precede discussion of the key proposal which is the combination of the sectoral consumer advocacy functions in the Citizens’ Advice Service (CAS). And, under the heading of this proposal, it is possible to

consider the abolition of Consumer Focus, (14), its absorption into CAS, (12) and the proposed transfer of information-gathering powers, (16).

Design Principles for the Regulated Industries' Unit

The design principles are almost entirely unexceptional. They appear as the usual high-principled and comforting 'motherhood and apple pie' bromides that emanate from all Government Departments. The proof of the pudding, as always, will be in the eating, i.e., how precisely will these wonderful principles be applied in practice. At this stage, that is entirely unknown, but, with a Government focus on efficiency and rationalisation, one would have strong grounds for fearing that the application will be deficient. And there are concerns about the nature of accountability and funding. One would presume that a revamped consumer advocacy body exercising statutory powers would be accountable directly to Parliament, but this is not made clear. The nature of funding by the relevant sectors is a particular problem. This is almost guaranteed to ensure that the revamped body will be under resourced.

The proposed revamped consumer advocacy body should have the full statutory powers currently enjoyed by Consumer Focus and these should be extended, as appropriate, to represent the collective interests of consumers. It should be funded directly on foot of a vote by Parliament and be directly accountable to Parliament.

The Combination of Sectoral Consumer Advocacy Functions in the Citizens' Advice Service (CAS)

The Government's Proposal is totally wrong-headed...

Although it is in receipt of public funds, the CAS is a non-statutory, civil society organisation. The proposal of Government to abolish a body, Consumer Focus, with some, but insufficient, statutory powers and resources and to transfer its existing functions to a non-statutory, civil society body which will require statutory empowerment is so ridiculous that it beggars belief that a formal public consultation process is being conducted that includes this as a key proposal for consultation. In almost all other developed democracies even suggesting this would be greeted with so much public ridicule that it would be a very foolhardy or tin-eared (or, perhaps, mendacious) government which would seek to progress it. It is a measure of the extent to which the process of governance and public consultation has smothered and suppressed public engagement on matters of public interest that such a daft proposal is being entertained seriously by Government – and that it is not only being entertained seriously, but that it appears to be its settled policy.

There is no question but that there is a requirement for rationalisation of consumer advocacy and representation in these sectors, but this is so wrong-headed as to defy rational critique. To make matters worse, it is also beyond parody or satire. Nevertheless, it is possible that, by empowering and advancing a civil society body (CAS) that has wide public recognition and is generally acknowledged to do 'good work', this is an attempt to put some flesh on the few insubstantial bones of the Prime Minister's 'Big Society' concept. It is also possible, and not necessarily conflicting with the previous observation, that this is an attempt to reduce the existing limited effectiveness of the advocacy of consumers' collective interests.

..but it appears to be a 'done deal'

However, since the Government appears to have a settled view on this matter – and since the exercise of its excessive executive dominance guarantees its success in bending Parliament to

its will – it makes sense to treat this as ‘done deal’ and to focus on how the resulting damage to consumers’ interests may be minimised and on how their interests may be advanced.

The Consumer Advocacy Challenge

The Government seems to be aware, at least to some limited extent, of the challenge that effective consumer advocacy poses. Para. 4.18 presents some partially enlightened drafting:

“In regulated sectors, firms devote substantial resources to working with and influencing their regulator. If views from regulated firms were the only organised external input, there would be insufficient challenge to the regulatory relationship. A strong consumer voice is therefore needed to provide a different perspective to the regulator and a more rounded evidence base upon which to make decisions. There needs to be effective consumer engagement with regulators (for example through research), formal representation of consumers and their representatives in regulatory processes such as price control reviews and policy work that is independent of regulators in terms of both the choice of topic and the analysis. Early and informed consumer input into the EU policy-making process is also essential if overarching regulatory frameworks are to evolve and develop appropriately.”

This, indeed, gets close, but not, perhaps, close enough, to the nature of the institutional and statutory arrangements that should be in place. But, even then, it falls far short of current arrangements; and there is every likelihood that it will fall even further short when the Government’s proposal re Consumer Focus and the CAS is enacted.

The Failure of Regulation and the Inadequacy of Consumer Advocacy – the Case of Electricity and Gas

For example, in the regulation of the electricity and gas sectors it is generally believed that there is no requirement for direct consumer advocacy in price control reviews because these apply only to the regulated network activities. It is expected that network users (some of whom are suppliers to final consumers) will provide the ‘necessary challenge to the regulatory relationship’. However, the major retail suppliers have little interest in representing the collective interests of their customers by making the case for efficiencies in network operations that would reduce costs and charges or in contesting the proposals advanced by the network businesses. Each supplier’s interest is to ensure that the level and structure of network charges do not discriminate against it and in favour of other suppliers. In effect, they are largely indifferent to the level and structure of networks tariffs as they simply pass the network costs on to final consumers.

Even if this significant deficiency were recognised and steps were taken to remedy it, the existing consumer advocacy body, Consumer Focus, lacks the resources and capability to contest the proposals on network revenues and tariffs advanced by the network businesses. It falls to the regulator to adjudicate on these proposals and to make determinations in the absence of any effective final consumer representation – although the regulator has a duty to protect the interests of consumers. This would make sense if the regulator were operating in a quasi-judicial mode, considering both the proposals advanced by the network businesses and any evidence and analysis advanced by network users contesting these proposals. But, as we have seen, the retail suppliers, as the principal network users, have no incentive to contest these proposals on behalf of their consumers. And these are not the only deficiencies.

Prior to privatisation and the application of regulation in gas (1986) and electricity (1990), final consumers provided an almost indefinite commitment to consume and pay for the electricity and gas provided by their monopoly suppliers. Conversely, public sector ownership allowed the state via its corporatised integrated businesses to levy whatever prices were required and the explicit or implicit back-stop of a sovereign guarantee provided the necessary assurance of full recovery of the costs of investment and of the operating expenditures incurred. This, in effect, was an implicit contract, with final consumers as the key counter-party, that provided the assurance of investment recovery required by providers of finance for the long-lived, specific assets that characterise the electricity and gas industries.

The roll-out of full retail competition has destroyed this implicit contract. Retail suppliers, competing to retain and attract final consumers, have very short time horizons. Their customer bases are churning continuously (and policy and regulation are encouraging even more churn). With such volatility in their revenue bases, they are both unwilling and unable to enter into the long-term contracts that providers of finance require to assure recovery of investment.

As a result, regulators have been forced to step into the breach to provide the assurance of investment recovery that providers of finance require. Regulators, inevitably, have been captured by the regulated businesses. And no attempt has been made to reduce the extent of this capture by, for example, seeking to develop a market in gas pipeline capacity that would limit the requirement for regulation. All this would be bad enough if this capture and enforced regulatory impotence were confined to the electricity networks and the gas distribution networks; but it extends to the entire sector. Politicians, policy-makers and regulators have found themselves in thrall to unbelievably naïve ideas about the nature of commodity markets in electricity and gas and the behaviour of large firms providing essentially utility services to masses of individualised, atomised, disenfranchised final consumers.

While they were taking the steps that destroyed the ‘implicit contract’ described above, politicians, policy-makers and regulators convinced themselves that there was no need to replace it with explicit long-term contracts – as had been done in other better governed jurisdictions. Instead, it was assumed that deep, liquid wholesale markets in electricity and gas would provide both the signals for efficient investment and the assurance of investment recovery that providers of finance require. And they also assumed that retail competition would impose the necessary market discipline on retail suppliers and provide choice, service innovation and affordable prices for final consumers. They had this vision of a horde of generators, producers and suppliers on one side of the wholesale markets and a similar horde of retail suppliers on the other side of the wholesale markets competing to supply final consumers – with a further horde of physical and ‘paper’ traders applying their risk management magic.

What they ignored, to the cost of all final consumers, was that suppliers would consolidate and pursue vertical integration along both the electricity and gas supply chains to internalise and manage the risks to which the destruction of the ‘implicit contract’ exposed them. The reduced number of participants reduced the depth and liquidity of the wholesale markets and this creates barriers to entry and market participation. In addition, many suppliers hollowed out their balance sheets to maximise shareholder return and they were unwilling or unable to maintain investment at the levels required. They are now confronting a requirement to make up this shortfall – and to invest to meet the Government’s excessive climate agenda objectives. So it is not surprising they are employing every trick in the book to extract extra margins from final consumers to part-finance some of the investment up-front and to meet the high cost of capital

they are encountering on their own investments and the equally high cost of capital on the investments of those who provide them with services.

Moreover, the dominant suppliers are imposing significant search, information, switching and consumption management costs on final consumers. The evidence is staring the Government and the regulator in the face, but every effort is being made to avoid the implications. The possible policy and regulatory remedies being advanced – e.g., seeking to increase the depth and liquidity of the electricity wholesale market, encouraging new entrant suppliers, exhorting consumers to ‘shop around’, seeking to simplify the multiplicity of tariff offers, passing the proceeds of fines on the energy suppliers back to consumers, etc. – are unlikely to have any meaningful impact.

Repairing the Damage to the Interests of Consumers and the Economy

The only effective solution is to mirror the Independent Banking Commission's proposal for the banks and use competition law to break the vertically integrated energy supply businesses into upstream producers and suppliers to wholesale markets and downstream utility suppliers to final consumers (with these retail suppliers securing their supplies from the wholesale markets). In parallel to this, it will be necessary to re-establish regulation in a quasi-judicial fashion which will adjudicate on proposals by regulated businesses that are fully contested by an adequately resourced consumer protection body. Similarly, this consumer protection body should be empowered to bring cases before the soon-to-be-reconstituted competition authority.

Relevant and replicable aspects of this approach should be applied to all other regulated sectors.

The basis and rationale for these recommendations flow directly from the previous discussion. The ‘implicit contract’ between final consumers and their, previously monopoly, suppliers has been broken. It cannot be restored. Nor is it possible to replace it with explicit long-term contracts between local companies (enjoying a franchise to supply a ‘bundled’ - electricity and wires or gas and pipes - service to final consumers) and electricity generators and gas producers. This option is precluded by EU primary legislation that has been transposed into UK law – and into the national laws of all other member-states. In any event, such a contractual relationship never existed on an arm’s-length basis in the UK.

UK politicians, policy-makers and regulators (in company with their EU peers) have stupidly, and, perhaps, unwittingly, allowed themselves to be lured by the siren songs of the ‘useful idiot’ economists hired by the US Neoconservatives (and their European acolytes) about the wondrous efficiencies of unfettered, lightly regulated markets. And, in contrast to the US, where retail competition is being advanced as deep, liquid wholesale markets emerge to reduce the requirement for long-term contracts between suppliers to final consumers and generators and producers, UK and EU politicians, policy-makers and regulators have mandated the full roll-out of retail competition without taking the necessary steps to ensure that deep, liquid wholesale markets would emerge to reduce the requirement for these long-term contracts.

In addition, throughout the EU, the quite sensible and necessary separation of network and supply activities did not make provision for the long-term contracts between the network businesses and network users on which providers of finance could rely to assure investment recovery. In the absence both of these long-term contracts and of the emergence of deep-liquid

markets that would provide risk-management capability- and confronting huge risks in the fully liberalised retail markets – energy suppliers pursued vertical integration and mergers and acquisitions to build balance sheet strength and market power so as to manage and internalise the risks to which they are exposed.

The additional and excessive costs of this policy, regulatory and market dysfunction are being borne, ultimately, by all final consumers. The powers, resources and techniques available to these large energy suppliers to extract the revenue they require from final consumers are immense when contrasted with the resources of individual consumers and the limited capacity of consumer protection bodies (both statutory and non-statutory) to protect their collective interests.

Having destroyed the basis for the long-term contracts required (though it should be possible to develop long-term tradable contracts for gas transmission capacity), UK (and EU) politicians, policy-makers and regulators have no option but to seek to facilitate the rapid emergence of deep, liquid wholesale markets in electricity and gas if they wish to reduce the excessive, and growing, burden on final consumers. The “half-way house” of using the market to some extent and attempting to supplement it (with subsidies for preferred technologies, soft loans, expressions of comfort for finance providers and other ruses that will impose contingent liabilities on the public purse) is even more damaging to the interest of citizens as both energy consumers and taxpayers.

This, unfortunately, is the path that the Government seems determined to pursue with its Electricity Market Reform proposals; and this mirrors the path being pursued throughout the EU with an ineffectual attempt to complete the internal EU market in electricity and gas by 2014 coupled with various ruses to attract long-term finance and with effectively uncoded climate change policy objectives. This runs the very real risk of adding ‘government failure’ to policy-induced market failure and regulatory failure.

And all this is being accompanied in the UK by these proposals to weaken the limited advocacy and representation of the collective interests of consumers. The objective should be to banish the market power and political meddling that impose unnecessary and unjustified additional costs on citizens, respectively, as consumers and taxpayers. Effective consumer advocacy and representation could, and should, play a vital role in achieving this objective, but, first, some structural reform is required.

An inquiry by the Competition Commission is required to identify the appropriate structural arrangements, but it needs to be accompanied by a follow-through by DG COMP of the European Commission of its 2007 Energy Sector Inquiry. And these inquiries should subsequently be expanded to deal with all areas where large vertically integrated firms provide utility and public services to final consumers. The Independent Banking Commission implicitly recognises the need to separate ‘wholesale’ from ‘retail’ banking. Intense competition with appropriate regulation will generate sustainable benefits in the wholesale market; the retail market requires much less competition, but considerably more regulation and the representation of consumers’ collective interests.

This is an insight that has application in other sectors where it might not appear to be immediately relevant, such as the provision of health services. However, the broader applicability of this insight will not be established until a Competition Commission Inquiry is conducted into the electricity and gas sectors. And the role of the advocacy and representation

of the collective interests of consumers should be a key matter for consideration in such an inquiry.

ICPB – International Consumer Policy Bureau

**INTERNATIONAL CONSUMER POLICY BUREAU
19 Eglinton Crescent
Edinburgh EH12 5BY
Scotland**

tel: +44 (0)131 346 2643 e-mail:jeremy.m@which.net

**RESPONSE TO THE UK CONSULTATION ON
EMPOWERING AND PROTECTING CONSUMERS
– DEPARTMENT OF BUSINESS, INNOVATION
AND SKILLS**

1. Subject to the detailed comments below, ICPB supports the aims set out in the consultation document of improving the effectiveness of systems for enforcing consumer protection legislation and bringing greater coherence and effectiveness to consumer advice and representation.

Limitations of the Competitive Market Model

2. The simplified competitive market model on which proposals are based does not take sufficient account of non-competitive services provided by the public sector, for which central and local government are responsible, and for which consumers pay, at least in part, through taxation. These include – but are not confined to - health services, the justice system, benefits delivery, education, transport infrastructure and public housing. Also, there is a wide range of services where competition is muted or non-existent and which are subject to regulation. These include energy, water, non-print media and telecommunications. Additionally, there is evidence of massive market failure, involving

ICPB is a consultancy wholly owned by Jeremy Mitchell providing research and advice on consumer policy and legislation to international organisations, governments and consumer groups

unnecessarily high costs and penalising consumers financially, across the spectrum of financial services (see Competition Policy below). **Over this extensive range of direct and indirect consumer expenditure, the consultation document's model of 'empowered' consumers 'demanding choice and, by exercising it, stimulating competition and innovation as well as high standards of consumer care' seems fairly remote from the reality of consumers' experience.** Any redrawing of the landscape of consumer protection and information needs to take full account of the practical limitations of the competitive market model.

3. More detailed comments follow under the headings of:

Consumer Advice, Information and Education;

Consumer Advocacy;

Regulated Industries;

Enforcement;

Competition Policy;

Codes of Practice;

Devolutionary Implications.

4. The specific questions asked in the consultative document do not always match what we want to say, so we have not followed them.

Consumer Advice, Information and Education

5. Although consumer queries and complaints only constitute a relatively small part of the work of Citizens Advice and Citizens Advice Scotland, these two bodies have already proved their competence in this area. **The government's intention to consolidate consumer advice services within Citizens Advice in England and Wales and Citizens Advice Scotland in Scotland is therefore supported.**

6. It would be sensible to apply the same approach to consumer information – that is, information to all consumers or groups of consumers, rather than advice to individuals – and consumer education.

However, Citizens Advice in England and Wales and Citizens Advice Scotland north of the border have much less experience in these two areas than in the advice field. Before any consolidation occurs, **Citizens Advice and Citizens Advice Scotland should be asked to prepare strategic plans setting out aims, methods, timetables and resources for their consumer information and consumer education programmes.** These should be subject to public consultation before approval by the Competition and Markets Authority (CMA).

Consumer Advocacy

7. Consumer advocacy involves – but is not necessarily limited to:

Promoting the interests of all consumers;

Promoting the interests of particular groups of consumers, including those on low incomes, disabled people, the elderly and consumers living in remote areas;

Taking account of the needs of different groups of consumers where these may be in conflict and balancing the needs of present and future generations of consumers (for example, when it comes to decisions about who pays for investing in infrastructure);

Representing the interests of consumers to firms, governments, local authorities, public service providers and regulators;

Ensuring that the interests of UK consumers are taken fully into account in the European Union's legislative initiatives.

8. To be effective, consumer representation needs to be based on sound research into consumers' experiences and needs. Consumer complaints information is an obvious source, but is not enough in itself. There are many issues which can only be teased out by random sample surveys or other consumer research techniques.

9. The techniques of consumer advocacy range widely. They involve influencing the legislative initiatives of governments and the EU at all stages, as well as proposing new legislation. They require an active participation in the political process, working not just with officials but also with elected representatives. To that extent, a consumer representative body is ‘political’ – not in a party political sense, but lobbying actively on behalf of consumer interests and playing a part in the political process.

10. The government’s present intention, as set out in the consultation document, is to transfer consumer advocacy functions from Consumer Focus to Citizens Advice, and north of the border from Consumer Focus Scotland to Citizens Advice Scotland. There are three major obstacles to this.

11. First, **Citizens Advice and Citizens Advice Scotland do not have the skills or experience needed to carry out the systematic research and policy analysis on which consumer advocacy should be based.** A high degree of competence in this area has been built up by Consumer Focus and Consumer Focus Scotland (and their predecessors, the National Consumer Council and Scottish Consumer Council) over decades. **The government’s proposals risk discarding all this accumulated experience and starting again from scratch, putting back the clock more than thirty years.**

12. Second, Citizens Advice and Citizens Advice Scotland are charities, with all the strengths and limitations implied by that status. They are governed by Trustees, who are under obligations to act in the interests of their charities. A number of consequences flow from this. The two charities would have to be very careful about the extent to which they engage in the political process. **This would place constraints on how effectively they could act as bodies advocating consumer interests. Also, it is difficult to see how charities could be given the statutory powers that Consumer Focus has at present, not least the power to require regulators, businesses and other organisations to provide information.**

13. Third, Consumer Focus and Consumer Focus Scotland are publicly accountable bodies, ultimately responsible through ministers to parliament. Citizens Advice and Citizens Advice Scotland are not – and could not be, given their charitable status. The line of accountability of their Trustees is to the Charity Commission for England and Wales and the Office of the Scottish Charity Commission Regulator respectively. They are not therefore subject to parliamentary scrutiny and oversight. Moreover, as charities they are not subject to the provisions of the Freedom of Information Act. **The government’s proposals to abolish Consumer Focus and Consumer Focus Scotland and transfer their consumer advocacy function to Citizens Advice and Citizens Advice Scotland would therefore weaken significantly the public accountability of the way this function is interpreted and exercised.**

14. ICPB therefore urges the UK government to retain Consumer Focus and Consumer Focus Scotland in being – if necessary in a slimmed down form - to fulfill their consumer advocacy role and as a highly appropriate context for the work of the Regulated Industries Unit (see paras.15-17 below). If the UK government nevertheless decides to go ahead with their abolition, ICPB wishes to suggest an alternative approach. **The new CMA should include a Consumer Division, with appropriate powers and duties. These would include the five principal elements of consumer advocacy outlined in para.7 above, but not consumer advice, information and education, which would be consolidated within Citizens Advice and Citizens Advice Scotland, as currently proposed.**

Regulated Industries

15. The Financial Services Consumer Panel, the Communications Consumer Panel and other sectoral consumer bodies have played a notable consumer advocacy role in relation to their respective industries. They have, however, been hampered by a lack of resources. Also, their separate structures have not made cross-sectoral learning easy.

16. **The proposal to establish a Regulated Industries Unit (RIU) is therefore welcome.** It should be funded by industry levies and have powers to deal with a wide range of consumer issues, not least in relation to such pricing issues as tariff structures and transparency and the relation between wholesale and retail prices. It should have the power to require a regulated industry to provide information and there should be a corresponding duty on all regulated industries to consult the RIU.

17. However, the issues that arise from locating such a unit within Citizens Advice and Citizens Advice Scotland are similar to those that arise in connection with consumer advocacy functions. These two bodies are not equipped by their experience, skills, constitution or ethos to carry out the functions of an effective RIU. **The RIU should be located within a slimmed down Consumer Focus and Consumer Focus Scotland. If, however, the UK government decides to proceed with the abolition of these two bodies, then the RIU should be set up within the proposed CMA, where its work would be subject to proper public accountability.**

Enforcement

18. The nub of the problem is that national UK legislation is enforced by local authorities throughout England, Wales and Scotland that vary widely in their size and financial resources, not to mention their willingness to spend money on this statutory responsibility. For example, within Scotland the number of enforcement staff varies between one and fifty. Moreover, enforcement is already coming under severe financial pressure as local authorities search for ways to cut their expenditure. As the consultation document points out, local government funding for trading standards work is expected to decline from an estimated £213 million in 2009 to an estimated £140 –170 million in 2014. Compounding the problem, it is clear that the present system fails to provide effective ways of dealing with issues that cross local authority boundaries.

19. The preferred way forward in the consultation document is for the establishment of yet another quango, the Trading Standards Policy Board (TSPB). It seems that the TSPB would not itself have any powers, but would be a coordinating body. Frankly, the chances of its success would seem to be small, as, not only would it not be tackling the central issue, but also it would be diverting money away from what the consultation document calls the ‘frontline’.

20. The time has come for the government to grasp the nettle and consider the pros and cons of removing enforcement responsibilities from local authorities and creating national enforcement services (for England and Wales and for Scotland). The CMA could provide an appropriate ‘home’ for the national enforcement service for England and Wales, while the Scottish government would be responsible for a similar service in Scotland. **It is proposed that the UK government should launch a fresh consultation on enforcement, including the option of national enforcement outlined above.**

Competition Policy

21. Under the government’s current proposals, one consequence of the merging of the Competition Commission and the Office of Fair Trading into a new CMA will be the severance of consumer policy from competition policy. Is this wise? For example, an increasingly widespread phenomenon as a competitive strategy is the offer of an artificially low first-year price for a wide range of services, including house insurance, contents insurance, motor insurance and motoring support services (such as the AA and RAC). When it comes to renewal at the end of the first year, the consumer is faced with a massive increase in the premium or fee. The insurer or service provider hopes that the consumer either does not notice the increase or has signed a direct debit mandate that she or he will find it troublesome to cancel. In other words, firms rely on badly informed consumers – that is, an imperfect market – to fund their profits. A similar situation applies in the savings sector. ISA providers advertise a high headline rate of interest to attract new savers, while only those who scrutinise the (often very) small print will realise that this is reduced – often by 50% or more

– after the first year.

22. The optimal strategy for the individual consumer is to change her or his insurers and existing ISA provider every twelve months, to take advantage of the first year bait. This is the advice she or he should receive from the Citizens Advice and Citizens Advice Scotland services and any other independent sources of advice. However, if all or a large proportion of consumers follow this course of action this, it imposes enormous administrative costs on the industries concerned, as the firms would have to deal with so many closed and new accounts. As it is, consumers are paying for the extra administrative costs in generally higher premiums. Unregulated competition had led to collective inefficiency. **It is a prime example of competitive market failure whose remedy requires an integrated competition and consumer policy approach.** This seems difficult enough to achieve in the present set-up, but would be almost impossible under the government's current reorganisation proposals. However, there would be a much greater chance of success if the terms of reference of the proposed CMA were to be widened to include consumer policy responsibilities.

Codes of Practice

23. Providing they contain specific provisions rather than general platitudes, cover the entire industry concerned and are accompanied by effective monitoring and enforcement procedures, codes of practice may benefit consumers. The part that codes of practice can play in consumer protection was first given statutory recognition in the Fair Trading Act 1973. It is therefore unfortunate that the government's intention to subsume the Office of Fair Trading in a new CMA will, as currently envisaged, bring the Consumer Codes Approval Scheme (CCAS) to an end.

24. None of the options floated in the current consultation inspires any great confidence or enthusiasm and it is to be hoped that the government will come forward with realistic and effective proposals to ensure that the momentum of this 38 year old initiative is not lost. **A more effective option would be to give the CMA responsibilities in relation to the**

promotion and approval of industry-based codes of practice.

Devolutionary Implications

25. The current devolutionary settlement has created a confusing patchwork of responsibilities. For example, consumer protection legislation, the regulation of energy and some transport markets, telecommunications, media and postal services are UK concerns. By contrast, legal services, health, social care, water, education, housing and some aspects of transport are devolved to the Scottish Government.

26. There are some areas of uncertainty – for example, consumer education. Also, UK areas of responsibility may have a ‘Scottish dimension’ not found south of the Tweed. Remote areas in Scotland have transport and telecommunications difficulties unknown further south, with retail competition limited or unknown.

27. This does not matter in practice in relation to consumer advice and information. Citizens Advice Scotland is constituted to give consumer advice and information north of the border on both UK and Scottish Government areas of responsibility. The problem arises in relation to consumer advocacy. At present, Scotland has a dedicated consumer advocacy body, Consumer Focus Scotland, which, though formally part of the UK Consumer Focus, in practice operates with considerable autonomy under a separate governing council. It has a notable track record in consumer advocacy, not just in relation to the Scottish government, but also to a wide range of public and private sector bodies in Scotland. **If the UK government decides not to fund Consumer Focus Scotland, then the Scottish government should consider taking on the responsibility.**

28. In any event, a radical reappraisal may be needed in the context either of a revised devolutionary settlement or Scottish independence.

Summary of Recommendations

29. The UK government's intention to consolidate consumer advice services within Citizens Advice in England and Wales and Citizens Advice Scotland in Scotland is supported.

30. The UK government's intention to consolidate consumer information and education services within Citizens Advice in England and Wales and Citizens Advice Scotland in Scotland is also supported in principle, subject to both bodies preparing strategic plans setting out aims, methods, timetables and resources for approval by the Competition and Markets Authority (CMA).

31. ICPB urges the UK government to retain Consumer Focus and Consumer Focus Scotland in being – if necessary in a slimmed down form - to fulfil their consumer advocacy role and as an appropriate context for the work of the Regulated Industries Unit (RIU).

32. If this approach is rejected, the new CMA should be given the appropriate powers and duties in relation to consumer advocacy and to the work of the RIU.

33. The government should launch a fresh consultation on the enforcement of consumer protection legislation, including the option of a national. UK-wide enforcement agency within the CMA.

34. If the UK government decides not to fund Consumer Focus Scotland, then the Scottish government should consider taking on the responsibility.

Jeremy Mitchell

September 2011

Institute of Professional Willwriters

BIS Consultation

EMPOWERING & PROTECTING CONSUMERS

Consultation on institutional changes for provision of consumer information, advice,
education, advocacy and enforcement

26th September 2011

Response by



The Institute of Professional Willwriters
Trinity Point
New Road
Halesowen
B63 3HY

Tel 0345 257 2570 Fax 08456 442043
www.ipw.org.uk
office@ipw.org.uk

The Institute of Professional Willwriters (IPW) was formed in 1991 and is a non-profit making organisation owned by its members. Our members provide Will-writing and related services to consumers and our membership represents 250 firms in which 800 people work. The organisation also regulates the activities of its members through a Code of Practice which has approval from the Office of Fair Trading under its Consumer Codes Approval Scheme (CCAS).

Our responses are made following debate within the elected Council of the organisation and amongst members.

As one of the ten CCAS Code Sponsors, our response focuses on the future of the Consumer Codes Approval Scheme since its future is going to have a significant impact on the Institute and its members, however we make the following general observations:

- 1) It makes sense to us to reduce the plethora of consumer advice and enforcement organisations – not only is the current system inefficient, more importantly, it is confusing for consumers and for small businesses.
- 2) It makes sense to us to divide the current system into two:
 - a. A function which advises, informs and educates customers – and it is logical that this function is placed with Citizens Advice
 - b. A function which advises and regulates businesses – and it is logical that this function is placed with Local Authority Trading Standards
- 3) We believe there is a need to oversee these two functions to fill in any gaps and to ensure that each function operates satisfactorily and it makes sense that this should rest with CMA.

Question 6

For the Institute, there are three attractions to the current CCAS

- 1) By far the most important is the facility for Code Approved traders to display the OFT logo. The logo, and what it stands for, is well established and well recognised and the ability to display the logo is a clear endorsement of the quality of service provided.
- 2) The scheme is funded by government and therefore the financial impact on the Institute as a Code Sponsor and its members as traders has been mitigated to a great extent.
- 3) The application process and the compliance implementation process have been an opportunity for the Institute to learn about the raft of consumer protection legislation that our members need to comply with – and to pass that information on and to check that our members are complying with that legislation.
- 4) Finally the fact that the scheme offers a single, national standard is also an important benefit of the scheme. Members and their clients know that it doesn't matter where they live, the scheme sets the same standards for them

and their competitors (if they are part of the scheme) and is implemented and enforced to the same standard across the country.

The first two points are by far the most important to the Institute and its members..

How any of the proposed schemes might be funded is not discussed in the consultation paper, so it's difficult for us to make definitive comments on the proposals but of the proposals only two proposals potentially meet the first requirement – and that would be a transfer of the scheme to British Standards or to Which?

A transfer to Which? would cause the Institute serious difficulties because Which? Provides commercial Will-writing service under their brand and we cannot see how they could be involved in the endorsement of standards in an activity in which they have a commercial interest in providing. Which? could extend its commercial activities in the future to any other activities covered by the CCAS, or its replacement and therefore we believe that Which? has no role to play in measuring and endorsing consumer standards.

A transfer to British Standards is therefore the most attractive of the options described in the consultation, however we would want to understand how the scheme would work, and how it would be funded before giving this option formal support.

A transfer to a Primary Authority is the least attractive of the options. It doesn't provide a badge which is likely to be instantly recognisable to consumers. It's not clear whether there would be one Primary Authority for the whole scheme (which would be preferable to ensure continuity of standards across the whole scheme) or whether there would be a different Primary Authority for each Code Sponsor – which has the potential to create different approval schemes setting different standards in different sectors, which would not be an attractive solution.

Question 7

Other sectors may respond with an effective alternative system of accreditation. The important question to answer is whether any alternative systems will appeal to trade bodies. We suspect that a major hurdle will be addressing the balance between recognition of the scheme amongst consumers and the funding of such schemes.

Question 8

We would be reluctant to see any aspect of the scheme changing – either in requirements for Code constant or requirements for Code compliance checking.

We make two observations in regard to the scheme that we would like to see addressed in a scheme going forward:

- 1) The application process was reactive rather than pro-active. We had to make proposals to the OFT and wait for them to be accepted or rejected – and if the latter, we had to reconsider and resubmit, repeating the submission process. It would have been more helpful if we had received constructive ideas about

how we might resolve issues that had been highlighted – it would certainly have made the application process faster.

- 2) Throughout the process, there hasn't been a platform for Code Sponsors, applicants and potential applicants to discuss and share their experiences of the scheme. We believe that this would have encouraged more applications and speeded up the application process for applicants if they had been able to feed off others who had already done it.

Question 9

We fear that transposing the Codes themselves into standards may result in a cacophony of Codes with different and therefore potentially meaningless BSI numbers. We would prefer to see a single British Standard for all Consumer Codes, with a single Standard number with the requirements for that standard imported from the existing OFT scheme.

Question 10

The same standards as those set by the existing OFT CCAS.

Question 11

This is the least attractive of all of the solutions - with the exception of the closure of the CCAS scheme without replacement, for the reasons outlined in our response to Question6.

Islington Council TS

Consultation on Institutional changes for provision of consumer information, advice, education, advocacy and enforcement.

Islington's Trading Standards Team welcomes the opportunity to comment on the proposals. Our comments were collated after the consultation document was circulated to our team of enforcement officers.

We are a small service operating in one of the most deprived, and diverse, areas in the UK. As we are few in number we often consult other bodies for guidance. These include the Office of Fair Trading, TSI and LGR. We would want to be sure that any changes in the Consumer Landscape effectively replace that level of support.

Islington is also home for a number of virtual offices which are used by traders based elsewhere in the UK and the world. As a result we are very aware of gaps in deciding responsibility for cross border enforcement and, in some cases, cross disciplinary work as fraud is often involved. We would welcome an improved system for allocating or supporting this work.

I am happy for our comments to be made public.

Our responses to individual questions are below.

Yours

Liane Bishop
Principal Trading Standards Officer
Islington Council
222 Upper Street
London N1 1XR
Liane.bishop@islington.gov.uk

QUESTION 1. How do you think the provision of consumer information to consumers can be improved upon?
--

An improvement would be to provide information via a well publicised single source that offers information in a range of formats from written to verbal and in alternative languages. Information should be presented in a range of styles from simple points as currently provided by Consumer Direct to something more detailed, quoting legislation, as previously provided by the Community Legal Service leaflets. The simple style will suit first step requirements and the more detailed for those consumers who need and are able to take their complaints to the next stage such as writing more formal letters.
--

QUESTION 2. Do you agree that the OFT's consumer information role should be transferred to the Citizens Advice service?
--

Yes, if it is supported with sufficient resources such as skilled staff and databases

QUESTION 3. Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service?
--

Yes as this might enable a customer to receive more "holistic" support as the CAB may be able to help with any extra issues beyond consumer needs

QUESTION 4. Do you agree that the OFT's consumer education roles should be transferred to the Citizens Advice service? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?

Transferring the OFT education role to CAB would only be successful if it is properly resourced.

Education needs to cover basic needs as well as the more in depth. Previously the OFT has been able to carry out extensive market research covering different trade sectors which also assesses customer behaviour. The OFT's legal experts have provided a large number of detailed reference materials on fair contract terms covering specific sectors such as tenancy agreements, gym and mobile phone contracts. The CAB does not have the skills or resources to carry on such valuable research work that would enable it to design and target advice to specific groups of people, e.g. teenage, young adults, older people.

QUESTION 5. Do you agree that the proposed Trading Standards Policy Board and the TSI should coordinate and support business-facing educational activities?

In terms of providing guidance on new legislation this currently is often prepared by the OFT or BISS in tandem with the drafting of regulations. The advice has an input from the legislature. This means the advice is a solid interpretation of the law and less likely to be challenged by the courts. It is unlikely TSI or the TSPB would have such a close working relationship with the drafters.

Unless TSI or the TSPB receive adequate support from the centre the responsibility for education and advice should lie with a government body in order to provide accountability and assurance. Trading standards services would be able to identify gaps in business education needs but may not be able to produce agreed guidance quickly.

QUESTION 6. What are the best options for current and prospective CCAS members to consider in the event that the Government's proposed consumer and competition landscape proposals are adopted?

The OFT has wide experience and knowledge of what constitutes a fair contract term and links to information such as the Consumer Direct database, to help identify which issues in a trade sector cause the most problems. It will be difficult to recreate this know how. Codes need to be compulsory for the sector they cover not just for members.

QUESTION 7. Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of CCAS with effective alternative systems of accreditation?

No as there needs to be an incentive to have a scheme.

QUESTION 8. What are the lessons learned from the operation of CCAS which may help in establishing (or revising) voluntary schemes in the future?

The cost of entering a scheme is a deterrent to smaller businesses. There is a danger if only the larger players can afford to enter a scheme and therefore benefit from marketing of that scheme the smaller firm will be squeezed from the market.

Perhaps there should be levels of code, such as minimum standards (basic consumer rights covered) up to a superior more detailed code where scheme members offer extras. This

could cut down on the time taken to draft schemes. LBRO could have a role.

There are some successful ombudsman schemes such as Financial Services Ombudsman, The Property Ombudsman. Both examples do have 100% sector involvement (TPO due to the redress scheme) and are good examples of co-regulation and similar set ups could encourage code development.

QUESTION 9. What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?

BSI standards are widely recognised and I believe some already cover some of the areas dealt with in CCAS codes (ISO9000). This move might improve the status of schemes with the public and other businesses. Also BSI could bring a wider experience to the process.

QUESTION 10. What characteristics would a Kitemark® based code certification process need to have to meet industry requirements?

BSI standards are widely recognised and I believe some already cover some of the areas dealt with in CCAS codes (ISO9000). This move might improve the status of schemes with the public and other businesses. Also BSI could bring a wider experience to the process.

QUESTION 11. What is your view on extending the Primary Authority concept to code certification?

If LBRO are to work with trade sectors and bodies this could work. The BS idea might be better mainly due to recognition and the fact they have systems set up to consult and confer and agree.

QUESTION 12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

Some of the general issues raised by consumers are probably common across sectors. So may be they can come together.

QUESTION 13. Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?

Yes

QUESTION 14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?

Consideration could be given to organisations such as OFWAT, OFGEM doing more for consumers, and possibly an advocacy role for ombudsman schemes.

QUESTION 15. What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

No comment

QUESTION 16. What are your views on these options for the transfer of information gathering powers? Which is preferable and why? Are there any other options for information-gathering powers?

Business and others may well be reluctant to provide information directly to a body such as Citizens Advice which is known to mainly represent consumers. Even with protections provided by Part 9 Enterprise Act there may be concerns. Transferring the power to sectoral bodies would give the appearance of an independent buffer, but might also cause delays to investigations and would lose any streamlining created by bringing the advocacy under one body. Perhaps the sectoral bodies can be brought in only if there is a dispute between a business and the “regulated industries unit”. They would not need to channel every request just mediate those under dispute.

QUESTION 17. What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?

Redress schemes should be extended to other sectors. If the consumer’s issue is being investigated why not go a few steps further and set a compensation level. Schemes would be able to identify common or frequently arising issues which might point to industry wide problems. This might fill gaps left when the OFT no longer looks at industry specific contractual problems.

QUESTION 18. Do you support the transfer of the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland and agree that as a result Consumer Focus Post Northern Ireland be abolished?

No comment

QUESTION 19. Do you agree that the Postal Services Redress Scheme should continue to apply in Northern Ireland to ensure that Northern Irish consumers retain the same access to redress as consumers elsewhere in the United Kingdom?

No comment

QUESTION 20. Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?

We prefer the fourth option as propounded in paragraph 5.64, but with the JEB looking more like the TS policy board. See later for comments.

Option 1 – Trading standards take on all OFT enforcement functions. As each LATSS is differently funded and answerable in the first instance to their own councils this option would fragment enforcement. It would not be possible to ensure that an issue would be acted on in the same way in any two authorities. External agencies such as other EU enforcers would not have a single point of contact. It would be unclear who should represent the voice of enforcement in arenas such as parliament and the EU.

Option 2 – Competitions & Markets Authority take on all but local enforcement. This is an attractive option as it provides a clear single place for business and others to go to. The commentary expresses concerns that funds would need to be taken from LATSS as they would no longer be remitted to cover cross border enforcement. I feel some research is

necessary to ascertain current levels of failure to carry out cross border enforcement. Based on the home authority principle LATSS do currently advise local traders who are giving rise to complaints elsewhere, using the part 8 of the Enterprise Act as well as criminal sanction. As the CMA would be taking on the OFT's overseeing role this could be assessed.

To avoid the CMA being seen as the OFT under a different name they could work with either the proposed TS Policy Board or Joint Enforcement Board models to commission and fund regional enforcement work through the LATSS regional networks. This would also avoid the need to establish costly regional offices, as suggested by the consultation. Specialist teams modelled on the Illegal Money Lending teams and Scambusters could also be commissioned and funded by the CMA. The benefit being that one body has an overview of all activities from market structures to individual business non compliance.

Option 3 – majority of OFT functions passed to LATSS. Although giving decision powers front line enforcers who see first hand the problems consumers face this option loses the benefit of a single point for consumer enforcement issues. The proposed set up of a TSPB looks cumbersome and potentially bureaucratic. Not all Chief TSOs will have equal resources to put into the decision making roles and it would be possible that the services better resourced to free up senior officer time would have the loudest voices.

If the OFT's functions were to be re-established under LATSS there would be a considerable time lag before the same levels of expertise were rebuilt. Why break up aspects of the OFT that work well? Other than retaining these teams under the CMA the only other option would be to move them as whole units to various individual LATSS.

QUESTION 21. In relation to Option 3, do you agree with the Government's principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

The idea of a TSPB or JEB (as suggested in 5.65) is attractive. A leadership comprising practitioners will help ensure the right decisions are made on which cases and issues should be prioritised for investigation. However I feel it should be working with the CMA rather than stand alone. One agency needs to be accountable for decisions and a stand alone TSPB facilitated by the Trading Standards Institute rather than a government agency may not enhance UK's reputation overseas.

In terms of effective enforcement against large businesses breaking the law, again the backing of a national agency would be necessary for better impact. Sorting out funding for expensive cases would be easier through a "CMA with TSPB" body.

Specialists should also provide support and guidance to LATSS for their more local cases. In addition to existing teams for illegal money lending, specialist teams would be useful for Enterprise Act work, including fairness of contracts, e commerce and rogue builders.

QUESTION 22. Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards? If so, would one of the JEB models be the best solution? Which one and why?

This would be our preferred option. Often it has appeared that the OFT is slow or overcautious in taking enforcement action on national trading standards type cases where both agencies share enforcement responsibilities such as Enterprise Act or Consumer Protection from Unfair Trading Regulations and the Consumer Credit Act. A joint forum to discuss cases of a national and regional nature would allow current enforcement gaps to be

filled.

The CMA would act as a single point for consumer enforcement issues in terms of UK's role in the EU. The CMA would clearly be answerable to a single body namely the UK government.

QUESTION 23. In relation to the various JEB models, how would you ensure effective Trading Standards participation in the JEB? Do you think that this option would deliver integration of enforcement across local, regional and national levels? Should other organisations be involved in the JEB, either as members or as participants in discussions? Would retention of such unrestricted consumer enforcement powers and responsibilities affect the CMA's singularity of purpose and distract it from its core competition remit?

The TS representatives could come from the already established TS regions would not need to be a Chief Officer but someone suitable and acceptable to the TS region. Decisions could be initiated through email discussion to speed up the process thus requiring some sort of secretariat. Expenses to the officer's employer to cover time spent would help ensure support.

QUESTION 24. How can your preferred new model best work with businesses?

I believe business would prefer to know that decisions are made by a single accountable government body. The improved status quo option would deliver this.

QUESTION 25. Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

yes

QUESTION 26. In an Option 3-based model, should this enforcement role be subject to procedural limitations?

There should not be limitations but a requirement to discuss the proposed enforcement actions with the TS community to ensure the best enforcement strategy has been adopted to ensure future compliance and an improved consumer environment with fair market competition.

QUESTION 27. Do you agree that the CMA should enjoy significant discretion over when a market has structural problems, such as to give rise to its consumer enforcement powers?

Yes but in discussion with other enforcement agencies.

QUESTION 28. Do you agree that the CMA should retain responsibility for mixed market studies where there may be competition and consumer issues (supply and demand side market failures) present on the relevant market?

Yes

QUESTION 29. Do you agree that in an Option 3-based model, the Citizens Advice

service should in future be responsible for pure consumer detriment analysis and that the CMA should not perform pure consumer market studies? In such a case, do you agree that the CMA should stop performing market studies once it identifies that there is no structural problem in such markets and do you think there should be a duty on the Trading Standards Policy Board to prioritise cases referred by the CMA?

No. Both CMA and Citizens Advice should be able to carry out consumer market studies and the need for a study may arise through different strands of intelligence. Citizens Advice (4.15) have a super complaint role and this in itself will require a consumer market study. TS have no background in carrying out market studies.

QUESTION 30. Do you agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies in the proposed new landscape?

Yes

QUESTION 31. Do you agree that it would be helpful to have some resource that required joint agreement between the CMA, TSPB and consumer advocacy bodies for its release, to be used to investigate or address consumer and market issues that would otherwise risk an enforcement or advocacy gap? If so, at what level should such funds be set and how best should they be administered?

Yes to a resource for this but I do not have enough experience to suggest a level.

QUESTION 32. Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not, how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?

Yes

QUESTION 33. Do you agree the TSI would be the appropriate home for the OFT's professional guidance and training functions in the event of creation of a new single Competition and Markets Agency?

It would only be appropriate if TSI were able to take on the OFT's and LGR's existing know how and resources in the area of professional guidance. Currently the OFT is able to provide advice to LATSS on credit, contract terms and enterprise act within quite a short turn around time as they employ experts in these field. TS officers tend to be generalists. The LGR system of specialist groups previously provided guidance on wider issues, may be not as quick but was operated through a system of consultation and consensus. It would be detrimental to businesses and consumers to loose or lessen either system. There would be a risk that disputes over interpretation of the law could only be decided through the courts; a slow and expensive option that may not be taken up by LATSS.

QUESTION 34. Do you agree that the TSI is the most appropriate home for the OFT's international liaison and general policy functions in the event that the CMA has only a limited consumer enforcement role?

No I believe international liaison should be provided by an agency that represents the UK's elected government and is clearly accountable to that government.

QUESTION 35. Do you think the requirement for LATSS' and other designated bodies' (under Part 8 of the Enterprise Act 2002) court orders to be directed by a central body needs to be retained in the new consumer enforcement model and if so, why?

A single point to record enforcement orders is necessary. Businesses can move location and it is important that their history can be found by other agencies.

QUESTION 36. Do you agree that responsibility for chairing the consumer concurrencies group should remain with the CMA?

The consumer concurrencies group sounds like a version of the JEB. The group should be linked to this and be housed wherever the JEB goes.

QUESTION 37. Do you agree that the current supercomplaints system to the OFT should be retained in respect of the CMA if the proposed changes go ahead?

Yes

QUESTION 38. Do you think that the super complaints process should be extended to require the Trading Standards Policy Board to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?

If the TSPB option goes ahead – yes.

QUESTION 39. Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?

A model exists in terms of the Ministry of Justice and claims management firms.

QUESTION 40. Do you agree that the proposed changes to the consumer enforcement landscape should go ahead if the creation of the CMA is delayed? If not, why not?

Not if there would be a gap in consumer and business protection. The only option if there is a delay would be to improve the status quo and ensure there is some sort of joint enforcement board attached to the OFT to improve liaison and ensure regional and national issues are effectively dealt with.

Joint WP of the Bars & Law Societies of the UK on competition law

Department for Business Innovation & Skills
'Empowering and protecting consumers'
Consultation on institutional changes

Headline comments of the
Joint Working Party

September 2011

Introduction

1. The JWP¹ is pleased to have this opportunity to comment on the consultation paper issued by the Department for Business Innovation & Skills ('BIS') "*Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement*" ('Consultation Paper').
2. The JWP comprises barristers, advocates and solicitors from all three UK jurisdictions² with particular experience and expertise in competition law; it includes those in private practice and in-house. There is extensive collective experience within the JWP of all aspects of UK competition law. The primary role of the JWP is to comment on changes in competition law or practice proposed by the UK Government or EC Commission.
3. The JWP does not claim the same level of experience or expertise of UK consumer law. The comments in this note are therefore limited to the possible impact of the proposals in the Consultation Paper on the ability of the proposed Competition and Markets Authority (CMA) to ensure that markets operate competitively, as outlined in the BIS consultation paper on competition law reform.³

Options for reform

4. The Consultation Paper includes three broad options for reform of consumer enforcement powers and responsibilities:
 - Option 1: all of the OFT's current consumer enforcement functions would be transferred to Trading Standards
 - Option 2: all enforcement other than at a local level would be undertaken by the CMA
 - Option 3: the majority of the OFT's current consumer enforcement function would be transferred to Trading Standards which would develop a new national leadership and coordination function for cross-boundary and national enforcement, but with some consumer enforcement powers being retained by the CMA.

JWP view

5. In its response to the BIS consultation paper on competition law reform, the JWP expressed a general concern "*that the OFT may have too many responsibilities at*

¹ The Joint Working Party of the Bars and Law Societies of the United Kingdom on Competition Law.

² The JWP has not sought to include comment in this paper on issues that may be particular to Scotland or Northern Ireland.

³ BIS consultation paper : "*A Competition regime for growth: A Consultation on Options for Reform*" ('BIS Consultation on Competition Reform').

present and that its resources are too thinly spread. It considers that there is a case for reducing the scope of the OFT's responsibilities for consumer affairs, so as to enable it to develop a sharper focus on competition issues and enforcement."⁴ The JWP remains of that view.

Option 1

6. As noted in the Consultation Paper, *"Consumer law enforcement is currently a remedy available to the OFT to use where it finds problems of competition in a market. Consumer enforcement capacity in these cases can be seen as an alternative tool for effective delivery of competition as well as consumer policy."* The JWP shares the view expressed in the Consultation Paper that removing such a tool from the powers available to the CMA is likely to reduce rather than enhance the effective enforcement of both competition law and consumer law. For this reason the JWP does not favour Option 1.

Option 2

7. As noted in the Consultation Paper, Option 2 *"... would eliminate uncertainty over the split in roles and responsibilities which currently exists between Trading Standards and OFT as everything beyond the local level would be dealt with by the national enforcement body."* The JWP agrees that it would be desirable to reduce the uncertainties caused by the current split. The JWP can also see that the split proposed in Option 2 might deliver greater consistency of approach in consumer enforcement and allow for the development of expertise within a dedicated body. Indeed, for these reasons, a few JWP members favour Option 2 because of its potential to enhance the enforcement of consumer laws.
8. However, as noted in the Consultation Paper, Option 2 *"would entail significant enhancement of current OFT resources, including inevitably the establishment of a network of regional offices to handle supra-local, but sub-national, consumer cases which form a significant proportion of the total."* Also *"a dispersed and national consumer enforcement operation on this scale would have a major impact on the character and balance of the CMA, which might detract from its proposed focus on making competition work in markets."*
9. From the viewpoint of effective enforcement of competition laws, Option 2 could have certain advantages (per para 7 above). However, as noted above, from the viewpoint of ensuring that markets operate competitively, the JWP is of the view that the CMA should have fewer consumer enforcement powers and responsibilities than the OFT has at present; and that this should be an important objective when scoping the powers and responsibilities of the new CMA. Self-evidently, Option 2 is inconsistent with that objective. For that reason the JWP does not favour Option 2.

Option 3

10. It follows from the above that the JWP has a preference for Option 3.
11. As regards Option 3 it is important, so far as practicable, to achieve a clear division between the roles and responsibilities of the CMA and those of the Trading Standards network.
12. The Consultation Paper proposes that *"the CMA consumer enforcement powers should be restricted to the remedying of structural problems in markets, they should*

⁴ See para 2.15 of the JWP response to the BIS Consultation on Competition Reform.

not be used for pursuing individual breaches of the law or remedying perceived unfairness in the way consumers are treated when this is unrelated to competition and broader market concerns". The JWP agrees with that view.

13. The Consultation Paper seeks views about the limits that might be placed on the CMA's powers to enforce consumer law in this context, suggesting that this might be done *inter alia*: (a) by restricting the use of consumer enforcement powers to cases where market studies or market investigations had already been carried out; or (b) by adopting a threshold whereby the use of consumer powers would depend on *prima facie* evidence of a competition problem in the relevant market, or of a structural market problem as opposed to an isolated case of illegality. Certain options for this divide are suggested in Annex D of the Consultation Paper.
14. The JWP agrees that a "*procedural restriction*" (ie limiting the CMA's powers to cases where there had already been a market study) might impose an undue and unnecessary constraint on the CMA's flexibility; and that a threshold allowing the CMA a degree of discretion would be preferable.
15. The preferred discretionary test mentioned in the Consultation Paper is based on "*a requirement for the CMA to identify a structural market problem which means that competition is not working properly*". The Paper suggests alternatives based on the market investigation reference test or the super-complaint test. The JWP is of the view that some combination of these tests may provide an appropriate threshold, eg :

"... reasonable grounds for suspecting that the interests of consumers are being significantly affected by an absence of effective competition in some feature or features of a market for goods or services in the United Kingdom (or part of the United Kingdom)"
16. Finally, the JWP would be concerned to ensure that any split of responsibilities avoids the potential for double jeopardy. The JWP assumes that the Trading Standards network would not have (or would cease to have) power to prosecute individual breaches of the law in any case where the CMA was investigating the breach in question under its powers.

+ + + + +

Jones, Tom

From: Tom Jones
Sent: 27 September 2011 15:33
To: Idowu Babatunde (RB)
Subject: consultation

WELSH Version

I wish to respond to the consultation, briefly, question 15. I presume that I can do so in Welsh.

Yn cwstiwn 15 gofynnir am ymateb i sut y bydd y newidiadau yn effeithio ar Gymru.

1 - mae LLais Defnyddwyr Cymru wedi gwneud gwaith arbennig o dda gydag arweiniad profiadol a phroffesiynol. Pan ofynnais am gymorth fe'i cefais yn fuan a thrylwyr.

2 - nid oes gen i farn ar unrhyw gymhariaeth rhwng y Corff Presennol a Chyngor ar bopeth. Mae gen i barch i waith y ddau. Yr hyn sy'n bwysig yw fod gan y corff fydd yn gyfrifol yr adnoddau anghenrheidiol i ddefnyddio ymarfer da mewn gweithio yn y Gymraeg, ac y bydd swyddogion lleig a gweithredol o statws uchel o fewn y Corff yn gweithio yng Nghymru ac yn medru bod yn atebol i bobol Cymru ac yn ymwybodol o waith a pholisiau Llywodraeth y Cynulliad Cenedlaethol. Bydd yn bwysig fod BIS wrth roi cyfarwyddiadau i'r Corff Cyfrifol yn deall yr angen i weithio'n sensitif gyda chyrrff a phartneriaid yng Nghymru ac yn ymwybodol o'u rhaglenni gwaith a'u polisiau.

yn gywir,
Tom Jones.

ENGLISH Version

"Question 15 asks how the changes will impact on Wales.

1. Consumer Focus Wales has done excellent work providing professional and knowledgeable guidance. When I asked for support, it was provided promptly and thoroughly.

2. I don't have a particular opinion on the comparison between the present body and the Council on all issues. I respect the work of both. What's important is that the responsible body has the necessary resources to develop a good practice of working in Welsh and that high-status working offices will be located in Wales and be able to be accountable to the Welsh people and knowledgeable about the work and policies of the Welsh Assembly Government. It will be important for BIS, when giving instructions to the body, to understand the need to work sensitively with Welsh partners and to be knowledgeable of its work programmes and policies."

KGB (operates 118 118 directory service)



Response to ‘Empowering and Protecting Consumers’ on behalf of 118 118 and kgbdeals

Introduction and Background

kgb (‘knowledge generation bureau’) is a privately held, New York-based company and the world’s largest independent provider of directory assistance and enhanced information services. kgb has built some of the most successful brands in the telecommunications, customer care and enhanced information services sectors.

In 2002, kgb (then known as InfoNXX) established 118 118 (The Number) which soon became the largest and most well known provider of directory services in the UK. It currently handles over 40 million calls a year, providing both core directory services and a range of enhanced offer, advertising and other information services.

kgb has also pioneered the provision of a broad range of wholesale and retail information services beyond traditional directory assistance services and in 2010 launched kgbdeals.com.

kgbdeals is an online daily discounts business. It operates by signing up merchants e.g. restaurants, beauty/hair salons or service providers and negotiating significant discounts from their standard prices. These discounts are emailed daily to kgbdeals subscribers who are able to buy the ‘deal’ for a short period of time, exclusively via the kgbdeals website.

For the sake of simplicity, 118 118 and kgbdeals are collectively referred to as ‘kgb’ throughout this response. All views expressed should therefore be attributed to both businesses, except where stated that specific issues are particularly relevant to one or the other.

Information, Advice and Education

The provision of accurate, helpful and timely information to consumers is at the very heart of kgb’s businesses, particularly in relation to directory inquiries. It is therefore a subject about which we feel passionately. Furthermore, we believe strongly that finding the correct source of information should be made as easy for consumers as possible and ideally, information and advice should be available from a single easily identifiable source.

This approach underlies the success of kgb’s directory inquiries business. 118 118 is the most called telephone number in the UK which is due in very large part to the effort which has been expended in promoting it as **the** number to call when you need directory information. Over time, the business has expanded to provide a far broader range of information and establish itself as a ‘one stop shop’ for local information and advice.

Although Citizens Advice obviously exists to provide a very different type of information and advice to consumers, we believe that the Government’s proposals to establish and promote it as the single source of



all such information (in a way which is easily accessible and recognisable to consumers) follows very similar principles. For that reason, we believe that it is absolutely the right approach.

Many consumers view 118 118 as a type of 'emergency' service in the sense that it is the number they call when they need information quickly and no other source of the information is readily available with the same convenience and speed. They do not want or need the added difficulty of having to work out where to go or to remember what number to call.

In a similar way and to a much greater extent, consumers who may be suffering distress or anxiety to the extent that they are in need of the help and advice of Citizens Advice (or one of the other similar bodies) do not want the added difficulty of having to navigate a myriad of overlapping and conflicting consumer organisations in order to determine which is the most appropriate one to call. The mere fact that a variety of similar organisations exist makes it less likely that any one of them will have the 'front of mind' awareness to ensure that consumers immediately think of them at their time of need and that can only increase the chances of consumer harm.

Furthermore, we recognise that very occasionally it is possible that consumers might want to contact a consumer advice agency in relation to the services which we provide. Although both of our businesses have dedicated customer care departments to handle any queries or complaints, we appreciate that some consumers may want to have third party advice which is independent of the company with which they are dealing. Directory inquiries is generally well understood by consumers, but the kgbdeals daily deals business model is newer and some consumers may be unfamiliar with it and particularly the balance of responsibilities between kgbdeals and its merchants. In rare instances that could generate issues about which consumers want advice. We would therefore want our customers to be able to identify an easily accessible source of reliable consumer information and advice, which we believe would be in the best interests of us and other reputable businesses. We would support Citizens Advice as performing that role.

So kgb agrees strongly that transferring all consumer advice and information services, together with related resources, to a single point is the correct way forward. We further agree that Citizens Advice is best suited to performing the role in view of long experience of providing this type of advice and its network of bureaux nationwide, where consumers can go, when they do not have any alternative means of access.

Consumer Advocacy

Question 12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

kgb's interest is primarily in relation to the sectoral advocacy within the communications sector, currently undertaken by the Communications Consumer Panel. Although we have no direct interest in sectoral advocacy in other sectors, there is clearly an issue of 'critical mass'. That is, the more similar sectoral advocacy functions are put together, the stronger, more experienced and more effective the overall team can become. So fundamentally, we agree with the approach of combining as many sectoral advocacy functions as possible (subject to some concerns outlined below).



Although the Communications Consumer Panel has been an effective advocate on specific issues, we do not believe that it is the perfect model for a sectoral advocacy body. Primarily, this is because the part-time role of the panel members makes it very difficult for them to engage with relevant stakeholders (be it large communications providers, smaller players or consumers themselves) or to become completely familiar with the issues about which they are advocating. At the same time, the Panel has employed a very small number of policy staff who are not well placed to engage with stakeholders or to advance matters without input from Panel members. The result is that the Panel may have been slightly isolated from some stakeholders and at times operating on an incomplete evidence base.

kgb hopes and believes that the establishment of a professional and properly staffed multi-sectoral advocacy function within Citizens Advice should overcome these difficulties. It should ensure that sufficiently senior policy staff are available to meet with all relevant stakeholders and that the team collectively is able to develop sufficient expertise and detailed understanding of the issues on which they are advocating.

Further, we agree that Citizens Advice would be a more appropriate sectoral advocacy body than Which? As more of a campaigning organisation, kgb does not believe that Which? is best suited to sectoral advocacy work, which requires a more detailed and long-term understanding of complex issues and the ability to assess them objectively on a case by case basis. In addition, Which?'s commercial activities are also likely to present some conflicts and difficulties which might not be easy to resolve, so it does not appear to have any advantages over Citizens Advice.

However, the Government should also give some thought to the accountability of Citizens Advice. Not only will it receive fairly significant public funding, but it will also have been granted a potentially powerful position as the only recognised consumer advocacy body. Whilst kgb recognises the very obvious need for Citizens Advice to retain absolute independence, it must still be held accountable for its use of public money and the policy positions which it adopts. It would not seem reasonable that its policy team could adopt positions on certain issues, without a process for ensuring that they are effectively representing consumers on the issues causing most harm. A policy team with the duty to represent 60m UK consumers should be able to demonstrate the basis upon which it has adopted the positions which it has.

Furthermore, Citizens' Advice should also have an obligation to consult (or at least communicate) with third parties who are relevant to its work on particular subjects, most obviously in relation to its sectoral advocacy. Such third parties should include whichever industry sector or players are likely to be affected by whatever it is investigating or about which it is seeking to advocate. Whilst Citizens' Advice must maintain its independence and obviously not be bound to adopt the views of third parties, there is a potential danger that in the absence of this form of consultation, it might be advocating without a sufficient understanding of detail of the particular issue.

This could for example, lead to it adopting a position which might generate short term consumer benefits, but not take account of important long-term consequences such as restrictions on future competition or investment in a particular market, which are ultimately to the detriment of consumers. So Citizens' Advice will need to ensure that it fully understands the subject matter with which it is detailing and is fully appraised of all the relevant facts and issues, in order to then decide for itself what position to adopt in both the short and long-term interests of consumers.



Question 13. Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?

Question 16. What are your views on these options for the transfer of information gathering powers? Which is preferable and why? Are there any other options for information-gathering powers?

kgb agrees with the proposed design principles for the regulated industries unit, which would appear to be generally sensible and largely uncontroversial. The only point which might generate some discussion or concern is what is meant by “*appropriate powers*”.

‘*Powers*’ may not necessarily be the correct terminology to adopt in relation to a consumer advocacy body, as it is a term more often associated with regulators who perform a very different function. An advocacy body may not require significantly greater ‘*powers*’ than the regulated providers as both will advocate their views to each other, the regulator and policy stakeholders more generally.

So the question of what are ‘*appropriate*’ powers therefore becomes very important. Several of the ‘*powers*’ referred to in para 4.34 are probably better described as ‘*rights*’ eg rights to be consulted and rights of appeal. kgb recognises that the advocacy body should have a power to initiate a super complaint, but information gathering powers are likely to be more controversial because of significant burden which they can impose on the affected party.

kgb believes that there must be effective checks in place to ensure that such powers are used proportionately and only when actually required for genuinely necessary information as part of a specific inquiry. On balance, we would therefore support option (b), namely the transfer of the power to a public body of bodies, such as the sectoral regulators. This should hopefully ensure that the powers are only used as is appropriate. However, we would not be entirely opposed to option (a), namely relying on restrictions in existing legislation, if it could be shown that sufficient checks would remain in place. We do not think that arguments concerning ‘*regulatory capture*’ are particularly strong.

Whichever option is adopted, it is obviously critical that that the confidential/non-disclosure obligations in section 237 of the Enterprise Act are retained either directly or equivalent provisions are put in place. Furthermore, Citizens’ Advice must ensure that sufficiently robust checks and processes are in place to guarantee that the information which it obtains is indeed kept completely confidential. kgb is conscious that Citizens’ Advice may not be used to handling business critical confidential information and so new processes and ways of working are likely to have to be established.

In addition, kgb believes that there is one matter not dealt with within the proposed design principles which needs to be considered. That is, with what type of issues the consumer advocacy body will become involved and on what basis they will be chosen.

The potential weakness of a single advocacy body compared with the several specialist sectoral bodies is that its remit and potential number of issues will be so wide as to be unmanageable and it ceases to become sufficiently expert and informed or an effective advocate on any of them.



Even with its current more limited responsibilities, Citizens Advice's policy work covers 14 distinct areas, just one of which is "fuel, water, postal services, digital and telecommunications". As the Government is proposing that (in addition to its general advocacy work) Citizens Advice takes on separate sectoral responsibilities for each of these areas (plus rail and legal) this will clearly amount to an extremely wide remit and potentially vast workload.

Telecoms alone involves a myriad of complex consumer impacting issues, upon which one cannot effectively advocate without a detailed understanding of the issues at stake. It will therefore be critical that Citizens Advice plans its work programme and focuses its activity effectively.

Citizens Advice must be wary of the obvious pitfall of trying to spread itself too thinly and risk advocating in areas in which it does not have sufficiently detailed expertise. It should therefore be required to focus on those issues which cause the greatest harm to the greatest number of consumers, rather than trying to be involved in everything which has any consumer interest. Whilst it may be tempting to do so, it will inevitably compromise its overall effectiveness.

Importantly, it should also not replicate work which is already being undertaken by the regulators themselves. For example, Ofcom itself has a well-resourced consumer policy team which investigates and acts upon issues of consumer harm. Whilst we recognise that the role of a consumer advocacy body is very different to that of a regulator, Citizens Advice should only get involved where it is clear that it can add real value by way of a different perspective or specific experience.

So in summary, Citizens Advice should be required to set a clear work programme based on a defined number of issues which it determines have the greatest consumer impact. It should closely monitor the activities of the regulators themselves and only become involved to the extent necessary if it genuinely assesses that it can add real value and a unique perspective. At all costs, it should seek to avoid advocacy on issues without having the necessary understanding and expertise based on prior evidence and research.

Question 14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?

Kgb agrees that Consumer Focus should be abolished and that its general advocacy functions be transferred to Citizens Advice. We have no view on whether its current sectoral advocacy functions should be transferred (as they do not relate to sectors with which we are involved) but if Consumer Focus is to be abolished, it must be an inevitable consequence (assuming the Government is not contemplating re-establishing separate advocacy bodies for each of those sectors).

The only question which needs to be considered in this context is how Citizens Advice will balance its general advocacy functions with its sector specific functions. We believe that a clear and permanent distinction between the two needs to be made within Citizens Advice to avoid one unduly taking attention and resources from the other. As we have explained above, Citizens Advice must establish a clear programme based on evidence and an objective view of consumer harm and not be swayed by other factors.



Kgb believes that there is a risk that without a clear separation, Citizens Advice might become overly focussed on general advocacy work to the detriment of its sectoral advocacy role. In those circumstances, there is a risk that it might miss the opportunity to develop a sufficient familiarity and expertise in the more complex sectoral issues. Even if there are no issues in a particular sector at the time, it is nevertheless important that Citizens Advice staff have the requisite detailed knowledge and understanding of each regulated sector to be able to advocate effectively as and when the need arises.

All queries in relation to this response should be to Simon Grossman, Director of Government & Business Affairs, The Number, Whitfield Court, 30-32 Whitfield Street, London W1T 2RG – simon.grossman@118118.com – 020 3205 0800

Kingston-upon-Thames TS

Consultation on Institutional changes for provision of consumer information, advice, education, advocacy and enforcement.

Comments from - D. Booker, Service Manager Trading Standards, Royal Borough of Kingston upon Thames.

D.booker @rbk.kingston.gov.uk. 020 8547 5513.

QUESTION 1. How do you think the provision of consumer information to consumers can be improved upon?

The current role of OFT in providing Consumer Direct should be replicated in any revised structure with the preference being for that service to be provided by Citizens Advice (CAB) via the existing regional call centres and others. Information should still be transmitted, as at the moment, to local TSAs by electronic means. The provision of personalised consumer advice should be maintained rather than using simple web based advice guides or recorded messages.

QUESTION 2. Do you agree that the OFT's consumer information role should be transferred to the Citizens Advice service?

As above, Consumer Direct could be run by Citizens Advice and there should be a shared database across Trading Standards and CAB as at present so that trends analysis etc can be carried out and as well as regional and national information being available locally.

QUESTION 3. Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service?

Agree.

QUESTION 4. Do you agree that the OFT's consumer education roles should be transferred to the Citizens Advice service? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?

This role should be transferred along with Consumer Direct. Education on issues such as scams, post shopping advice and making informed choices on how to find reputable builders etc are likely to be the most useful.

QUESTION 5. Do you agree that the proposed Trading Standards Policy Board and the TSI should coordinate and support business-facing educational activities?

This is a much wider question than pure consumer advice and the ability of those two organisations to support business advice needs to be carefully considered. Advice at the moment is largely provided by local Trading Standards as they are often best placed to discuss technical matters and where appropriate find a solution. There are web based advice services such

as ERWIN (Everything Regulatory When Its needed) which, in conjunction with TSI leaflets available through the TS Broadcast service on local TS webpages, allow general guidance to be provided. TSI may be a provider of that general advice but detailed business advice is likely to remain in the hands of local TS services who should be supported in that role as part of the move away from OFT provided resources. Coordination of that advice may be a role for TSPB but achieving that may not be too easy.

QUESTION 6. What are the best options for current and prospective CCAS members to consider in the event that the Government's proposed consumer and competition landscape proposals are adopted?

No particular view

QUESTION 7. Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of CCAS with effective alternative systems of accreditation?

No particular view

QUESTION 8. What are the lessons learned from the operation of CCAS which may help in establishing (or revising) voluntary schemes in the future?

No particular view

QUESTION 9. What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?

No particular view

QUESTION 10. What characteristics would a Kitemark® based code certification process need to have to meet industry requirements?

No particular view

QUESTION 11. What is your view on extending the Primary Authority concept to code certification?

Code certification could be a role for LBRO and the Primary Authority scheme in the same way that other schemes such as 'Trustmark' are approved.

QUESTION 12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

A single point of contact for consumer issues across many sectors would appear to be of benefit and should be supported.

QUESTION 13. Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?

No particular view

QUESTION 14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?

See response to Q12

QUESTION 15. What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

No view

QUESTION 16. What are your views on these options for the transfer of information gathering powers? Which is preferable and why? Are there any other options for information-gathering powers?

No particular view

QUESTION 17. What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?

No particular view

QUESTION 18. Do you support the transfer of the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland and agree that as a result Consumer Focus Post Northern Ireland be abolished?

No view

QUESTION 19. Do you agree that the Postal Services Redress Scheme should continue to apply in Northern Ireland to ensure that Northern Irish consumers retain the same access to redress as consumers elsewhere in the United Kingdom?

No view

QUESTION 20. Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?

Of the three models discussed, Option 3 would appear to be the most capable of providing support and resilience to Trading Standards services and is

supported as being the sole option capable of enabling enforcement action across borders.

Clarity is needed on how the cross border staffing arrangements would work though ie is this a formalisation of the current 'Scambusters' or Regional Fraud Units and if so how would any current forms of such teams link into the new arrangements or would they be subsumed by them? Staffing arrangements for the proposed structure need to be clarified ie is it envisaged that funding is to be targeted to local TS services to fund current staff to do this work thus enabling the extra resources to be used to obtain agency staff to be brought in to carry out locally agreed work or is it envisaged that there will be a grouping of permanently engaged staff in separate teams to carry out this work? Retaining staff at local level is essential to maintain local services and having staff drawn off to cover cross border issues may provide returns by stopping some regional scams etc but local services should not suffer as a consequence. With a restricted number of appropriately qualified staff there may be some difficulty in fully providing this model.

There may be an increase in costs for agency staff if the small number of those available are only available at a premium as a result of increased demand. Any increased cost for any non funded work would need to be borne locally and that may have the effect of increasing the cost of local services.

QUESTION 21. In relation to Option 3, do you agree with the Government's principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

Regional representatives to the TSPB would be needed as well as other representatives bringing issues to the Board. The model appears to provide the ability to tackle large scale issues e.g. national pricing issues and therefore provide a deterrent for national companies to not break the law. An example of this would be the ability to investigate sales pricing claims that might involve price monitoring across a region or wider area and for which a large amount of time may be needed to fully investigate. One single authority may not be able to deal with that but a funded regional or national approach would be a considerable deterrent.

An indemnity fund would be necessary to provide the comfort to one or more authorities that taking on this type of work and potentially losing a big case, would not pose the financial risk that it might otherwise be.

To enable this model to work effectively and for this to be linked in to information provided by CAB, a single national database of convictions and formal actions based on the current OFT CRW and CRC systems is needed. This authority has been of the view that a single national database of all relevant Trading Standards legislation as opposed to the limited range currently stored by OFT has been required for some time. Without such a database prioritised working of both local and regional teams would be compromised. In addition a more robust alcohol licensing regime might be also created enabling national tracking of convictions etc of personal licence holders and nationally based traders. Closer working with colleagues in

Environmental Health means that such a database could also usefully include Environmental Health legislation for which, outside of HSE, there currently does not exist such a facility. Included within that should be central records of all Personal licences under the Licensing Act 2003.

I understand that LBRO have considered their ability to host such a database and have a legal opinion that only a change in legislation would give them the legal authority to host that. The necessary legal status might therefore be created in any legislation needed to implement the proposals in this consultation. I also understand that this issue is with the Ministry of Justice following its referral to them by LGR. A very recent development in this area is that the National Anti Fraud Network (NAFN) have indicated that they are looking to host a database of all local authority sanctions.

QUESTION 22. Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards? If so, would one of the JEB models be the best solution? Which one and why?

QUESTION 23. In relation to the various JEB models, how would effective Trading Standards participation you ensure in the JEB? Do you think that this option would deliver integration of enforcement across local, regional and national levels? Should other organisations be involved in the JEB, either as members or as participants in discussions? Would retention of such unrestricted consumer enforcement powers and responsibilities affect the CMA's singularity of purpose and distract it from its core competition remit?

QUESTION 24. How can your preferred new model best work with businesses?

Response to Qs 22- 24.

The mode proposed does not appear to have the flexibility of 'Option3' and lacks the ability to create regional and national structures that effectively incorporate Trading Standards. As described it would appear that the governance of this arrangement would involve limited resources from Trading Standards.

QUESTION 25. Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

Agree but there needs to be communication between the TSPB and CMA so that each is clear on who is doing what and who needs to address any particular issue. Information held by CAB and Trading Standards would need to be accessible to CMA .

QUESTION 26. In an Option 3-based model, should this enforcement role be subject to procedural limitations?

QUESTION 27. Do you agree that the CMA should enjoy significant discretion over when a market has structural problems, such as to give rise to its consumer enforcement powers?

QUESTION 28. Do you agree that the CMA should retain responsibility for mixed market studies where there may be competition and consumer issues (supply and demand side market failures) present on the relevant market?

QUESTION 29. Do you agree that in an Option 3-based model, the Citizens Advice service should in future be responsible for pure consumer detriment analysis and that the CMA should not perform pure consumer market studies? In such a case, do you agree that the CMA should stop performing market studies once it identifies that there is no structural problem in such markets and do you think there should be a duty on the Trading Standards Policy Board to prioritise cases referred by the CMA?

Response to Qs 26-29.

There may be a need to have a procedure to establish whether any issue is a 'structural' one as opposed to being more of an enforcement issue for Trading Standards etc. Without some form of mechanism to ensure appropriate cases are dealt with by the appropriate bodies there is scope for conflict and some form of referral process or mechanism perhaps within TSPB and CMA joint meetings could enable this.

QUESTION 30. Do you agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies in the proposed new landscape?

QUESTION 31. Do you agree that it would be helpful to have some resource that required joint agreement between the CMA, TSPB and consumer advocacy bodies for its release, to be used to investigate or address consumer and market issues that would otherwise risk an enforcement or advocacy gap? If so, at what level should such funds be set and how best should they be administered?

As noted in the response above some form of agreement will be needed in some cases and a simple procedure with TSPB/CMA TSAs needs to be created.

QUESTION 32. Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not, how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?

'Trading Standards' is a well known 'brand' both professionally and colloquially such that anybody using that brand name would, in my view, command respect and an attendant ability to deter unfair practices.

QUESTION 33. Do you agree the TSI would be the appropriate home for the OFT's professional guidance and training functions in the event of creation of a new single Competition and Markets Agency?

Agree – TSI are a very competent training body.

QUESTION 34. Do you agree that the TSI is the most appropriate home for the OFT's international liaison and general policy functions in the event that the CMA has only a limited consumer enforcement role?

Agreed – TSI has again already got international liaison contacts and is ideally situated to take on this role.

QUESTION 35. Do you think the requirement for LATSS' and other designated bodies' (under Part 8 of the Enterprise Act 2002) court orders to be directed by a central body needs to be retained in the new consumer enforcement model and if so, why?

Central liaison is vital both by means of a database such as CRW (see response to Q 21 on the need for a single database) as well as via a liaison mechanism such as envisaged above through TSPB and liaison with CMA. Ownership of the OFT CRW and CRC databases needs to be resolved as part of the proposal.

QUESTION 36. Do you agree that responsibility for chairing the consumer concurrencies group should remain with the CMA?

This could remain with CMA but would need to liaise with the TSPB.

QUESTION 37. Do you agree that the current supercomplaints system to the OFT should be retained in respect of the CMA if the proposed changes go ahead?

Agree . Liaison with TSPB will be necessary. The ability for Trading Standards as a group to also make 'supercomplaints' in the same way as CAB are able to would be welcomed and should be part of the revised structure.

QUESTION 38. Do you think that the supercomplaints process should be extended to require the Trading Standards Policy Board to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?

If the complaint related to a matter to be enforced by or through TSPB one would have thought that that body would have to respond. TSPB may be the body which itself might be able to make a 'supercomplaint' on a matter found not be with its sphere of activity but which should be investigated.

QUESTION 39. Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?

That may be possible through a commissioning process in a similar manner to the Ministry of Justice Claims Management Compliance Unit run by Staffordshire CC under a contract with that Ministry.

QUESTION 40. Do you agree that the proposed changes to the consumer enforcement landscape should go ahead if the creation of the CMA is delayed? If not, why not?

The proposed changes should go ahead whether or not the arrangements for CMA are in place.

Law Society of England & Wales



The Law Society

Empowering and protecting consumers

Comments of the Law Society of England & Wales

September 2011

SUPPORTING
solicitors

INTRODUCTION

1. The Law Society is the representative body for over 140,000 solicitors in England and Wales. It negotiates on behalf of the solicitors' profession, lobbies regulators, Government and others. It also works closely with stakeholders to improve access to justice for consumers.
2. The Law Society welcomes the fact that BIS is examining ways in which the provision of information and education, consumer advocacy and enforcement regimes can be improved.
3. The Law Society shares with BIS the objectives behind the consultation. The *status quo* (in relation to the provision of consumer information, education, advocacy and enforcement) needs to be improved. The Law Society further acknowledges that the Government agenda to decentralise power and empower civil society informs the proposals in the consultation. However, the Law Society is concerned that the debate over reform should not be unduly inhibited or undermined by resource constraints. The aim must be to create a system that works. In addition, the reforms need to take into account their interconnectedness with other policy areas. Changes being brought in elsewhere e.g. to the civil justice system, could have a significant impact on the overall effectiveness of the proposed reforms to the consumer enforcement regime. Therefore the Law Society urges BIS to think about its reform proposals in this wider context.
4. The Law Society has two particular areas of interest, in relation to the proposals:
 - The impact of the proposed changes to the consumer advocacy landscape, including a specific concern in relation to the legal services sector.
 - Ensuring that the reform proposals do not impact negatively on the key principles of the rule of law and access to justice.
5. The complexity of the modern economy tends to mean that consumers are less powerful than producers. Therefore it is vital that:
 - Consumers are as informed as is practicable about their rights and the quality and availability of products and services.
 - There are consumer advocacy mechanisms in place, especially for vulnerable consumers.
 - A strong enforcement and remedy regime is available to deal with traders who break the law.
6. The Law Society strongly supports these three objectives. More specifically:
 - Better informed consumers are important because such consumers are more likely to make better choices. If consumers are more aware of their rights this is likely to increase access to justice because consumers can react in an informed way to breaches of their rights. Further, greater knowledge of what products and services offer and their availability enables consumers to make choices that best suit their needs. This more discriminating consumer will be a more satisfied consumer.
 - Strong consumer advocacy is vital to help ensure the voice of vulnerable consumers is heard by government, industry and regulators. However, the reforms proposed in the consultation have to avoid the appearance of any

conflicts of interest, which might undermine the effectiveness of a consumer advocacy body. Further, while consumer advocacy is crucial, maintaining advocacy bodies in sectors where the consumer voice is already effectively incorporated into the governance arrangements of that sector is not the most effective use of resources. It is duplicating effort in unnecessary ways. It ties up resources that could be better deployed elsewhere.

- Effective enforcement is vital in ensuring the rule of law is upheld. A robust enforcement regime is required in order that those who infringe the rules are dealt with appropriately while ensuring those consumers who do suffer detriment can get the justice they deserve.

7. In the main body of this response (below) the Law Society sets out answers to some of the specific questions in the consultation.

CONSUMER INFORMATION AND ADVICE

8. Good consumer information and advice is vital for two reasons:

- Firstly, it contributes to a better functioning demand side i.e. consumers can make better and more informed choices about the products and services they purchase.
- Secondly, good information and advice ensures consumers have adequate knowledge about their rights. A better informed consumer means increased access to justice because the consumer will be more aware of when and how they can exercise their rights. Greater access to justice, in turn, reinforces the rule of law.

Q1: How do you think the provision of consumer information to consumers can be improved upon?

9. In general terms consumer information provision and advice suffers from a lack of visibility combined with a low level of awareness about its availability. Although awareness does vary depending on the particular population demographic. Research commissioned by the Office of Fair Trading (OFT) gives an indication of this¹.
10. The research found that overall just 58% of consumers felt they were informed about their rights. Only 43% of under 18s felt informed about their rights and 49% of the over 75s. Those who felt most aware of their consumer rights were in the ABC1 socio-economic groupings.
11. It is through increased visibility and the provision of clear and understandable information that consumers will be able to make better decisions and exercise their rights. Most importantly the information and advice provided has to be valued by the user and be delivered in such a form as to be meaningful and useful. There is much work that needs to be done on understanding how consumers understand and use information and advice to make decisions. The Law Society supports more research into this with the aim that information and advice in the future can be delivered to consumers in ways that are of practical use to the consumer.

¹ Synovate (2004). 'Competition Act and Consumer Rights', pub: Office of Fair Trading: London.

12. In the meantime a number of useful improvements could be made to how information and advice is currently provided to the consumer:
- There should be wider availability of easy to read and understand literature on consumer rights. This might include the provision of a user friendly and plain English statement of the main consumer protections. This could be supplied at the point of sale e.g. alongside goods over a certain value or with certain specific types of goods. The specific contents of such a statement of consumer rights would have to be decided on by the relevant authorities.
 - At very marginal cost online sellers could be required to prominently display a similar statement of key consumer rights on their consumer facing web pages.
 - Greater use of the media could be made (TV, radio and the internet) to spread important consumer information, especially about rights.

Q2: Do you agree that the OFT's consumer information role should be transferred to the Citizens Advice service?

13. The Law Society is concerned that transferring the consumer information and advice responsibilities of the OFT to Citizens Advice (CA) could mean CA taking on a significant new responsibility, without the requisite resources in place to manage it. CA carries out its current responsibilities well. However, adding new ones could jeopardise current functions as its resources become too stretched, due to having to carry out additional functions. A related danger is that such a transfer of responsibilities will mean a significant period of organisational disruption because of the inevitable restructuring. New responsibilities will mean new staff, new teams and reorganisation of existing structures. It takes time for an established body to adapt to new tasks and operate in new ways. During this time the consumer is likely to suffer a gap in the provision of information and advice, which could lead to consumers facing detriment that might have been prevented or ameliorated had there been more continuity.
14. The consultation document does not give much detail on how BIS envisages CA carrying out the new responsibility on information advice in practice. However, if BIS is relying on the Citizens Advice Bureaux (CABx) to provide a nationally uniform service at the local level, then it is likely that minimum service requirements will need to be put in place. While all CABx work to common standards and values all CABx are independent, all are resourced very differently. For example there will be CABx with numerous funding streams and high numbers of both volunteers and paid staff. While other CABx may well have only one or two funding streams and resources may limit their opening hours and the service that they can offer. While these different resource levels do not necessarily mean a lowering of quality of service there is a risk that any services transferred to Citizens Advice will be delivered unevenly, unless certain steps are taken.
15. These steps should include putting in place mechanisms that help ensure a minimum level of quality and availability. A postcode lottery of consumer advice and information must be avoided. Poor service in some areas has two key negative consequences:
- It hinders the ability of the consumer to make informed choices, thus reducing the effectiveness of the consumer as a driver of quality and innovation.

- If the individual consumer is unable to access adequate information and advice it could mean reduced access to justice. In turn this might mean rogue traders can continue to get away with illegal behaviour.
16. In light of these risks it makes sense to insist on rigorous minimum standards to ensure a consistent and effective information and advice service to consumers. Clear service level agreements would need to be put in place. It would also make sense for most literature and online information to be created by a national body (e.g. CA) and then disseminated to CABx to ensure consistency.
 17. The Law Society is also concerned that shifting the provision of important public goods such as consumer information and advice from an accountable public body to a charity like CA reduces public safeguards (which are available through mechanisms such as Judicial Review) and transparency (e.g. through Freedom of Information). The proposals could result in reduced levels of accountability in the provision of consumer information and advice.
 18. An alternative that BIS might consider is to keep Consumer Focus in place (albeit reformed) and pass the consumer information and advice responsibility of the OFT (including Consumer Direct) to Consumer Focus. This would help ensure the transparency and accountability concerns are reduced because Consumer Focus is already a public body. The opportunity for a postcode lottery in information and advice provision would also be reduced because Consumer Focus is a national body and therefore can exercise greater central authority. Further, Consumer Focus already has some national role in providing consumer information and advice and therefore such a reform would be building on an existing information and advice capability.

CONSUMER EDUCATION

19. Another important way of ensuring consumers know their rights and can make informed consumption decisions is through education. The Law Society supports the maintenance of some sort of consumer education.

Q4: Do you agree that the OFT's consumer education roles should be transferred to the Citizens Advice service? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?

20. There is a clear logic in having consumer education, information and advice done by the same organisation. It would ensure consistency and would mean that changes and improvements in information, advice and education provision can evolve simultaneously and in a complementary fashion. The advantage of using a body other than the OFT is that, firstly they would have the opportunity to develop brand identity among the public and secondly (depending on who took over the role) could focus to a much greater extent on consumer education than the OFT is able to, which has a wide range of roles.
21. However, the Law Society has similar concerns in relation to consumer education as towards information and advice i.e. transferring responsibility to CA will mean:

- Very stretched resources resulting in the very good services CA and CABx already provide being diluted.
 - The current CABx operating model will not ensure the consistency in consumer education that is should be expected
 - Such a shift will involve a protracted period of change and adaptation during which consumers will be poorly served.
 - Moving responsibility to a charity and away from a public body will reduce the scrutiny, accountability and transparency of the delivery of important public goods.
22. To overcome some of these concerns there would have to be guarantees from CA (e.g. through service level agreements) on minimum standards in consumer education provision and on the quality of training given to those who might deliver such education.
23. One measure that might help ensure high levels of consistency in consumer education would be through partnership with both BIS and the Trading Standards Institute (TSI) on education issues. Partnership with the TSI on training standards could be particularly helpful in ensuring those delivering consumer education are adequately trained.
24. In this context the Law Society reiterates that BIS should consider retaining a reformed Consumer Focus and in addition to shifting the information and advice role to them, the education role should be transferred there too.

Q5: Do you agree that the proposed Trading Standards Policy Board and the TSI should coordinate and support business-facing educational activities?

25. The Law Society agrees that the body which replaces the OFT should co-ordinate with the Trading Standards Institute (TSI) all business facing educational activities. The new arrangements should have a strong role for Local Authority Trading Standards Services (LATSS) in delivering business facing educational activities because they are closest to the businesses in their local areas.
26. There is a good deal of sense in having a dedicated team, within the national enforcement body that replaces the OFT, and in conjunction with TSI developing materials and minimum training standards to support those local Trading Standards Officers (TSOs) delivering the business-facing education in their local areas.
27. To help ensure the delivery of consistent and good quality business-facing education on consumer issues, there should be at least one fully trained TSO, in each jurisdiction, who is responsible for the pro-active delivery of such services to the local business community.
28. There should be regular peer review of the delivery of such business-facing education, by TSOs from other areas or by any new central authority. This would operate in conjunction with testing and feedback with businesses. Methods of evaluation measures (such as these) will help ensure quality provision and the spread of best practice.

CONSUMER ADVOCACY

29. The Law Society believes that there is an important role for consumer advocacy, specifically on behalf of vulnerable consumers. It is vital to ensure their perspective is heard in public debate and in the legislative process. Vulnerable consumers are often forgotten in discussions about markets, products and competition. Consumer advocacy will facilitate access to justice for vulnerable consumers, e.g. by ensuring the diverse needs of this group are taken on board by government, business and regulators.

Q12: Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

30. The Law Society is cautious about the establishment of a Regulated Industries Unit (RIU) within CA. The Law Society has practical concerns as to the usefulness of such a body, what sectors it would cover and potential conflicts of interest.
31. Our first concern is the removal of sectoral advocacy from its current position risks creating unnecessary disruption to a system that is not broken. The risk has three elements:
- Existing relationships with regulators will be damaged.
 - Existing expertise is lost.
 - There will inevitably be a 'gap' or 'lost period' during any transition period as the advocacy function moves from one organisation to another.
32. A neater and more effective solution to these issues of sectoral advocacy would be to:
- Ensure that the boards of the regulators in these industries have sufficient non-executive (lay) membership on them, who explicitly represent the interests of consumers. This puts the voice of the consumer right at the heart of the decision making process.
 - Require all the regulators of these sectors to focus on consumer outcomes as one of their key regulatory objectives.
33. With such a framework in place the need for sectoral advocacy would be significantly reduced, if not removed.
34. Our third concern relates to which sectors could potentially be included under the term 'regulated industry'. The sectors listed in the consultation document are wide ranging. The Law Society urges careful consideration over which sectors are covered by this term.
35. The consultation seems to suggest that those sectors which have specific sectoral regulators and some form of official consumer representation/ advocacy system in place will come under the auspices of the proposed RIU. The Law Society considers this too sweeping in its approach. A more nuanced understanding of a regulated sector would make more sense.

36. The consultation for example seems to suggest that legal services should be included within the remit of RIU, implying that the legal services sector is comparable to the water or energy sectors. The Law Society strongly contends that the legal services sector has a number of characteristics which make it significantly different to what are traditionally understood as the regulated industries.
37. The regulated industries are generally set apart from other sectors because of their strategic importance and their concentrated market structure. This structure tends to confer significant market power on the companies operating in them. The legal services sector is not structured in such a way. Its characteristics are markedly different:
- It has a wide range of players including Legal Executives, Barristers and soon ABSs. In addition it has a vibrant not-for-profit sector.
 - It is made up of a large number of firms, a significant proportion of which are small and medium sized practices. There are numerous large firms too.
 - Firms operate across a range of markets, some very localised and some international, some firms focus on particular market segments and others offer a more general range of services. It is a rich and diverse ecology.
38. In addition the legal services sector already has a very consumer friendly regulatory regime. The Legal Services Act 2007 has ensured representation and regulation are separate. It required non-executive majorities on the boards of those bodies regulating legal services. Consumers are also protected by a strong ombudsman regime as well as the long established professional standards to which all solicitors have to adhere.
39. With such a framework in place, the case for including the legal sector within the purview of any RIU is weak. In particular the involvement of non-executive representation at the heart of the regulation of legal services ensures a powerful independent input into the key decisions.
40. The Law Society's fourth concern is that, if legal services are included within the remit of an RIU (working as part of CA), then this creates a potential conflict of interest.
41. The primary function of CA is as a deliverer of advice on a wide range of issues, many of which are legal in nature. As such CABx are employers and deliverers of legal services. To have CA advocating for consumers on legal services issues while delivering them would mean that the RIU could not be considered wholly independent.

Q13: Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?

42. In genuinely strategic and highly concentrated sectors, such as energy and telecoms (and where the boards of the relevant regulators do not contain lay majorities or have the consumer interest as a key regulatory objective) then there is a case for keeping in place some form of independent consumer advocacy, until the regulatory situation is rectified.
43. It is difficult to see if advocacy was to be centralised into a RIU (and legal services were part of the RIU remit) how a conflict of interest could be avoided.

Q14: In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?

44. If Consumer Focus is abolished then there is a good case for transferring independent general consumer advocacy for vulnerable consumers to another body. There is an important role for a body to advocate generally for vulnerable consumers. They are the least able consumers; they face the greatest challenges when engaging in market transactions and are often a forgotten section of the consumer population - quite often because they are the least profitable for firms. As the OFT evidence set out in paragraph 10 suggests those in vulnerable groups are also the least likely to know their rights². Their voice needs to be clearly represented in policy debate.
45. In addition, by abolishing Consumer Focus it has to be borne in mind that a significant amount of useful institutional expertise and memory, especially on vulnerable consumers, risks being lost. This will not be easily replaced.
46. Further, Consumer Focus carries out a significant amount of consumer research. It is a prolific publisher of analyses of consumer markets and consumer problems. Its work is an important resource (for regulators, Government, researchers and policy professionals) in policy debate. If Consumer Focus is abolished this will be lost. Consequently there would be a detrimental impact on the consumer policy debate. The Law Society considers that steps need to be taken to ensure this valuable work continues to be carried out into the future.
47. Consumer Focus also has the advantage of being a public body. As highlighted earlier this means they operate within a framework of accountability that a charity (such as CA) does not. In light of this the Law Society is concerned that moving responsibility for important public functions such as consumer advocacy on behalf of vulnerable consumers (from Consumer Focus) will result in reduced levels of accountability and transparency in the system.
48. The Law Society considers that the best option for the future of consumer advocacy is for a reformed Consumer Focus to remain in place. However, it should have a very tightly focused remit. In relation to advocacy this should involve solely advocating on behalf of vulnerable consumers. This advocacy role would be in addition to taking over consumer education, advice and information provision (including operating Consumer Direct).
49. Keeping a reformed Consumer Focus would allow CA to continue the effective policy and advocacy work it currently carries out without the significant disruption of taking on new responsibilities resulting in the kinds of negative impacts described earlier.

CONSUMER REDRESS

50. The Law Society is a supporter of redress schemes such as ombudsmen as part of a suite of ways that consumers can enforce their rights. Ombudsman schemes are particularly useful for helping resolve low value consumer-to-business disputes,

² Synovate (2004). 'Competition Act and Consumer Rights', pub: Office of Fair Trading: London.

which, without the existence of such a scheme, might not otherwise get resolved. Therefore they can play a role in increasing access to justice and in turn reinforce the rule of law.

51. More specifically they can:
- Make it easier, quicker and cheaper to resolve disputes, with arbitrators considered to have greater expertise on a specialist issue than a judge.
 - Deal with matters which a court would not (e.g. poor service questions or questions of professional conduct).
 - Provide a more appropriate solution to a case than a simple court judgement.

Q17: What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?

52. In light of the advantages (set out above) the Law Society supports the extension of ombudsman schemes in principle. However, it should not be an indiscriminate extension. The extension needs to be carefully considered.
53. A number of options for expanding redress schemes are available going forward. There could be:
- An extension of such schemes sector by sector.
 - Special schemes covering specific types of transactions e.g. online business to consumer.
 - A general scheme such as a general consumer ombudsman, which covered all sectors not already served by a specific sectoral ombudsman scheme.
54. Thorough research is required in order to discover what types of scheme have worked in other countries and sectors. If redress schemes were to be expanded such research would enable best practice to be identified and adopted for the new schemes. In addition it may emerge that certain types of industries are more suited to an ombudsman scheme than others.
55. The trend in the UK seems to be for ombudsman schemes in two types of sectors, those with concentrated market structures and which have strategic importance and those where the nature of the product means that there are large asymmetries of information between buyer and seller, where purchases are infrequent but significant and it is hard for the buyer to judge the quality of the product for a period of time after purchase. A good example of this kind of sector is financial services. This kind of approach has led the UK towards setting up a series of sectoral ombudsman. In contrast, Denmark has established a general consumer ombudsman.
56. The Law Society considers there is a need for a wide ranging comparative piece of research into the issue of ombudsmen. This is a necessary first step before decisions on extending such schemes can be credibly made. For example *prima facie* there seems to be a good case for an ombudsman service in both the rail and air travel sectors. However, before launching into the creation of such schemes the Law Society considers that the suitability of these sectors for such schemes needs to be evaluated against credible criteria on which suitability can be decided. The research would help such criteria to be developed on a sound evidential footing.

57. ADR/ ombudsman schemes can work well. However, in order to make sure they are not seen as just a cheap and weak alternative, any scheme must be robust and well designed. A poorly designed and operated scheme would undermine the principle and people's enthusiasm for using them. Identifying best practice e.g. through rigorous comparative research, is therefore crucial.
58. As a contribution to the debate on ombudsmen the Law Society considers that any scheme should be based a number of key general principles. These should include:
- Independence of the decision-making body.
 - Transparency of the process.
 - Adherence to the adversarial, effectiveness, legality and liberty principles.
 - Adherence to the principle of representation.
 - Any scheme must be staffed by personnel trained in both basic legal concepts and mediation/ adjudication skills.
 - Convenience for consumers.
 - A guarantee of security, including of information (personal data).
59. If there was going to be a roll out of more ombudsman schemes (on whatever basis) the Law Society believes there is a clear need to put the general framework in statute. This will create a general structure for all future schemes. It would also make sense to require all future schemes to be approved by a body such as any new national consumer enforcement body – whatever shape that finally takes, or failing that, BIS itself. Unless there is a specific sectoral regulator that can do this.
60. If the number of ombudsman type redress schemes is going to be expanded, thought needs to be given as to how participation in ombudsman schemes can be incentivised. In particular how businesses can be convinced that participation in them can sometimes be a good thing, for example, helping firms avoid costly alternative action and having a positive impact on both reputation and revenue. In the UK, in some of sectors where ombudsmen schemes exist membership is compulsory. There are a number of problems with compulsion, such as the implications for the freedom of parties to be able to exercise their rights through the courts. Therefore the evidence on the effectiveness of incentives could be one of the important questions any comparative research investigates.
61. Finally, another method (among the suite of ways) by which consumers can obtain redress when they have suffered detriment is collective redress. In addition to examining the case for expanding ombudsman schemes the Law Society urges the Government to look at the case for introducing an effective collective redress mechanism in England and Wales.

CONSUMER ENFORCEMENT

62. Enforcement is vital to the rule of law. It ensures that consumers who are victims of rogue traders receive justice. The Law Society is therefore keen to see effective consumer enforcement. In light of this the Law Society agrees with the recent National Audit Office (NAO) report³ that there are a number of failings and gaps in the current consumer enforcement regime. Indeed, the OFT itself highlighted a

³ National Audit Office (2011). *'Protecting consumers - the system for enforcing consumer law'*, pub: Stationery Office: London.

number of areas for change in its 2010 report into how online enforcement can be improved⁴.

63. The Law Society also acknowledges that in recent times the OFT and Trading Standards have begun to develop more effective coordination and cooperation in relation to enforcement. The Law Society does not wish to see the progress that has been made already unnecessarily disrupted by reform.
64. Therefore the Law Society considers that any new enforcement regime must do three things:
- It must look to close the enforcement gaps identified by the NAO⁵ and (in relation to online enforcement) bring about the objectives identified previously by the OFT⁶.
 - It must not hinder the positive changes that have already happened but aim to improve on them.
 - It must facilitate effective international enforcement.

Q20: Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?

65. The Law Society is concerned that none of the options set out in the consultation offers the best solution to improving consumer enforcement. While all three seem to have positive elements each creates concerns. For example the Government's preferred option 3 of a Trading Standards Policy Board (TSPB) risks being too weak at the centre. There is a significant high risk that it could result in shifting the enforcement gap rather than reducing it. In addition there is a risk it will leave consumers facing an enforcement postcode lottery. Although the detail in the consultation document is limited it seems that the TSPB will not have the authority or resources to ensure effective national enforcement, deal with cross-local authority boundary issues and regional cases effectively or sufficiently tackle international problems.
66. The Law Society considers a body at the national level that does more than coordinate enforcement and foster cooperation is needed. Indeed, the Law Society is concerned that the emphasis on coordination does not lead to a cutting back of resources dedicated to enforcement. The Law Society believes there is a need for a robust and credible central authority, such as a National Trading Standards (NTS) body with its own significant resources (investigative and prosecutorial). It should be a body solely dedicated to consumer enforcement; both through conducting its own work and by supporting LATSS in their enforcement efforts.
67. It must operate at the heart of a national network of LATSS. To complement its enforcement role and to support the work of LATSS it should be a hub or clearing house for intelligence and other legal and consumer information, best practice, new ideas and innovations in consumer enforcement and have the resources to offer direct aid in complex local and regional cases. The new body must build on the existing networked approach to consumer enforcement by having the authority to

⁴ Office of Fair Trading (2010). *Protecting consumers online: a strategy for the UK*, pub: OFT: London.

⁵ National Audit Office (2011). *Protecting consumers - the system for enforcing consumer law*, pub: Stationery Office: London.

⁶ Office of Fair Trading (2010). *Protecting consumers online: a strategy for the UK*, pub: OFT: London.

coordinate effort and facilitate greater cooperation by LATSS and TSOs at local and regional levels.

68. The OFT in the past was perhaps seen as something very distinct and separate element in consumer enforcement to the LATSS, which created barriers to cooperation and left enforcement gaps. The NTS should be seen as the national enforcement body of the LATSS.
69. A strong and well resourced national body is important to take on those significant national cases that a conglomeration of local or regional bodies might not be able to manage. It is also needed to help take forward and coordinate action with consumer bodies in other countries. As consumption becomes more international inter-country cooperation is going to become more important. A well resourced body will be needed to cope with the increasing workload in this area. A single body makes coordination across borders easier and more effective.
70. The Law Society is concerned that the proposed solutions to the resources problem e.g. indemnity insurance (while important and worth bringing in, in any case, as an additional aid) do not necessarily remove the disincentives to bringing actions in complex cases and against large and powerful firms. The upfront costs and the uncertainty over losing - no matter how big the covered risk - will inevitably act as disincentives on such resource intensive actions. A well resourced national body mitigates these problems to a much greater extent than insurance schemes and small pots of reserved national funding can.
71. The NTS needs to be designed with the problems in the current regime (as set out by the NAO) in mind, in order that they can be avoided. Therefore when developing its operating model some key points need to be considered:
 - It must be able to command and coordinate local and regional resources and not rely on the enthusiasm and good will of the local LATSS.
 - The structures and operating model of this new network approach to consumer enforcement must include incentives to encourage participation in intelligence sharing, cross border cooperation etc. Incentives are always to be preferred to the use of commands. These could take the form of a reserve of money, accessible only to facilitate cooperative activities and investigations, so that local resources are not eaten into by such ventures. Access would continue for as long as cooperation was maintained.
 - An additional and important way of incentivising cooperation and coordinated action would be to have clear and open accountability structures integrated into the new regime. For example, where there is an instance of a lack of cooperation the relevant Chief TSOs or LATSS can be made to account for their reluctance to cooperate and if necessary required to cooperate.
 - Any new body must have clear governance structures. It is sensible to have all the Chief TSOs as part of the governance structures, perhaps sitting on an oversight Council (with some strategic responsibilities). This will ensure buy-in by all LATSS.
 - A smaller executive board would run the NTS body day-to-day. Members of the board might be drawn from the Local Authority Chief TSOs, while the CEO and others would probably be permanent members of staff. Non-executive representation would also be important.
 - There would need to be an effective referral system in place in order that cases could be with at an appropriate level.

- There would have to be a clear outline of the division of responsibilities between local, regional and national enforcement. Clarity here is vital to avoid confusion and duplication, a characteristic of some parts of the current system (as identified by the NAO). Clarity would also reduce the ability of any LATTS to effectively opt-out of cross-boundary cooperation. This should include the development of clear rules on what defines something as nationally or regional important and what kinds of cases should be dealt with locally. This would need to be accompanied by explicit rules on who should be a lead LATSS and in what circumstances.
- In addition there would have to be a clear delineation of responsibilities between the proposed Competition and Markets Authority (CMA) and the national, regional and local enforcement bodies/ teams e.g. CMA tasked with competition issues whether structural or firm based and the NTS and LATSS very clearly focused on consumer enforcement.
- To ensure this and also to assist in coordination and cooperation with the CMA there should be a representative from the CMA on the executive board of the NTS body and also a representative of the NTS on the board of the CMA - both with full rights of participation - not just observers.

72. The NAO report also noted significant gaps in consumer detriment analysis. This also needs to be improved. Access to relevant consumer intelligence is essential. Therefore with relevant safeguards in place there should be formal arrangements for the enforcement authorities to be able to access regularly (if not in real time) relevant sources of consumer intelligence. Further, they would need the freedom to interrogate any relevant intelligence to uncover emerging consumer problems.
73. Finally, the Law Society believes serious consideration needs to be given to the development of specific specialist prosecutorial resources, especially in national and regional consumer cases. For example, one of way of developing such a capacity would be for an approved list of experienced and effective prosecutors and specialist training to be created. It is very important that whatever body leads on consumer enforcement at the national level it has access to in-house as well as external high quality legal specialists, including those with significant prosecutorial experience in these areas. These kinds of specialist resources can most effectively be established through a strong central body at the heart of a nationwide network of LATSS, where for example, economies of scale can be exploited.

Q21: In relation to Option 3, do you agree with the Government's principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

74. If the Government is determined to introduce option 3 in the consultation, then it seems clear that there would need to be some mechanism which allowed for funding national enforcement efforts and a central body of some sort to facilitate coordination and cooperation. Option 3 would also need to be structured in such a way to ensure that it would not lead to a post-code lottery in enforcement and that the current enforcement gaps are reduced and not just shifted around or exacerbated.
75. Such a post code lottery in enforcement and the shifting or exacerbation of the existing enforcement gaps would mean that consumers would turn to private enforcement in order to see justice done and obtain redress. While this would help

ensure some consumers were still able to access justice in the courts, the Government's proposals for reform of the civil justice system are likely to make this an avenue very difficult for consumers to go down. Consumer cases are likely to be relatively low value. The changes the Government is proposing will make it uneconomic for solicitors to bring such cases on behalf of consumers. Some of those unable to use a solicitor will give up. Others could try litigation in person. However this slows down court proceedings and with the civil justice system already overstretched and underfunded it would add another significant burden onto an already creaking system. This would inevitably have a knock on effect of delaying numerous other cases, which means consumers would not get the justice they deserve and rogue traders would not be tackled as effectively, denying access to justice.

76. In order to reduce the risks of a postcode lottery in enforcement; the shifting and exacerbation of existing enforcement gaps and a reduction in access to justice for consumers through a reliance on private enforcement (in an environment of an under resourced civil justice system) structures need to be put in place that will ameliorate these dangers. Under option 3, at a minimum this would have to take the form of the TSPB setting a strict national policy, guidance and standards for LATSS. To ensure their effectiveness strong incentive and accountability mechanisms would likely need to be put in place by the TSPB.
77. The concern of the Law Society in relation to option 3 is that it fails to effectively resolve some of the problems with coordination and cooperation or fill some of the enforcement gaps in the existing system (identified by the NAO). Disincentives to regional and national action will remain significant if effective enforcement in such cases relies on a lead authority or coordination and cooperation by LATSS and the main financial support for such actions is insurance, a relatively small pool of reserve funds controlled by the TSPB and in addition there is little prospect of being able access additional manpower or expertise. It is also unclear from the proposals how the reluctance of some LATSS to become involved in regional and national actions in the first place will be overcome. In addition, the consultation is not very explicit on how international cooperation will be improved by option 3. Yet, this is likely to be a growing issue over the coming years.
78. The consultation does not give enough detail on the governance arrangements of the proposed TSPB. It also fails to give very definitive ideas on how responsibilities will be decided upon and allocated when it comes to investigations and enforcement. For example a governing board made up of all the Local Authority Chief TSOs seems unwieldy and unworkable. It could be very inefficient and a recipe for gridlock. A much smaller executive board drawn from Chief TSOs would make more sense, but with a CEO on the board who would run the permanent staff at the TSPB and make day to day operational decisions. The framework governing the division of responsibilities around investigation and enforcement is likely to be very complex in such a highly decentralised model as option 3. This will require a firm grip at the centre to ensure the framework setting this out is as simple and clear as possible in order that potential gaps, overlaps and confusion are minimised. The unclear allocation of responsibilities is a key problem of the current regime. It would be a wasted opportunity if the new regime suffered from a similar fate. Another concern is the lack of detail on the permanent staffing and what kinds of expertise and resources they might have. These will have a direct bearing on how effective the TSPB will be in practice.

Q22: Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards? If so, would one of the JEB models be the best solution? Which one and why?

79. The Law Society does not consider the status quo to be sustainable. The NAO report shows quite clearly that the current arrangements do not work as effectively as they should. A proposal that does not radically alter the current system is likely to mean many of the current problems remain problems. Further, a body that was permanently trying to negotiate between the inevitably competing priorities of Trading Standards, the OFT and CMA is a recipe for continued ineffective action. The Law Society concurs with the consultation that continuing with the status quo and the JEB models are therefore unlikely to be the best options for a more effective consumer enforcement regime.

Q23: In relation to the various JEB models, how would you ensure effective Trading Standards participation in the JEB? Do you think that this option would deliver integration of enforcement across local, regional and national levels? Should other organisations be involved in the JEB, either as members or as participants in discussions? Would retention of such unrestricted consumer enforcement powers and responsibilities affect the CMA's singularity of purpose and distract it from its core competition remit?

80. The Law Society believes that the danger with the JEB models is that they are too unwieldy, with too many different interests at the table. This is likely to mean that decisions are slower and often more about compromise and politics than effective enforcement.

Q24: How can your preferred new model best work with businesses?

81. The NTS model should have an independent arms length advisory board, on which key stakeholders sit. It would be there to enable the NTS to discuss consumer enforcement issues with representatives of business and consumers. It could be something akin to the current consumer panels that operate at a distance from the sectoral regulators.
82. In addition there could be the use of agreements or memorandums of understanding between individual LATSS and the NTS to work with specific business representative bodies – both nationally and locally – to facilitate the delivery of education and information to make businesses aware of their legal obligations in particular and consumer rights in general.

Q25: Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

83. There may be situations where it is more appropriate to resolve issues in markets through the use of consumer enforcement powers, rather than competition powers. However, with so much yet unknown about the resources and functions of the CMA it is difficult at this stage to be able to give a definitive answer on whether the CMA

should retain consumer enforcement powers. It is a question that can only properly be answered in light of the detailed proposals on the capabilities of the CMA.

Q27: Do you agree that the CMA should enjoy significant discretion over when a market has structural problems, such as to give rise to its consumer enforcement powers?

84. In principle the CMA should not be subject to any limits but should be required to both inform the TSPB as early as possible if it is intending to use consumer powers (if it is given consumer powers) rather than competition laws as the basis for action. Secondly the CMA should be required to formally ask if the TSPB wants to participate in any action, albeit in a supporting role. This kind of potential overlap would be easier to manage if the CMA governing board had a representative of the TSPB on it.

Q28: Do you agree that the CMA should retain responsibility for mixed market studies where there may be competition and consumer issues (supply and demand side market failures) present on the relevant market?

85. The Law Society supports the retention of the power to undertake market studies by the CMA. It would be additionally helpful if they could move beyond sector specific studies and be able to look into cross sectoral issues too.
86. Market studies are useful pro-active, forward looking tools in relation to both consumer and competition issues. They are helpful to both the authorities and to other organisations with an interest in either specific markets or more consumer markets in general. Market studies help tease out *prima facie* evidence of the existence of problems in markets. They therefore provide a good foundation for further investigation by enforcement bodies and other parties.
87. That is not to say that there are no problems with the market studies system. There is a danger that an organisation could become too focused on market studies, with a knock on negative effect on other enforcement duties. If the market studies powers are to remain there would have to be careful management to ensure this type of situation does not arise. There is also a danger that market studies take too long to complete. Therefore strict public deadlines might be helpful in order to expedite the swift conclusion and publication of such work.

Q29: Do you agree that in an Option 3-based model, the Citizens Advice service should in future be responsible for pure consumer detriment analysis and that the CMA should not perform pure consumer market studies? In such a case, do you agree that the CMA should stop performing market studies once it identifies that there is no structural problem in such markets and do you think there should be a duty on the Trading Standards Policy Board to prioritise cases referred by the CMA?

88. If the CA is to get powers to conduct market studies then it would seem sensible that this is for general consumer markets only. The regulated industries and other specific sectors, where there is a sector specific regulator and there is a strong consumer protection regime in place (beyond the generic protections of consumer law) should be exempted. The regulated industries and these other sectors (such as the legal services sector) operate within strict parameters. The regulators in these sectors

have competition responsibilities and there are additional layers of consumer protection. It would be a waste of resources e.g. through the potential duplication of effort, for a body like CA to conduct market studies into sectors where these types of regulatory frameworks. The regulators in these sectors can examine issues in a much more detailed way than CA ever could. Some of the regulators also have the powers to take action directly against the problems that they find. The CA would not be able to do this.

89. The CMA must retain the flexibility and thus the power to undertake market studies with a purely consumer focus as well as a purely competition focus and a mixed consumer-competition focus. Discretion must not be taken away. It is important that the CMA is not artificially hamstrung by restricting its operational discretion in regards to market studies. There would however have to be good communication between CA and the CMA to ensure that overlap is minimised and work can even be complementary where possible.

Q32: Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not, how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?

90. The Law Society considers the key element in deterrence to be effective enforcement and not branding. While branding can be useful in conveying messages it has to be based in a truth i.e. in this case an effective enforcement regime. The surest way to deter illegal behaviour is for the proposed new system to build a reputation of strong and fair enforcement; tackling rogue traders in a superior way to the current regime. Whatever perceptions a rogue trader may have of their current LATSS, if the new system means more rogue traders are caught then the brand of LATSS will deter illegal behaviour and become known for its effective work.

Q33: Do you agree the TSI would be the appropriate home for the OFT's professional guidance and training functions in the event of creation of a new single Competition and Markets Agency?

91. It makes sense that the TSI leads on training and professional guidance. As the body representing TSOs it is in the best position to organise and ensure training and professional guidance is taking place and is of an adequate standard. However, training standards should be agreed with the new national enforcement body. This will mean that all TSOs (whether working in LATSS or for the national enforcement body) will have similar training. This will help increase and maintain consistency in enforcement. Cooperation on training matters could be achieved through imposing a formal requirement on the relevant bodies to develop and agree minimum national standards on training in relation to both general and specialist skills.
92. Particularly in relation to specialist training there should be a very explicit focus on joint training between local TSOs and national officers. This would have a number of advantages. It would increase the spread of specialist enforcement skills and sectoral knowledge among local TSOs. This would facilitate LATSS taking the lead role in specialist cases as well as aiding cooperation between different LATSS on cases. This is because if TSOs have been trained in similar ways and understand the same kinds of issues this will inevitably aid understanding and thus cooperation. In turn such a policy could reduce the chances of any current frictions arising between different interpretations and styles of working that act as obstacles to cooperative

working. If there is a clear policy to increase the amount of cooperation, collaboration and sharing of intelligence (which there should be) training cannot be ignored. It has a potentially important role to play in helping achieve such outcomes. This consultation offers the opportunity to create a more uniform and rigorous training regime.

Q34: Do you agree that the TSI is the most appropriate home for the OFT's international liaison and general policy functions in the event that the CMA has only a limited consumer enforcement role?

93. The Law Society agrees with the proposal in the consultation document that the new national enforcement body will not need a policy function and that the logical repository for such a function is the TSI. This should also extend to international policy work.
94. However the new national enforcement body must remain in control of international coordination and enforcement work. This will help international cooperation and enforcement be as simple and streamlined as possible and thus as effective as it can be.

Q35: Do you think the requirement for LATSS' and other designated bodies' (under Part 8 of the Enterprise Act 2002) court orders to be directed by a central body needs to be retained in the new consumer enforcement model and if so, why?

95. There needs to be some central co-ordination to ensure efficiency and minimise duplication. However, the current regime could be more flexible.
96. The new national enforcement body should act as a clearing house - maintaining up-to-date information on investigations and enforcement action being undertaken by the LATSS and by the national body. As long as all TSOs were linked into the updated database and the flow of information was current there is no reason why responsibility for avoiding duplication cannot be devolved to the local TSOs. In the event of uncertainty as to whether a particular action will duplicate action elsewhere the TSO would be expected to contact the relevant LATSS and discover what the situation was. Where this was not possible (e.g. the relevant TSO was unavailable for a period) a TSO or LATSS would be expected to take a precautionary approach i.e. continuing with an action until it could be confirmed that it was duplicating work elsewhere.
97. As regional and national coordination improved over time these overlaps would be expected to reduce with any issues becoming resolved relatively quickly as relationships between TSOs and LATSSs developed.

Q37: Do you agree that the current supercomplaints system to the OFT should be retained in respect of the CMA if the proposed changes go ahead?

98. The Law Society agrees that the current supercomplaints system should be retained by the CMA.

Q38: Do you think that the supercomplaints process should be extended to require the Trading Standards Policy Board to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?

99. The Law Society believe that the new national consumer enforcement body, whether that is the TSPB, NTS or whichever body has the national enforcement role, should have the option of being able to issue a response when the supercomplaint is related (or partly related) to consumer enforcement. It should be at the discretion of the TSPB/ national enforcement body whether to issue such a response.
100. If there is a significant consumer element there should be some mechanism in place for involving the TSPB, NTS or national consumer enforcement body in the work - albeit with the lead staying with the CMA. This could happen through having the national consumer enforcement body staff on the supercomplaint project team. The national consumer enforcement body should also be formally requested to submit evidence to the CMA, specifically when consumer issues are involved. There is likely to be scope for developing guidelines (in conjunction with the national consumer enforcement body) in order to set out when it is appropriate to officially request input/ evidence from the national consumer enforcement body and when it is not.

Q39: Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?

101. The Law Society considers that the primary concern in relation to the OFT's obligations in relation to estate agents is for better enforcement than currently exists. Enforcement to date has been inadequate. Making sure the current rules are followed is the key issue.
102. The Law Society believes that the transfer to a single lead local authority of the OFT's estate agency and related AML (Anti-money laundering) functions will likely have a detrimental effect on the way in which the AML regime operates in the UK. In particular, in relation to what is generally acknowledged to be the highest risk area of work. The concern is that such a transfer could result in the reduction of resourcing for these functions
103. Property is widely acknowledged by law enforcement and government as being a favoured destination for the proceeds of crime in the UK, as summarised in the annual SOCA Threat Assessment.
104. Of those involved in the purchase and sale of property, estate agents are the key participants because they receive the initial instructions usually direct from the sellers or the buyers, view the property and are therefore well placed to provide crucial intelligence in the fight against crime within the property purchasing chain. They often act as introducers to other professionals. They are also most likely of all the professionals to meet potential sellers and buyers face to face, enabling them to better assess responses to anti-money laundering related queries. As the agent will be the first to view the property, they are the most likely to actually identify significant discrepancies in purchase prices by comparison to the state of the property which may be an indicator of money laundering.
105. From the OFT's report on supervision to HM Treasury for 2010, the OFT indicated that it:

- Supervised 12,000 businesses for anti-money laundering compliance.
 - Had 13 staff dedicated to this area.
 - Provided advice through its helpline in response to over 6,000 enquiries.
 - Issued guidance tailored for estate agents (although this has yet to be approved by HM Treasury).
 - Undertook 11 training sessions.
106. Despite all of this work, the OFT found a significant lack of compliance and understanding of anti-money laundering obligations by their supervised businesses. From the Law Society's experience, with a similar sized supervised population, it will take a number of years of concerted and well resourced efforts to embed AML compliance within this sector.
107. The Law Society is concerned that a reduction in resources for these functions will result in there being a weakness in the property purchasing chain in respect of anti-money laundering efforts and that this in turn will place greater burdens on surveyors, banks, solicitors and licensed conveyancers.
108. While the Law Society is cautious about drawing conclusions on whether a sector is making an appropriate level of suspicious activity reports, the level of reporting by estate agents does raise some questions. In 2010 suspicious activity reports made by estate agents were appreciably lower than those made by licensed conveyancers (whose reports solely relate to property transactions) and significantly lower than those made by solicitors (who make a considerable number of reports relating to property transactions). While it may be that the estate agents were simply not in possession of information which would have made them suspicious, it may be that they missed the warning signs due to lack of understanding of money laundering methodologies and their obligations. The Law Society is concerned that without appropriate resourcing in the future of these functions it is likely that key intelligence on suspected money laundering may continue to be lost to law enforcement from this sector.

Law Society of Scotland



THE LAW SOCIETY
of SCOTLAND
www.lawscot.org.uk

BIS Consultation: Empowering and Protecting Consumers

The Law Society of Scotland's Response

September 2011

INTRODUCTION

The Law Society of Scotland (we) welcome the opportunity to comment on the BIS Consultation: Empowering and Protecting Consumers. We are supportive of any measures which seek to strengthen the rights of the consumer, providing easy access to information and education on those rights and empowering consumers with effective enforcement measures, in particular to those consumers who are most vulnerable within our society. We also recognise the need to ensure that any measures are prescriptive only as far as necessary so as not to increase costs for business, and ultimately consumers. It is important that consumers have a lobbying body to speak up on their behalf and to represent their interests in all consumer related matters, including regulated markets, who can provide help, support and guidance in all types of consumers issues and who actively promote consumer awareness

We have the following responses to make to the questions posed within the consultation document:

QUESTION 1. How do you think the provision of consumer information to consumers can be improved upon?

RESPONSE: This is a matter for particular agencies involved in providing such information however it is clear certain principles of providing accurate (particularly on legal matters), accessible, consistent and up to date information need to be maintained. We are concerned to see consumer information on particular matters which are different in a Scottish context such as information booklets issued by Consumer Focus being continued and improved in any new arrangements.

QUESTION 2. Do you agree that the OFT's consumer information role should be transferred to the Citizens Advice service?

RESPONSE: Yes provided that it continues to receive appropriate funding priority and the information provided is accurate and authoritative. This is an important area of seeking to empower consumers which needs to be maintained and further developed.

QUESTION 3. Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service?

RESPONSE: Yes.

QUESTION 4. Do you agree that the OFT's consumer education roles should be transferred to the Citizens Advice service? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?

RESPONSE: See response to Question 2 above.

QUESTION 5. Do you agree that the proposed Trading Standards Policy Board and the TSI should coordinate and support business-facing educational activities?

RESPONSE: Yes this appears to be a logical and efficient approach.

QUESTION 6. What are the best options for current and prospective CCAS members to consider in the event that the Government's proposed consumer and competition landscape proposals are adopted?

RESPONSE:

As we understand the new Competition & Markets Authority will not have any role in relation to any current or proposed consumer code. In our opinion, with the necessary resources Citizens Advice could take on the role of approver for a consumer code, although it is recognised that they do not currently have any experience in this area.

We would be supportive in the concept of a unified UK approved of such Schemes, but understand that this may require greater resource. We would suggest that localised schemes can be too restrictive and parochial and it is more beneficial if schemes are national as it is easier to see a bigger picture. For example a British Standard relating to complaints handling by trades such as care dealers, building trades etc. with a shared UK expertise on the

technical side. Same standards throughout the UK and industry would be worth pursuing. Although the Scottish element such as Food and Water need different approach.

QUESTION 7. Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of CCAS with effective alternative systems of accreditation?

RESPONSE: As we understand the Government wish to promote self-regulation. Most codes of practice are voluntary and are not members of CCAS, Indeed, the Law Society of Scotland, are self regulating, although the basis is statutory.

We believe there will be room in the market place for other “Kitemark” providers. There are not very many Codes in existence through CCAS, only 10, and a further 10 being currently worked on. We are not sure if Local Authorities should be involved. The whole question of consumer redress is far too complicated (Local Authority Assured Trading Network).

QUESTION 8. What are the lessons learned from the operation of CCAS which may help in establishing (or revising) voluntary schemes in the future?

RESPONSE:

- In our opinion, the current approval process takes for too long, upto 2 years as quoted in para 3.5.
- Any scheme introduced must be credible and promote high standards. Every business should want to be able to offer the best possible service to customers, and in that respect the benefits of the code should be promoted to the business sector.
- The OFT approved code does send a message that there is commitment to raising standards, and any future codes must do the same. The code has to be valued by the market and the consumer.

QUESTION 9. What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?

RESPONSE: We believe that anything that encourages higher standards within the consumer sector must improve market advantage/growth and is good for consumer. There are care

standards which can cover any contract for example such as transparency and fairness. For example the Property Ombudsman Scheme has completed Stage 1 for its Lettings Code, giving Landlords and Tenants greater protection when dealing with letting agents. In that instance the code promotes and safeguards consumer interests by helping customers identifying better businesses, better monitoring, compliance and publicity. The Government must help support such schemes, if the OFT is no longer to have the power. Care criteria can be universal as can demonstration that the code is being effectively implemented.

QUESTION 10. What characteristics would a Kitemark® based code certification process need to have to meet industry requirements?

RESPONSE:

- Ability to display an “Approved” logo.
- Support from trade bodies, consumer groups and Govt.
- Evidence-based code should ensure fair deal from trustworthy business.
- Minimum standards nationally, risk assessed and competent technical input.
- Easy way of finding businesses they can trust.
- Source of help and advice.
- Free redress, responsive to complaints, regular re-assessment.
- Impartiality and integrity without conflict of interest

QUESTION 11. What is your view on extending the Primary Authority concept to code certification?

RESPONSE: Not affecting Scotland

QUESTION 12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

RESPONSE: Yes. We believe there is a strong argument in favour creating a strong and integrated consumer advocacy body to promote and protect the interests of consumers, provide the new body is adequately funded.

QUESTION 13. Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?

RESPONSE: Yes

QUESTION 14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?.

RESPONSE: Yes. The paper makes out a strong case for the functions of Consumer Focus being transferred to the Citizens' Advice service. Alternative approaches would not achieve the financial savings that integration seeks to achieve.

QUESTION 15. What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

RESPONSE: The best way to reflect the Scottish interests would be to ensure that the interests of Scottish consumers are on a national regional and local basis fully recognised. Where it was practical for the consumer to access assistance on a local basis this would be a positive outcome.

QUESTION 16. What are your views on these options for the transfer of information gathering powers? Which is preferable and why? Are there any other options for information-gathering powers?

RESPONSE: The power to require the provision of information is a significant one in relation to allow the consumer advocacy body effectively gather relevant information to allow it to carry out its primary purpose to protect consumers. It is important, however, that this power is used appropriately and subject to control by the relevant regulator, where appropriate, or by the Courts. We would be concerned that the transfer of this “public function” power to a charitable organisation such as the Citizens’ Advice service may cause problems. It is important that these powers are used appropriately and we would therefore prefer option (b). We consider that this option in effect enables the information gathering powers to be used, subject to the check that they are being used proportionately and only where necessary.

QUESTION 17. What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?

RESPONSE: The provision of an accessible and cost effective redress scheme is critical to effective consumer protection. We consider that such schemes should be extended to other sectors.

QUESTION 18. Do you support the transfer of the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland and agree that as a result Consumer Focus Post Northern Ireland be abolished?

RESPONSE: Not applicable.

QUESTION 19. Do you agree that the Postal Services Redress Scheme should continue to apply in Northern Ireland to ensure that Northern Irish consumers retain the same access to redress as consumers elsewhere in the United Kingdom?

RESPONSE: Not applicable

QUESTION 20. Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?

RESPONSE: We prefer option 2 as we consider that this option would be the one which most likely achieve an effective and a consistent approach on a UK basis to enforcement.

QUESTION 21. In relation to Option 3, do you agree with the Government's principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

RESPONSE: We agree with the principles for the operation of the new TSPB.

The creation of a TSPB may be helpful in allowing this option to deliver effective enforcement against large businesses tempted to break the law provided it was effective in achieving a consistent approach.

Specialist national teams are appropriate where consumer prejudice is caused by criminal activity.

An indemnity fund would be useful.

QUESTION 22. Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards? If so, would one of the JEB models be the best solution? Which one and why?

RESPONSE: This may be a viable option and the JEB model outlined in paragraph 5.66 may be the most appropriate.

QUESTION 23. In relation to the various JEB models, how would you ensure effective Trading Standards participation in the JEB? Do you think that this option would deliver integration of enforcement across local, regional and national levels? Should other organisations be involved in the JEB, either as members or as participants in discussions? Would retention of such unrestricted consumer enforcement powers and

responsibilities affect the CMA's singularity of purpose and distract it from its core competition remit?

RESPONSE: It is important that enforcement should be effective and it is also important that it should be consistent on a UK basis.

Effective Trading Standards participation might be achieved by ensuring adequate representation on the JEB, although we do not consider that this would necessarily achieve consistent enforcement and integration across local, regional and national levels.

We are uncertain what other organisations might appropriately be involved in the JEB.

We would hope that if adequate funding was provided the CMA would not be distracted from its competition remit.

QUESTION 24. How can your preferred new model best work with businesses?

RESPONSE: By engaging with business through trade associations and providing guidance.

QUESTION 25. Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

RESPONSE: Yes. We consider that it would be useful for the CMA to retain a consumer enforcement role where that is related to a structural market problem. We would have thought it would be useful to retain that function "centrally" as the CMA would have a wider overview, rather than local authority specific, with an ability to investigate more widely.

QUESTION 26. In an Option 3-based model, should this enforcement role be subject to procedural limitations?

RESPONSE: No. We think in practice this would be very difficult to formulate in a way which was not excessively restrictive. We consider that such powers should be exercisable at the CMA's discretion having carried out all the appropriate investigation in a similar way to that

which affects the Crown Office or Procurator Fiscal Service's discretion to prosecute where they consider it to be in the public interest.

QUESTION 27. Do you agree that the CMA should enjoy significant discretion over when a market has structural problems, such as to give rise to its consumer enforcement powers?

RESPONSE: Yes. See above

QUESTION 28. Do you agree that the CMA should retain responsibility for mixed market studies where there may be competition and consumer issues (supply and demand side market failures) present on the relevant market?

RESPONSE: It would appear to us to be logical that the CMA should retain such responsibility given the powers of investigation, general overview of the market and lack of geographical restriction relative to Trading Standards departments

QUESTION 29. Do you agree that in an Option 3-based model, the Citizens Advice service should in future be responsible for pure consumer detriment analysis and that the CMA should not perform pure consumer market studies? In such a case, do you agree that the CMA should stop performing market studies once it identifies that there is no structural problem in such markets and do you think there should be a duty on the Trading Standards Policy Board to prioritise cases referred by the CMA?.

RESPONSE: It is difficult at this stage to provide a view on this. The Citizens Advice Bureau will obviously have certain resource limitations and inconsistent geographical coverage which may affect its ability to be a fully effective consumer analyst. That said it would not appear to fit with the CMA's functions in an "option 3" model for the CMA to perform pure market studies. There will be an inevitable degree of overlap given how any investigation develops and we do not think it would be prudent to provide a hard and fast rule on this. In principle however we would suggest that the "pure" consumer market studies would fit better with the CAB.

Similarly we think it difficult to impose an obligation on the Trading Standards Policy Boards to prioritise cases referred from CMA. We again consider that this should be left to the discretion of the Board in question

QUESTION 30. Do you agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies in the proposed new landscape?

RESPONSE: Yes

QUESTION 31. Do you agree that it would be helpful to have some resource that required joint agreement between the CMA, TSPB and consumer advocacy bodies for its release, to be used to investigate or address consumer and market issues that would otherwise risk an enforcement or advocacy gap? If so, at what level should such funds be set and how best should they be administered?

RESPONSE: Yes. Although the question of the level of funding it is not something that we can have any input into.

QUESTION 32. Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not, how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?

RESPONSE: As a general rule we would consider the Local Authority Trading Standards Services are an effective deterrent to illegal behaviour. There will of course continue to be "rogues" who act in a manner which is not deterred by the LATSS. We think however the LATSS enforcement model should be sufficient.

QUESTION 33. Do you agree the TSI would be the appropriate home for the OFT's professional guidance and training functions in the event of creation of a new single Competition and Markets Agency?

RESPONSE: Yes provided this was sufficiently resourced.

QUESTION 34. Do you agree that the TSI is the most appropriate home for the OFT's international liaison and general policy functions in the event that the CMA has only a limited consumer enforcement role?

RESPONSE: In the absence of CMA.

QUESTION 35. Do you think the requirement for LATSS' and other designated bodies' (under Part 8 of the Enterprise Act 2002) court orders to be directed by a central body needs to be retained in the new consumer enforcement model and if so, why?

RESPONSE: Yes as it provides necessary safeguards to ensure there is not excessive duplication of effort, that self regulation routes where more appropriate are not bypassed and that proper coordination with other enforcement agencies is achieved.

QUESTION 36. Do you agree that responsibility for chairing the consumer concurrencies group should remain with the CMA?

RESPONSE: We agree that coordinating role should remain with CMA as the body having the appropriate overview.

QUESTION 37. Do you agree that the current supercomplaints system to the OFT should be retained in respect of the CMA if the proposed changes go ahead?

RESPONSE: Yes as any perceived limitations of the existing system ought to be improved by changes in the institutional landscape including data gathering which should lead to potentially more effective use of the system.

QUESTION 38. Do you think that the supercomplaints process should be extended to require the Trading Standards Policy Board to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?

RESPONSE: Given the changes in responsibilities proposed this may assist in ensuring accountability and transparency for one of the key aspects of the TSBs new role.

QUESTION 39. Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?

RESPONSE: We have some reservations on this and wonder if they could be activities undertaken nationally by CMA. However with appropriate arrangements put in place it would be possible although it seems an unduly complex route.

QUESTION 40. Do you agree that the proposed changes to the consumer enforcement landscape should go ahead if the creation of the CMA is delayed? If not, why not?

RESPONSE: Where a number of significant changes are proposed to the consumer enforcement landscape it is crucial to introduce them in a consistent and effective manner. We would be concerned if elements of new arrangements were introduced piecemeal without other parts that support the overall plan of the new map of responsibilities and accountabilities being in place. As one of the aims of reforms would be to simplify matters it could introduce unnecessary confusion with the new arrangements to introduce some parts only at an earlier stage.

For further information and alternative formats please contact:

Tel: 0131 226 7411

Email: lawreform@lawscot.org.uk

The Law Society of Scotland

26 Drumsheugh Gardens

Edinburgh

EH3 7YR

www.lawscot.org.uk

LBRO (Local Better Regulation Office)

Our Ref: 270911/CG/hp

27th September 2011

David Evans
Consumer and Competition Policy Directorate
3rd Floor
1 Victoria Street
London
SW1H 0ET

LBRO
Better Local Regulation

Local Better Regulation Office

The Axis
10 Holliday Street
Birmingham B1 1TG
www.lbro.org.uk
0121 226 4000
enquiries@lbro.org.uk

Dear Mr Evans

Empowering and Protecting Consumers Consultation

The Local Better Regulation Office (LBRO) welcomes the opportunity to comment on the consultation relating to the institutional changes for the provision of consumer information, advice and education, advocacy and enforcement.

As you will be aware, the recent consultation on Transforming Regulatory Enforcement and accompanying paper on LBRO and the extension of Primary Authority has a number of implications for LBRO. Subject to the views expressed during the consultation and the views of Parliament, LBRO will be no longer operate as an executive NDPB and its work will be carried forward by a new organisation within BIS working with national regulators, policy departments, local authorities and business to improve regulatory delivery. The new organisation will work closely with the Better Regulation Executive and Regulatory Policy Committee to ensure a joined up approach to improving the design and delivery (enforcement) of regulations.

Rather than respond to the individual questions, I would like to make some general comments of relevance to the consultation and the work of LBRO in improving the delivery of regulation.

It is noted that the consultation proposes a number of significant reforms to ensure that consumer advice, representation and enforcement are delivered effectively and efficiently. This is in the context of significant planned cuts to local government spending on regulatory services and increasing pressure on local budgets. LBRO has recently published an analysis of local authority budgets for 2011-2012, and this analysis can be found at <http://www.lbro.org.uk/resources/docs/lars-budgets-2011-12-overview.pdf>.

The main proposals focus on supporting and bolstering two key bodies, namely Trading Standards Services and Citizens Advice, as being the frontline delivery agents for consumer enforcement and empowerment respectively.

The consultation proposals clearly reflect the Government's commitment to transfer more decision making to local people and communities to ensure improved accountability and transparency in public service delivery. These principles of public service reform closely reflect the principles of good regulation – proportionality, consistency, transparency, targeted and accountable – that provide the underpinning foundations for regulation that protects citizens and supports economic growth.

Regulating at the right level

Regulatory threats are often not restrained by geographical boundaries, and regulatory issues can be local, sub-national, national or international in impact. It is important that the

system of regulation operates in a cohesive manner to effectively control risks that impact beyond the locality and prevent under regulation where the costs and benefits of regulatory activity are not aligned. This means regulating at the right level on the basis of the risk posed. Addressing regulatory risks that cross boundaries and/or require specialist resources, such as mobile rogue trading and illegal money lending, is dependent on effective co-ordination between local authorities, shared decision making and prioritisation.

OFT Consumer Codes Scheme and Primary Authority

The consultation refers to the OFT's Consumer Codes Scheme which is voluntary and industry led. There is a proposal that Primary Authority arrangements with local authorities working with sponsors could provide an alternative to the existing OFT Approved Codes Scheme. LBRO welcomes the recognition of the potential role Primary Authority could play in establishing a co-regulatory approach that recognizes the compliance efforts by business and therefore provide a point of improved coordination. Government is committed to more innovative use of alternatives to state regulation and so it is increasingly important to consider the rights and responsibilities of each party in the regulatory interaction – the regulator, the regulated but also the citizen or consumer – in deciding the most effective way to control risks and deliver the desired outcome. We would be happy to discuss this further if some of the aspects of the OFT Codes were to be taken forward in this way.

LBRO Business Reference Panel

The proposals include reference to the importance of the Trading Standards Policy Board (TSPB) developing strong partnerships with business representative bodies and the potential for this to be achieved through engagement with the LBRO's Business Reference Panel. We share the view that LBRO's Business Reference Panel provides an excellent opportunity to engage the business perspective on regulation. The Panel has provided assistance to a number of government departments and enforcement authorities and I am sure they would welcome the opportunity to engage with these proposals as appropriate.

Prioritisation

The consultation document makes clear that the TSPB prioritisation and coordination of national enforcement cases is separate from LBRO's Priority Regulatory Outcomes (PROs) (ref 5.56 footnote p32). This is a helpful clarification, however, there may remain some concerns from stakeholders regarding potential duplication or competing prioritisation mechanisms and we will seek to mitigate this in our own messages regarding the new PROs. The PROs for England are, subject to Ministerial consent, due to be published shortly and will provide an overarching set of outcomes within which decision making on resource allocation and specific enforcement action can be made by Local Authorities directly or as coordinated by the proposed Trading Standards Policy Board.

Common Approach to Professional Standards for Regulators

With regard to providing guidance and training for local authority regulators, the consultation refers to Trading Standards Institute (TSI) taking a lead role and the use of the Common Approach to Professional Standards for Regulators. This is being developed by LBRO on behalf its World Class Coalition Partners including the professional bodies TSI and CIEH. LBRO will continue to work with TSI and other partners in rolling out the framework with the launch scheduled for autumn 2011. It is hoped that this will provide a valuable and sustainable resource for local regulators to maintain their competency in delivering effective consumer protection.

LBRO believes that good regulation - both in its design and its implementation - supports economic prosperity and public protection. We agree that it is important that the combination of robust provision of information and advice for consumers and businesses with effective risk based targeted intervention/enforcement approach will contribute to the government's vision for strong public protection and fair trading environment.

I hope you find our comments useful and if you have any queries relating to the projects/initiatives outlined above, please contact the lead officer, Heena Prajapati – heena.prajapati@lbro.org.uk in the first instance. We look forward to continuing to work together with the Consumer and Competition Policy Directorate in the effective delivery of regulation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Clive Grace', with a horizontal line underneath.

Clive Grace
Chair, LBRO

Legal Services Board



The Chief Executive's Office
Legal Services Board
7th Floor
Victoria House
Southampton Row
London WC1B 4AD

T 020 7271 0043
F 020 7271 0051

www.legalservicesboard.org.uk

David Evans
Consumer and Competition Policy Directorate
Department for Business, Innovation and Skills
3rd Floor
1 Victoria Street
London
SW1H 0ET

27 September 2011

Dear Mr Evans,

Legal Services Board response to BIS consultation ‘*Empowering and protecting consumers*’

The LSB is grateful for the opportunity to respond to this important consultation, the outcome of which will have far-reaching consequences for consumers across the United Kingdom.

Legal services play a unique role in all of our lives; the rule of law is a cornerstone of civil society and we are fortunate to have legal professions and a justice system with an international reputation.

From a consumer perspective, however, the market still has a way to go before consumers can exercise the same degree of empowerment as they take for granted in energy or communications, for instance. For many, choosing and using a lawyer with confidence – including understanding what is being purchased, whether a judgement can be made of whether a quality service has been received or whether a fair price is being charged, is still challenging.

We are driving regulatory change in the sector with the clear aim of putting the consumer at the heart of regulatory decision-making and service provision. We can only do this if we are able to understand what the consumer interests are. Our work to date has benefited greatly from the informed, independent and influential advice of our dedicated Consumer Panel. Such dedicated advocacy serves consumers well.

At this stage in the legal services market development, we believe that the interests of its many and varied consumers, and the interests of the public at large, are best served by the maintenance of this architecture. We are therefore not supportive of a proposal to

merge the Legal Services Consumer Panel into a broader regulated industries unit within Citizens Advice.

We would be happy to provide further information as required and look forward to seeing the development of these important proposals.

Yours sincerely

A handwritten signature in black ink, appearing to read "Chris Kenny", with a horizontal line extending to the right and a short vertical line at the end. Below the signature is a separate horizontal line.

Chris Kenny
Chief Executive

E chris.kenny@legalservicesboard.org.uk

Legal Services Board response to BIS consultation ‘Empowering and protecting consumers: Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement.’

About us

1. The Legal Services Board (**LSB**) is the independent body responsible for overseeing the regulation of legal services in England and Wales. Our goal is to reform and modernise the legal services in the interests of consumers and the wider public. We aim to enhance quality, ensure value for money and improve access to justice.
2. The Board is independent of Government and of the legal profession. We oversee ten separate bodies, the Approved Regulators, which themselves regulate the circa 143,000 lawyers practising throughout the jurisdiction. The Board also oversees the Office for Legal Complaints (**OLC**), which administers the Legal Ombudsman scheme. Funding for both the LSB and the OLC comes from a levy on the Approved Regulators and neither body receives any public monies.
3. In all of our work, we aim to deliver the eight regulatory objectives set out in the Legal Services Act 2007 (**the Act**). These objectives are shared with the Approved Regulators and the OLC and are as follows:
 - protecting and promoting the public interest
 - supporting the constitutional principle of the rule of law
 - improving access to justice
 - protecting and promoting the interests of consumers
 - promoting competition in the provision of services in the legal sector
 - encouraging an independent, strong, diverse and effective legal profession
 - increasing public understanding of citizen’s legal rights and duties
 - promoting and maintaining adherence to the professional principles of independence and integrity; proper standards of work; observing the best interests of the client and the duty to the Court; and maintaining client confidentiality.
4. Additionally, the better regulation principles enshrined within the Act, ensure that our activities must always be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

Context

5. As a statutory regulator, albeit not an economic regulator, we have a passionate interest in the development of proposals to empower and protect consumers. The need for the legal services market to become more responsive to consumers was at the very heart of our establishment

and is the foundation on which the new regulatory architecture established by the 2007 Act was built.

6. It is worth noting that getting to a public and consumer focused outlook for legal services regulation has been ten years in gestation. In 2001, the Office of Fair Trading (OFT) published its report "*Competition in Professions*" which recommended that unjustified restrictions on competition should be removed. It took a further four years for the Government's subsequent White Paper in 2005 "*The future of legal services: putting consumers first*" and another two before the Act hit the statute book.
7. Since our own establishment in 2009, we have been relentless in our drive to see independent, consumer outcomes focused regulation put in place in the market. We are making good progress but we are not there yet: we still hear far too often that there are no consumers in legal services, only clients. Indeed, the language of market regulation – used throughout the consultation document and so well-understood by the broader regulated industries community – is not a language at all common to legal services providers or, dare we say, to their regulators. This is not surprising when it is only in recent years that regulation has been divorced from professional representation. We do not intend this as critical comment, but as context for our broader response to this important consultation.
8. Our starting point is that, when compared to the economically regulated industries (energy, water, post, communications) the legal services sector:
 - Is at a much earlier stage of regulatory maturity;
 - Does not have the sort of aides to consumer purchasing commonly found elsewhere in the economy, such as price comparison or user review sites;
 - Has consumer behaviour characterised by an unwillingness to shop around and a lack of confidence in purchasing or complaining;
 - Sees consumers unable to judge quality even after receiving the service;
 - Has a highly unusual consumer base (akin to the health sector in some aspects) in that most domestic purchases are 'one-offs', often at times of distress, or life-changing significance (including when liberty is at stake).
9. As such, we believe it needs intensive, informed, influential consumer advocacy to make sure that all of the benefits of a powerful demand side are capable of being realised in the ways that they are already elsewhere in the economy.

Our interest in the consultation

10. We have confined our response to the discussion of the proposals for streamlined consumer advocacy, where the consultation paper suggests an ideal model for the future might see the amalgamation of all sectoral advocacy into a single regulated industries unit. The paper notes that there is currently a Legal Services Consumer Panel operating in the legal services market. It also notes that would be for relevant Departments to decide whether the role of any particular sectoral panel should form part of the unit.

Statutory basis for the Legal Services Consumer Panel

11. The Act requires the LSB to “establish and maintain a panel of persons (to be known as “the Consumer Panel”) to represent the interests of consumers”¹. It prescribes the necessary nature of the membership of the Panel ie that it must have a fair degree of representation to both domestic and business consumers². It requires the Board to consider any representations made to it by the Panel and to publish its reasons where it disagrees with any views expressed or proposals made by the Panel³. The Act also gives the Panel an advice and research function⁴.
12. Statutory legislation would therefore be required to divest the LSB of its responsibility to establish a Consumer Panel: we note that the LSB is not currently within the ambit of the Public Bodies Bill.

The Board’s need for effective consumer advocacy

13. Establishing the Panel was an early priority for the LSB. We believe it is essential that we have mechanisms in place to ensure consistency and challenge in our approach to consumer issues. As such, the Panel plays an important role in making sure we put the interests of consumers at the heart of our work, and that we take an evidence-based approach to considering the wide variety of consumer interests. The Panel is independent of the Board and has considerable scope to advise and influence the Board from the consumer perspective.
14. We understand that the Panel has made its own submission to you which we are sure will make reference to the work it has undertaken to advise and influence both the LSB and the Approved Regulators. Significant pieces of advice received by the Board, and which have represented a major contribution to our evidence-base, have included:
 - A report on the impact of referral fees on consumer interests;
 - Advice on consumers’ perspectives of quality in legal services provision
 - Recommendations and advice on the regulation of will-writing.
15. The Panel’s advice is highly regarded by the Board for its integrity and sound grounding in evidence: the Panel has its own modest research budget, which it deploys carefully to inform the advice it provides.
16. Without the Panel’s contribution to these important areas of our work, the consumer voice would have been sadly lacking. It is worth noting that in the 31 consultation exercises we have conducted since 2009, albeit some of a highly technical regulatory nature, on only four occasions have responses from groups representing consumer interests been received. Our work has therefore been highly reliant on the advice provided by the Legal Services Consumer Panel, and our own research programme, in making sure that we have understood and grappled with the interests of consumers in our regulatory activities. No single consumer advocate has been able to devote similar effort to a single sector.

¹ Legal Services Act 2007 S.8(1)

² Legal Services Act 2007 S.8(4)

³ Legal Services Act 2007 S.10

⁴ Legal Services Act 2007 S.11

17. Because we have though spent time speaking with existing consumer bodies, we know, anecdotally, that this is not because consumer groups believe that there are no issues relating to consumer interests to be pursued in the legal services sector: far from it. But they, quite rightly, need to allocate their scarce resources prudently and, where they see a regulator with consumer interests at its heart advised by a credible and dedicated Panel, it is perhaps understandable that legal services issues will not rise to the top of the priority list - because someone else is looking after them.
18. In reviewing the proposals in the consultation paper in this light, we would therefore make the point that an important aspect of consumer advocacy appears to have received inadequate attention: the consumer interest advice needs of the regulator. It is beyond question that it is an important role for powerful consumer advocacy to help drive business behaviour where the combined efforts of individual consumers alone will not bring about positive change on an appropriate timetable. But it is equally important to ensure that regulation has the benefit of such advocacy too – and in this we are careful to draw a distinction between advocacy as informed advice and advocacy as lobbying. The former is essential if a relationship of trust and openness - imperative if consumer interests are to be played into regulatory policy making at the earliest stages - is to be developed.

Question 12: Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

19. Our response is confined to our view on whether we believe benefit would accrue to legal services consumers from the proposal. Our view is that it would not. In the specific context of the legal services market, where the concepts of consumer empowerment, and the development of tools to assist it, are in their infancy, we believe that regulators, providers and consumers alike stand to gain most thought the continuing, focused attention of a dedicated, informed and embedded consumer advocacy function. This is not simply in relation to our own work at the LSB, but also for the ten Approved Regulators in the sector and the Legal Ombudsman, to whom any new consumer advocacy machinery will also need to relate.
20. We do not dispute that “*consumers in sectors subject to economic regulation require particularly effective advocacy, representation and empowerment*”: indeed they do. But our strong sense, informed by many of our colleagues’ experience in the economic regulated sectors, is that the consumer experience in the legal services sector is different in kind, particularly at this stage in the market’s evolution.
21. Indeed, for the LSB, we believe that what would benefit consumers most is a plurality of diverse, informed, passionate consumer voices each giving greater priority to legal services than is currently the case. This is a market that needs to hear from those it serves; to understand how best to meet consumer needs; and to reap the benefits that a solid understanding of consumer interests and requirements has delivered elsewhere in the economy. Market liberalisation as a result of regulatory change will help with that – but without a vocal and active demand side we will all miss out on the market’s full potential.
22. There is an additional important consideration in the legal services sector where the Citizens Advice service is also collectively the largest provider of legal aid services in England and Wales. A very careful separation of duties would be required to avoid what would be a

significant conflict of interests, with Citizens Advice acting as both a major service provider and advocate for consumer interests.

Question 13: Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?

23. The design principles represent a useful starting point but could be enhanced by greater clarity around the nature of the relationship between the unit and the regulator. One of the most important and helpful aspects of the embedded Panel model is the degree of trust and openness that is developed between the regulator and the Panel. This means that the regulator can consult the Panel informally at the very earliest stage of policy making, can expose emerging thinking in a 'safe' environment and, as a result, embed consumer interests from the very beginning. We recommend that the relationship between the regulated industries unit and the regulators, must be very carefully thought-through and due consideration given to the need for eg Memoranda of Understanding.
24. We also have some concerns as to whether a regulated industries unit, focused primarily on the important array of issues connected with economic regulation issues, is also going to be the right mechanism to provide advocacy on the much broader range of consumer concerns across the economy.

Question 14: In the light of these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative proposals?

25. No comment.

Question 15: What do you consider the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

26. We would point out that our regulatory jurisdiction extends to England and Wales.

Legal Services Consumer Panel

Consultation response

BIS: Empowering and protecting consumers

Overview

1. **The driving principle behind reshaping the institutional landscape for consumer advocacy should be creating strong, expert and effective representation of consumer interests for the long-term. There are clear benefits to retaining expert consumer panels embedded within their sectoral regulators. In addition, there are unique features within the legal services market that would make a transfer of the Legal Services Consumer Panel's functions to Citizens Advice problematic.**
2. **The Panel supports proposals for Citizens Advice to take over responsibility for Consumer Direct and to take on national coordination of consumer education. This should include legal services within scope. Online technologies have great potential, but it is important to retain adequate face-to-face advice provision. It is crucial that intelligence from calls to Consumer Direct continues to be made available to the enforcement community while as much anonymised data as possible should be published so that researchers and others can use it.**
3. **It is important to find a suitable home for consumer codes. The application process should remain rigorous, but involve a more collaborative approach between the scheme operator and code sponsor. Our experience suggests that BSI would need to significantly adapt its model in order to offer a cost-effective scheme that could achieve wide industry take up, especially for small businesses.**
4. **Legal businesses operate across local authority boundaries so enforcement needs to be delivered in tune with how modern markets function. We are not convinced the proposals offer an effective solution to the local/central delivery debate. A national leadership body is needed with the concentrated expertise, clout, funding and risk appetite to tackle specific threats which local authorities are not equipped to deal with. It must be able to draw on more than soft influence, but instead have meaningful levers over local authorities, including powers of direction.**
5. **The Competition and Markets Authority should have responsibility for carrying out pure consumer market studies.**

The proposals

6. **The Consultation Paper ('the Paper') makes proposals on institutional changes for the provision of consumer information, advice, education, advocacy and enforcement.**
7. **The Panel's comments are limited to those proposals that have the potential to affect**

consumers of legal services. In so doing, we have drawn on the expertise and experience contained within the Panel about consumer policy more widely. We focus on:

- Giving the Citizens Advice service responsibility for publicly-funded national advice and education of consumers;
- Options for the future support of consumer codes;
- Strengthening consumer enforcement by improving the national leadership and coordination capability of Trading Standards and by clarifying its responsibility to tackle cross-boundary threats. Also to promote more effective partnership working and prioritisation of activity between Trading Standards and the proposed Competition and Markets Authority (CMA); and
- Making Citizens Advice the lead national, publicly-funded consumer advocate by taking on functions from Consumer Focus, and wherever possible other sectoral consumer bodies.

The Panel's response

Information, Advice and Education

8. The Panel fully endorses the aim to empower consumers to demand more of suppliers thus enabling them to play their part in driving competitive markets. This is only likely to happen in legal services if people understand their rights, know how to access legal services, can make reliable comparisons between competing offers and can shop with confidence.
9. The need to do more to empower consumers was the main theme of the Panel's Consumer Impact Report¹ – the first of our annual assessments of the legal

services reforms. Our research shows that consumers generally do not shop around for legal services, cannot find information about the quality of different providers, approach lawyers with trepidation and lack the confidence to complain. In addition, work by the Legal Services Research Centre has shown that many people are not aware that they need or would benefit from advice and do not know where to go or cannot navigate the 'advice maze'.²

10. One of the regulatory objectives in the Legal Services Act is: 'increasing public understanding of the citizen's legal rights and duties'. The main focus of legal services regulators has been opening up legal services to greater competition to stimulate market solutions to better connect consumers to services that might benefit them. In addition, Plenet – a network of organisations and individuals working in the field of public legal education – provides a space for practitioners and researchers to share information and ideas, to promote good practice in delivering public legal education and to improve awareness of the need for and value of this field.
11. The focus of the BIS proposals is the coordinated provision of consumer information, advice and education. Currently, in legal services these are delivered in the following ways:
 - Consumer Direct provides limited information materials on some aspects of legal services, such as making a will;
 - Most local authorities produce a range of information and coordinate consumer information and advice;

- The Citizens Advice Service's Advice Guide provides general information on the legal system including: courts of law; using a solicitor; help with legal costs; small claims; personal injuries; alternatives to court; police powers; and issues affecting prisoners. In addition, local bureaux provided advice on 301,252 legal problems in 2010/11.
 - If eligible for legal aid people can call the Community Legal Advice helpline about debt, education, family, welfare benefits and tax credits, employment and housing problems (those ineligible for legal aid are signposted elsewhere);
 - Some front-line regulators in legal services, such as the Solicitors Regulation Authority, provide basic information about using legal services; and
 - Commercial websites enabling consumers to compare legal services providers are beginning to emerge; some of these sites include educational materials.
12. Our impression is that the provision of consumer information, advice and education about *using legal services* in particular (as opposed to materials on legal rights) is disjointed and lacks coordination, whilst the available materials are quite basic and are not comprehensive in the range of subjects covered. Some of the best materials are being provided by the new breed of commercial websites described above, although their penetration is limited so far. Although this may change, particularly when alternative business structures come on stream, there is always likely to be a need for the independent provision of such materials. This is because some important legal problems will be of marginal interest to commercial providers
- and there may be some types of information for which it is inappropriate to rely on them to deliver.
13. The Panel therefore supports proposals for Citizens Advice to take over responsibility for Consumer Direct and to take on national coordination of consumer education. This should include legal services within scope recognising that Citizens Advice already operates in this area. The inclusion of legal services is important because problems that citizens face often include a legal element. The help needed to deal with these requires joined-up solutions to resolve issues that overlap the boundaries that result from multiple organisations operating in different policy spheres.
14. The Ministry of Justice proposes to retain the Community Legal Advice helpline in a revised form as part of its legal aid proposals. Consideration will need to be given to the interaction between this service and advice services delivered by Citizens Advice (which itself competes for contracts to deliver legal aid services).
15. The Panel sees the potential for technology to deliver helpful information to the public. As the experience of NHS Direct has demonstrated, it is possible to develop systems using algorithms to diagnose problems and offer tailored information that helps people to resolve their issue. Therefore, online provision can go beyond the provision of generic information. Nevertheless, it is important to maintain capacity to offer face-to-face advice for legal services. This recognises that legal problems can be complex or emotionally sensitive, and that some people, especially those in vulnerable circumstances, may

need more active guidance. Advisors may also need to see documentation in order to provide effective advice. There remains a significant minority of people who do not have internet access. Research also shows that many people prefer to access legal services in a face-to-face environment.³

16. The existing model is that Consumer Direct fields simple enquiries and passes more complex matters to Trading Standards. Trading Standards often intervenes on behalf of individual consumers to help reach a satisfactory solution including by assisting in court where necessary. It will be important to retain capacity within the new arrangements for this hand-holding role. The need for such support is important in legal services. Normally, consumers use lawyers to help them resolve disputes with businesses, so challenging poor service by a lawyer can be intimidating. The Legal Ombudsman offers a simple redress route, but there are many legal activities falling outside of its jurisdiction where consumers might require assistance.
17. We are pleased that the consultation recognises the need to capture intelligence on consumer detriment and to make this available to enforcers and policymakers. This dataset should be made available to the widest possible audience rather than in a password-protected site available to a select few (the need to protect personal data is recognised, but this should not prevent sharing anonymised information). The dataset should be made available in raw form entering fully the spirit of the *mydata* proposals that BIS envisages for empowering consumers in the marketplace.

Consumer codes

18. Will-writing is a one of the markets which has an OFT approved code so the future of the Consumer Codes Approval Scheme (CCAS) is of direct interest to legal services consumers. In fact, the vast majority of legal services are unregulated activities which may be offered by anyone. The Panel is likely to encourage credible self-regulatory initiatives in such markets when we do not consider that regulation would be a proportionate means of tackling consumer detriment. Self-regulation has a chequered history, but its use of industry expertise and flexibility to adapt to evolving markets means it is potentially well-suited to legal services depending on the circumstances.
19. The Panel shares the analysis of the strengths and weaknesses of CCAS. It is important that future arrangements continue to offer a rigorous application process. In particular, the unique strength of CCAS lies in the two-stage application process: the OFT's logo may only be used once the code sponsor demonstrates its members are meeting the code promises in practice. This is unlike other self-regulatory codes, which are based on written commitments alone. However, our experience (including from outside the legal services market) is also that the application process can be unnecessarily drawn-out. Moving forwards we would like a future scheme to operate on a more collaborative basis where code sponsors have clear expectations about what is expected of them and the scheme operator and code sponsor accept a shared responsibility for working towards an agreed timetable for code approval.

20. It is important to choose an appropriate home for consumer codes should BIS remain of the view that the CMA's primary role should be as a competition authority. The decision criteria should include the organisation's purposes, its capacity to handle applications and supervise code sponsors, the suitability of the body's proposed processes for operating the schemes and public awareness.
21. The ideal location for CCAS is not obvious. There is obvious synergy between CCAS and BSI's standards work. The Kitemark also has strong public recognition. However, our experience suggests that BSI would need to significantly adapt its model in order to offer a cost-effective option that could achieve wide industry take up, especially in sectors with many small businesses (as is the case in legal services). It would also need to reflect the better regulation trend away from setting prescriptive standards towards outcomes-focused regulation; this shift is a feature of legal services regulation. Which? is another candidate to operate consumer codes as it has strong public recognition, but this would be problematic in legal services as it provides paid-for legal services. Another possibility is Citizens Advice, although it lacks regulatory experience and it may be the case that consumer codes are one more extra responsibility too many at a time of major organisational change.
22. If a suitable replacement for CCAS is not found, sectoral regulators may decide to initiate their own accreditation schemes. However, this would not be ideal as it would not be possible to standardise scheme criteria across economic sectors; this would

create the risk of inconsistent standards and consumer confusion.

Consumer advocacy

23. The consultation paper expresses the wish to make Citizens Advice the lead national, publicly-funded consumer advocate by taking on functions from Consumer Focus, and wherever possible other sectoral consumer bodies. The Legal Services Consumer Panel is not publicly-funded and we have received written confirmation from BIS that there are no plans to move us to Citizens Advice. Indeed, such a move would require new primary legislation. Nevertheless, this consultation exercise presents an important opportunity to record the benefits of retaining expert consumer panels embedded within their sectoral regulators. In addition, there are unique features within the legal services market that would make a transfer of our functions to Citizens Advice problematic.
24. It is beyond the Panel's remit to comment on which organisation(s) should do what work in the future. The most important thing is to ensure arrangements that enable strong, expert and effective representation of consumer interests for the long-term. Although the Panel is directly affected by the proposals, our approach is the same as for every other proposal that we consider: what solution would best meet the needs of legal services consumers. Our strong view, which is shared by the Legal Services Board (LSB), is that there should continue to be a dedicated expert panel embedded within the LSB. Of course, the Panel is committed to continue working closely with other consumer bodies in whatever revised institutional landscape emerges.

Background about the Panel

25. The Legal Services Act 2007 requires the LSB to appoint a Consumer Panel to represent the interests of consumers in England and Wales. The Panel is not a separate legal entity, but is embedded within the LSB. We started work in November 2009.
26. The Panel consists of seven lay people who were appointed following open competition by the LSB with the approval of the Lord Chancellor. They bring rich expertise from a range of professional backgrounds and user perspectives, including the third sector, local government, trade unions, small business and consumer affairs. Their external perspective is invaluable in helping the LSB to draw learning from other sectors that are facing, or have successfully dealt with, similar challenges. The Panel is supported by a small secretariat from the LSB staff team and its activities are funded by the LSB.
27. Our mission is to ensure the regulation of legal services is shaped around the needs of consumers by influencing decision-makers and the behaviour of providers. The Panel investigates issues that affect consumers and influences the regulation of legal services. The vast majority of our work consists in providing advice to the LSB about their developing policies. Much of this work takes place informally behind the scenes, but the LSB may make a formal request for our advice as it has on referral fees, quality assurance and will writing. The Panel also provides advice to the Legal Ombudsman and approved regulators (the bodies responsible for day-to-day delivery

of regulation). In addition, the Panel has some scope for own-initiative projects.

The benefits of embedded panels

28. Consumer panels embedded within regulators operate very differently to campaigning organisations such as Consumer Focus and Citizens Advice. The Panel is an advisory body, representing the consumer interest to the regulator; it does not perform a lobbying role nor offer advice or guidance to consumers.
29. The Panel's location within the LSB allows it to input at the earliest stages of policy formulation before the LSB is ready to test its thinking in public. This is the stage at which officials are most receptive to new ideas and change of direction, whereas external bodies normally provide input during the public consultation stage when there may already be a preferred approach. Such early engagement is only made possible by the confidentiality of the process and the trust developed through close working relationships with colleagues.
30. A permanent and discrete Panel allows the LSB to access expert consumer insight on tap. The Panel does not face competing demands on its time to the extent inevitably confronted by organisations that must respond to an economy-wide policy agenda with finite resources. Indeed, there is no guarantee that additional money will be provided to Citizens Advice to conduct work on legal services regulation. The national consumer bodies have given limited input on legal services regulation issues since the Legal Services Act was passed.

31. The Panel is a vital part of the accountability of legal services regulation, ensuring proper consumer scrutiny of the LSB's deliberations. The legal services reforms were designed to put consumers at the heart of regulation. The legal sector is well-resourced and strongly positioned to put its case to the regulator, so a discrete consumer voice provides the client counterweight. The Legal Services Act recognises this by giving us a series of statutory responsibilities. Certain bodies have duties to consult us, such as the LSB and the OFT. The Act also gives the Panel powers to make representations to the LSB on any issue and to publish its advice to the LSB. We also have powers to trigger investigations, for instance into the scope of reserved activities and the Legal Ombudsman's jurisdiction.
32. It is unclear whether these statutory powers and duties accorded to the Panel could be transferred to Citizens Advice, which operates as an independent charity accountable only to its beneficiaries and with no requirement to appoint representatives of users of legal services to its trustee board. Thus the carefully crafted features of the Legal Services Act designed to ensure effective representation of consumers' interests risk becoming unbalanced should the Panel's functions be transferred to a charitable body.
- The special case of legal services**
33. We note the Government is not minded to merge the Financial Services Consumer Panel (FSCP) with Citizens Advice. There are close parallels between us and the FSCP as we both have a statutory duty to advise the regulator in areas of professional services. Neither the LSB nor Financial Services Authority are economic regulators. In addition, there are unique features of the arrangements in legal services that make it a special case.
34. The Panel represents a wider range of consumers than panels in other sectors, including small business and charities. This aspect of the Panel's work was explicitly recognised during debates on the Legal Services Act. In fact, the legislation requires the Panel's membership to include those who use legal services as part of a business activity.
35. The introduction of alternative business structures, and other major reviews such as into the training of lawyers and the future regulatory landscape, makes this a transformative period in the sector. The issues which we deal with are often highly specialised demanding a strong, expert, discrete and articulate consumer input. The regulatory bodies are also new to their role and are making the transition from trade associations to independent regulators. It will take time for the sector to develop the degree of regulatory maturity experienced in other markets. The weak consumer engagement arrangements of the approved regulators are one manifestation of this level of maturity, which has resulted in an additional call for the Panel's input.
36. There would be a conflict of interest if Citizens Advice advised the LSB and Legal Ombudsman. Citizens Advice Bureaux (CABx) are a major provider of legal services. Many CABx have contracts with the Legal Service Commission to deliver

legal advice and casework in defined categories of law – principally debt, benefits/social security, housing, employment and immigration. Some CABx employ solicitors engaged in the conduct of litigation whilst others are involved in the delivery of pro-bono services by lawyers and offer advice services in County Courts. The vast majority of bureaux offer advice and representation services in Tribunals.

37. In future the network is likely to be subject to oversight regulation by the LSB, and fall under the Legal Ombudsman's jurisdiction, under the ABS licensing regime. This trend is likely to continue as the Legal Services Commission is increasingly requiring that the delivery of some social welfare law services should require the employment of an authorised solicitor. This creates a serious and unavoidable conflict of interest. It would be impossible for Citizens Advice to represent clients views to the LSB when it itself is a provider, regulated by the LSB and thus lobbying it as a provider. This problem has been publicly recognised by the LSB Chairman⁴ and by the Chief Legal Ombudsman.⁵

Enforcement

38. Lawyers are subject to general consumer law just as much as other businesses. As previously indicated, most legal activities are not subject to sector-specific regulation. In these circumstances, consumers rely on public authorities to promote compliance and deal with infringements of general law. This is of interest to the better regulation agenda as an enforcement gap strengthens the case to regulate new legal activities.

Therefore, the Panel has a strong stake in ensuring an effective enforcement regime.

39. This consultation does not deal with private law remedies available to consumers. The Panel's recent investigation into will-writing services identified sales practices outlawed by the Consumer Protection Regulations, but which consumers cannot pursue of their own volition due to the absence of a private right of action. We have shared our evidence with the Law Commission as part of their consultation on this issue. Issues of substantive law reform lie outside of the Panel's remit, but we note that the absence of private redress remedies puts a heavier reliance on public authorities to fill the gap at a time when resources for taking enforcement action are increasingly limited.
40. We recognise from our work that unregulated legal businesses operate across local authority boundaries, hence the need for enforcement to operate in ways which reflect and deal with this reality whilst retaining local democratic accountability. In this context, we welcome steps to improve the prioritisation and coordination of consumer enforcement work in England and Wales, but we share the concerns of other consumer commentators who have urged consideration of more radical change. This is a longstanding issue, but budgetary pressures make it urgent to reach a new settlement for delivering Trading Standards which is sustainable in funding terms and works in tune with how modern markets function.
41. We are unconvinced that proposals for the Trading Standards Policy Board (TSPB) in their current form will offer an effective solution to the local/central delivery debate.

What is needed is a national leadership body with the teeth to target resources at threats spanning local boundaries, wherever such legal businesses are based. Trading Standards should remain a local service choosing local priorities, but supplemented by a mobile central resource which has the concentrated expertise, clout, funding and risk appetite to identify and tackle specific threats which local authorities are not equipped to address. This requires a body with real powers to make decisions and coordinate activity. TSPB must be able to draw on more than soft influence to mobilise the Trading Standards community, but instead have meaningful levers, including powers of direction over local authorities. The TSPB should also have proper lines of accountability, involving consumer and public interest representatives in addition to local government input.

42. Trading Standards must juggle a large number of priorities and make difficult decisions about what not to address. This would be true whatever level of resource was made available. Institutional reform could make resources go further, especially through the amalgamation of very small services which lack the capacity to deliver effective enforcement against large companies headquartered in their area. Even so, there is a minimum level of resourcing required to allow Trading Standards to operate effectively. We are realistic in appreciating that legal services will often be a second-order priority compared to other fair trading issues, but it is nevertheless deserving of attention. Our concern is that deep funding cuts will mean legal services are neglected leaving

consumers exposed to rogue operators. The level of detriment that could result and the impact on consumer confidence would make savings from reducing funding for Trading Standards a false economy.

43. The proposed consumer enforcement function of the CMA is broadly supported. In relation to market studies, the Panel shares the view that it can be hard to disentangle consumer and competition issues, as the OFT's recent caseload demonstrates. This is certainly true in legal services and we consider it important to retain the ability to carry out such a unified analysis. It will be important that the CMA has a culture which supports an integrated approach. This is best achieved by the CMA having responsibility for 'pure' consumer market studies as well as competition cases. We are also concerned that Citizens Advice, as a campaigning organisation, will lack the authority to elicit a formal Government response to market studies as the OFT is currently able to do. The OFT's market studies are also impressive for their depth, which relies on a significant budget and staff expertise; such capacity would need to be developed within Citizens Advice.

September 2011

¹ Legal Services Consumer Panel, *Consumer Impact Report 2011*, June 2011.

² Legal Services Research Centre, *Causes of Action: Civil Law and Social Justice*, 2006.

³ See: <http://www.legalfutures.co.uk/legal-services-act/legal-services-board/public-still-want-face-to-face-legal-advice-in-key-areas-lsb-research-finds>

⁴ <http://www.legalfutures.co.uk/legal-services-act/legal-services-board/edmonds-citizens-advice-needs-to-overcome-conflict-issue-to-become-adviser-to-lsb>

⁵ <http://www.legalfutures.co.uk/legal-services-act/legal-ombudsman/ombudsman-adds-voice-to-concerns-over-plan-to-scrap-consumer-panel>

Lennon, Peter

Empowering and Protecting Consumers

Consultation on institutional changes for provision of consumer information, advice advocacy and enforcement

Response from;

Peter J Lennon B Sc (Hons) DTS MTSI

I am a qualified Trading Standards Officer, employed by a local authority in Scotland and I submit the following response to the consultation on the proposed changes to the consumer protection landscape.

Although the changes are proposed to a part of the trading standards service's work, in reality it must be recognised that it will provide for a radical reform of those services provided by a local authority. It must be noted also that there is likely to be an increase in the work for a local authority TS service at a time when budgets are reducing and experienced staff are being lost. Resources can be refocused but any lack of ability of an individual local authority to provide adequate protection for consumers by poorly resourcing the service must not be tolerated.

Trading standards services are generally ignored by most local authorities and therefore starve them of resources. Whether this is because they are unique in that most of their legislation is reserved to Westminster or there is poor understanding of a service that brings a positive image and outcomes is something that needs to be addressed.

Chapter 1

The proposal is generally to disband the Office of Fair Trading and redirect some of the resources to the CAB and trading standards. I would therefore expect the TS services to be bolstered and additional staff to be employed.

Chapter 2

The CAB can run Consumer Direct but they cannot be entrusted with the complex complaints that find their way to trading standards. The individual Bureaux have always been problematic in some areas because of their client confidentiality that prevents proper intelligence on the ground reaching the enforcement authorities. In some cases I suspect that the complaints are not dealt with to a high standard.

The position is not helped by consumer advice and assistance that empowered local authorities

under the Fair Trading Act 1973 not being made a duty. This resulted in a postcode lottery and a patchwork approach nationally to consumer matters in local authorities. The lack of that direct contact served to reduce all of consumer protection in those areas that did not offer consumer advice and assistance from 1973.

CAB must be compelled to pass on all complaint information as intelligence to either a central database with consumer details anonymised if necessary to allow a full picture of the trading environment.

QUESTION 1. How do you think the provision of consumer information to consumers can be improved upon?

Consumer information should be available in a number of forms to consumers. There must be consideration to providing at least some information in formal education to some pupils. It is an essential life skill to know your rights (and responsibilities!)

QUESTION 2. Do you agree that the OFTs consumer information role should be transferred to the Citizens Advice service?

The information role is appropriate for the CAB. But no more than that. Although the question relates to consumer information, there is also the matter of consumer advice and intervention to resolve consumer complaints. A professional, knowledgeable service that exists in most local authorities cannot be replaced by volunteers. Consumer Direct provides a script led method of resolving simple complaints; this is not appropriate for complex complaints that require knowledge, an understanding of the criminal law and analytical skills to effect a proper resolution. Local advice centres and services provided by a local authority should not be affected by this change that transfers the OFTs responsibilities.

QUESTION 3. Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service?

Someone must have the responsibility.

QUESTION 4. Do you agree that the OFTs consumer education roles should be transferred to the Citizens Advice service? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?

The education role must be provided by somebody. CAB may be appropriate

QUESTION 5. Do you agree that the proposed Trading Standards Policy Board and the TSI should coordinate and support business-facing educational activities?

Trading standards are trusted by honest businesses as they are the enforcers of the legislation likely to be the subject of the advice. The advice must be of a high standard and consistent.

Chapter 3

The codes must be preserved as best practice by trade organisations to show their commitment to their customers.

QUESTION 6. What are the best options for current and prospective Consumer Codes Approval Scheme (CCAS) members to consider in the event that the Government's proposed consumer and competition landscape proposals are adopted?

The CCAS should be able to continue in some form. There is a need for CCAS to be achieved at low cost and this may not be possible within BSI. Consumer Focus in some form could provide the certification, or TSI. Local Authority Assured Trader Schemes could also provide the certification necessary for individual traders.

There are unapproved schemes that merely encourage fraud.

QUESTION 7. Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of CCAS with effective alternative systems of accreditation?

Do not disband this scheme.

QUESTION 8. What are the lessons learned from the operation of CCAS which may help in establishing (or revising) voluntary schemes in the future?

The process of approval seems to be too onerous. A better path should encourage more schemes that encourage better traders to show their commitment.

QUESTION 9. What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?

BSI deal with standards. Some of that provides a lowest common denominator rather than encouraging better traders.

QUESTION 10. What characteristics would a Kitemark based code certification process need to have to meet industry requirements?

I think the idea is a non starter.

QUESTION 11. What is your view on extending the Primary Authority concept to code certification?

Trading standards is likely to provide the best solution. It should be independent and perhaps overseen by the body that continues LAATSN and other standards.

Chapter 4

There is no reason to abolish Consumer Focus, it could have a very effective expanded role.

QUESTION 12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

Combining as many of the sectoral advocacy functions is reasonable, but the CAB?

QUESTION 13. Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?

OK

QUESTION 14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?

Keep Consumer Focus because it provides a vital function in consumer protection. The CAB may be capable but I fear for them as much as the consumers. CF can also do so much more to provide for the OFT functions if they are to be abolished.

QUESTION 15. What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

Scotland must be considered as a special case and not as an adjunct to the UK solution. This is a good opportunity to gain the protection of Scottish consumers at a lower cost. Much effort is expended by trying to make English legislation fit the Scottish legal system – it cannot be done! The criminal and civil enforcement, especially the Enterprise Act finds total impasse trying to marry the enforcement orders to the Scottish legal system. Sheriffs don't like the system at all and there

is poor understanding generally of consumer affairs.

QUESTION 16. What are your views on these options for the transfer of information gathering powers? Which is preferable and why? Are there any other options for information-gathering powers?

The information gathering powers need to be transferred.

QUESTION 17. What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?

Redress schemes are great if all in a sector have to find a regulator such as the financial markets. Everyone will need to sign up or make it a necessity in legislation.

QUESTION 18. Do you support the transfer of the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland and agree that as a result Consumer Focus Post Northern Ireland be abolished?

N/A

QUESTION 19. Do you agree that the Postal Services Redress Scheme should continue to apply in Northern Ireland to ensure that Northern Irish consumers retain the same access to redress as consumers elsewhere in the United Kingdom?

N/A

Chapter 5

Local authorities starve services such as trading standards seeing them as luxury services! It is little wonder we have a patchwork landscape where the cunning are able to exploit weaknesses in the system with cons, scams and dodgy doorstep trading. Where spending per head is just £3 the answer is obvious – it all needs to be brought to a proper level of enforcement across the UK. In a service where every pound spent brings about six pounds of benefit, there is no reason to skimp on this.

A word on legislation – it's far too complicated. The traders do not understand it, the consumers find it confusing and even the enforcers can be severely taxed to understand it all. For example, the Toys Safety Regulations were about 40 pages of A5, now they are hundreds of pages of A4 with a number of detailed reference documents in ISO standards.

QUESTION 20. Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?

The trading standards community is very capable and could provide the solution. In Scotland I think there should be a proper solution to this instead of an amended English scheme. The matters may be reserved but there are compelling reasons to deliver something better for Scotland. There is a different legal system, a devolved government and it has always been a "region" for level 2 intelligence.

QUESTION 21. In relation to Option 3, do you agree with the Government's principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

I refer to the answer above. Option 3 is a reasonable solution, but a Scottish scheme would be so much better.

QUESTION 22. Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards? If so, would one of the JEB models be the best solution? Which one and why?

The best solution for Scotland is one that recognises its position and separate legal system. If Westminster wishes to retain the powers, then it can do so without the enforcement structures.

QUESTION 23. In relation to the various JEB models, how would you ensure effective Trading Standards participation in the JEB? Do you think that this option would deliver integration of enforcement across local, regional and national levels? Should other organisations be involved in the JEB, either as members or as participants in discussions? Would retention of such unrestricted consumer enforcement powers and responsibilities affect the CMA's singularity of purpose and distract it from its core competition remit ?

Trading Standards should be the dominant member of any JEB if that were the reality.

QUESTION 24. How can your preferred new model best work with businesses

I do not think that businesses are the prime consideration in this. They have a role and should be consulted regularly.

QUESTION 25. Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

Yes, where appropriate

QUESTION 26. In an Option 3-based model, should this enforcement role be subject to procedural limitations?

No Comment.

QUESTION 27. Do you agree that the CMA should enjoy significant discretion over when a market has structural problems, such as to give rise to its consumer enforcement powers?

Yes.

QUESTION 28. Do you agree that the CMA should retain responsibility for mixed market studies where there may be competition and consumer issues (supply and demand side market failures) present on the relevant market?

Yes.

QUESTION 29. Do you agree that in an Option 3-based model, the Citizens Advice service should in future be responsible for pure consumer detriment analysis and that the CMA should not perform pure consumer market studies? In such a case, do you agree that the CMA should stop performing market studies once it identifies that there is no structural problem in such markets and do you think there should be a duty on the Trading Standards Policy Board to prioritise cases referred by the CMA?

No, the CMA is better placed to do so.

QUESTION 30. Do you agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies in the proposed new landscape?

There will need to be a lot of collaboration for this to work effectively. There needs to be funding as well. If the trading standards spend is predicted to fall then collaboration will not be able to fill that void! Collaboration should give smarter enforcement but it must be recognised that it doesn't happen on reducing budgets.

QUESTION 31. Do you agree that it would be helpful to have some resource that required joint agreement between the CMA, TSPB and consumer advocacy bodies for its release, to be used to investigate or address consumer and market issues that would otherwise risk an enforcement or advocacy gap? If so, at what level should such funds be set and how best should they be administered?

There will be many enforcement gaps, and any advocacy gaps could only come from the CAB failing on that matter. Resources should be retained and allowed to accumulate. If this is not spent then it should be utilised for other consumer matters such as education.

QUESTION 32. Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not, how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?

Local authorities are well versed in deterring illegal activity. It has to be backed up with regional assistance where necessary without liability.

QUESTION 33. Do you agree the TSI would be the appropriate home for the OFTs professional guidance and training functions in the event of creation of a new single Competition and Markets Agency?

TSI would be an appropriate body as they already undertake a similar role.

QUESTION 34. Do you agree that the TSI is the most appropriate home for the OFTs international liaison and general policy functions in the event that the CMA has only a limited consumer enforcement role?

Yes

QUESTION 35. Do you think the requirement for LATSS and other designated bodies (under Part 8 of the Enterprise Act 2002) court orders to be directed by a central body needs to be retained in the new consumer enforcement model and if so, why?

It is too onerous and prevents proper enforcement at present and should be done away with.

There does need to be a free flow of intelligence to replace this.

QUESTION 36. Do you agree that responsibility for chairing the consumer concurrencies group should remain with the CMA?

I am not sure exactly what their remit can be.

QUESTION 37. Do you agree that the current supercomplaints system to the OFT should be retained in respect of the CMA if the proposed changes go ahead?

Yes. It is important that super complaints remain as a part of the consumer landscape.

QUESTION 38. Do you think that the supercomplaints process should be extended to require the Trading Standards Policy Board to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?

No comment

QUESTION 39. Do you think that a lead local authority could take on the OFTs estate agency and related anti-money laundering functions?

Why would they? Unless they were funded to do so.

QUESTION 40. Do you agree that the proposed changes to the consumer enforcement landscape should go ahead if the creation of the CMA is delayed? If not, why not?

Yes. The system doesn't work, mostly because of a reluctance to fund consumer protection by some authorities. Change is necessary as soon as possible.

Local Government Group

Response to the Department for Business Innovation and Skills (BIS) “Empowering and Protecting Consumers” Consultation

Date: 27 September 2011



Introduction

1. The Local Government Group (LG Group) is a voluntary membership body and our 422 member authorities cover every part of England and Wales. We work to promote, support and improve local government. This LG Group response has been drafted with the input from the LG Group's Stronger and Safer Communities Board and also its Economy and Transport Board. The response also draws on views put forward by chief trading standards officers.

Background

2. The LG Group believes that radical changes need to be made to the provision of consumer information, advice, education, advocacy and enforcement. We therefore agree with the government's objective of simplify the confusing and overlapping provisions around consumer protection, strengthening the effectiveness of consumer enforcement, with more cost-efficient delivery that is closer to the consumer front line.
3. We also believe it is right that public funding is concentrated on bodies that consumers trust and already turn to for advice – Local Authority Trading Standards Services (LATSS) and the Citizens Advice service. It is the right way forward in the LG Group's view for the consumer protection functions delivered nationally by the Office of Fair Trading (OFT) to be delivered by LATSS provided there is also a transfer of resources and funding.
4. Furthermore we support the Citizens Advice service becoming the single service that consumers can turn to for information and advice, with the consumer advice currently delivered by the OFT under the banner 'Consumer Direct' being transferred to Citizens Advice from April 2012. In order for this to be successful we believe that support will need to be provided to some Citizens Advice offices to ensure that governance structures are in place to enable them to consistently deliver the expected roles in consumer protection these changes will require. Recent reductions in funding to Citizens Advice have left some offices less well placed to easily adopt the new role that is proposed for them.
5. The LG Group has focussed most of this response on the proposals relating to changes in the enforcement landscape as that is the key priority for local government. Whilst recognising all other aspects of the proposals, it is in the enforcement arena where trading standards services could have a fundamentally different role in future.

The consultation questions

Submission

Chapter 2 – Information, advice and education

Key Proposals

- Citizens Advice to lead on all information and advice for consumers (outside health and financial services).
- The Citizens Advice service to take over responsibility for Consumer Direct.
- The Extra Help Unit for vulnerable consumers of energy and postal services to be transferred to the Citizens Advice service.
- Citizens Advice service to take on national co-ordination of consumer education (except on financial services). Coordination of consumer education activities locally to be done by collaboration between Citizens Advice and the Trading Standards community.

1. *How do you think the provision of consumer information to consumers can be improved upon?*

Response: Consumers should be able to get a range of high quality consumer information and advice. This advice should be available face to face, as well as via the telephone and online. The internet provides a valuable resource of information to empower consumers to take action or seek information. However, some consumers, particularly the more vulnerable, are often happier speaking to someone face to face and this service should still be available in the new model, either directly via their LATSS or through specific local partnership arrangements with local Citizens Advice Bureaux.

It is important that the high level of consumer advice is maintained. Each individual enquiry should be dealt with by an officer who provides bespoke advice and guidance relevant to the complaint. We would not support any reduction in the standards of advice from that currently provided.

2. *Do you agree that the OFT's consumer information role should be transferred to Citizens Advice?*

Response: The LG Group would be happy for the OFT's consumer information role to be transferred to Citizens Advice, providing Citizens Advice works with LATSS both nationally and locally in the provision of this consumer information service, as the OFT has previously done.

3. *Do you agree that the OFT's consumer education roles should be transferred to Citizen's Advice? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?*

Response: We agree with the Government's proposal that the OFT's publicly-funded consumer education role at national level be transferred to Citizens Advice, if other related advice services are transferred. We believe that Citizens Advice will need to work closely with the Trading Standards community to ensure that education provision is well coordinated, including the distribution of educational materials and sharing of best practice.

Chapter 5 – Enforcement of Consumer Protection Legislation

Key Proposals:

- *To establish a Trading Standards Policy Board (TSPB) to lead the prioritisation and coordination of national, regional and cross local authority boundary consumer enforcement work in England and Wales.*
- *In England and Wales, national enforcement to be undertaken by Primary or Home Authorities and by expanded regional teams supported by a small number of lead regions and/or authorities with specialist areas of expertise. Money for enforcement against national and cross boundary threats to be ring-fenced for this purpose.*
- *The proposed new Competition and Markets Authority (CMA) to retain a market studies role in relation to markets where there may be both structural competition issues and consumer-related (demand-side) market failures.*
- *The CMA to retain powers to take action against breaches of consumer law wherever these breaches may inhibit the effective functioning of competition in markets.*
- *Powers to make supercomplaints to CMA to be retained by existing bodies.*
- *The TSPB, CMA, Citizens Advice service and Which? to be transparent about enforcement and market analysis priorities and to share work plans as far as possible, working in partnership on cases which risk crossing over the boundaries between them.*
- *The TSI to take on the OFT's current guidance, training, international liaison and policy functions.*
- *"Established Means" code of practice promoters to be able to formally request action against businesses breaking the relevant laws which the TSPB would have a duty to consider.*
- *If the creation of the CMA is delayed, these consumer enforcement landscape changes should go ahead with OFT taking the role proposed for the CMA.*

Options for reform

4. *Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?*

Response: The LG Group believes Option 3, with the transfer of the majority of the OFT's consumer enforcement functions to LATSS with some functions (for cases involving structural market problems) remaining with the CMA is the most appropriate way to achieve the three objectives set out in the consultation document. The LG Group believes that LATSS have the skills, experience and willingness to deliver the outcomes the Government wants to see.

As well as helping local consumers and businesses, LATSS already do consumer protection work which has a regional and/or national impact. This includes LATSS providing Home Authority/Primary Authority support for businesses; dealing with e-crime, internet scams and national pricing rip-offs; working at ports and airports; dealing with rogue traders who act outside their local council areas targeting some of the most vulnerable consumers; and helping to support legitimate businesses, who comply with the law, but face unfair competition from those who do not.

Option 3 will enable the building up of skills and capability in LATSS as they take on to regional and national work. It will enable the development of better resilience for existing regional infrastructures which are crucial to effective engagement and delivery between the local and national levels. It will also enable transformational changes within LATSS in terms of strengthening

leadership and influence in order to support more effective action against cross-boundary threats. Furthermore Option 3 fits in well with the government's localism agenda as it gives LATSS greater freedom and flexibility to be able to work together nationally, regionally and locally.

5. In relation to Option 3, do you agree with the Government's principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

Response: Establishing an effective governance structure to bring together LATSS, and to ensure the work undertaken on national, regional and cross-council boundary threats is a priority for the public, will be the most crucial element of ensuring that the changes to enforcement work effectively. As such we have broken our response to this question down into separate elements.

We agree with the Government's principles of the need for the coordination of enforcement against regional and national threats, and that national funding could be used to support such efforts. We are not yet convinced the proposed TSPB consisting solely of chief trading standards officers is the right governance structure for this, and nor are we yet convinced that the LG Group has a role to play in these structures. Officer input, especially on technical matters is vital, but there are questions around leaving decisions on the prioritisation of cases and how resources should be allocated to officers, without the wider context of the issues councils face being taken into account.

A Board with a role such as that envisaged for the TSPB would need to meet regularly to provide the strategic and operational oversight in a co-ordinated manner. The government can establish principles but it would need to empower the TSPB to take operational decisions, based on evidence of consumer detriment, and this could be provided by bodies such as Citizens Advice, Which and the CMA. BIS will clearly want to ensure that national consumer protection issues are dealt with in a timely and effectively manner, but the Government must not dictate what action should be taken.

Political Oversight and Scrutiny

We understand that clear political accountability and oversight is regarded as very important. We would agree. However we note the minimal detail in the consultation about how this might be provided, and what it might entail. This makes it difficult to assess the resource and risk implications for the LG Group at a time when the Group has limited capacity to take on additional work. We would therefore like to explore how political accountability could be provided without solely relying on the model set out in the consultation. One option might be to get the direct input of councils into the enforcement work being done, and this need not come through the LG Group.

Financial Oversight

Clear financial oversight and auditing is also crucial. A decision will have to be taken as to who would hold the funding and provide the necessary accounting and audit services to ensure total probity. The LG Group would not want to take on this role itself.

Membership

Involving heads of trading standards services will be crucial. The heads of

service involved in any Board must effectively represent each English region and Wales. For officers the Welsh/English regional representatives would need to be nominated via their relevant chief officer groups and be mandated to take decision at the TSPB on behalf of their areas. We recognise that effective co-ordination at a regional level is essential to achieve this. In addition we would expect there to be representation from Association of Chief Trading Standards Officers, Welsh Heads of Trading Standards, Society of Chief Officers of Trading Standards in Scotland and the Trading Standards Institute on that Board plus other representatives such as BIS.

However we do not yet take the view that the Board's membership and associated questions about how political oversight of the TSPB is provided have been solved. In our view these matters still need to be explored further.

Indemnity Fund

There is a particular concern that any individual local authority taking on a national case should not be put at significant financial/legal risk, and as such, BIS would need to find a method of underwriting or insuring against any such risk.

It will be essential that the resources are available to cover all the costs of the investigations and legal liabilities are underwritten. Without the indemnity fund we would not recommend that any council should undertake any of these national high risk cases.

6. Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards?

Response: Maintaining the status quo, as the creation of a new Joint Enforcement Board (JEB) would create additional bureaucracy and costs associated with a new organisation but few clear benefits. As is identified in the consultation paper there would not be the resources to create national and regional enforcement infrastructures in LATSS. The JEB would also not be controlled by heads of trading standards and could not be held accountable in the same way.

The role of the proposed Competition and Markets Authority

7. Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

Response: We would agree that there are benefits for CMA to retain a consumer enforcement role only in those cases where a potential breach of consumer law is connected to a structural market problem (e.g. the bank charges type cases). Where there are consumer cases that have a competition implication, we understand that the CMA will want to retain the resources to deal with cases that reflect structural market problems.

We believe that there must be effective communication and a good working relationship between the TSPB and CMA to ensure that intelligence can be shared and assurance received that cases can be dealt with appropriately.

Other current OFT roles

8. Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not, how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?

Response: LATSS already have years of enforcement experience of dealing with rogue traders and illegal behaviour within their own communities including many with a national impact. Councils take far more prosecutions than the OFT, and are confiscating tens of millions of pounds of assets from serious criminals in the consumer protection field.

We believe that their threat of enforcement can help to deter non-compliance and can effectively back up self-regulatory schemes. LATSS have always used a wide range of tools to ensure compliance over the years such as warning letters, cautions, fixed penalty notices, civil orders, injunctions etc. We do not believe that there will be any problems with an enforcement model branded as run by LATSS.

9. Do you agree that the proposed changes to the consumer landscape should go ahead in April 2013 regardless of whether the CMA is created by then or not? If not, why not?

Response: We suggest that the proposed changes to the consumer landscape should go ahead in April 2013 if possible.

Local Government Ombudsman

Local Government
OMBUDSMAN

26 September 2011

Mr David Evans
Consumer and Competition Policy Directorate
3rd Floor
1 Victoria Street
London SW1H 0ET

**If telephoning contact: Dr Martin's PA on 020 7217 4692
email address: d.gorwala@lgo.org.uk**

Dear Mr Evans

Consultation – Empowering and Protecting Consumers

I am writing on behalf of the Local Government Ombudsman (LGO) in relation to your consultation Empowering and Protecting Consumers. The LGO has noted the proposed establishment of a new Trading Standards Policy Board (TSPB), made up of Chief Trading Standards Officers. We also note that the TSPB would be accountable to BIS for financial propriety and thus, come under the Parliamentary Ombudsman for the purpose of complaints.

In response to these proposals, we would like to highlight the current role that the Local Government Ombudsman plays in holding councils to account, by receiving complaints about the enforcement of trading standards regulations by local authorities. We are able to investigate complaints from members of the public and local businesses. There are a number of different types of complaints that we may typically receive. They include whether the council has properly considered the appropriate level of investigation, or whether an investigation was conducted properly, including whether a local authority followed its own policies and procedures. In certain circumstances we may also consider complaints about advice given by a local trading standards service. This is just part of our wider role in remedying injustice caused by unfair, inappropriate or improper monitoring and enforcement of regulations by local authorities in relation to environmental health, food hygiene, health and safety, planning and trading standards. In 2010-11 10% of all complaints and enquiries received by LGO related to environmental services, public protection and regulation other than planning.

Where faults are identified, we can make recommendations to remedy injustice caused by maladministration and service failure. In making recommendations we try to ensure that systematic faults are addressed, preventing similar mistakes from being repeated in the future. Where a wider public interest is identified by a complaint the Ombudsman can issue a public report. This helps to share lessons learnt with other local authorities.

In summary, we would highlight our role to reinforce mechanisms currently in place to hold local authorities' trading standards services to account.

/...

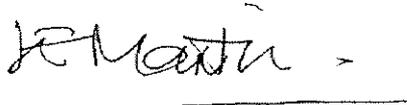
10th Floor
Millbank Tower
Millbank
London
SW1P 4QP

T: 020 7217 4620
F: 020 7217 4621
DX: DX 149243 Victoria 13
W: www.lgo.org.uk
Advice Team: 0300 061 0614

Jane Martin
Acting Chairman
Nigel Karney
Secretary

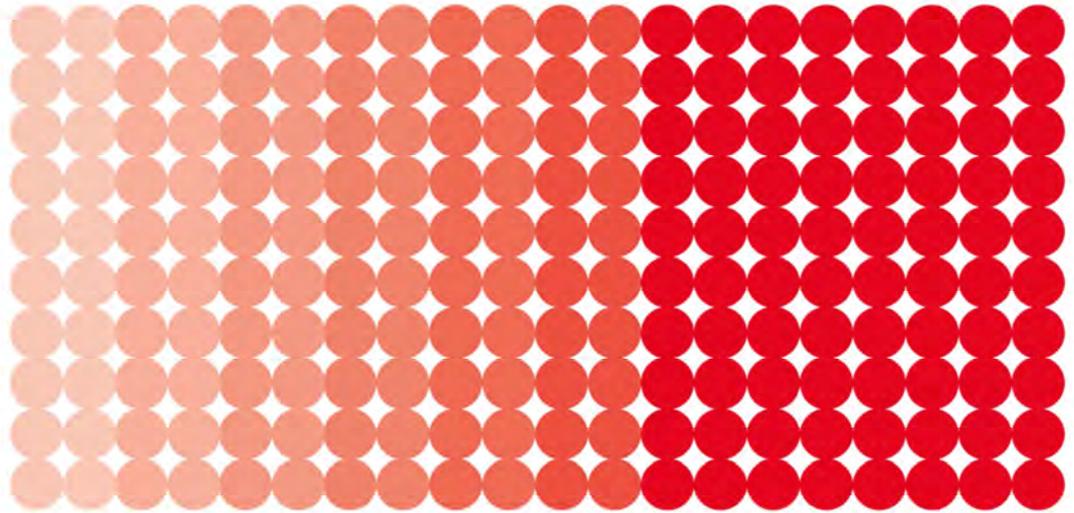
If you require further details about the role of the Ombudsman please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J Martin', with a horizontal line underneath it.

Dr Jane Martin
Local Government Ombudsman
Acting Chair of the Commission for Local Administration in England

LSE – London School of Economics

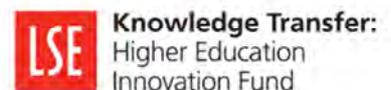


media *policy brief* 4



Reforming Consumer Representation in UK Communications

Damian Tambini
London School of Economics and Political Science
Department of Media and Communications



Acknowledgements

The author was previously a member of the Communications Consumer Panel, and this paper received administrative and research support from the panel. The author is grateful for comments received from CCP members and administrators and Alistair Bridge, Sonia Livingstone, Claire Milne, Peter Lunt and Sally Broughton-Micova.

Special appreciation goes to Nate Vaagen who researched the sections on financing. The LSE Media Policy Project was initiated with support from the Higher Education Innovation Fund 4 and is now funded by the Open Society Foundation.

A full length version of this paper will appear in the journal INFO (Emerald Insight **ISSN: 1463-6697**) in January 2012. The author is grateful to the editor, Colin Blackman and an anonymous reviewer of that article.

LSE Media Policy Project Series Editors
Sally Broughton Micova, Zoetanya Sujon and Damian Tambini



Creative Commons copyright licence, Attribution-Non Commercial.
This license lets others remix, tweak, and build upon your work non-commercially, and although their new works must also acknowledge you and be non-commercial, they don't have to license their derivative works on the same terms.

September 2011.
LSE Media Policy Project. <http://blogs.lse.ac.uk/mediapolicyproject/>

Key Messages

- Communications consumers in the UK do not switch provider enough, and when they do they sometimes do so irrationally. As the government conducts a welcome review of the landscape of consumer representation in the UK, they should be aware that there is an ongoing, permanent need for consumer representation that is specific to the communications sector.
- The government's proposals, by shifting consumer advocacy to the Citizen's Advice Bureau, are likely to result in an increase in costs to the public purse. Within the current model Ofcom and its consumer panel receive almost half their funding from the private sector. If the body is moved to Citizens Advice, the proportion met by public funding will be higher.
- The fast changing, technical complexity of the communications sector makes a consumer representative particularly important. Consumer advocacy in communications will be most efficient if it is within Ofcom, but has much more effective operational independence from it.

Introduction

Consumers in the UK have reaped huge benefit from the liberalisation of the telecommunications and media sectors over the past three decades. Consumers as well as companies have been the engine of this dramatic transformation: only if consumers are willing and able to adopt new services and take risks will innovation continue, and it is consumers' spending that drives investment. Ultimately, the success of a liberalised communications sector rests on a multitude of separate consumer decisions: decisions to consume a particular service, to contract or to switch. Active, informed, empowered consumers are a key economic asset and should not be taken for granted.

In these processes of market driven innovation, we are all consumers, and consumer satisfaction is the basic objective for good policy. But consumers are also a means to an end, for if a significant proportion of consumers are not willing or able to switch, to choose and thus to assert their power, then all consumers will suffer, from lower quality, higher prices, and less responsive service. Whilst regulators focus on the structural, legal and economic reasons why markets may not function effectively, they sometimes neglect the human perspective, and fail to examine the reasons why consumers may be unwilling or unable to play their part. This is why they need access to an active, informed consumer representative

Ultimately, the success of a liberalised communications sector rests on a multitude of separate consumer decisions: decisions to consume a particular service, to contract or to switch.

This paper argues that the need for consumer representation is particularly acute in fast changing sectors such as communications. Where new innovations reach the market on a daily basis, and the popularity and utility of products and services is difficult to predict; regulators and public authorities should retreat, focus on areas of market failure, and as far as is possible rely on the market. But they should also monitor and ensure that consumers are able to fulfil the role assigned to them in dynamic markets, and make targeted policy adjustments to enable consumers to play an optimal role.

To a certain extent, the current framework for communications regulation reflects these ideals. Since 2003, Ofcom has successfully 'mainstreamed' consumer empowerment, for example through careful monitoring of consumer switching and consumer empowerment in its annual Consumer Experience Reports, and the setting up of an independent consumer advocate, the

Communications Consumer Panel.¹ This paper draws upon the experience of the Communications Consumer Panel in order to assess some of the continuing challenges for communications consumers in the UK.

During 2010 and 2011, Ofcom's role and scope was reduced in the context of wide ranging cost savings, and the question of the role of the Consumer Panel was again put on the agenda for policy discussion.² This paper is an attempt to assess the changing role of consumer representation in this context.

1. The Communications Consumer Panel in UK Regulation

The 2003 Communications Act (Section 16) gave a duty to the UK communications regulator Ofcom to establish appropriate consumer consultation arrangements, and in particular to establish the Ofcom Consumer Panel as a semi-independent consumer representation body. Part of a range of cross-sectoral reforms to consumer representation as first outlined by the Consumer Protection Green Paper in 1998, the role of the Consumer Panel is to advise Ofcom and other bodies about the interests of consumers and small businesses in relation to electronic communications markets (but not including content).

The remit of the Panel was defined by the Act in a broad way, including for example monitoring and providing information about end user equipment, complaints handling, service quality and dispute resolution, and the Panel had considerable freedom to define how best to interpret these roles and how to spend its budget. Spending declined from £936,000 in 2006 to £743,000 in 2011. Because the Panel works within Ofcom (members selected by Ofcom with Ministerial approval) and has privileged access to Ofcom internal documents, the body has been able to operate effectively as a consumer advocate early in the policymaking process, drawing on Ofcom and operator complaints data, Ofcom research, as well as commissioned research. CCP spending on research was around £260,000 in 2006 but it declined rapidly due to cuts after 2008.

However the issue of operational independence from Ofcom was problematic, with some stakeholder confusion about the role of the Panel. In 2008, after the first Panel Chair, Collette Bowe became a member of the Ofcom Board, the Ofcom Consumer Panel was re-named the Communications Consumer Panel in order to underline the independence of the body, and a mainly new board and chair (Anna Bradley) were installed.

2. Consumer Failure³ in Telecommunications and Media

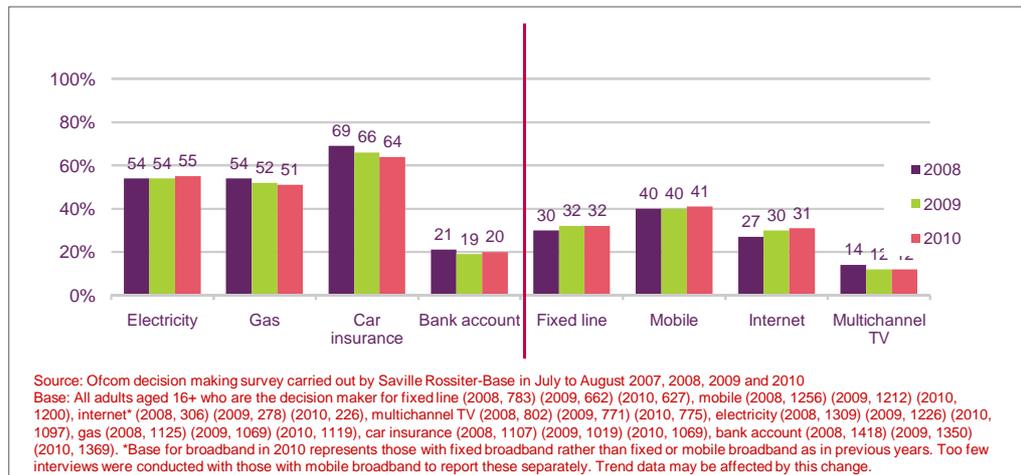
The Consumer Panel has had an important role to play in a fast changing sector. Bill Monitor (a price comparison site) recently calculated that the total number of potential mobile telephony deals in the UK in September 2010 was over seven million. Whilst this number may be exaggerated as some of these tariffs may no longer be available, the point of principle remains: with the level of choice and complexity in telecommunications markets, consumers' rationality may be stretched. The same research suggests that the vast majority of UK mobile telephony consumers are on the 'wrong' tariff,⁴ and

there is ongoing evidence that consumers, and particular groups of consumers, may not always make the right choices.

2.1 Barriers to switching

Many things may explain the apparent discrepancy between the switching behaviour of communications consumers (illustrated in Figure 1 below from Ofcom’s Consumer Experience Report 2010) and those of other utilities. The fact that consumers are significantly more likely to switch providers of energy and insurance may reflect the different levels of price, choice and competition in those markets.

Figure 1: Proportion of Customers who have switched communications and utilities suppliers



We do not have comparative data which would confirm whether communications markets constitute a special case, but research on the communications sector indicates that the hassle factor, together with a range of sector specific factors does hinder switching. According to the Consumer Experience report on communications markets for 2010;

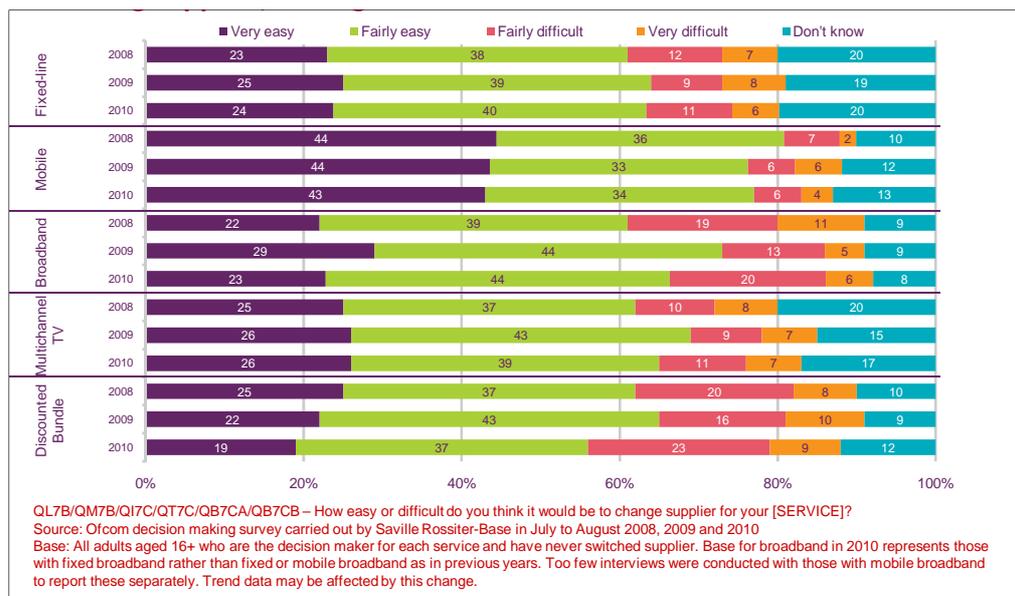
*“The main reason given for not switching, among consumers of mobile and bundled services, is the perceived lack of difference in cost, while the most common reason in the fixed-line and broadband markets is the hassle involved in switching (twenty-five per cent of fixed-line and 27% of broadband consumers said they were ‘too busy/ do not have time to research the options’). For multichannel TV, the most common reason for not switching was a combination of hassle (30%) and ‘no perceived cost advantage’ (29%“.*5

It is likely that technical literacy and the related problem of speed of innovation may raise particular barriers to switching in the communications sector.

2.2 Consumer literacy and information

Problems of consumer literacy are highlighted when we examine Ofcom's Consumer Experience data on trends in consumer perceptions of various services since 2008. In the case of mobile services and bundled services, there has been significant stalling and reversal in consumers' views on ease of switching provider particularly if those decision-makers who report they don't know how easy or difficult it is to switch.

Figure 2: Perceived consumer opinion about ease of switching supplier, among those who have never switched.



This kind of survey data is notorious for underestimating consumer difficulties (because they ask consumers to self-report on their lack of ability) but even so, in relation to bundles they still register a reduction in the numbers that perceive switching is easy, (among non switchers) and an increase in those that say it is difficult over the past 3 years. Whilst the numbers involved are small, the direction of travel is significant. As markets mature it might be expected that perceptions would have improved. In this case the opposite is true.

Measures to improve transparency and information are a very important part of how regulators help make markets work more effectively in the consumer interest.⁶ But there is more to information and transparency than meets the eye. To what extent do consumers understand the information provided – for example on broadband speeds, or traffic management policies. And to what extent do people act on that information? Are there specific groups that act on this information whereas others do not?

Problems of information are compounded for communications services by the high rate of innovation, and because they tend to be ‘experience goods’ whose utility is only understood after consumption.

In addition, the economics of networked industries are such that they can tend to be dominated by a small group of players, and have particular tendencies to network effects which accentuate problems of ‘lock in’ when technology standards choices are made. So whilst consumers may value a particular new platform – Freeview for example – their taking

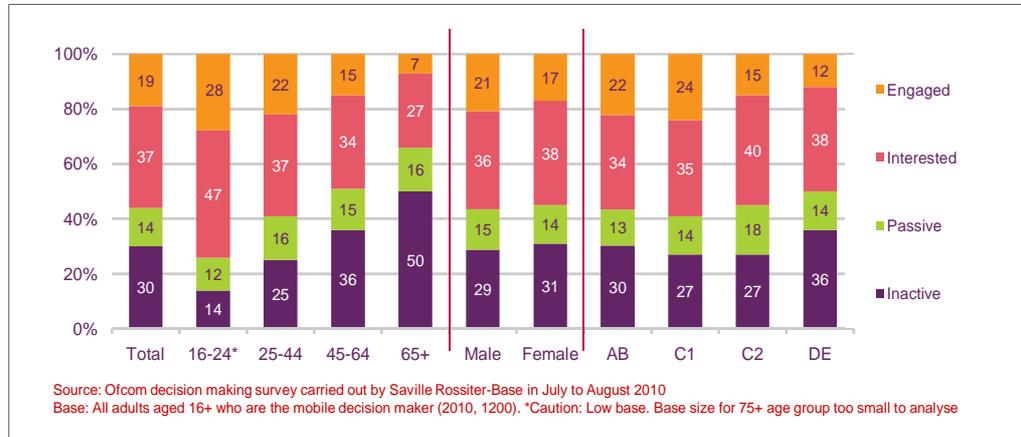
up this platform may in fact undermine the market for a technology that delivers superior services. The role of the regulator in ascertaining the value to citizens and consumers of allocating public resources such as spectrum to such a service is very complex and contestable.

Simply improving information on currently available services is only part of the challenge. Regulators and policymakers need to consider how consumers will understand the information and how they will act upon it.

2.3 ‘Vulnerable Customers’?

There are also other questions that should be considered. Are there particular groups of consumers that are unable to benefit from certain types of services, and who are currently peripheral to the market? Is there a role for a consumer champion in attempting to ensure they are more active in the market? Since 2005, Ofcom has been tracking the level of participation of different socio-demographic segments of the population in communication markets.

Figure 3: Demographic difference between participation segments in the mobile market



The Ofcom Consumer Experience report for 2010 in which the figure above appeared shows that 66% of over 65s are passive or inactive in the mobile market. This compares with only 26% of 16-24 year olds who are inactive or passive in the mobile market. It is highly likely that this results in detriment not only for inactive consumers, who are even more likely to be on the wrong tariff, but for all older consumers, because the market does not benefit and is not strategically responding to this potential area of growth.

This is not a question of special treatment or special pleading for particular groups. It is a question of ensuring that markets work well, and for the benefit of all.

3. What Drives Consumer Choice?

The question of what drives consumer switching, how it can be encouraged, and the extent to which it is 'rational' are therefore key questions of broader political and policy import. Such questions are not the preserve of any sector, or a particular regulatory body, they are at the centre of a broader rethinking of the assumptions of regulatory policymaking, embodied in recent academic work in behavioural economics. One of the many insights of this field is that we should not take the rationality of consumers for granted: there may be things that we need to do to protect and promote consumer choice-making, including providing so called 'nudges'.⁷

“In a competitive environment, one effective way for consumers to express their preferences is through the market mechanism. However, market mechanisms are not a panacea. Particular consumers may not be in possession of all the relevant information or have the incentives to collect this information, necessary to make decisions effectively. Such limitations may apply particularly to some consumer groups.”⁸

However dedicated to ‘evidence-based policymaking’ a regulator is, consumers usually appear in evidence as a theoretical construct, or a set of assumptions.

The theoretical consumer is:

- Perfectly rational
- Well informed
- Has time and motivation to study options and switch⁹

In this sense the theoretical consumer is at the very centre of the competitive vision for communication. In many, perhaps most areas, the construct does apply.¹⁰ We sometimes find that real consumers, particularly in fast changing technical areas like communications, do not resemble these theoretical consumers. Rather they have an alarming tendency to be:

- Irrational (or at least subject to systematic forms of bias)
- Lacking in access to information (or, increasingly the time or ability to search for the most useful information in the mire of other information).
- Far too busy/lazy/bored/rich/poor to spend time studying their options and switch service providers.
- And in particular they are often challenged by fast-changing markets.

Unfortunately for regulators, it is difficult to predict when consumers in relation to any particular market, or aspect of consumer satisfaction resemble the latter or the former category. Usually consumers as a whole are divided into different overlapping groups, and the extent to which they are active and effective varies between product markets.¹¹

4. Tools and Remedies for a Communications Consumer Champion

Identifying information gaps

A consumer champion should be involved in monitoring and researching the information needs of real consumers. The MyData initiative by the Department of Business Innovation and Skills is one example of an attempt to do this.¹² But the difficulties consumers face are often unpredictable. An example might be the information provided about broadband speed or mobile coverage. Not only are such service quality data very sensitive to topography and geography (even down to differences between buildings and within buildings) but different consumers will have radically different preferences for how they should receive data on service quality.

Information depends not only on the supply side but also on the demand side – the consumers that are to be informed. Understanding the information uses and needs of consumers is an essential part of making markets work. And providing information to consumers is an immensely complex task. Not only is the information likely to be complex and contested (witness the problem of providing information on mobile service coverage) but preferences regarding how the information should best be presented vary among consumers.¹³

Identifying consumer market failure

Conventional market failure analysis focus on the supply side, but some key sources of market failure – such as merit goods, externalities and information problems can be alleviated by consumer literacy and empowerment. The consumer champion should identify and - through targeted interventions and ‘nudges’¹⁴ – rectify such market failures.

Identifying vulnerable groups

One key problem with consumer protection in pro-competition, pro-market regulatory regimes is that many of the measures of market failure tend to assume one type of consumer: highly competent, informed and active.

However there may be systematic differences – to do with dexterity, literacy, ability or preferences that mean that certain consumers and citizens are not adequately reflected in the assumptions.

Identifying citizen and social value: the real citizens' perspective

It is widely acknowledged that externalities and citizen or social value may lead to market failure: the market may not deliver maximum overall social welfare if some benefits or dis-benefits of the good or service affect third parties rather than producers and consumers. Communications policymaking is often involved in the attempt to isolate those broader social values.¹⁵

Longer-term regulatory strategy and horizon scanning

A consumer champion with sector specific expertise should be able to identify potential future problems based on experience and research. This is more difficult to do simply through analysis of complaints data. By carrying out research on consumers it is possible also to explore how consumers' needs and the role of communications services in meeting those needs are likely to change. This can include:

- Identifying specific product and service markets where key market mechanisms are not working; because of a lack of information, skills, or coordination problems.
- Identifying potential regulatory failures: for example in ensuring that spectrum allocation policies reflect both consumer demand and social value.
- Identifying those areas where traditional tools, such as ensuring all market segments are adequately competitive and resolving information problems, are not enough to address consumer interests.
- Encouraging decision-makers to focus on consumer outcomes rather than assuming that their traditional tools will work. For example highlighting cases where providing consumers with more information or choice may be unlikely to deliver benefit because of a lack of consumer motivation to seek information.

Regulation as a balance of competition, intervention, regulation by the market and self regulation

Consumer representation in regulatory policymaking has an important role to play, and if it is not adequately supported in the new regulatory framework then it is not only the case that certain groups of 'vulnerable consumers' such as older people will suffer as a result. The efficient operation of the market will also suffer.

Ofcom and other regulators are constrained by Treasury Green Book¹⁶ approaches to intervention, and the overarching framework that suggests that careful market failure analyses should take place before any intervention is made, to determine why the market is failing to respond to any consumer demand, and what the costs and benefits of any proposed intervention might be. Policymakers should also be aware of the scope for regulatory failure (why should they do any better?) and carry out assessments of regulatory impact.

Consumer information and data is very often an important part of those processes, particularly in highlighting the benefits of switching e.g. consumer research on switching supported gaining-provider led processes¹⁷, over losing provider led processes. As the examples in this paper demonstrate, it is extremely important that the consumer dimension is not neglected.

5. Proposed Changes to Consumer Representation

The Government Minister responsible for the current reforms, Ed Davy, acknowledges the key, permanent role for consumer representatives:

“The empowerment of consumers is not just about making markets competitive, however, vital though that is. Even the most competitive markets will not always deliver the best results for consumers without a properly enforced framework of regulation to protect the consumer interest.”

Clearly, improvements can be made to the current framework.

“..duplication of effort ... leads to waste and inefficiency in the use of public funds. It draws resources from the front line, resources which could better be used driving forward consumer empowerment directly – a key commitment in the Coalition’s programme for Government.”¹⁸

There are therefore two key questions to ask of the proposed reforms: are they likely to improve outcomes and are they likely to reduce public spending. Analysis for this paper suggests that for the communications sector they will do neither.

The Government proposes that the Citizens Advice Bureau should become the sole official consumer advocate body, given responsibilities of general and sector specific advocacy. Under the proposal, Consumer Focus and

all existing sectoral advocacy groups would be dismantled and ostensibly recreated within Citizens Advice. BIS would prefer that as many sectoral advocacy groups as possible make the move to Citizens Advice, but acknowledges that the final decision rests with the particular Departments.

BIS briefly mentions the possibility of simply leaving things as they are, though the effect of the “current economic climate” on budgets is presented as such that the status quo is “not a realistic option.” While arguing that the status quo is not an option due to budgetary constraints, the BIS seems to be touting as advantages to their proposal an expansion of customer services.

5.1 Cross-sectoral expertise

Twin goals of the proposed one stop shop are to increase the influence of sectoral advocacy and cut costs by reducing redundant research and organizational roles.

In regard to the influence of sectoral advocacy, the BIS proposal neglects the value of access. An advantage to having the Communications Consumer Panel structurally located within Ofcom is the proximity to the regulator which offers privileged access to Ofcom policy processes and targeted efficient interventions. The proposed changes would eliminate that advantage and create potential obstacles between regulators and consumer advocates.

In order to do its work well, the consumer advocate body will have to go through more time consuming and bureaucratic processes in order to access Ofcom internal data and research. Whilst the consumer advocacy group will still have access to Ofcom data, it will not share staff and resources with the consumer panel, and will not have access to Ofcom staff and internal policies until after they are published.

The Citizens Advice Bureau model does offer the advantage of having frontline staff deal directly with consumers, which could improve services to consumers. It will however be of concern whether frontline staff will be able to cope with the specialist knowledge and training in order to be an effective advocate for the new range of sectors, including communications.

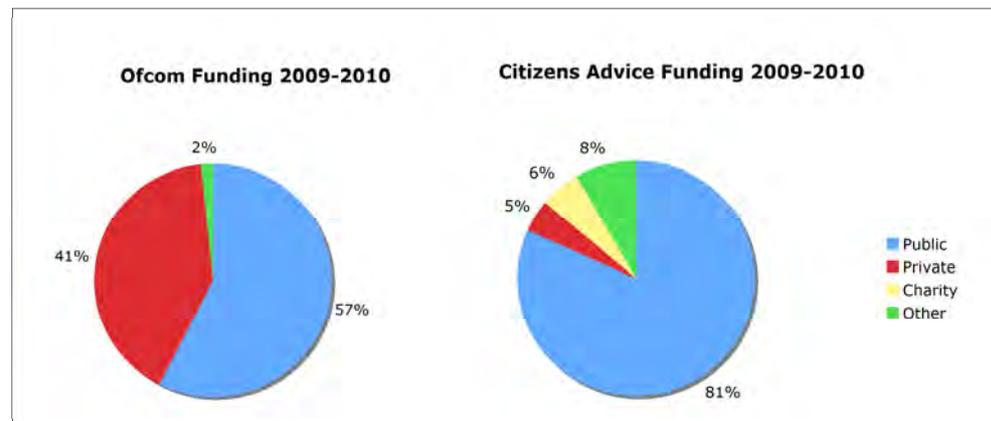
It is, therefore, not clear exactly how the proposed changes would cut costs. BIS suggests that an enlarged Citizens Advice Bureau would allow for a “local presence for sectoral advocacy” and “face-to-face advice services on sectoral issues.”¹⁹ While these sound like potentially good

things, they would require customer-facing personnel familiar with sectoral issues. How exactly these services would be funded is unclear.

5.2 Increasing burden on the public purse

Comparing the funding models between Ofcom and Citizens Advice, it is apparent that under the proposals being advanced by the government, public funding would play a substantially larger role for the consumer advocate. Currently funding for the Communications Consumer Panel comes from Ofcom budgets. Under the proposals, this funding burden would be placed on the Citizens Advice Bureau.

Figure 4: Comparison of funding sources for Ofcom and Citizens Advice



Source: Annual Reports

Taking the average budget for the Consumer Panel from 2006 to 2011 as a reference point, this comes to an average total cost of £819,400. With the 2009-10 revenue models as a guideline, this would translate into an increase in the average total cost to the public purse of £196,656. However, if, as appears to be likely given the previous assumptions, costs rise, this could result in a more marked rise in the cost to the public of providing cross-sectoral consumer advocacy. This cost profile is not shared with the other sectors that are the subject of this reform.

Given the broader range of issues that Citizens Advice is called upon to deal with, it may be that the role of protecting consumers in the communications sector will be less of a priority. This is likely to result in a significant detriment to consumers, who have in the past benefited from Communications Consumer Panel work for example on broadband speeds and mobile coverage.

Conclusion

Consumer representation has been subject to successive waves of cross sectoral reform in the UK. Over a decade ago the Department for Trade and Industry set out a framework for consumer representation in the network utilities in its green paper: A Fair Deal for Consumers: Modernising the Framework for Utility Regulation (DTI, 1998). This set out duties to promote the interests of consumers 'wherever appropriate through the promotion of competition' which were implemented across the utilities and in the Communications Act of 2003. The Green Paper made explicit that as markets became more competitive, it may be appropriate to 'sunset' or phase out the clauses supporting consumer representation bodies.

The 2011 Government Consultation: Empowering and Protecting Consumers falls short of advocating the sunsetting of consumer advocacy in communications. The paper underlines the need for supporting consumers as an aspect of a robust competition policy. However, it also proposes to remove most of the sector-specific consumer representation (for example the Communications Consumer Panel) and replace it with a cross-sectoral structure. Whilst this may possibly in the long term reduce overall costs, the Government's approach would also:

- Increase the proportion of cost met by the public, and possibly also the overall cost to the public.
- Weaken consumer representation by undermining sector specific expertise
- Make consumer representation more remote from the fast changing, technical issues that are peculiar to the communications sector
- Undermine the learning and intelligence gathering on the specific problems faced by consumers in communications markets

In the case of communications, there is an enduring and probably permanent need for a sector specific Consumer Protection and Empowerment Unit, for the following reasons:

- The rapid pace of innovation and change create acute problems of information for consumers.
- Evidence showing that consumers in general and particular groups of consumers are particularly reluctant to switch in the case of communications services.

- Behavioural biases among consumers which endure, but also change and develop as technology changes and should be monitored by specialist research.
- Transparency measures require assessment of consumer demand for information.
- There is a need for sector specific technical expertise in the communications sector.

Regulatory attention of late has focused on how consumer behavioural biases should be incorporated in regulatory decision-making. But to replace the simplification of a rational actor model of the consumer with a construct of a 'predictably irrational' one misses the point: consumers learn and adapt, and as new innovations occur they also need to unlearn.

In such reflexive processes the point is not to develop a more perfect theory of the consumer, it is to accept that there is a permanent need for an expert, informed consumer representative body able to monitor developments, make limited predictions of the likely impact of future policy developments and advocate on consumers' behalf for targeted forms of intervention.

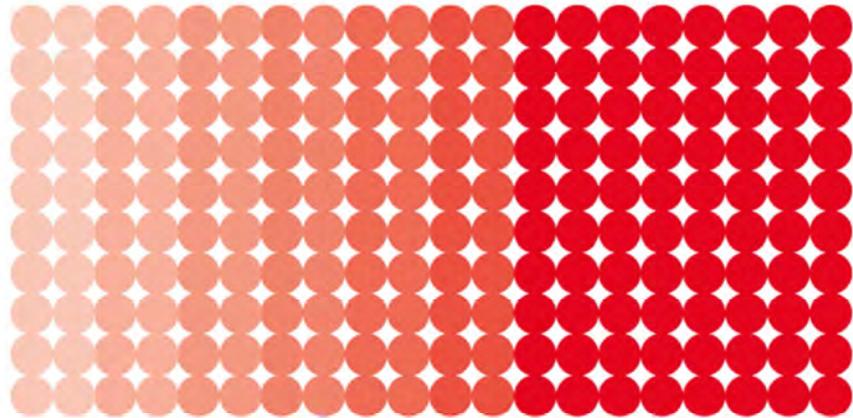
This body should work closely with the Citizens Advice Bureau, Ofcom and other consumer groups who should provide the Consumer Unit with regular updates on complaints, consumer empowerment and consumer welfare issues. Ofcom should work with the Communications Consumer Unit to monitor and evaluate new and existing markets.

Senior officials from Ofcom, providers and the relevant government departments should have an obligation to answer the Communications Consumer Unit's reasonable questions. The Unit should work both within Ofcom (and have access to internal data and information) and have an independent voice and brand.

The key governance challenge for such a body is to give it sufficient independence from Ofcom, Parliament and Government (DCMS and BIS as the lead Departments) with adequate access to information, data and personnel.

Notes

-
- ¹ <http://stakeholders.ofcom.org.uk/market-data-research/market-data/consumer-experience-reports/> For a discussion see Lunt and Livingstone, 2011.
- ² The Department for Business Innovation and Skills issued a consultation in June 2011 proposing options for reform. See Department for Business Innovation and Skills: Empowering and Protecting Consumers. June 2011.
- ³ OFT (2010) identified consumer failure as the 'fourth market failure'.
- ⁴ Bill Monitor (2010) About the Maths: "88% of people in the UK are on the wrong mobile phone contract, paying too much money and getting too little value".
- ⁵ The Consumer Experience. Ofcom 2010.
- ⁶ See Howard Beales, Richard Craswel and Steven Salop. Information Remedies for Consumer Protection. *The American Economic Review* 71 (2) May 1981.
- ⁷ Office of Fair Trading. What does Behavioural Economics Mean for Competition Policy OFT 1224 (March 2010). http://www.of.gov.uk/shared_of/economic_research/oft1224.pdf (last accessed July 5th 2011).
- ⁸ Harker, Michael, Mathieu, Laurence; and Waddams Price, Catherine (2005) Regulation and consumer representation. in D. Parker (ed), *International Handbook on Economic Regulation*, Edward Elgar, Chapter 10, 2006.
- ⁹ The OFT (2010) contrast Homo Economicus with Homo Sapiens to illustrate the limits of these assumptions of rationality and perfect information.
- ¹⁰ See OFT (2010). P5.
- ¹¹ See the qualitative research reported in Switched On: An Elaboration of Britain's Tech Savvy Consumers. Consumer Panel 2008.
- ¹² See Department for Business Innovation and Skills. Better Choices, Better Deals. <http://www.bis.gov.uk/news/topstories/2011/Apr/better-choices-better-deals>
- ¹³ See Communications Consumer Panel. 'Can I Cancel? Mobile Coverage and Contract Cancellation.' Consumer Research Report July 2010.
- ¹⁴ Thaler, Richard, H and Sunstein, Cass. 2009. *Nudge: Improving decisions about health, wealth and happiness*. Penguin.
- ¹⁵ See A Framework to Evaluate the Value of Next Generation Broadband. A Report by Plum Consulting for the Communications Consumer Panel. <http://www.communicationsconsumerpanel.org.uk/smartweb/digital-inclusion/nga-economic-and-social-value>
- ¹⁶ HM Treasury. The Green Book. Appraisal and Evaluation in Central Government. Treasury Guidance.
- ¹⁷ Ofcom Strategic Review of Consumer Switching September 2008.
- ¹⁸ BIS. Empowering and Protecting Consumers <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/e/11-970-empowering-protecting-consumers-consultation-on-institutional-changes.pdf>
- ¹⁹ BIS. Empowering and Protecting Consumers <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/e/11-970-empowering-protecting-consumers-consultation-on-inst>



LSE *media policy project*



About The LSE Media Policy Project aims to establish a deliberative relationship between policy makers, civil society actors, media professionals and relevant media research. We want policy makers to have timely access to the best policy-relevant research and better access to the views of civil society. We also hope to engage the policy community with research on the policy making process itself.

Links Project blog: <http://blogs.lse.ac.uk/mediapolicyproject/>
Twitter: <http://twitter.com/#!/LSEmediapolicy>
Facebook: <http://on.fb.me/dLN3Ov>

Contact Media.policyproject@lse.ac.uk



Lyle, Ken

From: Ken Lyle

Sent: 28 June 2011 18:18

To: Evans David (CCP)

Subject: Consultation on Protecting Consumers

It's not clear to what extent I'm supposed to respond to Q. nos. or whether some particular format is required.

Basically, I'm not too fussed about who is regulating, but the extent to which *anyone* is. I think there should be *more* resources given to enforcing things, and *more* strict regulation of the kind of things which cause people nuisance, hassle, confusion, and wasted time.

I'm responding as an individual.

I'm very concerned about the attitude implied by the phrasing (para. 12, page 7) "govt. understands that some people simply are unable to process all the available info... to exercise choice effectively". This is condescending & implies you think that anyone who cannot access & process an indefinite amount of marketing material (designed to confuse & bury crucial downsides in masses of small print), or doesn't have an indefinite amount of time to make each consumer decision, is some in kind of minority category of inadequate who is to be pitied. This is the kind of cynically-employed argument, designed to intimidate us into silence, which would be used by the least scrupulous commercial interests to oppose **all** consumer protection, & I'm worried about how it got into the consultation document.

The document itself is very long and repetitive, further putting off anyone wading through it to respond, but I hope to make a variety of points about the process by the means stated for such.

Q7:

No. But I'd not heard of CCASs anyway, & didn't know the eggs you give (eg ASA & GMC) had a common status. Generally, I thought they (exc. ASA which I've had some dealings with, & seem to be patsies to commercial pressures) were statutory bodies.

Generally, it seems to me that industries regulating themselves do so very lightly, and in the general perceived interest of mainstream businesses in it, against the interests of consumers, eg as regards clarity & ease of comparison.

Q17:

There should be *more* redress schemes. The fact that no simple redress is available to most things, so scoundrels just get a slap on the wrist if someone can be bothered to go through the time-consuming process needed to bring them to book, which few can, is why deceptive practices are so profitable.

Ken Lyle

Manchester Metropolitan University

Response to the Department for Business, Innovation and Skills consultation

“Empowering and Protecting
Consumers: Consultation on institutional changes
for provision of consumer information, advice,
education, advocacy and enforcement”

Manchester Metropolitan University



**The University for
world-class professionals**

To: David Evans

Department for Business Innovation and Skills
Consumer and Competition Policy Directorate
3rd floor
1 Victoria Street
London SW1H 0ET

Manchester Metropolitan University (MMU) is part of the largest higher education campus in the UK and one of the most extensive education centres in Europe. The University has been running Trading Standards programmes for almost 20 years and has an unrivalled reputation for experienced staff and specialist facilities. The courses are accredited by the Trading Standards Institute and are well established routes into careers in the trading standards profession.

MMU welcome the opportunity to comment on the consultation and are heartened that the consultation paper proposes a strengthening of the role for Trading Standards as the front line in consumer protection. The proposal envisages an enhanced role for Trading Standards as a frontline consumer protection service and the Government proposes 'to strengthen consumer enforcement by improving the national leadership and coordination capability of Trading Standards'. We agree with the Ministers suggestion in his Foreword that "Trading Standards and the Citizens Advice service both enjoy high levels of public awareness and public trust", and that this "is a significant benefit as

we strive to inform people better and bolster front-line protection". We are also encouraged by his indication that the "preference is to focus almost all Government spending on consumer policy on these two groups."

We feel that the proposed future consumer institutional landscape will help to ensure that markets work properly and competitively, that vulnerable consumers are protected from rogues wherever they live or work and that costly duplication of effort can be avoided.

To achieve this, we agree with the Consultation Proposal, Option 3, namely where the majority of the OFT's consumer enforcement functions are transferred to trading standards, is most likely to lead to improved leadership and coordination of enforcement across local authority boundaries.

The consultation envisages Trading Standards taking greater responsibility for more complex cases across boundaries. Furthermore, another consultation from BIS proposes the extension of the primary authority scheme to enable particular authorities to develop specific expertise; for example in food or product safety. (*The future of the Local Better Regulation Office and extending the benefits of the primary authority scheme* BIS June 2011).

The proposal to set up a Trading Standards Policy Board (TSPB) envisages trading standards involvement at a higher policy level uninhibited from taking robust action to deal with complex or risky cases against rogue traders.

Trading Standards professionals need to have the appropriate skills, knowledge and confidence to be able to fulfil their role in making markets work, protecting consumers and promoting fair competition. The role has great responsibility and requires a level of professionalism that is commensurate with a graduate qualification.

In keeping with this the Trading Standards Institute is seeking Chartered status from the Privy Council.

We feel that there is a substantial risk which may well be faced in the challenges of delivering this goal in the light of the dramatic fall in recruitment for the accredited graduate programmes in Higher Education.

MMU is now one of only two institutions which offer a graduate programme allowing graduate entry into the profession. In both cases the programmes are highly vulnerable. In our case, the number of students has fallen from strong cohorts of 30-40 in the 1990s to single figures, with just 3 graduating in 2011.

We feel strongly that it is important that prospective trading standards professionals receive the high standard, high quality and necessary education and training to be able to discharge their duties effectively. The economic and societal benefits extend beyond the continuation of the courses and employment of our graduates.

If the current range of programmes is discontinued the expertise will be lost and it seems unlikely that in the light of the changes in the funding to higher education those universities will have the appetite to seek to reinstate them.

We support the proposals set out in Option 3 for the transfer of consumer enforcement functions to Trading Standards and the creation of a Trading Standards Policy Board, and believe that strengthening the role of trading standards and building on the strong awareness of the service will help to attract talented individuals to the profession to meet the challenges of the coming years.

If the courses are discontinued, this will have an inevitable and detrimental impact on the number and quality of individuals wishing to enter the trading standards profession.

If the role and awareness of trading standards is increased this may be a positive step in ensuring the continuing future of accredited courses and the profession in general.

Yours sincerely

Michael Jeffrey
Head of Department of Food, Tourism, Management
Hollings Faculty
Manchester Metropolitan University

Steve Eddy LLM, LLB(Hons), PGCE, MTSI
Programme Leader
MSc/Pg Dip in Trading Standards

Jillian Gavin-Pitt LLM, LLB(Hons), PGC(AP), MTSI
Programme Leader
BSc (Hons) Trading Standards

McCulloch, David

Empowering and Protecting Consumers

Personal response by David McCulloch
Section Head (Trading Standards & Licensing)
West Dunbartonshire Council
27 September 2011

Information, Advice and Education

QUESTION 1. How do you think the provision of consumer information to consumers can be improved upon?

The creation of Consumer Direct in 2004 resolved the postcode lottery in the provision of first tier advice, however it did nothing to tackle the patchy provision of second tier advice i.e. investigation of those complex civil consumer complaints which cannot be resolved by self-help alone. Some Trading Standards services and some Citizens Advice Bureaux provide a good service but some do not. This consultation does not address that uneven level of service across the UK.

QUESTION 2. Do you agree that the OFT's consumer information role should be transferred to the Citizens Advice service?

Citizens Advice has a strong, national brand identity and is well-regarded by the public. I understand the argument for placing all public advice functions with a single body so I would not object in principle to the role being transferred from OFT.

However OFT specialises in protecting consumers of goods and services whereas Citizens Advice has a very much wider remit. OFT has been successful in raising the profile of consumer advice and there is a risk that consumer advice would have a much lower profile if it was part of an organisation with so many other competing priorities.

Citizens Advice has tended to focus on services which are more directly linked to poverty such as debt advice and welfare rights. If consumer advice is to be transferred to Citizens Advice, the organisation should be properly funded to take on the role so that they can give consumer advice a higher priority than it has had in the past.

A distinction must be made between Citizens Advice Scotland and the local Citizens Advice Bureaux. The consultation does not make clear who will handle second tier complaints which can't be resolved by self-help advice alone.

It is essential that Trading Standards continues to receive detailed information about all complaints made to Consumer Direct after its transfer to CAS so that we can identify any where enforcement action may be justified, including criminal matters. There is a concern that civil advisors may not correctly

identify matters which could require enforcement action, especially as the Enterprise Act 2002 and Consumer Protection from Unfair Trading Regulations 2008 extended the scope of issues which can be tackled using enforcement action.

The Government want to reduce public funding in response to the growth of private sector advice, however it is unclear who will monitor the quality and accuracy of that private sector provision and identify when public funding is required.

QUESTION 3. Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service?

If other consumer information and advice services are to transfer to Citizens Advice, it would make sense to transfer the Extra Help Unit as well.

QUESTION 4. Do you agree that the OFT's consumer education roles should be transferred to the Citizens Advice service? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?

My views are similar to those in our response to question 2 above.

QUESTION 5. Do you agree that the proposed Trading Standards Policy Board and the TSI should coordinate and support business-facing educational activities

Yes.

Consumer Code Approvals

QUESTION 6. What are the best options for current and prospective CCAS members to consider in the event that the Government's proposed consumer and competition landscape proposals are adopted?

Members will presumably consider running the codes as self-regulatory schemes. However CCAS has the advantage that it is backed by an official body and this gives it credibility in the eyes of customers that self-regulation will have difficulty matching.

QUESTION 7. Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of CCAS with effective alternative systems of accreditation?

CCAS has the advantage of being a national scheme recognised throughout the UK, and local authorities are not best-placed to take over the administration from OFT. Trader accreditation schemes are not a statutory function of local authorities and will not be a priority at a time of reducing budgets.

QUESTION 8. What are the lessons learned from the operation of CCAS which may help in establishing (or revising) voluntary schemes in the future?

I have no views on this matter.

QUESTION 9. What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?

In principle this could work but it may depend on whether BSI's charging structure is similar to OFT's.

QUESTION 10. What characteristics would a Kitemark® based code certification process need to have to meet industry requirements?

I have no views on this matter.

QUESTION 11. What is your view on extending the Primary Authority concept to code certification?

The primary authority concept enables businesses to avoid inconsistent enforcement action, and I do not understand how that concept can apply to codes.

Presumably the intention is to allow a trade association to pay a local authority to approve a code, and if the trade association does not police the code appropriately the primary authority can withdraw its approval. Many local authorities will not have the capacity to take on this specialised area of work, even for a fee. A tie-in to a nationally recognised brand is crucial but each primary authority will need to submit themselves to an audit, for example by BSI, and this may be expensive.

Consumer Advocacy

QUESTION 12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

I understand the logic in combining sectoral advocacy functions as it would reduce some costs and duplication of effort. However I have concerns at the possible loss of focus and expertise on specific sectors.

QUESTION 13. Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?

Yes. I especially support the inclusion of small business customers.

QUESTION 14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?

Yes, provided the organisation is properly funded to take on the role and can provide at least the same level of sector-specific expertise that is currently available.

QUESTION 15. What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

As Citizens Advice Scotland is a separate organisation from Citizens Advice in England and Wales, we presume that the sectoral advocacy bodies will of necessity have to have be separated from their English counterparts.

QUESTION 16. What are your views on these options for the transfer of information gathering powers? Which is preferable and why? Are there any other options for information-gathering powers?

I understand the concerns about giving information-gathering powers to a private charity that is not publicly accountable. However I consider that it would be cumbersome for CAS to have to ask a regulator to use powers on its behalf. I also understand the argument for maintaining a separation between advocacy body and regulator.

On balance I feel that the advocacy body should be given information-gathering powers. However Part 9 of the Enterprise Act simply regulates disclosure, and does not control whether the use of information-gathering powers is appropriate. Therefore there should be a mechanism for Government to oversee and audit the use of those powers to ensure they are used wisely.

QUESTION 17. What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?

This would depend on whether the number and complexity of complaints generated by the other sectors justifies a similar approach. In the absence of such information I cannot express a view.

QUESTION 18. Do you support the transfer of the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland and agree that as a result Consumer Focus Post Northern Ireland be abolished?

I have no views on this matter.

QUESTION 19. Do you agree that the Postal Services Redress Scheme should continue to apply in Northern Ireland to ensure that Northern Irish consumers retain the same access to redress as consumers elsewhere in the United Kingdom?

I have no views on this matter.

Enforcement of Consumer Protection Legislation

QUESTION 20. Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?

Option 1 is unrealistic. Local authority Trading Standards services do not have the resources or expertise to investigate complex structural problems in the way markets work.

Option 2 is unworkable. The National Audit Office recently found that 73% of consumer detriment from unfair practices arise as a result of threats that span more than one local authority area. However that figure was based on highly subjective information supplied by local authorities. In fact, casework cannot be neatly separated into local, regional and national issues. For example, if a consumer complains about an unsafe item purchased from a nationwide retailer, that is a local matter as a local person has suffered detriment, but it is also a national matter because the same item may be on sale across the UK.

Option 3 has some merit. It would encourage local authorities to work collaboratively. It would avoid any artificial distinction between local, regional and national issues. Indeed the main advantage could be the integration of decision-making so as to avoid any enforcement gap whereby local authorities facing budget pressures decline to get involved in cross-border activities, and the OFT cannot take up the slack due to their focus on even higher priorities.

Option 3 also has some drawbacks. The Trading Standards Policy Board (TSPB) would comprise Chief Trading Standards Officers. Reducing budgets and the loss of many senior posts mean that Chief TSOs are increasingly at a low level of seniority within their local authority, often only one grade above frontline officer level and three grades below Director level. They are able to spend less time supporting their chief officers' society as they must prioritise the needs of their local authority employer. It is perhaps naïve to suggest that "the TSPB would be able to exert significant influence over the entire Trading Standards system because of its authority" (para 5.52). There is always a risk that power-sharing leads to a loss of the strong, decisive, central authority of the OFT and this might exacerbate rather than address "the criticism that UK consumer enforcement is inconsistent and un-coordinated" (para 5.62).

The biggest risk associated with Option 3 (and Option 1) is that funding for the TSPB may be uncertain in the medium to long term. Whilst this is technically also true of local authorities and the OFT, in practice staff employed by long-established public bodies feel more secure in their posts than staff employed

in semi-permanent regional/national cross-border teams. One strength of the OFT is that it employs permanent staff who have acquired high levels of knowledge, experience and expertise. In contrast, the existing regional/national Trading Standards teams (e.g. money lending units, scambusters teams) have suffered from being funded on a short-term basis with resulting problems of recruitment and retention. Officers build up expertise only to leave to take up a permanent post elsewhere. It is hard to see how semi-permanent cross-border teams could replicate the expertise which exists within the OFT.

Referring to the budget for regional/national work, the consultation notes that “It would be essential that this was linked to, although separated in budget terms from, the ongoing activity carried out by individual local authorities” (para 5.52). Para 5.54 then says the national funding “should not become a crutch or bailout for local authorities that simply fail to invest enough resource in their core operations”. Assuming ‘core operations’ means local enforcement work, will the TSPB be required to monitor which local authorities are cutting back on regional/national work and then take steps to plug the gaps? If so, that may simply encourage local authorities to retrench towards purely local issues, simply exacerbating an existing trend. This effect may actually cancel out the advantage of integrated decision-making referred to above.

Another drawback of regional/national teams is that all client councils can be at the mercy of procedures within the single employing authority e.g. a problematic HR or Legal Services decision can have implications far beyond that one local authority.

The driver for change seems to be a concern that local authorities may cut back on regional/national work and retrench into purely local work. This is indeed a risk, but it’s hard to see why it should be any less likely if resources are transferred from OFT/CMA to a TSPB. As noted above, contrary to the statement in para 5.52, a TSPB is unlikely to have any significant influence over a local authority’s decision.

A common national issue is home authority work whereby one local authority undertakes a national co-ordination role for a large trader based in their area. This is exactly the sort of work which a cash-strapped local authority might rein back on.

The question therefore remains: which organisation is better equipped to step into the breach – TSPB or OFT/CMA? I believe the greater expertise located in a permanent central body counts for more than any influence which a TSPB might be able to wield.

Whilst Option 3 could perhaps be made to work, there is a risk that it could result in a less effective enforcement regime, especially in the short term as the TSPB feels its way with its new responsibilities. Those risks could be avoided by implementing what the consultation describes as ‘the most realistic alternative to Option 3’ described in paras 5.64 to 5.71.

There is however another possibility which is to transfer OFT responsibilities for national enforcement work to a formally-constituted Scottish national trading standards team that would be accountable to local authorities but would have more credibility and influence than a TSPB. An appropriate body would need to be identified to host such a central team, and such a team would have to be adequately and securely funded so that sufficient numbers of experienced and well-qualified staff would be attracted to work for it.

QUESTION 21. In relation to Option 3, do you agree with the Government's principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

For the reasons described in our answer to Q20 above, I believe there is a risk that the TSPB would not be as effective as the OFT and it is likely that this would be felt most acutely in the high-profile, high-risk national cases.

In addition to semi-permanent cross-border teams, the consultation suggests that individual local authorities could be funded to take the lead on specialist regional or national cases. However, unless they happen to have underused staff at their disposal (unlikely) those authorities would need to employ extra staff to take on the work but then dispose of them again when the work is complete. Again, it is hard to see how that arrangement could be as effective as the current OFT. In addition, it may be hard to persuade many local authorities to take on such work when they are cutting back on core work.

National teams are needed for work which requires specialist expertise, especially to support the smaller local authorities which cannot develop in-house expertise in matters which may only be required from time to time in each council area. In addition to illegal money lending and scambuster teams, there is a need for national teams with expertise to take on large-scale intellectual property cases, and complex investigations involving digital evidence.

Local authorities, including the larger ones, will be very reluctant to take on work which might result in substantial costs if the case is lost. This will be especially true in Scotland where councils are used to prosecution costs being paid by the Procurator Fiscal's service. This is already a consideration in relatively small-scale actions under Part 8 of the Enterprise Act and is probably the reason why councils continue to prefer to report matters to the Procurator Fiscal. If a regional/national team loses a case, the employing authority will want to ensure that it alone does not bear the financial burden. An indemnity fund is therefore essential.

QUESTION 22. Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards? If so, would one of the JEB models be the best solution? Which one and why?

This would be the option involving the lowest risk. As noted above, I don't believe that other options on the table provide many valuable opportunities.

I believe that the alleged difficulties in the relationship between Trading Standards and the OFT have been over-stated. Therefore a JEB could function well without having to be legally separate from the OFT's successor, the CMA.

QUESTION 23. In relation to the various JEB models, how would you ensure effective Trading Standards participation in the JEB? Do you think that this option would deliver integration of enforcement across local, regional and national levels? Should other organisations be involved in the JEB, either as members or as participants in discussions? Would retention of such unrestricted consumer enforcement powers and responsibilities affect the CMA's singularity of purpose and distract it from its core competition remit?

I see no reason why the JEB would have to have its own legal personality. I also see no need for OFT/CMA staff to be formally transferred to the JEB. The two chief officers societies would be able to ensure effective Trading Standards participation. Retention of consumer enforcement powers would of course distract from a core competition remit for the CMA, however I see no reason why the CMA could not function well with this wider remit.

QUESTION 24. How can your preferred new model best work with businesses?

A business reference panel could be established similar to the one which supports decision-making by LBRO/BRDO.

QUESTION 25. Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

Yes.

QUESTION 26. In an Option 3-based model, should this enforcement role be subject to procedural limitations?

I agree that the best test is for the CMA to identify a structural market problem which means that competition is not working properly. I also agree that there will need to be close co-operation between the TSPB and CMA as identified in para 27 of Annex D.

QUESTION 27. Do you agree that the CMA should enjoy significant discretion over when a market has structural problems, such as to give rise to its consumer enforcement powers?

Yes.

QUESTION 28. Do you agree that the CMA should retain responsibility for mixed market studies where there may be competition and consumer issues (supply and demand side market failures) present on the relevant market?

Yes.

QUESTION 29. Do you agree that in an Option 3-based model, the Citizens Advice service should in future be responsible for pure consumer detriment analysis and that the CMA should not perform pure consumer market studies? In such a case, do you agree that the CMA should stop performing market studies once it identifies that there is no structural problem in such markets and do you think there should be a duty on the Trading Standards Policy Board to prioritise cases referred by the CMA?

Yes to all questions.

QUESTION 30. Do you agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies in the proposed new landscape?

In an Option 3 scenario, yes, although this would be made easier if there was to be a JEB.

QUESTION 31. Do you agree that it would be helpful to have some resource that required joint agreement between the CMA, TSPB and consumer advocacy bodies for its release, to be used to investigate or address consumer and market issues that would otherwise risk an enforcement or advocacy gap? If so, at what level should such funds be set and how best should they be administered?

Yes, although again it would be made easier to manage in a JEB-based scenario.

QUESTION 32. Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not, how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?

This is a potential weakness of any TSPB-based solution as it may lack credibility and influence. As noted above, the TSPB may have difficulty directing or requesting an individual local authority to take action. The problem would be overcome by investing powers in a national team.

QUESTION 33. Do you agree the TSI would be the appropriate home for the OFT's professional guidance and training functions in the event of creation of a new single Competition and Markets Agency?

Yes.

QUESTION 34. Do you agree that the TSI is the most appropriate home for the OFT's international liaison and general policy functions in the event that the CMA has only a limited consumer enforcement role?

Yes

QUESTION 35. Do you think the requirement for LATSS' and other designated bodies' (under Part 8 of the Enterprise Act 2002) court orders to be directed by a central body needs to be retained in the new consumer enforcement model and if so, why?

No; simple co-ordination of enforcement action could be achieved via TSPB or JEB.

QUESTION 36. Do you agree that responsibility for chairing the consumer concurrencies group should remain with the CMA?

Yes

QUESTION 37. Do you agree that the current supercomplaints system to the OFT should be retained in respect of the CMA if the proposed changes go ahead?

Yes

QUESTION 38. Do you think that the supercomplaints process should be extended to require the Trading Standards Policy Board to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?

As the TSPB will have little real ability to compel anyone to take action, it seems unrealistic to expect it to be accountable for a failure to act.

QUESTION 39. Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?

The willingness of a local authority to agree to take on a national function is one of the weaknesses of the TSPB model.

QUESTION 40. Do you agree that the proposed changes to the consumer enforcement landscape should go ahead if the creation of the CMA is delayed? If not, why not?

No; a TSPB would do little to plug any looming enforcement gap and may simply exacerbate the problem by reducing the effectiveness of national enforcement. We must avoid implementing a quick fix that we could come to regret.

MD Insurance Services Ltd

David Evans
Consumer and Competition Policy Directorate
3rd Floor
1 Victoria Street
London
SW1H 0ET

26 September 2011

Dear Mr. Evans

Re: Empowering & Protecting Consumers – Consultation Response

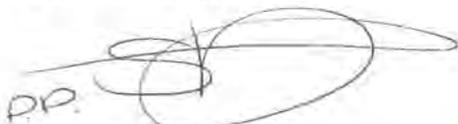
It is with interest I write in response to the ministers invitation on the above consultation. I understand and am encouraged by the objectives of the consultation to empower consumers, improve efficiencies and encourage stronger competition.

Our business is fundamentally linked with consumer protection through Structural Warranties provided through our companies Premier Guarantee and LABC Warranty, we are also proud founder members and architects of the Consumer Code for Homebuilders, you will therefore understand our desire to contribute to further good consumer protection and improved future changes.

The effectiveness, efficiency and competitiveness seem to be the 'key drivers' for the consultation, it is my belief and request that equal emphasis is placed on consistency and national governance maintained. It is for this reason I would ask you to consider that any demise of the Consumer Codes Approval Scheme (CCAS) in creating a single Competition and Markets Authority (CMA) does not lead to a devolved and fragmented local system of approval and audit that may advantage consumers in some parts of the country but not in others through inconsistent service.

I look forward to reading the conclusion of the consultation exercise, which hopefully will take into account the above.

Yours sincerely



Gary Devaney
Chairman & Managing Director

Haymarket Court
Hinson Street
Birkenhead
Merseyside
CH41 5BX

Telephone
0151 650 4300
Facsimile
0151 650 4344

Email
info@mdinsurance.co.uk

Mills, Sharon

02nd September 2011

To whom it may concern,

Re: Response to BIS consultation on empowering and protecting consumers

To introduce myself, my name is Sharon Mills and my relationship with Consumer Focus Wales began some 4yrs ago after the tragic death of my 5yr old son Mason. Mason contracted E.coli during the 2005 outbreak in S.Wales. During these last 4yrs Consumer Focus Wales have worked so hard to help try to improve Food Safety to give us the Consumer a voice and most importantly to supply us with the information we so desperately need to call for change. The support that my Family and I and other victims of this outbreak as received from Consumer Focus Wales as been overwhelming and for that we will all be eternally grateful.

I am concerned about the proposals to abolish Consumer Focus Wales and transfer some of the work it undertakes to Citizen's Advice. This is why I would like this letter to be treated as a response to the consulting on these proposals.

Having read the consultation, on page 20, it says that the Government is open to different approaches in Wales and Scotland. I think it is important that consideration is given to a different model in Wales which would allow for a Welsh specific solution to meet the needs of people living in Wales.

What is important about the way in which Consumer Focus Wales works at the moment is that it listens to people and organisations from across Wales in deciding what work to focus on. It doesn't rely on listening to the people that only use one particular service or have problems in a certain area, it works across a broad range of public and private sectors based on where it identifies that there are problems and that they can make a difference.

That is one of my concerns about Citizen's Advice being the organisation identified to take on some of the work of Consumer Focus in Wales.

Consumer Focus Wales role in raising awareness of food safety issues in Wales and ensuring that action has been taken to learn from the lessons of the 2005 outbreak of E.Coli O157 in South Wales has been absolutely vital to hold the agencies who have a role to play in this to account. If it wasn't for Consumer Focus Wales no one would be monitoring who had taken action to implement the key recommendations made by Professor Hugh Pennington as part of his inquiry into the outbreak. No one else was in a position to be independent enough to do this because the Food Standards Agency, Welsh Government and Local Authorities all had recommendations aimed at them.

If it wasn't for Consumer Focus Wales the profile of food safety would not have been raised over the past two years, significant advancements in implementing these recommendations wouldn't have been made or reported and most importantly myself and other families would continue to be in the dark about what action was being taken to ensure no other family has to go through what we have been through.

The work that Consumer Focus Wales has done has achieved so much that will make real and meaningful changes to how people in Wales feel about the safety of their food, both in terms of changes that people can see and are now aware of, like getting the Welsh Government to agree to introduce mandatory display of food hygiene ratings within food hygiene businesses so people can make informed decisions about where they eat, but also the changes behind the scenes. They have for instance encouraged the Food Standards Agency to clarify the law on the separation of raw and cooked food, over which there was a lot of confusion amongst food businesses, they have clarified the confusion local authorities in Wales had over some of Professor Pennington's recommendations around the need for effective food hygiene management systems (including how and when to use HACCP- the Hazard Analysis Critical Control system) and their work has led to the First Minister announcing a review of food safety law in Wales, which I believe has now been extended across the UK. Consumer Focus Wales has been a strong voice for any consumer in Wales who eats outside of the home.

I believe that Citizen's Advice identify problem areas to work in as a result of the people that they provide advice to. Food safety is not the type of issue that someone would ever seek advice about through this type of service. Therefore there is a real danger and significant risk that if Citizen's Advice are the organisation to be responsible for representing people in Wales in future, this type of important work and work like it, just won't get done.

I am firmly of the belief that if this work had not been carried by Consumer Focus Wales then Consumers would be none the wiser of the serious risks we are still facing with very little or no improvements being carried out.

I feel very strongly that the organisation that represents consumers like myself in Wales should be based in Wales and answerable to people in Wales through their representatives in the National Assembly. I also think that the organisation should be able to work on any issue where they identify there are issues for people in Wales relating to private businesses or public services, or both as in the case of food safety. I also think that organisation needs to be properly funded to ensure that it has a strong voice and can make itself heard on behalf of the people of Wales.

I'd like you to take into account my views as part of the consultation and to ask you to make sure that that can happen so we can have a body that we can have confidence that will stand up and deliver for Welsh people like Consumer Focus Wales has done.

Yours Sincerely

Sharon Mills

Milne, Claire

EMPOWERING AND PROTECTING CONSUMERS: Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement

This response is limited to consumer representation and advocacy in the communications sector, an area in which I have been continuously involved since 1989. For the past three years I have, at Ofcom's request, chaired the Consumer Forum for Communications (CFC), a grouping of third sector (consumer and public interest) representatives concerned with communications policy and regulation¹.

CFC was set up in 1999 for mutual support during the drafting and passage of the current Communications Act, and has continued to provide a forum for discussing relevant issues. It has around 40 organisational members, including all the major generalist consumer bodies and many smaller and specialist ones (several concerned with specific disabilities), all of which take part in CFC on a voluntary basis. While their constituencies and interests vary, all members have very limited resources for consumer advocacy in communications. Either they are small, or communications is only one small part of what they cover, and rarely a priority.

The consultation document states in paragraph 21:

There can be a need for effective advocacy in all consumer facing markets. It is, however, particularly important in regulated sectors where choice may be more limited and the goods and services provided (energy, water, telecoms, transport) are essential to ensure quality of life and social inclusion, especially for the poorest and most vulnerable citizens.

Few would disagree with this statement, and in particular with its inclusion of telecoms as an essential service where effective consumer advocacy is needed. Effective advocacy in any of the sectors mentioned calls for specialised knowledge and expertise. In telecoms, the knowledge and expertise requirements are great, being broad and constantly changing. Dedicated skilled staff are needed to do the job properly.

The document goes on to suggest (in paragraphs 4.32-4.44) setting up a Regulated Industries Unit (RIU) whose coverage would include communications, water and public transport, subject in each case to the agreement of the relevant authorities. For communications, this authority is Ofcom; and the proposed change would mean transferring the functions and budget of the Communications Consumer Panel (CCP) to the new RIU, which would combine the relevant strengths of Consumer Focus and Citizens Advice.

The remark in the consultation document (paragraph 4.27) about a single consumer response being more effective than two seems out of touch with reality. BIS is surely aware of the influence exerted by numbers of responses, which can outweigh strength of argument. Some other arguments in favour of an RIU have a good deal of merit. But it now looks unlikely that communications will be included in such a unit (or indeed that it will go beyond Consumer Focus' "core businesses" of energy and posts). Indications are that Ofcom (along with other "owners" of regulated industry consumer representation) has little incentive to change from the current arrangements; and no

¹ A list of members and notes of previous meetings are available at <http://www.ofcom.org.uk/about/organisations-we-work-with/consumer-forum-for-communications/>

funding seems to be proposed from any other source. As the document remarks, the Communications Consumer Panel has been drastically cut in size, budget and staffing. Ofcom's previous intention to close down the CCP has now changed, and the CCP looks likely to continue in this reduced state.

This leaves the communications sector with an advocacy budget of around £300,000, which Table 1 on page 40 of the document compares with ten times that amount for postal services and approaching twenty times that amount for each of energy and water. Even given that the CCP does not handle consumer complaints or enquiries, this situation seems disproportionate.

More important than comparison with other sectors, however, is the need itself. With widespread take-up of broadband, and technological convergence, communications is already a service which every household in the country relies on. The push for more and faster connectivity, and the move to e-government, mean its importance will grow further. As well as guidance, information and support to individual consumers (some of which is done by Ofcom itself), there are many important policy and regulatory decisions to be made in which consumer representation and advocacy are needed. Not only does such advocacy often provide valuable additional evidence for decision-making, it may well be needed to balance lobbying by an articulate and increasingly litigious industry.

The CCP was founded at the same time as Ofcom, and after a slow start has done good work. It is a board of non-executives appointed on Nolan principles, supported by staff seconded from Ofcom. Although its early budget was three times the present one, it has always underlined its need to be selective in the issues it takes up, and has tended to focus on areas of long-term strategic importance. It has had a close and often non-transparent relationship with Ofcom, engaging with issues before they reach the public.

The CCP's strength as a close companion to Ofcom has to some extent been complemented by external consumer voices, notably from both Consumer Focus and Citizens Advice – though these have devoted little effort to communications, in part because of the existence of the CCP. Many issues that have deserved attention from a consumer viewpoint have, however, received little or none. For example, industry self-regulatory initiatives have generally taken place without consumer input. Loss of experienced staff from the outside bodies (intensified during this long period of uncertainty) means there is now even less expertise to draw on for such purposes.

Ofcom has also had five Advisory Committees of external members, again non-executive board style, which meet quarterly, four representing the four countries of the UK and one (ACOD) representing older and disabled consumers. These too have recently been trimmed to save Ofcom's budget.

Ofcom itself has a strong team devoted to consumer affairs and consumer policy, but this operates within an overall Ofcom framework which must balance competing stakeholder interests. The team has many useful achievements for consumers to its credit, but there is also a significant list of areas where industry interests appear to have prevailed, including:

- Apparent abandonment of attempts to make comparable quality of service measurements widely available.

- A long-standing preference for leaving provision of consumer price information to the market, which has led to full comparisons being next to impossible.
- A project on consumer switching which has been running for more than five years already and looks like taking several more to show any results.
- Only recently (after pressure from the CCP) has Ofcom agreed to identify the companies about which it receives complaints.

The consultation document, in paragraph 4.19, says:

BIS is exploring options for consumer representation in communications to be enhanced within the new consumer landscape model.

On current showing, however, it looks likely that consumer representation in communications will be greatly weakened:

- The new slimmer CCP will need to prioritise issues that it can take up even more strictly than before; the Advisory Committees have even less resource than before.
- The new Regulated Industries Unit (if it exists) will have little or no specialised capability in communications.
- Ofcom will receive less independent and critical input from a consumer viewpoint; its ability to take decisions which are good for consumers could be seriously eroded.

It cannot be healthy that a regulator, however well-meaning, should control nearly all the available resources for representing consumer interests in its areas of work. Consumers of communications services deserve an independent, transparent, expert, properly resourced voice. BIS urgently needs to reconsider the funding and organisation of consumer representation in communications.

Claire Milne

Mobile Broadband Group



The Mobile Broadband Group

www.mobilebroadbandgroup.com

5th October 2011

Mr David Evans
Consumer and Competition Policy Directorate
Department of Business Innovation and Skills
1 Victoria Street
London SW1H 0ET

Dear Mr Evans

Empowering and protecting consumers

The Mobile Broadband Group ('MBG', whose members are Vodafone, Three, O2 and Everything Everywhere – which operates the Orange and T-Mobile brands in the UK) welcomes the opportunity to respond to BIS's consultation on empowering and protecting consumers.

By way of background, there are now in excess of 80 million mobile subscriptions in the UK, including 5 million mobile broadband users. In the first twenty five years or so of the industry's existence, growth came mostly from voice calls and text messaging. Mobile voice call minutes, at 125 billion minutes per annum, have now caught up with fixed voice call minutes and will very likely exceed them in the current year. Customers sent 129 billion text messages in 2010, up 25% on the previous year. Mobile data volumes are now growing very rapidly and increased by 3800% in the period Q4 2007 to Q4 2010¹.

This level of ongoing success has been achieved by a tireless search to identify customer needs and responding to them with products and services that they want to buy, at prices they are willing to pay. In addition to paying very close attention to customers' needs, the mobile operators both individually and through the MBG have interacted with a wide range of bodies representing consumers, such as:

- The consumer directorate of Ofcom
- The Consumer Communications Panel (CCP)
- The Consumer Forum for communications
- Consumer Focus
- The Citizens Advice Bureau
- Trading standards

¹ Ofcom Communications Market Report 2011

Mobile operators also engage extensively with groups with a particular focus, such as those with disabilities.

Our experience is that there is quite a bit of overlap between the activities carried out by these organisations. In the recent past, Ofcom, the Communications Consumer Panel and Consumer Focus have all carried out research projects on the future priorities for the mobile industry and have reached broadly the same conclusions.

We therefore welcome the government's intention of rationalising the landscape for consumer representation. We support an approach along the following lines:

- A consumer advocacy body that can take an impartial and informed overview of consumer matters across the regulated sectors.
- It is important that the Government's new arrangements have the capability to consider strategic issues, as they are not always the ones that would necessarily be identified by taking the top issues raised in the local branches of CABs and Trading Standards (although there is overlap).
- As a counterpoint to strengthening external consumer representation, the Government should also consider how the duties of Ofcom could be focussed more on economic regulation; setting the overall framework and seeking to deliver benefits for consumers through competition, which is where Ofcom's greatest successes have been achieved.

The MBG has also considered the Government's proposals for improving enforcement of trading standards. Our priority for the institutional arrangements in this area is that standards be consistently applied across the UK.

Each mobile operator sells its services (although not exclusively) through a nationwide chain of branded retail stores, as well as on-line. As such, most have nominated a Primary Authority for matters relating to trading standards. While mobile operators have good relations with their home authorities and seek to keep them abreast of new products and services, the mobile offering is reasonably complex and issues do arise from time to time. Our experience is that these are promptly and professionally dealt with through the established channels of the respective Primary Authorities.

During a previous consultation by the OFT on the pilot scheme for introducing civil sanctions under the Regulatory Enforcement and Sanctions Act 2008 (in February 2011), we had expressed concerns that local enforcement would undermine the consistency achieved through the Primary Authority schemes. We do not hold a strong view about the exact implementation but we would not support proposals that would undermine consistent enforcement across local authority boundaries for those retailers that operate on-line and with a physical national footprint.

Yours sincerely,

Hamish MacLeod

Hamish MacLeod, Chair

Money Advice Scotland

Response by Money Advice Scotland

BIS CONSULTATION ON INSTITUTIONAL CHANGES FOR PROVISION OF CONSUMER INFORMATION, ADVICE, EDUCATION, ADVOCACY AND ENFORCEMENT

Background to Money Advice Scotland

Money Advice Scotland (MAS) is the national umbrella organisation in Scotland which aims to champion and support the continuing development of free, independent, impartial, confidential money advice, and financial inclusion. Its vision is to “raise the standards of money advice and financial inclusion in Scotland”.

Money Advice Scotland and its relationship with Consumer Focus Scotland, Citizens Advice Scotland and the Trading Standards Service

MAS works with various partners in Scotland regarding consumer advice etc. This includes partners Consumer Focus Scotland, Citizens Advice Scotland and Trading Standards Departments. Between them these organisations in their own ways have played a significant role in Scotland in providing Consumer information, advice, education Advocacy and enforcement. . We also work with the Office of Fair Trading, Financial Services Authority and the Money Advice Services.

General comments regarding the Consultation

Money Advice Scotland welcomes the opportunity to contribute to this consultation. Our response is a general one rather than specifically aimed at answering the questions within the consultation.

Money Advice Scotland supports the need for changes to the institutional landscape for consumer advice, advocacy and enforcement. It is our view that this consultation provides an excellent platform for an overhaul of the specific needs of consumers in Scotland, and the Scottish context in which consumer advocacy and support services can operate most effectively.

It is very important now, given the different consumer world we live in, given the range of services and delivery channels, all of which potentially could give consumers problems. For these reasons it is vitally important that any new framework adequately supports consumers in Scotland.

We fully acknowledge that as this is a difficult time, in economic terms, and as such the costs of any changes will need to reflect a cost benefit to the public purse, as well as delivering much needed services.

Consumer advocacy, advice, information, education and enforcement have never been more important than they are now for consumers in Scotland. Households are really feeling the pinch, particularly given the recent announcements regarding increases in fuel. Consumers in rural and Island communities in Scotland (although not exclusively) will be hard hit by the increases in fuel, coupled with the general increases in living costs. We also recognise that salaries and benefits have not moved in keeping with the increasing costs. As such people are worse off, and will need advice, information, advocacy etc even more than ever. Our experience of dealing with agencies offering debt advice is that more people from different socio-economic groups (in the upper groups) are seeking advice than ever before. This is a signal that the world is changing and how people seek advice is changing. Traditionally, where some people could afford to seek advice they would contact a lawyer, they are now using free advice services.

The role of the Scottish Government

As mentioned earlier, it is our view that there is an opportunity to improve the whole consumer landscape. To that end we believe that Scottish Government should have direct responsibility for education, advice and advocacy of its consumers.

Consumer advocacy

It is well documented that many of the everyday issues facing Scotland's consumers are affected by the different economic, geographic and demographic makeup of Scotland, alongside its separate legal system, different cultures and belief systems.

Much of Scotland is rural and/or remote, which can be isolating for consumers, and reduces access to services. Scotland also has many consumers who live on islands which further exacerbate their problems of accessing goods and services. Where consumers can access services it is expensive for them to do so due to higher fuel/travel costs.

For consumers in Scotland already many of the issues which they deal with on a daily basis are the responsibility of Scottish Government. These include, legal services, health, transport, food and diet, social care, energy efficiency, water, digital communications, housing and education.

Given how active consumers are in Scotland and buying services across the public and private sectors, it is essential that their voices are heard as consumers, and policies are made which reflect the needs of consumers in Scotland. We believe that the Scottish Government is ideally situated to do just that.

Consumer education, information and advice

As with consumer advocacy, we believe it would be in the best interests of consumers if clear responsibility for the delivery of consumer education, information and advice, together with the funding for their provision, were to lie with the Scottish Government.

We are aware there are some areas such as legal education, housing advice and financial capability are seen to be devolved (even though financial services is reserved). This leads to confusion, as they are inextricably linked, yet separate in practice.

If the responsibility for consumer education and advice, together with the appropriate funding, were to be assumed by the Scottish Government - subject to agreement with the UK Government - this would enable the Scottish Government to consider the delivery of education, information and advice on consumer matters, legal rights and responsibilities, money advice and financial capability, and housing advice in a co-ordinated way, which would be cost effective. This could only lead to improved access to information and advice for the people of Scotland.

Consumer enforcement

Whilst we fully support local trading standards departments having a central role in enforcement, given the current constraints and how different the shape of Trading Standards Departments are from area to area, it is unlikely that across Scotland the existing Trading Standards Service would be able to cope, and provide a consistent quality service, unless it was given significant resources to do so. However, even with additional resources it is unlikely that an enhanced role as suggested by the UK government in the proposals for change, will be possible without a change in legislative powers.

Should there be a change in powers that will enable a clear administrative role for Scottish Government which would in turn give added value for consumers and businesses alike.

Future consumer advocacy and advice in Scotland

We agree with Consumer Focus Scotland that a Scottish model for the delivery of consumer advocacy and advice should be able to meet the needs of this difficult time for consumers, and should be able to represent the consumer interest on issues that will affect all of us in the future. It should learn from and consolidate the strengths of the current providers of consumer advice and consumer advocacy. We also endorse their 10 tests for advocacy and advice in Scotland as follows.

- 1) Knowledgeable and easily accessible consumer advice services for individual consumers throughout Scotland, to assist with their problems, complaints and concerns
- 2) Data from these problems and complaints should help to inform consumer advocacy and representation. It needs to be collected and constructed in a way that enables investigation and analysis by consumer bodies and providers of private and public services.

In addition to support and advice for individual consumers, there needs to be strong, expert and responsible consumer advocacy for the collective consumer interest. Such consumer advocacy must:

- 3) represent Scotland's consumers across all markets: energy, post, water,

transport, digital communications, and all other private markets and public services

4) represent the issues and concerns of Scotland's consumers in the development of UK wide policy with a strong and distinct voice, working closely with any Regulated Industries Unit and through effective partnerships with UK wide bodies on matters of UK interest

5) represent the consumer voice in the many policy areas that are devolved to Scotland

6) be forward looking, able to anticipate the future consumer issues as well as address the present ones

7) work in the interests of all consumers – including those with disabilities, older people, those on low incomes and those living in remote rural areas

8) be expert and grounded: its voice based in evidence and independent research as well as in consumers' experiences, and in relevant economic and legal expertise

9) be backed by statutory powers that can be exercised by the consumer advocacy body itself, independently, without recourse to others

10) be publicly accountable in Scotland, to the people in whose interests it acts

A Scottish model for consumer advocacy

Like Consumer Focus Scotland we believe that a strong, expert and responsible consumer voice benefits both consumers and good businesses. Stability and predictability are important for economic growth, and early and strong consumer representation (and where necessary intervention) to business, regulators and policy makers can increase these and help to ensure favourable conditions for growth, rather than allowing situations to arise which require to be addressed and changes to be made after problems have arisen.

In the Scottish context, we believe there should be consolidation of consumer advocacy for the collective consumer interest into a single, expert body which is able to represent Scotland's consumers across all areas of the economy and regulated industries, as well as public services. This would lead to economies of scale, which would in turn give efficiencies.

Such a new body should take on responsibility for consumer advocacy in all sectors i.e. the existing scope of Consumer Focus Scotland (energy, post, water, public services, food, health, housing, regulation, redress and legal services, digital communications), and with the addition of transport (bus, train and air), where existing advocacy arrangements are fragmented, crowded and complex.

This would allow the vast expertise and working methods of Consumer Focus Scotland to be retained, ensuring that the new consumer advocacy body would continue to be effective on behalf of the consumer interest in Scotland.

It will be critical to ensure that effective arrangements will be put in place with

consumer advocacy bodies working on issues affecting consumers across the UK, as well as those working specifically in other devolved contexts, to ensure that issues affecting consumers in Scotland are taken into account in UK wide policy and practices, and to work on issues of common interest

We believe that a Scottish consumer advocacy body, acting in the collective consumer interest, should be a public body. Firstly because it will be important that any new consumer advocacy body has statutory powers, such as Consumer Focus currently has (for example to require businesses, as well as regulators to supply it with information), in order to secure its effectiveness in carrying out its functions. We would question the feasibility and appropriateness of Parliament giving statutory powers to a charity (such as Citizens Advice/ Citizens Advice Scotland), which is not accountable to Parliament. The alternative of such powers resting with others, such as Ministers, to be exercised at the request of the consumer advocacy body, raises questions over its ability to exercise such powers independently, in the consumer interest only. Furthermore, we believe that any consumer advocacy body, in order to be trusted by consumers, must be publicly accountable, through and to Parliament; must be required to consult and report on its work; and have processes that are fully transparent - for example in relation to appointments to its governing body.

The cost of establishing a Scottish consumer advocacy body need not be a significant burden on the public purse: it can be met in large measure by levies on the relevant (regulated) industries, as is already the case for energy, water and post. As Scotland's consumers have paid through their bills for these levies, they should be able to expect their specific concerns to be raised and their voice to be both funded by those industries and properly represented in Scotland.

Work on advocating for the consumer interest in other areas of the economy and in public services is currently funded by the UK Department for Business, Innovation and Skills. Clearly it would be necessary to secure an appropriate share of this funding to ensure that consumer advocacy in Scotland in these areas can continue.

We are aware that the Scottish Government is committed to simplifying Scotland's public bodies landscape, and aims to reduce the number of public bodies. A new Scottish consumer advocacy body could build on the recent consolidation of the Scottish Consumer Council, energywatch Scotland, Postwatch Scotland, and the advocacy functions of Waterwatch Scotland, by also absorbing the functions of existing bodies such as the Public Transport Users' Committee for Scotland and the Mobility and Access Committee for Scotland.

Conclusion

Life is getting harder for Scotland's consumers for all the reasons earlier stated. It is important now to ensure that what the UK and Scottish Governments decide to do in

reshaping the delivery of consumer information, advice, education, advocacy and enforcement meets both the needs of the individual and the collective needs of consumers in Scotland.

Based on many years of expertise in representing the interests of consumers with debt problems in Scotland, we believe that consumer advice and advocacy services must continue to be a priority for any government – these will become more and more important as markets become more complex, and new markets emerge, and indeed, as more abuse takes place.

In Scotland we believe there is now an opportunity to ensure that the Scottish Government is given the responsibility to ensure that appropriate and accountable consumer advice and advocacy arrangements are put in place, through a distinct delivery model that meets the needs of the people of Scotland. We want to work with government in producing a positive outcome for everyone.

Yvonne MacDermid
Chief Executive, Money Advice Scotland

Money Advice Service



Consultation response

BIS Empowering and Protecting Consumers: Consultation on Institutional Changes for Provision of Consumer Information, Advice, Education, Advocacy and Enforcement

from the Money Advice
Service

September 2011

About us

1. The Money Advice Service is a nationwide service that provides free, unbiased advice to help everyone make the most of their money. We do this by offering practical money advice online, over the phone and face-to-face.
2. Our statutory function is to enhance the understanding and knowledge of members of the public about financial matters (including the UK financial system), and their ability to manage their own financial affairs and take control of their money. Our statutory remit includes, in particular:
 - a. promoting awareness of the benefits of financial planning;
 - b. promoting awareness of the financial advantages and disadvantages in relation to the supply of particular kinds of goods or services;
 - c. promoting awareness of the benefits and risks associated with different kinds of financial dealing;
 - d. the publication of educational materials or the carrying out of other educational activities; and
 - e. the provision of information and advice to members of the public.
3. We expect the coordination of debt advice to be added to these responsibilities during the passage of the Financial Services Bill in this session of Parliament.
4. We empower people to engage confidently with the retail financial services market, engendering a sense of control of their financial affairs, promoting informed choices, providing trusted, free non-sales advice, and encouraging and enabling people to take appropriate further action.
5. We play a key role in the consumer advice landscape. Our consultation response welcomes reduced complexity in the landscape and encourages a joined up approach. We make observations about how BIS' proposals will fit with the separate – and evolving – financial services environment for consumers which is outside the scope of this consultation. Simplicity and clarity can only be achieved if in-scope and out-of-scope issues are considered together. Money matters cannot be completely set aside because they are so often interlinked with other issues, and we need seamless customer journeys across the piece.

Response summary

6. The Money Advice Service supports policy which empowers consumers and supports markets to deliver good consumer outcomes.
7. Government-backed, we are an independent, impartial and authoritative source of money advice. We welcome the distinct space the consultation sets out for advice and information relating to financial services, recognising the unique arrangements for

consumer protection regulation and enforcement in this arena, including consumer representation, information, advice and education.

8. We support improving the coordination of consumer advice and reducing complexity for consumers. Whilst financial services are out of scope of the consultation, we would welcome more regard for financial education, information and advice. To achieve simplicity and clarity in the overall consumer landscape, the proposals need to take account of the consumer landscape in money and financial services. Money issues are often linked with other issues, so we need seamless customer journeys across the piece.
9. The Money Advice Service is contributing to the move to introduce more clarity into the overall landscape. From April 2012, we will be responsible for the coordination of the debt advice services across the UK and are undertaking a strategic review of the debt advice sector.
10. The new landscape should be integrated and joined up, with clear relationships between organisations with a remit for consumer advice and clear signposting for consumers. This integration should not involve overly complex governance arrangements stipulating how consumer advice organisations link. However there should be clarity and mutual agreement regarding the role that organisations will play in the consumer advice landscape. We already have clear links with the FSA, FOS and FSCS and will continue working with them, and with the FCA in the future. Specifically in relation to debt advice we are ensuring that we are joined up with organisations such as Citizens Advice, the Consumer Credit Counselling Service, the Money Advice Trust and Payplan.

Question 1 – How do you think the provision of consumer information can be improved?

Better and more transparent coordination

11. Those in the consumer advice landscape have a collective responsibility to provide good customer services that are joined up. Whilst consumers might not completely appreciate the differences between the remits of different organisations they do need to know where to turn in the first instance. This will be dependent on effectively coordinated communications and marketing.
12. It is also important that consumer information services are co-ordinated well with clear referral and signposting, so that such services present a seamless, cohesive customer journey. Whilst financial education, information and advice are out of scope for the consultation, we would welcome more regard for this as money issues are so often linked with other issues, and cannot be considered completely separately. Full consideration of the complete consumer landscape will better achieve the desired simplicity and clarity in the overall landscape. This in turn can help to enable seamless customer journeys across the piece. For example, our online money health check is designed to identify when an individual may be in a crisis debt situation; if this is the case, rather than produce a customised and complete action plan, the customer is instead presented with an option to focus solely on their day-to-day money, and is quickly routed to some initial debt advice and referred to specialist debt support e.g. to the National Debtline and/or the Money Advice Trust.
13. The Money Advice Service will be a key part of a joined up landscape of consumer advice services and we already work closely with a number of stakeholders, including Government departments, regulators and consumer bodies. For example:
 - We currently work closely with Citizens Advice and Citizens Advice Scotland on the delivery of our face-to-face money advice service in Wales and Scotland.
 - From April 2012, the Money Advice Service will be responsible for the coordination of debt advice services across the UK. We are currently undertaking a strategic review of the debt advice sector and how best to co-ordinate and integrate this into the overall financial advice and consumer advice landscape. Specifically in relation to debt advice we are ensuring that we are joined up with organisations such as Citizens Advice, the Consumer Credit Counselling Service, the Money Advice Trust and Payplan in order to avoid unnecessary duplication.
 - On pension reforms we are working closely with the DWP, The Pensions Advisory Service and The Pensions Regulator.
 - Our services are designed to link to other organisations where appropriate. For example, the divorce and separation section of our website (<http://www.moneyadvice.service.org.uk/divorce>) is designed to highlight the network of support available and contains reciprocal links to organisations such as Relate, Families Need Fathers and National Family Mediation.

14. We will continue to collaborate with other organisations in the new advice landscape and believe that our extensive knowledge and experience of consumer finance issues, along with our range of established relationships, enables us to play an important and complementary role.

Engaging consumers

15. In addition to being joined up, consumer information and advice services must also be easily accessible and engage consumers in the right way. This means:
 - a. Providing clear, accurate jargon-free advice;
 - b. Making sure material is suitable for diverse audiences, reaching people at key life stages when they are open to change (e.g. having a baby or when facing redundancy), at the right place, using the appropriate channel, and with the relevant information, education and/or advice; and
 - c. Taking into account the social, cognitive and emotional factors that influence people's decision-making, by applying behavioural insight.
16. More generally, the services need to be engaging, attractive and compelling to target audiences, so they are:
 - a. appropriately promoted;
 - b. easily understandable;
 - c. trustworthy; and
 - d. for people 'like me'.
17. We would be happy to share our expertise in delivering information, education and advice so that it can be applied more widely than in the personal finance arena, and would encourage others to use behavioural-insight to deliver effective consumer education. We have already talked through the results of our own behavioural research with the consumer empowerment team at BIS and all the material is available on our website¹. This use of behavioural-insight could help to tackle the inertia that significant proportions of the population face in areas of their lives that involve difficult choices or perhaps even too much choice and complexity.

¹ Transforming Financial Behaviour: Developing interventions that build financial capability, CFEB CR01 - July 2010, <http://www.moneyadvice.org.uk/about/corporateinformation/research.aspx>

Question 4 – Do you agree that the OFT’s consumer education roles should be transferred to the Citizens Advice service? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?

18. We recognise the high level of brand awareness that Citizens Advice has and the success it has achieved to date in helping consumers – making them a strong candidate to take ownership of the OFT’s consumer education roles. If the OFT’s consumer information, education and advice roles are transferred to Citizens Advice it is important that the quality of the information, and access to expertise which informs these current roles, is maintained and reviewed against any widened remit. Consumers and stakeholders will also need to be made aware of the changes in an effective way to avoid any detriment.
19. We support moves which make it easier for consumers to access the information they need and which reduce complexity. To ensure that we can effectively collaborate to reduce complexity in the overall landscape, we would welcome clarification of the success measures Citizens Advice will be working to. This will help everyone in the consumer advice landscape better understand the differing remits of different advice organisations and help to achieve a joined up approach.
20. We currently work closely with Citizens Advice and Citizens Advice Scotland on the delivery of our face-to-face money advice service in Wales and Scotland. In recognition of their expanded remit, we will continue our dialogue with Citizens Advice to ensure that we are working collaboratively to reduce the complexity of the overall landscape, for the benefit of consumers.

Frederick Good
frederick.good@moneyadviceservice.org.uk
Tel: 0207 943 0555

Published: September 2011

The Money Advice Service

25 The North Colonnade
Canary Wharf
London
E14 5HS

Tel: 0207 943 0555

Contact enquiries@moneyadviceservice.org.uk

Money Advice Trust

BIS Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement

Response by the Money Advice Trust (September 2011)



CONTENTS

Introduction

About the Money Advice Trust	2
A partnership approach – who we have consulted	2
Responses to individual questions	3

INTRODUCTION

About the Money Advice Trust

The Money Advice Trust (MAT) is a charity formed in 1991 to increase the quality and availability of money advice in the UK. We work with the UK's leading money advice agencies, government and the private sector to increase the availability of money advice, improve its quality, and enhance the efficiency and effectiveness of its delivery.

MAT's vision is to help people across the UK to tackle their debts and manage their money wisely. MAT aims to support individuals and micro-businesses in the UK through their debts and into financial health, and to improve the capability, quality and efficient delivery of free independent money advice by:

- Delivering advice to the public via National Debtline, Business Debtline and My Money Steps;
- Supporting advisers;
- Making the case for free money advice;
- Co-ordinating initiatives to improve money advice;
- Sharing research and information to shape and influence policy.

How we have drawn up this response

In preparing this response, we have consulted our partner agencies in the free-to-client money advice sector in order to achieve a consensus view.

On this occasion a number of our usual partners have indicated that they will be submitting a separate response. These submissions may include issues not covered below.

We are therefore submitting this response on behalf of Money Advice Trust, National Debtline, Business Debtline and Payplan.

Please note that we consent to public disclosure of this response.

Introductory comment

We welcome the opportunity to comment on this important and complex area and base our responses - where possible - on the evidence we gather as we assist consumers in debt.

Broadly, we have not taken a view in this paper as to which organisation should take on particular role(s), but we do outline here how we think these roles should be carried out and what resources we think they need.

Responses to individual questions

Question 1 How do you think the provision of consumer information to consumers can be improved upon?

There should be widespread dissemination of consumer information in a variety of targeted formats. There needs to be improved coordination of resources should be avoided. However, we favour a variety of approaches as this is often better than a “one-size-fits-all” approach. We would suggest that duplication is only a real problem where it sends a confusing message, wastes resources or leads to unnecessary gaps in provision.

There should be a national profile for bodies charged with the provision of consumer information. Any strategy developed should use a variety of formats and channels to reach the widest variety of consumers including the most vulnerable groups. A nationally recognised and trusted brand would be an advantage with this strategy.

We note that there may be a possible overlap with the work of the Money Advice Service on some of the proposals for ‘consumer information’ contained within the paper. There would need to be very clear boundaries established to allow consumers and the sector to understand which body covers which issues. From a debt advice perspective, it is easy to identify many issues which could be classed as financial or consumer for example, scams may be in relation to texts offering debt remedies.

Issues such as illegal money-lending, PPI miss-selling, utility debt, and harassment could all be dealt with on the face of it as either financial or consumer issues and therefore it is not clear which would fall under the remit of the Money Advice Service and which would be covered by these proposals. We are concerned that there would be a risk of consumer detriment if any of these ‘cross-over’ issues fall between the remit of different bodies, particularly in relation to where and how to seek redress.

Having said this, however, once remits are clear, some duplication might help to strengthen the messages as long as there is consistency in messaging and there is no unnecessary duplication of resources. We would urge sufficient funding to be allocated to the provision of consumer information. This is crucial to ensure that the greatest possible impact is achieved with the resources provided.

Question 2 Do you agree that the OFT's consumer information role should be transferred to the Citizens Advice Service?

We feel it is extremely important to preserve the vital functions of the consumer information role currently carried out by the OFT, Consumer Direct and Consumer Focus. As above, we do not propose in this response to comment on who should take on this information role. Consumer information is a vital function and the relevant body needs to be equipped with sufficient skills and resources to orchestrate national information campaigns. It is also vital to consider the importance of ensuring a variety of approaches is taken to reach different audiences and vulnerable groups.

Question 3 Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service?

The Extra Help Unit is a specialist team that currently operates within Consumer Focus and provides assistance and advice for vulnerable gas and electricity customers who are facing difficulties because of disconnection/potential disconnection of supply. It is effectively a "second tier" specialist advice service which receives enquiries from Consumer Direct, local authorities and Citizens Advice Bureaux.

We agree that it is vital to maintain the Extra Help Unit whatever the fate of Consumer Focus. The Extra Help Unit's remit has already been diminished following the demise of Energywatch which had direct responsibility for dealing with all fuel complaints and intervening in disputes.

It is very important that the current sources of seamless referral through Consumer Direct and both local and national advice agencies are maintained and expanded to ensure that vulnerable consumers will reach the help they need.

Question 4 Do you agree that the OFT’s consumer education roles should be transferred to the Citizens Advice service? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?

It is vital to preserve the OFT’s consumer education role no matter who takes the lead in this area. However, we are concerned that this approach to public information on consumer education could also result in some overlap with the role of the Money Advice Service. See our response to question 1 above.

Section 2.22 of the paper states:

“This consultation does not address financial education. The Money Advice Service was established in the Financial Services Act 2010 to promote understanding of the financial system and raise levels of financial capability across the UK. Other public services such as health services are also not covered.”

We feel that consumer and financial education overlap substantially and we are worried that this will increase public confusion over trusted brands. The different brands will need to be very clear as to what educational subjects are covered and services provided to avoid confusion.

We do not have a definitive view on how consumer education activity should be managed and coordinated. It is very important to ensure that different types of activity are undertaken to ensure that different groups can be targeted. Clearly media campaigns can be very effective as well as more resource intensive, local campaigns for example, around loan sharks on an estate can be equally effective within a limited area.

The growing influence of social media should also be utilised. We note the contribution made by Consumer Focus on consumer empowerment in their interim response to this consultation.¹

“As consumers become better connected through social networks, they grow more powerful and behaviours change-changing the dynamics of markets and the economy in the process.”

¹ <http://www.consumerfocus.org.uk/files/2009/06/Consumer-Focus-interim-response-to-the-consultation-on-empowering-and-protecting-consumers.pdf>

Question 5 Do you agree that the proposed Trading Standards Policy Board and the TSI should coordinate and support business-facing educational activities?

We would support the continuation of business-facing educational activities. If set up, this work should be coordinated by the proposed Trading Standards Policy Board, otherwise the coordination function should remain with the OFT in an enhanced role. As outlined in our response to question 22 of this paper we are not yet convinced that setting up a new body is cost-effective or an efficient use of resources and expertise.

Question 6 What are the best options for current and prospective CCAS members to consider in the event that the Government's proposed consumer and competition landscape proposals are adopted?

Question 7 Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of CCAS with effective alternative systems of accreditation?

Question 8 What are the lessons learned from the operation of CCAS which may help in establishing (or revising) voluntary schemes in the future?

Question 9 What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?

Question 10 What characteristics would a Kitemark® based code certification process need to have to meet industry requirements?

Question 11 What is your view on extending the Primary Authority concept to code certification?

We do not have sufficient knowledge on the issues outlined in questions 6 to 11 to provide a response.

Question 12 Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

The paper states at section 4.43:

“The Government has considered a number of alternative approaches before reaching its preferred view. Maintaining the status quo would leave sectoral consumer bodies and Consumer Focus separate from the Citizens Advice service. This option would provide continuity of existing boards, committees and staff and it would not require additional resources for planning and transition. However, it would not resolve the problems of overlapping roles in providing general advocacy or the lack of integrated, direct, local input into consumer advocacy. There is one further difficulty: in the current economic climate, individual consumer bodies are likely to come under pressure to reduce their budgets. In some cases, this budget pressure is likely to be severe and the status quo will not be a realistic option. The Government believes that transferring functions from Consumer Focus to the Citizens Advice service would create a body with the critical mass to cope better with budget pressures, as well as more efficient and effective consumer advocacy, but is seeking views on whether others agree with this assessment.”

Section 4.46 states:

“For organisations such as Citizens Advice and Citizens Advice Scotland to take on statutory powers and functions, they would need to satisfy themselves that the powers and functions were consistent with their charitable purposes, aims, principles and strategies. Likewise, Government would need to be satisfied that appropriate arrangements were in place for accountability of these powers and functions.”

Our view is that in order to achieve this Government needs to ensure that any changes do not result in any conflict of interest between the roles of consumer advocacy, charitable functions and advice provision.

There would also need to be resources available to ensure enough expertise in a very wide range of subject areas. These should include all of the areas we identify in our response to question 1. We are also concerned that the consumer advocacy role should be made broad enough to encompass debt and personal finance policy issues. From our perspective, it is vital that the policy role and focus on debt and money related issues are not lost in reorganisation within the sector between Consumer Focus and Citizens Advice.

There needs to be a distinctive capacity to look at all policy subject areas including debt and personal finance issues and not keep a narrow focus on “pure” consumer issues. For instance, current topics may include the merits of an interest rate cap, payday lending, the regulation of debt management companies, and so on. These will no doubt alter in the future but there will be a continued need for capacity to focus on such issues.

It will be vital that sufficient resources are allocated to ensure that all the new functions will be sustainable in the long term so that a quality service is maintained and that such as extension in remit does not result in a dilution of specialist knowledge.

Question 13 Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?

The design principles for the envisaged regulated industries unit look admirable subject to resolving the challenges as set out under our response to question 12.

Clearly it is important that the regulated industries unit meets functional costs and efficiency criteria. We would question whether this service can be best provided by a separate body or whether it will be best placed as an adjunct to an existing service. At present, the features as set out in paragraph 4.34 do not resemble the functions of the current Citizens Advice Service. Sufficient resources would need to be allocated to ensure that the functions can be integrated into the existing service,

Question 14 In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?

Our overall response to this paper is framed around the functions that should be delivered rather than commenting on which organisation should carry these out.

We also note the following point under section 4.43.

“The Government believes that transferring functions from Consumer Focus to the Citizens Advice service would create a body with the critical mass to cope better with budget pressures, as well as more efficient and effective consumer advocacy but is seeking views on whether others agree with this assessment.”

It appears that one driver for the proposed changes is budgetary and it is vital to ensure that a high quality service is maintained following any changes with sufficient resources in place for the body to carry out the functions properly.

It also appears that a further driver for change is that the consumer sector should have “one voice”. We are concerned that under section 4.27 the paper states:

“At present, many consultations inevitably draw separate responses from Consumer Focus and Citizens Advice. The Government believes that the consumer input on general advocacy matters would be more effective if it was delivered as a single seamless message.”

Whilst we recognise from our own coordinated responses that there is strength in speaking in one voice, it is vital that the ‘sum of the parts’ is taken into account when Government are assessing responses to consultations and to other advocacy issues. We value the importance of different view points that different organisations put forward. We know from experience that some Government departments count up responses that are either “for” or “against” a consultation proposal and we are worried that if this approach is adopted as standard the consumer voice might be at risk of being drowned out. Perhaps a useful separate piece of work would be a Whitehall-wide look at how Government departments assess the submissions they receive.

Question 15 What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

We do not have sufficient knowledge on this issue to provide a response. We would refer you to the Consumer Focus interim response issued in July 2011.² This provides a useful set of proposals within the section “Advocacy in Scotland and Wales”.

Question 16 What are your views on these options for the transfer of information gathering powers? Which is preferable and why? Are there any other options for information-gathering powers?

Section 4.47 outlines what information gathering powers mean in this context.

² <http://www.consumerfocus.org.uk/files/2009/06/Consumer-Focus-interim-response-to-the-consultation-on-empowering-and-protecting-consumers.pdf>

“Consumer Focus has the power to require information from a range of regulators, businesses and any person that supplies goods or services in the course of a business. Where a person who supplies goods or services refuses to provide the information, Consumer Focus can refer this to the relevant regulator (if the person is a regulated provider) or can apply for a court order. This power clearly gives Consumer Focus leverage when taking forward investigations on issues which concern consumers.”

Section 4.49 goes on to say:

“Concerns have been expressed in some quarters about the placing of what is essentially a public function power designed specifically for Consumer Focus in the hands of private charitable organisations such as the Citizens Advice service. On the other hand, subject to this consultation, the Citizens Advice service is being given responsibility for a number of public functions and money by Government to undertake activities which coincide with its own charitable remit. So to the extent that the powers are necessary to fulfil the functions, an argument can be made for a transfer. This option would also help prevent “regulatory capture” since the consumer advocacy body would have the powers to investigate whether regulators where acting in the interests of consumers.”

We do not have any information as to how often the powers have been used in practice, but we would be extremely reluctant to lose the wide-ranging information gathering powers held by Consumer Focus. We do not favour the option outlined in the paper whereby the proposed regulated industries unit would have to ask regulators to use these powers as we agree that this would restrict the powers to areas covered by sectoral regulators such as energy and post. It could also be an unwieldy process with inbuilt delays.

We are not clear how problematic it would be for a non-public body to hold such powers. We would suggest there needs to be further investigation as to whether this is a real issue. If not, it would make sense for the powers to transfer to Citizens Advice if the other functions as proposed in this paper are also transferred to Citizens Advice.

Question 17 What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?

The paper states that if the relevant Departments decide that the functions of the Consumer Council for Water or Passenger Focus should transfer to the regulated industries unit, redress schemes in the respective sectors would have to be considered as these bodies have the handling of complaints by consumers as part of their functions.

If the relevant bodies are abolished, then it could well be a conflict of interest to have the regulated industries unit under Citizens Advice dealing with complaints. We therefore agree that redress schemes would need to be set up. These should be modelled on the Financial Ombudsman Service, which we regard as a simple, accessible and effective process, and set up on a statutory basis. It is vital that there is a requirement on the relevant industries to become members of the scheme.

Question 18 Do you support the transfer of the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland and agree that as a result Consumer Focus Post Northern Ireland be abolished?

Question 19 Do you agree that the Postal Services Redress Scheme should continue to apply in Northern Ireland to ensure that Northern Irish consumers retain the same access to redress as consumers elsewhere in the United Kingdom?

We do not have sufficient knowledge on the issues raised in question 18 and 19 to provide a response.

Question 20 Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?

We have looked at the options outlined in the paper. We are concerned that the option to transfer all of the OFT's enforcement functions and associated funding to Trading Standards could water down the current capacity to deal with national threats. It would also be a challenge to ensure proper national coordination of local Trading Standards departments.

We have concerns about the option to transfer the majority of OFT's consumer enforcement functions to Trading Standards with some consumer enforcement powers being retained by the CMA. The creation of a new Trading Standards Policy Board instead of the OFT seems to run the risk of replacing the OFT with another body with a different name but similar functions.

Our initial thought is to query whether retention of the status quo as suggested in section 5.64 of the paper might be the most realistic way forward.

“The most realistic alternative to Option 3 is to broadly maintain the status quo in terms of powers and responsibilities but with provision made for reform of the way collaboration between Trading Standards and OFT takes place. The capacity for national enforcement and enforcement policy currently located in OFT would be largely retained to reduce the loss of expertise and disruption of shifting functions between organisations and the transitional costs of change. The CMA would have the same consumer policy scope as the current OFT. The CMA would still decide how much resource to allocate out of its overall budget towards consumer enforcement.”

This would allow the experience and capacity for national enforcement built up by the OFT to be retained under the CMA. It would also avoid the potential loss of expertise and the added costs and disruption of shifting functions between organisations.

However, we recognise that there is a need for reform of the way in which collaboration between TS and the OFT takes place. This could be by way of the creation of a Joint Enforcement Board (JEB) or similar to allow a more joined-up consumer enforcement strategy between the national, regional and local levels. This would be a simpler, less disruptive and practical solution but could meet the perceived gap in effective interaction between the OFT and local TS at present. There is a need to better use the resources available both locally and nationally to enforce consumer protection. Coordination of local TS so that “the sum of its parts” has an effective impact with national issues being properly addressed is vital.

The CMA needs sufficient resources if it is to effectively cover both competition and consumer responsibilities. If resources are reduced, then it will be extremely challenging for the CMA to provide effective consumer enforcement.

Question 21 In relation to Option 3, do you agree with the Government’s principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

The paper argues under section 5.55 as follows:

“The new Trading Standards Policy Board would have clear policy responsibility and corresponding funds to allocate for combating all regional and national threats except those relating to structural market failings, which would be for the CMA. Working through its regional representatives the Board should be in a position to mobilise the wider Trading Standards community around a common agenda. This should improve the efficiency with which local authority funding of LATSS is spent by counter-balancing any temptation to retreat into small-scale actions against low-level threats and instead mobilising LATSS resources to act against the most economically important targets. By devolving power to local government to set the strategic direction, albeit collectively, this would reflect the Government’s strong commitment to localism.”

We are not yet convinced that the proposed model would deliver effective enforcement against big business. It would be extremely important to ensure that the Trading Standards Policy Board (TSPB) would be able to wield the current clout of the OFT. We would suggest it is vital to ensure there is sufficient resources, knowledge and expertise in the proposed model to enable controversial and complex cases (such as those against high street banks) to be taken on.

We are also concerned that the proposals appear to replicate the existing work of the OFT and wonder whether giving the OFT/CMA the same powers, resources and responsibilities would lead to a more streamlined approach with economies of scale. This would also avoid the costs of setting up a new organisation. At a time of disruption due to proposed changes in the regulatory landscape, we are not convinced that it is optimal to make such radical changes when the approach as outlined in section 5.64 of the paper could involve minimal disruption and could provide an immediate improvement in joint working. Overall, we therefore wonder if re-examining this issue once the Prudential Regulation Authority (PRA), the Financial Conduct Authority (FCA) and the CMA have bedded in would be a way forward.

Question 22 Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards? If so, would one of the JEB models be the best solution? Which one and why?

Improved collaboration between OFT/CMA and Trading Standards would appear to be both vital and achievable. However, there needs to be consideration given to making sure there are sufficient resources available to ensure that this collaboration is successful.

The paper puts forward various model options for the Joint Enforcement Board (JEB) in sections 5.65 to 5.71. However, we are not sure we understand the models sufficiently to comment. One note of caution however, is to query whether giving the JEB a statutory legal personality would mean it resembles the TSPB model and therefore be subject to the same concerns regarding cost, resources and replication of the role of the OFT.

We agree that early implementation would be preferable.

Question 23 In relation to the various JEB models, how would you ensure effective Trading Standards participation in the JEB? Do you think that this option would deliver integration of enforcement across local, regional and national levels? Should other organisations be involved in the JEB, either as members or as participants in discussions? Would retention of such unrestricted consumer enforcement powers and responsibilities affect the CMA's singularity of purpose and distract it from its core competition remit?

All organisations involved in the consumer regulatory and enforcement landscape should be involved in the proposed JEB. We would always encourage effective collaborative working.

However, we do not know enough about the workings of local Trading Standards to know if this option would achieve effective integration of enforcement across local, regional and national levels. In our experience, many local Trading Standards departments appear to have very limited resources and staffing and may find it difficult to participate effectively in the proposed JEB. This could lead to disparate and uncoordinated enforcement and duplication of effort.

However, there are examples of outstanding Trading Standards initiatives such as the Scambusters teams and the Illegal Money Lending teams. We do note that the latter have been restructured into national teams for England, Wales and Scotland as the BIS announcement on further funding for these schemes³ notes:

“independent research showing that larger teams have proved more successful than smaller ones.”

We see no reason why the retention of unrestricted consumer enforcement powers should affect the CMA’s singularity of purpose. The two roles do not contradict each other, and in many ways will enhance the functionality of the CMA.

Question 24 How can your preferred new model best work with businesses?

We do not have sufficient knowledge on the issues raised in question 24 to provide a response.

Question 25 Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

Yes, this approach appears to be reasonable.

Question 26 In an Option 3-based model, should this enforcement role be subject to procedural limitations?

We do not have sufficient knowledge on the issues raised in question 26 to provide a response.

Question 27 Do you agree that the CMA should enjoy significant discretion over when a market has structural problems, such as to give rise to its consumer enforcement powers?

Yes, this approach seems sensible.

³ <http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=417252&NewsAreaID=2>

Question 28 Do you agree that the CMA should retain responsibility for mixed market studies where there may be competition and consumer issues (supply and demand side market failures) present on the relevant market?

Yes. It is much too hard to disentangle the issues. It is preferable to have mixed market studies carried out by a single agency although the CMA would be likely to focus on competition related issues.

Question 29 Do you agree that in an Option 3-based model, the Citizens Advice service should in future be responsible for pure consumer detriment analysis and that the CMA should not perform pure consumer market studies? In such a case, do you agree that the CMA should stop performing market studies once it identifies that there is no structural problem in such markets and do you think there should be a duty on the Trading Standards Policy Board to prioritise cases referred by the CMA?

If the Citizens Advice service gains all the powers as outlined in the paper, we would agree that it makes sense for them to carry out “pure” consumer market studies.

With regards to the CMA and the transfer of “pure” consumer market studies once it has identified there is no structural market problem, we think these proposals are confusing and will not address the perceived complexity of the current system. This solution seems to be overcomplicated and could lead to a duplicate of effort and lengthy delays if the CMA were to stop a market study midway and refer the case elsewhere. If this approach was to succeed then there would need to be a seamless transfer of findings and resources to the other body. We feel that there should be a duty on any TSPB to prioritise cases referred by the CMA or risk the CMA work having been wasted.

This approach seems to be in danger of creating both duplication of effort and resources. We would ask if there a better model that could be developed to deal with these concerns.

Question 30 Do you agree that the Government’s proposed approach is a sensible way of ensuring effective collaboration between the various bodies in the proposed new landscape?

We always welcome effective collaboration between relevant bodies. If this approach is adopted, then effective and regular coordination of cases will be vital as the new consumer landscape appears to be even more complex and confusing than the existing model.

Question 31 Do you agree that it would be helpful to have some resource that required joint agreement between the CMA, TSPB and consumer advocacy bodies for its release, to be used to investigate or address consumer and market issues that would otherwise risk an enforcement or advocacy gap? If so, at what level should such funds be set and how best should they be administered?

If this approach to enforcement is adopted, then it would be vital to have resources available to investigate consumer and market issues that would otherwise fall into a gap in protection.

Question 32 Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not, how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?

We have concerns that the proposals are in danger of producing a confusing picture with too many different agencies with differing local and national remits rather than a sound blueprint for improvement.

We are very concerned that Local Authority Trading Standards Services (LATSS) will need to develop a strong national reputation along with the credibility to have a deterrent effect in order to have the required legitimacy in making enforcement threats. We note that section 5.94 of the paper states:

“Some cases require a strong national brand to take enforcement action.”

We would suggest that this brand already exists in the OFT. The paper acknowledges that the TSPB would need to “ensure that LATSS sustained or acquired the necessary reputation and credibility.” We suggest that significant resources and time are needed to build up a network of local organisations to ensure a new and effective enforcement regime.

The paper states at section 5.96:

“The Government is committed to ensuring the success of self-regulatory schemes such as that run by the Advertising Standards Authority and PhonepayPlus. One option to sustain the level of threat of national enforcement against companies which are in repeated breach of such code requirements, would be to offer any “Established Means” of self-regulatory enforcement (under the Consumer Protection from Unfair Trading Regulations; CPRs) the right to demand that the relevant enforcement body should consider any case which they refer. This would be similar to a current supercomplaint power to the OFT and would imply a duty on the TSPB or JEB to consider any case referred from these sources and then either to direct a regional team or request a relevant local authority to take effective enforcement action or to give reasoned justification for any refusal or lack of progress. Other options might include the creation of a national enforcement squad under the CPRs somewhere within the Trading Standards network to bring such cases.”

The proposals in section 5.96 of the paper in relation to self-regulatory regimes suggest an equivalent to the supercomplaint power to require the TSPB or JEB to consider cases referred on by the self-regulatory schemes. We are not convinced that the suggested structure for dealing with such complaints is robust. We cannot see how regional teams or local authority level teams would currently have the expertise or resources to deal with national cases. Significant resources and national coordination would need to be put in place. The creation of a national enforcement squad “somewhere within the Trading Standards network” appears to duplicate the work of the specialist teams that are already established and functioning within the OFT.

Question 33 Do you agree the TSI would be the appropriate home for the OFT’s professional guidance and training functions in the event of creation of a new single Competition and Markets Agency?

If it is decided that the Trading Standards Institute (TSI) is the appropriate home for the OFT’s professional guidance and training functions, then it will be vital to ensure that the TSI has the same level of expertise and experience that the OFT has built up in developing a library of guidance documents relating to different legislation. There should be a requirement to consult widely with stakeholders over industry guidance and to have both a public and stakeholder facing function. The TSI has not held this role historically and it will need to develop such functions in order to replicate the good practice developed by the OFT under the current regime.

We are particularly familiar with the OFT guidance as it relates to debt issues and would seek reassurance as to how Consumer Credit Act 1974 related consumer guidance such as the OFT Debt Collection Guidance, the OFT Debt Management Guidance and the OFT Irresponsible Lending Guidance would be governed. Would this crucial guidance for our sector remain with the CMA, move to the TSI or transfer to the FSA?

Question 34 Do you agree that the TSI is the most appropriate home for the OFT's international liaison and general policy functions in the event that the CMA has only a limited consumer enforcement role?

In the event that the CMA is given a limited consumer enforcement role, we question whether transferring the OFT's international liaison and general policy functions to the TSI would create a conflict with the remit of the Trading Standards Policy Board. Would it not be better to keep the functions together if possible within one body?

Question 35 Do you think the requirement for LATSS' and other designated bodies' (under Part 8 of the Enterprise Act 2002) court orders to be directed by a central body needs to be retained in the new consumer enforcement model and if so, why?

Question 36 Do you agree that responsibility for chairing the consumer concurrencies group should remain with the CMA?

We do not have sufficient knowledge on the issues raised in questions 35 and 36 to provide a response.

Question 37 Do you agree that the current supercomplaints system to the OFT should be retained in respect of the CMA if the proposed changes go ahead?

Yes, definitely. It is a very useful tool that should be utilised more often in dealing with market failings where the interests of consumers are being harmed. We would draw your attention to recent supercomplaints by Which? in the area of card surcharges and by Citizens Advice on sub-prime credit brokerage⁴ as examples where supercomplaints have been put to good use and are likely to produce important enhancements in consumer protection in those areas.

⁴ <http://www.offt.gov.uk/OFTwork/markets-work/super-complaints/>

Question 38 Do you think that the supercomplaints process should be extended to require the Trading Standards Policy Board to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?

If the Trading Standards Policy Board is set up then it would make sense to require them to issue a reasoned response if the subject of the supercomplaint relates to consumer enforcement.

Question 39 Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?

We do not have sufficient knowledge on the issues raised in question 39 to provide a response.

Question 40 Do you agree that the proposed changes to the consumer enforcement landscape should go ahead if the creation of the CMA is delayed? If not, why not?

Yes. We would support action to change the consumer enforcement landscape even if the creation of the CMA is delayed. We recognise that there is a perceived gap between local Trading Standards activity and the remit of the OFT in relation to national enforcement activity. Some regional cases or cases that do not fit with the OFT prioritisation principles could fall through the gaps.



**BUSINESS
DEBTLINE**

Payplan
financial freedom



**NATIONAL
DEBTLINE**

The Money Advice Trust
21 Garlick Hill
London EC4V 2AU
Tel: 020 7489 7796
Fax: 020 7489 7704
Email: info@moneyadvicetrust.org
www.moneyadvicetrust.org

Motor Codes



Peace of mind for motorists

Motor Codes was established at the request of Government in 2008 to provide a self-regulatory body for the UK automotive industry. It is responsible for the operation of three codes of practice setting standards in the service and repair, new car and vehicle warranty sectors.

The **New Car Code** covers over 99% of all new cars sold in the UK and regulates the advertising, sale, warranty and replacement parts availability for new cars.

The **Service and Repair Code** has 6,500 subscribing garages and motorists benefit from its standards delivering protection across the UK and enabling informed choices to be made in the selection of a garage through the Motor Codes online Garage Finder listings and ratings mechanism.

The **Vehicle Warranty Products Code** represents around 70% of the industry's major providers that administer over three million products per annum. It covers a wide range of automotive warranty and insurance products, providing protection to compliment the FSA regulation of general insurance.

All three codes are supported by the Motor Codes Advisory and Dispute Resolution Service. Supporting, advising and resolving concerns for consumers and subscribers through our experienced and time served team.

The long term strategy has been to use the OFT CCAS as the framework for the provision of our modern methods of self regulation since first engaging in the approval process for the New Car Code in 2002.

Motor Codes is committed to a centrally operated consumer codes regime and is keen to work with Government in establishing a stable and beneficial form of self/co-regulation for the future.

For the purposes of this consultation, I limit our input to those questions directly relating to the future of the OFT CCAS, however the Motor Codes team are available to provide further input as the process continues.

QUESTION 6. What are the best options for current and prospective CCAS members to consider in the event that the Government's proposed consumer and competition landscape proposals are adopted?

MCL: Should there be any change to the current operation of self/co-regulation it would be advantageous to continue this effective means of providing consumer reassurance, support and protection through an organisation that has a recognised brand, demonstrable track record, nationally established network and sector specific specialists which compliment the skills, knowledge and work of the Code Sponsor.

A regime that is a real driver of consumer confidence and provides choice within a protected environment would also provide benefits that make an attractive case to the business community. Therefore a recognised brand is imperative, as is the necessity to commit to one recognised national benchmark that clarifies what can be referred to as a 'consumer code of practice'.

Trading Standards is well placed to adopt, adapt and operate CCAS and move it forward with a remit of driving up consumer awareness, using Code sponsor relations to monitor local business performance and ensure consumers are referred to the industry experts, via an approved code, for the best advice.

QUESTION 7. Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of CCAS with effective alternative systems of accreditation?

MCL: There will undoubtedly be interest from any number of parties. Unfortunately some of these will sense a revenue or influence opportunity and would therefore, in my opinion, not be appropriate. Others would be keen but unable to deliver the service or make improvements on the foundations laid by OFT.

It is important that Government drives the future of approved codes and is seen by the consumer as the gatekeeper to approval. Any sense that it is being run for commercial or influential gain will only dilute the value and ultimately reduce the interest in the scheme.

It is also important for Government to consider taking the initiative to eradicate those operations that run 'codes' that provide little or no consumer protection.

Allowing a 'market decides' approach will be to the detriment of the scheme, as well as many consumers and businesses.

QUESTION 8. What are the lessons learned from the operation of CCAS which may help in establishing (or revising) voluntary schemes in the future?

MCL: An improved approval process is required. Not easier but more efficient. There should be no reason why approval can not be granted at 'stage 1', when the scheme is agreed in principle. With an effective monitoring mechanism ensuring that improvements are made thereafter, while the Code is going about its business.

Our experience is that OFT staff can get very hung up on specific detail where the more beneficial approach would be to get the Code working and analyse the operational data to make 'evidence based' requests for changes/improvements in real time.

Real life experience of the sector being dealt with is an area that would benefit from attention. Staff that have no working knowledge do tend to make decisions based on assumption rather than fact, which has caused some considerable problems.

Consumer awareness should be made a priority. There is little point in putting resource and energy into re-housing and revitalising a scheme that then continues to receive a similar sized marketing and promotional budget to that which has seen OFT so hamstrung over the last decade.

There are numerous other less significant areas that I would be happy to discuss but feel would be too much detail for this consultation.

QUESTION 9. What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?

I would not support this proposal as, in my opinion, it would not work. Standards and 'related documents' are not consumer codes of practice and can not be made to be. It is a very different discipline and has too many barriers to satisfactorily progress.

QUESTION 10. What characteristics would a Kitemark® based code certification process need to have to meet industry requirements?

As above, the kitemark is most specifically recognised as a sign of quality on a product, so would not be an appropriate base from which to begin.

My feeling is that too many characteristics would need to be changed/introduced for the kitemark style proposition to gain traction with business, and then at what cost? Something the motor industry has already had previous experience of.

Modern consumers are increasingly utilising independent online mechanisms to rate a service and provide input on collective opinion for others to view and aide the selection process when looking for a business to use. This model fits well with traditional self regulatory schemes as there are no real barriers to entry, unlike a 'product' style stamp of approval which is expensive and static, not continually fed by real customer opinion.

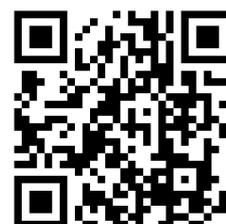
QUESTION 11. What is your view on extending the Primary Authority concept to code certification?

MCL: I think it is an interesting proposal that deserves some further discussion to better understand operationally. It certainly fits with the position I feel is important for the codes regime – Government backed, not commercially based, operational network, provision of sector specific working knowledge etc.

In an ideal world, Trading Standards should be supported to help deliver consumer protection against poorly performing businesses. Consumer codes fall correctly into this area and with appropriate central support, coordination and promotional backing a co-regulatory approach would deliver much for consumers and business in the manner supported by Government and at little cost to the public purse.

Chris Mason
Managing Director
Motor Codes Limited

October 2011



National Caravan Council



To: David Evans
Consumer and Competition Policy Directorate 3rd Floor
1 Victoria Street London SW1H 0ET
Email: david.a.evans@bis.gsi.gov.uk

From: Alicia Dunne
Deputy Director General

Organisation: The NCC, Catherine House, Victoria Road, Aldershot
Hampshire GU11 1SS.

Tel: 01252 796059

Email: alicia.d@thencc.org.uk

Date: 26 September 2011

**DEPARTMENT OF BUSINESS INNOVATION AND SKILLS:
CONSULTATION RESPONSE: 'EMPOWERING AND PROTECTING CONSUMERS'**

A response from The National Caravan Council (NCC)

The NCC is the trade association representing the collective interests of caravans, motor homes and the holiday and residential park industry. The industry has a turnover approaching £6 billion, employs in excess of 90,000 people and serves over 1 million caravanners and over 250,000 holiday and park home residents. Our members include over 90% of the UK manufacturers of caravans, motor homes and caravan holiday and park homes along with the leading park owners, dealers, and supply

Executive Summary:

The NCC welcomes the opportunity to respond to this consultation. In common with peer Trade Associations, we welcome the principle of empowering and protecting consumers by reducing the number of local and national government departments that have responsibility for consumer information, advice, education, advocacy and enforcement. We also support and recognise the role that greater industry self regulation can play as a means of helping to achieve such aims, and urge Government to make it easier for industry to engage fully, and in a co-ordinated way, with bodies charged with consumer empowerment and protection.

Consultation Response: Our consultation response contributes only in the limited areas where we have expertise, experience or specific views (notably the questions posed in Chapter 3) but this includes the following:

Q1-4 Improving Consumer Education and Advice:

The NCC strongly believes that consumers need to have easy access to appropriate and consistent information and advice to guide their purchasing choices. Industry and Government should broadly share responsibility for this but, perhaps more importantly; we believe Government should do far more to create a culture among consumers to encourage and educate them to carry out basic research before purchasing and to recognise that like sellers, they too have responsibilities and obligations. Creating such a culture is something that only a non-industry/statutory body such as Citizens Advice can lead but industry can support the process provided it is given the opportunity to do so through active consultation and co-ordination. For example, within its Industry Consumer Codes Schemes, NCC specifically provides advice to consumers about what they need to do to ensure a smooth transaction. NCC therefore calls on Government to consider this within its review and develop an all-embracing strategy to develop such a culture and for this to be delivered by a body directly accountable to Government.

Q5 Trading Standards (TS):

While the role of the proposed TS Policy Board and TS generally will make a significant contribution to the aspect of educating businesses, it is not clear at this stage whether the proposed TS Policy Board would be best placed, connected or resourced to co-ordinate and support all business facing educational activities. This might be better performed by the Competition and Markets Authority (CMA). Looking more widely at TS' role, it is well understood that while Code sponsors can enforce their own sanctions, sometimes all this does is drive a rogue business out of a voluntary self regulatory scheme and therefore it has to fall to properly empowered authorities like TS to enforce compliance with the law. In some industries, TS works together with the sector but The NCC would like to see such co-operation enhanced through more structured arrangements including exchange of relevant information about businesses between the various bodies that have the necessary intelligence on Codes or legal breaches. We feel industry should have the opportunity to police itself wherever possible but also be able to call upon TS to promptly investigate any industry malpractice by businesses outside an industry self regulatory scheme (in sectors where a Consumer Code Approval Scheme (CCAS) Code exists). Equally, TS should be able to call upon industry for the necessary expertise and information to assist in its own enforcement and education activities. This could easily be embedded in any continued or replacement CCAS scheme. While it may seem logical to consider TS, or the proposed TS Policy Board, as a future 'home' for CCAS, this could lead to problems due to the local nature of TS funding and setting of enforcement and consumer protection priorities. Looking at it another way, it might be better to consider the development of a nationally based trading standards service rather than a local one as trying to be national but operating locally will always present huge challenges where resources are already stretched.

Q6 Best options for CCAS members:

Although the NCC Codes of Practice were being considered under CCAS, the review of OFT operations and development meant that the Codes never reached Stage 1. Nonetheless, the NCC is still committed to the principle of a CCAS and believes fully in the strength of the OFT 'brand' and CCAS as a means for industry to demonstrate its commitment to independently monitored Codes. The NCC also recognizes its strength as a means for consumers to identify businesses committed to robust standards and best practice and strongly believes this should be continued. Any brand awareness that has developed under CCAS over its lifespan should not be lost under any new structure. With regard to the structure and delivery of a CCAS-equivalent scheme, or continuation of the current scheme, the NCC believes that this must be significantly simplified but also that the integrity, independence and standards must be maintained. We note the suggestion that Citizens Advice could take custody of CCAS but by its very nature, the service has a well entrenched position as a body that consumers, typically those less well equipped to pursue their own resolution, turn to when they have a problem. This is the complete opposite of what industry Codes and their members represent; businesses that do all they can to protect consumers specifically to prevent problems. Therefore, the NCC does not believe this is the best fit. In contrast, The Competition and Markets Authority has an aim to ensure that markets are working well and this does fit with the standards being applied under CCAS that already help to set standards for markets to work well and promote fair competition. The NCC therefore believes CMA represents the most appropriate future home for any continued or replacement CCAS.

Q7 Effective alternative accreditation systems:

The NCC does not believe that the private and voluntary sectors are either properly placed or resourced to deliver any effective, independent and alternative systems nor are sufficiently 'motivated' to do so. In particular, it is vital that CCAS, or any replacement scheme, continues to operate under national 'control'.

Q8. Lessons learned from CCAS:

In general, The NCC fully supports the principle of CCAS, and its position within OFT, and believes that it currently offers the best and most appropriate model for robust and independent accreditation of industry Codes/self regulatory schemes. It is vital that the progress that CCAS has made and the benefits it has delivered in relation to enhanced consumer protection and promotion of consumer confidence are not lost. However, in considering any continued or replacement scheme, the NCC suggests that various improvements need to be made;

(1) As noted above, the CCAS scheme needs to be far more responsive to industry needs (e.g.: commercial pace) while being live to issues around industry fragmentation (e.g.: multiple Codes in the same sector)

(2) It is also vital that a consistent approach is ensured (this hasn't always been the case) which is also flexible enough to change should the need arise. The NCC believes that industry could usefully contribute to ensuring that any scheme remains fit for purpose and calls on Government to consider this in its review.

(3) A further aspect of CCAS that frequently poses difficulty for Code sponsors is in ensuring suitable independence and oversight of industry Code schemes due to the small pool of consumer representative bodies. The NCC therefore believes alternative means of achieving independent oversight should be explored under any new or continued scheme.

(4) CCAS clearly hasn't attracted sufficient numbers of Code sponsors and the NCC therefore believes that more assistance and support needs to be extended to industries to improve this situation. It is equally important that no financial hurdles are placed in front of current or potential Code sponsors or their members that are already investing heavily in their own schemes not least because this may deter more industries from pursuing Government accredited self regulation.

(5) As previously noted, the NCC believes the OFT brand does carry weight but far more needs to be done to market and promote CCAS or any replacement scheme and not just via advertising, but also through the many channels open to Government and industry that exist already but haven't previously been exploited. This was clearly a weakness under the previous arrangements.

Q9/10 Transposition to BSI/Kitemark:

The NCC recognises the value of the BSI Kitemark brand and the work of BSI in setting standards and Publicly Available Specifications (PAS) but does not see there being an easy fit between BSI standards and industry Codes of Practice or the fact that BSI is in many respects, a largely commercial entity. As such, we do not believe BSI represents a suitable 'home' for CCAS continuation or replacement.

Q11 Extending Primary Authority concept:

The NCC has submitted a response to the recent BIS consultation "The future of the Local Better Regulation Office (LBRO) and the Primary Authority scheme" and our full views are summarised there. In summary though, we support the aim of promoting a more collaborative approach between regulators and the regulated, and further recommend this includes collaboration with industry self-regulatory schemes and draws on the significant expertise within each business sector via bodies such as Trade Associations. The NCC also recognises the role that the Primary Authority scheme fulfils in improving consistency of compliance interpretation, etc. at an individual business level but would oppose moves to delegate control over a national business sector to a locally controlled body.

Q17 Redress Schemes:

Redress schemes are a positive element in any consumer protection regime but schemes such as CCAS need to recognise the differences in approach between varying methods of redress (e.g.: Ombudsman, Adjudicator, the Courts, etc.) and ensure a consistent approach among industries of varying structure and complexity. If OFT or any other body moves towards extending statutory redress schemes into new sectors, then in-depth consultation with industry is vital to minimise potential fragmentation.

Q20-24 Reform Options:

From the options presented, the NCC prefers a blend of Options 2 and 3 (i.e.: a more balanced split of consumer enforcement functions between TS and CMA). This would bring

about a body (the CMA) with a clear strategic and leadership role whilst having a national network of locally based enforcement bodies. Its success would depend on effective co-ordination between the 'lead' body and the local enforcers and also between the local enforcers themselves which doesn't always happen that well at present. It is perhaps unnecessary for a TS Policy Board to be created purely to oversee this as it is a function that presumably could be performed by the CMA. A model that recognises businesses operate nationally and react simply to issues is what is needed and if Trading Standards are given a clear mandate by the Competition and Markets Authority, there does not appear to be the need for a further policy body.

Conclusion:

We would welcome the opportunity to discuss our views and observations with the Department in person and in more detail. We look forward to hearing from you.

THE NCC
26 September 2011

NCF – National Consumer Federation



**DEPARTMENT FOR BUSINESS INNOVATION
AND SKILLS**

CONSULTATION

***“EMPOWERING AND PROTECTING
CONSUMERS”***

RESPONSE FROM

THE

NATIONAL CONSUMER FEDERATION

26 September 2011

PART 1 – CONSUMER EMPOWERMENT AND PROTECTION

“A FULLER VIEW”

1. Introduction

The National Consumer Federation welcomes the opportunity to contribute to the reshaping of the United Kingdom’s consumer landscape. Many of the key organisations especially Citizens Advice (CA) and Trading Standards (TS) will need to change. We fully support the previous roles of these organisations and in this response we aim to bring out what we see as the requirements for the new landscape. We believe that the NCF should have an important part to play and that we ourselves need to adapt and develop if the new landscape is to meet the needs of all consumers in the 21st Century.

Our response is based on wide consultation and dialogue arising in particular from the March 2011 NCF Consumer Congress “*What next for Consumerism?*”, attended by 140 participants. One breakout session focused on “*The Consumer Landscape*”. We have also consulted our NCF groups and individual members, and have dialogued with Citizens Advice, Trading Standards, Age UK, Which? and Consumer Focus.

While the BIS consultation and proposals have – understandably – been from the perspective of public expenditure by BIS on empowerment and protection, this perspective does not adequately reflect the consumer view of the world and omits some key business perspectives too. The NCF recommends taking a fuller view of consumers, regulators and business perspectives to enable proposals that benefit from better insights and offer even greater national value.

The NCF believes it to be vital at this stage to ensure that consideration is given to what needs to be done for consumer empowerment and protection, with appropriate funding for that to be effective and efficient, and that the issue of who undertakes the various roles will follow more easily from that consideration.

2. A fuller consumer perspective

First, we must start with the breadth of consumption by members of the public. Consumers are on the receiving end of the provision of goods and services from public, private and voluntary sectors and according to the Office of National Statistics in its Consumer Trends survey of Q2 2010 we consume some 693 types of goods and services. From these there arise :-

420 million complaints calls pa to all UK Contact Centres.¹

120 million complaints pa made by consumers to goods and service providers²

26 million significant problems pa experienced by consumers.³

The current state of affairs is far from satisfactory and though the BIS proposals will address some aspects of this consumer detriment there is a real need for wider thinking from the government to embrace more aspects than those addressed by BIS in this consultation.

¹ “*The UK Contact Centre Operational Review - 6th edition (2008)*”

² Ref “*A fuller picture*” *A lean process view of consumer law and it’s enforcement.* Eisenegger, Hart and Pindar July 2008 adopted by the National Consumer Federation.

³ *Consumer detriment. Assessing the frequency and impact of consumer problems with goods and services April 2008 OFT992*

The NCF believes that to make the whole national system more efficient and to reduce confusion for consumers it is essential for the government to adopt a consistent approach to consumer empowerment and protection across all relevant government departments and all sectors of the economy.

3. The consumer view of empowerment

3.1 Individual empowerment

The BIS consultation embraces some of the key aspects of individual empowerment with the exercise of choice especially through web and other comparison services in particular. However these comparison services themselves need careful handling. For example many of the commercially run comparison sites take commission on sales which affects the choices they offer to consumers. The NCF believes that codes of practice for the fairness of comparisons will be required to generate trust and hence greater growth of such useful (online) services.

We recognise that consumer information and education has a key role to play. However it needs to be approached in a realistic way. Dr Alan Knight⁴ and research by ANEC⁵ indicate that consumers across Europe expect products and services to be safe and generally fit for purpose. The consequence of this is that consumers generally do not see the need for pre-shopping advice. And where markets function well, and goods and services are fit for purpose, the need for additional information and consumer education is minimised. Steps should be taken to ensure that information and education are available at the right time to meet the consumers' needs. This is often not until an issue or dispute arises during or following purchase of the goods or services. It goes without saying that information provided about goods and services must be clear and accurate. In particular there is a constant need to protect vulnerable and often gullible consumers from unfair advertising and misrepresentation.

Whilst recognising the role of education and information we believe that the priority should be on avoiding market failure by getting markets to work effectively through quality systems and improved market surveillance.

3.2 Local representation

At this year's NCF AGM (June 2011), we were reminded of the difference local consumer groups make to empowerment. Members told us quite clearly that when complaining or raising issues with the larger firms, as an individual, they felt relatively powerless. It was often only when the problems were addressed responsibly by their local NCF group that real influence was exerted on companies/organisations to deal properly with the issues raised.

We welcome the strategic approach by BIS in recognising the strengths of CA and TS and the proposals that CA and TS should lead in the consumer landscape. However BIS focuses on national advocacy and individual empowerment and appears to miss the key role of local organisation which is a strength of both bodies.

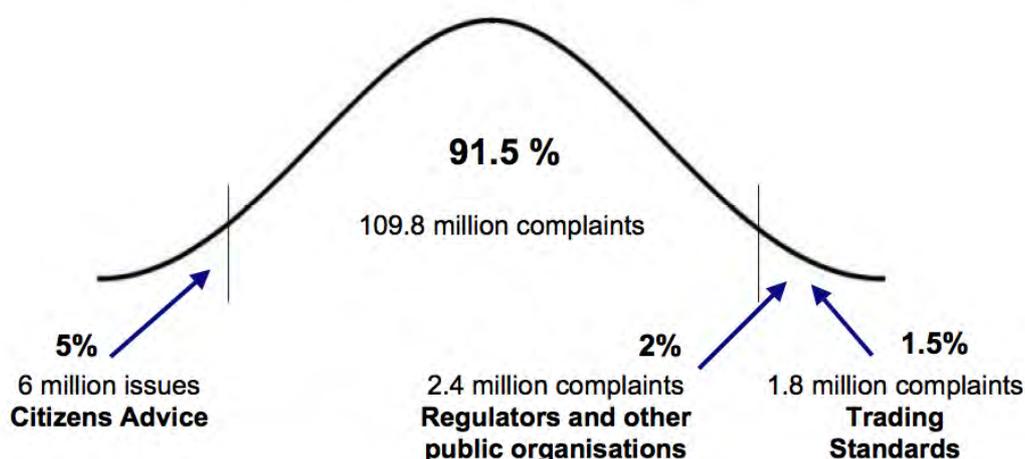
The figure below shows the consumers' perspective of the landscape measured by the volume of complaints dealt with by different players in the landscape. It can be

⁴ Dr Alan Knight, *Single Planet Living*, advisor on corporate sustainable strategies development

⁵ ANEC, *The European Consumer Voice in Standardization*

seen that CA and TS are currently active at the extremes of this complaints and detriment landscape with local presence. There is the potential to build on this to meet the needs of the broader landscape and hence all consumers. NCF has much to contribute to the development of this middle ground based on 50 years experience working with local front line consumer groups.

Figure 1. Consumer landscape by complaints volumes



According to Citizens Advice's own annual report⁶ their local bureaux handle 6 million issues every year with the vast majority of issues being to provide help for individuals with benefits, debt, and employment. Regulators and similar consumer organisations deal with 2.4 million complaints⁷ and trading standards contribute directly to an estimated 1.8 million consumer complaints⁸. These issues are often a long way from the average consumer goods and services complaint.

Note: The role of groups in the high volume middle ground of complaints in the diagram is not to provide individual complaints advice and support because the levels of skills and competency, and the legal responsibilities, resources etc preclude individual complaint support. This middle ground is where Consumer Focus, Which? and the NCF and local front-line consumer groups have great expertise and experience. Citizens Advice and Trading Standards have been far less active in these activities. The NCF believe the scope for local front-line consumer groups is to help empower consumers in dealing with some 90% plus of complaints that are not currently addressed by CA, TS or regulators.

Local consumer groups collate and communicate evidence from many consumers and other sources, engage in dialogue with local managers and authorities to effect changes and improvements on behalf of the local consumer communities. National support offers local groups additional expertise, national representation of local issues and the ability to spread best practice to other groups.

From the NCF's point of view there is a very considerable need to revitalise local front-line consumer groups who act collectively for consumers of public, private and voluntary sector goods and services. One value of such groups is also in identifying emerging areas of potential difficulties before they give rise to complaints.

⁶ Citizens Advice Annual report and accounts 2008/09

⁷ DTI CONSUMER EFFECTIVENESS PROJECT Consumer Complaints Data 16th February 2004

⁸ Trading Standards impact OFT report OFT1085 2009

Who undertakes this revitalisation is less important than recognising the need and ensuring there is adequate funding to achieve it within the consumer landscape.

3.3 National representation

Just as the individual benefits greatly from membership of a local group, so do local groups benefit from support nationally, nationally available expertise and the assembly of the picture at a national level. This is necessary when issues arise in many places, or they involve regulators, or larger companies and organizations. A mechanism is needed for all to express their views nationally. The National Consumer Federation is well respected and well positioned to act as an independent umbrella for these views.

In 1962 the Molony Report of Consumer Protection recommended the establishment of the National Consumer Council to “make sure the Government of the day had to consider the consumer interest when framing new laws”. It is important, therefore, that consumers locally and nationally try to hold all providers to account whatever sector they come from.

3.4 Consumer vulnerability

The BIS consultation makes reference to protecting vulnerable consumers in a way which suggests they are a defined and fixed group. This is not so. The NCF believes that much of the research into economic and consumer behaviour shows that all of us will be vulnerable in our dealings at one time or another particularly when undertaking a large and infrequent purchase or at times of major life changes.

The British Standard BS 18477 – ‘Inclusive service provision - Requirements for identifying and responding to consumer vulnerability’ provides in its introduction a very good overview of the many types of vulnerability experienced by consumers.

All consumers can be vulnerable in one way or another and so consumer law, empowerment and protection has to address the needs of all consumers from children to the aged, not forgetting the consumer rights and expectations of those with a disability.

Understanding that we can all be vulnerable reinforces the need to ensure that the 90% plus of consumer complaints are supported in the consumer landscape arrangements put in place by BIS and other government departments.

3.4 Including regulators in a fuller view

For those sectors of the economy within BIS’s remit, and all those beyond that remit, the NCF sees regulators as a key part of the landscape. Regulators are funded by consumers either through our taxes and public funding or via industry fees that add to costs we have to pay for goods and services. When good and effective regulation is not in place for a sector then consumers suffer major detriment. One of the worst examples of this in recent years has been the Financial Services Authority⁹.

Consumers need to be empowered to address the issues of poor regulation and steps need to be taken to ensure regulatory regimes provide good consumer protection as well as fulfilling their other roles and not over burdening industry.

These aspects of consumers and regulation are discussed further in the sections on

⁹ “Fair Enough” A report to Consumer Focus from the NCF on the FSA’s Initiative “Treating Customers Fairly” <http://www.ncf.info/sites/default/files/Fair%20enough.pdf>

Codes of Practice (4) and organisationally led quality (5.3) approaches below.

4. Industry Codes of Practice

4.1 The use of Codes of Practice

BIS state “Honest businesses with high standards also often develop voluntary codes of practice which go beyond the law, to reassure consumers and boost their confidence. Public bodies can help by developing or endorsing the standards which such codes seek to apply.” The NCF would not disagree with this view as far as it goes.

However the opposite is also true in that poor businesses can and do have very inadequate codes of practice for consumer protection. This is a topic we responded on in more detail to the BERR consultation on simplifying consumer law in 2008 *A Fuller Picture*¹⁰.

A key element in any CoP is dealing with consumer complaints in such a way that individual suppliers face responsibility for fixing their own mistakes, creating an incentive to get it right first time.

4.2 Putting in place good codes of practice

If the setting of standards for organizations to meet when dealing fairly with consumers is to be industry led then it is essential that the processes used and codes of practice established are achieved with suitably empowered and supported consumer representation.

The NCF endorses the BSI approach to consulting with a wide range of public and business representatives and recommends the BSI should take the lead in the development of new Codes as a development of their publicly acclaimed Kitemark scheme. The NCF considers that any other scheme would have to come up at least to this quality of standard setting to be effective and trusted by consumers.

Should any other Codes of Practice organisations be utilised then their structure, processes and membership must be transparent and fully engaging of stakeholder groups.

4.3 Effectiveness of CoPs in the market place

The degree to which a good CoP is taken up and adhered to by firms (or public sector organizations) is absolutely key as a CoP has no effect if it is not implemented in the goods and services purchased or used by consumers.

How good firms are at taking up good CoP's will impact greatly on the workload of TS. Achieving a high % reduces the need for TS visits while low compliance levels drive the need for more frequent visits and hence greater cost. Further effective implementation of good CoP schemes should also reduce regulatory costs.

So the compliance assessment regime associated with good CoP's is an essential part of the whole system. The NCF believes that only third party assessment by accredited assessment bodies delivers the degree of compliance needed for consumer protection and reduced TS and regulator costs. Where voluntary take up is low and consumer complaints and detriment high then regulators will need the ability and responsibility to mandate organisations to take up suitable CoP's.

4.4 How would consumers know if a good voluntary system could be trusted?

The NCF recommends that if BSI is not to be responsible for the standards process

¹⁰ *Fuller Picture* Section 6 and Annex 6
<http://www.ncf.info/sites/default/files/A%20fuller%20picture.pdf>

and Kitemark assessment for a sector, then BSI develop with industry and consumers a standard for assessing CoP schemes including their conformity assessment processes, so that industry and government CoP schemes can be properly third party assessed.

5. A fuller view of the business and organizational perspective

5.1 Responsible consumerism

We have stated already that not all businesses are honest and treat customers fairly. Similarly, it has to be stated that a small percentage of consumers are not entirely honest or fair when dealing with providers of goods and services when making individual complaints. It is here that responsible local consumer groups, guided by national policies and expertise, can play a positive role with evidence-based, issues-based (as opposed to individual complaints-based) dialogue with local businesses and organisations. This should be backed up by national representation when organizational issues cannot be resolved locally.

5.2 The economic impact of poor treatment of consumers

Complaints handling and eventual redress by organisations cost a great deal. Nationally the 120 million complaints cost providers an estimated £24bn per annum (including the costs of the 420 million complaints calls). The 26 million consumer problems cost consumers £6bn per annum. The combined effect is that the economy as a whole suffers £30bn detriment through economically wasteful activity that should be better put to innovation and cost reduction.

5.3 Organisationally led quality

Organisations (public, private and voluntary) should be using their own complaints data as a key source of information and insight into business and organizational improvement and innovation opportunities.

When considering consumer empowerment and protection the NCF believes that BIS and other government departments should take a lead in bringing direct consumer engagement into industry and organizational quality systems to allow responsible and expert consumers to participate directly with firms to innovate and improve their goods and services. This could, for example, be approached through the sponsorship by BIS of national customer feedback and improvement Codes of Practice which bring together the best of BSI, the Institute of Customer Service and other similar organisations.

5.4 Data inputs to Codes of Practice

To complete the virtuous circle of good quality systems national data sets on complaints, accidents and injuries need to be defined and data feeds established to inform Codes of Practice improvements as well as regulators and businesses.

PART 2 – RESPONSE TO THE SPECIFIC CONSULTATION QUESTIONS

CHAPTER 2 – Information, Advice and Education

Consultation Questions 1-4

The provision of information and advice is essential for the protection of consumers but there is some concern that there is too much information, which results in consumers paying insufficient attention to it. While there is a major role for businesses to provide product-specific information and instructions for use, there is also a role for Trading Standards in monitoring and ensuring that such information is appropriate and fit for purpose, especially where safety aspects are involved. Information in the context of the more general consumer landscape needs to be clear and concise – easy to understand – and available in different forms e.g. Internet, leaflets, verbal etc. It is often not required, or not assimilated, until an issue or dispute arises between a consumer and their supplier and hence, also needs to be made available in such a way that it is available at the right time to meet the consumer's needs.

The NCF supports the principle of further concentration of the provision of general information and advice through Citizens Advice and, providing the expertise to supply the information is maintained, we have no objections to the transfer of the OFT's consumer information role or to the transfer of the Extra Help Unit. However, in other areas it is essential that information that is more specific in nature is provided by those with the specific expertise. In this respect, the establishment of Consumer Direct was important in establishing a one-stop-shop for first level advice and in directing those enquiring to specialist organisations for more detailed information and advice. This role should be maintained by Citizens Advice in the transferred Consumer Direct functions. Advice provided by the new Consumer Direct also needs to address specific complaints and not to be limited to general information about consumer rights.

We believe that the provision of case studies showing how specific problems have been resolved, with an effective search facility, could be a helpful addition to the information provided.

The NCF agrees that there is no need to duplicate the provision of information provided by independent consumer organisations and comparative sites. However, there is a need to ensure that consumers know the difference between commercial comparative sites and those that are truly independent. Without this clear distinction there is a danger that consumers will be misled or will lose confidence in using information, even when it is truly independent.

We would expect Citizens Advice and Trading Standards to liaise on the provision of information and advice.

Consumer education is also a vital element of the consumer landscape but is of more limited value than may be believed. Education about consumer rights and issues is generally not of high priority in people's lives until they hit a problem. In those circumstances anyone can be a vulnerable consumer and will need clear, timely information/education. We believe that a greater return on investment would be achieved if more funding was directed to supporting the development of improved products and services through well-targeted legislation, standards and training for

business. This would provide a significant saving to the economy by reducing complaints and the need for redress.

We do not agree that education is only for people who may not realise they have a problem or that they have particular rights as consumers (Para. 2.16). Education about how to exercise those rights is just as important. Consumers often fail to achieve redress following initial complaints as evidence shows consumers often give up when complaints are resisted or ignored.

Question 1 How do you think the provision of consumer information to consumers can be improved upon?

There is, of course, value in having a diversity of information provision to suit the different strata and needs of society. However, increasingly the volume of information is overwhelming. We believe the most vital element is to ensure information is readily available when needed. This requires sophisticated search mechanisms and experts in the new Consumer Direct that can identify needs and provide assistance rapidly.

Question 2 Do you agree that the OFT's consumer information role should be transferred to the Citizens Advice?

Yes, providing the expertise is available to Citizens Advice to ensure the service is maintained.

Question 3 Do you agree the Extra Help Unit should be transferred to the Citizens Advice service?

Yes, providing the expertise is available to Citizens Advice to ensure the service is maintained.

Question 4 Part 1 Do you agree that the OFT's consumer education roles should be transferred to the Citizens Advice service

Answer to questions 2 to 4 Part 1

We are less concerned about which organisation leads on the provision of information, advice and education than that the services are of high quality and fit for purpose. We have no objection in principle to these services being transferred to the Citizens Advice as long as the expertise is available to continue them. However, we trust that Citizens Advice would add value in further developing these services.

Question 4 Part 2 ? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?

Consumer education should, ideally, be available at all ages and stages. Of high importance is the presence of financial and citizenship education in the National Curriculum, but other groups such as young people starting work, first time house buyers, immigrants, vulnerable consumers of all kinds and senior citizens all need access to consumer education in the most appropriate form. NCF believes that it is essential that consumer education initiatives be centrally coordinated, with adequate funding to ensure that they be well produced, disseminated and evaluated.

CHAPTER 3 - Consumer Codes Approvals

Consultation Questions 7-11

The NCF is supportive of the Consumer Codes Approval Scheme and considers that future actions should aim to build on what has been achieved thus far. The Scheme needs to extend to more consumer markets whilst maintaining the essential integrity upon which the credibility of the Scheme depends. In approving the existing codes OFT has sought to ensure that they deliver real value for consumers and provide members with incentives to deliver that value to consumers. An essential element is to ensure that complaints are handled effectively. When businesses face the cost of fixing their mistakes, this creates a virtuous circle in which both fair dealing businesses and consumers benefit.

An essential element in the existing codes is the credibility of the approval process. Consumers need to be clear what standards are being adhered to and how these standards have been assessed. NCF sees scope for some streamlining the approval process but this must not be at the expense of the quality either of the content of codes or their enforcement. NCF is therefore in agreement with the consultation that an organisation with the stature of the British Standards Institution should be central to the codes approval process. The BSI Kitemark is well established and would considerably enhance the scheme and lead to a greater take up.

Alternatives to BSI are discussed in the Consultation, NCF agrees that none of these can be a substitute for Codes approved by BSI.

Placing code approval under a Primary Authority Scheme is a poor substitute for BSI or OFT. Apart from our general reservations on the role of Primary Authority Schemes set out elsewhere in this response, NCF considers that a local authority-based scheme lacks the essential elements of the existing OFT administered scheme.

It is always possible that new systems could be devised locally, but they would not have national credibility. Past experience of *Trustmark* and *Buy with Confidence* schemes demonstrate the confusion, particularly for consumers who live near Local Authority (LA) borders and may face both schemes, and for businesses which trade across LA boundaries and may have to subscribe to both schemes. Such schemes have a role locally, particularly for small traders, but only nationally known and reputable bodies should authorise schemes.

Codes promoted by trade associations can be self-serving, aimed at restricting competition rather than promoting it and seen by consumers as being weighted in favour of traders in any dispute resolution.

Codes or practice or conduct covering members of professional bodies have patchy record in delivering benefits to consumers. This is well illustrated by the need to provide statutory backing for the handling of legal services complaints.

Codes of practice in the telecoms area function against a background of statutory regulation including the imposition of licence conditions on suppliers.

Existing codes should be transposed into a British Standard and the BSI Kitemark should replace the OFT Logo.

Summary in terms of responses to questions posed in Chapter 3

[NB these should be self-evident from the text in Part 1 of this response but for the avoidance of doubt ...]

Question 6 What are the best options for current and prospective CCAS members to consider in the even that the Government's proposed consumer and competition landscape proposals are adopted?

BSI is currently the only credible option for both consumers and businesses.

Question 7 Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of CCAS with effective alternative systems of accreditation?

No. BSI is NCF's preferred option.

Question 8 What are the lessons from the operation of CCAS which may help the establishment (or revising) voluntary schemes in the future?

CCAS has provided real benefits for consumer in the sectors covered thus far. These benefits arise from a rigorous application of the approval criteria by an organisation that has credibility with consumers. Only BSI can currently deliver these benefits. Other options at this time lack this essential credibility and are poor substitutes for BSI.

Question 9 What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?

This is the best way of bringing existing codes into a BSI-based approvals system.

Question 10 What characteristics would a Kitemark based code certification process need to have to meet industry requirements?

The BSI Kitemark would give added credibility to Codes on the part of consumers and make adherence to an approved attractive to businesses. Alternative third party certification by other bodies would need to have at least the same level of rigour as the BSI Kitemark.

Question 11 What is your view on extending the Primary Authority concept to code certification?

NCF has general reservations about the role of Primary Authorities. In the case of CCAS we serious doubt if a primary authority has the expertise which BSI would bring to the task.

CHAPTER 4 – Consumer Advocacy

Consultation Questions 12-19

Advocacy at local level Advocacy takes many forms and is necessary at different levels of government. One potential benefit of transferring Consumer Focus's advocacy role to Citizens Advice, which fits well with the localism agenda, is the existence of a network of local CABs that might possibly take on a wider local

advocacy role. However, this is far from certain as what is needed at local level is very much wider and very different from the current scope and role of the CABs. This has been the role of National Consumer Federation Local Groups for almost fifty years and the NCF is willing to work with Citizens Advice to rebuild effective local advocacy. The CAB model is essentially an individual casework model and there are often local issues e.g. in health, transport that require more of a campaigning approach where NCF and local groups have experience and expertise.

Advocacy at national level We fully agree that Citizens Advice has been very effective in its advocacy role at national level in support of its objectives and in support of CABs. However, the role of Consumer Focus is very much wider (ref fig 1) addressing the national issues arising within the whole consumer landscape (all 120 million complaints) and it is essential that CA will have all the necessary expertise to undertake this much wider role. We are concerned that the uncertainties for Consumer Focus staff is resulting in people leaving to take up jobs elsewhere and believe it is essential to that CF and CA work closely together due to the long drawn out procedure to close down Consumer Focus.

Advocacy at international level The need for advocacy in consumer protection is not confined to the United Kingdom. There has long been a need for representation and consumer advocacy within the European Union and increasingly globally. Consumer Focus has a high reputation internationally for their research papers and activities. The international level needs UK consumer experts and the implications for the transfer of such work to Citizens Advice must not be lost.

Whilst recognising the consumer credentials of Citizens Advice, they appear not to be recognised as a consumer organisation by some important European or international consumer bodies. We understand they are active members of Citizens Advice international but, as discussed previously, this only covers a part of the overall consumer landscape. To cover the full range of necessary EU and international consumer representation and activities CA will need to broaden their direct links with European and international consumer organisations (e.g. BEUC, Consumers International).

Forms of advocacy Advocacy means different things to different groups and people. For example, for some it may be adversarial rather than collaborative. The NCF sees two main types of advocacy :

- Campaigning advocacy - to take forward issues that are being poorly addressed by e.g. regulators, COP's etc.
- Participative advocacy - whereby consumers sit down locally nationally and internationally with others to develop for example policies, actions and CoP's often avoiding serious detriment and business costs at some later date.

There is a need for both forms of advocacy to be effective and properly funded at all levels across the consumer landscape.

We are concerned that whilst the CABs undertake social policy work, this is rather narrowly based and very different to the broad spectrum of advocacy undertaken by Consumer Focus and other consumer organisations. These differences need to be understood and addressed and NCF believes Citizens Advice will need to develop to achieve the most beneficial future for consumerism.

NCF role in advocacy The NCF and our predecessor the National Federation of Consumer Groups has a long history of consumer advocacy. Our primary role is to

provide an umbrella, to articulate local consumer interests at national level and to disseminate information and provide support to the local front line. This is carried out through our National Executive Committee and specialist groups in areas such as legislation, food and financial services. Our individual experts represent consumer views on a range of different bodies, inputting to governmental policies and helping business to understand issues from the consumer perspective. Whilst still very active and we believe influential, our capabilities have been significantly reduced since Government and Which? financial support was withdrawn some 11 years ago.

NCF Consumer Congress The NCF holds the title to Consumer Congress, which was also Government funded as a separate organisation until about 11 years ago. Consumer Congress brings together all with consumer interests, to develop national consumer policies in key areas. It provides an umbrella for Government and industry, as well as consumers. Since the loss in funding no Congresses were held until 2009 when we held a very successful meeting entitled *Consumers and the Credit Crunch*. From this base the NCF has developed policies and on-going actions to improve financial services for consumers. Our most recent Consumer Congress (7 March 2011) focussed on the current hot issues for consumers and has provided input to our response to this consultation. We believe that Consumer Congress should play an important part in the revised consumer landscape.

Scope of the BIS Consumer Landscape We agree with the aim to combine all the current consumer advocacy bodies. However, we believe this should extend further than planned by BIS. Citizens Advice have rather more strengths in activities including advocacy in health and financial services than in the wider aspects of consumer advocacy and yet these areas are excluded from consideration for transfer in the BIS consultation. We recognise that BIS does not have governmental responsibilities for these areas but are concerned that the full benefits and savings of concentrating consumer advocacy in Citizens Advice will not be achieved unless these responsibilities are also transferred to Citizens Advice. The consumer landscape is not restricted by (artificial) Government Departmental structures.

Statutory functions and responsibilities Consumer Focus has a number of statutory functions and responsibilities and we question how these can be transferred to a Charity. This includes the right to investigate consumer complaints and disclosure of information by suppliers and public bodies to Citizens Advice.

Question 12 Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is a correct one?

Providing Citizens Advice is given the powers and experts needed to act effectively on behalf of consumers, we believe that this is an important goal for Government.

Question 13 Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34-45

The NCF has been concerned for some time about “Who regulates the Regulators?”. Therefore, the establishment of a Regulated Industries Unit (RIU) has some attraction. We note particularly the Consumer Focus paper “Consumer Representatives for the 21st Century: A Regulated Industries Unit” June 2011¹¹ which provides further proposals for the role, responsibilities and powers along with

¹¹ <http://www.consumerfocus.org.uk/files/2009/06/Consumer-representation-for-the-21st-century1.pdf>

the skills and powers needed to establish an effective organisation. However, we believe this needs much further discussion before a final decision is made to establish an RIU. We would be pleased to devote a Consumer Congress to this topic in order that all stakeholders have the opportunity to debate the issues and to offer advice on the best way forward.

Question 14 In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?

This appears to us to be the wrong question. The organisation in which consumer advocacy is concentrated is far less important than that consumer advocacy is maintained and preferably significantly improved within the changed consumer landscape. Hence, we are concerned about the functional transfers and changes and whether these will be funded to a level that facilitates maintenance and supports real improvements for consumers. There are huge differences between Citizens Advice and Consumer Focus in their current structures, functions and culture. The Charitable status of Citizens Advice is just one of the fundamental differences that will need to be addressed.

Question 15 What do you consider the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

Whilst the NCF is formally open to membership right across the United Kingdom, we believe this question should be for the organisations in these regions to propose their solutions to the changing consumer landscape.

Question 16 What are your views on these options for the transfer of information gathering powers? Which is preferable and why? Are there any other options for information-gathering powers?

The NCF sees that there is a need to ensure that there is no loss or diminishing of powers that reside within current organisations.

Question 17 What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?

Whilst we might agree in principle with this extension, we believe that this needs further debate and that Consumer Congress might be an effective means of building consensus.

Question 18 Do you support the transfer of the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland and agree that as a result Consumer Focus Post Northern Ireland be abolished?

Please see our answer to question 15.

Question 19 Do you agree that the Postal Services Redress Scheme should continue to apply in Northern Ireland to ensure that Northern Irish consumers retain the same access to redress as consumers elsewhere in the United Kingdom?

Agreed

CHAPTER 5 – Enforcement of Consumer Protection Legislation

Consultation Questions 20 – 40

QUESTION 20: Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?

Our first preference would be to broadly maintain the status quo, in terms of powers and responsibilities, but with provision made for reform of the way collaboration between Trading Standards and OFT takes place. Otherwise, of the three options detailed, NCF might support Option 3, but we have concerns about the complex division of responsibilities between several layers of organisations and between the large number of local authorities. We accept that clearer access to specialist high level expertise is desirable, particularly in respect of complex cases of unfair commercial practices spreading across several regions. Also, a clearer route to funding the more complex cases is welcomed.

We were surprised that a “national government” trading standards service had not been considered as an additional option. With some notable outstanding exceptions, the local authorities have not convinced us that they have consistently maintained a satisfactory service across the country. We are aware that in many other European countries this service forms part of a national government department of Trade or Economy.

QUESTION 21. In relation to Option 3, do you agree with the Government’s principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

In relation to Option 3, NCF is not convinced that the government’s proposals for the new TSPB would result in a significantly more efficient and cost-effective service. Our particular concerns relate to bureaucracy, accountability, and resourcing.

QUESTION 22. Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards? If so, would one of the JEB models be the best solution? Which one and why?

Yes, see our response to Question 20 above. We do not support the establishment of a separate JEB which we consider introduces further bureaucracy and inserts an unwieldy and time-consuming layer into decision making. We would prefer this role to be undertaken by CMA assuming adequate liaison links are established with LATSS and Citizens Advice.

QUESTION 23. In relation to the various JEB models, how would you ensure effective Trading Standards participation in the JEB? Do you think that this option would deliver integration of enforcement across local, regional and national levels? Should other organisations be involved in the JEB, either as members or as participants in discussions? Would retention of such unrestricted consumer

enforcement powers and responsibilities affect the CMA's singularity of purpose and distract it from its core competition remit?

See our response to Question 22 above.

QUESTION 24. How can your preferred new model best work with businesses?

By increasing transparency, national consistency, and minimising bureaucracy.

QUESTION 25. Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

Yes, NCF agrees.

QUESTION 26. In an Option 3-based model, should this enforcement role be subject to procedural limitations?

No, we do not see the need for procedural limitations.

QUESTION 27. Do you agree that the CMA should enjoy significant discretion over when a market has structural problems, such as to give rise to its consumer enforcement powers?

Yes

QUESTION 28. Do you agree that the CMA should retain responsibility for mixed market studies where there may be competition and consumer issues (supply and demand side market failures) present on the relevant market?

Yes, in our experience, consumer and competition issues are not always easily separated.

QUESTION 29. Do you agree that in an Option 3-based model, the Citizens Advice service should in future be responsible for pure consumer detriment analysis and that the CMA should not perform pure consumer market studies? In such a case, do you agree that the CMA should stop performing market studies once it identifies that there is no structural problem in such markets and do you think there should be a duty on the Trading Standards Policy Board to prioritise cases referred by the CMA?

We prefer that detriment studies remain with CMA as most detriment arises from market failures. As now information derived from Consumer Direct provides an important means of assessing consumer detriment so it is vital that CD continues to collect sufficient information about individual complaints. See question 31.

QUESTION 30. Do you agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies in the proposed new landscape?

No, NCF have concerns that the proposed approach involves too many problems in co-ordination and complexity. The CMA should be able to take on the wider role if provided with the right data from LATSS and Citizens Advice. A clear common specification of that data would need to be developed between those concerned.

QUESTION 31. Do you agree that it would be helpful to have some resource that required joint agreement between the CMA, TSPB and consumer advocacy bodies

for its release, to be used to investigate or address consumer and market issues that would otherwise risk an enforcement or advocacy gap? If so, at what level should such funds be set and how best should they be administered?

No. This is another example of the complex arrangements that the Government's preferred option requires in order to make it work. The NCF believes that a national TS organisation with continued strong local presence and accountability should be considered.

QUESTION 32. Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not, how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?

NCF has no comment on this question other than our response to question 20 above.

QUESTION 33. Do you agree the TSI would be the appropriate home for the OFT's professional guidance and training functions in the event of creation of a new single Competition and Markets Agency?

Yes.

QUESTION 34. Do you agree that the TSI is the most appropriate home for the OFT's international liaison and general policy functions in the event that the CMA has only a limited consumer enforcement role?

Yes.

QUESTION 35. Do you think the requirement for LATSS' and other designated bodies' (under Part 8 of the Enterprise Act 2002) court orders to be directed by a central body needs to be retained in the new consumer enforcement model and if so, why?

NCF has no comment on this question.

QUESTION 36. Do you agree that responsibility for chairing the consumer concurrencies group should remain with the CMA?

Yes.

QUESTION 37. Do you agree that the current supercomplaints system to the OFT should be retained in respect of the CMA if the proposed changes go ahead?

NCF recommends that the issue of Supercomplaints, and who can make them, should be reviewed.

QUESTION 38. Do you think that the supercomplaints process should be extended to require the Trading Standards Policy Board to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?

See response to Question 37 above.

QUESTION 39. Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?

NCF has misgivings on the role of Lead Local Authorities. See [x-ref]

QUESTION 40. Do you agree that the proposed changes to the consumer enforcement landscape should go ahead if the creation of the CMA is delayed? If not, why not?

Yes.

NEA - National Energy Action



Campaigning for Warm Homes

Empowering and Protecting Consumers

Department for Business Innovation and Skills

**Consultation on institutional changes for provision of consumer
information, advice, education, advocacy and enforcement**

Comments from National Energy Action

Background

National Energy Action (NEA) is a national charity with a primary objective of eradicating fuel poverty through work to improve the circumstances of financially disadvantaged energy consumers. Since NEA sees action to improve heating and insulation standards as the most rational and sustainable approach to affordable warmth the charity's main policy focus is on maximising investment in domestic energy efficiency programmes intended to benefit low-income and other vulnerable households.

However energy efficiency is only one of the three main factors predisposing households to fuel poverty, the other two being low household income and unaffordable energy prices and NEA also undertakes campaigning activities to address both of these issues. Clearly the element of this consultation most relevant to NEA's work concerns the operation of energy markets, areas of possible detriment to disadvantaged energy consumers, effective mechanisms to protect vulnerable households from any such detriment and action to deliver positive benefits to these households.

Consequently, NEA's comments in response to the consultation will generally be restricted to discussion of how to empower and protect low-income households in the competitive energy market. Responses follow the sequence of questions posed in the consultation document.

Question 1. How do you think the provision of consumer information to consumers can be improved upon?

NEA Comment: As noted by Ofgem in its Energy Market Review, energy tariffs are numerous and complex and the price comparison process is difficult to navigate; this is particularly the case for many vulnerable and financially disadvantaged households who may lack the confidence or technological skills to secure the optimum tariff for their circumstances. NEA believes that regulatory intervention to address some of the specific problems of the energy market are innovative and constructive; these include Ofgem's recent statement of intent on limiting energy suppliers to only one tariff per supplier for each of the three main payment methods. In addition, the Energy Best Deal demonstrates, albeit on a modest scale, how consumers and advisers can benefit from advice and support in

understanding the processes involved in minimising energy costs through an improved understanding of energy markets

However, vulnerable energy consumers require much more than a basic understanding of how markets work. They also require advice, guidance and advocacy services associated with their energy consumption and, as such, there is a need for a comprehensive service comprising energy advice, debt counselling and negotiation and support in ensuring that energy suppliers adhere to the wide range of hypothetical protections for energy consumers set out in Licence Conditions.

Question 2, Do you agree that the OFT's consumer information role should be transferred to the Citizens Advice Service?

NEA Comment: NEA's primary concern in relation to advice provision is that it should be both expert and sufficiently well resourced to meet demand. We recognise the merit in creating one comparatively high profile source of consumer advice and accept that Citizens Advice Bureaux are well known and valued in their communities. NEA also recognises that the nature of volunteer engagement in advice provision can be seen as a manifestation of the Coalition Government's 'Big Society' agenda; however we are disappointed that cost savings appear to be a significant driver of this proposal and would stress that any transfer must not be to the detriment of a professional and expert advice service.

Question 3. Do you agree that the Extra Help Unit should be transferred to the Citizens Advice Service?

NEA Comment: Subject to the reservations expressed above, NEA sees no reason why the Extra Help Unit should not be transferred. However the skills and depth of knowledge of Consumer Focus staff have been built up over a number of years and there would have to be a seamless transition involving the transfer of expert personnel to avoid the inevitable hiatus that would result from the need to train lay staff. Energy consumer problems can be both complex and potentially damaging to the health and welfare of the consumer. In summary, NEA sees the quality of the service as the paramount issue rather than what agency provides that service.

Question 4. Do you agree that the OFT's consumer education roles should be transferred to the Citizens Advice Service? What are your views about the types of consumer education activity that are most valuable and how should they be managed and coordinated?

NEA Comment: We note the general comment that businesses are generally the first resort for consumers seeking advice and information and to some extent this is true even of the energy industry where there is considerable consumer scepticism about, for example, energy companies offering advice on reducing energy consumption. What concerns there are over any transfer of energy advice provision is complicated by the inconsistent existing level of provision and uncertainty over the future of the Energy Saving Trust network of energy advice centres. If Citizens Advice Bureaux are to develop energy advice services they should adopt a comprehensive model in which expert advisers can offer support and guidance on the full range of consumer problems including debt and disconnection, disputes with suppliers and energy efficiency measures and funding sources.

In this specific context NEA is more concerned about how such advice provision might be funded rather than management and coordination. If Citizens Advice Bureaux were to offer a comprehensive energy advice service, additional funding to enable this service might be available through the Industry Initiatives element of the Warm Home Discount scheme. Ofgem has endorsed a number of possible areas of expenditure for the (maximum) annual Industry Initiatives spend including energy advice services for disadvantaged households; at a time of severe constraints on public spending this could prove an important source of funding for a much-needed service.

Question 5. Do you agree that the proposed Trading Standards Policy Board and the TSI should coordinate and support business-facing educational activities?

NEA Comment: In the context of energy supply, the regulatory infrastructure is intended to address industry failings in treatment of consumers, and this work is supplemented by the involvement of the Energy Ombudsman in negotiation and complaint resolution. In the context of wider energy services such as energy efficiency provision there may be a role for the proposed Trading Standards Policy Board and the TSI. The imminent introduction of the Green Deal will involve numerous agencies with limited experience of working with domestic consumers

on a large scale. Green Deal installers will be subject to accreditation and a complaints and resolution mechanism will have to be developed to maintain best practice within that scheme. However, NEA would recommend that the Trading Standards Policy Board and the TSI maintain a watching brief on what is intended to be a national-scale programme with major implications for social and environmental policy, and monitor and engage with emerging structures.

Question 6. What are the best options for current and prospective CCAS members to consider in the event that the Government's proposed consumer and competition landscape proposals are adopted?

NEA Comment: The Big Six energy suppliers currently dominate domestic gas and electricity markets. Whilst this raises a general issue of limited competition it also, at least in theory, facilitates uniform and effective consumer protection. Within the energy supply industry consumer-sensitive Codes of Practice cover all aspects of interaction between industry and customer; the challenge is to rigorously monitor and ensure compliance across Codes. Policing compliance is as important as developing and agreeing Codes of Practice and NEA is not confident that enforcement and compliance have been consistent priorities for the regulator.

Question 7. Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of CCAS with effective alternative systems of accreditation?

NEA Comment: NEA would prefer accreditation to be consistent and with as much statutory force as is achievable in given circumstances. Whilst there may be scope for a combination of private sector, voluntary sector and local authority involvement in developing localised accreditation this would have to be reinforced by formal national accreditation systems.

Question 8. What are the lessons learned from the operation of CCAS which may help in establishing (or revising) voluntary schemes in the future?

NEA Comment: NEA has limited knowledge and experience of the CCAS; however we would note that some areas of work clearly require mandatory levels of skill and oversight. Whilst recognising that consumer confidence in tradespersons is

highly important in consumer terms there is an absolute need for regulation where health and safety issues are primary, such as the Gas Safe Register.

Question 9. What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?

NEA Comment: NEA's preference would be for consistent national standards underpinned by recognised national objective criteria. As such, we would endorse the evolution of CCAS-approved codes to the equivalent of BSI requirements.

Question 10. What characteristics would a Kitemark-based code certification process need to have to meet industry requirements?

NEA Comment: Clearly this is an issue for discussion within the respective industries, consumer bodies, relevant Government Departments and the BSI.

Question 11. What is your view on extending the Primary Authority concept to code certification?

NEA Comment: NEA recognises the potential merit in developing individual local authorities as 'Primary Authorities' in individual areas of consumer concern. Such an approach would enable development of 'Beacon Councils' to advise, inform and guide other authorities on specific issues. However, we are less convinced by the suggestion that any enforcement action would then be subject to approval by the Primary Authority; we would see this as diminishing scope for independent action on the part of other agencies.

Question 12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice Service is the correct one?

NEA Comment: NEA is ambivalent on this issue. We recognise the value of the Citizens Advice Service in its historic generalist role; however we are also conscious of the need for specific expertise which may have been the province of highly specialist agencies. Conversely, the one-stop-shop approach clearly has merit and, provided there is no dilution in quality of service, there is a strong case for centralising advocacy functions in a well recognised and respected agent such as Citizens Advice.

Question 13. Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?

NEA Comment: The remit, responsibilities and powers as set out in paragraph 4.34 represent a reasonable model for a regulated industries unit. NEA notes and welcomes the emphasis on protecting the interests of vulnerable consumers. Equitable access to energy is essential to the health and well-being of all consumers and many vulnerable and financially disadvantaged households require support and protection across at all levels, from the development and implementation of policy to individual guidance and advice.

Question 14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice Service? What are your views on alternative approaches?

NEA Comment: NEA expressed concern over developments which saw the single issue agency energywatch replaced by a more generalist service in the form of Consumer Focus. At that time, NEA took the view that a highly specialist service was required to address the many complex issues associated with domestic energy supply and consumer protection. In the event, these concerns were not justified and Consumer Focus proved a constructive and effective champion of disadvantaged energy consumers.

In the proposed transference of energy consumer protection responsibility to the Citizens Advice Service, similar initial reservations emerge. However, as stated throughout these comments, NEA's chief concern is that there should be no diminution of quality of service, expertise and authority and, provided these criteria are assured, we see Citizens Advice as an effective agency to adopt these roles. We would, however, see it as a serious misjudgement if existing skills and experience currently within Consumer Focus were to be lost. We would also wish to see a seamless transition in quality and breadth of service that is not compromised by the need to recruit, train and test new personnel in crucial areas of work.

Question 15. What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

NEA Comment: The views expressed in this response relate primarily to England although energy consumers in Scotland and Wales will also be affected by the proposals. As with the comments in relation to England, NEA believes that the primary concern is to ensure that any revisions to consumer protection build on and improve existing arrangements whilst retaining skills, knowledge and expertise. The devolved nature of consumer protection in Northern Ireland means that the proposals are of limited relevance in that country. However, given that the expanded role for Citizens Advice in Great Britain is intended to enhance consumer protection and access to support, NEA would have welcomed some discussion of the need for expanded provision in Northern Ireland. A number of factors contribute to the extremely high incidence of fuel poverty in Northern Ireland, including dependence on unregulated fuel sources, and energy consumers are in particular need of advice, guidance and support.

Question 16. What are your views on these options for the transfer of information-gathering powers? Which is preferable and why? Are there any other options for information-gathering powers?

NEA Comment: NEA recognises the immense value of the work Consumer Focus has done in requiring, collating and interpreting consumer data to inform authoritative publications advocacy and policy work. If the Citizens Advice Service is to assume responsibilities previously allocated to Consumer Focus we would expect that they would retain the same information-gathering powers.

Historically much of the policy-related work of Citizens Advice has been informed by reporting of consumer experience from individual bureaux. NEA would see a synthesis of objective and subjective, quantitative and qualitative findings as an extremely powerful tool in allowing informed representations on energy policy issues. Consequently, in this area, NEA believes that the combination of existing Consumer Focus powers and the traditional role of Citizens Advice represents potentially the optimal model for informed analysis and representation. Clearly, this view is subject to the general caveat on resources to enable such analysis and dissemination.

Question 17. What are your views on whether redress schemes such as those established in electronic services, financial services, energy and postal services should be extended to other sectors?

NEA Comment: As a general principle NEA endorses the concept of redress schemes where feasible and relevant. We are not convinced that redress schemes prevent poor practice on the part of companies but a combination of financial penalties and customer compensation appears appropriate in the case of both transport and water services.

Question 18. Do you support the transfer of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland and agree that as a result Consumer Focus Post Northern Ireland be abolished?

NEA Comment: N/A

Question 19. Do you agree that the Postal Services Redress Scheme should continue to apply in Northern Ireland to ensure that Northern Irish consumers retain the same access to redress as consumers elsewhere in the United Kingdom?

NEA Comment: N/A

Question 20. Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?

NEA Comment: In terms of direct localised consumer protection work and enforcement NEA sees merit in Options 1 and 3. We accept the Government's suggestion that Option 3 best combines improved local enforcement and collaborative working across local government boundaries.

Question 21. In relation to Option 3, do you agree with the Government's principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

NEA Comment: NEA is happy to defer to agencies with more direct knowledge and involvement in these issues.

Question 22. Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards?

NEA Comment: As above

Question 23. In relation to the various JEB models, how would you ensure effective Trading Standards participation in the JEB? Do you think that this option would deliver integration of enforcement action across local, regional and national levels? Should other organisations be involved in the JEB, either as members or as participants in discussions? Would retention of such unrestricted consumer enforcement powers and responsibilities affect the CMA's singularity of purpose and distract it from its core competition remit?

NEA Comment: As above

Question 24. How can your preferred new model best work with businesses?

NEA Comment: As above

Question 25. Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

NEA Comment: NEA believes that within the domestic energy market there are sufficient mechanisms to effect remedies without there being a specific role for the CMA. We recognise that Option 3 does not refer to individual cases of consumer detriment and agree that breaches of consumer law may be associated with structural market problems but we also believe that the primary role for the CMA should lie in investigating and identifying these structural problems with Ofgem having the key remedial role.

Question 26. In an Option-3 based model, should this enforcement role be subject to procedural limitations?

NEA Comment: See above

Question 27. Do you agree that the CMA should enjoy significant discretion over when a market has structural problems, such as to give rise to its consumer enforcement powers?

NEA Comment: NEA would support significant discretion within the CMA in identifying structural market problems but believes that enforcement powers should rest with Ofgem.

Question 28. Do you agree that the CMA should retain responsibility for mixed market studies where there may be competition and consumer issues (supply and demand side market failures) present on the relevant market?

NEA Comment: As indicated above our understanding of the delineation of powers as they relate to energy markets is that the CMA should be responsible for identifying market failures and Ofgem should retain responsibility for remedial action.

Question 29. Do you agree that in an Option 3-based model, the Citizens Advice Service should in future be responsible for pure consumer detriment analysis and that the CMA should not perform pure market studies? In such a case, do you agree that the CMA should stop performing market studies once it identifies that there is no structural problem in such markets and do you think there should be a duty on the Trading Standards Policy Board to prioritise cases referred by the CMA?

NEA Comment: This issue is somewhat complicated by the involvement of Ofgem in consumer detriment issues. In short, in the context of the energy industry, NEA would see the CMA role as an investigator of 'macro' issues such as anti-competitive agreements between companies such as cartels. Responsibility for 'Micro' consumer detriment covering all other aspects of consumer protection should be retained by the Citizens Advice Service and Ofgem.

Question 30. Do you agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies in the proposed new landscape?

NEA Comment: NEA agrees that whatever agencies are engaged in the different areas of consumer protection there will inevitably be an overlap between delineated functions. We concur that collective discussion should seek to identify clear spheres of influence wherever feasible. NEA also welcomes the proposed engagement of other agencies in determining the most appropriate form of enforcement action.

Question 31. Do you agree that it would be helpful to have some resource that required joint agreement between the CMA, TSPB and consumer advocacy bodies for its release, to be used to investigate or address consumer and market issues that would otherwise risk an enforcement or advocacy gap? If so, at what level should such funds be set and how best should they be administered?

NEA Comment: NEA supports this in principle but cannot speculate on the appropriate level of such a resource. Our expectation is that it would be sufficient to ensure that no significant issue should be overlooked for lack of funding.

Question 32. Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not, how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?

NEA Comment: NEA is a strong supporter of local authority involvement in a wide range of issues that affect their residents. This support is predicated on the belief that local authorities are generally understood and trusted in their communities. Local authority branding of enforcement action could well be effective in localised circumstances concerning local services; however; if the purpose is to create a national deterrent to malpractice the national enforcement squad model might be more effective.

Question 33. Do you agree the TSI would be the appropriate home for the OFT's professional guidance and training functions in the event of creation of a new single Competition and Markets Agency?

NEA Comment: NEA does not have a strong view on this issue but would not dissent from the recommendation that it be located within TSI.

Question 34. Do you agree that the TSI is the most appropriate home for the OFT's international liaison and general policy functions in the event that the CMA has only a limited consumer enforcement role?

NEA Comment: Yes.

Question 35. Do you think the requirement for LATSS' and other designated bodies' (under Part 8 of the Enterprise Act 2002) court orders to be directed by a central body needs to be retained in the new consumer enforcement model and if so why?

NEA Comment: None.

Question 36. Do you agree that responsibility for chairing the consumer concurrencies group should remain with the CMA?

NEA Comment: The overarching nature of the OFT remit would appear to make it suitable to serve as the chair of the consumer concurrencies group. However if, as asserted, the main theme of regulatory discussion is likely to be structural market problems then it is logical for the CMA to adopt this role.

Question 37. Do you agree that the current supercomplaints system to the OFT should be retained in respect of the CMA if the proposed changes go ahead?

NEA Comment: NEA would support a degree of additional flexibility in the supercomplaint process to enable the process to accommodate important areas of concern that may be outside the narrow focus of structural market failings.

Question 38. Do you think that the supercomplaints process should be extended to require the Trading Standards Policy Board to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?

NEA Comment: Yes.

Question 39. Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?

NEA Comment: None.

Question 40. Do you agree that the proposed changes to the consumer enforcement landscape should go ahead if the creation of the CMA is delayed? If not, why not?

NEA Comment: Yes.

NETSA – North East TS Association



David Ellerington
Room 709 Civic Centre
Barras Bridge
Newcastle upon Tyne
NE1 8PB
Tel: (0191) 2116119
E-Mail:
david.c.ellerington@newcastle.gov.uk

Partnership Body comprising the Trading Standards services of: Darlington BC, Durham County Council, Gateshead MBC, Hartlepool BC, Middlesbrough BC, City of Newcastle-upon-Tyne, North Tyneside MBC, Northumberland County Council, Redcar and Cleveland BC, South Tyneside MBC, Stockton-on-Tees BC and the City of Sunderland.

Mr D.Evans
Consumer & Competition Policy Directorate
3rd Floor
1 Victoria Street
London
SW1H 0ET

Dear Mr Evans

Empowering and Protecting Consumers: Consultation Document

1. Background

- 1.1 The Department of Business, Innovation and Skills (BIS) issued its consultation paper on “Empowering and Protecting Consumers” on the 21st June 2011. The Consultation Document proposes radical changes to the provision of consumer information, advice, education, advocacy and enforcement. The new proposals aim to simplify the confusing and overlapping provision of consumer protection, strengthening the effectiveness of consumer enforcement, with more cost-efficient delivery that is closer to the consumer front line.
- 1.2 Central Government wants to see public funding concentrated on bodies that consumers trust and already turn to for advice – Local Authority Trading Standards Services (LATSS) and the Citizens Advice service. It proposes that all consumer protection functions delivered nationally by the OFT could be delivered by LATSS. The Citizens Advice service would become the single service that consumers can turn to for information and advice. Citizens Advice will also act as their champion across a range of sectors and the consumer advice currently delivered by the OFT under the banner ‘Consumer Direct’ would be transferred to Citizens Advice from April 2012.

- 1.3 This response has been produced by the North East Trading Standards Association (NETSA). NETSA is the partnership body representing Heads of Trading Standards services from the twelve unitary local authorities in the North East of England.
- 1.4 This response has been formulated after full consultation with all the Executive Members of NETSA and the consultation and debate we have undertaken as a partnership body, has been specifically focussed around and following the regional event entitled "Empowering and Protecting Consumers" which was held in Newcastle upon Tyne on the 12th September 2011.
- 1.5 This regional event was well attended by local authority Heads of Service, elected Members and colleagues from local Citizens Advice Bureaux, from around the region. The attendees heard well informed presentations from Mr Alex Scharaschkin from the National Audit Office, Mr Graham Branton from the Department of Business, Innovation and Skills, Mr Robert Laslett from the Office of Fair Trading and Ms Teresa Perchard from Citizens Advice.
- 1.6 In formulating this response, NETSA currently anticipates that there is likely to be one solution for England and Wales, and a different separate structure for Scotland. This is driven by the broader political agenda, not any desire by LATSS. We are aware that the political agenda in Wales and Scotland is very dynamic and that these key assumptions may change.
- 1.7 Another key assumption in the formulating this response is that within England and Wales and specifically the North East of England, there will be no significant changes, made in the foreseeable future, in terms of formal local government reorganisation based on the existing number of unitary local authorities.
- 1.8 In terms of the overall context related to the impact and scope of the Consultation document; NETSA as a partnership body, would wish to highlight to BIS, that there is a clear need to recognise that with respect to the delivery of Trading Standards services by local authorities; there are an increasing range of legislative responsibilities placed on these services, as 'directed' from a wide range of Central Government Departments.
- 1.9 These Departments include the Department of Health, the Home Office, and the Department for Environment, Food and Rural Affairs. It is also clear that the related legislative work-streams, which revolve around the key sectors of metrology, product safety, quality and also animal health, are also very important to local authorities to ensure delivery upon; and in many of these areas of work, cross boundary issues around enforcement also often come into play.

1.10 Notwithstanding these various assumptions, NETSA has focussed most of this response on the proposals relating to changes in the enforcement landscape as that has been the key priority for us. Whilst recognising all other aspects of the proposals, it is in the enforcement arena where Heads of Trading Standards could have a fundamentally different role in future.

2. Specific Consultation Questions

Chapter 2 – Information, advice and education

Key Proposals

- Citizens Advice to lead on all information and advice for consumers (outside health and financial services).
- The Citizens Advice service to take over responsibility for Consumer Direct.
- The Extra Help Unit for vulnerable consumers of energy and postal services to be transferred to the Citizens Advice service.
- Citizens Advice service to take on national co-ordination of consumer education (except on financial services). Coordination of consumer education activities locally to be done by collaboration between Citizens Advice and the Trading Standards community.

QUESTION 1. How do you think the provision of consumer information to consumers can be improved upon?

It remains the view of NETSA, as the partnership body for the twelve local authority Trading Standards services in this region, that all consumers should be able to access a wide range of consumer information and advice.

Further NETSA remains of the view that this advice should be available face to face, as well as via the telephone and online. We also recognise that the internet continues to provide a valuable resource of information to empower consumers to take action or seek information.

The constituent local authority Trading Standards services within NETSA are also of the opinion that it needs to be continued to be recognised that some consumers, particularly the more vulnerable, are often happier speaking to someone face to face and therefore this service should still be available in the new model, either directly via their LATSS or through specific local partnership arrangements with local Citizens Advice Bureaux.

NETSA are committed to the fundamental principle, that it is very important that the high level of consumer advice is maintained. Each individual enquiry should be dealt with by an officer who provides bespoke advice and guidance relevant to the complaint. NETSA would not support any reduction in the standards of advice from that currently provided. Specifically we do not believe that 'pick-lists' could be used to answer queries effectively as many complaints have the potential to be complex in their nature.

QUESTION 2. Do you agree that the OFT's consumer information role should be transferred to Citizens Advice?

NETSA would be happy for the consumer information role currently delivered by the OFT, to be transferred to Citizens Advice, providing Citizens Advice works with LATSS both nationally and locally in the provision of this consumer information service, as the OFT has previously done.

At a national level in England and Wales, we continue to believe that regional partnership bodies such as NETSA should have some form of representation on any body created to oversee the future delivery of the services currently delivered by "Consumer Direct".

NETSA would also like to see each local authority Trading Standards service have an 'account manager' within each local Citizens Advice Bureaux, to deal with any problems, issues or concerns and vice versa. It also would be extremely helpful if each LATSS could provide Citizens Advice with a named contact for Trading Standards too.

NETSA clearly acknowledges that the proposals contained within the Consultation Document already recognise how important the Consumer Direct data is for LATSS. LATSS have an intelligence-led approach to enforcement and the referrals and Consumer Direct data provides an invaluable evidence base for LATSS.

NETSA is of the view that access to this information must continue and be improved where possible. The database currently managed by Consumer Direct provides an efficient and effective reporting line that enables LATSS to identify problem traders, consumer detriment, scams and any other problems that may require them to take enforcement action or provide advice to businesses or consumers.

All LATSS should be able to continue to receive and act on timely referrals from Consumer Direct and there should be no reduction in the quality and quantity of information they currently receive from Consumer Direct.

The twelve local authority Trading Standards services within this region, clearly recognises that the local Citizens Advice Bureaux fiercely guard their autonomy; and a concern remains that any proposals by Citizens Advice nationally to deliver parts of the service using local Citizens Advice Bureaux centres may not materialise.

QUESTION 3. Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service?

NETSA are of the opinion that the 'Extra Help Unit' for vulnerable consumers should continue under the new arrangements and that the unit and associated

finance should be transferred to Citizens Advice, if other related advice services are transferred.

QUESTION 4. Do you agree that the OFT's consumer education roles should be transferred to Citizen's Advice? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?

NETSA is happy with Central Government's proposal that the publicly-funded consumer education role at national level currently delivered by the OFT, should be transferred to Citizens Advice, if the other related advice services are transferred.

NETSA also believes that Citizens Advice will need to work closely with the Trading Standards community to ensure that education provision is well coordinated, including the distribution of educational materials and sharing of best practice.

NETSA would wish to propose that areas for development and improvement could include financial literacy, helping consumers how to complain, educating them on what consumer rights exist and what to do with faulty goods.

NETSA recognises that the OFT has done a lot of good national work in relation to scams, code approval schemes, etc and it will be important to ensure that any campaigns that Citizens Advice deliver have a high media profile, where necessary, to get the messages out to a wide audience. We also recognise that TSI and its Consumer Education Liaison Group (CELG) are already active in this area.

As Central Government has stated, consumer education activities for the public at a local level are usually carried out by LATSS, sometimes using materials developed by the OFT. Therefore it remains our view that consumer education and advice are both part of a system that benefits both consumers and businesses with the outcome of making markets work better.

NETSA welcomes the recognition that local authorities should remain responsible for direct delivery of education to consumers at local level. The development of localised schemes in our neighbourhoods such as 'No Cold Calling Zones', which have demonstrated the ability of LATSS to engage with a range of partners including Age UK and local Police services; and such schemes have been and continue to be very successful.

NETSA firmly believes that Central Government must agree upon and set the right balance of funding between Citizens Advice and local authorities to properly support both national and local consumer education.

It is clear to NETSA that the primary role for overall co-ordination probably sits with Citizens Advice, if indeed they are given the key national responsibility for this work area. However they will need to link closely with the proposed Trading Standards Policy Board to ensure an effective link between local,

regional and national consumer education activities in the most effective and efficient manner.

QUESTION 5. Do you agree that the proposed Trading Standards Policy Board and the TSI should coordinate and support business-facing educational activities?

NETSA very much recognises at the local level, most business facing educational activity is carried out face to face with local businesses by LATSS staff or by localised training initiatives etc. Nationally there are websites such as “Business Link” and also “Everything Regulation When Its Needed” (ERWIN).

The role of TSI to date has been to provide very valuable educational materials for LATSS to use and also they provide business training such as their fair trading award.

NETSA firmly is of the opinion that it will be important that at a strategic level these are joined up as appropriate under the scrutiny of the TSPB. However for any of this aspect to work effectively there needs to be a very clear steer from Central Government, as to how it envisages “Business Link” developing in the future.

Further there needs to be a clear recognition by Central Government of the need or the expectation for “Business Link”, to engage in a structured way with Trading Standards services, which in our view has not always been done in the past.

NETSA are also keen to see how the development of the future role of Local Enterprise Partnerships can be linked into the co-ordination and development of business-facing educational activities.

Chapter 3 – Consumer Code Approvals

Key Proposals

- Competition and Markets Authority will not continue operation of the OFT’s current Consumer Codes Approval Scheme.
- Alternative options for future accreditation of Consumer Code Approvals to be explored further, including BSI roles, Trading Standards, LBRO and private and/or third sector organisations.

QUESTION 6. What are the best options for current and prospective CCAS members to consider in the event that the Government's proposed consumer and competition landscape proposals are adopted?

QUESTION 7. Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of CCAS with effective alternative systems of accreditation?

QUESTION 8. What are the lessons learned from the operation of CCAS which may help in establishing (or revising) voluntary schemes in the future?

QUESTION 9. What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?

Question 10. What characteristics would a "kitemark" based code certification process need to have to meet industry requirements?

Question 11. What is your view on extending the Primary Authority concept to code certification?

NETSA has no strong preference on the future of CCAS.

However NETSA is of the opinion that if a scheme is to continue, there must be an opportunity for LATSS to feed into the application process as they have done in the existing OFT Consumer Codes Approval Scheme, so that any concerns or issues can be raised with those seeking code approval.

It also is the view of NETSA that the process adopted by the OFT for the approval of codes has generally proved to be a very long and relatively labour-intensive process; although we also recognise that it has been a very stringent process with rigorous requirements. It is therefore our view that it is essential that whatever new scheme is developed the process for code approval should be completed in a timelier manner, than perhaps it has been the case in the past.

It is the case that many schemes developed by local authorities in this region and elsewhere, already give consumers a method for finding trustworthy businesses via the various Local Authority Assured Trader Schemes. It remains the view of NETSA, that these types of schemes have been very successful and well received by local consumers and businesses.

Chapter 4 – Consumer Advocacy

Key Proposals:

There should be a single focus for the coordination of publicly-funded consumer advocacy functions. A single unit, run by Citizens Advice and acting in partnership with other expert providers as appropriate, should take over responsibility for:

- All Consumer Focus functions in relation to gas, electricity and (except Northern Ireland) postal services
- Key, non-sector specific advocacy functions of Consumer Focus
- Sectoral consumer bodies for water (in England and Wales), transport, communications and legal services, if the relevant Departments and Devolved Administration responsible for those bodies so decide
- Redress schemes could be set up by business for consumers in the water, rail, coach, bus and tram sectors to mirror those in the energy and postal services sectors, if the relevant Departments and Devolved Administrations so decide.
- Consumer Focus's functions in respect of postal services consumers in Northern Ireland, undertaken by its committee known as Consumer Focus Post, should be transferred to the General Consumer Council for Northern Ireland.

QUESTION 12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

QUESTION 13. Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?

QUESTION 14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?

QUESTION 15. What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

NETSA generally agrees with the proposal to combine as many sectoral advocacy schemes as possible in the Citizens Advice Service, if indeed that is where most consumer advice type provision is to be located under the proposed new delivery model.

It is further the view of NETSA, that any organisation that takes on the coordinated, publicly-funded, consumer advocacy function, requires to be empowered with real 'bite', in order that the new organisation is able to take on cases that would not otherwise be taken. For example, we understand that Consumer Focus Wales helped to secure £70 million for "Npower" customers across the UK.

NETSA also takes the view that whatever the outcome around the proposals, the level of consumer detriment taken together with the intentions of the businesses involved and the availability of potential damages (i.e. financial health of errant business) should all be carefully considered before any action is contemplated and indeed sanctioned.

Many of the local authority Trading Standards services in the North East of England currently offer second tier advice and advocacy for consumer complaints. The individual local authorities that still provide these consumer advice services, do so because they, through the direction provided by elected Members, remain of the opinion, that it is very important to retain this level of support for the benefit of their local businesses and consumers.

NETSA as a partnership body, for these local authorities, would not wish any proposed changes around consumer advice to undermine any locally delivered support.

NETSA and its twelve constituent local authorities are more than happy to work with local Citizens Advice Bureaux in this region to maximise the benefits that the new operating model may bring for consumers and businesses alike.

QUESTION 16. What are your views on these options for the transfer of information gathering powers? Which is preferable and why? Are there any other options for information-gathering powers?

NETSA has no strong views on this however we do believe that the unit should be accountable to Parliament, as Consumer Focus and the sectoral advocacy bodies have been in relation to their statutory functions and powers.

QUESTION 17. What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?

NETSA is of the opinion that the further development of redress schemes, based on the appropriate levels of evidence of need, to the mutual benefit of consumers and businesses alike should always be encouraged.

QUESTION 18. Do you support the transfer of the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland and agree that as a result Consumer Focus Post Northern Ireland be abolished?

QUESTION 19. Do you agree that the Postal Services Redress Scheme should continue to apply in Northern Ireland to ensure that Northern Irish consumers retain the same access to redress as consumers elsewhere in the United Kingdom?

These are matters for those who represent Northern Ireland to comment on.

Chapter 5 – Enforcement of Consumer Protection Legislation

Key Proposals:

- To establish a Trading Standards Policy Board (TSPB) to lead the prioritisation and coordination of national, regional and cross local authority boundary consumer enforcement work in England and Wales.
- In England and Wales, national enforcement to be undertaken by Primary or Home Authorities and by expanded regional teams supported by a small number of lead regions and/or authorities with specialist areas of expertise. Money for enforcement against national and cross boundary threats to be ring-fenced for this purpose.
- The proposed new Competition and Markets Authority (CMA) to retain a market studies role in relation to markets where there may be both structural competition issues and consumer-related (demand-side) market failures.
- The CMA to retain powers to take action against breaches of consumer law wherever these breaches may inhibit the effective functioning of competition in markets.
- Powers to make supercomplaints to CMA to be retained by existing bodies.
- The TSPB, CMA, Citizens Advice service and Which? to be transparent about enforcement and market analysis priorities and to share work plans as far as possible, working in partnership on cases which risk crossing over the boundaries between them.
- The TSI to take on the OFT's current guidance, training, international liaison and policy functions.
- "Established Means" code of practice promoters to be able to formally request action against businesses breaking the relevant laws which the TSPB would have a duty to consider.
- If the creation of the CMA is delayed, these consumer enforcement landscape changes should go ahead with OFT taking the role proposed for the CMA.

Options for reform

QUESTION 20. Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?

After a great deal of consideration NETSA as a partnership body supports the implementation of the delivery model as set out in Option 3, which envisages the transfer of the majority of the consumer enforcement functions currently delivered by the OFT to LATSS with some functions (for cases involving structural market problems) remaining with the CMA.

NETSA takes the view, that even taking into account the ever increasing financial pressures that are undoubtedly having and continue to do so, significant impacts, on all public sector services; all LATSS have developed the requisite skills, experience and also enthusiasm to deliver the outcomes that Central Government wishes to see with the delivery of the new operating model.

The twelve constituent local authority members of NETSA, having now had the opportunity to discuss the options as outlined in the consultation document, are very positive about the new operating model as outlined in Option 3.

The Heads of Service in the North East of England, acting through NETSA as its partnership body continue to take the professional view that as well as helping local consumers and businesses; LATSS have already developed into the consumer protection role, which has and continues to develop a regional and/or national impact.

There are numerous examples which can be provided by NETSA and other regional partnership bodies to demonstrate this contention. For example:

- LATSS providing Home Authority/Primary Authority support for businesses;
- dealing with issues related to e-crime,
- dealing with internet scams and national pricing rip-offs,
- working in partnership with other enforcement bodies and agencies at ports and airports,
- dealing with rogue traders who act outside their local council areas targeting some of the most vulnerable consumers; and
- helping to support legitimate businesses, who comply with the law but face unfair competition from those who do not.

NETSA is of the opinion that the implementation of the operating model as set out under Option 3 will enable LATSS to have a greater influence over regional and national work. This implementation will also enable the development of better resilience for existing regional infrastructures, which are crucial to effective engagement and delivery between the local and national levels.

Likewise NETSA believes that the new operating model will also enable transformational changes within LATSS, in terms of strengthening leadership and influence in order to support more effective action against cross-boundary threats.

It is also worth noting that NETSA does not believe that the implementation of the operating model as set out under Option 3, would undermine the provisions of the Localism Bill, providing that it gives LATSS greater freedom and flexibility to be able to work together nationally, regionally and locally and does not impose top down targets and strategies.

As with all such developments NETSA would wish to state quite clearly the success or otherwise of the implementation of the operating model outlined under Option 3; will be critically dependent on the amount of funds available to deliver effectively the level of work that will be required.

QUESTION 21. In relation to Option 3, do you agree with the Government's principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

NETSA clearly recognises that the effective organisation of the TSPB will be the most crucial element of ensuring that the proposed changes to enforcement work effectively. Directly related to this important recognition, we have broken down our response to this specific question into separate elements.

Principle

NETSA agrees with Central Government's principles for the operation of the new TSPB to co-ordinate and lead the enforcement effort against regional and national threats and to deploy the appropriate levels of national funding to support the development of such efforts.

NETSA clearly recognises that the Board must comprise Heads of Trading Standards services and must be the key decision making body for the agreement of:

- the priorities,
- the allocation of funds to those priorities,
- the necessary delivery mechanisms and
- the appropriate means to monitor performance.

We envisage that the TSPB would direct the work currently done regionally/nationally by local authorities around such existing regional projects as the regional Enforcement Teams (Scambusters), the Illegal Money Lending Teams and regional co-ordination and regional intelligence.

The TSPB would also be responsible for the allocation of funding from Central Government, under a service level agreement or a similar financial arrangement, for specific activities in order to deliver many of the functions currently provided by the OFT. These new arrangements would be very much driven and implemented by the use of effective intelligence analysis.

NETSA clearly recognises that the TSPB will need to meet regularly to provide the strategic and operational oversight in a co-ordinated manner. Central Government can establish the principles but it must empower the TSPB to take operational decisions, based on evidence of consumer detriment. This evidence base may be provided by bodies such as Citizens Advice, the Consumers Association and the CMA etc.

NETSA recognises that BIS, as the Central Government Department responsible for the delivery of the new model, will clearly want to ensure that national consumer protection issues are dealt with in a timely and also effective manner but we take the view that at the same time Central Government must not dictate what action should be taken.

Political Oversight and Scrutiny

NETSA also recognises that in the delivery of the new model, clear political accountability and oversight is crucial. We are of the opinion that this role should be developed along the lines of an oversight and scrutiny role which has been developed within local authorities, whereby a group of elected Members take responsibility to hold the TSPB to account for the decisions it has made and the work that has been carried out on its behalf.

This very important role NETSA would wish to be delivered by the LG Group with WLGA represented either by a directly appointed person or by an LG Group member from a Welsh Authority (this would be for the WLGA to decide).

NETSA would envisage that reports could be prepared for scrutiny by a programme board within the LG Group but there is a concern that this programme board would not have the time and capacity, alongside very full board agendas, to carry out an effective scrutiny role.

NETSA would therefore recommend that a small sub group of perhaps 3-4 Elected Members takes on this important role. Specific terms of reference and arrangements would need to be agreed later but we would envisage that they would need to meet for perhaps twice per year and the sub group, may wish to receive written updates in between these programmed meetings.

Financial Oversight

NETSA clearly recognises that as with all such programmes of this nature, there is an essential need to develop both clear financial oversight and also an auditing process. We recognise that a decision will have to be taken as to who would hold the funding and provide the necessary accounting and audit

services to ensure total probity. However no matter which organisation provides this service, all decisions about the spending of any money would come directly from the TSPB.

Membership

NETSA is of the opinion that representatives drawn from Heads of Trading Standards services must be ultimately responsible for the operational governance and oversight of the delivery model. It therefore seems eminently sensible that any such board should be based around a similar format of the existing Trading Standards Policy Forum.

Also NETSA believes that the TSPB must have effective representation and leadership from each English region and also from Wales. The Welsh/ English regional representatives would need to be nominated via their relevant chief officer groups and be mandated to take decision at the TSPB on behalf of their areas.

NETSA continues to recognise that effective co-ordination at a regional level is essential to ensure the effective delivery of the new operating model. There must therefore be a clear recognition that the appropriate funding for regional co-ordination is in place throughout the lifetime of the model delivery.

Also NETSA would expect there to be representation from ACTSO, WHoTS, SCOTSS and TSI on that Board plus other representatives such as BIS. However we are of the opinion that the voting rights on the TSPB related to the decision making process, should rest with the Heads of Service who represent their various regions on the Board.

NETSA also envisages that due to the important role and expectations placed around the Board, representatives from other bodies and organisations with an interest on the delivery of the new operating model, would be invited at attend meetings to share information, intelligence and advice (e.g. Citizens Advice, CMA etc), as required, but they would not form part of the decision making process of the new Board.

Chair

As with all such roles, NETSA recognises that the TSPB will require that a Chair will need to be appointed and who will play a pivotal role. This person could be elected from its members (in the same way as the policy forum does currently), or it could be an independent person. If it is determined that an independent chairman is required, then we believe the Chair it must be someone with significant experience of running Trading Standards Services.

Further NETSA recognises that depending on the amount of time required to fulfil this role, it may be appropriate for funds to be made available to pay for the Chair's role. If the Chair was an existing Head of a Trading Standards then we envisage that funds would be provided to their employing local authority.

Secretariat

As with the delivery of all such operating models, NETSA clearly recognises that the TSPB will need some form of programme office and secretariat to facilitate the meetings, ensure decisions are enacted, provide a contact point for Heads of Service and Central Government for TSPB related issues, prepare reports, deal with media, support any political oversight mechanism etc . Decisions will need to be made as to who should deliver the secretarial function for the Board, for example via ACTSO or TSI or some other arrangements.

Relationship to existing Trading Standards Policy Forum (TSPF)

We understand that under the new operating model the TSPB would be a separate but linked group to the existing TSPF. NETSA thinks it is a fundamental principle that the business and decisions of TSPB are kept separate from the broader policy making decisions of the TSPF as we believe that the arrangements and accountabilities of the two groups, will be different.

Members of the TSPB may be the same as those nominated to the TSPF. Or it could be that Wales and the English regions may take the view to have two different nominees to help share responsibilities and workloads, or they may have different skills that would be seen as more appropriate to one than the other. NETSA as a partnership body will take this decision on nominee(s) from this region, at the most appropriate time around the development of the proposals.

We anticipate that in the first year the TSPB would need to meet more often than the TSPF. Travel costs for members of the TSPB would need to be covered. If meetings are to be held on the same day, we recommend that the business is kept completely separately (e.g. by splitting the two parts as half a day each etc.).

Support required from BIS

NETSA would clearly state that transformation of this type cannot be achieved if the relationship between BIS and the TSPB is seen as some form of outsourcing or procurement arrangement. It can only work as a partnership. The development of this partnership will be necessary both to ensure that the requisite arrangements are made to set up the TSPB and ensure that the new arrangements work and also then to carry them forward to deliver what both Central and Local Government desire from the implementation of the new delivery model.

It is very clear to NETSA that In terms of the transitional process, the TSPB will be extremely reliant upon the expertise of BIS in the provision of detailed and robust advice, that the TSPB can rely on, in terms of matters such as how procurement rules need to work, what and how any TUPE arrangements will be managed, any contractual or legal matters etc.

Delivery Mechanisms

NETSA clearly understands that the detail of any delivery mechanisms will depend entirely on final decisions as to what functions are to be delivered by Trading Standards services, under the governance of the TSPB and more importantly the amount of funding to be associated with the various functions under the new delivery model.

NETSA also clearly understands that based on various assumptions that we can make at the moment, we take the view that the delivery mechanisms are very likely to focus on commissioning groups of authorities or lead authorities with support from their regional groups. These commissioning groups or lead authorities will be able to provide a national centre of excellence and deliver certain functions, using funding allocated to that specific function.

NETSA also recognises that it may also be appropriate that other functions may be done by other organisations such as TSI, training institutions, ACTSO or to other organisations and bodies which have an interest in the delivery of issues related to consumer protection.

NETSA recognises that whilst Wales and every English region must fully participate in the governance processes outlined above, there is no expectation or need that every region/country need to undertake work or apply to lead on any the national work. Indeed we take the view that it is crucial that any regional partnership body or local authority that bids for aspects of the work are absolutely confident they can deliver that particular project.

NETSA is of the opinion that expanded regional teams or national centres of excellence will provide sufficient investigative capacity to take on the larger cases.

NETSA is of the opinion that types of lead regions or national centres of excellence could work for any of the functions that are currently done by OFT. In particular we see them working for issues such as Unfair Contract Terms, national consumer protection cases, national estate agents issues etc.

We also understand that, to date, all cross-border referrals that have come to the OFT via the Consumer Protection Co-operation mechanism, have been passed by OFT to be dealt with by LATSS. If a CPC referral needed some form of national response then the TSPB could commission this via a lead authority or one of the existing centres of excellence.

In terms of the current regional Enforcement Teams and the Illegal Money Lending Teams, NETSA would expect that these should continue, using the same delivery mechanisms but under the governance of the TSPB rather than direct governance by BIS.

Indemnity Fund

NETSA as with other regional partnership body's have a particular concern that any individual local authority taking on a national case should not put itself at significant financial/legal risk. As such BIS, working with ACTSO and the Trading Standards Policy Forum, need to find a method of underwriting or insuring against any such risk.

NETSA would wish to reiterate that it will be essential that the resources are available to cover all the costs of the investigations and legal liabilities are underwritten. Without the indemnity fund NETSA would not recommend that any of your twelve constituent local authority Trading Standards services, should undertake any of these national high risk cases.

QUESTION 22. Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards? If so, would one of the JEB models be the best solution? Which one and why?

QUESTION 23. In relation to the various JEB models, how would you ensure effective Trading Standards participation in the JEB? Do you think that this option would deliver integration of enforcement across local, regional and national levels? Should other organisations be involved in the JEB, either as members or as participants in discussions? Would retention of such unrestricted consumer enforcement powers and responsibilities affect the CMA's singularity of purpose and distract it from its core competition remit?

QUESTION 24. How can your preferred new model best work with businesses?

NETSA would not prefer to maintain the status quo in terms of powers and responsibility, as we are of the opinion that this would be provide additional bureaucracy and costs associated with a new organisation but few clear benefits.

As the Government identifies in the consultation paper there would not be the resources to create national and regional enforcement infrastructure in LATSS. The JEB would also not be controlled by Heads of Trading Standards and could not be held accountable in the same way.

NETSA firmly believes that this option would make it far more difficult to achieve the leadership role that the Government had hoped to create and without investment in Trading Standards infrastructure, the ability of the network to come together effectively in a national body such as JEB would also be much less certain. We also feel that there would continue to be far more confusion and overlap of powers and responsibility.

NETSA believes that without this clarity of responsibility as well as control of substantial, national enforcement resources within the Trading Standards network, it would be much harder to engage all LATSS in cross-boundary enforcement in any integrated national system.

The role of the proposed Competition and Markets Authority

QUESTION 25. Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

QUESTION 26. In an Option 3-based model, should this enforcement role be subject to procedural limitations?

QUESTION 27. Do you agree that the CMA should enjoy significant discretion over when a market has structural problems, such as to give rise to its consumer enforcement powers?

QUESTION 28. Do you agree that the CMA should retain responsibility for mixed market studies where there may be competition and consumer issues (supply and demand side market failures) present on the relevant market?

QUESTION 29. Do you agree that in an Option 3-based model, the Citizens Advice service should in future be responsible for pure consumer detriment analysis and that the CMA should not perform pure consumer market studies? In such a case, do you agree that the CMA should stop performing market studies once it identifies that there is no structural problem in such markets and do you think there should be a duty on the Trading Standards Policy Board to prioritise cases referred by the CMA?

NETSA agrees that there are benefits for the CMA to retain a consumer enforcement role only in those cases where a potential breach of consumer law is connected to a structural market problem (e.g. the bank charges type cases). Where there are consumer cases that have a competition implication, we understand that the CMA will want to retain the resources to deal with cases that reflect structural market problems but we remain concerned that this may reduce the resources for LATSS to deliver the new consumer landscape under the proposals.

NETSA believes there must be effective communication and a good working relationship between the TSPB and CMA to ensure that intelligence can be shared and assurance received that cases can be dealt with appropriately.

Obviously consideration of intelligence from CMA and Citizens Advice on consumer detriment will be a vital element of the TSPB's future work on setting enforcement priorities and this could be a standing item for discussion at each TSPB meeting. However, we do not believe that there should be a duty on the TSPB to automatically cases referred to them by the CMA.

Cases that cross over institutional boundaries

QUESTION 30. Do you agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies in the proposed new landscape?

QUESTION 31. Do you agree that it would be helpful to have some resource that required joint agreement between the CMA, TSPB and consumer advocacy bodies for its release, to be used to investigate or address consumer and market issues that would otherwise risk an enforcement or advocacy gap? If so, at what level should such funds be set and how best should they be administered?

NETSA agrees that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies.

NETSA believes that it would be very helpful to have some resource that required joint agreement between the CMA, TSPB and the consumer advocacy bodies for its release to be used to investigate or address consumer and market issues that could risk an enforcement or advocacy gap. The exact mechanism required would depend on the amount of funds allocated for this and who "held" the funds. However it is important that we would want to ensure that the amount of bureaucracy associated with any such scheme, should be minimised.

For example whilst NETSA and its twelve constituent local authority Trading Standards services very much welcomed the creation of the "Fighting Fund" that BIS made available to support LATSS enforcement activity; we are of the opinion that the bureaucracy associated with the application and decision process was disproportionate to the funds available.

Other current OFT roles

QUESTION 32. Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not, how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?

NETSA takes the considered view that LATSS already have years of enforcement experience of dealing with rogue traders and illegal behaviour within their own communities including many with a national impact.

It has to be recognised that local authorities have taken far more prosecutions than the OFT and are confiscating tens of millions of pounds of assets from serious criminals in the consumer protection field. NETSA believes that even the threat of enforcement can help to deter non-compliance and can effectively back up self-regulatory schemes.

LATSS have always used a wide range of tools to ensure compliance over the years such as warning letters, cautions, fixed penalty notices, civil orders, injunctions etc. NETSA does not believe that there will be any problems with an enforcement model branded and effectively and efficiently delivered by LATSS.

Guidance and training

QUESTION 33. Do you agree the TSI would be the appropriate home for the OFT's professional guidance and training functions in the event of creation of a new single Competition and Markets Agency?

NETSA is of the opinion that TSI could be the appropriate home for the professional guidance and training functions currently delivered by the OFT. TSI have considerable experience of training staff in the wider trading standards community and also in the production of professional guidance.

Notwithstanding the suitability of TSI to deliver these functions, we are of the opinion this is where advice from BIS on procurement rules would be crucial as the TSPB would need to understand if and via what mechanism any funds can be provided to bodies other than public authorities.

Most international liaison and OFT's general consumer policy work

QUESTION 34. Do you agree that the TSI is the most appropriate home for the OFT's international liaison and general policy functions in the event that the CMA has only a limited consumer enforcement role?

NETSA is very aware of TSI's strong role and expertise in relation to European and international work and would envisage that this particular programme of work could very well continue under the control of TSI. This is particular the case with the loss in the capabilities within LGR to deliver these particular functions.

QUESTION 35. Do you think the requirement for LATSS' and other designated bodies' (under Part 8 of the Enterprise Act 2002) court orders to be directed by a central body needs to be retained in the new consumer enforcement model and if so, why?

NETSA takes no particular view on this particular proposal.

QUESTION 36. Do you think that responsibility for chairing the consumer concurrences group should transfer to Trading Standards Policy Board or TSI or to the CMA and why?

NETSA believes the Chairmanship of this group could indeed pass to TSI or the CMA (though the relevance to the CMA is likely to be limited if most consumer protection functions are removed from it). The TSPB would need to be aware of any key issues arising from the group but intelligence could be shared using TSPB meetings and if TSI were to take on this particular role then they would be able to present at TSPB meetings anyway.

QUESTION 37. Do you agree that the current super-complaints system to the OFT should be retained in respect of the CMA if the planned changes in the landscape go ahead?

Question 38. Do you think that the super-complaints process should be extended to require the Trading Standards Policy Board to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?

These proposals seem to make sense.

QUESTION 39. Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?

NETSA has no doubt that a lead local authority or group of authorities, could take on the estate agency and related anti-money laundering functions currently delivered by the OFT.

Notwithstanding this opinion, NETSA also takes the view that any fraudulent activities or activities where consumers are misled by estate agents are currently able to be dealt with by LATSS under legislation, such as the Fraud Act, the Property Misdescriptions Act and the Consumer/Business Protection from Unfair Trading Regulations. We therefore do not believe that the current negative licensing system for estate agents is necessary.

Further NETSA is of the opinion that the enforcement of anti-money laundering regulations is currently dealt with in an extremely "light touch" way by the OFT, and any transfer to LATSS would be focussed on dealing with serious known breaches and providing appropriate advice and support to businesses who may seek advice on compliance.

QUESTION 40. Do you agree that the proposed changes to the consumer landscape should go ahead in April 2013 regardless of whether the CMA is created by then or not? If not, why not?

NETSA is of the opinion that for the positive development of consumer protection across the regions on a strategic level it is essential that the proposed changes to the consumer landscape should go ahead in April 2013.

Hopefully this response is of some assistance to the Consultation exercise but if there are any specific enquiries to the issues as raised, please do not hesitate to contact David Ellerington on (0191) 2116119.

A handwritten signature in black ink that reads "David Ellerington". The signature is written in a cursive, flowing style.

**Signed off on behalf of the NETSA Executive. Chair. David Ellerington.
23rd September 2011.**

Newport City Council TS



Mr David Evans
Consumer and Competition Policy
3rd Floor
1 Victoria Street
London
SW1H 0ET

Trading Standards Section/Adran
Safonau Masnachu
Stephenson Street/Stryd Stephenson
Newport/Casnewydd
South Wales/De Cymru
NP19 0RB

26 September 2011

Dear Mr Evans

RE: CONSULTATION “EMPOWERING AND PROTECTING CONSUMERS”

The Trading Standards Section of Newport City Council has read the response to the consultation of the Association of Chief Trading Standards Officers and endorses their views.

There are a number of further points that Newport wishes to add and these are detailed below;

- 1. First Tier Consumer Advice and Education should sensibly be concentrated within one organisation. There is much to be said for the positive image with the public for the Citizens Advice 'brand' and the proposals for the shift of such first tier activities to the CA organisation seem entirely sensible. Consumer Direct currently deliver a telephone and internet service and the new CA model will have this as a minimum but will also allow the Face-to-Face service provision based within the hundreds of CAB Drop-in-centres to be formally included in the new system. It is arguable also that the CA brand is stronger than the CD brand thus leading to increased contacts. Taking all this into account - it is an excellent idea and will improve the provision of first tier advice but will also increase the number of referrals from the first tier to the second tier at Trading Standards. This additional work will add to pressures on the LATSS. (Questions 1 - 3)*
- 2. Welsh Government - I feel that whichever model is adopted Wales should still play a full and active part in all UK decision making processes and should be included on the Policy Board. Wales should not 'go it alone' but should operate within the system and representatives from Welsh LATSS should be on hand to assist with any devolved peculiarities that will no doubt emerge. (Question 15)*
- 3. In terms of the enforcement models, Option 3, seems to be the most logical as it provides a methodology of case allocation to the correct enforcement body and providing the correct supporting mechanisms are in place such as the Fighting Fund and the Indemnity Fund, risks to LATSS will be reduced significantly. The point of caution with this system is that whilst increased funding in the areas identified is very welcome and projects such as Scam Busters, Regional Intelligence Networks and E-Crime Units need this security for the cross border enforcement gaps - there exists a massive risk that the foundations that these projects are built upon i.e. a strong, robust and secure system of LATSS - is under threat from disproportionate budget cuts - as reported in the September 2011 LBRO document "Local Authority Regulatory Services Budgets 2011-2012" (Question 20)*
- 4. Primary Authority is an excellent vehicle but for big businesses mostly - for smaller businesses links to LATSS need to be the principle vehicle for business support - development of PA could assist (Question 24)*

If you have any further questions regarding this response, please contact me.

Yours sincerely

Matthew Cridland
Trading Standards Manager

NFOPP – National Federation of Property Professionals

30 September 2011

David Evans
Consumer and Competition Policy Directorate
Department for Business, Innovation & Skills
david.a.evans@bis.gsi.gov.uk

Dear Mr Evans

Introduction

The National Federation of Property Professionals (NFOPP) is an umbrella organisation for a number of trade bodies /self regulatory organisations, which have a combined membership of just under 14,000 property professionals.

NFOPP's divisions are:

- National Association of Estate Agents (NAEA)
- Association of Residential Lettings Agents (ARLA)
- Institute of Commercial Business Agents (ICBA)
- National Association of Valuers and Auctioneers

NFOPP's over-arching aims are to support its members by promoting the highest standards of professionalism and integrity amongst those working within the property industry, and to encourage members of the public to proactively choose its members when they are involved in any kind of property transaction.

Empowering and protecting consumers

We have focussed our response on our key area of concern which is dealt with in Q39.

Yours sincerely



ELIZABETH RICHARDS
HEAD OF LEGAL AND POLICY

enc.



Question 39. Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?

We are less concerned about which organisation exercises the estate agency functions, and more concerned that they are exercised in a robust and timely fashion so that they pose a real threat to rogue agents.

We have expressed concerns about the OFT's anti money laundering register from the outset. We believe that the NAEA should be appointed as AML supervisor for NAEA members. However, HM Treasury takes the view that the third money laundering directive prohibits self regulation of real estate agents. We are therefore working with HM Treasury to secure the necessary amendment at European level. We would prefer NAEA members to swap from OFT to NAEA. If a lead LATSS were to assume supervision for an interim period then this could cause unnecessary confusion.



North Lanarkshire Council TS



Response to the Department for Business Innovation and Skills (BIS) *“Empowering and Protecting Consumers - Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement”*

BACKGROUND

1.1 This response to the consultation has been produced by North Lanarkshire Council. The Council is the fourth largest local authority in Scotland with a population of 326,000. The Council provides a fully comprehensive trading standards service that includes the provision of consumer advice and in addition the trading standards service is responsible for the funding and monitoring of the 5 independent Citizens Advice Bureaux that operate within North Lanarkshire.

1.2 In partnership with Dundee City Council, North Lanarkshire hosts the Scottish Scambuster Team on behalf of the Society of Chief Officers of Trading Standards in Scotland (SCOTSS) and the 32 local authorities. In a similar way North Lanarkshire Council currently contracts with the East of England Trading Standards Association for the delivery of the BIS funded e-crime project in Scotland.

1.3 The Council recognises consumer policy is reserved to the UK Government, although delivery of the trading standards service through local authorities is a devolved matter. For this reason we are supporting a separate Scottish solution to some of the proposals raised, particularly with regard to the enforcement landscape.

1.4 The consultation document highlights that a growing number of authorities have a reduced capacity and profile to deliver an effective service at a local level. This will have a serious impact on the effectiveness of national or regional enforcement delivery mechanisms that result from these proposals. Although the main focus of the consultation is on national enforcement functions, it is important that any resulting changes can also be used where appropriate to strengthen and support the delivery of services at a local level.

SPECIFIC CONSULTATION QUESTIONS

Chapter 2 – Information, advice and education

Key Proposals

- Citizens Advice to lead on all information and advice for consumers (outside health and financial services).
- The Citizens Advice service to take over responsibility for Consumer Direct.
- The Extra Help Unit for vulnerable consumers of energy and postal services to be transferred to the Citizens Advice service.
- Citizens Advice service to take on national co-ordination of consumer education (except on financial services). Coordination of consumer education activities locally to be done by collaboration between Citizens Advice and the Trading Standards community.

QUESTION 1. How do you think the provision of consumer information to consumers can be improved upon?

North Lanarkshire Council works very closely with Consumer Direct Scotland (CDS), diverting 100% of all telephone callers for first tier advice to CDS, and accepting all referrals and notifications relating to consumers and businesses based in its area. This enables our dedicated consumer advice staff to deal with the more complex cases that require intervention, and allows more time to assist those who may be regarded as vulnerable consumers, or those for whom online or telephone services are not their preferred option. This is done through the provision of a walk-in / face to face service for consumers and traders in its area through the provision of consumer advice centres in Motherwell and Coatbridge.

The provision of Consumer Direct Scotland and its successor through Citizens Advice Scotland meets the Consumer Focus Scotland requirement for a universal advice service at first tier level regardless of the consumer's place of residence. The new service after April 2012 should expand on this by extending opening hours beyond the traditional office hours of 9.00am to 5.00 pm on weekdays, providing a service into the evenings and at weekends.

Any new service should have suitably trained staff, able to identify criminal issues and other matters that require to be referred to Trading Standards. Any service provided in Scotland should be fully integrated with that in England & Wales, enabling call centres either side of the border to deal with each other's calls in the event of capacity issues caused by technical problems, holiday periods, high demand etc. This will require training and awareness on the part of all staff of the differences between Scots and English law.

Access by Trading Standards to the current Consumer Direct database should be maintained, and this should be integrated with any new database provided by Citizens Advice Scotland and Citizens Advice in England & Wales. Individual bureaux have traditionally been reluctant to pass on details of casework, often on client confidentiality grounds. These concerns will need to be addressed if the integrated system that will provide the "huge dataset on consumer detriment" envisaged in the consultation paper is to be realised.

It is essential that the existing system of referrals and notifications to Trading Standards services should continue, although provision of 2nd tier advice by local authorities may continue to be patchy in some areas of Scotland due to the ongoing financial constraints that many Councils face. Equally it is unclear

whether or how Citizens Advice Bureaux in Scotland will be in a position to maintain or secure extra resources to deal with additional requests for face to face or 2nd tier advice. As each CAB is an independent body, it is also unclear how Citizens Advice Scotland will be able to influence each bureau in the manner and level in which it should deal with consumer issues.

QUESTION 2. Do you agree that the OFT's consumer information role should be transferred to Citizens Advice?

We would agree that the OFT's consumer information role could be transferred to Citizens Advice. This would be of particular value if the transfer of OFT consumer functions outlined in Options 1 or 3 in Chapter 5 of the consultation went ahead.

QUESTION 3. Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service?

We have no preferred view on this proposal

QUESTION 4. Do you agree that the OFT's consumer education roles should be transferred to Citizen's Advice? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?

There is a strong case for local authorities to remain very active in the field of consumer education. In North Lanarkshire we run a money advice and consumer advice project in schools, and we also provide a teaching resource in relation to the sale of age restricted products. In conjunction with the Police and Housing & Social Work services we have run a doorstep crime initiative aimed at raising awareness among vulnerable residents of the potential hazards of bogus callers and distraction burglary etc.

We have also worked with the OFT on national campaigns such as scams and distance selling regulations. We see no reason why these should not continue if the OFT's role was transferred to Citizens Advice but we would want to see the same levels of involvement and liaison.

QUESTION 5. Do you agree that the proposed Trading Standards Policy Board and the TSI should coordinate and support business-facing educational activities?

At a local level in Scotland the provision of advice to businesses still forms part of a statutory performance indicator.. The ability to link in or refer to nationally produced guidance is very helpful in this respect. It is essential there is an effective scrutiny process to ensure materials remain both relevant and up to date, and this could be carried out by the TSPB and TSI.

Chapter 3 – Consumer Code Approvals

Key Proposals

- Competition and Markets Authority will not continue operation of the OFT's current Consumer Codes Approval Scheme.
- Alternative options for future accreditation of Consumer Code Approvals to be explored further, including BSI roles, Trading Standards, LBRO and private and/or third sector organisations.

QUESTION 6. What are the best options for current and prospective CCAS members to consider in the event that the Government's proposed consumer and competition landscape proposals are adopted?

QUESTION 7. Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of CCAS with effective alternative systems of accreditation?

QUESTION 8. What are the lessons learned from the operation of CCAS which may help in establishing (or revising) voluntary schemes in the future?

QUESTION 9. What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?

Question 10. What characteristics would a "kitemark" based code certification process need to have to meet industry requirements?

Question 11. What is your view on extending the Primary Authority concept to code certification?

Response to questions 6 to11

North Lanarkshire Council has no strong views on the future of CCAS.

The Council does not operate a Local Authority Assured Trader Scheme, although we acknowledge that some have been very successful and well received by local consumers and businesses.

The OFT process for approving codes has proved to be a very long and relatively labour-intensive, although it has been very stringent with rigorous requirements. It is essential that whatever new scheme is developed the process for code approval should be completed in a timelier manner.

Chapter 4 – Consumer Advocacy

Key Proposals:

There should be a single focus for the coordination of publicly-funded consumer advocacy functions. A single unit, run by Citizens Advice and acting in partnership with other expert providers as appropriate, should take over responsibility for:

- *All Consumer Focus functions in relation to gas, electricity and (except Northern Ireland) postal services*
- *Key, non-sector specific advocacy functions of Consumer Focus*
- *Sectoral consumer bodies for water (in England and Wales), transport, communications and legal services, if the relevant Departments and Devolved Administration responsible for those bodies so decide*
- *Redress schemes could be set up by business for consumers in the water, rail, coach, bus and tram sectors to mirror those in the energy and postal services sectors, if the relevant Departments and Devolved Administrations so decide.*
- *Consumer Focus's functions in respect of postal services consumers in Northern Ireland, undertaken by its committee known as Consumer Focus Post, should be transferred to the General Consumer Council for Northern Ireland.*

QUESTION 12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

QUESTION 13. Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?

QUESTION 14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?

QUESTION 15. What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

Response questions 12 to 15

North Lanarkshire Council would respond to these questions in relation to Scotland only.

We consider that there is a case for retaining Consumer Focus Scotland in some form, and that its functions should not be transferred to Citizens Advice. There are a number of areas where Consumer Focus Scotland has carried out specific work such as property factors that are unique to Scottish consumers and would not be prioritised by a replacement single advocacy body.

QUESTION 16. What are your views on these options for the transfer of information gathering powers? Which is preferable and why? Are there any other options for information-gathering powers?

We believe these should remain with Consumer Focus Scotland

QUESTION 17. What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?

We would support this.

QUESTION 18. Do you support the transfer of the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland and agree that as a result Consumer Focus Post Northern Ireland be abolished?

QUESTION 19. Do you agree that the Postal Services Redress Scheme should continue to apply in Northern Ireland to ensure that Northern Irish consumers retain the same access to redress as consumers elsewhere in the United Kingdom?

Questions 18 and 19 are matters for those who represent Northern Ireland to comment on.

Chapter 5 – Enforcement of Consumer Protection Legislation

Key Proposals:

- *To establish a Trading Standards Policy Board (TSPB) to lead the prioritisation and coordination of national, regional and cross local authority boundary consumer enforcement work in England and Wales.*
- *In England and Wales, national enforcement to be undertaken by Primary or Home Authorities and by expanded regional teams supported by a small number of lead regions and/or authorities with specialist areas of expertise. Money for enforcement against national and cross boundary threats to be ring-fenced for this purpose.*
- *The proposed new Competition and Markets Authority (CMA) to retain a market studies role in relation to markets where there may be both structural competition issues and consumer-related (demand-side) market failures.*
- *The CMA to retain powers to take action against breaches of consumer law wherever these breaches may inhibit the effective functioning of competition in markets.*
- *Powers to make supercomplaints to CMA to be retained by existing bodies.*
- *The TSPB, CMA, Citizens Advice service and Which? to be transparent about enforcement and market analysis priorities and to share work plans as far as possible, working in partnership on cases which risk crossing over the boundaries between them.*
- *The TSI to take on the OFT's current guidance, training, international liaison and policy functions.*
- *"Established Means" code of practice promoters to be able to formally request action against businesses breaking the relevant laws which the TSPB would have a duty to consider.*
- *If the creation of the CMA is delayed, these consumer enforcement landscape changes should go ahead with OFT taking the role proposed for the CMA.*

Options for reform

QUESTION 20. Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?

North Lanarkshire Council is in favour of the principles of Option 3, but with separate governance and operational arrangements for Scotland. We support the proposals put forward by the Society of Chief Officers of Trading Standards in Scotland (SCOTSS) that include the development of a 'Scottish Reaction Team' to deal with the majority of the OFT's national consumer enforcement functions in Scotland.

North Lanarkshire Council along with Dundee City Council currently hosts the Scottish Scambuster team on behalf of the 32 local authorities in Scotland. We accept that funding for this project along with the Illegal Money Lending Unit and e-crime etc will be combined with that for the OFT national enforcement functions in order to support the Scottish Reaction team.

The current relatively short term funding arrangements have not always been conducive to the best management and development of the Scambuster team. The proposed combination of funding and bringing together of teams may well provide some economies of scale which in turn will provide better and more

efficient outcomes. In addition, subject to suitable governance arrangements being put in place, such a team may be better placed within a national body such as the Scottish Government rather than being hosted by a local authority. This would ensure that the money would be used to provide capacity for Trading Standards to act collectively against national and regional threats.

It will be important that suitable governance arrangements are thought through and agreed with key stakeholders. These arrangements should provide suitable political oversight and strategic direction for the Scottish solution, which will also provide accountability for the operational oversight of the Scottish Reaction Team.

Any option such as the Scottish Reaction Team is dependent upon there being sufficient resources available to put the necessary structures in place. To date it has not been clear what amount of resources is available or in fact how much of that would be available for Scotland. Clarification of the resources available will be essential in taking these proposals forward and early progress on their implementation will not be possible until this is known.

QUESTION 21. In relation to Option 3, do you agree with the Government's principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

In opting for the proposal put forward by SCOTSS for a Scottish Reaction Team, we would support the principles contained in their response for the operational and strategic oversight of the team involving key stakeholders in Scotland. We believe this alternative Scottish solution will deliver effective enforcement against large businesses tempted to break the law. With this option all OFT national enforcement functions would be dealt with by the national team.

The question of an indemnity fund is slightly different in Scotland as no local authority is able to prosecute traders and businesses that flout the law. All offences are reported to the Procurator Fiscal who then becomes responsible for any subsequent prosecutions including the costs of such actions. However the experience of the Scambuster Team in pursuing Enterprise Act enforcement action in the Court of Session has shown that this can be a very expensive process, and therefore some form of indemnity for such civil actions would be very desirable.

QUESTION 22. *Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards? If so, would one of the JEB models be the best solution? Which one and why?*

QUESTION 23. In relation to the various JEB models, how would you ensure effective Trading Standards participation in the JEB? Do you think that this option would deliver integration of enforcement across local, regional and national levels? Should other organisations be involved in the JEB, either as members or as participants in discussions? Would retention of such unrestricted consumer enforcement powers and responsibilities affect the CMA's singularity of purpose and distract it from its core competition remit?

QUESTION 24. How can your preferred new model best work with businesses?

Response to questions 22 to 24.

We see the proposed alternative solution of a Scottish Reaction Team and the suggested Joint Enforcement Board as being mutually exclusive. Clearly any resources for Trading Standards to carry out work tackling national and /or regional threats is dependent on the demise of the OFT in its current form. The status quo will leave confusion and overlap in responsibilities between Trading Standards and the OFT. This will not lead to any improvement on the current system and still leaves potential for the cases to disappear between the enforcement gaps as identified by the National Audit Office report.

The role of the proposed Competition and Markets Authority

QUESTION 25. Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

QUESTION 26. In an Option 3-based model, should this enforcement role be subject to procedural limitations?

QUESTION 27. Do you agree that the CMA should enjoy significant discretion over when a market has structural problems, such as to give rise to its consumer enforcement powers?

QUESTION 28. Do you agree that the CMA should retain responsibility for mixed market studies where there may be competition and consumer issues (supply and demand side market failures) present on the relevant market?

QUESTION 29. Do you agree that in an Option 3-based model, the Citizens Advice service should in future be responsible for pure consumer detriment analysis and that the CMA should not perform pure consumer market studies? In such a case, do you agree that the CMA should stop performing market studies once it identifies that there is no structural problem in such markets and do you think there should be a duty on the Trading Standards Policy Board to prioritise cases referred by the CMA?

Response to questions 25 to 29

We agree that there are benefits for CMA to retain a consumer enforcement role only in those cases where a potential breach of consumer law is connected to a structural market problem (e.g. the bank charges type cases). Where there are consumer cases that have a competition implication, we understand that the CMA will want to retain the resources to deal with cases that reflect structural market problems but we remain concerned that this may reduce the resources for LATSS to deliver the new consumer landscape under the proposals.

There must be effective communication and a good working relationship between the Scottish reaction Team, TSPB and CMA to ensure that intelligence can be shared and assurance received that cases can be dealt with appropriately. The Scottish Reaction Team, TSPB and the CMA should follow a National Intelligence Model (NIM) or similar approach to take an intelligence-led, problem solving approach to consumer protection issues.

Cases that cross over institutional boundaries

QUESTION 30. Do you agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies in the proposed new landscape?

QUESTION 31. Do you agree that it would be helpful to have some resource that required joint agreement between the CMA, TSPB and consumer advocacy bodies for its release, to be used to investigate or address consumer and market issues that would otherwise risk an enforcement or advocacy gap? If so, at what level should such funds be set and how best should they be administered?

Response to questions 30 and 31

We agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies.

It would be helpful to have some resource that required joint agreement between the CMA, TSPB and the consumer advocacy bodies for its release to be used to investigate or address consumer and market issues that could risk an enforcement or advocacy gap.

Other current OFT roles

QUESTION 32. Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not, how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?

It is considered that local authorities currently report more cases to the Procurator Fiscal than the OFT and are also involved in the confiscation of assets from serious criminals in the consumer protection field. We believe that their threat of enforcement can help to deter non-compliance and can effectively back

up self-regulatory schemes. LATSS have always used a wide range of tools to ensure compliance over the years such as warning letters, cautions, fixed penalty notices, civil orders, injunctions etc. .

The current consultation does not address the issue as to how those rogue traders and businesses who are based overseas will be dealt with.

Guidance and training

QUESTION 33. Do you agree the TSI would be the appropriate home for the OFT's professional guidance and training functions in the event of creation of a new single Competition and Markets Agency?

Yes, this would be a suitable role for TSI.

Most international liaison and OFT's general consumer policy work

QUESTION 34. Do you agree that the TSI is the most appropriate home for the OFT's international liaison and general policy functions in the event that the CMA has only a limited consumer enforcement role?

TSI has a strong role and expertise in relation to European and international work in areas such as food and product safety and they could undertake this work.

QUESTION 35. Do you think the requirement for LATSS' and other designated bodies' (under Part 8 of the Enterprise Act 2002) court orders to be directed by a central body needs to be retained in the new consumer enforcement model and if so, why?

No, any issues could be resolved by use of a centralised database to record the information, such as the Consumer Regulation Website (CRW).

QUESTION 36. Do you think that responsibility for chairing the consumer concurrencies group should transfer to Trading Standards Policy Board or TSI or to the CMA and why?

No response.

QUESTION 37. Do you agree that the current supercomplaints system to the OFT should be retained in respect of the CMA if the planned changes in the landscape go ahead?

Question 38. Do you think that the supercomplaints process should be extended to require the Trading Standards Policy Board to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?

Response to questions 37 and 38

These proposals seem sensible. In terms of responding to supercomplaints, it is assumed this would be undertaken by the Scottish Reaction Team in Scotland.

QUESTION 39. Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?

In Scotland this could be taken on by the proposed Scottish Reaction Team

QUESTION 40. Do you agree that the proposed changes to the consumer landscape should go ahead in April 2013 regardless of whether the CMA is created by then or not? If not, why not?

Yes, any further delay would be unhelpful to both local authorities and businesses.

North Yorkshire CC



North

Yorkshire County Council

Business and Environmental Services

EXECUTIVE MEMBER

Telephone: 01937 832501

E-mail: Clr.Chris.Metcalf@northyorks.gov.uk

County Councillor Chris Metcalfe
17 West Mount
Tadcaster
LS24 9LB

19 September 2011

Dear Mr Evans

MAC
22/9

EMPOWERING AND PROTECTING CONSUMERS

I refer to the consultation document published in June 2011.

The government proposes to make radical changes to the way in which consumer protection advice and enforcement is undertaken in the UK. The consultation outlines many changes but I would like to respond on two issues which directly impact on the ability of NYCC to protect our residents and promote the economic interests of businesses that operate in North Yorkshire.

The consultation asks:

"Do you agree that the OFT's consumer information role should be transferred to Citizens Advice?"

Under this proposal the government proposes to transfer responsibility for the Consumer Direct (CD) service to Citizens Advice. CD information is essential for our successful trading standards service to target their resources effectively using an intelligence-led approach to enforcement and to identify those vulnerable residents who are in additional need of support.

Whilst we support this proposal we would do so on the assumption that BIS and CD are satisfied that CD has sufficient capacity and expertise to meet the demands that will be placed upon them. Further, we must stress that local authority access to CD information must continue and be improved where possible. Failure to do this would put at risk the well-being of our residents and make effective and targeted enforcement more difficult and ultimately more expensive.

Mr David Evans
Department of Business, Innovation and Skills (BIS)
Consumer and Competition Policy Directorate
3rd Floor
1 Victoria Street
London
SW1H 0FT

/Continued



The consultation asks:

"Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?"

We prefer Option 3 under which the majority of the Office of Fair Trading's consumer enforcement functions are transferred to local authority trading standards services with some functions (for cases involving structural market problems) remaining with the Competition and Markets Authority.

In North Yorkshire we have a very successful and proactive trading standards service and the Council is also a lead authority for internet crime enforcement and digital evidence recovery. North Yorkshire is also recognised as a lead trading standards service in terms of rogue trading and doorstep crime enforcement. As well as helping our local consumers and businesses we already undertake (working with our local authority partners and other agencies) consumer protection work which has a regional and national impact.

Through our intelligence-led approach to enforcement, and using our extensive network of enforcement agency relationships we are often able to intervene in an effective and timely manner to minimise consumer detriment. Numerous examples are available to support the effectiveness of a 'local' approach to tackling a major issue and the proposed continuation of specialist enforcement teams on 'Scambuster' lines will greatly assist tackling those rogue traders who operate across local authority boundaries.

Option 3 would also remove the duplication of responsibility for enforcement in several areas of consumer protection work. With additional resources to build on the success of local authority delivery of trading standards services much more can be achieved. It will be essential, however; that some of these resources are used to cover all the costs of an investigation of major national importance and any legal liability associated with the case is underwritten by government.

Yours sincerely



County Councillor Chris Metcalfe
Portfolio Member for Trading Standards

Nottinghamshire CCTS*

EMPOWERING AND PROTECTING CONSUMERS

Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement.

Response form

Respond by 27 September 2011

QUESTION 1. How do you think the provision of consumer information to consumers can be improved upon?

Consumer information and advice must continue to be available through a wide range of channels, face to face, online and telephone. The Consumer Direct model is based on telephone contact whereas there continues to be real value to the consumer through the face to face contact that the CAB delivers. This is particularly valuable for the more vulnerable consumer who needs impartial and independent advice from trusted sources. These residents will often be happier with, and the advice far more effective if they have face to face contact.

The service offer must recognise that consumers will require a range of interfaces and this must be maintained.

QUESTION 2. Do you agree that the OFT's consumer information role should be transferred to the Citizens Advice service?

There is real value in joining up this function both nationally and locally between the CAB and Local Trading Standards Authorities. Both of these bodies are positioned far closer to consumers than the OFT could ever hope to achieve in it's current form.

QUESTION 3. Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service?

We would be happy that the 'Extra Help Unit' for vulnerable consumers should continue under the new arrangements and that the unit and associated finance should be transferred to Citizens Advice, if other related advice services are also transferred.

QUESTION 4. Do you agree that the OFT's consumer education roles should be transferred to the Citizens Advice service? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?

We would be happy with the Government's proposal that the OFT's publicly-funded consumer education role at national level be transferred to Citizens Advice, if other related advice services are transferred. The Citizens Advice will need to work closely with Trading Standards to ensure that the education provision is well coordinated, including the distribution of educational materials and sharing of best practice. In Nottinghamshire the Trading Standards and CAB already have strong links and this proposal will capitalise on this even further and maximise benefits for consumers.

In the current financial climate an area for improvement could include financial literacy, helping consumers how to complain, educating them on what consumer rights exist and what to do with faulty goods.

Targeted consumer advice programmes are an active countermeasure employed by Nottinghamshire Trading Standards Service to empower consumers and assist in improving the trading environment. These programmes are intelligence led, based on the issues that are or are likely to impact on the County's residents.

Local authorities should remain responsible for direct delivery of education to consumers at local level. The government must agree the right balance of funding between Citizens Advice and local authorities to properly support both national and local consumer education.

QUESTION 5. Do you agree that the proposed Trading Standards Policy Board and the TSI should coordinate and support business-facing educational activities?

Yes we strongly feel this. TSI's role to date has been to provide valuable educational materials for Trading Standards Services to use and it also provides business training such as through its fair trading award. In Nottinghamshire we are keen to promote and use the Institute's age restricted sales 'Do You Pass', which initially provides a package to accredit local trainers, who are then able to deliver the training to local traders.

QUESTION 6. What are the best options for current and prospective CCAS members to consider in the event that the Government's proposed consumer and competition landscape proposals are adopted?

QUESTION 7. Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of CCAS with effective alternative systems of accreditation?

QUESTION 8. What are the lessons learned from the operation of CCAS which may help in establishing (or revising) voluntary schemes in the future?

QUESTION 9. What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?

QUESTION 10. What characteristics would a Kitemark® based code certification process need to have to meet industry requirements?

QUESTION 11. What is your view on extending the Primary Authority concept to code certification?

Q6 -11

Nottinghamshire has no strong preference on the future of CCAS.

If a scheme is to continue, there must be an opportunity for services to feed into the application process as they have done in the existing OFT Consumer Codes Approval Scheme, so that any concerns or issues can be raised with those seeking code approval.

Nottinghamshire already has 2 alternative schemes of accreditation in two key areas for our residents. It operates a Buy With Confidence Scheme which gives consumers a means of finding an approved trustworthy business and acts as an alternative strategy against rogue traders. The model is also used to accredit personal carers for those needing social care in Nottinghamshire. The schemes continue to be successful and are well received by local consumers and businesses.

QUESTION 12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

QUESTION 13. Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?

QUESTION 14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?

Q12 – 14

If most consumer advice provision is to be located within the CAB we would agree with the proposal to combine as many sectoral advocacy schemes within it.

Within Nottinghamshire the Trading Standards Service currently offers second tier advice and advocacy for vulnerable consumers only. We feel it important to maintain this level of support for the most vulnerable in our communities.

QUESTION 15. What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

We have no view on this question.

QUESTION 16. What are your views on these options for the transfer of information gathering powers? Which is preferable and why? Are there any other options for information-gathering powers?

We have no strong views on this however we do believe that what ever body they ultimately sit with should be accountable to Parliament, as Consumer Focus and the sectoral advocacy bodies have been in relation to their statutory functions and powers.

QUESTION 17. What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?

These schemes enable advisors to sort complaints on receipt and to direct consumers down particular redress routes rather than to give general advice to resolve their enquiries.

QUESTION 18. Do you support the transfer of the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland and agree that as a result Consumer Focus Post Northern Ireland be abolished?

QUESTION 19. Do you agree that the Postal Services Redress Scheme should continue to apply in Northern Ireland to ensure that Northern Irish consumers retain the same access to redress as consumers elsewhere in the United Kingdom?

Q 18 – 19 Not appropriate for Nottinghamshire Trading Standards to comment on.

QUESTION 20. Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?

We would prefer Option 3 which envisages the transfer of the majority of the OFT's consumer enforcement functions to Local Trading Standards Services with some functions (for cases involving structural market problems) remaining with the Competitions and Markets Authority. We believe that Nottinghamshire and other Trading Standards services have the skills, experience, willingness and position within communities to deliver the outcomes the Government wants to see.

As well as helping local consumers and businesses, the Nottinghamshire service hosts the East Midlands Regional Scambusters Team which has significant regional and national impact. A note-able success being a recent investigation and prosecution of individuals involved in the importation and

distribution of unsafe counterfeit hair-straightening products. The team's intervention has been responsible for the subsequent drop in the number of these potentially fatal products being imported into the country.

As well as assisting local consumers and business the Nottinghamshire Trading Standards Service's work also has considerable impacts both regionally and nationally. We have a number of Primary Authority Partnerships with national retailers, employ an e-crime capability to investigate internet scams, have an intelligence capability to join up with other Trading Standards services and other enforcement agencies.

Option 3 enables Trading Standards Services to have a greater influence over regional and national work. It will enable the development of better resilience for existing regional infrastructures which are crucial to effective engagement and delivery between the local and national levels. It will also enable transformational changes within Trading Standards Services in terms of strengthening leadership and influence in order to support more effective action against cross-boundary threats.

We do not believe Option 3 would undermine the provisions of the Localism Bill, providing it gives services greater freedom and flexibility to be able to work together nationally, regionally and locally and does not impose top down targets and strategies.

QUESTION 21. In relation to Option 3, do you agree with the Government's principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

We agree with the Government's principles for the operation of the new TSPB to co-ordinate and lead the enforcement effort against regional and national threats and to deploy national funding to support such efforts.

It is essential that the Board be comprised of heads of trading standards and must be the key decision making body for the agreement of: priorities; allocation of funds to those priorities; the necessary delivery mechanisms; and appropriate means to monitor performance.

Citing the East Midlands regional scambusters team as a real success we believe that expanded regional teams or national centres of excellence will provide sufficient investigative capacity to take on the larger cases. The types of lead regions or national centres of excellence could work for any of the functions that are currently done by OFT. In particular we see them working for issues such as Unfair Contract Terms, national consumer protection cases, national estate agents issues etc.

We would naturally want to minimise the financial/legal risk to the County Council in taking on a national high risk case, and would seek assurances that any such risks were covered.

QUESTION 22. Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards? If so, would one of the JEB models be the best solution? Which one and why?

QUESTION 23. In relation to the various JEB models, how would you ensure effective Trading Standards participation in the JEB? Do you think that this option would deliver integration of enforcement across local, regional and national levels? Should other organisations be involved in the JEB, either as members or as participants in discussions? Would retention of such unrestricted consumer enforcement powers and responsibilities affect the CMA's singularity of purpose and distract it from its core competition remit?

QUESTION 24. How can your preferred new model best work with businesses?

Q22 - 24

We would prefer not to maintain the status quo in terms of powers and responsibility as this would provide additional bureaucracy and costs associated with a new organisation but few clear benefits. It is difficult to envisage how a variant of the current model would lead to the increases in performance for consumers the Government is seeking to achieve.

As the Government identifies in the consultation paper there would not be the resources to create national and regional enforcement infrastructure in Local Authority Trading Standards. The JEB would also not be controlled by heads of trading standards, and therefore could not be held accountable in the same way.

We believe that this option would make it far more difficult to achieve the leadership role that the Government had hoped to create and without investment in Trading Standards infrastructure, the ability of the network to come together effectively in a national body such as JEB would also be much less certain. We also feel that there would continue to be far more confusion and overlap of powers and responsibility. Without this clarity of responsibility as well as control of substantial, national enforcement resources within the Trading Standards network, it would be much harder to engage services in cross-boundary enforcement in any integrated national system.

QUESTION 25. Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

QUESTION 26. In an Option 3-based model, should this enforcement role be subject to procedural limitations?

QUESTION 27. Do you agree that the CMA should enjoy significant discretion over when a market has structural problems, such as to give rise to its consumer enforcement powers?

QUESTION 28. Do you agree that the CMA should retain responsibility for mixed market studies where there may be competition and consumer issues (supply and demand side market failures) present on the relevant market?

QUESTION 29. Do you agree that in an Option 3-based model, the Citizens Advice service should in future be responsible for pure consumer detriment analysis and that the CMA should not perform pure consumer market studies? In such a case, do you agree that the CMA should stop performing market studies once it identifies that there is no structural problem in such markets and do you think there should be a duty on the Trading Standards Policy Board to prioritise cases referred by the CMA?

Q25 - 29

We agree that there are benefits for CMA to retain a consumer enforcement role only in those cases where a potential breach of consumer law is connected to a structural market problem (e.g. the bank charges type cases). Where there are consumer cases that have a competition implication, we understand that the CMA will want to retain the resources to deal with cases that reflect structural market problems but we remain concerned that this may reduce the resources for Trading Standards Services to deliver the new consumer landscape under the proposals.

There must be effective communication and a good working relationship between the TSPB and CMA to ensure that intelligence can be shared and assurance received that cases can be dealt with appropriately.

Consideration of intelligence from CMA and Citizens Advice on consumer detriment will be a vital element of the TSPB's future work on setting enforcement priorities.

QUESTION 30. Do you agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies in the proposed new landscape?

QUESTION 31. Do you agree that it would be helpful to have some resource that required joint agreement between the CMA, TSPB and consumer advocacy bodies for its release, to be used to investigate or address consumer and market issues that would otherwise risk an enforcement or advocacy gap? If so, at what level should such funds be set and how best should they be administered?

Q30 – 31

We agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies.

It would be helpful to have some resource that required joint agreement between the CMA, TSPB and the consumer advocacy bodies for its release to be used to investigate or address consumer and market issues that could risk an enforcement or advocacy gap. The exact mechanism required would depend on the amount of funds allocated for this and who "held" the funds.

QUESTION 32. Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not, how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?

Trading Standards already have years of enforcement experience of dealing with rogue traders and illegal behaviour within their own communities including many with a national impact. Councils take far more prosecutions than the OFT and are confiscating tens of millions of pounds of assets from serious organised criminals in the consumer protection field. We believe that the threat of enforcement can help to deter non-compliance and can effectively back up self-regulatory schemes. Services have always used a wide range of tools to ensure compliance over the years such as warning letters, cautions, fixed penalty notices, civil orders, injunctions etc.

QUESTION 33. Do you agree the TSI would be the appropriate home for the OFT's professional guidance and training functions in the event of creation of a new single Competition and Markets Agency?

TSI could be the appropriate home for the OFT's professional guidance and training functions. TSI have considerable experience of training staff in the trading standards community and producing professional guidance.

QUESTION 34. Do you agree that the TSI is the most appropriate home for the OFT's international liaison and general policy functions in the event that the CMA has only a limited consumer enforcement role?

We are aware of TSI's strong role and expertise in relation to European and international work.

QUESTION 35. Do you think the requirement for LATSS' and other designated bodies' (under Part 8 of the Enterprise Act 2002) court orders to be directed by a central body needs to be retained in the new consumer enforcement model and if so, why?

It would be useful to coordinate action although has to be balanced against the Governments drive for localism.

QUESTION 36. Do you agree that responsibility for chairing the consumer concurrences group should remain with the CMA?

QUESTION 37. Do you agree that the current supercomplaints system to the OFT should be retained in respect of the CMA if the proposed changes go ahead?

QUESTION 38. Do you think that the supercomplaints process should be extended to require the Trading Standards Policy Board to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?

Q36-38 These proposals seem to make sense.

QUESTION 39. Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?

We have no doubt that a lead local authority or group of authorities, could take on the OFT's estate agency and related anti-money laundering functions. The knowledge of local markets would improve the performance of this role. Any fraudulent activities or activities where consumers are misled by estate agents are being dealt with by Trading Standards Services under current legislation such as the Fraud Act, the Property Misdescriptions Act and the Consumer/Business Protection from Unfair Trading Regulations.

The enforcement of anti-money laundering regulations is dealt with in an extremely "light touch" way by the OFT, and any transfer to Trading Standards would be focussed on dealing with serious known breaches and providing appropriate advice and support to businesses who may seek advice on compliance.

QUESTION 40. Do you agree that the proposed changes to the consumer enforcement landscape should go ahead if the creation of the CMA is delayed? If not, why not?

We believe that it is essential that the proposed changes to the consumer landscape should go ahead in April 2013.

Department for Business, Innovation and Skills
URN 11/970RF

Npower

David Evans
Consumer and Competition Policy Directorate
3rd Floor
1 Victoria Street
London
SW1H 0ET

Your ref Kevin Miles
Phone 0113 289 5492

david.a.evans@bis.gsi.gov.uk

27 September 2011.

RWE npower response to BIS consultation “Empowering and Protecting Customers”.

Dear Mr.Evans,

RWE npower welcomes the opportunity to comment on this consultation, seeking as it does to review the existing complex consumer landscape and to streamline the current range of organisations with, sometimes, overlapping responsibilities. This should benefit consumers and businesses alike and we, therefore, applaud this review.

This is a very wide-ranging consultation and I have attached in an appendix our detailed responses to the questions that it raises.

However, there are one or two specific points that I wanted to draw to your attention.

Energy sector advocate

In our response, we have not specified what precise form the new energy sector advocate should take. However, I would like to emphasise that we would expect certain principles to be adhered to when Government decides on the model. These are that any effective advocate should:

- Be truly Independent,
- Be free from commercial distortions and bias;
- Use evidence from a wide range of consumers to drive its priorities; and
- Have appropriate governance in place.

This review is an excellent opportunity to give consumers a more simplified and coherent advocacy, enforcement and education regime but it is essential that the correct model is chosen for this. It would be wholly inappropriate for the agenda of the advocate to be set by anything other than the concerns of consumers, and certainly not by commercial considerations.

Risk of duplication

In the energy sector in particular, there is a significant risk of duplication given that the sectoral Regulator, Ofgem, also already undertakes some consumer-facing activities. It is clearly essential that this duplication of activities does not occur as it will not add value for customers and will simply be a waste of resource.

Given the scale of the investment that is needed in the UK in forthcoming years, the Government also needs to be mindful of investor disquiet arising from the complexity of the regulatory landscape and the potential for conflict between competing organisations in the same regulatory space. When investors have a choice of markets across the globe in which to invest their money, it is clearly essential that the UK is made as attractive a home as possible for those investments.

If you would like to discuss any of the comments made in our response, please do call me.

Yours sincerely

Kevin Miles
CEO, npower retail.

RWE npower response to BIS consultation “Empowering and protecting consumers”

Please note that we have only responded to those questions directly relevant to our business.

QUESTION 1. How do you think the provision of consumer information to consumers can be improved upon?

It would be helpful if the provision of information could be delivered by one organisation to ensure consistency of message and so that consumers know where to go when they need advice. The current piecemeal delivery can sometimes leave consumers confused.

The information should always be impartial, accurate and balanced if it is to be useful to consumers. It should also be available in a range of formats; e.g. over the phone, face-to-face, via a website and in written format etc so as to be accessible to as many consumers as possible.

QUESTION 2. Do you agree that the OFT’s consumer information role should be transferred to the Citizens Advice Service?

This would seem to be an appropriate move, especially given the excellent reputation Citizens Advice (CA) enjoys with consumers. Further concentration of resource on the service will succeed in making it the “go to” place for consumers seeking impartial advice.

QUESTION 3. Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service?

Yes. The present services are complemented by this proposal. CA is already being expected to assume responsibility for the provision of information and advice to the public over the phone and web that was previously provided by Consumer Direct and the OFT. It is also expected to assume the duties and obligations currently discharged by Consumer Focus including consumer education initiatives; reporting evidence to regulators for enforcement action as well as research and representation; and supporting frontline advisers with training and resource materials on energy and post related matters. Given this, it seems sensible for the EHU's functions to be operated by CA, so that it provides both an integrated service and a 'one-stop shop' for consumers.

It is essential that the energy-specific knowledge held within the EHU is passed to Citizens Advice such that vulnerable consumers get the best possible service. Clearly, it is also critical that the existing good relationships between the EHU and suppliers are replicated by Citizens Advice.

QUESTION 4. Do you agree that the OFT’s consumer education roles should be transferred to the Citizens Advice service? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?

Yes, we do. However, in the energy sector, we also believe that Government and Ofgem have a role to play in the education of consumers.

Examples of large education campaigns (which CA could not run on its own) would be smart meter roll-out and Green Deal. Education programmes which bring about behavioural change in consumers are critical to the success of these schemes and therefore they must be carried out by Government (with support from CA) because of the scale and scope required.

QUESTION 5. Do you agree that the proposed Trading Standards Policy Board and the TSI should coordinate and support business-facing educational activities?

It seems a natural transition from the present arrangement that both bodies should liaise and work in tandem with Citizen's Advice if it takes over the OFT's role of coordinating consumer education nationally. However, there needs to be awareness that the TSI is the Trading Standards profession's representative and lobbying body. It is therefore

not an impartial organisation and is not, unlike the OFT, governed by an act of parliament which sets out and limits its duties and obligations.

If this is to happen, given that it will also be responsible for enforcement, it needs to be quite a distinct, separate activity and its aims should be around helping businesses to comply. If this is not possible, CA should undertake the role.

QUESTION 6. What are the best options for current and prospective Consumer Codes Approval Scheme members to consider in the event that the Government's proposed consumer and competition landscape proposals are adopted?

We support the continuation of the current Consumer Codes Approval Scheme given that an official badge of approval of a piece of self-regulation clearly helps in its promotion to consumers. From experience we have found that consumers are more readily accepting of the protections that a self-regulatory code is trying to provide if it has this "formal" seal of approval.

If this is to happen, given that the TSI's member organisations (local authority trading standards officers and services) will also be responsible for enforcement, the educational activity needs to be quite a distinct, separate activity and its aims should be around helping businesses to comply. If this is not possible, CA should undertake the role.

QUESTION 7. Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of Consumer Codes Approval Scheme with effective alternative systems of accreditation?

We are not aware of any organisation that would have the appetite / resource to do this.

There has been some suggestion that Trade Associations could undertake this role in future but we would certainly not like to see this happening in energy. As described in our answer to Q6, it is essential that any approving body is independent from the organisation seeking approval, if it is to give consumers confidence in the relevant Code.

QUESTION 8. What are the lessons learned from the operation of Consumer Codes Approval Scheme which may help in establishing (or revising) voluntary schemes in the future?

Please see answers to Qs 6 and 7.

QUESTION 9. What is your view on transposing Consumer Codes Approval Scheme approved codes into standards and related documents such as those published by BSI?

We are not sure that this is appropriate or necessary given our views on the merits of self-regulation set out above, where the relevant sector / industry has set out the protections and safeguards that are appropriate to the issues at hand.

Code approval should therefore be proportionate and carried out in a consistent fashion. Approval timescales should also be as short as possible so that consumers can benefit from the Code's protection as quickly as possible.

We would support a fast track mechanism for amendments to Codes that have previously been approved.

QUESTION 10. What characteristics would a Kitemark® based code certification process need to have to meet industry requirements?

As discussed above, any certification process should be proportionate, appropriate, timely and consistent across Codes.

QUESTION 11. What is your view on extending the Primary Authority concept to code certification?

We refer to our concerns outline above re a related body (such as the ERA) carrying out Code approval in the sense that it may not deliver consumer confidence.

Having said that, the ERA's oversight of Codes is extremely rigorous given its use of independent auditors and audit process on an annual basis to check and sign-off on compliance, fulfilment of obligations and use of appropriate sanctions.

QUESTION 12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

We agree that sectoral advocacy functions should be combined in one organisation. Advocacy should always be evidence-based, impartial and free from any commercial bias or influence. CA would therefore be ideally placed to carry out this role, given its daily interaction with consumers and their many and varied issues.

QUESTION 13. Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?

Yes we do, though we are concerned that due consideration should be given to the risk of duplication with Ofgem's functions. It would not be in the interests of consumers for requests for information to be duplicated by the two organisations (as is sometimes the case now) and would cause a strain on suppliers' resources. It is therefore essential that the Regulated Industries Units adds value over and above the work already carried out by Ofgem.

QUESTION 14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?

RWE npower is agnostic as to what precise form the new advocate organisation should take. However, it is essential that it has certain characteristics, namely that: it is independent, free from any commercial bias or interest and follows an agenda where its priorities are informed by evidence gathered directly from the broadest range of consumers possible.

QUESTION 15. What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

As currently, we believe that there should be a single UK-wide organisation looking at consumer interests, but that it should take account where consumers' priorities are different according to their location.

QUESTION 16. What are your views on these options for the transfer of information gathering powers? Which is preferable and why? Are there any other options for information-gathering powers?

We support option b and believe that any additional information-gathering powers should be transferred to Ofgem. However, it is clearly important that an advocacy body should have access to this information where necessary - Ofgem and that body should enter into a MoU for sharing of the information so as to avoid duplication of requests and placing disproportionate burden on suppliers.

QUESTION 17. What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?

We do not have a view as such, but we do believe that the Energy Ombudsman is essential for energy customers on the rare occasions where redress from an independent source is necessary. It is, however, important that the operation of redress schemes remain within their Terms of Reference and do not become an alternative Regulator as this risks double jeopardy for companies in these sectors.

QUESTION 20. Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?

We support Option 2.

We understand and recognise the need for robust enforcement of consumer law to uphold consumer confidence in the system. However, it is also essential to ensure that due process takes place. We believe that this is more likely to happen if these duties are undertaken by the proposed Competition and Markets Authority

QUESTION 21. In relation to Option 3, do you agree with the Government's principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

A more co-ordinated approach across the trading standards is a welcome move because it mitigates the risk of the current system where the approach can vary from local authority to local authority. It is essential that there is consistency of approach and that the TSPB has the teeth to ensure this consistency.

We do not support the indemnity fund proposal as we are concerned that that would take the risk out of losing cases from local authorities. The system should be designed so as to avert vexatious and frivolous pursuit of issues. Otherwise, this could potentially take the rigour out of the due process of needing to build up a proper case.

In addition, the tax/rate payer should not subsidise the cost of bringing forward cases that fail or have a high probability of so doing. In cases investigated by the police, the Crown Prosecution Service applies certain tests before a prosecution is commenced. Finally, businesses should bear the cost burden of cases that fail, whether the costs be legal or operational

QUESTION 22. Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards? If so, would one of the JEB models be the best solution? Which one and why?

This sounds like an even better option; bringing into play a more considered OFT approach and getting the CMA engaged where consumer enforcement needs to be applied. Also it places some form of constraint on trading standards being responsible primarily for enforcement nationally through JEB -

We do have some concerns with TSPB having national enforcement responsibilities as it is opaque how it will operate. The fear is, that despite its co-ordinating role, local authorities' trading standards functions are still autonomous and will deal with the same issue in different ways (a good example is the application of No Cold Calling Zones across different parts of the country)

QUESTION 23. In relation to the various JEB models, how would you ensure effective Trading Standards participation in the JEB? Do you think that this option would deliver integration of enforcement across local, regional and national levels? Should other organisations be involved in the JEB, either as members or as participants in discussions? Would retention of such unrestricted consumer enforcement powers and responsibilities affect the CMA's singularity of purpose and distract it from its core competition remit?

There is a balance here to be struck in arriving at a model that represents adequately the various bodies, but one which performs efficiently in the way it operates. In that sense we believe that only key bodies should be involved in deciding activity such as national campaigns, (although clearly taking in feeds from others in the framework such as Citizens Advice, sectoral regulators etc). We repeat our concerns about the number of regulatory authorities and issues suppliers have to deal with, the uncertainty that creates and the strain on resource that they have to dedicate to working on securing compliance or reacting to issues raised by a variety of sources.

Trading Standards functions are creatures of local authorities. Their structures, size and remit may vary as a result of their own authorities' priorities. Each TSD's powers are confined in the main to enforcing consumer law as it applies to matters arising in their area. However, police forces, which are also locally accountable enforcement bodies, have national bodies such as SOCA, NPIA and ACPO, which, for their different remits, seek to provide a consistent approach nationally for policing while recognising local accountability for day-to-day activity. It is, therefore, essential that we have consistency of approach so that one TS doesn't act more or less vigorously in

enforcing consumer law than the neighbouring one. Resources are also an issue: some TSDs are better funded than others; ergo their approaches may be different. Businesses need to know that a particular policy, once agreed by one TS isn't going to be challenged by another one. Greater enforceable coordination in TS matters is necessary, along with associated funds and terms of reference, to ensure coordinating bodies: (a) have the ability to discharge functions; and (b) have the vires and authority to act..

QUESTION 24. How can your preferred new model best work with businesses?

The assumption with this option is that because cross-boundary case handling is not statutory, and as regional funding will diminish, Primary Authority arrangements may not continue. Clearly, for larger, national businesses these arrangements are beneficial and it would be preferable if they were to continue. If they are not to be undertaken at local level then they would need to be carried out centrally by an arm of the proposed CMA; or through the CMA regional offices; or through additional funding to those local authorities carrying out this function to enable it to continue.

Provided funding of day-to-day work is protected, this option for change should have little impact on the advice and oversight that form part of the LATSS work in respect of smaller business

QUESTION 25. Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

No. It would be inappropriate to enforce against a party that faces circumstances beyond its control. The matter should be referred to the appropriate regulatory authority which could enforce, consult and then update the regulations, and decide that further action is not appropriate

QUESTION 26. In an Option 3-based model, should this enforcement role be subject to procedural limitations?

Yes. These should be clear and, in addition, there should be a clear process for appeal to a different and appropriate body

QUESTION 27. Do you agree that the CMA should enjoy significant discretion over when a market has structural problems, such as to give rise to its consumer enforcement powers?

The CMA should have concurrent powers with Ofgem as is the case now with the latter and the OFT for energy.

However, where any body has enforcement powers, and is additionally 'judge and jury' (i.e. is able to both adjudicate and levy a penalty), then its powers must be clearly set out and circumscribed where necessary. In addition, there has to be a separate and independent appeal mechanism

QUESTION 28. Do you agree that the CMA should retain responsibility for mixed market studies where there may be competition and consumer issues (supply and demand side market failures) present on the relevant market?

Ofgem should take the lead on these matters where, and if, they relate to energy. Citizens Advice and other relevant bodies which have an interest can be consulted on consumer matters.

QUESTION 29. Do you agree that in an Option 3-based model, the Citizens Advice service should in future be responsible for pure consumer detriment analysis and that the CMA should not perform pure consumer market studies? In such a case, do you agree that the CMA should stop performing market studies once it identifies that there is no structural problem in such markets and do you think there should be a duty on the Trading Standards Policy Board to prioritise cases referred by the CMA?

We believe that CAB is expert at individual customer contact and can identify structural issues from that contact. CMA should look at structural issues, largely from referral, but should not work at the lower level of individual customer experience. TSI should look at individual and systemic, but not structural, issues.

QUESTION 30. Do you agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies in the proposed new landscape?

The case needs to be made. Given the plethora of existing and proposed organisations that are or will be envisaged as operating in the consumer policy, protection and advocacy space, and that their roles may overlap in certain cases, there has to be regular and effective liaison between the bodies involved. Otherwise, at best there will be duplication; at worst, like the confusion that arose during the early days of the credit crunch between the Treasury, Financial Services Authority and the Bank of England as to what each should have done, it could lead to consumer detriment being dealt with tardily, or even made worse. Clear and well observed Memoranda of Understanding are essential to facilitate effective collaboration.

QUESTION 31. Do you agree that it would be helpful to have some resource that required joint agreement between the CMA, TSPB and consumer advocacy bodies for its release, to be used to investigate or address consumer and market issues that would otherwise risk an enforcement or advocacy gap? If so, at what level should such funds be set and how best should they be administered?

This seems logical if the framework is to be coherent and efficient. We don't have a view as to the level of funding or how best the funds should be administered. However, there should not be any additional levy on market participants which such resource provision would require.

QUESTION 33. Do you agree the TSI would be the appropriate home for the OFT's professional guidance and training functions in the event of creation of a new single Competition and Markets Agency?

No. For the reasons set out in the answer to question 5 above

QUESTION 34. Do you agree that the TSI is the most appropriate home for the OFT's international liaison and general policy functions in the event that the CMA has only a limited consumer enforcement role?

The distinction between the roles of TSI and TSPB is not entirely clear from the consultation paper. The former is, amongst other things, a campaigning organisation and representative body for trading standards professionals, while the latter appears to be being established more as a co-ordinating body for dealing with regional and national consumer matters. To that end, and given the expectation that the TSPB would '*exert significant influence over the entire Trading Standards system... and its ability to deploy a considerable budget.*' (para 5.52), on the face of it, it might be more logical if this body, via its secretariat, represents the UK in liaising with our international colleagues.

QUESTION 36. Do you agree that responsibility for chairing the consumer concurrencies group should remain with the CMA?

Yes.

QUESTION 37. Do you agree that the current supercomplaints system to the OFT should be retained in respect of the CMA if the proposed changes go ahead?

Yes.

QUESTION 38. Do you think that the supercomplaints process should be extended to require the Trading Standards Policy Board to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?

Yes. Given that the scope of the TSPB is a national one and therefore its scope is strategic, if there is a matter that leads to a supercomplaint, then the rationale behind why it is taking the action it is, is essential.

QUESTION 40. Do you agree that the proposed changes to the consumer enforcement landscape should go ahead if the creation of the CMA is delayed? If not, why not?

Yes. The creation of the CMA is not central to the majority of proposals set out in this consultation. Presumably the OFT will remain until the CMA comes into being. Therefore the former can transfer its other responsibilities to other organisations, as and when in an orderly way, perhaps in separately agreed MOUs. If legal authority is required to effect the transfer of powers, legislation can be drafted to adopt such a phased approach.

OFCOM



Ofcom response to the BIS consultation *Empowering and Protecting Consumers: consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement*

1. Introduction

Ofcom is the regulator for the UK's communications sector. We regulate telecommunications, broadcasting and the radio spectrum, and will shortly take on responsibility for postal markets. Our response to the Government's consultation on empowering and protecting consumers focuses primarily on consumer advocacy and the most appropriate institutional arrangements for advocacy in the communications sector. We also offer some views on the implications for Ofcom of the Government's plans to change the way in which horizontal (as opposed to sector-specific) consumer law is enforced in the UK. We have concentrated on how the proposals would affect the communications sector and so have not sought to answer all of the questions set out in the consultation document.

2. Consumer advocacy

a. Ofcom position

Consumer advocacy is critically important to Ofcom's ability to understand consumer experiences and how they are affected by market failures from both the supply and demand sides. Hence, effective advocacy is a key input to our policy making and enforcement programme. There are a number of stakeholders who provide important evidence and advice to us through consumer advocacy. Some of these represent consumers broadly and with cross-sectoral experience (e.g. Which?, Consumer Focus, Citizen's Advice). Others are more focussed on particular groups of consumers and their needs. It is vital that consumer advocates are able to continue to engage with us going forward, irrespective of the outcome of the Consumer Landscape Review.

In this response we focus on the Communications Consumer Panel since the Panel is the primary source of independent consumer advice to us. The Panel was established under Section 16 of the Communications Act 2003 with the specific purpose to advise Ofcom on consumer issues.

Ofcom believes there is merit in retaining the Communications Consumer Panel as part of the UK's system of independent consumer advocacy. There are three main reasons for this approach:

- The Panel delivers real benefits for consumers by providing timely and relevant input to regulatory decisions. Communications markets are changing and converging quickly, which makes the Panel's sector-specific expertise invaluable.
- There continues to be a need for Ofcom to receive independent advice on consumers' interests to counterbalance industry views.

- The Panel has substantially reduced its costs and provides very good value for money.

We elaborate on each of these points in turn.

b. Benefits of the Panel model

The Panel's role is to provide advice to Ofcom to ensure that the interests of consumers, including small businesses, are central to regulatory decisions. The Panel also provides advice to Government and champions consumers' interests with industry. It has members who represent the interests of consumers in England, Northern Ireland, Scotland and Wales.

The Panel model has a number of benefits that it would be valuable to retain:

- Ofcom shares information and ideas with the Panel early in the regulatory process, before consulting formally with other stakeholders. This promotes constructive day-to-day engagement and means the Panel can influence the issues that Ofcom chooses to address, as well as how it addresses them, before any positions are adopted. It would be harder for a cross-sectoral advocacy body to provide early input in this way. For example, generally the first substantive formal engagement for an external consumer stakeholder would be likely to be in response to published policy proposals rather than through the early opportunities which exist with the panel model.
- Panel members have a broad range of experience and a high-level of expertise. This means they can quickly get to grips with the wide range of issues that arise in a dynamic and complex sector like communications. They can also advise on the interests of different groups of consumers, such as older and disabled people, people on low incomes and people living in the Devolved Nations. The Panel can also use its expertise to advise on the issues that might affect consumers in the future, where evidence from complaints or consumer research is unavailable.
- The Panel is not proposing to provide advice on post once Ofcom takes on the role of postal regulator. In our view, there are good reasons for adopting this approach. First, Consumer Focus currently provides advocacy on issues affecting consumers in postal markets and has a significant amount of expertise in this area. Secondly, as well as providing advocacy in relation to postal regulation, Consumer Focus provides advocacy in relation to post offices, which will continue to be the responsibility of Government. It makes sense for advocacy in these two areas to be provided by a single body.

c. Value of independent advice to Ofcom

Ofcom continues to need independent advice, and the Panel is effective and efficient in delivering this. There are a number of reasons for this:

- Ofcom is lobbied heavily by industry representatives. This is an important part of the consultative process, but an expert and articulate consumer voice is needed as a counterpoint.
- Ofcom needs to maintain the trust and confidence of stakeholders in order to function effectively. The Panel contributes to this by publishing its advice on its website and showing that Ofcom is receiving proper scrutiny on behalf of consumers.

- Ofcom project teams benefit from early independent advice on consumer experience and perspectives. This is particularly valuable for projects which do not have a direct 'touch point' with consumers, e.g. covering competition and spectrum-related issues, where the implications of different options for consumers may be downstream of the issues directly in scope for these projects.
- The pace of convergence and innovation in the communications sector means that new issues of importance to consumers will continue to emerge. The policy landscape is also set to change as the Government plans a new Communications Bill. It will be important for there to be a strong expert consumer voice in this debate.

d. Value for money

The Panel has significantly reduced its budget and provides very good value for money:

- Panel members work between 2 and 4 days per month and bring a UK-wide perspective. They are supported by one full-time member of staff. The Panel's benefits from Ofcom's support services, research and data.
- The Panel is funded via Ofcom. As part of the recent review of all Ofcom expenditure, the Panel reduced its budget significantly - from £740k in 2010/11 to £303k this financial year. This represents a reduction of 60 per cent in nominal terms.
- This reduction is in the context of Ofcom increasing resources devoted to consumer policy and protection, and carrying out a substantial programme of consumer research, which is compiled annually in a comprehensive report on the consumer experience of telecoms, the internet and digital broadcasting markets.¹
- The Panel has also worked effectively in partnerships with other consumer bodies, for example by drawing on case studies provided by Citizens Advice on the impact on consumers of mobile not-spots and drawing on the complementary expertise of Which?, Citizens Advice and Consumer Focus in order to provide Ofcom with a consolidated consumer position on the proposed system for tackling online copyright infringement.

e. Summary

Ofcom's view is that it is vital to preserve the benefits provided by the Communications Consumer Panel. An expert panel can foster a close and constructive relationship with a regulator, respond quickly and flexibly across a wide range of issues, and operate with a small team of advisors and very low overheads.

¹ This is the link to the latest consumer experience report: <http://stakeholders.ofcom.org.uk/market-data-research/market-data/consumer-experience-reports/consumer-experience/>

3. Consumer enforcement

Ofcom is responsible for consumer enforcement in the communications sector and so has significant experience of collaborating with the other authorities involved in consumer enforcement. We think that there are important features of the current structure that should be preserved in order to achieve positive outcomes for consumers in the communications sector.

In our view, any future model should seek to ensure that, at a national level, an organisation has the responsibility and capability to:

- co-ordinate enforcement activity among bodies with concurrent powers (including Ofcom) to avoid duplication or issues falling through the cracks;
- publish general guidance and training on consumer protection legislation, such as the Unfair Terms in Consumer Contracts Regulations, the Distance Selling Regulations and, more recently, the Unfair Commercial Practices Directive - implemented as Consumer Protection from Unfair Trading Regulations;
- pursue cases on points of principle, such as the unfair contracts terms in the bank charges case, which help to clarify legislation and its application across different sectors;
- provide advice to Government on the development and implementation of consumer law;
- act as a backstop for self-regulatory bodies like the Advertising Standards Authority; and
- liaise with international bodies on cross-border enforcement.

In addition, we would hope that any future model maintains market studies on, for example, price transparency, internet security, e-commerce and consumer behaviour. Such studies save each sector regulator looking at generic consumer issues individually, although, of course, we can still carry out sector specific studies as necessary.

In summary, our stakeholders benefit from the fact that we can draw on the enforcement expertise that OFT currently provides at a national level. We hope, therefore, that the expertise which we have highlighted can be retained in some form under the new arrangements.

OFGEM

David Evans
Consumer and Competition Policy Directorate
Department for Business, Innovation & Skills
3rd Floor
1 Victoria Street
London
SW1H 0ET

Direct Dial: 020 7901 7097
Email: sarah.harrison@ofgem.gov.uk

Date: 30 September 2011

Via email: david.a.evans@bis.gsi.gov.uk

Dear David

Ofgem's response to BIS' Consultation on Empowering and Protecting Consumers

Thank you for the opportunity to comment on these proposals.

We support the streamlining and strengthening the arrangements for consumer advice, advocacy and enforcement. All are important activities in the energy sector. There is scope for a more co-ordinated approach to advice, and also the more effective use of public funding of sectoral and cross-economy advocacy, that can influence at local, regional, national and international level. Equally there is a need for a more joined-up approach between local and national enforcers, as the National Audit Office recently identified.

We set out below some of the key issues we believe need to be considered in the new arrangements. Our detailed answers to the consultation questions are annexed.

The energy market is experiencing major change with significant investment required to deliver long-term, secure and sustainable energy supplies. Ofgem is committed to building effective consumer insight and analysis with its own dedicated Consumers and Demand Side Insight team under strong new leadership; a Consumer First programme of primary research and consumer engagement; a Consumer Panel of 100 households across Great Britain, and a Consumer Challenge Group made up of recognised consumer experts who engage in the detailed price control setting process.

These arrangements can be complemented by BIS's consumer reforms and in particular the creation of a regulated industries function. Given the substantial changes and challenges in the energy market, it is vital that the changes to the consumer landscape are implemented with as little disruption and loss of knowledge and capability as possible so that the interests of existing and future consumers can be effectively represented at this important time.

Regulated Industries Unit

We support the establishment of a Regulated Industries Unit (RIU) to represent the interests of consumers. It is important that the RIU has a good understanding of the needs and interest of all consumers, including on those matters which are not yet of concern to today's consumers. It should build from a strong evidence base, drawing on consumer research and economic analysis, as well as interactions with consumer groups in other relevant sectors and direct engagement with consumers.

We understand that current progress towards creating the RIU may see the function extend initially to energy and post only. This will create a patchwork of bodies advocating consumer interests across different regulated industries and risks reducing scope for a more cross-sectoral perspective to consumer advocacy and policy development. We consider there remains a compelling case for a more coherent approach.

This situation means it will be particularly important for BIS to champion effective cross-sectoral working through the governance arrangements of the new RIU, including, where appropriate, joint working between the RIU and consumer organisations in other regulated sectors, as well as across the wider economy.

We would like to see some criteria set out in advance against which the success of any new arrangements can be judged, with plans to conduct appropriate evaluations. A key aspect of this will be the extent to which arrangements for collaboration across all regulated sectors work effectively. There should also be benchmarking across consumer organisations.

Ofgem has valued the expertise in energy matters which Consumer Focus has brought to a number of important areas including price controls and smart metering. To be a credible consumer advocate, it is vital that this is sustained and developed in the new RIU function, and deployed to provide challenge and scrutiny in the energy sector.

The new arrangements must be able to operate effectively in the devolved nations, either through a single RIU or with parallel devolved bodies. Effective representation at EU level will also be critical.

Our response builds on the key principles which the BIS consultation outlined for the new RIU. These are set out at question 13. More recently, we are aware of a proposed new partnership between Citizens Advice, Citizens Advice Scotland (CAS) and Which?, in which the latter will provide the RIU function with Citizens Advice and CAS focusing on advice and other policy advocacy. Such a partnership has some potential strengths, building as it could on the established expertise and 'constituencies' of the three organisations. However it also raises a number of important questions which go to the governance of any partnership, and on which Ofgem is reflecting closely.

From an energy perspective, the RIU will play a key public role, exercising statutory powers to represent consumer interests over the long term. To establish the credibility and authority of this role, there must be strong, transparent and accountable governance arrangements which provide clarity on who does what, permit straightforward assessment of whether the arrangements are working well, and allow consumers and stakeholders to have confidence that commercial or other corporate interests cannot steer or influence its work.

We are keen to understand and explore the new proposal further with BIS, DECC and the partner organisations. Ofgem, with its principal duty to protect consumers, will need to be assured on how, both at the outset and on an enduring basis, the core principles set out in our submission can be satisfied for consumers in the governance and accountability arrangements of any new partnership.

Promoting customer engagement

There are functions currently undertaken by Consumer Focus which we recommend in future are undertaken by Ofgem. These are important to the development of stronger consumer engagement and competition in the energy retail market which Ofgem is currently reviewing. A realignment would be consistent with arrangements in the communications and financial services sectors where comparable functions are currently performed by the sector regulator.

Confidence Code for gas and electricity price comparison switching sites

The Confidence Code is a voluntary code of practice to which online domestic price comparison sites can become accredited by Consumer Focus. It has not been part of the OFT code approvals process. We propose that Ofgem take responsibility for the Confidence Code when Consumer Focus is abolished.

Domestic price comparison sites are an important tool for inspiring consumer confidence in the accuracy of information provided through switching sites and for facilitating consumer engagement. We consider that Ofgem branding will result in a number of advantages for consumers and the competitive market. This fits closely with the themes emerging from our Retail Market Review (RMR) and could facilitate implementation of RMR conclusions on the need for greater tariff simplification.

Information on energy company performance

Energy company performance information is a helpful tool for consumers in their choice of energy supplier and a means of helping them to participate in the market. BIS and the Cabinet Office's Behavioural Insights Team strategy document, *Better Choices: Better Deals*, earlier this year set an expectation/intention that more complaints and performance data held about businesses should be made available. Respondents to our RMR requested that Ofgem collect and publish detailed complaints information. We believe there is an opportunity to develop the information which is provided to consumers further. We would be pleased to debate the scope and breadth of the information that it would be helpful to collect and publish including who might be best placed to do the latter, with consumer groups, industry and Government as our RMR work develops.

Small business consumers

We are concerned that a gap may develop in assistance and advocacy for small businesses in the new arrangements, unless Consumer Focus' current role is transferred alongside its other functions. Many small businesses – especially but not only micro-enterprises – share the same characteristics as domestic consumers and it is important that they are able to secure help and advice with complaints and benefit from effective advocacy.

Ofgem's Retail Market Review proposals recommend stronger protections for small business customers. In developing these measures it has been helpful for us to draw upon evidence from complaints and insight from Consumer Focus' work. It is important that this focus on small as well as domestic consumers is retained in the successor body.

We are also concerned about the potential lack of policy input, for example on price controls, where it will continue to be important that the views of small businesses are adequately represented. The existing small business organisations have a very important role to play but generally have been less well placed to dedicate the resource, over extended periods, to contribute to these more technical aspects of energy market regulation.

There is also scope for BIS through the consumer landscape review to align protections for small business consumers across sectors. The Business Protection from Misleading Marketing Regulations 2008 which guard against mis-selling to business consumers are not capable of being enforced by Ofgem under the current concurrency arrangements. Tackling this anomaly would improve protection for small business consumers.

Consumer intelligence

Consumer Focus has been an important source of intelligence on complaints which has helped us to identify issues affecting consumers and to prioritise our enforcement activity. It will be important that robust arrangements are put in place to enable Ofgem and other interested parties to draw upon the information gleaned from complaints and enquiries in the new arrangements. Publicly-funded consumer research should also be made available in full.

Similarly, robust arrangements will need to be set up with Trading Standards to include information gateways and agreement on the appropriate enforcement body to take forward particular cases. We look forward to discussing these with Trading Standards.

Transition

It is important that decisions on the future make-up of the arrangements are made swiftly so that sufficient time can be given to allow a smooth transition. So far as possible, Consumer Focus' energy expertise, held by its staff, should be retained when the functions transfer.

We note that Consumer Direct will be transferred in March 2012. It will be important to ensure that the specialised knowledge contained within the Consumer Direct energy call centre is replicated within the Citizens Advice service to provide consumers with a consistent level of service and appropriate referral to assistance from the Extra Help Unit.

Consumer law enforcement

Ofgem is a designated enforcer of consumer protection legislation under the Enterprise Act 2002. These powers are a useful part of our toolkit in promoting choice and value for energy customers. As we set out in the RMR, we are committed to ensuring suppliers play it straight with customers.

Ofgem is a founder member of the Consumer Concurrencies Working Group currently chaired by OFT which regularly discusses concurrency matters: sharing best practice and assisting in the coordination of consumer protection law enforcement. We support moves to strengthen and improve the consistency of enforcement across Great Britain. Effective leadership and coordination of enforcement action is pivotal to this. We encourage BIS to ensure that transition arrangements ensure a smooth transfer from OFT to the new Trading Standards Policy Board and Trading Standards Institute, preserving the expertise wherever possible.

We consider that there is merit in either OFT maintaining a centre of expertise to support local Trading Standards' services, at least during a transition period while regional centres develop their capability, or for this function and knowledge to pass promptly to the Trading Standards Institute, preserving its experience.

We share BIS's view that it is important to maintain capability to bring landmark cases in consumers' interests, such as those brought by OFT on bank charges, prize draw promotions and gym contracts. BIS will want to be confident that the measures it is putting forward are likely to help mitigate the pressure on local authority budgets which could reduce their appetite to bring high-profile test cases. Alongside these measures, designated enforcers such as Ofgem could also work with Trading Standards where appropriate to bring these cases in their respective sectors.

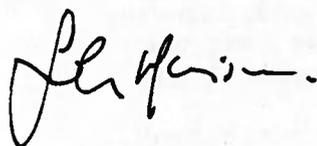
This review brings the opportunity for BIS to strengthen consumer law enforcement by aligning powers across the enforcement landscape and increasing compliance incentives on businesses. We would welcome such moves and encourage BIS to consider better alignment of powers as between OFT, Trading Standards and concurrent regulators, specifically (as noted above) to enable Ofgem to enforce the Business Protection from Misleading Marketing Regulations, as well as enabling enforcers to impose redress and financial penalties for breaches of consumer law including the Consumer Protection from Unfair Trading Regulations.

Next steps

We would be pleased to discuss all aspects of Ofgem's submission. For points of detail, please contact Philip Cullum by email Philip.Cullum@ofgem.gov.uk or telephone 0207 901 7175.

Ofgem is content for you to publish this response in full.

Yours sincerely



Sarah Harrison
Senior Partner, Sustainable Development

Consultation Questions

QUESTION 1. How do you think the provision of consumer information to consumers can be improved upon?

Comments:

We support Government's intention to streamline and make more straightforward the provision of consumer information and advice. The Citizens Advice service (including Citizens Advice Scotland) is a well-known trusted brand and many consumers are used to seeking help from them. We agree that it will be important to minimise duplication between various services and welcome the work already underway in this area between Citizens Advice and Which?. We hope that Citizens Advice will work closely with other consumer agencies to ensure consistent and complementary messages are given to consumers.

It is important to ensure that all consumers are able to easily access a trusted source of independent help and advice. Whilst it will be important to enhance the web-based tools and telephone services, there remains a need for consumers who are unable to either access or use these services to be able to access face-to-face assistance. The different needs of consumers will need to be met. Support will continue to be necessary for those who need help but who cannot help themselves. We note that the Consumer Direct service will transfer to Citizens Advice next year and it will be important that this service becomes more visible to consumers so that people know where to go (and where not to go) if they need assistance.

This help should of course not be a replacement for companies taking responsibility for properly assisting their own customers, resolving problems and learning from mistakes.

We believe that this change provides an opportunity to review and improve the quality of data collected and disseminated by Citizens Advice and Consumer Direct to make it a more useful tool for informing the work of regulators and others, alongside any publicly-funded research conducted by the Regulated Industries Unit (RIU) which should also be made fully available. As much as possible of this data and research evidence should be released publicly.

We view the provision of data on energy company performance as a key source of information for consumers to enable them to participate in the market. BIS and the Cabinet Office's strategy document, *Better Choices: Better Deals*, earlier this year set out an expectation that more complaints and performance data held about regulated businesses should be made available.

As part of its statutory functions, Consumer Focus publishes company performance information for the big six energy suppliers in the form of a league table based upon contacts and complaints to its Extra Help Unit, Consumer Direct, and the Energy Ombudsman. It is clear from the media attention this quarterly publication attracts that there is an appetite among consumers for this information.

We recommend that this function currently undertaken by Consumer Focus is undertaken by Ofgem in future. We consider that this is important to the development of stronger consumer engagement and competition in the energy retail market which Ofgem is currently reviewing. This realignment would be consistent with arrangements in the communications and financial services sectors where comparable functions are currently performed by the sector

regulator.

We believe therefore that there is an opportunity to develop the information which is provided to consumers further. For example including information on customer satisfaction, to provide a more holistic view of company performance.

We recognise that there is a considerable amount of information collected which is unpublished and its usefulness untested. We would be happy to debate the scope and breadth of the information that it would be helpful to collect and publish, including who might be best placed to do the latter, with consumer groups, industry and Government as our Retail Market Review (RMR) work develops.

QUESTION 2. Do you agree that the OFT's consumer information role should be transferred to the Citizens Advice service?

Comments:

Yes. It would appear to be consistent with Government's intention to centralise advice and transfer responsibility for Consumer Direct to Citizens Advice, to transfer OFT's consumer information role to Citizens Advice as well. This needs to take account of (and not duplicate) the valuable contribution made by private and third sector bodies such as Which? and moneysavingexpert.com.

QUESTION 3. Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service?

Comments:

Yes. We believe that the Extra Help Unit has provided an important source of help to vulnerable consumers as well as those threatened with disconnection or who have been disconnected. Transferring the Extra Help Unit to the Citizens Advice service should ensure these customers continue to benefit from this specialised help. Centralising this service within Consumer Focus has allowed expertise to develop and be shared. This has also assisted in the early identification of problems in the practices of particular suppliers, and in bringing evidence of potential breaches of licence and/or other obligations to Ofgem's attention.

QUESTION 4. Do you agree that the OFT's consumer education roles should be transferred to the Citizens Advice service? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?

Comments:

We do not have a view other than to support the transfer and to emphasise the importance of this activity in the energy market and the power that can be brought to it by a trusted organisation with a powerful well recognised brand.

QUESTION 5. Do you agree that the proposed Trading Standards Policy Board and the TSI should coordinate and support business-facing educational activities?

Comments:

We do not have a view other than to support the transfer and to emphasise the importance of this activity in the energy market and the power that can be brought to it by a trusted organisation with a powerful well recognised brand.

QUESTION 6. What are the best options for current and prospective CCAS members to consider in the event that the Government's proposed consumer and competition landscape proposals are adopted?

QUESTION 7. Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of CCAS with effective alternative systems of accreditation?

QUESTION 8. What are the lessons learned from the operation of CCAS which may help in establishing (or revising) voluntary schemes in the future?

Comments:

We do not have a view on questions 6-8.

QUESTION 9. What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?

Comments:

Our comments refer solely to the Confidence Code for online domestic switching sites.

Consumer Focus' Confidence Code is a voluntary code of practice to which online domestic price comparison sites can become accredited. It has not been part of the OFT approvals process. We consider that consumers would be better served if it continues to be separate from the umbrella code approvals process as envisaged in the consultation.

We propose that Ofgem take responsibility for the Confidence Code if Consumer Focus is abolished.

We view the Confidence Code as an important tool for giving consumers confidence in the accuracy of switching sites and as a means to help promote stronger consumer engagement. Our March 2011 RMR consultation document recognised the important role that switching sites occupy in customer engagement in the competitive market and sought views on whether more needed to be done to improve consumer trust and use of these sites. In response a number of operational suggestions were offered such as transparency of information and the standardisation of pricing templates, whilst others noted that Ofgem's brand confers credibility suggesting that Ofgem take ownership of the Confidence Code.

In our assessment Ofgem taking responsibility for the Confidence Code will result in a number of advantages for consumers and the competitive market.

- i. It will complement and support our RMR work to make the market more transparent and enhance effective consumer engagement. It will enable effective implementation of the RMR proposals, for example linking our proposals on tariff simplification and standardisation/simplification of language to the way tariffs are presented on switching sites.
- ii. The Confidence Code will provide an effective tool to influence operational improvements to domestic switching sites thereby improving customer confidence in such tools.
- iii. The Confidence Code needs to be flexible enough to respond swiftly to the changing needs of the market and in order to address supplier behaviour. Ofgem has the relevant expertise to consider issues such as the adaption of the Confidence Code to allow for a multiplicity of time of use tariffs once smart meters are rolled out.
- iv. Ofgem branding will promote consumer confidence and increase customer engagement, by giving the Confidence Code greater authority through an 'official' status.

Maximising the effectiveness of these arrangements may require some changes to our powers. We would be pleased to discuss this with you in more detail.

QUESTION 10. What characteristics would a Kitemark® based code certification process need to have to meet industry requirements?

QUESTION 11. What is your view on extending the Primary Authority concept to code certification?

Comments:

We do not have a view on questions 10-11.

QUESTION 12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

Comments:

We support the establishment of a consumer advocacy body with a remit to operate in different regulated sectors, subject to the proviso that it maintains specialist sectoral expertise in energy and has appropriate governance and accountability arrangements in place.

We see the primary benefit of this model as being the combination of deep sectoral knowledge with cross-economy expertise, so that sectoral work is framed by knowledge of what is happening elsewhere in terms of both consumer experience and attitudes and regulatory and business approaches. This enables the identification and application of best practice and greater cross-sectoral learning.

If other sectoral advocacy functions were combined into the new arrangements, it would be important to ensure that transparent and robust accountancy arrangements are put in place. We would expect to see that funds from energy licence fee payers were being used solely to fund activities in the energy sector.

In the absence of any such transfer we consider that there is an opportunity for closer partnership working with the existing consumer representative bodies in different sectors.

QUESTION 13. Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?

Comments:

We support the establishment of a RIU to represent the interests of consumers building from a strong evidence base gleaned from research and analysis as well as interactions with others such as consumer groups and consumers themselves. We recognise that Consumer Focus' policy team have considerable knowledge and skills on energy matters. It would be disappointing if this experience was not capitalised upon either through being transferred into a new unit to provide continuity or the knowledge downloaded in some way.

It is important that the RIU acquires a good understanding of the needs and interests of all consumers including on those matters which are not yet of concern to today's consumers. Insight into the diversity of consumer needs, attitudes and experiences, for example in terms of household income, personal circumstances/capacity and location should provide a strong evidence base from which to represent consumer interests. This robust evidence base, in terms of both consumer research and economic analysis, should also inform the selection of work topics and support high quality work on each topic.

We believe it is vital that the RIU should have expertise in energy matters. We have valued the input we have received from Consumer Focus and its predecessor energywatch in a number of important areas including price controls, networks issues, and industry and regulatory arrangements. This level of input will must be sustained and developed in the RIU function across a breadth of energy matters as consumer issues such as smart meter roll out, green deal, etc develop further.

To be a credible advocate on behalf of consumers it is important that this expertise is deployed to provide challenge and scrutiny in the energy sector. A powerful, informed, independent advocate on behalf of energy consumers must have the gravitas to hold others to account.

The RIU needs to have sufficient capacity to engage in more technical matters such as industry code panels. This is a very important role where a detailed technical understanding of the energy sector is required. Modifications to the industry codes can ultimately impact the end consumer and we consider it is important that the consumer is represented at the panels that oversee the administration of such modifications.

We agree that consumers should have confidence that their views are being represented by a strong and independent voice – this function is not the same as

a strong consumer division within a regulator, nor an advisory group or panel (such as our Consumer Challenge Group) established by some regulators. Consumer Focus currently has the power to seek information from licensees (and regulators) directly and has used this power on a number of occasions. We consider that the RIU's independence would be reinforced if they had this power rather than having to request that Ofgem does so on their behalf.

It is important that robust accountability arrangements are also put in place to demonstrate that licence fee payers are getting value for money.

We support the design principles set out in the consultation for the RIU. To these we would add a number of principles we have developed which we see as important in order for the RIU to work effectively:

- i. Strong, independent voice for consumers
- ii. Strong, transparent and accountable governance arrangements, with clear separation from any wider commercial or corporate interests
- iii. Good understanding of the needs and interests of all consumers
- iv. Strong evidence base from which to represent consumer interests
- v. Ability to represent both domestic and non-domestic consumers
- vi. Consumer expertise – understanding of consumer behaviour, research and policy skills
- vii. Providing value for money for licence fee payers
- viii. Energy expertise – including price controls, networks issues, industry and regulatory arrangements, emerging consumer issues (eg smarter markets)
- ix. Sufficient capacity to engage in price control forums, industry code panels etc
- x. Gravitas to provide challenge and scrutiny in the energy sector
- xi. Leverage cross-sectoral expertise
- xii. Ability and resources to influence at EU level
- xiii. Appropriate powers such as information-gathering powers, and super-complainant status
- xiv. The capability to empower and engage consumers to help to make the market operate better, contributing to the design of the market and regulatory policy.
- xv. The capacity and authority to give leadership to other consumer organisations and work in partnership with them to harness their contribution to regulatory policy and promote a cross-economy approach where appropriate. Even if the RIU covers a relatively limited number of sectors in the first instance, this body and the other sectoral consumer organisations must work closely together, just as the different regulators are brought together in the Joint Regulators Group.
- xvi. Capability to reflect the needs and circumstances of the devolved nations.

We would like to see some criteria set out in advance against which the success of any new arrangements can be judged, with plans to conduct appropriate evaluations. A key aspect of this will be the extent to which arrangements for

collaboration across all regulated sectors work effectively.

We are aware that there are plans for a new partnership between Citizens Advice, Citizens Advice Scotland and Which?, in which the latter will largely or wholly provide the RIU function. Whilst this has the potential to build upon existing expertise and breadth of consumer representation, it does raise a number of important questions regarding the governance of any partnership. It is vital that the corporate structures and partnership arrangements create sufficient role clarity to allow the RIU function to operate effectively and efficiently from the outset. As the RIU will be exercising statutory powers to represent consumer interests it must be, and must be seen publicly to be, acting independently of wider commercial and corporate interests in order to be credible.

QUESTION 14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?

Comments:

We support the establishment of an RIU and have set our expectations of it above; we do not have a view as to where it should be located. If Consumer Focus is abolished, we believe that there is benefit in involving both Citizens Advice and Which? in any new advocacy arrangements given their respective strengths, so long as appropriate assurance can be provided on relevant issues identified in our answer to Question 13. There must be strong, transparent and accountable governance arrangements which provide clarity on who does what, permit straightforward assessment of whether the arrangements are working well, and allow consumers and stakeholders to have confidence that commercial or other corporate interests cannot steer or influence its work.

We note that there is a danger of duplication and/or important matters falling between different bodies. Whichever organisation is chosen should seek to agree a detailed plan for how the organisations will work together and alongside one another, and also mechanisms for resolving any unforeseen issues that might emerge in future. As noted above, a clear framework for evaluating the success of these arrangements should be put in place.

QUESTION 15. What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

Comments:

It is important that the new arrangements are able to capture effectively consumer insight within the devolved nations, identify Scottish and Welsh dimensions to GB or EU wide policy matters and influence parliaments, governments and appropriate decision-making bodies.

We do not have a view on whether this should sit within the RIU or alongside it. In either case, we would expect to see appropriate capacity and governance in Wales and Scotland. If it is the latter, it will be important to ensure collaborative working and clear lines of communication, with joint working to establish GB-wide

policy positions and influencing strategies.

We understand the importance of ensuring the attitudes, experiences and needs of consumers in all the nations are reflected in our policy development and that the impact of our policies on those nations are taken properly into consideration. We have developed good relationships with Consumer Focus in order to achieve this and look forward to building new relationships to ensure continuity.

Ofgem is the regulator for Great Britain, and as such does not cover Northern Ireland. However the new arrangements should seek to continue the good working relationship that presently exists between Consumer Focus and the Consumer Council in Northern Ireland, so that they can learn from one another.

QUESTION 16. What are your views on these options for the transfer of information gathering powers? Which is preferable and why? Are there any other options for information-gathering powers?

Comments:

The RIU should ideally have the necessary powers to gather information on its own behalf. The proposal that the RIU gathers information via regulators is much less satisfactory: it might raise questions about the RIU's independence, have resource implications for regulators such as Ofgem and create unnecessary conflict between the RIU and regulators.

Consumer Focus has made regular use of its information gathering powers. It has established a process to check with Ofgem before making an information request to industry, ensuring that the information sought is not already held. This minimises the risk of duplication and reduces the burden on licensees. We would envisage agreeing a similar process with the RIU.

QUESTION 17. What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?

Comments:

The redress scheme for individuals and micro-businesses in the energy sector has provided customers with an assurance that their complaint can be dealt with by an independent body with the power to make binding decisions on participating companies. As long as the issues identified in the consultation can be overcome, our experience suggests that the extension of redress schemes into other sectors is likely to be of benefit to consumers.

QUESTION 18. Do you support the transfer of the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland and agree that as a result Consumer Focus Post Northern Ireland be abolished?

QUESTION 19. Do you agree that the Postal Services Redress Scheme should continue to apply in Northern Ireland to ensure that Northern Irish consumers retain the same access to redress as consumers elsewhere in the United Kingdom?

Comments:

Ofgem does not have a remit in respect of Northern Ireland so we have no comment to make on questions 18-19.

QUESTION 20. Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?

QUESTION 21. In relation to Option 3, do you agree with the Government's principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

QUESTION 22. Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards? If so, would one of the JEB models be the best solution? Which one and why?

QUESTION 23. In relation to the various JEB models, how would you ensure effective Trading Standards participation in the JEB? Do you think that this option would deliver integration of enforcement across local, regional and national levels? Should other organisations be involved in the JEB, either as members or as participants in discussions? Would retention of such unrestricted consumer enforcement powers and responsibilities affect the CMA's singularity of purpose and distract it from its core competition remit?

Comments:

Consumer law enforcement powers are an important part of Ofgem's regulatory toolkit for protecting consumers.

CMA retention of consumer law enforcement powers

Ofgem wishes to retain full consumer law enforcement powers to complement its competition and regulatory powers. We are also seeking power to enforce the Business Protection from Misleading Marketing Regulations.

As far as the roles of the CMA and Trading Standards are concerned, it is not for us to say who should do what. Whatever the responsibilities however, there should be no dilution of the ability to tackle difficult issues on a national basis and to be able to take on powerful business interests (e.g. banks, supermarkets). There also needs to be a mechanism for issues arising out of market studies to be addressed. Our own experience shows that sometimes the dividing line between market issues and consumer issues is not straightforward. In our view, expertise, resources, weight, and a clear understanding of relative roles are the key factors in making sure the new structure works.

Leadership and coordination of consumer law enforcement

As a national consumer law enforcer in the energy sector, our focus is on protecting the interests of current and future energy customers. In this work, we

liaise with OFT, Trading Standards local services and with other national regulatory bodies with concurrent consumer law powers. We participate in the consumer concurrences group and are a partner organisation using the OFT's Consumer Regulations website as the means of searching for and notifying consumer law enforcement action. This enables us to contribute to and draw on best practice as well as avoiding duplication of effort and facilitating co-ordinated work where appropriate (such as being able to start at the next stage of the enforcement process where a company has already been given guidance on the law, or provided undertakings). We have recently concluded an investigation under the Consumer Protection from Unfair Trading Regulations into the operation of a major supplier's automated response telephone system and resultant billing problems. We are also investigating another major supplier regarding an online fixed price offer. Please see our website for more details:

<http://www.ofgem.gov.uk/About%20us/enforcement/Pages/Enforcement.aspx>

We support moves to strengthen and improve the consistency of enforcement across Great Britain. Effective national leadership and coordination of enforcement action is pivotal to this. If BIS decides to proceed with changes, we encourage it to ensure that transition arrangements ensure a smooth transfer from OFT to the new Trading Standards Policy Board and Trading Standards Institute, preserving the expertise wherever possible. We consider that there is merit in either CMA maintaining a centre of expertise to support local Trading Standards' services, at least during a transition period while regional centres develop their capability or for this function and knowledge to be preserved by passing promptly to the Trading Standards Institute .

We share BIS's view that it is very important to maintain capability to bring landmark cases in consumers' interests, such as those brought by OFT on bank charges, prize draw promotions and gym contracts. BIS will want to be confident that the measures it is putting forward are likely to help mitigate the pressure on local authority budgets which could reduce their appetite to bring high-profile test cases. Alongside these measures, designated enforcers such as Ofgem could also work with Trading Standards where appropriate to bring these cases in their respective sectors.

QUESTION 24. How can your preferred new model best work with businesses?

Comments:

We have no comments on this.

However, in terms of Ofgem engagement with businesses, among other things we run two regular non-domestic user groups covering each of large users and small and medium users, which enable us to garner views from and disseminate key messages to a wide range of business stakeholders. Our Consumer First research programme incorporates primary research with SMEs and we have regular dialogue with regulated companies in the course of our broader regulatory work.

QUESTION 25. Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

QUESTION 26. In an Option 3-based model, should this enforcement role be subject to procedural limitations?

QUESTION 27. Do you agree that the CMA should enjoy significant discretion over when a market has structural problems, such as to give rise to its consumer enforcement powers?

Comments:

See our comments above regarding the need for a continuum of powers to deal efficiently and effectively with the range of issues which may emerge from a market study/review.

QUESTION 28. Do you agree that the CMA should retain responsibility for mixed market studies where there may be competition and consumer issues (supply and demand side market failures) present on the relevant market?

Comments:

Yes. As noted above, it is not straightforward to distinguish competition issues from consumer issues and market failures may arise from a combination of the two. It is now widely recognised that competition issues may have a behavioural element and are not limited to matters of structure. The institutional arrangements need to reflect this.

QUESTION 29. Do you agree that in an Option 3-based model, the Citizens Advice service should in future be responsible for pure consumer detriment analysis and that the CMA should not perform pure consumer market studies? In such a case, do you agree that the CMA should stop performing market studies once it identifies that there is no structural problem in such markets and do you think there should be a duty on the Trading Standards Policy Board to prioritise cases referred by the CMA?

Comments:

Ofgem conducts market reviews, including its current RMR work, and when looking at the range of remedies open to us to tackle problems. We consider that it works in consumers' interests for us to be able to draw on consumer and competition powers alongside our energy sector specific powers.

We note the strong benefit to cost ratio that OFT has calculated for its consumer enforcement work. We support consumer market review work continuing. Consumer bodies have a significant role to play in prioritising this work including by means of capturing and distilling consumer concerns and identifying detriment.

We consider that there may be some practical difficulties prohibiting the CMA from carrying out 'pure' consumer market studies, however these may be defined. In our view, there are significant challenges inherent in both predicting the outcome of a given study at the outset (quite apart from the fairness issues associated with this), and establishing a clear dividing line between competition and consumer issues.

While a study could be prioritised on the basis of consumer harm in combination with apparent structural market failings, it is not usually possible to predict accurately the precise cause of problems until some research and review work has been conducted. If the CMA were prohibited from carrying out 'pure' consumer studies, and its work subsequently revealed that issues were likely to stem from consumer law breaches rather than clear competition law abuses or structural market failures, then the CMA could potentially be obliged to close the work down or find a new home for it.

The handling of emerging issues arising from a given market study would be subject dependent. We do not see value in requiring a project to be closed down or transferred elsewhere in order to be seen through to its conclusion. This appears to risk slowing the resolution of the problems.

It appears to us that the resource constraints on the CMA and its primary duty to promote competition would be sufficient to incentivise it to prioritise studies in areas of greatest potential detriment.

If the CMA continues to have a role there is obviously the need to clarify its relationship with trading standards and other bodies.

QUESTION 30. Do you agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies in the proposed new landscape?

Comments:

See our comments above about the importance of continued effective coordination at a national level alongside improved coordination between local and national general enforcers.

QUESTION 31. Do you agree that it would be helpful to have some resource that required joint agreement between the CMA, TSPB and consumer advocacy bodies for its release, to be used to investigate or address consumer and market issues that would otherwise risk an enforcement or advocacy gap? If so, at what level should such funds be set and how best should they be administered?

Comments:

As BIS notes in the consultation document, budget constraints at local and national level will place considerable pressure on enforcers' ability to tackle consumer law breaches and drive compliance. This pressure makes the need to ensure effective coordination and prioritisation of action all the more important. Any measures which can act effectively to mitigate this pressure are welcome, particularly given the benefit to cost ratio of carrying out consumer protection enforcement work.

QUESTION 32. Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not,

how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?

Comments:

Ofgem has no comments on the effectiveness or otherwise of particular branding.

We consider that consumers' interests would be better served by aligning consumer law sanctions with other regulatory sanctions which include collective redress (in other sectors) and financial penalties. We believe this would better correct the harm to consumers of breaches and increase compliance incentives on businesses, in line with Macrory principles. Redress powers here would not duplicate the role of the Energy Ombudsman in the energy sector as we would not deal with issues on behalf of individual consumers.

We support moves towards measures which better facilitate restitution for customers. We considered that the restoration measures proposals (as had been set out within the Civil Sanctions Pilot) would have been a flexible means of reinforcing the incentives on traders to voluntarily compensate or otherwise act to restore consumers to the position they would have been in absent the infringement. We have sought to reinforce these incentives in our regulatory enforcement work, including by means of our financial penalties policy¹. The considerations that Ofgem balances in determining the general level of a financial penalty pursuant to a licence contravention include a criterion on the degree of harm or increased cost incurred by consumers or other market participants after taking account of any compensation paid.

We also consider that introducing financial penalties would be a positive step which would bolster compliance incentives on traders. We supported the move which had been proposed to enable general enforcers, as a last resort, to impose them. This is supported by our experience and also by OFT's recent review of drivers of compliance with Competition Law².

We would suggest that BIS takes this opportunity to consider these matters afresh as part of the fundamental review of the consumer landscape. We view these proposals as strong levers for increasing the effectiveness of consumer law enforcement in the interests of UK consumers.

QUESTION 33. Do you agree the TSI would be the appropriate home for the OFT's professional guidance and training functions in the event of creation of a new single Competition and Markets Agency?

QUESTION 34. Do you agree that the TSI is the most appropriate home for the OFT's international liaison and general policy functions in the event that the CMA has only a limited consumer enforcement role?

¹ *Utilities Act 2003 Statement of policy with respect to financial penalties*, 3 April 2007, Ofgem, available at: <http://www.ofgem.gov.uk/About%20us/Documents1/Utilities%20Act%20-%20Statement%20of%20policy%20with%20respect%20to%20financial%20penalties.pdf>

² *Drivers of Compliance and Non-Compliance with Competition Law*, OFT, May 2010

Comments:

We would like to emphasise the need for continued effective coordination between concurrent enforcement bodies, including sectoral regulators, and continued effective UK engagement in EU and internationally on enforcement policy.

The continuation of the professional guidance and training functions currently carried out by OFT is key to underpinning a more effective system of consumer law enforcement system. This will be particularly important now that Local Government Regulation (LGR) has been replaced by a smaller Regulatory Support Unit which is only able to take forward some of the core activities previously delivered by LGR.

If these functions are transferred away from the OFT into a new Trading Standards Policy Board and the Trading Standards Institute, these bodies would need time to get up to speed and build capability if this is not directly transferred with staff from OFT. In the meantime, there is a risk of a drain on expertise. This may lead to gaps in enforcement, particularly at the national and regional levels. In this context, prompt decisions over future arrangements and strong transitional arrangements to maintain capability are important.

QUESTION 35. Do you think the requirement for LATSS' and other designated bodies' (under Part 8 of the Enterprise Act 2002) court orders to be directed by a central body needs to be retained in the new consumer enforcement model and if so, why?

Comments:

We consider that effective coordination is necessary to avoid duplication and gaps. This is particularly important at a time of reducing spend on enforcement work generally. There are over 200 bodies involved in consumer law enforcement, including the national, designated enforcers and local Trading Standards. It would be problematic if local and national enforcers were not aligned in their approach or, at worst, not aware of each other's parallel actions against the same trader for the same conduct. The current arrangements of notification to a central body by means of a secure website are an efficient means of ensuring finite enforcement resources are targeted appropriately with the right body taking action. We would expect this to continue.

QUESTION 36. Do you agree that responsibility for chairing the consumer concurrencies group should remain with the CMA?

Comments:

Ofgem was a founder member of the consumer concurrencies group. We consider that the OFT has been an effective chair of the group since then and we find it a very useful forum for sharing and disseminating best practice and ensuring appropriate consistency between approaches. We think the group should continue and be chaired by a body with sufficient knowledge and breadth of vision.

QUESTION 37. Do you agree that the current supercomplaints system to the OFT should be retained in respect of the CMA if the proposed changes go ahead?

Comments:

We consider that the current supercomplaint arrangements have generally worked well and we do not see a case for significant change, other than the welcome extension to cover bodies representing small businesses as consumers. We have some concerns about BIS's distinction between consumer and competition issues, and about the apparent interpretation of competition matters as essentially being about market structure. This does not accord with the latest thinking on consumer behaviour in markets.

QUESTION 38. Do you think that the supercomplaints process should be extended to require the Trading Standards Policy Board to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?

Comments:

We do not have a view on this.

QUESTION 39. Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?

Comments:

We have no comment on this.

QUESTION 40. Do you agree that the proposed changes to the consumer enforcement landscape should go ahead if the creation of the CMA is delayed? If not, why not?

Comments:

We observe that there are a wide range of proposed changes within the consultation document, some of which are more contingent on the creation of the CMA than others.

Further to this, our only comment on is that minimising the period of uncertainty is desirable so as to avoid a drain on the expertise and knowledge of the bodies who are subject to change. Preserving and building on these skills and capabilities both in the transition period and in the new landscape is important to delivering a more successful system of consumer protection through enforcement.

OFT

Bernadette Kelly
1 Victoria Street
London
SW1H 0ET

Your ref		Direct line	020 7211 5951
Our ref		Fax	
Date	27 September 2011	Email	robert.laslett@oft.gsi.gov.uk

Dear Bernadette,

CONSUMER ENFORCEMENT

Today the OFT is submitting its response to BIS's consultation "Empowering and Protecting Consumers". I would like to use this opportunity to stress a few important points which may be of value to your Ministers as they consider their decisions on the consultation questions.

These points mainly relate to the advantages we see the Joint Enforcement Board model has over the Trading Standards Partnership Board model in reaching BIS's goals of:

- Better coordination and prioritisation to improve the system's ability to tackle cases which cross local authority boundaries; and
- Improving the enforcement output of the system.

We believe the JEB is preferable to the TSPB in these regards, both short and long-term.

Better coordination and prioritisation

The JEB model proposes a new form of governance for consumer enforcement that would join up national, local and regional bodies. It would bring TSS, the CMA, and potentially delivery partners such as Citizens Advice, Which? and sector regulators into a structure for agreeing strategic priorities, taking national decisions about enforcement cases, and ensuring more effective delivery of cases of all kinds. By enabling all bodies to play to their strengths in a common governance framework it would preserve the well-functioning parts of the UK consumer protection regime while closing enforcement gaps and increasing output.

While many of these points could be developed with the TSPB model, in our view the JEB has a clear advantage because it includes the CMA (and potentially also the sectoral regulators). These national regulators will inevitably remain an important part of the enforcement landscape and their role in the JEB model will minimise ambiguity.



in the system. In the JEB the CMA's experience and expertise in national issues is also involved in setting up and developing the new system.

Improving the enforcement output of the system.

The JEB would enable a greater number of enforcement cases to go forward - especially cases that are neither purely local nor distinctly national in focus. Its unified case prioritisation framework would remove the institutional barriers which hold up these cases at present. It would open channels for appropriate case allocation and a flow of expertise and support in both directions. By bringing national, regional and local experience and perspectives around the same table it would make case-handling decisions more efficient.

Currently, different parts of the enforcement system tackle consumer problems in complementary ways. TSS have led the way in addressing local and overt detriment such as doorstep crime and scams, through localised surveillance and intelligence gathering techniques, effective partnerships with local agencies and in-depth knowledge of local markets and businesses. TSS also run larger criminal investigations into firms that cause detriment regionally and nationally. The OFT, in contrast, has developed approaches to tackling nationally significant and market-wide issues, generally at the non-criminal end of the spectrum. OFT action is directed at problematic practices across many different businesses (case examples include airline pricing, bank charges, car warranties, care homes, payment protection insurance and estate agent charges). The super-complaint system has played an important role in triggering a number of these cases.

Both approaches are important, but we fear that in the TSPB model there will be a prioritisation away from the kind of issues the OFT tackles, with the result that very large volumes of consumer detriment will escape scrutiny and action. We believe that a JEB model will allow a proper debate about relative impacts of different kinds of enforcement and avoid the risk of new enforcement gaps opening up.

Nor would the JEB model need the complex commissioning arrangements that would be required for the TSPB's specialist centres. It has the advantage of making available a pool of experts for deployment across numbers of cases, bringing economies of scale and scope. The model would improve efficiency in a number of different ways and it would also bring a cultural shift in the UK approach to consumer enforcement by enabling local and national enforcers to learn from each other and combine their strengths. It is also not as subject to the risks arising from the difficulties of local authority finance – for instance that an authority hosting a specialist centre might decide that it is no longer a strategic fit with their priorities. Moving such a centre elsewhere in the country would involve considerable disruption.

The JEB offers a faster transformation which is less risky and cheaper than the alternative because capacity and expertise would not need to be lost from one place then developed in another. Thus the new formal arrangements could be put in place quickly: joint decision-making and casework could begin during 2012.

Finally, the cooperation on international enforcement which has delivered significant benefits for UK consumers (mostly in relation to rogue traders) is likely to be stronger under the JEB than under the TSPB, as it builds on our strong experience of working with international bodies which would be lost and need to be rebuilt in the new system.

Clearly more can and should be done to improve the speed and volume of consumer casework through a continued strengthening of project and case management, plus greater transparency to create an environment in which parties have incentives to cooperate quickly and constructively with enforcers actions. We have already reorganised our consumer enforcement processes and this is delivering positive results in the throughput of recent cases such as heating oil companies, holiday clubs and online sales involving unfair practices such as bait advertising. We are keen to work with partners to increase the pace of delivery.

Other aspects

In addition to the potential gains from adopting the JEB, our response also covers the full range of issues in the consultation, and provides the OFT's views on the implications of the proposals for super-complaints, internet enforcement, international coordination and enforcement, business and consumer education and information, consumer codes and advocacy.

I would value the opportunity to discuss these points further with you.

I am copying this letter to Edward Davey MP, Minister for Employment Relations, Consumer and Postal Affairs.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Robert Laslett', written in a cursive style.

Robert Laslett
Executive Director

**Empowering and Protecting
Consumers: Consultation on
institutional changes for the
provision of consumer
information, advice, education,
advocacy and enforcement**

OFT Response

September 2011

OFT1367

© **Crown copyright 2011**

You may reuse this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk

Any enquiries regarding this publication should be sent to us at: Marketing, Office of Fair Trading, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX, or email: marketing@oft.gsi.gov.uk

This publication is also available from our website at: www.oft.gov.uk

CONTENTS

<i>Chapter</i>	<i>Page</i>
1 Preface	4
2 Executive Summary	7
3 Setting the scene: creating the framework for an effective consumer protection regime	19
4 Enforcement	29
5 Other enforcement-related functions	52
6 Market studies and super-complaints	65
7 Consumer advice	72
8 Consumer information, education and awareness raising	75
9 Consumer codes approval	80
10 Advocacy and redress	86
<i>Annexe</i>	
A The OFT'S international enforcement, coordination and liaison functions	91
B Super-complaints to the OFT	96

1 PREFACE

- 1.1 The Office of Fair Trading (OFT) is the UK's national consumer and competition authority. Its mission is to make markets work well for consumers. It achieves this by promoting and protecting consumer interests throughout the UK, while promoting business behaviour that is both fair and competitive. The OFT has a range of tools which enable it to deliver this mission, including powers to enforce consumer and competition law; responsibility for licensing businesses operating in certain sectors; powers to advise, inform and educate consumers and businesses; and analytical, research and policy development capabilities.
- 1.2 The OFT welcomes the opportunity to respond to this consultation. This response also seeks to address a number of the questions and recommendations raised by the National Audit Office (NAO) in its June 2011 report *Protecting consumers – the system for enforcing consumer law*.¹
- 1.3 This response focuses on the implications of the Government's proposals for the laws and institutions which provide protection to consumers in their dealings with businesses across the whole economy. It does not explore in any depth the implications of the Government's proposals for specific sectoral consumer protection regimes. However, there would be merit in considering further the implications of proposed reforms for the consistency of consumer protection across the economy.
- 1.4 The proposals set out in the consultation document come in the context of wider reform proposals. In particular, the Government proposes to merge the OFT with the Competition Commission to create a new Competition and Markets Authority (CMA), which would retain consumer enforcement powers for some purposes and have responsibility for national oversight of the effective functioning of markets – hence this document refers to OFT/CMA throughout. Consultation on those

¹ www.nao.org.uk/publications/1012/protecting_consumers.aspx

proposals closed in June this year² and final decisions are yet to be made. The analysis in this response seeks to take account of these proposals and of the ongoing debate about the future of both the competition and consumer protection regimes. The creation of the CMA would not itself materially affect the key conclusions in relation to the proposals set out in this consultation, but the scope of the CMA's activities would do so. There are strong grounds to believe that the UK's competition regime benefits from exposure to consumer protection issues, and vice-versa, a model emulated by our leading international peers. This broad scope needs to be maintained.

- 1.5 The Government also proposes that responsibility for the Consumer Credit Act 1974 and the licensing regime it establishes – a significant part of the OFT's current consumer protection work – would go elsewhere. There are important operational linkages between credit and our general consumer protection functions and between these functions and our competition-focused work under the Competition Act 1998 and Enterprise Act 2002. The Government will want to consider the impact and timing of these proposed changes in the round in order to minimise uncertainty and disruption to firms and consumers, support effective delivery throughout any period of change and, where possible, avoid the need for interim solutions.
- 1.6 It is not always possible to go for the ideal solution, particularly when not starting from a blank slate. However, the OFT has sympathy with the views already expressed by a number of parties (for example, Consumer Focus) that this is a missed opportunity to consider bigger changes that would make consumer protection 'fit for the 21st Century'. In particular, more radical reforms could potentially more directly address challenges posed by the UK's fragmented consumer enforcement structures – which were established to meet the needs of an era before large national and multinational businesses, operating through multiple and sophisticated sales channels, became so prevalent in the UK retail environment.

² www.bis.gov.uk/Consultations/competition-regime-for-growth?cat=open

- 1.7 The OFT recognises that these questions are outside of the scope of the current consultation and would involve a broader look at wider central and local government policy debates, particularly in light of the interface between the Trading Standards Service and other regulatory services. For this reason this response focuses on which of the options set out in the consultation work best, and are most likely to maintain or enhance the strengths the UK system of consumer protection already has. Of the options for consumer enforcement presented in the consultation document, the OFT considers that the Joint Enforcement Board is clearly preferable.
- 1.8 The structure of this response is as follows. Chapter Two provides an Executive Summary. Chapter Three sets out the OFT's view on the cross-cutting elements of an effective framework for consumer protection. Chapter Four considers the Government's proposals for reform of consumer enforcement. Chapter Five deals with the future of linked functions such as international coordination and liaison, business guidance, policy and research and the specific regime for estate agency. Chapter Six covers the future of consumer Market Studies. Chapter Seven covers consumer advice, and Chapter Eight consumer education and information functions. Chapter Nine considers the future of the Consumer Codes Approval Scheme. Finally, Chapter Ten addresses the Government's proposals for reform of publicly-funded consumer advocacy and sets out the OFT's views on the importance of effective mechanisms for consumer redress.

2 EXECUTIVE SUMMARY

The Office of Fair Trading (OFT) supports the objectives which the Government has set out for these reforms, and some of its specific proposals

- 2.1 The OFT welcomes and supports the three objectives set out by the Government for these reforms: reducing complexity in the landscape, strengthening the effectiveness of consumer enforcement and achieving more cost-efficient delivery. As noted by the National Audit Office (NAO) in its report, *Protecting Consumers – the system for enforcing consumer law*,³ the UK's consumer protection regime delivers high levels of consumer confidence, with 78 per cent of consumers reporting that they feel adequately protected, compared to the European Union average of 55 per cent.⁴ However, the regime does have problems. It is facing significant funding cuts, it is institutionally complex and coordination between delivery partners could be better. Supporting consumer confidence in markets and the choices they make will assume increasing importance as government hands more market choice to consumers in areas such as pensions, education, health and social care.
- 2.2 The OFT therefore recognises the need for reform of the consumer protection regime to offer improved value for money and make it more fit for the challenges of the future. In particular, it agrees with the Government's conclusion that a better system of national coordination and prioritisation is needed in order to improve the system's ability to tackle cases which cross local authority boundaries.
- 2.3 The OFT welcomes the acknowledgment in the consultation document that the proposed Competition and Markets Authority (CMA) should take the lead in consumer enforcement actions where this is an appropriate solution to structural market problems. However, this response argues that the CMA's consumer enforcement role should go wider than this and that consumer and competition policy should be joined up across the

³ www.nao.org.uk/publications/1012/protecting_consumers.aspx

⁴ *Consumer Markets Scoreboard 3rd edition* (European Commission, 2010)

regime, ensuring it delivers effective consumer protection which helps create the conditions for economic growth.

- 2.4 The OFT agrees that there may be advantages to bringing together the provision of consumer advice, education and advocacy under a single, well-recognised brand like Citizens Advice, as long as appropriate mechanisms for accountability and coordination are put in place to ensure that these functions support the delivery of national policy objectives and can respond effectively to emerging challenges.

However, the OFT is concerned that the proposed reforms will lead to a weakening of the consumer protection regime's capacity to protect consumers where they need it most, and will place additional burdens on business.

- 2.5 The proposal to transfer most enforcement to Trading Standards Services (TSS) under the oversight of a new Trading Standards Policy Board (TSPB) would fragment capacity to tackle market-wide problems and to pursue nationally significant enforcement cases. This would reduce the system's ability to take on issues which have been of significant collective concern to consumers, for example in relation to bank charges, airline pricing and residential property markets. This gap is unlikely to be offset by a significant increase in regional and national enforcement action by TSS. There is no doubt that TSS, individually and collectively, would seek to rise to the challenges associated with increased responsibility for cross-boundary enforcement. However, there is a strong risk that the proposed TSPB model will not be able to overcome the financial and structural constraints which the NAO notes may already prevent TSS from taking on nationally significant cases.

As the economy develops, the importance of complex market-wide problems, occurring on a national and international scale, is growing. The consumer protection regime must be equipped to respond.

- 2.6 Most consumer detriment no longer occurs at a purely local level. The NAO estimates that detriment from mass market scams, intellectual property crime and doorstep crime crossing local authority boundaries costs consumers a minimum of £4.8 billion annually.

- 2.7 This figure provides only a partial picture of cross-boundary detriment, as consumer detriment comes from a much wider range of sources. For example, it can result from the inclusion of unfair terms in contracts, or from mis-selling, which can lead to consumers making unnecessary purchases, overpaying or getting a poor deal in other ways. Consumers also lose out as a result of complex pricing structures and opaque emerging business models or practices which make it hard for them to get the best deal.
- 2.8 New channels to market and new technologies can also create risks for consumers. For example, the OFT's recent Advertising of Prices Market Study⁵ examined how selling online can facilitate the advertising of prices in ways that make it harder for consumers to compare them, such as through drip-pricing. Such problems are likely to increase as internet-based sales continue to grow, supported by developments in mobile technology. In November 2006 approximately £1 in every £33 spent in retail (excluding automotive fuel) was spent on-line; by August 2011 this had risen to £1 in every £10 spent.⁶
- 2.9 This broad view of detriment is reflected in the introduction of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), which enhanced enforcers' ability to take on sharp practices of this kind. They extended existing laws dealing with misleading advertising and other selling practices to introduce a general prohibition, not only on misleading and aggressive practices, but on all unfair practices that fall short of ordinary standards of professional diligence which are likely to materially distort the economic behaviour of the average consumer.
- 2.10 These types of detriment (as opposed to criminal behaviour) are often the result of broadly legitimate businesses pushing the boundaries of the law. Where the business in question is a large national or multinational firm with access to the best legal representation, taking it on requires

⁵ www.offt.gov.uk/OFTwork/markets-work/completed/advertising-prices/

⁶ www.ons.gov.uk/ons/dcp171778_232975.pdf

considerable resources and expertise, as well as the ability to bear significant financial risk.

- 2.11 These types of detriment can also pervade markets where, as a company gains competitive advantage from such practices, competitors are drawn into a race to the bottom. In these cases, unfair practices can affect millions of consumers and have a considerable impact on the economy. For example, estimates have put the scale of mis-selling of payment protection insurance alone at between £3 billion and £9 billion over recent years.⁷ In 2009 an independent evaluation of just one OFT intervention (to secure a voluntary commitment from the airline industry to greater transparency in pricing) estimated annual benefits to consumers of £131 million.⁸
- 2.12 Of course, detriment is not only financial. In 2006 the OFT published two research reports which showed that consumers can experience loss from dealing with a business in many ways including: financial loss, deprivation of important services, loss of confidence in suppliers, inconvenience and stress.⁹
- 2.13 All forms of detriment are potentially important and may need to be tackled. However, given the growing dominance of national and multinational businesses operating through multiple and sophisticated channels to market, most notably retailing on the Internet, the evidence would suggest that the harm from mis-selling, unfair contracts and complex pricing – particularly where they develop into market-wide practices - is probably greater and growing faster than that from local or cross-boundary criminal behaviour.
- 2.14 If the system is to protect consumers today and respond effectively to the problems consumers may face tomorrow, it will be vital to preserve

⁷ See www.fsa.gov.uk/pubs/policy/ps10_12.pdf and www.guardian.co.uk/business/2011/may/08/banking-financial-services-authority-fsa

⁸ www.of.gov.uk/shared_of/reports/Evaluating-OFTs-work/oft1139.pdf

⁹ www.of.gov.uk/news-and-updates/press/2006/detriment

and develop the regime's capacity to respond to non-compliance by big, powerful firms and to emerging market-wide detriment. Whilst the OFT understands and supports the Government's aspiration to empower local enforcers, it is doubtful that the TSPB model will be able to achieve this. These matters are discussed in more detail in Chapters Three and Four.

The distribution of resources must be aligned with where consumer need is greatest, but it is also important that the nature of those resources is appropriate to the task in hand.

- 2.15 TSS and the OFT have evolved specialised and differentiated, but complementary, approaches to tackling different forms of detriment. TSS have led the way in addressing local and overt detriment such as doorstep crime and scams, through localised surveillance and intelligence gathering techniques, effective partnerships with local agencies and in-depth knowledge of local markets and businesses. TSS also run larger criminal investigations into firms that cause detriment regionally and nationally.¹⁰ TSS are experienced in taking prosecutions, often acting directly as prosecutors in local criminal courts. Coupled with their wider fair trading functions, such as business advice on compliance, they are often able to secure quick behavioural change from individual traders and resolution for consumers.
- 2.16 The OFT and the concurrent sectoral regulators,¹¹ in contrast, have developed approaches to tackling nationally significant and market-wide issues, generally at the non-criminal end of the spectrum. They do this through Market Studies and economic analysis of the drivers of business and consumer behaviour, working with trade bodies and firms to develop market-wide solutions, and pursuing multiparty enforcement and litigation, generally in the higher courts. They have developed resources and expertise to take on well resourced parties, such as major

¹⁰ For example the successful action by Surrey TSS against a major energy supplier for misleading selling practices earlier this year.

¹¹ The concurrent regulators are the Civil Aviation Authority, NIAUR (the Northern Ireland Utility Regulator), Ofcom, Ofgem, Ofwat and the Office of the Rail Regulator.

multinational companies. They also take cases on novel issues to create legal precedents which have wider impacts across the economy. In addition, the OFT is responsible for complementary functions (research and analysis, consumer advice and education, international liaison, and business guidance) that support its own enforcement activities as well as those of TSS and concurrent sectoral regulators, and has spearheaded the development of specialised online enforcement capabilities.

- 2.17 Reforms to create a more effective and responsive regime should build on these existing strengths. There is of course some overlap between the OFT and TSS, particularly where intelligence shows clear evidence of problems with a number of traders within a market, or where a case involves a difficult legal issue. There are strong examples of effective joint-working by TSS and the OFT. However, as the consultation document and the NAO highlight, there is room to improve and clarify how cases that cut across TSS and OFT responsibilities are dealt with to minimise the risk of an enforcement gap at the regional or national level. Mechanisms for effective coordination, intelligence sharing and risk assessment could also be enhanced.

The approach to enforcement under the TSPB option carries unnecessary risk and could result in poor value for money and lower standards of protection for consumers.

- 2.18 Chapters Four and Five set out OFT's views on proposed reforms to consumer enforcement, including a number of concerns about the TSPB option.
- 2.19 First, the proposals would separate enforcement activity from the diagnosis of market problems and from the capacity to deliver enforcement alongside other remedies such as voluntary and market-based solutions in a coordinated manner.
- 2.20 Second, the proposed TSPB faces a very significant challenge to develop the resources and capability needed to overcome the disincentives to cross-boundary collaboration highlighted by the NAO, as well as to develop the sorts of specialist legal and economic capability needed to

challenge the behaviour of large, well-resourced businesses with access to the best legal representation.

- 2.21 Making expertise and knowledge that is currently concentrated at the national level accessible to all delivery partners is, in the OFT's view, key to the system's ability to respond to existing and emerging threats to consumers. Dispersing these functions among different delivery bodies, including specialist regional TSS teams, different lead authorities, the proposed TSPB and the Trading Standards Institute (TSI), will make it harder to share experience and coordinate action across functions. The OFT is concerned that the result will be units within those bodies without a sustainable funding basis, too small to form a critical mass of resources, skills and expertise, and unable to bear the costs and risks associated with major consumer litigation.
- 2.22 It has not been demonstrated that the benefits of this change would outweigh the costs, particularly in the absence of specific new funding for the transition. Change could take several years to implement; there would be a diversion of resources and energy away from front-line enforcement towards managing the change and replacing lost expertise, with the risk that consumers are less well protected in the meantime.
- 2.23 Third, this option fails to achieve the Government's objective of reducing institutional complexity. Not only does it fragment functions currently delivered within a single authority, but it envisages the creation of a new body – the TSPB – to coordinate cross-boundary enforcement by TSS. Moreover, the consultation acknowledges that issues which cross organisational boundaries will continue, and that therefore further forums for coordination and exchange must be created in order to avoid duplication and determine who should act in specific instances. This model is therefore potentially more complex than the current system.
- 2.24 Fourth, the TSPB proposal could lead to a patchwork approach to enforcement, with the potential for inconsistent approaches by different local authorities, which will create cost and uncertainty for firms. This problem could be particularly acute in relation to the CPRs - which remain relatively untested. The process of honing these regulations into

a well-understood and legally tested framework is, in the OFT's experience, best supported by the existence of a strong national consumer enforcement body, rather than a piecemeal approach by different authorities across the country. As well as ensuring consumers receive consistent protection, a uniform approach to enforcement is vital to economic growth, supporting business confidence and reducing investment risk for legitimate businesses who may otherwise fear their business models may be undermined by sharp practices.

- 2.25 Despite the passion, commitment and professionalism of TSS there are very substantial structural challenges to the TSPB model which it will be difficult for them to overcome, such as the existence of 197 separate local enforcement agencies embedded within wider local authority structures and responsibilities and, importantly, the significant cuts in funding due to take place over the next three years. The consultation document does not set out sufficiently clearly how it is envisaged that the TSPB model will address these obstacles.

Proposed reforms to Market Studies risk losing the value which informed market analysis brings to the current system. Transferring consumer Market Studies to Citizens Advice and Citizens Advice Scotland would split the analysis of consumer issues from an understanding of competition issues and risks creating unnecessary burdens on business. Likewise, divorcing responsibility for market analysis from market interventions (particularly enforcement) may lead to unnecessary action, or poorly designed and uncoordinated remedies to consumer problems.

- 2.26 Chapter Six sets out the OFT's views on proposed reforms to the Market Studies regime. Bringing together both demand-side and supply-side perspectives leads to better outcomes for consumers, firms and the economy. In our experience, the key to this is putting robust analysis at the heart of the regime. Divorcing consumer Market Studies from markets-based thinking may result in inappropriate or unduly burdensome interventions, increasing costs for businesses and consumers, and hindering economic growth.

- 2.27 Market Studies facilitate a coordinated response to a consumer problem, often underpinning a range of remedies such as enforcement, consumer education, industry self-regulation or improved guidance to business. Currently, the OFT is able to immediately take forward many of these remedies itself. Under the proposal to transfer consumer Market Studies to Citizens Advice/Citizens Advice Scotland the situation would be more complex. Rather than most recommendations being taken forward in a coordinated manner by a single body, many would have to be referred to other bodies for action, creating the risk that important analytical insights could be lost or that actions would not be carried forward together due to other priorities. That could lead to consumers facing ongoing risks and businesses facing a piecemeal approach to reforms.
- 2.28 In addition, giving Market Study responsibilities to Citizens Advice/Citizens Advice Scotland - consumer advocacy bodies - risks significantly altering the specific role of Market Studies in the regime and losing some of their considerable benefits. However soundly based the analysis, they will no longer be seen as a neutral means of identifying a coherent and coordinated set of responses to a market problem if they are carried out by an organisation that also lobbies for consumers. Business in particular may lack confidence in the conclusions of such studies.
- 2.29 This response argues that it is in the interests of the overall effectiveness of the regime that Market Studies and Super-complaints - whether they are initially begun as a response to consumer, competition or mixed issues - should continue to be dealt with by the OFT/CMA. This is not to say that analytical capability should not be highly valued right across the regime. Research and analysis by bodies such as Citizens Advice, Consumer Focus and Which? makes a vital contribution to the collective understanding of consumer issues, and it is important to retain and develop such capability on a wide basis going forwards.

Of the options as presented, that of improving collaboration and cooperation within existing structures (the Joint Enforcement Board model) offers greater potential to improve outcomes for consumers than a transfer of most enforcement responsibilities to a network of local enforcers (the Trading Standards Policy Board model).

- 2.30 A modern and forward-looking consumer regime requires a strong national enforcer. The OFT therefore urges the Government to give OFT/CMA broader responsibility for nationally significant consumer enforcement cases, particularly precedent-setting cases and tackling market-wide issues. The OFT/CMA needs to retain powers to conduct consumer Market Studies and respond to Super-complaints, to ensure that consumer problems are looked at in the round, drawing on an understanding of the drivers of both consumer and firm behaviour, and that proportionate and appropriate remedies are selected which do not place unnecessary burdens on business. It should continue to act as a national hub for enforcement expertise, housing specialist functions such as Internet enforcement capability and the single focal point for international enforcement coordination and liaison offers greatest scope to build on the existing strengths of the regime and deliver value for money.
- 2.31 However, the benefits of this specialist capability should be more widely shared than is currently the case. There should be greater TSS involvement in decisions about how such resources are deployed, and the national infrastructure for sharing intelligence, knowledge and skills should be enhanced to help local enforcers develop their capacity to take on difficult cross-boundary cases and to ensure that resources are deployed to the areas of greatest need.
- 2.32 Therefore the OFT supports the creation of a Joint Enforcement Board (JEB), bringing together representatives of TSS and the OFT/CMA (and potentially other interested bodies) to set national priorities, choose which are the most important cross-boundary enforcement cases and agree responsibilities for taking them forward, including through joint enforcement by the OFT/CMA and TSS. Chapter Four provides more detail on how such a model might work.

- 2.33 It makes sense to build upon existing expertise and capacity rather than break it up and build replacements elsewhere. Joining up enforcers would be more efficient, less risky and, crucially, would divert less energy and resource away from front line enforcement, which is vital at a time of significantly reduced budgets. The JEB could become a reality quickly and at a far lower cost than the TSPB approach, without all the associated risks.
- 2.34 This is not a call to retain the status quo. Meaningful change is required to address the challenges identified in the consultation and the NAO report and to ensure that the consumer protection regime is forward looking, taking account of and anticipating new challenges faced by consumers in a changing world. Making the JEB model a success will require a commitment by all partners, including the OFT/CMA, to greater pooling of resources and capability across the regime, coupled with genuinely shared decision-making and joint responsibility for results.

Further thought should also be given to proposed changes to business education, consumer information and education, codes and advocacy.

- 2.35 The OFT has concerns about transferring business-facing education activities to the TSPB and TSI (see Chapter Five). It considers that this creates increased risk of uncertainty for firms. In line with our conclusion that the OFT/CMA should retain a significant role in national consumer enforcement action and coordination, it should also retain the complementary tools enabling it to provide guidance and information to business in line with statutory guidelines on good regulatory practice.
- 2.36 While consumer advice, information and education functions can be transferred to CitA/CAS, the OFT considers that mechanisms are required to ensure accountability for their performance and to enable other organisations – notably regulators – with a strong interest in the messages that consumers receive to influence how and when public consumer information and education funding is spent. It also strongly supports the NAO's recommendation that enforcers must continue to have appropriate access to consumer complaints data given its

significance as a source of intelligence, of evidence in investigations and as an input to prioritisation mechanisms. (Chapters Seven and Eight).

- 2.37 The OFT welcomes the Government's support for self-regulation and co-regulation. In considering options for the future, it is right that the benefits of the existing Consumer Codes Approval Scheme should be retained, whatever form a future model may take (Chapter Nine).
- 2.38 The OFT supports the principles behind the Regulated Industries Unit as proposed by BIS – joining up common themes across sectors, looking forward for future issues and holding regulators and government accountable. It does not take a view on the specific organisational structure or home but would agree that it should minimise duplication and there should be a strong economic analytical function (Chapter 10).
- 2.39 The OFT notes that the consultation paper considers consumer redress primarily in relation to proposed statutory redress schemes in the water and transport sectors. The OFT urges the Government to consider further the role of wider consumer redress mechanisms in the consumer protection regime. Effective redress mechanisms encourage the resolution of consumer problems and incentivise businesses to provide satisfactory goods and services (Chapter 10).

3 SETTING THE SCENE: CREATING THE FRAMEWORK FOR AN EFFECTIVE CONSUMER PROTECTION REGIME

SUMMARY

Changes to the consumer protection regime must be consistent with an effective regime which empowers and protects consumers and supports economic productivity and growth.

Several things are required for this consistency:

- Preserving the link between protecting consumers and promoting competition right across the consumer protection regime so that those carrying out consumer protection functions benefit from an understanding of how firms think and behave.
- Ensuring that the regime is appropriately equipped to deal with the full range of consumer detriment, from criminal activities (for example, scams and doorstep crime) through to unfair behaviour by legitimate businesses testing the boundaries of the law (for example, misleading pricing practices, unfair contract terms, or misleading marketing which can cause consumers to waste money or undermine confidence in markets), particularly where this becomes widespread across a market.
- Making best use of existing resources and skills, and ensuring that the benefits outweigh the costs where change in institutional structures is proposed.
- Ensuring that important synergies between functions are preserved and that there is effective, consistent coordination and information-sharing among the institutions that carry them out.
- Ensuring that institutions which carry out consumer protection functions are accountable to Ministers, Parliament and local communities, and that both consumers and businesses have confidence in the regime.

The link between protecting consumers and promoting competition

- 3.1 The OFT's experience strongly suggests that competition and consumer policy are linked. Good consumer outcomes rely on competitive markets to provide choice and value, while vibrant competition relies on consumers confidently shopping around. Competition problems can often manifest themselves in businesses failing to properly comply with consumer protection laws, which in turn can prevent consumers driving effective competition and lower prices through the exercise of informed choice.
- 3.2 The links between consumer and competition interventions mean that there are advantages for both businesses and consumers to aligning them in policy and practice. Box 3.1 summarises some of the benefits of taking an integrated approach to consumer protection and the promotion of competition. Losing this connection risks poor outcomes for consumers, firms and the economy as a whole.

Box 3.1 Benefits of an integrated Consumer-Competition approach

What does consumer policy gain from competition policy?

- Without a competition influence, consumer agencies can sometimes be tempted towards over-enforcement and intervention, or to believe that the answer to a problem is to reach for a new rule, law or licensing regime. Competition thinking is a counterweight, and shows that market processes can solve consumer problems, and that over-regulation carries risks such as pushing consumers away from making active, informed choices and learning from experience.
- Diagnosis of the market origins of a consumer problem often points to a more effective, light-touch remedy than case-by-case enforcement and in some cases may enable us to get closer to the root cause.
- Firm's strategies to set and raise standards can be examined to see if they stop new firms coming in, discourage innovation or make it easier for firms to rip off consumers.

- A better understanding of private sector market responses, including regulatory gaming and unintended economic side-effects (whereby the gains from reduced prices in one area are offset by increases in another) means that intervention outcomes can be predicted more accurately.
- Consumer detriment can be analysed with additional economic rigour and regulatory arguments can be scrutinised from the perspective of the harm they may do to consumers.

What does competition policy gain from consumer policy?

- Decision-making on competition cases is more likely to be based on a richer understanding of consumer detriment and customer interaction with firms.
- Lessons from experience of how consumers actually behave, rather than reliance on economic assumptions about 'rational consumers', promote more effective remedies.
- Intervention thinking is more likely to take account of perverse effects – for example, aggressive price competition that erodes quality – and to look at evidence of how remedies work in practice.
- Useful alternative or additional remedies can sometimes be found in the consumer toolkit. For example, activating consumer choice by increasing suppliers' obligations to disclose information in combination with consumer awareness programmes can kick-start markets where there is a lack of competition.

3.3 The OFT therefore considers it essential that the new CMA should have a strong consumer protection role. Some have expressed concerns that this could dilute the focus of the new organisation, but these concerns are misplaced. An exposure to the interests, needs and behaviour of consumers, and the difficulties which they can face day-to-day in dealing with firms of all kinds, is, in our experience, a source of strength to competition authorities. It helps ensure analysis that takes account of obstacles to the exercise of 'rational' choice by consumers and remedies which work with the grain of consumer behaviour and biases. The most

successful international comparators, such as the US Federal Trade Commission (FTC) and the Australian Competition and Consumer Commission (ACCC) apply this joined-up model, and other jurisdictions such as Ireland, Denmark and the Netherlands are moving in this direction.

- 3.4 It is also important that wider consumer protection functions be informed by an understanding of the competitive pressures on firms and wider market dynamics. As Box 3.1 highlights, this can help avoid unsuccessful interventions where the benefit to consumers is offset by gaming or by increased prices elsewhere, and it can help avoid over-regulation and over-enforcement where the market can deliver a better solution.
- 3.5 **OFT welcomes the Government's proposal that the CMA should retain powers to take consumer enforcement action where this is an appropriate solution to a structural market problem. However, it needs to go further than this and avoid separating the treatment of consumer problems from markets-based thinking. All functions within the consumer protection regime should be informed by an understanding of markets in the round, from the perspective of both the demand and supply sides. As noted above, without this there is a risk that interventions are ineffective, unnecessary or unduly burdensome. Ministers should give careful consideration to these points in reaching final decisions on the shape of the regime.**

Meeting the needs of tomorrow's consumers: tackling the full range of detriment

- 3.6 Most consumer detriment no longer occurs at a purely local level. The NAO estimates that detriment from mass market scams, intellectual property crime and doorstep crime crossing local authority boundaries costs consumers a minimum of £4.8 billion annually.
- 3.7 Evaluation of recent interventions and other data suggest that this figure provides only a partial picture of cross-boundary detriment, as consumer detriment comes from a much wider range of sources. For example, it can result from the inclusion of unfair terms in contracts, or from mis-

selling, which can lead to consumers making unnecessary purchases, overpaying or getting a poor deal in other ways. Consumers also lose out as a result of complex pricing structures and opaque emerging business models or practices which make it hard for them to get the best deal.

- 3.8 New channels to market and new technologies can also create risks for consumers. For example, our recent Advertising of Prices Market Study¹² examined how selling online can facilitate the advertising of prices in ways which make it harder for consumers to compare them, such as through drip-pricing. This work supported our recent action to tackle unfair credit and debit card surcharges for consumers buying flights online in response to a Super-complaint by Which? (the OFT estimated that consumers spent around £300 million pounds on surcharges in 2010 with the 10 major airlines operating in the UK).¹³ Such problems are likely to increase as Internet-based sales continue to grow, supported by developments in mobile technology. In November 2006 approximately £1 in every £33 spent in retail (excluding automotive fuel) was spent online; by August 2011 this had risen to £1 in every £10 spent.¹⁴
- 3.9 Detriment also arises where consumers are tripped up by complicated terms and conditions which are not obvious to them at the time they enter into a contract. For example, successful OFT litigation led to the High Court prohibiting the use of terms and conditions used by a residential lettings agency governing sales and third party renewal commissions, and the Court Order also provided that where renewal commission is charged, this must be clearly brought to the consumer's attention at the outset.¹⁵ A recent evaluation of this intervention found benefits to consumers of at least £4.4 million a year.¹⁶

¹² www.offt.gov.uk/OFTwork/markets-work/completed/advertising-prices/

¹³ www.offt.gov.uk/OFTwork/markets-work/super-complaints/which-payment-surcharges

¹⁴ www.ons.gov.uk/ons/dcp171778_232975.pdf

¹⁵ www.offt.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/foxtons/

¹⁶ www.offt.gov.uk/news-and-updates/press/2011/82-11

- 3.10 This broad view of detriment is reflected in the introduction of the CPRs, which enhanced enforcers' ability to take on sharp practices of this kind. They extended existing laws dealing with misleading advertising and other selling practices to introduce a general prohibition, not only on misleading and aggressive practices, but on all unfair practices that fall short of ordinary standards of professional diligence which are likely to materially distort the economic behaviour of the average consumer.
- 3.11 These types of detriment (as opposed to criminal behaviour) are often the result of broadly legitimate businesses pushing the boundaries of the law. Where the business in question is a large national or multinational firm with access to the best legal representation, taking it on requires considerable resources and expertise, as well as the ability to bear significant financial risk.
- 3.12 These types of detriment can also pervade markets where, as a company gains competitive advantage from such practices, competitors are drawn into a race to the bottom. In these cases, unfair practices can affect millions of consumers and have a considerable impact on the economy. For example, estimates have put the scale of mis-selling of payment protection insurance alone at between £3 billion and £9 billion over recent years.¹⁷ In 2009 an independent evaluation of just one OFT intervention (to secure a voluntary commitment from the airline industry to greater transparency in pricing) estimated annual benefits to consumers of £131 million.¹⁸
- 3.13 Of course, detriment is not only financial. In 2006 the OFT published two research reports which showed that consumers can experience loss from dealing with a business in many ways including: financial loss, deprivation of important services, loss of confidence in suppliers, inconvenience and stress.¹⁹ This was most likely to occur where: the

¹⁷ See www.fsa.gov.uk/pubs/policy/ps10_12.pdf and www.guardian.co.uk/business/2011/may/08/banking-financial-services-authority-fsa

¹⁸ www.offt.gov.uk/shared_offt/reports/Evaluating-OFTs-work/oft1139.pdf

¹⁹ www.offt.gov.uk/news-and-updates/press/2006/detriment

goods and services being supplied have a technical element making the consumer reliant upon the suppliers' integrity, dubious marketing methods or direct selling through cold calls are involved, the supplier is remote and pays insufficient attention to after-sales service, or irregular purchases of high value goods and services are made and not enough is known about the business involved.

- 3.14 All forms of detriment are potentially important and may need to be tackled. However, given the growing dominance of national and multinational businesses operating through multiple and sophisticated channels to market, most notably retailing on the Internet, the evidence would suggest that the harm from mis-selling, unfair contracts and complex pricing – particularly where they develop into market-wide practices - is probably greater and growing faster than that from local or cross-boundary criminal behaviour.
- 3.15 **The OFT is concerned that under the preferred options in the consultation, the consumer protection regime may not be able to meet the full range of challenges faced by consumers. Finite, and reducing, public resources may not be configured so as to be able to tackle the areas of greatest need. In particular, if the system is to protect consumers today and respond effectively to the problems consumers may face tomorrow, it will be vital to preserve and develop the regime's capacity to respond to emerging market-wide detriment. It is therefore a matter of concern that proposed reforms to the enforcement of consumer law and consumer Market Studies in particular may weaken this capacity. These matters are explored in greater detail in Chapters Four (enforcement) and Six (Market Studies).**

Preserving and building on existing strengths and synergies

- 3.16 The Government's proposals for reform of the consumer protection regime focus on the institutions delivering particular functions within the system and how these might be differently configured in order to reduce complexity and maximise efficiencies. Some of these proposals seek to take advantage of the likely benefits of co-locating functions and building on existing capacity and strengths, for example in bringing

together advice and advocacy services under a single institution with a well-recognised brand.

- 3.17 These benefits must be weighed against the costs of potentially disruptive change, particularly in the absence of specific new funding for the transition. The proposals under consideration would also involve the disruption of existing synergies and information flows within the regime and the potential loss of existing experience and expertise which would need to be rebuilt within the proposed structure over time. There would also be costs arising from the need to create new coordination and support structures. Change could take several years to implement; there would be a diversion of resources and energy away from front-line enforcement towards managing the change and replacing lost expertise, with the risk that consumers are less well protected in the meantime. At a time when public finances are extremely stretched, the OFT would also question the value for money of making experienced and skilled staff within existing institutions redundant only to seek to rebuild this capacity elsewhere. Businesses would also face familiarisation costs in adapting to the new regime.
- 3.18 **The OFT urges Ministers to conduct further detailed assessment of the costs and benefits of proposed reforms and, in particular, a full assessment of the risks associated with transition, including whether and how these can be effectively mitigated without damage to front-line delivery.**

Accountability

- 3.19 An effective consumer protection regime must create the right incentives for decision-making and ensure those that make decisions are accountable for them. The new structure, both political and financial, of the consumer protection regime must provide for clear lines of accountability: to Ministers and Parliament for the delivery of national consumer policy objectives, and to local communities for tackling local

priorities. There also needs to be accountability to business in line with legislation based on Sir Philip Hampton's recommendations.²⁰

- 3.20 Shared issues, cross-boundary cases and overlapping concerns are inevitable in the consumer protection system. There need to be effective mechanisms for ensuring genuinely shared accountability on shared issues, as well as systems for allocating tasks to avoid duplication or gaps in delivery. It is thus essential to build trust through regular information sharing and exchange, and for there to be appropriate mechanisms for this information sharing to occur.
- 3.21 All of this requires an effective performance management framework, as highlighted by the NAO in its recent report on consumer enforcement. This should be founded on clear shared objectives for the regime as a whole, clarity about roles and responsibilities and a commitment to work together towards the achievement of shared aims. It also needs to ensure appropriate incentives are in place to ensure resources are matched to risk.
- 3.22 Chapter Four argues that the proposal to transfer most responsibilities for cross-boundary enforcement to TSS, under the oversight of a new TSPB, does not directly address the difficult questions around accountability raised by the NAO in its report. In particular, it raises the concern that the TSPB will ultimately lack the hard tools needed to guarantee that national policy objectives will be met in the face of ongoing disincentives to cross-boundary working by TSS.
- 3.23 It is also vitally important that both consumers and business have confidence in the regime and its ability to deliver consistent, timely and fair results. Institutions involved in delivery must therefore be outward-looking organisations with the capacity to engage widely with other bodies, public and private, to ensure that they understand the broader public and policy agenda and are responsive to external needs and

²⁰ Legislative and Regulatory Reform Act 2006, section 21(2)(a) and the Regulators' Compliance Code section 9, and Part 4 of the Regulatory Enforcement and Sanctions Act 2008. The latter applies directly to the OFT (and national sectoral regulators) but not to TSS.

concerns. Arrangements for effective governance, transparency and due process will therefore be important elements in the design of the new regime.

- 3.24 Fairness and balance are also key underpinnings of business and consumer confidence in the system. In some instances this may require an organisational separation of certain functions. For example, Chapter Six raises concerns that placing Market Studies with consumer advocacy bodies may undermine business confidence in them. It may also require appropriate checks and balances, particularly where enforcers or other delivery partners may in some circumstances act as undertakings which are themselves subject to consumer laws, as, for example, local authorities may be in relation to their role as landlords. Apart from fairness considerations, this conflict of roles also potentially gives rise to significant legal difficulties unless any new specialist enforcement units at local level are clearly separated from the local authorities in which they are located.
- 3.25 **The OFT welcomes the emphasis placed on effective performance management by the NAO and the importance the Government places on clarity of roles and responsibilities and effective partnership working. However, it considers that further work is needed by all interested parties to establish a clear and effective framework for national and local accountability across the consumer protection regime. In addition, further thought must be given to how changes in the way certain functions are delivered may impact on business and consumer confidence in the regime.**

4 ENFORCEMENT

SUMMARY

The present consumer enforcement system has specialised and differentiated but complementary approaches to tackling different forms of detriment. Reforms to create a more effective and responsive enforcement regime should build on these existing strengths.

There is a lot of good partnership working within the current system. However, more could be done to improve coordination and front-line enforcement, particularly the prioritisation of cases which cut across OFT and TSS responsibilities.

The OFT considers that the TSPB option is risky and could result in lower standards of protection for consumers, loss of capability, poor value for money and greater complexity:

- Divorcing national consumer enforcement from market analysis and breaking up expertise in legislative interpretation and civil litigation risks creating an enforcement gap, weakening the system's capacity to deal with nationally significant issues.
- The TSPB would face a very significant challenge to develop the resources and capability needed to address national threats of the type the OFT has historically tackled, for example, through complex and costly multi-party litigation. In the meantime, consumers will be less well protected.
- The TSPB proposals under consideration would involve considerable cost and disruption and the need to build new coordination mechanisms. The change would divert resources and energy away from front-line enforcement.
- Under the TSPB option enforcement functions would be fragmented and there would be more bodies involved in delivering enforcement and its associated elements than at present.
- The TSPB option risks a patchwork approach to enforcement, which will create cost and uncertainty for firms. A level playing field is vital to economic

growth, supporting business confidence and reducing investment risk for legitimate businesses.

A better approach would be to retain existing roles and responsibilities for enforcement, but make more effective use of them through the creation of a JEB. This would be more efficient, less risky and, crucially, would divert less energy and resource away from front line enforcement, which is vital at a time of significantly reduced budgets. The JEB could become a reality quickly and at a far lower cost than the Government's preferred approach.

The existing consumer enforcement system

- 4.1 In order to compare the options set out in the consultation document, it is important to understand the way existing enforcers work and their respective roles and expertise.
- 4.2 TSS and the OFT have evolved specialised and differentiated, but complementary, approaches to tackling different forms of detriment. TSS have led the way in addressing local and overt detriment such as doorstep crime and scams, through localised surveillance and intelligence gathering techniques, effective partnerships with local agencies and in-depth knowledge of local markets and businesses. TSS also run some large criminal investigations into firms that cause detriment regionally and nationally, for example the successful action by Surrey Trading TSS against a major energy supplier for misleading selling practices earlier this year. TSS are experienced in taking prosecutions, often acting directly as prosecutors in local criminal courts. Coupled with their wider fair trading functions, such as business advice on compliance, they are often able to secure quick behavioural change from individual traders and resolution for consumers.
- 4.3 The OFT and the concurrent sectoral regulators,²¹ in contrast, have developed approaches to tackling nationally significant cases and market-wide issues, generally at the non-criminal end of the spectrum.

²¹ The concurrent regulators are the Civil Aviation Authority, NIAUR (the Northern Ireland Utility Regulator), Ofcom, Ofgem, Ofwat and the Office of the Rail Regulator.

They do this through Market Studies and economic analysis of the drivers of business and consumer behaviour, working with trade bodies and firms to develop market-wide solutions, and pursuing multiparty enforcement and litigation, generally in the higher courts. They have developed resources and expertise to take on well-resourced parties, such as major multinational companies. They also take cases on novel issues to create legal precedents which have wider impacts across the economy. In addition, the OFT is responsible for complementary functions (research and analysis, consumer advice and education, international liaison, and business guidance) that support its own enforcement activities as well as those of TSS and concurrent sectoral regulators, and has spearheaded the development of specialised online enforcement capabilities.

- 4.4 TSS and the OFT have developed different legal areas of substantive and procedural legal expertise over the years and these overlap very little. They generally act in different ways and in different courts. The OFT takes largely civil cases, often relying on legislation such as the Unfair Terms in Consumer Contract Regulations 1999 (UTCCRs) which can only be used in the civil courts. It acts mainly in the High Court and above, supported by the specialist advisory and litigation resources that are needed for such cases. By contrast the very large workload carried by the TSS consists overwhelmingly of criminal action in the magistrates and Crown courts. While TSS take hundreds of criminal prosecutions under consumer protection law each year, since 2006 only four cases have been taken by TSS solely under the UTCCRs. In comparison the OFT's cases have often sought to clarify law through the higher courts and even the European Court of Justice.

Example: The OFT took a test case with seven banks and one building society²² to clarify the application of UTCCRs to unarranged overdraft charges. The case, which went all the way to the Supreme Court, clarified that those terms could not be assessed for fairness under the regulations. Although the test case effectively ruled out enforcement action, the investigation (and the Market Study on personal current accounts that accompanied it) highlighted concerns about unarranged overdraft charges and enabled the OFT to agree voluntary initiatives with the industry to address them.

The OFT's approach to enforcement

- 4.5 The OFT operates on the basis that enforcement action should be taken only where there is no better route to securing compliance, in accordance with the principles of good regulation. Our approach to enforcement is set out in our annually updated Statement of Consumer Enforcement Principles,²³ which is designed to meet our obligations under statutory provisions reflecting the recommendations of Sir Philip Hampton,²⁴ and particularly the Regulators' Compliance Code 2007.
- 4.6 Between 1 April 2010 and 31 March 2011, the OFT accepted 43 undertakings under the Enterprise Act 2002 (EA02) in 20 cases and issued four prohibition or warning orders under the Estate Agents Act 1979 (EAA). A further 20 cases were closed, either because the firm in question ceased trading, a misleading website was taken down without need for further action, the firm took voluntary action to address the non-compliance, or because the case was transferred to a more appropriate enforcer. There were a further 17 cases ongoing as at March 2011.

²² www.offt.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/UTCCRs/

²³ www.offt.gov.uk/OFTwork/policy/policy/statement-consumer-enforcement

²⁴ Reducing Administrative Burdens, March 2005. The relevant legislation based on Hampton's recommendations is the Legislative and Regulatory Reform Act 2006, under which the 2007 Compliance Code was made, and the Regulatory Enforcement and Sanctions Act 2008, particularly Part 4.

- 4.7 The OFT's most recent impact estimate report shows average yearly direct benefits to consumers arising from OFT consumer enforcement of £36 million over the three years to 2011. This estimate is based on a detailed evaluation of only a small proportion of OFT consumer enforcement actions and understates the total benefit. It excludes cases where, for example, there was still potential for further legal challenge to a successful action, or where quantification would be speculative because of poor quality available data. Based on the cost/benefit ratios of specific cases, and other evidence from our in-depth ex-post evaluations, the OFT is confident that the real impact of our work in 2010/11 is much greater, particularly when wider impacts – such as greater deterrence or the impact on consumer confidence – are taken into account.
- 4.8 The OFT seeks to target enforcement action where it can secure wide-ranging changes to markets and tackle significant consumer detriment, particularly emerging trends. OFT interventions are considered in the context of our broader market analysis, and cases are informed by clear theories of harm which take account of dynamic economic analysis where necessary. This helps ensure that our interventions are proportionate to need and do not impose unnecessary burdens on business but, on the contrary, help create a framework in which competitive business can thrive.
- 4.9 The OFT also aims to clarify areas of consumer law and set legal precedents to help ensure that consumers get adequate protection and that businesses have a clear understanding of how to comply. For example, the OFT has taken action to help develop and embed the new CPRs, helping to ensure that these regulations are honed into a well-understood and legally tested framework in which both businesses and consumers can have confidence.

Example: The OFT has taken cases which establish how the law applies in areas affecting large numbers of consumers. The OFT's action against Purely Creative Ltd and others²⁵ (on misleading prize promotions) resulted in the first substantive High Court ruling on the CPRs and has now become the first UK reference to the European Court of Justice on CPRs.

4.10 The OFT has also worked with enforcement partners (both in the UK and overseas) to improve markets for consumers, by sharing investigative resource and expertise and by employing the full range of tools available to us to tackle problems.

4.11 There are a large number of strong examples of effective joint-working by TSS and the OFT. Around two thirds of OFT-led enforcement cases have some TSS involvement, and the OFT responds to an average of 90 TSS requests for advice and guidance per month. Box 4.1 sets out some examples of joint-working which have recently come to fruition.

Box 4.1 Joint working by the OFT and TSS

Holiday Clubs: The OFT has obtained enforcement orders against two companies and seven individuals to stop the use of misleading sales and marketing practices.²⁶ Cases were referred to the OFT by Scambusters team. Four TSS conducted onsite inspections to gather evidence.

Used car buying: Assisted by a number of TSS, the OFT took enforcement action against used car buying company webuyanycar.com²⁷ over concerns that its online valuations were misleading.

Gold buying companies: The OFT took enforcement action against five companies²⁸ who purchased gold from consumers by post following concerns

²⁵ www.offt.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-current/prize-draw-promoters/

²⁶ www.offt.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-current/holiday-products/

²⁷ www.offt.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/we_buy_any_car/

about practices including: unfairly pressuring consumers into selling their gold; misleading price advertising; and a lack of transparency. A number of TSS assisted the OFT with its investigations, including the home authorities for each of the companies and other TSS who carried out mystery shopping and studies.

Premium Rate Prize Draw mailings: The OFT investigated prize draw promoters²⁹ which used trading names liable to mislead consumers about their status, following key intelligence provided from an individual TSS.

Security systems: An individual TSS did not have the resource to fight a case against a company which had the potential to set an important legal precedent on the interpretation of 'transactional decision'. The OFT agreed to work with TSS and provided legal advice and guidance. Undertakings were secured from the company.

TSS have also played an increasingly important role in OFT Market Studies and research work, for example:

Home Repairs:³⁰ TSS were involved in the research development stage, assisting in the design of consumer surveys and stakeholder workshop and focus groups. Three TSS are represented on the steering group for the project, a further 12 have been consulted at various stages and two were interviewed as experts by a research agency.

Second hand cars:³¹ The OFT and TSS have collaborated in a drive to secure improved compliance in the sector. This has involved the publication of OFT guidance on compliance by used car dealers with the CPRs and other relevant legislation, supported by a programme of TSS engagement with major second-hand car dealers to advise on compliance, improve customer service, and reduce

²⁸ www.offt.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/goldpost/

²⁹ www.offt.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/prize-draw-promoters/

³⁰ www.offt.gov.uk/OFTwork/markets-work/othermarketswork/home-repairs/

³¹ www.offt.gov.uk/OFTwork/markets-work/completed/cars

³² www.offt.gov.uk/OFTwork/markets-work/current/mobility-aids/

complaints. The OFT and several TSS have also worked closely on identifying enforcement priorities.

Mobility aids:³² We have set up an OFT/TSS Working Group on mobility aids to share best practice and to help shape possible solutions to the problems identified in the course of our Market Study. The OFT is also working on an enforcement case in this sector (which was referred to the OFT by TSS). The OFT is committed to producing new enforcement guidance and will be organising a joint OFT/TSS enforcement summit as part of its development.

The OFT's Internet enforcement capabilities

4.12 The importance of online markets to the UK economy continues to grow. In 2011, 32 million people in the UK (66 per cent of all adults) purchased goods or services over the Internet – an increase from 62 per cent in 2010. Social networking was also a popular Internet activity in 2011, with 57 per cent of Internet users engaged in social networking, via sites such as Facebook and Twitter, and 40 per cent posting on online forums, blogs, and so on.³³ These new channels have already had significant implications for consumer law enforcement and will do so increasingly in the future.

4.13 In 2009 we established, with seed funding from BIS, a fully equipped forensic Internet lab. This facility undertakes a wide range of forensic tasks relating to online evidence capture (for example, website imaging), online investigation and analysis (for example, investigating links between websites and the individuals behind them). It also has the capability to forensically analyse digital evidence (for example, emails and smartphones) captured as part of OFT investigations. Specially trained staff have been recruited to undertake this work and we are now embedding these skills across the OFT.

³³ www.ons.gov.uk/ons/rel/rdit2/internet-access---households-and-individuals/historical-internet-access/index.html

4.14 Developing trust in online markets is one of the OFT's key themes across its work. In order to achieve this goal, it prioritises investigations against online trading practices that pose a threat to consumer confidence in online markets. This Internet enforcement activity is organised around five themes:

- Promoting awareness of consumers' rights when making purchases online.
- Reinforcing the integrity of online choice tools (that is, sources of online information, discussion, and comparison that help consumers compare and choose between alternative service and product offerings).
- Action to nudge emerging or significant online business models in a positive direction for consumers.
- Targeted, timely enforcement action and disruption activity where there is a specific threat to online consumer confidence.
- Action to test the law as it applies to online markets.

4.15 Box 4.2 describes some of the OFT's recent online enforcement actions.

Box 4.2 Recent OFT online enforcement actions

Promoting awareness of consumers' rights when making purchases online: The OFT secured an enforcement order against an online retailer of computer software, hardware and other electronic goods³⁴ who failed to deliver goods or provide timely refunds and took steps ensure that UK consumers are aware of their chargeback rights in relation to online purchases, so that they could get

³⁴ www.of.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/shop4tek/

refunds where they were entitled to them.

Reinforcing the integrity of online choice tools: The OFT took landmark enforcement action against the operator of a commercial blogging network³⁵ that was paying bloggers to promote its clients' products and services on blogs and microblogs such as Twitter, without ensuring that consumers were aware of the 'paid for' status of this activity.

Action to nudge emerging or significant online business models in a positive direction for consumers: The OFT took enforcement action against the operator of a Penny Auction Website³⁶ who was using 'auto bidder' software to introduce computer generated bids against genuine consumers bidding in the course of online auctions. It has also taken enforcement action against the operator of a group buying website (where a deal is advertised at a price which activates once a certain number of consumers respond to it) in relation to the use of bait advertising.

Targeted, timely enforcement action and disruption activity where there is a specific threat to online consumer confidence: The OFT took enforcement action (including the removal of websites) in relation to the unlawful sale of tickets and/or travel packages that included tickets to 2010 FIFA World Cup matches.³⁷

Action to test the law as it applies to online markets: The OFT prioritised investigations into different types of Internet Intermediaries (online businesses that give access to, host, transmit and index content originated by third parties or provide Internet-based services to third parties) which consider the obligations that apply to these important participants in online markets.

³⁵ www.offt.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/handpicked_media/

³⁶ www.offt.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/penny-auctions-scriptmatix/ Penny auctions are a popular online shopping method where players pay a small non-refundable fee each time they place a bid on an item. We also took enforcement action against the company supplying the software components that facilitated the illegal use of artificial bids in this way.

³⁷ www.offt.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/fifa/

- 4.16 The OFT actively seeks to share its knowledge and experience where possible. For example, it works closely with TSS, by sharing information and best practice in relation to online investigations as well as the technology we have at our disposal. It has established a secondment scheme for Trading Standards Officers to spend time working in the OFT's Internet enforcement team.
- 4.17 Given the global nature of the Internet, international co-operation is an important element of our online enforcement activity and OFT regularly liaises with overseas agencies during our work, via the European Union Consumer Protection Co-operation (CPC) network and also the International Consumer Protection Enforcement Network (ICPEN).³⁸ The OFT has taken a leading role on these issues within the EU and is currently chairing a wide-ranging CPC project on establishing an effective Internet enforcement capability (given that many other Member States do not have the skills and experience that the UK has in this area), which will help deal with overseas companies targeting UK consumers. This activity is partly funded by the European Commission. The OFT has also set up the ICPEN Internet investigations wiki, through which international enforcement agencies are able to share information and best practice relevant to online enforcement.
- 4.18 Our online enforcement action is informed by our wider research and analysis of online markets. For example the OFT's Internet Shopping Market Study³⁹ completed in June 2007 found that awareness of online shoppers' rights was low, among both consumers and online retailers. The OFT has taken enforcement action to address this, and more is in the pipeline. Likewise, the misleading advertising of pricing practices as identified in the Advertising of Prices Market Study has a particular read-across to online markets.⁴⁰ We have taken enforcement action subsequent to this study, and again more is in the pipeline. In April 2011

³⁸ For example www.offt.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/online-trader-investigation/

³⁹ www.offt.gov.uk/shared_offt/reports/consumer_protection/oft921.pdf

⁴⁰ www.offt.gov.uk/news-and-updates/press/2010/124-10

the OFT published a paper on how effective use of choice tools can empower consumers.⁴¹ Enforcement in this area underpins our objective to ensure that effective use of choice tools helps to make online markets work well for consumers. Our experience is that Internet enforcement is an increasingly vital complement to more conventional enforcement and needs to be kept together with it and strengthened further.

Concerns about the effectiveness of the current system

- 4.19 Concerns have been raised about the effectiveness of the current enforcement system by BIS in its consultation document, by the NAO in its recent report *Protecting Consumers*,⁴² by participants in the regime and by the wider stakeholder community.
- 4.20 The OFT welcomes the Government's timely focus on the enforcement regime and agrees that the current system is not as effective as it could be, particularly in tackling regional and national threats. In part, this is due to structural challenges. TSS are not a homogenous body, but a group of 197 bodies involved with Local Authority services with differing priorities and resources, supported by regional and national representative bodies. Many individual TSS are too small to benefit from economies of scale and can struggle to sustain the often considerable resourcing implications of taking on large-scale cross-boundary enforcement activity. These challenges are likely to be exacerbated by significant funding cuts. BIS estimates that annual funding for TSS will fall from its current level of £213 million to between £140 million and £170 million by 2014.⁴³
- 4.21 In addition, despite many important examples of collaboration and exchange between TSS and the OFT (including those mentioned above at Box 4.1), coordination between enforcers could be significantly

⁴¹ www.oft.gov.uk/shared_oftr/reports/consumer_protection/oft1321.pdf

⁴² *Protecting consumers – the system for enforcing consumer law*, NAO, June 2011

⁴³ *Protecting consumers – the system for enforcing consumer law*, NAO, June 2011 p9
www.nao.org.uk/publications/1012/protecting_consumers.aspx

improved. The NAO highlights a number of areas – for example the protocol for case referrals from TSS to the OFT and the implementation of the National Intelligence Model – where coordination has been insufficiently effective.⁴⁴ The OFT recognises that there needs to be better prioritisation of cases, particularly nationally significant cases which cut across both OFT and TSS responsibilities. There also needs to be better and clearer communication between partners.

Proposals for improving the enforcement of consumer law: the OFT's view

- 4.22 The OFT supports the Government's intention to strengthen the capacity, leadership and coordination of TSS to support more effective action against cross-boundary threats. However, the TSPB model of enforcement is risky and, far from improving the situation, could result in decreased efficiency and lower standards of protection for consumers.
- 4.23 In transferring resources and capability from a national agency to strengthen cross-boundary working by local enforcers, the Government risks creating enforcement gaps. In particular it risks weakening the system's existing capacity to deal with market-wide detriment or to take cases against large powerful businesses on issues of significant consumer concern – issues such as airline pricing, bank charges and rising motor insurance premiums which affect very large numbers of consumers every day. This sort of detriment is significant and growing.
- 4.24 The proposal to place consumer Market Studies away from the consumer enforcement system and from wider markets-based analysis (with Citizens Advice and Citizens Advice Scotland) would weaken the system's existing capacity. The proposed split could lead to inadequate understanding both of the causes of consumer detriment and of the most efficient tools with which to tackle them. It will also make it harder to take enforcement action as a part of a coordinated set of remedies to a consumer problem. This could lead to less effective consumer protection and greater burdens on business.

⁴⁴ See *Protecting consumers* paragraphs 3.14-3.18, NAO, June 2011

- 4.25 Making expertise and knowledge that is currently concentrated at national level accessible to all delivery partners is, in the OFT's view, key to the system's ability to respond to existing and emerging threats to consumers. The OFT houses specialist advisors, including financial analysts and statisticians. Its dedicated Litigation Unit supports both competition and consumer enforcement and is practised at dealing with a wide range of cases, including precedent-setting cases that test the meaning of the law in the highest courts in the land and at the European level. All the early cases on new legislation such as the CPRs and all the cases that have gone to the higher courts have been led by the OFT using this expertise. Such cases often carry considerable risk. The bank charges test case alone cost the OFT more than £950,000 in external legal fees.⁴⁵
- 4.26 Dispersing these functions among different delivery bodies, including specialist regional TSS teams, different lead authorities, the proposed TSPB and the TSI, will make it harder to share experience and coordinate action across functions. The OFT is concerned that the result will be units within those bodies without a sustainable funding basis, too small to form a critical mass of resources, skills and expertise, and unable to bear the costs and risks associated with major consumer litigation.
- 4.27 This is particularly so in light of the significant funding cuts expected over the next few years. There is no doubt that TSS will seek to rise to the challenge of increased responsibility for cross-border enforcement. But with limited resources, a small secretariat, and without supporting economic and legal functions, the TSPB model will be ill-equipped to take on significant cross-boundary cases on the scale of the bank charges test case, to undertake joint enforcement work with

⁴⁵ In 2007 the OFT took a test case with seven banks and one building society to clarify the application of UTCCRs to unarranged overdraft charges. The case, which went all the way to the Supreme Court clarified that those terms could not be assessed for fairness under the regulations. This figure represents only the OFT's external legal costs. By agreement between the parties, the OFT was not required to meet the banks' costs. Further information can be found at www.of.gov.uk/shared_of/freedom_of_information/FoIAresponses/IAT-FOIA-76649.pdf

international partners or to support cutting edge online investigation and enforcement work.

4.28 The OFT does not believe that a transfer of funding from the OFT to the TSPB would be enough to address these concerns. The OFT's spend on consumer enforcement – estimated at £8.5 million⁴⁶ in 2010-11 – is relatively small and delivers greater value for money for the taxpayer in one place than if it were distributed by the TSPB and BIS to a number of lead authorities and specialist teams. The OFT's current budget for consumer enforcement is not a discrete pot of money. Rather, it is tied up in staffing, equipment and other resources which are integrated with other consumer and competition functions. These resources are not easily transferrable, and breaking up these functions to recreate them elsewhere will carry significant transition costs, particularly if staff redundancies are involved. Meeting these costs and managing the change would result in the diversion of resources and energy away from front-line enforcement, with the risk that consumers are less well protected in the meantime.

4.29 It is not clear from the consultation how the TSPB model would deliver the national performance framework envisaged by the NAO, provide greater accountability than the current system or strike an appropriate balance between local autonomy and national priorities. In principle it would be possible to legislate to enable TSS to take cases in the interests of consumers outside of their locality. However, it does not appear that the Government envisages a requirement to provide a minimum level of service or to act across boundaries and no detail is provided about the scale of any possible indemnity fund or how schemes for pooling risk might operate. Without these the TSPB is ultimately likely to lack the hard tools needed to guarantee that national objectives will be met.

⁴⁶ This figure includes direct enforcement casework as well as wider support functions, such as policy development, business guidance, operation of the Consumer Codes Approval Scheme, international liaison and coordination and engagement with TSS.

- 4.30 There are a number of questions regarding the working of the proposed 'lead authorities'. For example, suppose a given TSS is made the national centre for UTCCRs, what would happen if a change of local priorities meant that the local council no longer wished to be the national centre? Or, if a TSS has been appointed lead authority, what in practical terms can the TSPB do to hold it accountable? And, who would be responsible for redundancy costs if the TSPB decided that a given lead authority was no longer performing to the standard expected and wished to move the function to another authority?
- 4.31 There are also concerns about different legislation being housed with different lead authorities. Large national consumer cases are often taken on the basis of two or more different pieces of legislation, or involve a choice between parallel provisions which could have different benefits to consumers or place different burdens on business. So having separate centres of excellence for each piece of legislation would add complexity to the system. For example, it may be unclear which authority would take a case such as the OFT's recent High Court action against Ashbourne Management Services Ltd,⁴⁷ which was brought under three separate pieces of legislation – the CPRs, the UTCCRs and the Consumer Credit Act 1974.
- 4.32 Furthermore, this option fails to achieve the Government's objective of reducing institutional complexity. Not only does it fragment functions currently delivered within a single institution, but it envisages the creation of a new body – the TSPB – to coordinate cross-boundary enforcement by TSS. Moreover, the consultation acknowledges that issues which cross organisational boundaries will continue, and that therefore further forums for coordination and exchange must be created across the system in order to avoid duplication and determine who should act in specific instances. This model is therefore potentially more complex than the current system. This could lead to confusion and damage business confidence in the regime.

⁴⁷ www.ofc.gov.uk/news-and-updates/press/2011/92-11

- 4.33 As well as ensuring consumers receive consistent protection, a uniform approach to consumer enforcement is vital to economic growth, supporting business confidence and reducing investment risk for legitimate businesses who may otherwise fear their business models may be undermined by sharp practices. The TSPB proposal could also lead to a patchwork approach to enforcement, with the potential for inconsistent approaches by different local authorities, which will create cost and uncertainty for firms. This problem could be particularly acute in relation to the CPRs, which came into force in 2008 and therefore remain relatively untested. The process of honing these regulations into a well-understood and legally tested framework is, in the OFT's experience, best supported by the existence of a strong national consumer enforcement body, able to take precedent-setting cases (such as the OFT's recent action on misleading prize promotions), rather than a piecemeal approach by different authorities across the country. Nor will it be possible under the TSPB model to ensure that the regime is equipped to embed any new legislative requirements in future, for example changes which may arise as a result of the recently announced Consumer Bill of Rights.
- 4.34 Despite the passion, commitment and professionalism of TSS there are very substantial structural challenges to the TSPB model which it will be difficult for them to overcome. A number of these are highlighted by the NAO in its report.⁴⁸ The consultation document does not set out sufficiently clearly how it is envisaged that the TSPB model will address these obstacles.
- 4.35 Improving collaboration and cooperation within existing structures offers greater potential to improve outcomes for consumers than a wholesale transfer of roles and responsibilities for enforcement to the local level. To that end the OFT/CMA should retain broad responsibility for nationally significant consumer enforcement cases, and continue to act as a national hub for enforcement expertise, housing specialist resources

⁴⁸ See *Protecting consumers* paragraphs 3.3 – 3.6, NAO, June 2011

and functions such as Internet enforcement capability and the single focal point for international enforcement coordination and liaison.

- 4.36 This role should go further than the ability to take consumer enforcement actions in response to structural problems in markets envisaged in the TSPB option. Nationally significant consumer detriment is not always the result of a structural market problem. It may occur because of the actions of a single powerful firm. Or it may happen where an unlawful practice is adopted across a whole market. In such cases it is perfectly possible that the market in question is experiencing strong competition and barriers to entry are low. Consequently, a requirement that an agency like the CMA must identify a structural or competition problem in a market before it could exercise consumer enforcement powers would be unduly restrictive.
- 4.37 More should be done to support more and better cross-boundary enforcement. The benefits of nationally-held specialist capabilities should be more widely shared than is currently the case. There should be greater TSS involvement in decisions over how such resources are deployed, and the national infrastructure for sharing intelligence, knowledge and skills should be enhanced to help local enforcers develop their capacity to take on difficult cross-boundary cases and to ensure that resources are deployed to the areas of greatest need.
- 4.38 Therefore the OFT supports the creation of a JEB, bringing together representatives of TSS and the OFT/CMA (and potentially other interested bodies) to set national priorities, choose which are the most important cross-boundary enforcement cases and agree responsibilities for taking them forward, including through joint enforcement by the OFT/CMA and TSS.
- 4.39 The JEB would select cases based on the National Intelligence Model and the processes which support it. Rather than simply providing a mechanism for referring cases between TSS and the OFT/CMA, we believe this approach would offer a more comprehensive and joined-up assessment of the issues from national, through regional, to the local level. The JEB would give TSS a degree of control over national

enforcement resources, and make the OFT/CMA more accountable to local communities for its enforcement activities. Box 4.3 provides more details on how the JEB might work in practice. This is initial thinking to provide a starting point for debate – to be successful the principles governing the operation of the JEB must be worked out through dialogue and signed up to by all partners.

Box 4.3 How the JEB might work in practice

The Board

- **Membership:** the JEB would comprise both TSS and OFT/CMA representatives. TSS representatives could be the English regional representatives and national equivalents from Scotland, Wales and Northern Ireland. The JEB could also involve wider delivery partners such as Citizens Advice, Which? and sector regulators. It could also take on board wider stakeholder views, such as representative groups of vulnerable consumers and business interests.
- **An independent chair** could be appointed.
- **Monthly meetings** would make decisions on enforcement cases, joint work and referral of cases and issues.
- **Decisions on enforcement cases:** the JEB would consider the full range of potential national and cross-boundary cases and decide who is best placed to take them on. Intelligence analysis would inform JEB discussions.

Enforcement and other interventions

- **Expected leads:** TSS lead on local issues, CMA and TSS share lead on national issues, with cases taken by whoever is best placed, as decided by the JEB, depending on the history, nature and complexity of the case, and whether there is a home/primary authority relationship.
- **Joint casework:** some large and complex cases would be run jointly by the OFT/CMA and TSS with dedicated support from the OFT/CMA, and based within the relevant local authority where necessary.
- **Market analysis:** Market Studies of consumer problems would be carried out

by the OFT/CMA. The JEB would help select the subjects for studies.

- **Super-complaints:** Which?, Citizens Advice and other bodies would continue to bring Super-complaints to the OFT/CMA.

Resources

- **The OFT/CMA** would retain its consumer enforcement responsibilities, expertise and resources - part of which would be under the direction of the JEB.
- **Additional enforcement funding** could also be provided by the OFT/CMA to assist regional TSS teams.
- **The OFT/CMA would provide direct support for TSS** through joint enforcement teams, legal advice on cases, and secondments on emerging, higher profile and more complex issues and cases. This would also help TSS to develop capacity, skills and expertise.
- **Enforcement resources would be pooled** and the OFT/CMA and TSS would provide reciprocal support on issues and cases they jointly agree to take forward.
- **Cases with high litigation risks** would continue to be taken by the OFT/CMA and there would be no need for a separate indemnity fund.

4.40 It is of course difficult to describe in detailed terms how any proposed model would work in practice before its design has been discussed and agreed with those to be involved. However, drawing on experience, Box 4.4 seeks to provide some hypothetical examples of regional, national and international threats which could arise and alternatives for addressing them which the JEB model would offer.

4.41 **It makes sense to build upon existing expertise and capacity rather than break it up and build replacements elsewhere. Joining up enforcers would be more efficient, less risky and, crucially, would divert less local energy and resource away from front line enforcement, which is vital at a time of significantly reduced budgets. Giving local TSS more control over national resources would be a better way to ensure that the system**

responds to concerns at all levels. Additionally the JEB could become a reality quickly and at a far lower cost than the TSPB approach, without all the associated risks.

Box 4.4 How the Joint Enforcement Board could improve outcomes for consumers

The JEB gives TSS and the OFT/CMA equal voices in selecting cross-boundary and national cases, deciding how resources should be allocated, and who should lead and be responsible for case delivery. The JEB would improve outcomes for consumers by joining up local and national decision-making and giving case teams access to pooled resources, expert capacity and direct support. As a result, any 'enforcement gap' would be closed and there would be an increased number of cross-boundary and national cases.

Hypothetical examples where JEB model would lead to a better outcome

Regional supplier of glazing products

The case - A small TSS brings a case to JEB with evidence of high levels of complaint and detriment for a company based in its area. Vulnerable consumers often targeted. Complex issues under various legislation (high pressure selling, unfair terms, lack of cancellation rights, misleading price information and credit licence issues). Intelligence network has confirmed the widespread nature of the problems.

Action - JEB supports TSS to take enforcement and business engagement. OFT/CMA provides direct support for the case through allocation of lawyers to assist on complex legal points, particularly unfair terms, and secondment of OFT/CMA investigators to help with evidence gathering. JEB asks OFT/CMA to produce guidance on compliance to supporting TSS engagement with major businesses in other regions on compliance, how to improve customer service, and reduce complaints.

Large online retailers of electrical products

The case – TSS aware of consumer complaints about three large online retailers supplying defective products and poor after sales customer service. Likely high

level of detriment, and complex unfair contract terms issues raised.

Action - JEB agrees whether home/primary authorities take enforcement action or it makes sense to run a single investigation (either a lead TSS or CMA) against the online traders. JEB considers benefit in a wider market study led by OFT/CMA which uncovers evidence of widespread sector non-compliance with Distance Selling Regulations.

To support the enforcement action, the OFT/CMA uses its Internet enforcement team and economists from the Market Study team (to assist with the unfair contract terms analysis). On the back of the Market Study, OFT/CMA works to raise general compliance levels in the market.

Emerging threat in run up to worldwide sporting event in UK

The case – Citizens Advice bring an urgent case to JEB with high levels of complaints about a number of traders: online sale of fake event tickets and hotel packages including to overseas customers. Not a high priority for police, but large numbers of consumers being affected and unclear from or through which country or countries some of the sellers are operating.

Action - JEB identifies OFT/CMA as appropriate lead. OFT/CMA takes case against well resourced national trader and works with international partners on cross-border compliance issues. OFT/CMA investigators and money allocated to regional TSS to assist with further enforcement work around hotel package advertising and to work with the Citizens Advice service on tailored advice and information provision for consumers.

4.42 This is not a call to retain the status quo. Meaningful change is required to address the challenges identified in the consultation and the NAO report and to ensure that the consumer protection regime is forward-looking, taking account of and anticipating new challenges faced by consumers in a changing world. To this end the OFT is stepping up its visible high impact enforcement and has made it one of two themes of

its Annual Plan for 2011-12;⁴⁹ we aim to devote the maximum amount of resources to activities that produce direct market outcomes and achieve maximum deterrence. To support this, the OFT established a new Pipeline and Performance Group, responsible for driving through improvements in the way we track delivery, make effective use of resources and gather intelligence, as well as supporting the development of new project proposals and assessing remedies.

- 4.43 Making the JEB model a success will require a commitment by all partners, including the OFT/CMA, to greater sharing of resources and capability across the regime, coupled with genuinely shared decision-making and joint accountability for results. More work needs to be done to explore how such a model would work in practice. The OFT has initiated conversations with TSS partners around developing a shared model, and looks forward to deepening those discussions and extending them to other interested parties.

⁴⁹ www.of.gov.uk/about-the-oft/annual-plan-and-report/

5 OTHER ENFORCEMENT-RELATED FUNCTIONS

SUMMARY

The TSPB model would have important implications for a number of wider functions which play an important role in supporting the consumer enforcement system. We believe that these merit further careful consideration.

International functions. Under the TSPB model it will be harder for international functions to be performed effectively, economically, coherently and in line with the principles of good regulation. The OFT urges the Government to consider keeping responsibility for international enforcement, coordination and liaison with the OFT/CMA, alongside its national consumer enforcement role.

Estate Agency. Further consideration should be given to which organisations should fulfil the OFT's current functions under the Estate Agents Act 1979. Greater TSS involvement in the investigation and preparation of prohibition cases is to be welcomed. However, it is important to guard against introducing unnecessary additional burdens either on businesses or on the public purse. In light of this, the CMA may be best-placed to retain these functions alongside duties to keep the market sector under review.

Coordinating enforcers. More detailed consideration must be given to the future of coordination mechanisms, such as the coordination powers under the Enterprise Act and the Consumer Regulations Website, to avoid placing unnecessary burdens on business from duplicative approaches by enforcers.

Policy and research. Under the TSPB model there is a risk that existing consumer policy skills and experience will not be easily replaced. Consideration should be given to the CMA retaining a leadership role for enforcement policy, integrating its knowledge of markets, enforcement experience and international role, sharing the benefits of this more widely through a JEB.

Business education and guidance. The coordination of business education and guidance is part of an overall compliance toolkit and must be closely linked to direct enforcement experience. There are logical arguments in favour of this function being joined to a national leadership role in consumer enforcement.

5.1 The Government's proposals would have important implications for a number of linked functions currently undertaken by the OFT as a corollary of its role as the national cross-economy consumer enforcement authority. The most important of these are:

- International enforcement, coordination and liaison.
- Responsibility for the licensing regime contained in the Estate Agents Act 1979 (EAA) and associated responsibilities for Anti-Money Laundering (AML) supervision of estate agents.
- Coordination and 'backstop' enforcement.
- Wider policy and research capabilities.
- Business education and guidance.

5.2 This chapter outlines the implications of proposed reform for each of these functions.

International enforcement, coordination and liaison

5.3 Two important international roles are currently performed by the OFT:

- tackling immediate international threats via direct enforcement action or working with other authorities, and dealing with longer term issues through strategic input to improve international consumer enforcement frameworks
- ensuring the UK's compliance with EU obligations to protect its own and other Member States' consumers.

These roles are explained in more detail in Annexe A.

5.4 Under the TSPB model the Government proposes that:

- enforcement cases with an 'international dimension' should be taken forward by the TSS network, with the TSPB allocating responsibility amongst different local authorities (p85)

- the OFT's international liaison functions should be transferred to TSS via the TSI, acting on behalf of a lead local authority answerable to the TSPB or on behalf of BIS (p73), and
 - the TSPB would act in support of 'whichever local authority was nominated as the Single Liaison Office (SLO) under a mandate from BIS or a lead local authority... This role would require it to allocate requests to relevant authorities' (p64).
- 5.5 The consultation document notes that this approach may require the Government to (i) change the Local Government Act 1972 to allow an individual authority to take action independently of the interests of local residents, (ii) provide national funding to support such action, and (iii) to ring-fence this funding, so as to prevent it being diverted to local purposes.
- 5.6 There is a risk that the TSPB proposals will make it harder for international functions to be performed effectively, economically, coherently and in line with the principles of good regulation. If the OFT's current international work is delegated to multiple geographically separate and independent bodies, it will inevitably be a demanding challenge to ensure join-up, consistency and accountability. There will be a need for initial investment in systems, and there will be ongoing additional resource costs associated with coordination, knowledge sharing and cost-control.
- 5.7 The greatest risk is that the TSPB proposals may diminish the regime's effectiveness in protecting UK consumers. These international functions require the capability to:
- take large and complex cases across the whole range of consumer legislation and in courts up to and including the UK Supreme Court and the European Court of Justice
 - engage in international coordination and liaison, continuing to provide strong strategic leadership.

- 5.8 Under the TSPB model, building this capability will take time and investment, particularly because TSS and the OFT currently have different and non-substitutable strengths as enforcers. In the meantime, there is a risk that UK consumers will lose out, and that the UK will be unable to effectively support international partners.
- 5.9 Separating international enforcement liaison and partnership activity input from case-work also involves longer term risk. The lack of a single UK enforcer would mean overseas enforcement authorities having to deal with different units at different times and for different purposes, leaving little scope to build working relationships. This could lead to poorer outcomes and instances of opportunities to protect UK consumers being missed.
- 5.10 Further, there could be damage to the strong reputation of the UK as a leader in international consumer protection debates and the potential for the UK perspective to be overlooked in new international initiatives. The OFT often adds value in international enforcement discussions on the strength of its own extensive enforcement and markets experience. TSI as a non-enforcement body could not do this on a first hand basis. It would need in each discussion to take steps to draw on the enforcement experience of the staff of local TSS, and on the markets experience of Citizens Advice. This would impede its ability to contribute to fast-moving discussions.
- 5.11 There are also issues around information sharing; the TSI is not at present a public authority, and – to act as SLO - would either need to be brought within Part 9 of the EA02 and subject to criminal sanctions for inappropriate disclosure, or it would not be able to participate substantively in information sharing between enforcers but could only act as a postbox for transmission of encrypted or otherwise secured data.
- 5.12 Overseas enforcers may be prohibited by law from sharing information with a non Government agency, limiting the UK's access to information which is vital to protect consumers. For example, the OFT has been assisting the FTC with an ongoing investigation into an online operation

that allegedly scammed more than \$450 million from consumers in the United States, Canada, the United Kingdom, Australia, and New Zealand by luring them into 'free' or 'risk-free' offers, and then charging them for products and services they did not want or agree to purchase. Given this international dimension, intelligence sharing and effective cooperation across national borders (for example in relation to sharing consumer complaints) have been particularly important.⁵⁰

- 5.13 The TSI is highly-regarded as the professional representative body of the TSS. But its status as such, and its funding – mainly from subscriptions and commercial activities, including sponsorship – are relevant to the question of its suitability to take on a role as in effect an international agency of the UK government.
- 5.14 **In light of these concerns, and given the Government's preference that the OFT/CMA should retain national consumer enforcement powers, there is a strong logic for CMA assuming responsibility for international enforcement, coordination and liaison. Building on existing expertise and broadening TSS engagement in international enforcement through a JEB offers the best means to sustain and enhance the UK's reputation and links with overseas enforcement partners, to meet our European obligations and to ensure UK consumers are adequately protected against growing international threats.**

Estate Agency: Licensing and Redress

- 5.15 The EAA imposes a negative licensing system on those doing estate agency work (consumer and business). Those found unfit to do estate agency work can be banned from all or parts of such work. Currently, only the OFT has the power to question and decide on an estate agent's fitness. The EAA also places other duties on the OFT, including to maintain a register of all the orders, variations and revocations it has

⁵⁰ Details of the FTC's investigation can be found at www.ftc.gov/opa/2011/05/jessewillms.shtm

made. The OFT is also currently the body that approves (and can revoke approval from) estate agents' redress schemes.

- 5.16 The consultation document sets out the Government's view that, subject to a power to act outside their authority and access to the necessary legal expertise and development of specialist procedures, these roles could be carried out by a lead TSS using evidence provided by other TSS, with oversight undertaken by the TSPB.
- 5.17 The consultation document would also suggest that the proposed remit of the OFT/CMA would fit with its retaining an overview of the overall functioning of the estate agency market. The OFT welcomes this, but believes that further detailed consideration needs to be given to how this role interacts with the specific powers and duties created under the EAA, including the assessment of fitness and approval of redress schemes. For example, information from the redress schemes and prohibition decisions can highlight trends and issues within the sector which are relevant to a judgement about how well the market is functioning.

Assessment of Fitness

- 5.18 Currently, both the OFT and TSS can investigate cases, but the OFT alone can formally issue and determine proceedings. The different roles of investigation, preparation of the case and the final adjudication all need to be provided for in any new regime.
- 5.19 Under the current regime, although there is in principle scope for local TSS to take responsibility for preparing the evidence and the necessary documents themselves and to pass the file to the OFT Adjudication Unit, in practice the ultimate preparation of the file for adjudication (and often the investigation stage itself) has fallen to the OFT. Under the current arrangements, the OFT has sought to work together with TSS to investigate fitness cases, and any future arrangements should make adequate provision for the specialist skill required in preparing these cases as well as the arrangements for adjudication itself.

- 5.20 Currently, the process of questioning and adjudicating upon an estate agent's fitness to practise is essentially administrative, but it includes strong safeguards to ensure fairness – for instance a right to see all relevant evidence and to make oral representations. It benefits from being co-located with the similar administrative processes for credit licensing and civil financial penalties for breaches of the Money Laundering Regulations 2007.
- 5.21 Although the decoupling of credit regulation from general consumer protection enforcement (which is the subject of separate institutional changes contemplated by the Government) may in any case result in the loss of the synergies and efficiencies generated by current arrangements at the OFT, the Government should consider carefully the practicalities of how a new process could operate effectively. Any new arrangement would have to meet the requirements of good regulation, including targeting, proportionality and consistency of action across the regime.
- 5.22 Creating a new case preparation and adjudication function from scratch elsewhere would obviously carry costs and would not benefit from the expertise and experience that the OFT has built up in running the regime. In any case, it is unlikely that the number of fitness cases would be sufficient to sustain an adjudication unit unless it had other suitable work streams or functions.
- 5.23 An important additional factor to bear in mind is the potential impact on business. The EAA confers in essence a single very severe sanction – loss of professional livelihood. Any new arrangements will need to ensure that it is used in line with the principles of good regulation and proportionality. In particular, that proceedings are issued only where action is really needed, and only when a less severe sanction is not more appropriate. These considerations are currently addressed by the EAA powers being located along with the OFT's market scrutiny function, and its powers to take other less burdensome enforcement actions. They could also be addressed through the operation of a JEB, but the OFT is not persuaded that devolving the administration of the EAA in isolation to a single authority linked to others only via the TSPB would offer sufficient safeguards.

- 5.24 An alternative would be more radical modifications to the EAA regime. For example, the adjudication mechanism could be replaced with a courts-based process. However, the Government would want to weigh carefully any identifiable benefits of such a change against the loss of a relatively inexpensive and well-established arrangement for questioning and adjudicating on the fitness of estate agents.

Redress Schemes

- 5.25 The OFT currently approves estate agent redress schemes, although the EAA also provides that the Secretary of State can designate a redress scheme as approved and either run it or have it administered on his behalf.
- 5.26 The EAA sets out in principle the requirements which must be satisfied before a scheme can be approved. The OFT consulted widely including with industry and ombudsmen in setting up its approval criteria and processes to meet the statutory requirements. The body fulfilling this role in the future would need the capacity to consider any new applications that could arise, and to maintain the ability to review and potentially revoke approval of current schemes.
- 5.27 **In light of these complexities, the OFT urges that further consideration be given to which organisations should fulfil functions under the EAA before a decision is taken. It is important to guard against introducing unnecessary additional burdens either on businesses or on the public purse, and that the costs/benefits of any changes are assessed.**
- 5.28 **Without a radical overhaul of the negative licensing and redress scheme regimes for estate agents, the CMA may be best-placed to retain these functions alongside duties to keep the market sector under review. However, as the OFT has advocated under the current regime, it does not follow that the CMA should investigate and prepare all prohibition cases – the preparation of cases should be conducted wherever possible by local TSS.**

Anti-Money Laundering

5.29 Responsibility for the Money Laundering Regulations 2007 and policy on AML supervisory responsibilities rests with HM Treasury. The OFT was given the AML supervisory role for estate agents and consumer credit financial institutions by HM Treasury because it had existing regulatory functions in relation to such firms. That principle would appear relevant to the future regime. A key issue which Government will wish to consider is to ensure that any future supervisory authority has the appropriate legal powers and the ability to properly fund AML supervisory activity.

Coordination and 'backstop' enforcement

5.30 The consultation document notes that under the TSPB option the Government is inclined to remove the formal requirement for direction by a central body. Coordination of use of the EA02 would fall to the TSPB as for all other enforcement coordination. The future of the Consumer Regulations Website and Central Register of Convictions is not specifically discussed.

5.31 Such coordination is important to ensure efficient use of resources by enforcers through avoiding duplication of effort, possible disputes over jurisdiction, and to ensure businesses do not have the burden of having to deal with multiple approaches from enforcers. That can be achieved in different ways, for example through coordinating or directive powers and through databases and other mechanisms for the exchange of intelligence.

5.32 **It is essential that a coordination role should continue to be performed, supported by appropriate legislation and funding. More detailed consideration must be given to the future of such coordination mechanisms before a change is made. The OFT does not have a fixed view as to which organisation should perform this role, but it would fall naturally to any central national enforcement agency with a coordination role, such the proposed TSPB, or JEB. However, the JEB model has the benefits of retaining the expertise built up by the OFT over a number of**

years, whereas it is currently unclear as to how the TSPB would perform this role.

Policy and research

- 5.33 The OFT carries out policy development and research in support of its Market Studies work and to help provide both BIS and the European Commission with evidence and analysis – particularly from a practitioner's perspective – to support national and international policy debates. The OFT is of the view the JEB model benefits from clarity over who would continue to play this role in the new consumer protection regime, complementing the national policy leadership provided by BIS, thus reducing the risk of loss of expertise in creating and implementing Government policy and legislation.
- 5.34 Dispersal of national enforcement functions under the TSPB model to multiple authorities at local level risks reducing the scope for making links between enforcement and policy development. There is a strong likelihood that expertise will be lost, with a consequential risk of impoverishing the legislative process, reducing the system's capacity to give well-founded consumer and business guidance and advice, and damaging the responsiveness of enforcement work to new developments in policy.
- 5.35 **The OFT believes that the JEB model will better provide the leadership needed for enforcement policy, integrating knowledge of markets, enforcement experience and the international role. The increasing output of consumer legislation from the EU requires input from an organisation able to offer a national perspective together with expertise in EU law and experience of the practicalities of enforcement. This is crucial to ensure implementation produces an effective regime which works for both enforcers and business. The case study at Box 5.1 illustrates how the OFT's current ability to offer this sort of approach has contributed to the UK's engagement in European policy debates. There is a risk under the TSPB model that extensive experience of consumer policy work and skills across the piece will not be easily replaced.**

Box 5.1 Case Study: Consumer Rights Directive

In October 2008, the Commission published a draft Consumer Rights Directive proposal, which amalgamated the Unfair Contract Terms, Consumer Sales, Doorstep and Distance Selling Directives. The proposal was for a fully harmonised directive which would require all Member States to implement the directive into their own national legislation at the same level of consumer protection.

The OFT has played a key role in the development of the UK position on the proposed Consumer Rights Directive by providing support for BIS based on our extensive practical experience and knowledge of all of the areas of legislation under consideration. In particular the OFT recognised a number of significant concerns about the impact of the draft proposal on the UK's consumer protection regime including the loss of the 'right to reject and liability periods' and harmonisation of the unfair contract terms legislation.

As part of this work the OFT:

- Provided a comprehensive response to the UK consultation on the draft proposal in 2009, highlighting the impact of full harmonisation on the scope of the directive, the potential loss of the ability to make information based recommendations in the UK's market investigation references regime, and the restrictive impact on existing national law in relation to unfair contract terms legislation.
- Directly alerted the European Commission and the European Parliamentary committee (Internal Market and Consumer Protection – IMCO) about our concerns.
- Supported BIS through the progress of the draft directive at the European Council Working Groups by advising on key risks based on its enforcement experience particularly in relation to the unfair contract terms provisions.
- Contributed to ongoing discussions and debate on progress and content of the proposal as a member of the BIS Consumer Rights Directive Stakeholder Group.
- Prepared extensive oral and written evidence to the House of Lords European

Union Social Policy and Consumer Affairs Sub-Committee for its inquiry into the Consumer Rights Directive proposal.

- Responded to the BIS call for evidence on allowing contingent or ancillary charges to be assessed for fairness to inform the UK negotiating line on the Consumer Rights Directive proposals. For this it drew upon extensive knowledge of not only the banks and other unfair contract terms cases, but also work on behavioural economics/consumer behavioural biases.

Business guidance and education

5.36 Businesses need to be both aware of and compliant with the law. Business education and information complement the deterrent effect of enforcement and offer an alternative, sometimes more proportionate response to negative business behaviours. It is important for businesses to understand how the law will be applied by its enforcers. They need to have confidence in how that guidance is produced and that enforcers will have regard to it. If the enforcers produce the guidance this is achieved more effectively and accountably, and the risk that there may be discrepancies between the guidance and the enforcers' interpretation of the law is minimised. Transferring business information and education to the TSPB and TSI – not themselves direct enforcers - risks damaging this connection between enforcement and guidance, thereby reducing businesses' confidence and losing the synergies which are a strength of the current regime.

5.37 The importance of providing such information to business is highlighted by the Better Regulation Executive in its Code of Practice on Guidance on Regulation.⁵¹ The need for guidance to be intimately linked to enforcement is underlined in the existing legislation. The OFT currently has a number of statutory duties to provide such information - each of its enforcement powers includes a dedicated function to give businesses advice and information about that power. The Regulators' Compliance

⁵¹ www.bis.gov.uk/files/file53268.pdf

Code requires the OFT to have regard to the need of businesses' for 'general information, advice and guidance to make it easier for [them] to understand and meet their regulatory obligations'.⁵²

- 5.38 In line with its view that the OFT/CMA should retain a significant role in national consumer enforcement action and coordination, the OFT believes it should also retain the complementary tools enabling it to provide guidance and information to business in line with statutory guidelines on good regulatory practice. This would reduce the risk of discrepancies between the guidance and the OFT/CMA's interpretation of the law, providing a consistent picture at the national level which gives certainty and confidence to firms.**

⁵² Paragraph 5.2 of the Code

6 MARKET STUDIES AND SUPER-COMPLAINTS

SUMMARY

It is important that all parts of the consumer protection system develop strong analytical capabilities in order to ensure that activities of every kind are founded in evidence. Market Studies, however, are a very specific type of investigation which provide an analysis of a market problem, whether it be a consumer problem, a competition problem, or a mix of the two. Evaluation shows that they result in substantial consumer benefits.

The proposal to place consumer Market Studies away from the consumer enforcement system and from wider markets-based analysis (with Citizens Advice and Citizens Advice Scotland) could lead to inadequate understanding both of the causes of consumer detriment and of the most efficient tools with which to tackle them. It will also make it harder to take enforcement action as part of a coordinated set of remedies to a consumer problem.

Giving Market Study responsibilities to consumer advocacy bodies risks significantly altering their role in the system, with consequent risks that business may lack trust in their findings and recommendations.

There are also practical difficulties in making the transfer option workable; it is often hard at the start to identify whether an issue is a consumer, a competition or a mixed problem, leading to the potential for delays and loss of accountability where work must be referred between different bodies in the regime.

Where appropriate, the OFT starts enforcement action rather than awaiting the final outcome of Market Studies and Super-complaints. This ability risks being lost in the Government's preferred structure, which would require Citizens Advice to make referrals to the TSPB.

- 6.1 The OFT investigates markets that may not be working well for consumers by means of Market Studies or in response to Super-complaints from designated bodies.

Market Studies

6.2 The OFT uses the term 'Market Study' to describe the process and methodology for the analysis of a market, or practices across a range of goods and services, with the aim of identifying and addressing any aspects of market failure, whether competition issues or consumer detriment, as well as the effect of government regulations. The OFT has developed a standard approach to the management and delivery of Market Studies which has become well-understood by business and consumer organisations, as well as a body of experience in the analysis of market problems which provides for a consistent and structured approach to consumer issues. The Government is committed to responding to the recommendations made in the course of a Market Study or Super-complaint response within 90 days.⁵³

6.3 Possible outcomes of Market Studies include:

- improving the quality and accessibility of information for consumers
- encouraging businesses in the market to self-regulate
- making recommendations to Government to change regulations or public policy
- taking competition or consumer enforcement action
- making a market investigation reference (MIR) to the Competition Commission
- a clean bill of health.

6.4 Up to end-2009, of the 30 Market Studies the OFT had completed, 62 per cent arose from OFT own initiatives, 23 per cent from Super-

⁵³ The OFT can also conduct other pieces of research outside the established market studies framework, in particular where the outcomes do not directly affect stakeholders (see paragraph 2.13 of OFT519 www.oft.gov.uk/shared_of/business_leaflets/enterprise_act/oft519.pdf)

complaints and 15 per cent from suggestions from Government.⁵⁴ For more details see www.offt.gov.uk/OFTwork/marketswork/OFT1335

- 6.5 The OFT has evaluated the impact of several of its Market Studies and the evidence suggests they have produced benefits that are many times their cost. For example, the OFT's car warranties Market Study in 2006⁵⁵ cost the OFT £300,000 to complete. Total benefits to private consumers attributable to resulting action are estimated to be £30 million. For fleet and business customers estimated total benefits are in the range £90-140 million. The OFT also commissioned a formal evaluation of our Market Study into care homes, conducted in 2011.⁵⁶ The cost to the OFT was £416,000. There are several areas of benefit but the only one where it was possible to derive financial estimates of impact was in relation to quality improvements. The OFT estimates that they resulted in cumulative consumer benefits of between £30-50 million over the period 2005-2010 (likely to be at the lower end of this range).
- 6.6 The OFT considers that linking intervention to robust analysis which draws on an understanding of both business and consumer behaviour is critical to the success of the consumer protection regime. The most successful international peers, such as the FTC and the ACCC, apply this joined up model. Divorcing consumer Market Studies from markets-based thinking may result in unduly burdensome interventions which fail to take account of market realities, increasing costs for businesses and consumers, and hindering economic growth.
- 6.7 Market Studies harness insights from research and analysis of a market or set of practices in order to drive a balanced and coherent programme of complementary interventions. They facilitate a coordinated response to a consumer problem, often underpinning a range of remedies such as enforcement, consumer education, industry self-regulation or improved guidance to business. For example, the OFT's Market Study into the

⁵⁴ Page 45 of Frontier Economics *Evaluation of the Impact of the Enterprise Act 2002 Provisions Covering Market Studies and Market Investigations* March 2010

⁵⁵ www.offt.gov.uk/shared_offt/about_offt/oft852.pdf

⁵⁶ www.offt.gov.uk/shared_offt/reports/Evaluating-OFTs-work/OFT1322.pdf

second-hand car market, published in March 2010,⁵⁷ found that more should be done to ensure dealers are aware of the law, consumers are aware of their rights, and dealers who fail to comply face a real threat of effective enforcement action by TSS and the OFT. The Study, which was the product of close collaboration with TSS, resulted in:

- clear OFT enforcement priorities to take forward investigations, a number of which are now in train
- new guidance for second-hand car dealers on compliance with the CPRs and the Sale of Goods Act 1979
- the launch of a 'Know Your Consumer Rights' campaign to increase awareness of consumer rights when buying a used car
- the launch of a new module of 'Skilled to go'⁵⁸ about buying and running a car
- a recommendation to Government that consideration be given to the introduction of legislation to outlaw illegitimate mileage correction services and their advertising
- recommendations to the Vehicle and Operator Services Agency and to the industry that more mileage data should be shared with vehicle check companies to make it easier for traders and consumers to verify a vehicle's mileage and to deter the falsification of odometer readings.

6.8 The OFT was able to immediately take forward many of the study's recommendations itself. Under the proposal to transfer consumer Market Studies to the Citizens Advice service, the situation would be more

⁵⁷ www.offt.gov.uk/OFTwork/markets-work/completed/cars

⁵⁸ Skilled to go is a free online consumer education resource toolkit designed for use in further and adult education settings. Young people are a key target audience for this module.

complex. Rather than most of these actions being taken forward in a coordinated manner by a single body, many would have to be referred to other bodies for action, creating the risk that important analytical insights could be lost or that actions would not be carried forward together due to other priorities. That could lead to consumers facing ongoing risks and businesses facing a piecemeal approach to reforms.

- 6.9 In addition, giving Market Study responsibilities to Citizens Advice and Citizens Advice Scotland - consumer advocacy bodies - risks significantly altering the specific role of Market Studies in the regime and losing some of their considerable benefits. However soundly based the analysis, they will no longer be seen as a neutral means of identifying a coherent and coordinated set of responses to a market problem if they are carried out by an organisation that also lobbies for consumers. Business in particular may lack confidence in the conclusions of such studies.
- 6.10 There are also practical problems in making the proposal to transfer 'pure consumer' Market Studies to Citizens Advice/Citizens Advice Scotland workable. It will often be impossible to know at the outset of a Market Study whether a given issue is a consumer, a competition or a 'mixed' problem. Once the underlying causes do become clear, a requirement to transfer studies between delivery partners could result in delay in remedying consumer problems leading to continuing consumer detriment whilst they clarify who has responsibility. It could even result in some initiatives not being taken forward at all if they do not fit with the priorities of the receiving bodies.

Super-complaints

- 6.11 Section 11 of the EA02 enables consumer bodies, designated by the Secretary of State, to submit 'Super-complaints' to the OFT (or other sectoral regulators) where they consider that there is any market feature, or combination of features, such as the structure of a market or the conduct of those operating within it, that is or appears to be significantly harming the interests of consumers. Section 205 of the EA02 enables specified sectoral regulators also to receive and handle Super-complaints.

- 6.12 The Super-complaints process was set up with the aim of strengthening the voice of consumers, who are unlikely to have access individually to the kind of information necessary to judge whether markets are failing. Consumer groups can access individuals' complaints to form a judgment on whether there is a problem and then take the necessary action.
- 6.13 The receiving body must, within 90 days, publish a reasoned response stating how it proposes to deal with the Super-complaint, whether it has decided to take action and, if so, what action it proposes to take. Annexe B provides a summary of Super-complaints received by the OFT to date and their outcomes.
- 6.14 The consultation document notes that the majority of Super-complaints highlight market failings where further analysis is necessary, and, as a result, should continue to be made to the CMA. The Government also seeks views on whether it may be appropriate to have a fast-track process by which the designated bodies could request enforcement action from the TSPB or a response as to why it will not be taken.
- 6.15 As noted above, joining up research and analysis of market issues with the broadest possible suite of remedies is key to ensuring that consumer protection interventions are considered, coordinated and proportionate. It is important at the outset to keep an open mind about the causes of a problem and the most appropriate remedies. It is important, therefore, that Super-complaints remain a mechanism for ensuring balanced and dispassionate review and analysis. This makes it particularly essential that there should be a separation between the bodies responsible for conducting research and analysis and those with the right to make a Super-complaint on behalf of consumers.
- 6.16 However, it is extremely important that all institutions within the system should be responsive to emerging issues and to the concerns of consumer organisations. It may therefore be worth considering whether greater transparency can or should be introduced so that, subject to appropriate safeguards, complainants understand how and whether their complaints will be acted upon and receive updates on their progress. In this context, it is worth noting that the OFT does not wait until it has

completed consideration of a Super-complaint, but starts the enforcement action as soon as is appropriate. This further benefit of the current integration of functions within the OFT could be lost under the TSPB model.

- 6.17 **In the OFT's view it is in the interests of the overall effectiveness of the regime that Market Studies and Super-complaints - whether they are initially begun as a response to consumer, competition or mixed issues - should continue to be dealt with by the OFT/CMA. However, analytical capability should be highly valued right across the regime. Research and analysis by bodies such as Citizens Advice, Consumer Focus and Which? makes a vital contribution to the collective understanding of consumer issues in the UK. This sort of capability should be retained and developed on a wide basis going forwards.**

7 CONSUMER ADVICE

SUMMARY

The OFT strongly supports the recommendation of the NAO that BIS should ensure any reorganisation of the consumer complaints service maintains or enhances its value as an intelligence database for enforcers.

The OFT welcomes engagement with BIS, Citizens Advice and Citizens Advice Scotland on this point and remain committed to working closely with them and with TSS in support of this recommendation.

The OFT, Citizens Advice and Citizens Advice Scotland are working together to manage the risk that there could be a drop in quality of advice during the transition, including development of a joint transition plan and the establishment of a 'shadow service' before formal launch.

- 7.1 The OFT notes the Government's intention to integrate existing publicly-supported advice services into a single public offering delivered through the Citizens Advice Service. As part of this, the decision has been taken to transfer the OFT's responsibility for delivering consumer advice and information to Citizens Advice in England and Wales and to Citizens Advice Scotland. Citizens Advice have chosen to develop a new advice service, while in Scotland the OFT understands the service will be based, at least in part, upon the existing Citizens Advice Direct service. As a consequence, Consumer Direct (CD) will close, most likely at the end of the current financial year. The OFT is working closely with Citizens Advice/ Citizens Advice Scotland to ensure a seamless transition to the new service for consumers and organisations that depend upon CD, such as TSS.
- 7.2 Consumer Direct is the government funded telephone and online service offering information and advice on consumer issues. Advisers are trained in all aspects of consumer rights and help people to take the best course of action when they have a consumer problem by giving legally correct advice. CD is delivered through seven contact centres across Great Britain, one handling issues relating to energy and post only. Handling

around 1.5 million contacts per year, CD's performance is measured against key performance indicators (KPIs) relating to service level, customer satisfaction and call abandonment. Quality is incentivised through a bonus scheme. The service has consistently met its KPIs. Since taking responsibility for CD in 2006, the OFT has maintained the quality of the service and customer satisfaction levels whilst reducing the annual budget from £19 million to less than £9 million in the current financial year.

- 7.3 The service is delivered in partnership with TSS. Approximately 95 per cent of TSS divert their consumer advice calls to CD. In accordance with protocols agreed with individual TSS, CD advisors refer more complex or criminal issues to them for detailed advice and possible enforcement action. Additionally, some local authorities are involved in delivering the service as contractors.
- 7.4 The CD database is a valuable source of data to TSS, the OFT and other partners in shaping enforcement priorities, feeding directly into prioritisation and pipeline mechanisms, and as evidence in cases. For example, the OFT launched a Market Study into second hand cars as a direct consequence of analysis of CD data, which recorded 72,000 complaints about used cars in 2008. Similarly, the 'Just Tick It' consumer awareness campaign which started in 2009 was motivated by the level of complaints to CD about an Internet ticketing scam.
- 7.5 The OFT notes the NAO's conclusion in its recent report that 'Consumer Direct is a highly regarded source of data on the prevalence and nature of consumer detriment'. One of the biggest risks of the transfer is that the access of the OFT, TSS and others to this valuable data will be constrained. This would threaten the effective operation of the wider regime.
- 7.6 **The OFT therefore strongly supports the recommendation of the NAO that BIS should ensure that any reorganisation of the consumer complaints service maintains or enhances its value as an intelligence database by preserving the current level of access given to enforcement professionals. The OFT welcomes engagement with BIS and Citizens**

Advice/ Citizens Advice Scotland on this point. The OFT is working closely with them and TSS to ensure that appropriate mechanisms for enforcers to access, interrogate and analyse complaints data are maintained, and to examine ways in which its value as an intelligence tool could be enhanced.

- 7.7 The new structure will also need to ensure that there is consistency between the guidance given to businesses and that given to consumers (which is a big concern to business). This will require effective joining up across the regime. This point is addressed in greater detail in Chapter Eight.
- 7.8 At an operational level, the main risk is that service quality will drop as CD advisors begin to seek work elsewhere in the run-up to closure. The OFT is managing this by developing a joint transition plan with Citizens Advice/Citizens Advice Scotland. The launch of a 'shadow service' before formal launch of the new service forms a vital component of this.

8 CONSUMER INFORMATION, EDUCATION AND AWARENESS RAISING

SUMMARY

A number of issues will need to be addressed in transferring the consumer information function to the Citizens Advice service in order to ensure the new approach works effectively and retains key strengths of the current regime.

Critically, consumer advice, information and education must: (a) remain fully aligned and consistent with guidance to businesses and (b) respond to the needs of regulators and other organisations which need to inform and educate consumers in the public interest.

Citizens Advice will need to develop consumer information and education campaigns which are based upon broad partnership working and are demonstrably effective in cutting detriment.

Additionally, the Government will need to establish accountability mechanisms which ensure consumer information and education are delivered in support of national policy objectives and offer value for money.

Consumer information

8.1 The OFT currently provides information to increase consumers' awareness and knowledge of the law and to indicate appropriate courses of action if they need to take it. This information is available online and, where appropriate for audience needs, in a printed format. Consumers who demonstrably need to be made aware of their rights in specific areas are also targeted by proactive campaigns.

8.2 Recent campaigns include:

- 'Just Tick It',⁵⁹ a campaign to raise consumers' awareness of the risks of scam websites when buying tickets online. This campaign integrated engagement from TSS, ticketing organisations and event promoters and involved around 105 participating partners to ensure consistent messaging, maximise reach and strengthen credibility. Evaluation of this campaign indicates a 2.54:1 return on investment.⁶⁰
- 'Doorstep selling',⁶¹ a campaign to increase awareness of rogue doorstep trading amongst UK residents over 70 years old and their friends, families and carers. This campaign brought together TSS, Neighbourhood Watch and Home Watch, and Age UK and involved around 170 other partners, and followed a recommendation from the OFT Market Study on doorstep selling.

8.3 The OFT supports the view that consumer information should be available from an authoritative source, in an easily usable format and in a cost-efficient manner. The OFT also supports the intention that consumers seeking advice from the Citizens Advice service about consumer rights should receive this information via integrated face-to-face, telephone, online and printed formats to enable information to be accessed in a way which meets individual consumer needs.

8.4 As the consultation highlights, consumers currently seek information from many sources beyond Citizens Advice; they look to Which?, central and local government (including Directgov), relevant charities and other trusted intermediaries including families, friends, carers, businesses, trade bodies and websites. This will continue and consumers will need messages to be consistent across the broad range of different sources

⁵⁹ www.offt.gov.uk/OFTwork/consumer-protection/campaign11-12/scams/just-tick-it/

⁶⁰ www.offt.gov.uk/shared_offt/reports/Evaluating-OFTs-work/oft1323.pdf

⁶¹ www.offt.gov.uk/OFTwork/consumer-protection/campaign11-12/doorstep/

they use. This creates a clear requirement for Citizens Advice to have strong and effective partnership-working across the diverse range of bodies in the provision of consumer information.

- 8.5 Consumer advice and business guidance are both derived from the same law. Often, the OFT seeks to include in its consumer information campaigns a business element which complements the consumer campaign. For example, the Sale of Goods Act (SOGA) Hub⁶² provides information on legal compliance and customer rights to businesses and is complemented by the 'Know Your Consumer Rights' campaign for consumers. This hub also provides materials for businesses to give directly to consumers which ensures that messages are integrated. Having one organisation to do this has ensured consistency, but if the new regime is to have different providers new mechanisms will be needed to ensure that consumer and business guidance are fully aligned and consistent.
- 8.6 OFT information and advice campaigns are frequently an outcome of Market Studies or of national consumer law enforcement. For example, the OFT Market Study into the mobility aids market gave rise to the inclusion of specific information on mobility aids in the OFT's Doorstep Selling campaign. It is important that those organisations – notably regulators – which have a strong interest in what messages are communicated to consumers are involved in deciding how and when public consumer information and education funding is spent and in joining up with wider initiatives in order to maximise their impact.
- 8.7 Furthermore, in addition to protecting consumers, information campaigns also work to drive economic growth by improving market functioning. To achieve this effectively, consumer information needs to be directed at the full range of detriment and Citizens Advice will need to broaden its communication beyond its historical focus on vulnerable consumers. For example, the OFT's 'Just Tick It' campaign tackles a consumer need which is not specific to vulnerable consumers.

⁶² www.offt.gov.uk/business-advice/treating-customers-fairly/sogahome

- 8.8 **The OFT therefore believes that further thought should be given to how the provision of information, advice and education to consumers will work in practice. In particular, consideration should be given to the establishment of mechanisms for determining national consumer information priorities and messages, engaging the range of organisations which have a strong interest in what messages are communicated to consumers. The provision of consumer information will need to continue to be closely linked with the provision of information to business to avoid inconsistencies and uncertainty.**

Consumer education

- 8.9 Education, delivered face-to-face, increases consumers' skill levels to ensure they have the ability to find and research information sources and make confident, effective and responsible choices.
- 8.10 Launched in 2008 for use in Further Education settings, the OFT's 'Skilled to go' toolkit develops consumer skills, knowledge and confidence. Skilled to go currently has over 8,000 registered users from a range of education settings across the UK – there are tailored versions of the toolkit for England and Wales, Scotland and Northern Ireland. Evaluation of Skilled to go in 2010 indicated an almost 5:1 return on investment, estimating that this will increase to 13:1 by 2014/15.⁶³
- 8.11 In taking on this work, as well as working closely with TSS, the Citizens Advice service will need to develop strong links with the educational community to ensure the provision of educational materials and programmes remain relevant and fit for purpose.
- 8.12 Educational activities need continuous development to be sustainable over the long-term. In addition, teachers need time to familiarise themselves with the materials and incorporate them into their lesson plans. Ongoing updates to materials ensures that teachers continue to

⁶³ www.offt.gov.uk/shared_offt/reports/Evaluating-OFTs-work/oft1323.pdf

utilise the materials over a period of years, reaching larger number of learners.

- 8.13 **As for consumer advice, the OFT believes that consideration should be given to the establishment of mechanisms for prioritising education activities based on market research. Educational activities must be clearly linked to the national curriculum and other relevant education curricula.**

- 8.14 **For both consumer information and consumer education functions, further consideration should be given to the structures which will ensure effective accountability and value for money. In particular, the OFT would support the continuation efforts to evaluate the impact of these activities and learn from the findings.**

9 CONSUMER CODES APPROVAL

SUMMARY

The OFT welcomes the Government's support for self-regulation and co-regulation.

In considering options for the future, the OFT believes the value of the Consumer Codes Approval Scheme should be retained as far as possible. Particular benefits include: government endorsement, an approval process founded on proof of effectiveness and protection for consumers via independent redress and pre-payment protection.

The OFT is keen to encourage constructive dialogue with Code sponsors and other stakeholders.

- 9.1 The OFT welcomes the Government's support for self-regulation and co-regulation. The OFT believes that self-regulation offers benefits for consumer protection and adds real value to the functioning of markets.⁶⁴

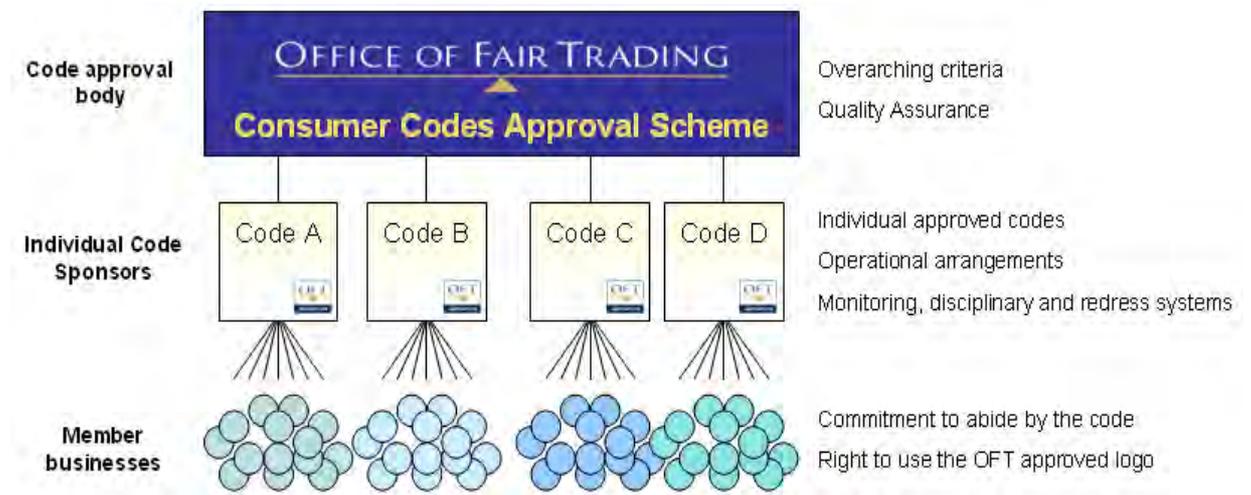
The OFT's Consumer Codes Approval Scheme

- 9.2 The Consumer Codes Approval Scheme (CCAS) is designed to promote effective self-regulation. It is entirely voluntary. It aims to encourage the business community to take the lead in solving consumer protection problems, particularly where there are known problems in specific sectors.
- 9.3 CCAS is an umbrella scheme which brings together industry bodies undertaking self-regulatory activity, through a common approach and common standards. It has overarching criteria and provides quality assurance through the approval of individual sector-specific codes, which are mainly sponsored by trade bodies. The individual code

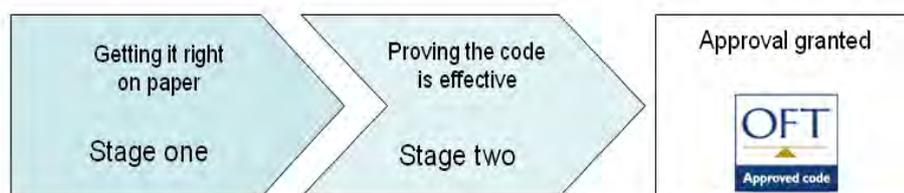
⁶⁴ *OFT Policy statement – The role of self-regulation in the OFT's consumer protection work* (OFT1115) September 2009

sponsors are responsible for drafting their own code and creating the appropriate infrastructure to support it.

The diagram shows the two tiers of accreditation in place for individual businesses which become members of code schemes, whose codes are approved by OFT under CCAS.



9.4 Code approval is a two stage process. At the first stage the code sponsor produces a code that fulfils the OFT CCAS core criteria.⁶⁵ At stage two code sponsors have to prove that their code operates effectively, improves the consumer experience and deals effectively with problems.



9.5 Currently the OFT offers code approval free of charge. Prior to the consumer landscape review, we had started to consider the possibility of moving to a self-funding model, as a long term option to both reduce public funding and improve sustainability.

⁶⁵ *Consumer Codes Approval Scheme – Core criteria and guidance* (OFT390) March 2008

- 9.6 There are currently 10 OFT approved codes in a wide range of sectors; motor, property, home removals, carpets, direct-selling, healthcare products, debt management and will-writing. More than 16,500 businesses (including branches) have signed up to abide by an approved code of practice. A further five codes are at the second stage, with another 12,458 businesses signed up to one of these codes that have successfully completed stage one (codes that meet OFT criteria on paper).

Preserving the benefits of CCAS

- 9.7 Mindful of the BIS objective of preserving or recreating the full value of the CCAS in the new regime, the OFT would highlight the following factors that distinguish the scheme and which generate benefits for consumers and businesses:

The two-tier structure harnesses business efforts to raise standards within sectors

- 9.8 The OFT sets overall standards, provides oversight and quality assurance but its relationship is with the code sponsors rather than individual firms. Code sponsors take ownership of their individual code processes and have a direct relationship with their member businesses. This is an efficient division of responsibility between individual self-regulatory bodies and the code approval body. The individual market sector codes can directly address the specific consumer protection issues of that sector including treatment of vulnerable consumers, truthful advertising, high-pressure selling, cancellation rights and terms and conditions.

Government endorsement

- 9.9 Providing a credible signal of commitment to consumer protection can be particularly valuable to good businesses in market sectors with poor reputation or to small businesses who find it hard to build reputation.⁶⁶ Of the 10 approved codes, eight have significant SME membership.

⁶⁶ *The economics of self-regulation in solving consumer quality issues* (OFT1059) March 2009

- 9.10 Recognition by a government body is important for alerting shoppers to the codes' high standards of customer care, in a way that they trust. Code sponsors tell us that visible accreditation can convince member businesses that the commitment to improve standards will provide a competitive advantage.
- 9.11 The OFT brand itself, which is the predominant feature of the CCAS logo, has high levels of recognition, currently estimated at 83 per cent. Branding will be an important consideration for any potential successor scheme.

Approval granted only on proof of effectiveness

- 9.12 An essential feature of CCAS is its insistence that code sponsors must demonstrate that their codes are working before they can gain approval. This is to ensure consumers get what they are promised, and meet the persistent general criticism that self-regulatory codes can look good on paper but often fail to deliver in practice. CCAS approval is government accreditation of outcomes, not just promises. However, these processes are not quick and easy, especially coupled with the high standards required by the core criteria. Real changes to business behaviour take both time and commitment.

Ongoing monitoring and disciplinary systems

- 9.13 Active and continuous monitoring is important to ensure that the aims of any code of practice are met. Reliance on complaints is not enough, as consumers may not complain for a variety of reasons. Well designed sanctions that are actively used underpin successful self-regulation through their deterrence value. CCAS requires that codes have robust mechanisms for dealing with non-compliance by members.

Relationship with the OFT, consumer bodies and independent representation

- 9.14 CCAS gives codes sponsors access to direct advice and assistance from the OFT and other consumer bodies. This helps businesses address common problems and comply with legal requirements. Procedures for

dealing with issues of non-compliance with the code should have independent involvement or scrutiny.

Conciliation and redress

- 9.15 Protection is important in instances where things do go wrong, either when a rogue business slips through or an honest business makes a mistake and fails to respond appropriately. The opportunity to access both a conciliation service (often provided by the code sponsor) and a low-cost, independent redress scheme ensures that where problems do occur consumers are not disadvantaged. A significant number of Alternative Dispute Resolution (ADR) schemes have been introduced, or amended in sectors such as household removal, mobility aids and car repair, in order to meet the criteria for approval.

Prepayment protection

- 9.16 A requirement for protection of prepayments guards against consumer losses when firms go out of business. This criterion is strongly supported by consumer groups and it addresses a key issue of consumer confidence, although some sponsors find it the most difficult requirement to meet. CCAS encourages sponsors to find appropriate solutions for their sector; examples include insurance or bonds, ring-fenced accounts and arrangements for other members to complete consumer contracts.

Alternative to enforcement

- 9.17 Sponsors of approved codes can play an important role as a compliance partner, providing an alternative to direct enforcement action by central or local government. Where the OFT receives intelligence or direct complaints about a trader belonging to an approved code, responsibility for resolving the issue can be passed directly to the code sponsor in the first instance.
- 9.18 For self-regulatory initiatives to succeed in promoting compliance it is important that there remains an effective statutory enforcement back-stop, to take action when appropriate, and providing deterrence signals

to businesses that persistently fail to comply with consumer protection legislation gaining a competitive advantage over fair trading businesses.

- 9.19 **The OFT welcomes the BIS objective of preserving or recreating the full value of the OFT CCAS in the new consumer protection regime. Whatever the eventual outcome of the consultation, the OFT believes the value of the CCAS to consumers, business and code sponsors should be retained in some form, having regard to the particular benefits of the current scheme. If the CMA has a strong consumer leadership role it may wish to consider addressing consumer protection issues through a self-regulation scheme.**
- 9.20 The OFT is keen to hear the views of Code sponsors and other stakeholders on the options to preserve the benefits of the CCAS. We hope this is the start of a constructive debate.

10 ADVOCACY AND REDRESS

SUMMARY

The OFT supports the principles behind the Regulated Industries Unit as proposed by BIS. The OFT does not have a view on the specific organisational structure or home but would agree that it should minimise duplication and there should be a strong economic analytical function.

The OFT urges the Government to consider further the role of wider consumer redress mechanisms in the consumer protection regime – effective redress mechanisms encourage the resolution of consumer problems and incentivise businesses to provide satisfactory goods and services.

Advocacy

- 10.1 The OFT's role in advocacy is a limited one. There are two principal definitions of advocacy (aside from the legal context) which are:
- i) informing public-policy and resource allocation decisions within political, economic, and social systems and institutions
 - ii) pleading or arguing for a particular cause, including media campaigns, public speaking, and so on.
- 10.2 The OFT has a role in doing the first of these, as outlined in Section 7 of the EA02, in respect of its competition function. This work has two broad objectives:
- i) Encouraging government to meet its wider policy objectives in a way which is least distortive to the effective functioning of markets.
 - ii) Making recommendations to government which will typically relate to a specific market, or particular market features, and are directly aimed at achieving one of the OFT's two broad objectives.
- 10.3 However, the OFT is not a 'campaigning' organisation which publicly pleads or argues a particular cause. The OFT does not therefore engage in consumer advocacy.

- 10.4 The OFT is therefore not directly affected by the BIS proposals for advocacy as a whole. However, it can see some benefits and synergies from having a national consumer advisory function for regulated industries in place in the new consumer protection regime, with legal powers for information gathering. The OFT agrees with the design principles BIS outlines.
- 10.5 A straightforward coordination function to look across the sectoral areas and undertake a horizon scanning role would be helpful and ensure consistency, as would the ability to bring pressure to bear on regulators and government to take action in certain areas on behalf of consumers.
- 10.6 **The OFT supports the principles behind the Regulated Industries Unit as proposed by BIS – joining up common themes across sectors, looking forward for future issues and holding regulators and government accountable. The OFT does not have a view on the specific organisational structure or home but would agree that it should minimise duplication and there should be a strong economic analytical function.**

Redress

- 10.7 The OFT has a keen interest in consumers' ability to obtain redress and considers this is an important tool in raising and maintaining consumer confidence in markets. The OFT actively supports and encourages self-regulatory mechanisms for the resolution of individual consumer complaints via CCAS, and via its approval and monitoring responsibilities for statutory estate agents redress schemes under the Consumers, Estate Agents and Redress Act 2007. In order to better understand the current consumer redress system the OFT has completed a mapping exercise of existing ADR provision within the UK and highlighted gaps in provision against Consumer Direct's most frequently complained-about sectors.⁶⁷

⁶⁷ *Mapping UK consumer redress: A summary guide to dispute resolution systems* OFT 1267
www.offt.gov.uk/OFTwork/policy/mapping-uk-consumer-redress/

- 10.8 Although at present the OFT does not provide redress directly to consumers, through preparation for the BIS Civil Sanctions Pilot it perceived considerable consumer protection benefits relating to restorative justice and the opportunities such powers would provide for redress provision. While there do not appear to be any immediate opportunities to apply these powers, the OFT remains interested in considering alternative solutions for applying restorative justice given the potential for improving consumer outcomes.
- 10.9 The OFT has also been keen to widen the debate in the UK on redress for consumers under CPRs. The OFT hosted and organised a joint workshop in October 2010 with the Law Commission and Local Better Regulation Office to discuss the practical implications of such measures with TSS representatives from around the UK. It has also responded to the Law Commission and Scottish Law Commissions' recent consultation on private redress for misleading and aggressive practices under the CPRs using findings from the workshop and its enforcement experience to provide relevant examples to support the view that private redress should be available for all breaches of the CPRs.
- 10.10 The OFT strongly supports the view that representative actions would be beneficial to groups of consumers who have been unable for whatever reason to resolve their disputes through direct settlement with a trader or by voluntary ADR. It would be of particular value where individual losses may be low and therefore unlikely to be suitable for individual actions, but across a sector or group represent a high level of detriment to consumers.
- 10.11 The European Commission (DGs Sanco, Justice and Competition) recently published a joint consultation on the common principles which should be applicable to collective redress mechanisms across the piece. The OFT was uniquely placed in the UK in its ability to formulate its response to the consultation based on an informed consideration of both consumer and competition elements.
- 10.12 The OFT notes that the consultation paper addresses the issue of consumer redress primarily under the advocacy proposals in Chapter 4 in

relation to proposed statutory redress schemes in the water and transport sectors. In the OFT's view, the provision of wider consumer redress outside of statutory schemes should feature strongly in the consultation, because:

- effective redress mechanisms encourage the resolution of consumer problems and incentivise businesses to provide satisfactory goods and services
- widespread use of effective redress mechanisms is likely to lead to less need for enforcement interventions, with consequent budgetary savings.

10.13 Current and forthcoming developments at EU and UK level for the provision of consumer redress following breaches of consumer law would suggest this is an area which needs more consideration in the proposed structure. For example, for enforcer-led provision of redress/restorative justice there would clearly be a role for both the CMA and TSS to ensure that cases across the spectrum of size provided equal access to redress by this mechanism. The JEB's involvement in prioritisation of cases for the provision of redress would also be crucial in this respect.

ANNEXE(S)

A THE OFT'S INTERNATIONAL ENFORCEMENT, COORDINATION AND LIAISON FUNCTIONS

A.1 The OFT has two main international roles:

- taking enforcement action abroad when necessary, and working with other authorities to deliver a coordinated response to international threats to consumers, directly as an enforcer and through strategic input to improve international consumer enforcement frameworks, and
- acting in a range of ways to ensure the UK's compliance with EU treaty obligations to protect its own and other Member States' consumers.

A.2 **Tackling international threats.** The increasingly international nature of markets and of threats to consumers makes it vital for consumer protection agencies across the world to cooperate and share information. The OFT's contribution to this effort includes:

- action to protect UK consumers through partnership working with non EU counterparts such as the FTC and ACCC
- direct action against overseas rogue firms where possible: the OFT is unique within the EU in our record of taking legal proceedings in other Member States to protect our own consumers⁶⁸
- liaison with other UK and EU agencies on cross-border enforcement issues.

A.3 Effective performance of these nationally important roles is greatly assisted by the OFT's broad experience of UK consumer enforcement, overview of consumer markets, and ability to act a single point of

⁶⁸ The OFT took successful cases against the Duchesne group in Belgium and against Best Sales in the Netherlands www.of.gov.uk/news-and-updates/press/2008/86-08

contact, advice and support for international partners on all relevant issues.

A.4 Box A.1 provides a case study of recent OFT activity in this area.

Box A.1 Case study: Enforcement cooperation with the FTC

In February 2009 the FTC asked the OFT to assist with an investigation into two websites selling discount home electronics equipment to UK consumers. The sites were located in the US, but gave the appearance of being UK based by using '.co.uk' domains. Over 70 consumers complained of issues such as unexpected import fees, invalid warranties and difficulties obtaining refunds.

The OFT assisted the FTC by providing consumer complaints data, assisting the FTC to trace UK witnesses and using formal information gathering powers under section 224 of EA02.

This assistance enabled the FTC to reach a settlement with the trader, prohibiting him from making further misrepresentations. Additionally, the OFT took steps to help UK consumers secure redress after some consumers were unable to raise chargeback requests with their banks. To resolve this the OFT spoke with a number of UK companies who provided commercial services relevant to the payment transactions and also wrote to consumers to inform them of chargeback rights.

A.5 **Strategic input.** The OFT also uses its enforcement experience and markets expertise to contribute fully on behalf of the wider UK consumer enforcement community to international fora on consumer issues, and thus to maintenance and development of the frameworks and mechanisms that allow for international action. This contribution is made both at global and EU level. Specifically it:

- is an active member of the International Consumer Protection Enforcement Network (ICPEN)
- leads the UK enforcers' participation in discussions between EU authorities who enforce the legislation - indeed where appropriate, it

organises such discussions itself (for instance a workshop in Brussels this year on unfair contract terms enforcement)

- contributes to consideration of EU consumer legislation, ensuring that proper account is taken of UK enforcement needs
- develops significant strategic partnerships to benefit UK consumers.⁶⁹

Box A.2 provides an example of recent OFT actions to provide strategic leadership in international enforcement.

A.6 EU compliance. Nearly all new UK consumer law since the 1980s has originated in the EU, and places legal obligations on the UK to ensure effective enforcement. The OFT plays a key part in ensuring UK compliance with these obligations through performing a number of linked roles:

- **National enforcer of consumer directives.** Local and sectoral enforcers in the UK are empowered to enforce EU-derived consumer legislation, but only within their specific remits. UK compliance depends on there being a UK enforcer (currently the OFT) with the ability to consider cases from a national and international perspective, and the resources and expertise to take complex international cases.
- **Competent Authority and Single Liaison Office.** Under the 2004 CPC Regulation the UK is obliged to ensure that its authorities can, and where necessary, do take action in this country to protect consumers in other Member States, and that such cross-border action is facilitated and coordinated. The OFT performs the requisite liaison role at EU level, and acts as national enforcer where required.⁷⁰

⁶⁹ www.of.gov.uk/news-and-updates/press/2011/41-11

⁷⁰ All Member States have a duty to ensure that action is taken to protect consumers elsewhere in the EU by appropriate Competent Authorities. Each country is also required to coordinate

- **Cross-border action.** EU legislation also requires that the consumer protection agencies of other Member States are empowered themselves to act elsewhere in the EU to protect the interests of their own consumers.⁷¹ The OFT has a dual statutory role, in that it takes proceedings as necessary in the courts of other Member States on behalf of UK consumers (as mentioned above), and also assists non-UK authorities taking proceedings in the UK, where they lack full competence to act for technical reasons.⁷²

action under the CPC Regulation via a public authority designated as a Single Liaison Office (SLO). The OFT acts both as the UK's SLO and as its sole fully-empowered Competent Authority. It also chairs the UK's Enforcement Forum, bringing together UK authorities including TSS who have powers to act but only within local or sectoral remits. The OFT is generally able itself to take enforcement action where no such other authority can do so.

⁷¹ The 1998 Injunctions Directive is implemented in the UK through Part 8 of the Enterprise Act 2002.

⁷² Specifically, compel the provision of information by the subjects of enforcement action – s.224(2)(c) of the Enterprise Act.

Box A.2 Case Study: Building a European Internet Enforcement Capability

In December 2010 the OFT secured funding from the European Commission to lead a 13-month project 'Building a European Internet Enforcement Capability' within the CPC Regulation Network. The outcomes of the project are important for UK consumers since they will improve capacity in and collaboration between European enforcers, thereby improving protection for UK consumers in cross border transactions. The OFT leads this initiative which creates a network of e-enforcement officers who work together to share knowledge and expertise through a series of workshops on:

- legal issues, to share experience when applying the law to online economic threats to consumers
- technical issues, to discuss the skills and equipment required for online investigations
- working with industry.

The project group is also developing a knowledge sharing website to share information and intelligence about Internet enforcement with CPC colleagues. By taking the lead role in proposing and delivering this project, the OFT is required to manage all budgetary and administration aspects with the European Commission. Given the success and support for the current project the OFT has made a further bid for a follow up project to commence in 2012.

B SUPER-COMPLAINTS TO THE OFT

Date	Complainant	Issue	Outcome
Oct 2001 *	Consumers' Association	Private dentistry	Market study leading to recommendations to Government and others
Sep 2002 *	Citizens Advice	Doorstep selling	Market Study leading to recommendations to Government and others
Mar 2003 *	Postwatch	Mail consolidation	Referred to Postcomm
Dec 2003	Consumers' Association	Care homes	Market Study leading to recommendations to Government and others
Jun 2004	National Consumer Council	Home credit	Market Investigation Reference to the CC leading to remedies
Nov 2004	Which?	Northern Ireland Banking	Market Investigation Reference to the CC leading to remedies
Sep 2005	Citizens Advice	Payment protection insurance	OFT Market Study resulting in Market Investigation Reference to CC leading to remedies
Apr 2007	Which?	Credit card interest rates	The OFT worked with industry to improve transparency and switching
May 2007	Which?	Scottish legal profession	Recommendations to Government and others
Jul 2009	Campaign for Real Ale	The supply of beer in UK pubs	Clean bill of health. Decision not to make a Reference
Mar 2010	Consumer Focus	Cash ISAs	Voluntary industry undertakings
Mar 2011	Citizens Advice	Sub-prime credit brokerage	Ongoing OFT enforcement action, new OFT guidance and recommendations to Government

Mar 2011	Which?	Card surcharges	Recommendations to Government and potential enforcement action under CPRs
Sept 2011	Consumer Focus	Travel Money	Currently under consideration.

* Complaints pre-dated coming into force of section 11 EA02 but the OFT elected to treat them as Super-complaints and responded within 90 days.

OFWAT



Ofwat's response to the BIS consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement

Key messages

Consumer representation

- It is essential that all water and sewerage sector customers are properly protected. Customers who have choice of supplier and those who do not need:
 - access to reliable information;
 - effective redress systems; and
 - strong representation.
- Because of the importance of these roles to our work as an economic regulator we have taken steps to ensure that they are effective within the regulatory regime. We are:
 - enhancing the role of customers in our approaches to setting price limits
 - increasing the involvement of customer representatives in reviewing company charges,
 - working with the Consumer Council for Water (CCW) – the current statutory body to strengthen their role as first point of contact for all customers; and
 - working with CCW to ensure they can provide us with the essential intelligence and insight on customer issues that we need to carry out our functions.
- It is essential that any consumer arrangements are properly resourced and have the expertise and capacity to deal with both the technical issues which are peculiar to the water sector and on consumer interests generally.
- We see benefits from sharing consumer experience and expertise between regulated sectors – this can be done by institutional arrangements or by better co-operation and collaborative working between existing consumer bodies.

- Arrangements paid for by water customers should not be diverted to support consumer issues in other unrelated sectors.

Enforcement of consumer protection

- In regulated sectors such as water there is a range of sectoral enforcement tools available besides consumer and competition powers.
- Any changes to responsibilities for enforcement would therefore need to include effective arrangements for the following:
 - identification of systemic issues;
 - consistent treatment and application of policies by different bodies;
 - scope for a co-ordinated decision about the most appropriate enforcement tool to tackle a specific problem;
 - adequate resourcing for investigations and formal action, which suppliers may choose to challenge.

1. Introduction

We welcome the BIS consultation which focuses on the essential functions of consumer advice, advocacy and enforcement. These are important activities in all sectors, and particularly so in the water and sewerage sectors where the majority of customers have no choice of suppliers.

These functions can be carried out in a range of institutional structures and choices as to those structures are a matter for government. But whatever structure is put in place, it is essential that water customers have access to:

- effective redress systems for complaints;
- representation in decision making processes (especially the price reviews);
- advocacy in issues of service, standard; and price, and
- proportionate protection both where they have no choice of service provider and where choice is being introduced.

To be influential in regulated sectors, such as water, the consumer body(ies) needs both a sound understanding of wider consumer issues and more technical issues relevant to specific regulated sectors. It will need to engage in discussions about environmental or drinking water standards and the operation of water and sewerage networks (for example sewer flooding).

Should the changes BIS proposes be implemented for the water and sewerage sectors we therefore see merit in the proposal for a regulated industries unit to provide appropriate expertise and focus.

2. Context

The context for consumer representation in the water and sewerage sectors currently differs from that in other sectors, including other regulated sectors. Most customers are unable to choose their supplier. But the sectors are changing. Companies and customers face new challenges. The Government has already announced its intention to give more large business customers choice and it is considering extending this to small businesses. But household customers are likely to continue to be served by regional monopolies for some time.

As a more competitive market develops, those customers with choice will need to be empowered by good information and effective redress. But those household or small business customers who remain customers of monopolies will need a strong advocate to hold the companies to account and alert the regulator to areas of customer detriment. The arrangements for customer representation must help create a more level playing field by strengthening the customer's voice in their dealings with suppliers of essential water and sewerage services.

The sectors face a range of new challenges to water resources and water quality driven by:

- climate change;
- environmental standards; and
- a rising population.

This will put pressure on services, investment and bills. If the sectors are to rise to these challenges they must retain their legitimacy with customers – which means customers must value the services they receive and be willing and able to pay for them. Affordability is a growing key concern for some groups of customers in the water and sewerage sectors (as for energy). And bad debt, which in 2009-10 added around £14 on each customer's bill, continues to rise. Customers must be able to have confidence that their needs are being considered and that they are getting value for money.

To tackle this, Ofwat is making a number of important changes to put customer engagement at the centre of our regulatory and price setting processes. We are increasing the incentives on companies to engage effectively with their customers to establish and deliver their current and future needs. We will also engage directly with

customers through our business customers' forum and the new expert customer advisory panel we are establishing to inform our decisions on cross-sectoral policy during price reviews.

As the economic regulator Ofwat has specific sectoral powers as well as more general competition and consumer powers. To date, most of our enforcement action has been based on our sectoral powers. For example, we have imposed fines on companies for failing to meet required service standards and for mis-reporting of performance. We are currently reviewing whether, in future, other tools might also prove effective, including general consumer and competition legislation.

The consultation is considering consumer arrangements across the wider economy and the specific institutional model chosen will be a matter for government. So we have structured this response around the outcomes we consider need to be achieved for water customers and the consumer functions that we believe need to be effectively carried out in the sector.

3. Customer representation

It is crucial that **all** water and sewerage customers (both household and non-household) have adequate representation, information and redress. Water and sewerage customers (who are normally consumers of other services too) need:

- access to reliable information and well informed advice to empower them to deal effectively with their supplier;
- proportionate protection from issues that are likely to cause significant detriment whether they have no choice of supplier, or are able to shop around;
- effective handling and redress for complaints that they cannot resolve with their supplier; and
- adequate representation of their interests to the suppliers, regulators, Government and other opinion formers, based on sound engagement, evidence and policy analysis.

This requires strong and effective independent customer body(ies) capable of holding both the regulator and companies to account and able to provide resolution of complaints, representation in decision making and advocacy for customer interests.

The particular circumstances of the water and sewerage sectors means customers also need an advocate that:

- has the expertise and capacity to deal with all types of suppliers - the 21 existing regional monopolies of water and sewerage or water only and, as enhanced competition is introduced, new entrants to the sector;
- can work with all of the regulators in the sector (Ofwat, the Environment Agency and the Drinking Water Inspectorate) on the implications for customers and their bills of environmental obligations, drinking water safety standards and customer service levels;
- can engage effectively with suppliers as they develop new services, in particular new approaches to demand management such as metering and novel tariffs to promote efficient use of water and measures to help address affordability issues such as forthcoming social tariffs; and
- understands and works in the context of relevant sectoral legislation, as well as the more general consumer powers.

Customer engagement

It will be particularly important to ensure effective customer representation in the water and sewerage sectors during the process of setting price limits which determines customer bills. The consumer representative has a vital role representing customers' interests and challenging the companies as they develop sustainable long-term strategies and more detailed business plans.

We have recently enhanced and formalised the role of the customer representative in the price review process. Our policy statement on involving customers (['Involving customers in price setting'](#)) explains how we expect the companies to work with the statutory consumer representative body (currently Consumer Council for Water – CCWater) and other stakeholders to develop customer-focussed business plans for Ofwat to review in 2014. As a core member of a local customer challenge group, CCWater's views on the quality and outcome of engagement will help guide the level of challenge we apply to the companies' proposals and they will also play an important role in our expert customer advisory panel.

The issues involved in price reviews can be complex and require specialist knowledge. For example, new environmental obligations are an important driver of price increases. Individual customers are not in a position to influence Government decisions or their supplier's business plans on such issues and there are currently no other parties to play such a role (for example large retailers). So effective customer representation is essential to complement direct customer engagement by the companies.

We are also proposing an enhanced role for CCWater in the governance of water and sewerage charges for individual water and sewerage companies, to comment/challenge company proposals before these are submitted to Ofwat. We

discuss this in more detail in our consultation on [‘Changing the approval process for water and sewerage charges in England and Wales’](#).

Any new arrangements would need to ensure a body capable to carry out these important roles.

Cross sectoral expertise: the Regulated industries unit

There are clearly benefits from sharing expertise and experience across sectors, particularly regulated sectors where there may be similar issues and frequently the customers of one service (e.g. water) are also the customers of another service (e.g. energy). We believe this should be encouraged whatever the institutional arrangements. We are aware from our own experience of the benefits of such cross sectoral working and have carried out joint work with other regulators in the past. Our most recent joint work was with the OFT on the [organic waste market study](#). Potential benefits for the water customers from cross-sectoral learning and synergies could be achieved in areas such as:

- affordability;
- the interests of vulnerable customers;
- understanding consumer behaviours; and
- the application of consumer law.

If the UK and Welsh Governments decide that existing sectoral consumer bodies should be subsumed into new structures, we would support the creation of a regulated industries unit. This could maximise the pooling of expertise and resources on issues of common interest between sectors.

Any changes do also need to recognise that there are also issues that are quite specific to the water and sewerage sectors. So any new cross sectoral arrangements would need to retain the sector-specific expertise that currently resides with CCWater - for example, on issues such as sewer flooding, environmental issues and drinking water quality.

We also recognise the potential benefits of a consumer body being able to address the longer-term issues important to future customers without being diverted by the immediate concerns of current customers. In that case (that is if the unit was to operate independently of day to day customer representation), the essential data and intelligence that can be gained from day to day contact with customer issues would have to be available both to Ofwat and the unit to ensure that systemic issues could be identified and acted on by the appropriate body.

We agree that any regulated industries unit should have appropriate powers, including information gathering and the ability to make super complaints. We would also expect Government and regulators to consult the unit on the impact on customers of new policy or legislation. The existing duties to consult the Consumer Council for Water would need to be enshrined in any new institutional arrangements. We would also support a continuing requirement to establish MOUs between regulators and statutory consumer representatives (as now with CCWater) to underpin effective working relationships.

Market intelligence

If we, as the economic regulator, are to take a targeted and proportionate approach to regulation we need to receive good intelligence on systemic issues and those causing significant detriment to particular types of customer. This will become increasingly important as we move to a more risk-based approach to regulation, focusing on areas of more significant risk or customer detriment. The body responsible for handling customers' complaints needs to provide us with timely and well-evidenced intelligence through effective channels of communication. Should this body be separate from the consumer advocacy function then it may need to be able to provide similar intelligence to the consumer advocate.

The consumer advocate should have its own information gathering powers rather than having to persuade the sectoral regulator to collect information on its behalf. This will reinforce its independence and enable it to hold both suppliers and regulators to account. But we will need to continue avoiding duplication of information burden.

We believe this is an area where the current arrangements can be improved. We are working with CCWater to address issues identified by David Gray in his recent [review](#) of Ofwat and consumer representation in the water and sewerage sectors. We are discussing with CCWater how we can improve arrangements for identifying general consumer detriment and how it can provide Ofwat with good market intelligence by:

- developing its role as the first point of contact for all customers' enquiries and complaints (including business customers, particularly SMEs);
- using intelligence from its analysis of complaints to companies and those direct to CCWater, to identify areas of consumer detriment where we might target regulatory intervention or enforcement; and
- drawing on its understanding of what matters to customers and ensuring we exploit synergies when carrying out customer research and market reviews.

Support for business customers

In the water and sewerage sectors, business customers of all sizes are currently represented by CCWater and have access to advice and support with complex complaints. David Gray noted that more work was needed to ensure that SMEs were better understood and represented. But in other sectors the consumer advocate does not represent such customers. For example the limited support for small businesses has emerged as a concern in the energy sector. So changes to consumer representation in the water and sewerage sectors should ensure that these customers are adequately served.

As the retail market for business customers develops it will be particularly important that customer protection is well designed and proportionate, with input from a well-informed advocate, so that any emerging customer detriment is quickly identified and dealt with through market or regulatory mechanisms.

Funding and cost-effectiveness

At present water and sewerage customers pay for CCWater through a licence fee. Changes to institutional arrangements should deliver synergies or efficiencies and not add to costs (unless this funded demonstrable increased benefits to these customers). We would not expect funds raised from water or sewerage customers for representation of their interests to pay for work on other sectors unless there is clear cross sectoral benefit relevant to water customers.

4. Enforcement of consumer protection

Sectoral regulators have important concurrent powers on competition and consumer issues. We also have a range of sectoral duties and powers to protect customers.

In allocating responsibilities for enforcement – such as the proposed division of roles between local trading standards offices and the new Central Markets Authority (CMA) – effective relations with the sectoral regulators must be secured. We consider that any new arrangements should provide for the following.

Co-ordinated analysis and decisions

We need to coordinate analysis of issues and subsequent decisions about which is the most appropriate body to investigate and how any market failure or consumer detriment should be remedied.

BIS proposes that the Citizens Advice service should in future be responsible for pure consumer detriment analysis and that the CMA should not perform pure consumer market studies. In such a case, it suggests that the CMA should stop performing market studies once it identifies that there is no structural problem in such markets. The CMA would retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem.

In our experience it is not necessarily clear, when studies begin, what the nature of the problem is and which regulatory or enforcement tool is most appropriate to address it. So where cases relate to water and sewerage services we would therefore expect there to be early discussion and agreement on appropriate arrangements for joint working or for cases to be transferred between the CMA, trading standards or the sectoral regulator.

It will be important to avoid delays, inefficiencies or inconsistencies that might arise if cases were frequently transferred between bodies. We agree that that the CMA should have discretion on how to address structural market problems. As sectoral regulator, we would expect to co-ordinate with the CMA on water or sewerage issues as we have with the OFT on the organic waste study mentioned above.

The use of joint working to support the OFT's market study into organic waste had a number of positive effects over and above the study recommendations. These related in particular to pace and cost of delivery. There was also significant capacity building in both organisations and a real interchange of skills and knowledge. This is an example of effective joint working that any new institutional arrangements should preserve.

Identification of systemic issues

It will be important for us to have access to good quality intelligence about issues that other bodies have identified as affecting water and sewerage customers so that they can be addressed by the regulator or the CMA. And we need to be kept informed of emerging consumer issues or developments in other regulated sectors, which could read across to our areas of responsibility.

We consider that the existing OFT consumer concurrences group has an important role that should not be lost in any future changes. We agree that the new CMA could be well placed to co-ordinate and chair this group in future.

Consistent policies and action

If different bodies or local trading standards offices carry out independent uncoordinated investigations or enforcement action, there is a risk that inconsistent decisions or policies might be applied. This could lead to lack of clarity about the requirements that companies must meet to the detriment of customers, particularly those operating across different regions.

Adequate legal and policy resources

The investigating and enforcing body will need adequate resources to support investigations and any necessary formal action. This will be critical if cases involve large national or international companies, such as those the sectoral regulators or OFT deal with. Such companies are well informed and resourced. It will be important that the enforcement body has sufficient resource, contingency and stature to take the action needed to protect customers of such companies.

**Ofwat
October 2011**

Ogg, Dr Neil

David Evans
Consumer and Competition Policy Directorate
3rd Floor
1 Victoria Street
London SW1H 0ET

12 July 2011

Dear Mr Evans Empowering and Protecting Consumers - Consultation Document

As an individual consumer who has had to complain in recent years about Internet Service Providers, Credit Card Companies, Insolvency Administrators, the NHS, DWP etc., I wish to comment on the above paper and what is proposed. I regret I cannot use the formatted questions which are far too restrictive, miss some of the major points, and assume the solution before consultation on basic issues has taken place. While I entirely support a main thrust of the paper, to reduce complexity and strengthen the effectiveness of consumer redress when things go wrong, I have considerable concern on what is proposed. The paper itself would have benefited from shortening in the interest of clarity, to no more than about 20 pages. Much is repetitive and the focus should have been on England which contains about 85% of UK consumers. Detail on any necessary differences elsewhere could have been relegated to an Annex. Major issues I want to raise are:

- a. Is Citizen's Advice (CA) the best choice for the way ahead? Why not build instead on LATSS and embed CA in a such a structure?
- b. Why exclude the FSA, etc.? Why not aim for a comprehensive, integrated consumer and citizen's advice and support system?

More detailed comments are appended.

I am copying this letter to my MP, David Willetts, as I have corresponded with him on related issues over a number of years.

Sincerely



Dr Neil R Ogg

Comments on Empowering and Protecting Consumers - Consultation Document

Consumer protection is a fundamental duty of government but is an area that has been sadly neglected. Little wonder that public perception is reflected in such terms as “Rip Off Britain”. The present attempt to improve the current situation is laudable provided it is done properly. What is needed is an integrated, transparent, independent and user-friendly system for consumer advice and support, not the diffuse, confusing and unhelpful organisation that exists currently. Such a system should also contain, or at least have links to, all authorisation/accreditation, regulation, Ombudsman Services and the like, and should cover the private and public sector. The balance of legislation should shift much more from *Caveat Emptor* towards *Caveat Vendor*. Consumers should not be mollycoddled but companies, (and government agencies), presently have far too much freedom. Positive innovation and good management and service should not be stifled by over-regulation, but it is clear that the pendulum has swung too far and exploitation is rife. The long term success of any organisation is closely related to customer satisfaction, so what might initially seem harsh would ultimately be beneficial. More specific comments are as follows:

- a. From the consumer's perspective the key requirement must be to have a single, independent, visible and accessible channel through which to obtain advice and help on selection of products and services or on redress when things go wrong. If this is local so much the better. The average consumer neither needs nor wants visibility of the overall structure.
- b. The priority here is probably on redress rather than product selection/education. Much advice on the latter is usually obtained from family and friends, advertising, the internet, shops etc. While concern is expressed in the paper on vulnerable consumers, the present system of redress is difficult even for educated citizens. Informed consumers help make firms responsive to demand, but complaints are probably even more effective in shaping markets and improving products and services. Were it not for complainers and malcontents we should probably all still be living in caves.
- c. The paper excludes the FSA, Consumer Credit, Health etc.. Why is not possible to include all these in an integrated consumer advice, support and protection system? Their exclusion immediately undermines a major objective of the paper. Financial products/services are sometimes more complex than in other areas. But this is only marginally true when Mobile Telephones, Energy Suppliers and Internet Providers are considered.
- d. Is Citizen's Advice, (CA), the best option for the main channel for consumer advice and complaint? Have other options been considered? Major, current tasks for CA are to help people deal with the complexities of the benefit system and debt management. They are a charity staffed by volunteers. As such could they take legal responsibility for advice and support given? How would they be accountable? It is fine to talk of empowering, but much of this seems like the government passing the buck or preparing for future privatisation. A thorough analysis of CA capacity, funding and capability for such a revised task would need to be undertaken before adopting the proposal.
- e. The role of local, regional and national Trading Standards authorities is discussed - mostly in the enforcement context. Would it not be better to absorb the CA into this structure and form an integrated Consumer and Citizen Advice, Support and Protection Service, (CCASPS)? Being part of an authority would automatically add responsibility and accountability to the role but need not discount the use of some volunteer staff. Such an amalgamation would also allow advice on dealing with and complaining about public sector bodies to be included as well as other functions presently unique to CA. Cross boundary issues alluded to in the paper would also be solved by clear delegated links from national to regional to local level within such a system.

f. The natural basis for such a CCASPS at local level would be the LATSS. Existing functions would be retained, (although why these include Animal Health/Welfare is not obvious), but would be extended to include current CA functions and those related to consumer advice, support and advocacy. Limited accreditation functions for small local businesses could also be included as they appear to be now, as would advice to local businesses on consumer related legislation/standards. Support on complaints should generally be limited to informing customers of the correct route for their particular complaint. Complaints should only be handled on behalf of the most vulnerable. A database of such complaints would be held, probably organised on a sectoral basis and accessible and accumulated by higher authority, to indicate possible broader problems. Regional and national authorities would provide similar functions on more complex issues which the local CCASPS cannot resolve. At national level the proposed Competition and Markets Authority would support the national CCASPS on market failure, inadequate competition and other more complex, national or international issues. The FSA could remain in the Treasury, (with its own CPMA), but would need to be linked to a national CCASPS, or could be brought within the structure proposed.

g. The paper advocates lighter touch regulation, (although the FSA appears to be going in the opposite direction with more intrusive regulation). This should be underpinned by clear Consumer Protection or Assurance Standards covering:

- Quality, Reliability, Performance, Safety
- Customer Service, After Care, Continuity of Service, Warranties and Guarantees
- Insolvency and Fraud and Protection Schemes, (modelled on those in the travel industry)
- Unfair Charges or Poor Value
- Unreasonable, Misleading, Changing, Obscure or Over-complex Terms and Conditions/Descriptions
- Undisclosed Credible Risks & Costs, etc.

Such standards could be prepared by the BSI. Codes of Practice generated within particular industry sectors could be viewed as a response to such standards. Regulation would then consist of registering/authorising/accrediting firms which accept compliance with standards, and ensuring that suitable evidence of compliance is produced by them and audited by regulators. Such regulation could be done on a sliding scale measuring the degree of customer assurance from 0 to 10 which would be made visible to customers on advertising. Non-compliance with standards that are accepted by a firm would be subject to penalties.

h. Responsibility for such regulation could remain where it is at present or become more integrated. However, regulation must be seen to be objective and unbiased. Where self-regulation is in place this should be underpinned by an independent regulator whose responsibility includes imposing regulation standards, checking that they are complied with, and if necessary providing independent adjudication. Self-regulation appears to be prevalent in the professions where authorising/regulating bodies often also represent the profession concerned - a clear conflict of interest. One example where this is unsatisfactory and against consumers' interests is in current regulation of insolvency practitioners. Complaints have to be made to authorising bodies. There are more than seven of these some of which also represent the practitioners. It is unclear if the Insolvency Service provides final arbitration. Regulation of public sector bodies would have to take into account existing Citizens' Charters and the like but should be based on the same principles; checking evidence of compliance with standards of customer service.

i. Ombudsmen

Existing Ombudsmen could remain as at present or become more integrated. Their prime function of dispute resolution needs to be made clear, particularly if they are embedded in a regulatory body. Complaints that cannot be resolved with a product or service provider should be referred to the relevant Ombudsman. It would be for the local CCASPS to direct a complainant appropriately. In the public sector, where a dispute cannot be resolved with the agency or department concerned, possibly with the help of the relevant MP, the Parliamentary Ombudsman should be involved. Where self regulation is in place and independent adjudication/ombudsman function would be necessary.

Ombudsman Services

Author	Mark Glover, Policy Manager
Status	Final
Date last updated (and reason)	23/9/11 comments from board and SLPs
Version	0.4
Distribution	BIS
Related documents	

Empowering and Protecting Consumers:

Consultation Questions

Response of Ombudsman Service Ltd (Ombudsman Services)

Introduction

1. The Ombudsman Service Ltd is a company limited by guarantee (not-for-profit) that provides ombudsman services for the energy, telecommunications and property sectors, by appointment or approval from the relevant regulators. We provide dispute resolution and redress to domestic consumers and micro businesses.
2. Established in 2002, Ombudsman Services now has over 8,500 participating companies and last year sent out over 20,300 complaint forms. The company employs over 170 people and has a turnover in the region of £6.4 million.
3. In the energy sector we have recently taken on the responsibility for complaints about feed-in tariffs, in addition to our existing role providing the alternative dispute resolution scheme for both energy suppliers and networks. The redress service we provide in property developed from appointment by the Royal Institution of Chartered Surveyors, followed by approval from the UK Office of Fair Trading to provide alternative dispute resolution services for estate agents. This scheme now covers the range of property professionals. We have recently started a pilot project to provide alternative dispute resolution for Royal Institution of Chartered Surveyors registered firms throughout Europe.
4. The most recent sector the service provides alternative dispute resolution for is copyright licensing and with our sustainable funding model, independence and considerable experience we have the capacity to undertake further work.

5. To help 'level the playing field' between consumers and companies, we have a contact centre which provides information and assists those who have difficulty in making a complaint. We achieve proportionality by providing alternative dispute resolution through different processes, from informal resolution and telephone mediation to in depth investigation. Our decisions are enforceable through the courts.
6. Our service is free to the consumer and paid for by the participating companies under our jurisdiction by a combination of subscription and case fee. While we consult with the sector participants on our annual budget and business plan, the participating companies do not and should not exercise financial control. Our governance ensures that we are entirely independent from the companies that fall under our jurisdiction.

Preamble

7. Ombudsman Services welcomes the opportunity to comment on the Empowering and Protecting Consumers consultation paper published on 21 June 2011. Below is our response to the consultation questions which are most directly related to our experience of operating ombudsman schemes. Our consultation response has been drawn from the Ombudsman Board and our three sector liaison panels representing the communications, energy and property sectors.
8. Ombudsman Services fully supports the transfer of the advocacy functions of Consumer Council Water and Passenger Focus to Citizens Advice. The remaining complaints functions of the two organisations can then be transferred to other redress schemes such as Ombudsman Services while maintaining consumer protection.
9. We believe that through the arrangements that the structure Ombudsman Services has developed over the past two years we can provide a number of advantages to an industry;
 - For the consumer – the redress schemes is free and we provide an easy and quick access to justice;
 - For a regulator – we work with the regulators to resolve problems independently between customers and companies properly, fairly and quickly, without the need to go to court. This can reduce the burden of regulation.
 - For companies – we are cost effective and able to specialise in redress for sectors such as energy, communications, property and copyright. We are independent, and cannot become a customer champion. Redress schemes offer value for money as we are often quick in resolving issues without the need to go to court. Redress schemes such as Ombudsman Services ensure integrity in the sector and allow systemic issues to be addressed.

- For consumer bodies – we work closely with organisations such as Citizens Advice and Consumer Focus and support them in their role as consumer champion.

QUESTION 1. How do you think the provision of consumer information to consumers can be improved upon?

There is a role for Ombudsman in other redress schemes and for regulators and for others such as Consumer Focus to make information available so consumers are able to make informed choices about service providers. Websites are an ideal tool for this, but care needs to be taken about what information is made available so that it conveys an accurate picture. It is also essential that conflicting or contradictory information issued by others be avoided.

There needs to be clarity of roles and the proposals in the consultation document go a long way to providing such clarity. The role of education and ensuring that consumer advice and information is taught in schools has not been covered. Children, if not consumers now, will be the consumers of tomorrow and there is a need to inform them of their consumer rights at an early age. There is a responsibility on business to promote and provide good accurate information about the services and goods they offer. However, there are examples of reputable companies and sectors having mis-informed consumers. There is therefore a need to ensure that appropriate enforcement powers are in place to ensure that companies are prevented from doing so.

QUESTION 2. Do you agree that the Office of Fair Trading consumer information role should be transferred to the Citizens Advice service?

Ombudsman Services supports the transfer of the Office of Fair Trading's consumer information to the Citizens Advice service which has a reputation for providing effective consumer advice and information. The transfer of such a role, however, must be accompanied by sufficient resources.

Citizens Advice should be required to continue to provide consumers with sufficient information to access Ombudsman Services.

QUESTION 3. Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service?

Ombudsman Services currently deals with the Extra Help Unit by referring cases of hardship it. We regard the unit as having a vital role in helping vulnerable groups to manage their energy bills effectively and should therefore be retained.

In light of the proposed changes, Ombudsman Services considers that Citizens Advice may be an appropriate place for the unit to be located. It should however, in line with the government's consumer strategy published in April, be adequately resourced both now and in the future as evidence suggests that energy bills/costs are likely to increase as a proportion of household bills and their role will therefore become increasingly important.

There may however be appropriate alternatives to Citizens Advice, for example a re-branded Consumer Focus Scotland, Ombudsman Services itself could deliver the service as we are frequently in contact with both consumers and their energy providers. This being the case there should be a proper tender exercise against a clear service specification and bankable assurances about funding over the next three years.

QUESTION 4. Do you agree that the Office of Fair Trading consumer education roles should be transferred to the Citizens Advice service? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?

As previously mentioned, the need to publicise the availability of the ombudsman service or other redress schemes is essential to enable consumers to access redress and be able to hold companies to account. It is part of our standard work to ensure that such information is available to consumers, and it is important that the role of educating consumers is not lost when service level agreements are negotiated and agreed with delivery organisations such as Citizens Advice.

QUESTION 5. Do you agree that the proposed Trading Standards Policy Board and the Trading Standard Institute should coordinate and support business-facing educational activities?

Effective signposting is essential.

In addition to providing a redress scheme to residential customers, Ombudsman Services also provides redress to micro businesses. It is our view that business-facing education activity should continue with Local Authority Trading Standards – indeed their role in this area is strengthened.

QUESTION 6. What are the best options for current and prospective Consumer Codes Approval Scheme members to consider in the event that the Government's proposed consumer and competition landscape proposals are adopted?

We support the continuation of Consumer Codes Approval Schemes, as well as the development of new schemes as they do provide a degree of consumer assurance and redress.

We would welcome any competent organisation to be able to administer a scheme. However, future schemes should include an appropriate alternative dispute resolution mechanism that is free at the point of delivery to consumers with decisions enforceable through the courts if necessary. It is also important that the redress mechanism is independent of the development and administration of the code scheme; it cannot be right to allow providers of redress to write and administer the codes. The codes should be an industry code written separately from the redress scheme and should be principle or legislation based.

QUESTION 7. Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of Consumer Codes Approval Scheme with effective alternative systems of accreditation?

It is likely that - given the reductions in spending that local authorities and the voluntary sector are experiencing - they will not be able to adopt Consumer Codes Approval Schemes. The energy industry already operates two codes against which the Ombudsman Services measures the performance of the companies. To be efficient any code must require access to independent redress.

QUESTION 9. What is your view on transposing Consumer Codes Approval Scheme approved codes into standards and related documents such as those published by BSI?

There may be a case for transferring rather than transposing approved Consumer Codes Approval Scheme codes to the British Standards Institute, so that the schemes can be aligned with the institute's own standards and codes. There may be an opportunity to introduce a fast-track mechanism for schemes that already are in place. However, any redress mechanism should be assured.

QUESTION 10. What characteristics would a Kitemark® based code certification process need to have to meet industry requirements?

Although this is not a matter that the Ombudsman Services wishes to comment on, the Kitemark is a recognised standard in which consumers have confidence.

QUESTION 11. What is your view on extending the Primary Authority concept to code certification?

We think that this would be a good way forward. For example, the Energy Retailers Association sponsors the two energy codes referred to in our answer to Question 7 above and we can see how it might become a Primary Authority for code certification. Likewise, the regulating area of RICS is for surveyors and other parts of the property industry.

It is important that while the primary authority might have responsibility for any disciplinary action, consumer redress should remain independent of this process and be available through third party ADR. The separation of regulation and code approval from ADR is essential.

QUESTION 12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

Ombudsman Services considers that there is merit in combining many sectoral advocacy functions as possible in one body such as the Citizens Advice service, thereby providing economies of scale, reducing confusion to the consumer and pooling expertise. However, as previously mentioned, the combining of

functions will need to be adequately resourced both now and in the future when demand for such services is likely to increase. A reformed service will also have to be easily accessible to the most vulnerable and be able to effectively signpost consumers to the relevant redress scheme. Such a move to combine advocacy functions must not, however, be at the expense of the network of bureaux that provide an excellent service at a local level.

QUESTION 13. Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?

Ombudsman Services agrees with the principles set out in section 4.34 including the need for independence and adequate resourcing. It would be helpful if those they are expected to partner would have the relevant redress schemes in place.

QUESTION 14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions are transferred to the Citizens Advice service? What are your views on alternative?

As mentioned in Q12 there is merit in transferring the advocacy functions of Consumer Focus to Citizens Advice providing it is adequately resourced both now and the future and has the ability to hold industries to account. We do have concern that the experience and expertise of Consumer Focus has in its current staff may be lost. Links with the relevant redress schemes must be maintained.

QUESTION 15. What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

In terms of redress, Ombudsman Service believes it is advantageous to mirror the proposals that are being suggested for Citizens Advice. Given that, with the exception of the water industry, the companies providing services in the sectors mentioned in 4.19 above operate in all four countries, a single redress scheme which covers all four countries or a number of schemes that have the same principles and procedures will help to reduce confusion for the consumer, allow economies of scale to be generated and ensure expertise is pooled.

There would be additional benefits too: a single scheme would also be able to maintain a common approach throughout the sectors and ensure consistency in terms of decisions that are taken and the level of awards that are made.

QUESTION 16. What are your views on these options for the transfer of information gathering powers? Which is preferable and why? Are there any other options for information-gathering powers?

Although the Ombudsman Service has no view on who should be responsible for information gathering we think there should be clearly independent of provider and consumers. Arrangements should be put in place to ensure that we are able to work closely with whoever is given the duty.

QUESTION 17. What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?

The availability of an effective redress scheme is an essential component in ensuring consumers have access to justice and ensuring that confidence is maintained in the sector. It also means that companies can be held to account when things go wrong; an effective ADR scheme can help to ensure a level playing field between companies which in turn promotes competition.

It is therefore the view of Ombudsman Services that there should be an effective and mandatory redress scheme like ourselves in all regulated sectors such as public transport and water, in fact customers of Scottish Water now have access to an Ombudsman scheme. Care needs to be taken, however, when drafting legislation to ensure that the redress schemes include a number of important elements; not only do they need to be free at the point of delivery but also follow the principles of good governance set out in the British and Irish Ombudsman Association guidance, ie that they are independent, effective, open and transparent, accountable, operate with integrity and have clarity of purpose.

Ombudsman Services considers that other key elements we provide should be integral to any alternative dispute resolution schemes, they include;

- ***Independence from the companies that are under jurisdiction***
- ***Clear advice on what the alternative dispute resolution scheme can and cannot deal with***
- ***The need for clarity of process and timescales for consumers***
- ***Clear and approved Key Performance Indicators to allow consumers, the regulator and participating companies to assess performance***
- ***An effective and efficient front-of-house contact centre/enquiries service which is able to collect relevant information effectively and efficiently or to re-direct complaints that cannot be dealt with to an appropriate resource***
- ***A long term, sustainable funding mechanism paid for by, but independent of (ie not controllable by), the participating companies which allows for a free dispute resolution service, at point of delivery***
- ***The ability to recommend areas of service improvement to participating companies***
- ***Meetings with participating companies on a regular basis***
- ***Consistent, robust decisions that, when accepted by complainants, are legally binding on the participating companies***
- ***There should be clear rules about signposting to such a service established by a regulator***
- ***There should be a presumption against the creation of a new public body – there needs to be clear arrangements whereby statutory ombudsman functions can be discharged by not for profit and other bodies***
- ***It is important that requirements in primary legislation are kept to the minimum to ensure that schemes have the maximum flexibility to devise their own appropriate governance and managerial arrangements***

The Ombudsman Service would discourage the establishment of multiple redress schemes within a single service sector, which has already happened with property and telecommunications.

Although the schemes currently involved are both sound and reputable, Ombudsman Services believes it is not in the interest of consumers to have multiple redress schemes for a single sector. It is often confusing in an already confused consumer redress landscape; moreover, it permits less scrupulous providers to choose to join whichever redress scheme is more advantageous to them, rather than to the consumer. This surely cannot be the intention of the legislation or the general thrust of this current consultation.

If a dual redress scheme is in place and continues, the regulator needs to be able to periodically review the process and be able to issue clear roles and responsibilities to those redress schemes it supervises – such guidance needs to be enforceable.

As outlined in the answer to Question 15, such a service should be available across all four countries or operate to the same process to ensure equity and consistence of decision making. It is also our view that independent redress, particularly through an ombudsman should be encouraged in private sector areas that currently do not have ADR schemes and particularly in sectors where approved codes apply.

QUESTION 18. Do you support the transfer of the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland and agree that as a result Consumer Focus Post Northern Ireland be abolished?

See answer to Question 15.

QUESTION 19. Do you agree that the Postal Services Redress Scheme should continue to apply in Northern Ireland to ensure that Northern Irish consumers retain the same access to redress as consumers elsewhere in the United Kingdom?

See answer to Question 17.

QUESTION 21. In relation to Option 3, do you agree with the Government's principles for the operation of the new Trading Standards Policy Board? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

The existence of an effective, mandatory and sector-wide redress scheme can ensure that enforcement can be brought against individual un-cooperative companies. This in turn will allow for systemic, industry-wide issues to be dealt with through the Trading Standards Policy Board.

It is important that there is a clear mutually agreed definition of boundaries between the redress scheme/s, the new trading standards body, regulators and government, so it is clear who is responsible for helping individual consumers,

who is responsible for tackling misbehaving firms and who is responsible for tackling genuinely systemic issues at the industry-wide level. The lessons from FOS/FSA is that, in the absence of that kind of statement and the will to implement it, it's the redress schemes that are left to pick up the pieces for everybody else – which can damage their reputation in the intervening period.

QUESTION 24. How can your preferred new model best work with businesses?

It is believed that business could benefit from the preferred consumer model by having an effective and proactive redress scheme. Such a scheme is cost effective in terms of resolving complaints, and can effectively reach businesses to help them improve their service – for example, Ombudsman Services has the potential to work with over 8,500 participating companies helping them improve business practices.

QUESTION 25. Do you agree that the Competition and Market Authority should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

Yes – there may be structural market problems in a sector which from time to time need to be investigated and resolved. This is an important role that needs to be retained. We envisage that a suitably resourced Competition and Market Authority is the most appropriate body to undertake this work.

QUESTION 29. Do you agree that in an Option 3-based model, the Citizens Advice service should in future be responsible for pure consumer detriment analysis and that the Competition and Market Authority should not perform pure consumer market studies? In such a case, do you agree that the Competition and Market Authority should stop performing market studies once it identifies that there is no structural problem in such markets and do you think there should be a duty on the Trading Standards Policy Board to prioritise cases referred by the Competition and Market Authority?

There may be merit in giving Citizens Advice responsibility for pure consumer detriment analysis providing it is adequately resourced. However it may be seen as being contrary to establishing clear roles and responsibilities that the proposed changes seem to be trying to introduce. If such an arrangement is to operate effectively it must not detract or conflict from the consumer advocacy role the government intends for Citizens Advice. However, data acquired or developed by the consumer advocate will always be contentious in each sector and there must be merit in establishing the independence of an organisation which gathers, analyses and disseminates this information, such as is done by the National Statistics Office.

QUESTION 30. Do you agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies in the proposed new landscape?

The consultation paper does provide clarification of the roles and responsibilities of the key institutions in the new landscape of consumer protection and it will help in reducing the level of overlap that the government maintains there is at present. Providing such clarity, however, does not in itself ensure more effective collaboration, which can really only be achieved by the organisations themselves once the new system is in place.

QUESTION 32. Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not, how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?

The requirement of a redress scheme is an important element of a self regulated scheme. Ensuring that decisions of an independent redress scheme can be enforced through the courts goes a long way to underpinning the credibility of the scheme. Such schemes, however, complement rather than replace enforcement which still should be undertaken by trading standards.

QUESTION 37. Do you agree that the current super-complaints system to the Office of Fair Trading should be retained in respect of the Competition and Market Authority if the proposed changes go ahead?

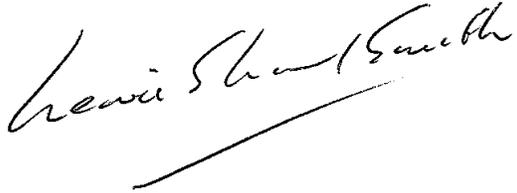
Yes – there is likely to be a continuing need for interested organisations to be able to make a complaint about a sector. This is an important function and Ombudsman Services would support the need for the current super-complaint system to be retained and possibly strengthened so that redress schemes could also refer such complaints on. We regard the proposed Competition and Market Authority as being the appropriate body to consider such matters.

QUESTION 39. Do you think that a lead local authority could take on the Office of Fair Trading's estate agency and related anti-money laundering functions?

This is certainly a possibility. The role of the Office of Fair Trading in relation to estate agency is to assist in the regulation of the sector's practices and provide guidance on future developments. Whatever arrangements are put in place to establish a lead authority to oversee estate agency, the Competition and Markets Authority should retain responsibility for national policy (as local authorities will not have the skills of infrastructure to do this) and that the existing good relations that are currently in place between Ombudsman Services and the Office of Fair Trading should continue. It may therefore be appropriate to ensure this by including it in any service level agreement.

In terms of anti-money laundering, it is understood that separate arrangements are being developed for the regulation of the financial sector. It may be more appropriate if the financial services regulator were given the responsibility to oversee estate agents in this regard.

10. Ombudsman Services has considerable experience in the field of dispute resolution. We would be happy to provide clarification on any point in this evidence or if there is any other way we can assist, please contact me.

A handwritten signature in black ink, reading "Lewis Shand Smith". The signature is written in a cursive style and is positioned above a horizontal line that extends to the right.

Lewis Shand Smith
Chief Ombudsman, Ombudsman Services

27 September 2011

MG 26/08/11

ORR – Office of Rail Regulation



OFFICE OF RAIL REGULATION

Richard Price

Chief Executive

Telephone 020 7282 2006

richard.price@orr.gsi.gov.uk

David Evans

Consumer and Competition Policy Directorate

3rd Floor

1 Victoria Street

London

SW1H 0ET

29 September 2011

Dear David,

CONSULTATION ON INSTITUTIONAL CHANGES FOR PROVISION OF CONSUMER INFORMATION, ADVICE EDUCATION, ADVOCACY AND ENFORCEMENT

The Office of Rail Regulation (ORR) is the independent economic and safety regulator for railways across Great Britain. Thank you for providing us with the opportunity to respond to this consultation on proposed changes to the consumer institutional landscape. As a Part 8 enforcer of consumer law and as an authority with a key focus on the needs of the passenger, we are keen to ensure that any future structure is capable of protecting those who travel on our railways and promoting their best interests.

We are pleased to note that the consultation envisages a continuing future role for sector regulators within the new structure. Regulators are particularly well placed to tackle systemic, non company specific issues which can be a feature of network industries such as the railways, where the service is provided by a number of industry parties and the terms and conditions of sale are primarily a product of intra-industry agreements. Our continuing interaction with the industry, including in our role as safety regulator for the sector, also provides us with the unique opportunity to spot issues as they arise and to act accordingly. This does not always mean by formal enforcement action. We fully accord with the view of Government that market-based solutions and self-regulation can also play their part in ensuring better consumer outcomes. We understand that key objectives of the proposals are to reduce the complexity of the consumer landscape; to strengthen the effectiveness of consumer enforcement; and to ensure more cost-efficient delivery, closer to the consumer front line. We understand that the Government wants to clarify

future responsibilities and ensure efficient use of limited enforcement resources through more effective leadership and integration of effort around the country.

We strongly support moves toward unifying structures in a way that prevents overlap and promotes efficiencies. It is vitally important that business is given the certainty it needs to invest and critical to this is a predictable and coherent framework of regulation and enforcement. There is also a clear need to address issues of structure which are hindering rather than helping consumers to access the advice or redress they need.

We are particularly concerned to understand, therefore, how the interface between each of the various bodies is expected to work in practice (including how regulators are expected to fit into the new structure); how lines of responsibility will be agreed and how the structure will retain the capability of delivering cross-sector policy goals where appropriate.

The reasoning used to support the split between the enforcement of “pure” consumer matters from those which arise out of either the behaviour of firms or structural deficiencies is not particularly compelling not least in terms of practicalities. It is not always possible to determine at outset why a problem has arisen and moreover there is not always a single cause. Transferring cases between authorities as the issues unfold is sub-optimal and is likely to increase uncertainty for business and lead to delayed remedy for the consumer. Importantly by splitting expertise in the way proposed there is a real risk of creating policy silos; with no single authority having oversight and responsibility for the delivery of a cohesive consumer strategy.

As noted above we understand that one of the Government’s objectives is to rationalise the number of bodies providing consumer advice and education. We believe, however, there is a case to retain sector advocacy for the foreseeable future not least due to the complex overlay of sector specific consumer protection legislation and rules. In particular we support the continuance of Passenger Focus and consider that it provides a valuable role in undertaking sector specific research; carrying out the National Passenger Survey acting as a statutory complaints body under domestic and European legislation; and importantly interpreting general consumer policy and research within the context of the railways.

The preferred view of Government is supported, however, with some lines of argument which resonate with challenges which we face in this sector. In particular how we can engage the local consumer voice and capture the perspective of consumers in the devolved nations. We can understand how the wide geographical spread of the Citizens Advice service could add significant value here. Further the creation of a powerful and informed sectoral advocacy unit could ensure that the consumer is adequately and fully represented in such highly complex and technical exercises such as periodic reviews. We would question, however, the view that such benefits could only

be achieved from merger and would alternatively advocate closer working relationships between sector specific and general advocacy bodies.

We agree that an ombudsman can play a valuable role in dealing with consumer grievance particularly for issues where the question is one of fairness rather than whether there has been a breach of the law. Access to such schemes can greatly improve consumer confidence and trust in the sector. As such, we broadly agree with the benefits which you set out at paragraph 4.58. As noted in the consultation document, however, the question as to whether or not an ombudsman scheme has a part to play in the transport sector very much depends on whether the Department for Transport considers there to be a continuing need for sector advocacy in the office of Passenger Focus.

We hope that this response is helpful and look forward to hearing the views of others who are vested with making any new structure work. We will be pleased to play our part in this. The consultation does not set out your timetable for reaching conclusions or your proposed next steps. We would, however, welcome the opportunity to discuss any element of your proposals and/or our response with you in advance of you reaching any final conclusions.

I am copying our response to Robin Groth at the Department for Transport who has responsibility for the sponsorship of Passenger Focus.

Our more detailed responses to the questions set out in the consultation document are set out in the attached annex. There is no need to treat any part of this response as confidential.

Yours sincerely,

A handwritten signature in black ink that reads 'Richard Price'.

RICHARD PRICE
Chief Executive

Chapter 2 – Information, Advice and Education

Q1. How do you think the provision of consumer information to consumers can be improved upon?

Q2. Do you agree that the OFT's consumer information role should be transferred to the Citizens Advice service?

Q3. Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service?

We fully support the Government's consumer empowerment agenda and agree that information is key to consumers being able to choose the product and service which is right for them and also in enabling successful challenge against traders and service providers when products and services fail to deliver. This is equally true for passengers within a railway context and we are focused on the twin aims of ensuring that even limited choice is exploited to positive effect and ensuring that enough data is out there so that consumers (or bodies acting on their behalf) can hold service providers to account. Transparency plays a key role here and we are working toward a world where passengers know precisely what they are buying for their money and can access the lowest fare and plan a journey which is best suited for their needs.

Passenger Focus has provided valuable research in this area particularly around ticketing and fares complexity and has done much to highlight and identify where problems exist. There is no compelling argument that any other body (including the Citizens Advice service) could have done more to improve the passenger experience in this area. Further we have not been provided with any evidence that passengers consistently approach either Consumer Direct or the Citizens Advice service for advice and information on railway matters. It is not clear, therefore, that passengers would necessarily see the existence of Passenger Focus as adding to structural complexity. We are not convinced that there is a case for moving responsibility for information on railway matters to the Citizens Advice service irrespective of arguments which might support the transfer of the OFT's consumer information functions. We make no comment on the latter.

Q4. Do you agree that the OFT's consumer education roles should be transferred to the Citizen's Advice service? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?

No comment.

Q5. Do you agree that the proposed Trading Standards Policy Board (TSPB) and the TSI should coordinate and support business-facing educational activities?

No comment

Chapter 3 – Consumer Code Approvals

Qs 6-11

No comment

Chapter 4 – Consumer Advocacy

- Q12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?**
- Q13. Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?**
- Q14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?**
- Q15. What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?**

Our views on the future of sector advocacy are set out in the covering letter.

Q16. What are your views on these options for the transfer of information gathering powers? What is preferable and why? Are there any other options for information-gathering powers?

No comment

Q17. What are your views on whether redress schemes such as those established in electronic communications, financial services, energy and postal services should be extended to other sectors?

Our views on this are set out in the covering letter.

Q18. Do you support the transfer of the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland and agree that as a result Consumer Focus Post Northern Ireland be abolished?

Q19. Do you agree that the Postal Services Redress Scheme should continue to apply in Northern Ireland to ensure that Northern Irish consumers retain the same access to redress as consumers elsewhere in the United Kingdom?

No comment

Chapter 5 – Enforcement of Consumer Protection Legislation

Q20. Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?

Q21. In relation to Option 3; do you agree with the Government's principles for the operation of the new TSPB? Do you think this model would deliver effective enforcement against large businesses tempted to break the law? Which areas of enforcement activity should warrant specialist national teams? Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

Q22. Would you prefer to maintain the status quo in terms of powers and responsibilities, but with improved collaboration between OFT/CMA and Trading Standards? If so, should one of the JEB models be the best solution? Which one and why?

Q23. In relation to the various JEB models, how would you ensure effective Trading Standards participation in the JEB? Do you think that this option would deliver integration of enforcement across local, regional and national levels? Should other organisations be involved in the JEB, either as members or as participants in discussions? Would retention of such unrestricted consumer enforcement powers and responsibilities affect the CMA's singularity of purpose and distract it from its core competition remit?

Q24. How can your preferred new model best work with businesses?

What is important is to ensure that within the new structure there is an authority vested with responsibility for overseeing an enforcement strategy; leading on prioritisation; and critically in promoting joint leadership and collaboration between the various enforcement bodies.

What is also of critical importance is that the structure is designed in such a way as to promote engagement between enforcement bodies and those involved in advocacy and education. We, in our sector, promote close working relationships between ourselves and passenger bodies. We believe this brings significant benefits. The sharing of intelligence means that we can prioritise according to what matters most to the passenger. In turn passenger bodies can focus their efforts where there is more chance of being able to deliver better consumer outcomes and moreover, can advise consumers in full knowledge of developments in enforcement policy. We support proposals which reflect that model of partnership working.

The document provides no clarity, however, on how sector regulators and sector advocacy bodies will fit into the new structure and, therefore, what influence they will have over the prioritisation of cases and how they will continue to have access to developments in consumer and consumer enforcement policy and intelligence gathered through case work. The

proposal to retain the competition concurrency working group has merit in principle but, as explained in our response to question 36 below, we are concerned as to the proposed limited scope of its remit.

Q.25. Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

Q26. In an Option 3-based model, should this enforcement role be subject to procedural limitations?

Q28. Do you agree that the CMA should retain responsibility for mixed market studies where there may be competition and consumer issues (supply and demand side market failures) present on the relevant market?

Q29. Do you agree that in an Option 3-based model, the Citizens Advice service should in future be responsible for pure consumer detriment analysis and that the CMA should stop performing market studies once it identifies that there is no structural problem in such markets and do you think there should be a duty on the Trading Standards Policy Board to prioritise cases referred by the CMA?

A core strength of the market study system is the ability to look beyond individual breaches of consumer or competition law and examine whole markets to assess the best way of remedying problems. We note the Government's preference that "pure" consumer market studies should not, in future be conducted by the CMA and wonder how this will work particularly since it is not often known at outset of a market study what the underlying causes of a given problem are. As noted in the covering letter, a requirement to transfer studies between agencies mid-way through a study seems to us to add complexity; create uncertainty for business; and delay remedy for the consumer.

Q30. Do you agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies in the proposed new landscape?

Q. 31. Do you agree that it would be helpful to have some resource that required joint agreement between the CMA, TSPB and consumer advocacy bodies for its release, to be used to investigate or address consumer and market issues that would otherwise risk an enforcement or advocacy gap? If so, what level should such funds be set and how best should they be administered?

We entirely agree with the concerns expressed within the consultation that any new structure should be designed to minimise overlap and duplication of effort. We also agree that as well as creating inefficiencies, overlap can perversely lead to enforcement and advocacy gaps should one authority imagine that a case fell more properly within another authority's control.

It is vitally important, therefore, to define responsibilities clearly at outset and establish agreed procedures and expectations around how the interface

between the organisations will work. ORR, for example, has letters of understanding with the Department for Transport and with the Office of Fair Trading setting out our respective roles in relation to consumer protection on the railways. We also have letters of understanding with our sectoral passenger bodies which include the circumstances in which complaints are transferred between us and expectations as to the sharing of intelligence.

In response to question 31 it is not clear how proposals around having some form of ring-fenced resource will work in practice and the extent to which it would effect more collaborative working between the various bodies than can be achieved by formal letters of agreement. The more likely scenario is that it will lead to tension and disagreement on how the resource will be employed particularly in an era where individual budgets are coming under significant pressure.

Q.32. Do you believe that an enforcement model branded as run by Local Authority Trading Standards Services would deter illegal behaviour? If not, how could the threat of enforcement needed to back up self-regulatory schemes be made more credible?

No comment

Q.33. Do you agree the TSI would be the appropriate home for the OFT's professional guidance and training functions in the event of creation of a new single Competition and Markets Agency?

We note the proposal to vest professional guidance and training functions with the TSI in the event of creation of a new single Competition and Markets Agency and have no objection to this in principle. Our concern is to ensure that the valuable training resource currently provided by the OFT to regulators in consumer law and enforcement is picked up somewhere within the new structure and that there is an agreed budget for this.

We are particularly concerned with proposals around the creation of national excellence centres (paragraph 5.58 refers) and the risk that this might lead to the loss of a central core of expertise upon which to draw where issues are complex and span a range of legal issues.

Q.34. Do you agree that the TSI is the most appropriate home for the OFT's international liaison and general policy functions in the event that the CMA as only a limited consumer enforcement role?

Q.35. Do you think the requirement for LATSS' and other designated bodies' (under Part 8 of the Enterprise Act 2002) Court orders to be directed by a central body needs to be retained in the new consumer enforcement model and if so, why?

Q.36. Do you agree that responsibility for chairing the consumer concurrencies groups should remain with the CMA?

Q.37. Do you agree that the current supercomplaints system to the OFT should be retained in respect of the CMA if the proposed changes go ahead?

Q.38. Do you think that the supercomplaints process should be extended to require the Trading Standards Policy Board to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?

In response to question 36, we receive significant value from being a member of the consumer concurrency working group in terms of the sharing of information and in the transfer of knowledge and lessons learned. We have no objection in principle to the proposal that the CMA retain responsibility for chairing the group and for its continuing existence. We do not entirely agree, however, that the stated reasoning behind this proposal is sound. It is not clear on what evidence BIS has formed its view that consumer enforcement in the regulated sectors is confined to matters which arise from structural market problems. Moreover, by retaining the group, in its current form, you are potentially creating policy silos and importantly missing an opportunity to promote institutional cohesion at outset.

An alternative option which we believe merits consideration would be a group expanded to include representatives from all bodies within the new structure, perhaps with a rolling Chair.

Q.39. Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?

No comment.

Q.40. Do you agree that the proposed changes to the consumer enforcement landscape should go ahead if the creation of the CMA is delayed? If not, why not?

No comment.