



Department
for Business
Innovation & Skills

**SMALL BUSINESS APPEALS
CHAMPION AND NON-ECONOMIC
REGULATORS**

Government response to the
consultation

JUNE 2014

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Introduction

The Government consultation [Small Business Appeals Champions and Non-Economic Regulators](#) closed on 23 April 2014. The consultation asked for views on the policy to create in law, and appoint, an independent Small Business Appeals Champion for each non-economic regulator to ensure that the needs of business – particularly small businesses – are taken into account with an understandable and effective appeals and complaints process.

This addressed evidence collected by the [Focus on Enforcement Programme](#) which suggested business were not always confident that there was a clear pathway to challenge decisions by a regulator, even when they felt there was strong reason to do so. Businesses - and in particular small businesses - need to be confident that they can ask for an explanation of or challenge to a regulator's decision, outcome, advice or behaviour without fear, disproportionate cost or long delays.

The consultation proposed that each Small Business Appeals Champion would have powers to scrutinise the way appeals and complaints are handled by national non-economic regulators; consider whether they are adequate, and make recommendations for improvements. Departments and Regulators would then be expected to consider any recommendations to improve processes made, and either implement them or explain, publicly, why they had decided not to do so. Small Business Appeals Champions would have no role in intervening in individual cases, and would have no power to do so.

It further proposed that these Champions would be senior part-time appointments. To assure their independence they would typically be Non-Executive Directors (NEDs) or equivalent of the Regulator.

The consultation considered the relative merits of both legislative and non-legislative approaches, the possible range of powers and duties of the Small Business Appeals Champion, and the scope of the bodies to be included.

Policy Background and Proposal

Small Business Appeals Champions are part of a package of 5 measures announced in the Autumn Statement 2012 to drive greater efficiency, accountability and transparency in the interaction between the regulator and those they regulate, as part of the Government's strategy to make the UK the best place to start, finance and grow a business.

The measures are:

1. The [Regulators' Code](#) - a statutory code of practice;
2. A 'Growth Duty' in primary legislation requiring regulators to factor economic growth into their decision-making;
3. Accountability for Regulator Impact, - an initiative to support better advance engagement with customers about proposed changes to regulators' policies and practices;
4. Work to address the shortcomings in regulators' appeals mechanisms identified in Focus on Enforcement reviews via the appointment of a Small Business Appeals Champion to relevant non-economic regulators;
5. Changes to the financial operating framework controlling regulators fees and charges, to drive regulator efficiency and remove perverse incentives.

The new [Regulators' Code](#), which took effect in April 2014, sets out Government's expectations for regulators' treatment of appeals and complaints by non-economic regulators. The Government believes that this needs to be accompanied by a new form of assurance that regulators are delivering against these expectations. The policy to appoint Small Business Appeals Champions was therefore proposed in order to:

- a. to create the conditions for auditing and improvement of regulators' appeals and complaints processes and policies, and;
- b. to ensure that regulators are accountable to those they regulate for those processes and policies, and improvements to them.

As there are a varied and broad range of statutory remits, enforcement regimes, and types of intervention against which a business may wish to appeal or complain, the Government believes that the most efficient means of improving businesses' experience of appeals and complaints is to ensure that arrangements for audit and scrutiny are established within each regulator, rather than being centrally organised.

Broadly, the intention is that Small Business Appeals Champions should be appointed in respect of the national non-economic regulators currently in scope of the new Regulators' Code. However, given the range of different statutory arrangements and practices among

these regulators the Government will need to give individual consideration to the application of the policy to each regulator before the policy is implemented (see Next Steps).

In the case of the financial services regulators, the PRA and the FCA, their existing statutory structures may offer a more proportionate means of delivering the objectives of the policy and an exclusion may be appropriate. We are minded to allow these regulators to meet the objectives of the policy through their existing structures.

Responses Received

A total of 25 responses were received. Responses came from a variety of sectors from business or their representative bodies to national regulatory bodies. The table and chart below summarise the split of respondents by category. Annex A provides a summary of the responses by question and a full list of respondents.

In addition to the written responses to the consultation, the policy and its supporting analysis has been informed by discussions with national regulators and Government Departments.

Table 1: Breakdown of the number of respondents by category

Respondents by category	Number of Respondents
Business	1
National Regulator	9
Trade Association/Business Representatives	12
Other (Third Sector Organisation, individuals etc)	3
TOTAL	25

Analysis and Government Response

This section provides a summary of responses received against each question in the consultation document, followed by a statement of the Government's planned course of action.

25 responses from national regulators, businesses, businesses representatives, professional bodies and individuals were received and analysed. Of the respondents, 7 did not fill out the questionnaire but, nevertheless, offered broader views which have been incorporated into the analysis below as appropriate.

A summary of answers and list of respondents is set out in Annex A.

Question 1: Do you agree that the creation of Small Business Appeals Champions for non-economic regulators will lead to improvements in businesses' access to, and experience of, effective appeals and complaints mechanisms?

Summary of Consultation Returns:

Of the 17 that responded to this question, 11 were received from non-regulators and 6 from regulators. Of the non-regulators, over 80% welcomed the proposal to create Small Businesses Appeals Champions in non-economic regulators and felt the measure would lead to improvements in businesses' access to, and experience of, effective appeals and complaints mechanisms. Of the regulators that responded, the majority were unsure whether it would lead to improvements in effective appeals and complaints mechanisms.

Government Response:

The Government welcomes business support for the creation of a Small Business Appeals Champion.

Question 2: Do you agree that legislation is necessary to establish Small Business Appeals Champions, and to set out their basic powers and duties?

Summary of Consultation Returns:

Answers from those that responded to this question (17) were split. 7 (all of whom were non-regulators) were in favour of the use of legislation to establish the Small Business Appeals Champions and to set out their basic powers and duties, whereas 6 were broadly against the use of legislation and felt that consideration should be given to alternatives or existing measures such as the Regulators' Compliance Code. A further 4 respondents were unsure.

Government Response:

The Government has considered the responses and has concluded that legislation will best achieve the policy goal, ensuring that the Champion has the both the powers and independence to make necessary recommendations and that the policy is implemented evenly across all appropriate non-economic regulators.

Question 3: Is the proposed statutory objective appropriate? If not, how should it be modified?

Summary of Consultation Returns:

Out of the 18 responses to this question, 13 considered that the proposed statutory objective was appropriate. Of those who disagreed, some suggested that the Appeals Champion should have stronger powers; and that the role should not be overly restrictive but extend to all businesses regardless of size.

Government Response:

The Government has considered the responses. Whilst the main focus of the Small Business Appeals Champions will be on small business, they will consider appeals matters affecting all businesses. Any recommendations made by the Champion and implemented by the regulator may equally apply to all business.

Question 4: Is the range of areas [that the Champion will be invited to focus on] adequate? If not, what do you think should be added or not included?

Summary of Consultation Returns:

Out of the 17 that responded to this question, 14 either agreed or thought it should be stronger. Of the 4 responses that thought the range of areas might be inadequate, all suggested extending the coverage - for example by including cost, time, and simplicity within the remit. Further suggestions included that the Appeals Champion should have the power to ensure the proper application of an appeals process in individual cases and the ability to hear appeals cases independently from the regulator. One regulator suggested that the Champion should also consider the robustness of process followed by the regulator in order to reach a decision.

Government Response:

The Government has noted these responses. The Champions' areas of focus will be set out in guidance, which will be developed in discussion with stakeholders and published in due course.

As part of the work to develop guidance, the Government will consider whether the additional areas suggested by respondents would be adequately covered by the remit above and will discuss potential additions with stakeholders.

Question 5: Do you agree with the proposals in respect of the Champion's report?

Summary of Consultation Returns:

Of the 16 that responded to this question, 11 agreed with the proposals in respect of the Champion's report, whereas 4 disagreed – for example, suggesting that it might be dependent on the nature and activities of the regulator or that the report should include additional requirements.

Government Response:

The content of each Champion's report will be influenced by both the proposed guidance, which will be prepared in due course, and the nature of the regulator. The Government will take the detail set out in responses into consideration while drafting this guidance.

Question 6: Do you consider it necessary to enshrine the duty to report in law?

Summary of Consultation Returns:

Of the 6 regulators that responded, the majority felt that the duty to report should not be enshrined in regulation. However, the majority of business or business representative bodies that responded felt that it was necessary to enshrine the duty to respond to each report in law.

Government Response:

The Government believes it is important that business has confidence that the Small Business Appeals Champion will deliver benefits, and that this should be the determining factor.

Question 7: Do you agree that regulators should be under a duty to provide relevant information when requested by a Champion?

Summary of Consultation Returns:

The majority of responses (4 out of 5 responses from regulators, and all of the responses from other groups) agreed that regulators should be under a duty to provide relevant information when requested by a Champion.

Government Response:

The Government has noted the strong support for this aspect of the policy and will therefore ensure that non-economic regulators are bound by a duty to provide relevant information when requested by their Champion.

Question 8: Do you anticipate any potential conflict of this requirement with any statutory restrictions on disclosing this information or other obligations of confidence? Are these avoided altogether by the fact that the Champion is appointed for the regulator? 7

Summary of Consultation Returns:

No respondent identified any potential areas of conflict with statutory restrictions.

Government Response:

The Government has noted these responses.

Question 9: Do you agree that a “comply or explain” approach is appropriate, and that it should be set out in guidance rather than legislation?

Summary of Consultation Returns:

Of those that responded to this question (18 in total), 8 – including the majority of regulators - agreed that a “comply or explain” approach would be appropriate, and that it should be set out in guidance rather than legislation. Of the 10 that disagreed or were unsure, some were unsure whether it would give the Champion enough power to ensure change and a further 3 respondents would prefer the duty to be placed in legislation.

Government Response:

The Government has noted these responses and support to set out ‘comply and explain’ in guidance, rather than regulation. The guidance will be developed in due course and after further engagement with stakeholders.

Question 10: Do you agree that to do the job effectively the Champion should normally be at the equivalent of Board level?

Summary of Consultation Returns:

Out of the 18 responses received for this question, 12 agreed that to do the job effectively the Champion should normally be at the equivalent of Board level, a further 4 were unsure and 2 responses disagreed.

Government Response:

The Government has noted these responses and expects that appointments to the role of Champion will be made at board level. Appointments will be made by the relevant Secretary of State on a case by case basis, taking into account the individual requirements of different regulators and the business sectors they affect.

Question 11: Do you agree that the Champion should have a background in the type of business predominantly regulated?

Summary of Consultation Returns:

Out of the 18 responses received, 10 agreed that the Champion would benefit from having relevant business experience, 4 were unsure and 4 did not think it was necessary, with a few responses suggesting that broader experience might also be important.

Government Response:

As noted above, appointments will be made on a case by case basis, to fit the needs of each regulator and the business sectors they affect.

Question 12: Do you agree that Champions will be able to operate effectively as part-time appointments?

Summary of Consultation Returns:

Overall, 14 out of 18 responses to this question stated that the Champion would be able to operate effectively as a part-time appointment. Of those 18 responses, 100% of the regulators and 70% of 'other' respondents agreed.

Government Response:

As noted above, The Government expects that appointments will be made on a case by case basis, to fit the needs of each regulator and the businesses they affect.

Question 13: Do you agree that the support which Champions are likely to require from regulators' staff will be limited?

Summary of Consultation Returns:

Of the 18 responses to this question, 13 either agreed or were unsure. Of those that were uncertain or thought that costs might be higher, 2 regulators and 4 responses from business or business representative bodies thought that initial costs for support staff might be higher as the Champions familiarised themselves with the work of the regulator, or felt that smaller regulators might bear a disproportionately higher burden.

Government Response:

The Government is grateful for these responses. In parallel to this formal consultation, Government has undertaken a separate exercise in partnership with regulators and Departments to assess the resource requirement and cost of the policy. The results support the general view expressed by respondents to the consultation that costs are likely to be minimal. Further detail about these estimates can be found in the Impact Assessment accompanying this publication.

Question 14: Do you agree that in some cases it would be sensible for one Champion to cover more than one regulator? Do you know of any groups of regulators where this approach might be worth considering?

Question 15: Are there any cases where sharing regulators would be inappropriate? Why?

Summary of Consultation Returns:

Of the 15 that responded to question 14, 12 either agreed or were unsure about whether a Champion should cover more than one regulator. Of those that disagreed (3) or were unsure, some felt that the Champion would be more effective if the role was able to focus on one regulator or business.

A large majority of respondents to question 15 could not identify specific cases where sharing regulators would not work. The issues that were raised related to the need for each Champion to be familiar with an industry and how it was regulated, rather than technical or legal barriers.

Government Response:

The Government has noted these views and, as set out above, that each Champion will be appointed on a case by case basis according to the needs of individual regulators and Departments.

Question 16: Do you agree that in order to ensure genuine independence, appointments should normally be made by whoever appoints the regulator (typically the relevant Secretary of State)?

Summary of Consultation Returns:

Of the 17 responses to this question, the majority (11) agreed that in order to ensure genuine independence, appointments should normally be made by whoever appoints the regulator. Of the remainder, 5 were unsure and 1 – a regulator – disagreed for practical reasons.

Government Response:

Government has noted these responses and believes that the appointment should be made in the same way as each regulator is appointed (normally by the Secretary of State), to ensure that the Champion is independent of the Regulator. The Government will work with Departments and regulators to identify and resolve any issues with this approach.

Question 17: Do you agree that the role should normally be added to an existing office-holder or employee's responsibilities?

Summary of Consultation Returns:

Responses to this question were evenly split: Of the 17 responses, 6 were in favour of adding the function to an existing office-holder or employee, 6 were against and 5 were unsure. In particular, some non-regulators were of the view that the appointment of a Champion should be external to the regulator.

Government Response:

Having considered these responses, Government believes that a Non-Executive Director (NED) or equivalent will typically allow sufficient independence to provide business with confidence in the policy. In addition, the Champion will have statutory duties that are independent of the regulator. However, as noted above the status and appointment of the Champion will be decided on a case by case basis.

Question 18: Do you agree that Champions' contracts should normally be based on existing arrangements for appointments in respect of a particular regulator? Are there any regulators for which this will not be possible?

Summary of Consultation Returns:

Of the 15 responses to this question, the majority felt the Champion's contract should normally be based on existing arrangements for appointments in respect of a particular regulator or were unsure.

Government Response:

The Government has noted these responses. In considering its guidance, and appointment arrangements for individual regulators, the Government will take into account specific comments made in the consultation.

Question 19: Are you aware of any non-economic regulators where the appointment of a Champion would not be legally or practically possible? If so, what alternatives do you suggest?

Summary of Consultation Returns:

Of the 14 that responded to this question, the majority (12) either could not identify any non-economic regulators where the appointment of a Champion would not be legally or practically possible, or were unsure if any restrictions existed. Of the 2 responses that disagreed, one regulator identified that it may be odds with their stated purpose but the other did not refer to any specific non-economic regulator or identify any reasons for their answer.

Government Response:

Government will engage further with respondents who identified barriers to individual appointments.

Question 20: Do you agree that any familiarisation costs for business associated with the appointment of Small Business Appeals Champions are likely to be very low?

Question 21: Can you suggest how much time a typical business might need for such familiarisation?

Summary of Consultation Returns:

The majority of respondents to question 20 (11 out of 16) felt any familiarisation costs for business, associated with the appointment of Small Business Appeals Champions, were likely to be minimal or insignificant. 1 response, from a regulator, suggested that familiarisation costs might be higher if the policy was put on a statutory basis.

Of the responses received for question 21 (6 in total), all felt that any familiarisation costs, and therefore the time a typical business might need for familiarisation with the appointment of a Small Business Appeals Champion, would be likely to be minimal or insignificant.

Government Response:

The Government is grateful for these assessments, which have supported its understanding of the costs associated with this policy. It has presented its analysis of likely familiarisation and other costs in the Impact Assessment.

Next Steps

This response marks the conclusion of the formal consultation on the policy to introduce to appoint a Small Business Appeals Champion to all relevant non-economic regulators.

We intend now to move ahead with the plans as set out in this response via the introduction of enabling powers in the Small Business, Enterprise and Employment Bill. Once the Bill receives Royal Assent, the Government will take secondary powers to implement the policy, including decisions on which regulators and regulatory functions will be covered. Appointments to posts will follow.

Annex A

List of Organisations* that responded:

Animal Health and Veterinary Laboratories Agency
Association of Chartered Certified Accountants
Association of Labour Providers
Association of Professional Financial Advisors
British Hallmarking Council
British Hospitality Association
British Private Equity and Venture Capital Association
Charity Commission for England and Wales
Chemical Business Association
Claims Management Regulation Unit
Corporation of Trinity House
Employment Agency Standards Inspectorate
Environment Agency
Federation of Small Business
Groceries Code Adjudicator
Home and Communities Agency
Legal Services Board
Monitor
National Federation of Retail Newsagents
National Union of Farmers
North East Chamber of Commerce
Northern Lighthouse Board
United Kingdom Weighing Federation
Valpak Ltd

*Please note that this does not include individuals

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