

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

Aberdeenshire Council .....	3
ABTA.....	4
ACTSO .....	5
Advertising Association.....	6
Advertising Standards Authority .....	7
Age UK .....	8
AITO – Assn of Independent Tour Operators.....	9
Auty, Allan.....	10
Alliance against IP Theft.....	11
Anglian Water .....	12
Angus CCTS* .....	13
BAR – British Association of Removers .....	14
Barnsley Metropolitan Borough Council .....	15
BATA – British Air Transport Association .....	16
Bell, Jeffrey .....	17
Benfaida, Laila .....	18
BEUC – European Consumer organisation.....	19
Blackpool TS.....	20
Boleat, Mark.....	21
Bosch Car Service .....	22
Brighton & Hove TS .....	23
British & Irish Ombudsman Association .....	24
British Airways .....	25
British Brands Group .....	26
British Compressed Air Society .....	27
British Gas .....	28
British Retail Consortium .....	29
BSI .....	30
BT .....	31
Buckinghamshire CCTS* .....	32
CAA – Civil Aviation Authority .....	33
Cambridgeshire CCTS* .....	34
Carpet Foundation .....	35
Cartwright, Professor Peter.....	36
CBI .....	37
Central England TS Authorities .....	38
Cheshire East Borough Council .....	39
Cheshire West & Chester Council .....	40
Children's Commissioner for Wales .....	41
Citizens Advice and CAS .....	42
City of London TS .....	43
Communications Consumer Panel .....	44
Competition Commission .....	45
Construction Licensing Executive.....	46
Consumer Council (Northern Ireland).....	47
Consumer Council for Water .....	48
Consumer Finance Association.....	49
Consumer Focus .....	50
Cope, Ray .....	51
COSLA – Convention of Scottish Local Authorities.....	52
David Hume Institute .....	53
Debt Managers Standards Association .....	54
Derbyshire CC .....	55
Devon CC .....	56
Direct Selling Association .....	57
East Midlands Trading Standards .....	58
East of England TS Association .....	59
East Riding, Yorkshire .....	60
East Sussex CC.....	61
ebay .....	62

EDF Energy .....	63
Electricity North West .....	64
Essex CCTS* .....	65

## Aberdeenshire Council



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22 August 2011

Mr David Evans  
Consumer and Competition Policy Directorate  
3<sup>rd</sup> floor  
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Dear Mr Evans

**Empowering and Protecting Consumers**

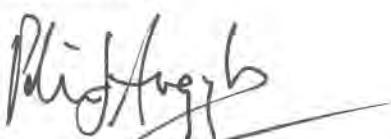
Thank you for the opportunity to respond to the consultation document, Empowering and Protecting Consumers.

There are clearly significant changes proposed to the consumer landscape and I welcome the chance to put forward views on behalf of Aberdeenshire Council.

The consultation document has been discussed by the Infrastructure Services Committee and the response is detailed in the attached Annex.

The response contains general comments in relation to particularly Chapter 2 on Information, Advice and Education, and Chapter 5 on Enforcement of Consumer Protection Legislation, and has detailed responses to individual questions where this is indicated.

Yours sincerely

  
Cllr Peter J Argyle  
Chair, Infrastructure Services Committee

## **Empowering and Protecting Consumers**

**A consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement.**

### **Chapter 1 Introduction**

The Government's aims of simplifying the landscape and clarifying the roles and responsibilities of the relevant organisations are to be welcomed. As well as reducing or eliminating overlap and so making better use of scarce resources, it will help consumers find the correct body to provide the information, assistance and support they need.

It also provides an opportunity to modernise the Trading Standards Service and help address cross-boundary and national issues more robustly.

There is a danger however that to make so many changes at a time of reducing budgets will lead to cuts in service rather than a transfer of services. Whilst recognising the challenges of the current economic climate, it will be important that sufficient resources are found to ensure these changes are successful and ensure adequate service provision thereafter.

The potential loss of the Office of Fair Trading (OFT) in particular could leave a gap in expertise and will need to be carefully planned and executed to ensure no loss in consumer protection.

Consumer Focus has also gained respect in its relatively short life, and it will be important to ensure Citizens Advice has sufficient capacity to be equally successful as a consumer advocate.

### **Chapter 2 Information, Advice & Education**

The proposal to deliver consumer information and first line consumer advice through Citizens Advice and Citizens Advice Scotland could offer some advantages over current provision. It is a nationally recognised brand and has the advantage over Consumer Direct (which offers a telephone helpline and website assistance) of offering additional face to face advice throughout the UK. It will however be vital to ensure that the high level of consumer advice is maintained with each individual enquiry dealt with by an officer providing bespoke advice and guidance relevant to the complaint. In particular the level of training required of advisors should not be less than that currently demanded by Consumer Direct.

Local Authority Trading Standards Services (LATSS) should continue to receive referrals and take on advice casework as is the current situation, and should have continuing access to the central database of complaints. This access is vital for LATSS to identify problem

traders, consumer detriment, scams and other problems and to enable them to have an intelligence-led approach to enforcement.

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

Information to consumers could be improved by allowing some form of restricted access to the national complaints database (currently Consumer Direct Central Database). With adequate disclaimers it could provide some indication to consumers of the businesses causing problems to consumers and prove a real driver in improving customer care. The development of a national trusted trader scheme would also fit well with the Government's aim of empowering consumers and providing the right information to them to enable them to make an informed decision.

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

The OFT consumer information and education role could be transferred to Citizens Advice, with adequate provision for any differences in the Scottish legal position to be addressed.

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

The proposed Trading Standards Policy Board (TSPB) and the Trading Standards Institute (TSI) should coordinate and support educating businesses.

### **Chapter 3 Consumer Code Approval**

No comments.

### **Chapter 4 Consumer Advocacy**

No comments.

### **Chapter 5 Enforcement**

The proposals are aimed at addressing potential enforcement gaps, particularly at regional and national level, as Local Authority budgets and others such as OFT and Local Government Regulation (LGR) shrink.

The consultation document seeks to delineate between local, regional and national enforcement but it is important to recognise that the vast proportion of trading standards work carried out by LATSS at a local level has a regional and/or national impact. Ensuring products are the correct weight, ensuring unsafe toys are removed from the market, ensuring websites are compliant, operating Home Authority and Primary Authority schemes- all help protect consumers outwith as well as within a local authority boundary. It is important therefore that roles (and budgets) are not too compartmentalised otherwise it

may act as a disincentive for LATSS to take on cases which they would currently pursue with the potential to create rather than address an enforcement gap.

The recent National Audit Office Report- Protecting Consumers-The System for Enforcing Consumer Law, recommends that an appropriate level of spend is established for adequate protection of consumers, and we would urge the Government as part of this exercise to address this recommendation.

This along with the development of appropriate performance measures would then allow for improved accountability of LATSS which would help ensure all local authorities were pulling their 'Trading Standards' weight. And with improved coordination and collaboration arrangements would go a long way to achieving the improvements required.

The National Audit Office report also found there was a need to work more collaboratively and recommended improved coordination arrangements for cross boundary and national cases, better reporting and accountability arrangements for national priorities, clarification of responsibility of all bodies and a coherent, overarching governance arrangement.

**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?

Of the options explored in the consultation for reform of the enforcement powers and responsibilities, most will go some way to addressing the issues above.

It is noted that the Governments' preferred option 3 proposes that the majority of the OFT's current consumer enforcement functions are transferred to local authority trading standards which develops a new national leadership and coordination function for cross boundary and national enforcement. In England and Wales this leadership is proposed to be provided via a new Trading Standards Policy Board (TSPB), with national and cross boundary enforcement being undertaken by Primary or Home Authorities and by expanded regional teams such as scambusters. There is however a lack of detail in the document on how this might be delivered in Scotland, both operationally and in terms of governance arrangements, and it is acknowledged within the report that this work is still ongoing.

It is disappointing that the consultation has been launched in advance of any detailed Option 3 proposals for Scotland.

The transfer of national enforcement to local authority trading standards is however generally welcome providing it is adequately funded to allow for employment of the resources and expertise required. In today's ever more global trading environment, there needs to be an increasing focus on national and regional enforcement issues and it is right that trading standards should be at the centre of this.

A directing body to coordinate and provide leadership on national and cross boundary issues would be essential. It must have the knowledge and resources to allow it to adequately address the different legal system, occasionally different problems, and in some cases different legislation in Scotland.

The creation of such a body would provide an opportunity to improve coordination and consistency throughout the Trading Standards community, through providing strategic direction, setting of national priorities and development of performance measures, and ensuring the delivery of adequate training and advice & guidance material etc. It could also provide a central enforcement body within Trading Standards able to engage with businesses and other partner agencies when required.

Funding would need to be sufficient to enable access to the resources required to tackle issues at the appropriate level such as expert lawyers, legal opinion etc. It will also be crucial to ensure an indemnity fund is available to allow authorities to pursue all appropriate cases.

**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 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?

The Competition and Markets Authority (CMA) should retain a consumer enforcement role for cases affecting a structural market problem and for mixed market studies e.g. the bank charges case. It should have significant discretion over when it thinks there is a structural market problem to ensure the flexibility and speed of response which may possibly be required.

**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?

It would seem in keeping with the government's aims of clarifying roles to leave consumer market studies to Citizens Advice and for the CMA to 'hand over' any studies found not to have structural market problems. It is not believed necessary to place a duty on any TSPB to give CMA referred cases automatic priority.

**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?

If the TSPB is tasked with prioritising enforcement action at national level, it will be important for them to have an overview of activity by other related bodies such as Citizens Advice and the CMA. It would thus seem appropriate to discuss this at the regular meetings of the TSPB.

**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?

**If you have difficulty reading this document please contact  
Lisa Moir on 01224 664065**

It is believed enforcement by Trading Standards should be an effective deterrent to illegal behaviour to support industry led compliance schemes such as the Advertising Standards Authority. However there are issues around low sentencing levels, particularly in Scotland, which may prove an insufficient deterrent. It may be that a national enforcement team or expanded regional teams will develop the necessary reputation and may not have the same issues around sentencing.

**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 will be important to ensure that the Trading Standards Institute (TSI) is adequately funded for all additional roles so that the costs do not end up being passed on to local authorities. The OFT currently provide their guidance free of charge. TSI could supply this guidance but it should remain free of charge.

**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 will still be important that there is some mechanism to ensure there is no overlap in action taken by designated bodies under the Enterprise Act. The current Consumer Regulation Website may be a vehicle to allow designated bodies to research current activity. Otherwise a TSPB could liaise with other designated bodies where necessary.

**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?**

Supercomplaints could usefully be retained in respect of the CMA and extended to the TSPB for relevant complaints and it would seem appropriate that the TSPB should issue a reasoned response in relation to consumer complaints.

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

Again providing the funding and access to resources is provided, a lead authority could take on Estate Agency and Money laundering duties currently carried out by the OFT.

19 July 2011

# ABTA



## **ABTA response to the Department for Business, Innovation & Skills (BIS)**

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

#### **Introduction**

ABTA – The Travel Association - was founded in 1950 and is the leading travel trade association in the UK, with over 1,300 members and over 5,000 retail outlets and offices. Our members range from small, specialist tour operators and independent travel agencies through to publicly listed companies and household names, from call centres to internet booking services to high street shops. ABTA Members provide 90% of the package holidays sold in the UK as well as selling millions of independent travel arrangements. The provision of quality, efficient and competitively priced passenger air travel is vital to the business interests of Members.

ABTA welcomes the Government's initiative to consult on consumer empowerment and protection. ABTA in the main supports the Government's objectives as set out in this consultation, with reservations over the loss of the work the OFT does on national consumer law enforcement, and on the proposals for consumer codes accreditation schemes.

ABTA's main purpose is to help our Members to grow their businesses successfully and sustainably, and to help their customers - the travelling public - have confidence in their travel experience. As part of achieving this, ABTA provides advice on consumer law to Members, in order to help them comply with their obligations and provide a good service to their customers. ABTA's Legal Department is very experienced and skilled at providing guidance to travel companies on how consumer legislation applies to them. It handles thousands of enquiries a year.

ABTA also provides advice and information to consumers through the ABTA website and through email and telephone contact, again with substantial expertise on their rights and obligations as they apply in the travel industry. On average, ABTA receives 18,000 telephone consumer queries and 12,500 written complaints concerning our members each year. In addition, the consumer advice pages of the ABTA website-

abta.com- receive on average 167,500 visits each year. This can be favourably compared with the 3,180 problems relating to package holidays advised on by Citizens Advice in the year 2010/11.

ABTA also operates a very successful Code of Conduct. For nearly 50 years ABTA has maintained its Code, which governs the relationship between Members and their customers, between Members and ABTA, and between Members and other Members. The primary aims of the Code of Conduct are to ensure that the public receive the best possible service from Members, and to maintain and enhance the reputation, good name and standing of ABTA and its Members. All Members must abide by the Code and we take enforcement action where necessary.

Consumers place their trust in ABTA because we make sure that our Members adhere to the Code of Conduct. We investigate several hundred cases every year and where appropriate Members can face penalties for breaching the code, including fines and termination of membership. Consumers are informed that ABTA has taken disciplinary action over their complaint and additionally each year we report on the number and nature of Code breaches, and how they have been resolved. The current report can be viewed at [http://www.abta.com/about/industry\\_standards](http://www.abta.com/about/industry_standards)

The Code is recognised and supported by our Members and is used as a selling point to distinguish their companies from those that do not live up to the ABTA standard. Consumers can have confidence that their ABTA travel company will provide them with a good service and that, if things do go wrong, they have somewhere to turn.

ABTA's work in self-regulation is recognised and accepted, for example, we worked closely with the OFT in 2008/2009 on misleading airline pricing and ensured that our Member travel agents and tour operators complied with the law.

ABTA has developed strong relationships with Trading Standards. We attend their Travel Focus Group meetings and Trading Standards officers are involved in one of ABTA's core processes, our Code of Conduct enforcement. We enforce our Code through a Code of Conduct Committee made up of ABTA Members. At every meeting of the Committee, Trading Standards officer(s) are present and play a full part in the decision making.

## **General**

ABTA believes that well-functioning competitive markets are the best form of consumer protection.

ABTA agrees that it is important that consumers are properly informed and any simplification of the institutional landscape that achieves that is to be welcomed.

It is important that consumer advice and information is accurate, which would mean, in our opinion, the various bodies working with industry bodies, such as ABTA, to ensure that their knowledge is up-to-date and accurate.

The focus of enforcement should be only in areas where it is required and on rogue traders.

Consistent treatment for businesses is key.

Businesses should have access to good advice and information on how to comply with their obligations.

ABTA welcomes the Government's view that regulation must not be excessive and that it supports flexible, non-regulatory approaches to ensuring consumers are empowered and protected.

### **Citizens Advice**

Citizens Advice does have a good name in consumer advice so if that can be built into an effective national service from which consumers can easily access the information they need this would be a welcome outcome. However it appears that this would be a sizeable challenge as Citizens Advice is perhaps known at the moment in certain areas, for example debt advice and as having an old-fashioned way of working from offices in local high streets. ABTA's concern would be that Citizens Advice has sufficient expertise to advise on all the different industry sectors.

ABTA's view is that Citizens Advice should be a one stop shop for consumer advice, centred on its website. The main function of this should be to signpost consumers to the available sources of information. Citizens Advice should work with industry specialist bodies and be aware of the sources of consumer assistance that are already out there. The ABTA website contains a lot of information for consumers on travel law and how to complain. We have found in the past that other websites, such as Consumer Direct, do not have the same specialist knowledge and do not always get their consumer advice right.

### **Trading Standards**

ABTA would support Trading Standards carrying on and enhancing its role in the enforcement of consumer law, as long as the Government's stated aims are achieved. Consumer enforcement activity must be sustained at a certain minimum level across the entire country. Activities should be directed at more effective action against cross-boundary threats, especially rogue traders and scam operators.

Great care needs to be taken to retain the national enforcement capability that has existed to date with the OFT. It has run many successful projects on national issues, such as airline pricing. There is a danger that moving this role to Trading

Standards would mean the loss of this national focus and this must not be allowed to happen. In our opinion most consumer detriment does not happen at local level.

There is also a danger that Trading Standards would not be viewed as having the gravitas or capability to undertake the role previously fulfilled by OFT. The perception is that Trading Standards operate on a local or regional level. They must be given sufficient assistance, presumably in the form of resources, expertise and publicity, to step up to the national level and ensure that businesses accept them as a regulator with teeth.

Businesses want to have a constructive relationship with their local Trading Standards office and above all, want consistency in enforcement. The Primary Authority scheme is a good idea that has been taken up by businesses and it should continue.

It would seem a useful idea for Trading Standards to be in charge of education for business, as that provides a direct link between the advice given to business on how to comply, and the enforcement side. Business would be able to have confidence that they could obtain accurate advice and could work with Trading Standards to ensure they comply and avoid enforcement procedures.

### **Consumer Codes**

ABTA welcomes the Government's support for self-regulation. It is indeed true that good businesses have long developed voluntary codes of practice which go beyond the law, to reassure consumers and boost their confidence and the travel industry, represented by ABTA, is a case in point.

ABTA's Code of Conduct is well-known, well-respected and well enforced.

ABTA's Code was part of the OFT's CCAS some years ago, but then had to withdraw from the scheme when changes to our consumer financial protection arrangements meant that we no longer guaranteed to protect consumers' money in all cases. It was unfortunate to have to withdraw from the scheme due to a reason not directly connected with the Code. The consumer benefits contained in the Code, such as the maintenance of high standards by our Members and the assistance with the resolution of complaints, were always delivered, and still are.

ABTA believes that the CCAS hasn't been a great success. It is not well-known amongst businesses and there are few codes in the scheme. There is no great desire from businesses to be part of the scheme and if businesses are not engaged then it is not contributing to improved standards or better consumer care.

ABTA agrees with the Government that there is an appetite in the market place for self-regulation and for codes of conduct. If left to the market, businesses will develop codes and voluntarily live by them. There is no need for government

intervention in that area. There does not seem to be a need for a code accreditation scheme either as the CCAS has not been a success.

The area where there could be intervention and things should not be left to the market is in ensuring that codes are living up to their billing. If a code claims to deliver benefits for consumers then there should be a mechanism to check that this is happening and to penalise code owners that do not deliver on these promises.

The principle in the Consumer Protection from Unfair Trading Regulations, that traders cannot claim to be governed by a code of conduct when they are not, could be developed to include this concept. Codes must not claim benefits for consumers if they don't provide that.

Code owners should be prepared to show that they take enforcement proceedings when breaches of the code occur and that the code is working in terms of delivering higher standards for consumers. This would be more useful than an accreditation scheme, which could just become an exercise for code owners to go through to say they have the logo.

If the Government was minded to continue with a scheme of some sort, the best proposal contained within the consultation is for code owners to form Primary Authority relationships with Trading Standards. ABTA doesn't believe that consumer organisations such as Which? should be in charge of a code accreditation scheme. We feel strongly that as self-regulatory tool codes are written by and for business and that should remain the case. ABTA does not see value in existing CCAS codes being turned into standards.

Thank you for taking our comments into consideration.

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30September 2011

## ACTSO



## **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 The Department of Business, Innovation and Skills (BIS) issued its consultation paper on '[Empowering and Protecting Consumers](#)' on 21 June 2011. It 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 The 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 Association of Chief Trading Standards Officers (ACTSO). ACTSO is the single membership organisation representing Heads of Trading Standards and regulatory services from councils across England and Wales. ACTSO supported by the Trading Standards Institute is focussed exclusively on providing a comprehensive co-ordinated leadership forum at the national level whilst assisting members to lead their services both locally and regionally which is a section of the Trading Standards Institute (TSI). This response was formulated in conjunction with the members of the trading standards policy forum who are members of ACTSO and also the regionally nominated leads for trading standards services in each English region and also in Wales.

1.4 In formulating this response, ACTSO 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 assumptions may change.

1.5 Also ACTSO 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.

1.6 The consumer landscape proposals focus on the fair trading elements of our work, we also answer to other central government departments and agencies and local politicians for other enforcement issues. A further improvement would be to better coordinate and simplify arrangements between central government departments and LATSS.

## 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.

Each individual enquiry should be dealt with by an officer who provides bespoke advice and guidance relevant to the complaint. ACTSO would not support any reduction in the standards of advice from that currently provided. (E.g. 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?*

ACTSO 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 2<sup>nd</sup> 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.

ACTSO 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, it would be helpful if each LATSS could provide Citizens Advice with a named contact for trading standards too.

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.

ACTSO recognise that Citizens Advice Bureaux locally 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?***

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?***

ACTSO 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.

ACTSO welcomes the recognition that local authorities should remain responsible for direct delivery of education to consumers at local level. '*Skilled to Go*' and '*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 to11**

ACTSO 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. 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. ACTSO believes that there are great opportunities to build on these existing Local Authority Assured Trader Schemes 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 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 to15

ACTSO 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, need 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.

Some LATSS currently offer second tier advice and advocacy for consumer complaints. These local authorities still feel it is important to maintain a level of support for their local businesses and consumers. ACTSO would not wish any changes to undermine any locally delivered support.

ACTSO would be happy to work with Citizens Advice in England and Wales 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?***

ACTSO 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?

ACTSO 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. ACTSO believes that LATSS have the skills, experience and willingness to deliver the outcomes the Government wants to see. ACTSO members have been very positive about the new proposals. However, it is 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. (E.g. LATSS 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).

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 ACTSO 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 then 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

ACTSO 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 direct this work be responsible for allocating Government funding, under a service level agreement nor 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 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. ACTSO will discuss these options directly with the LG Group and WLGA. 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 ACTSO, WHOts, SCOTSS and TSI on that Board plus other representatives such as BIS.

Others 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 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 ACTSO 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 significant knowledge or experience of running Trading Standards Services. 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 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, for example via ACTSO or TSI or some other arrangements. In accordance with the values agreed by all the Chief Officer Societies across Great Britain, there is a commitment to ensure 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.

#### Relationship to existing Trading Standards Policy Forum (TSPF)

The specific accountability and role of the TSPB is different to the existing TSPF, both in terms of scope, role and ability to deploy resources. The business and decisions of TSPB will need to be distinct from the broader policy making role of the TSPF. However, to use heads of trading standards time most effectively, and avoid confusing the landscape further, we are confident that the functions of the two can be dealt with via the same people and at the same meetings as long as the recording and accountability processes are clear. The exact details about timing, frequency, locations etc of meetings will be resolved as proposals become clearer as to the range and scope of responsibilities of the TSPB.

#### 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 the 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 associate with the functions.

Based on our assumptions at the moment 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 to others.

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 it is crucial that any region or council that bids for aspects of the work are absolutely confident they can deliver.

ACTSO 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.

ACTSO 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.

ACTSO 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.

We 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 scambuster and illegal money lending teams, ACTSO would expect 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 but not be put at significant financial/legal risk and 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 ACTSO would not recommend that any council should undertake any of these national high risk cases.

ACTSO has already arranged a meeting with BIS and one of the key public sector insurers to discuss possible options and this will be followed up in the early autumn.

*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.

ACTSO 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 LATSS. The JEB would also not be controlled by heads of trading standards and could not be held accountable in the same way.

ACTSO 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 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

ACTSO 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.

ACTSO 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 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 LATSS and the CMA.

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?*

## Response to questions 30 and 31

ACTSO agrees 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 minimise the bureaucracy associated with any such scheme. Whilst ACTSO 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.

## 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. ACTSO 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. ACTSO are aware that some regional groups and indeed other external providers may also want to bid for this type of work.

## 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?*

ACTSO 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 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?***

ACTSO 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. ACTSO believe that the role could pass to either TSI or the CMA but it will be dependent on the final scope/role that the Government would wish the CMA to take. TSPB would need to be aware of any key issues arising from the group but intelligence could be shared using TSPB meetings.

***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, ACTSO 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?***

ACTSO 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 ACTSO 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. We do not believe that the current negative licensing system for estate agents is necessary.

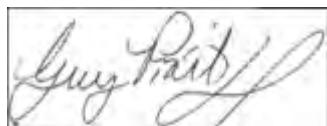
The enforcement of anti-money laundering regulations is dealt with in an extremely "light touch" way by the OFT, and any transfer to LATSS would be focussed on dealing with serious known breaches and providing appropriate advice and support to businesses who may seek advice on compliance. This could 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?***

ACTSO believes that it is essential that the proposed changes to the consumer landscape should go ahead in April 2013. This would avoid 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 Director of Policy, Wendy Martin on 07982 418423 or via [admin@actso.org.uk](mailto:admin@actso.org.uk)

A handwritten signature in black ink, appearing to read "Guy Pratt".

Guy Pratt  
Chairman ACTSO

16 September 2011

## Advertising Association

## **Advertising Association response to the BIS consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement**

**September 2011**

### **1) The Advertising Association**

The Advertising Association (AA) is the only organisation that represents all sides of the advertising and promotion industry in the UK - advertisers, agencies and the media. In the UK, the advertising industry employs nearly 250,000 people. In 2010, advertising expenditure was £15.5bn.

We promote and protect advertising. We communicate its commercial and consumer benefits and we seek the optimal regulatory environment for our industry. Our goal is that advertising should enjoy responsibility from its practitioners, moderation from its regulators, and trust from its consumers.

### **2) Overview**

The Advertising Association supports any moves towards less and better regulation. Therefore, the Government's drive towards strong consumer protection delivered by a clearer and more proportional regulatory system is something we support.

We believe it is essential that both the Advertising Association and Advertising Standards Authority (ASA) are closely engaged with the process of developing the new model for consumer protection in relation to advertising. As such, we welcome the Government's recognition in this paper of the ASA's important role in resolving advertising complaints.

### **3) The self-regulatory system**

As stated in the BIS paper, the advertising codes administered by the ASA supplement legislation and fill gaps where the law does not reach by also ensuring that advertisements are tasteful, decent and socially responsible. The system is highly effective and considered to be gold standard in self-regulation both in the UK and internationally.

The system of advertising self-regulation comprises two major elements. Firstly, advertising codes to which marketers must abide. Secondly, the ASA itself which is charged with monitoring, policing and enforcing these codes. The codes are underpinned by consumer protection legislation and reflect UK and EU law. The self-regulatory system is funded by industry but operates independently from industry in order to ensure impartiality.

The ASA is a non-statutory body and as such does not have the power to fine or take advertisers to court. The ASA's primary sanction is to have advertisements that are judged to be in breach of the advertising codes withdrawn and so prevent them from appearing again. In the vast majority of cases advertisers agree to withdraw their advertisements following an upheld complaint and these sanctions are effective. In the case of misleading non-broadcast advertising, should an advertiser fail to comply with an ASA adjudication or persistently offend, the ASA is able to refer a case to the OFT. The ASA has long been recognised as the 'established means', with referral to the OFT (or TSS) only undertaken very occasionally. While referrals are infrequent, the ASA's ability to refer cases to the OFT serves as a useful tool for the ASA in the rare circumstances of persistent non-compliance.

There are a number of reasons for the ASA's success as a self-regulatory body. But perhaps the most important is that it incorporates the national tripartite system. When advertisers, agencies, and media are all involved in the process, the chances of compliance are greatly enhanced. The ASA's effectiveness also results from proving itself to be a credible and transparent body. The effectiveness of the self-regulatory system leads to a very high compliance rate and, as such, referral to the OFT takes place only very occasionally.

#### **4) The ASA, OFT and Trading Standards – current relationship**

As stated above, the ASA is able to refer advertisers who fail to comply or persistently offend to the OFT for legal action. The OFT is able to act under the Consumer Protection from Unfair Trading Regulations 2008, which governs how businesses interact with consumers, and the Business Protection from Misleading Marketing Regulations 2008, which govern how businesses advertise to each other. Under agreement with the OFT, the ASA is considered the 'established means' for gaining compliance with both these pieces of legislation. This means that the ASA is the first point of call for addressing any problems under the advertising codes and the law is not usually enforced formally. As we have made clear, this self-regulatory approach is effective for both consumers and business, and furthermore, it reduces pressure on the court system.

The relationship between the Trading Standards Service (TSS) and the ASA is less formalised than the relationship between the OFT and the ASA. The local Trading Standards office should refer a case to the ASA as it also recognises the ASA as the established means. The TSS has enforcement powers under the same broad range of legislation governing advertising practices that the OFT has. However, the majority of referrals from the ASA are made to the OFT and not TSS. The ASA may refer a case to the local TSS if it is felt that a local TSS is more suited to settling the case. For example, if the complaint relates to misleading advertising in flyers circulated in a relatively small geographic area and it has not been easy to identify the perpetrators or to at least draw out compliance from those involved.

Both TSS and the OFT can investigate advertising complaints relating to misleading or illegal advertising but this usually only occurs after referral by the ASA. The ASA will refer cases to these bodies should persistent offence take place or if a company fails to adhere to the advertising codes. If a referral is deemed necessary, the ASA will usually refer cases to the OFT who will make the decision as to whether the case is best addressed by themselves or TSS. However, on occasions when a case relates to a localised campaign by a persistent rogue advertiser which is clearly best addressed by TSS, then the ASA may refer directly to TSS.

It is important that the relationship between the self-regulatory system and statutory bodies is maintained in the new system. The ASA's role as the "established means" for advertising regulation must be preserved.

#### **5) AA response to 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 are not convinced that an enforcement model branded Local Authority Trading Standards Services would deter illegal behaviour. We believe that it is essential that the enforcement body has a name that will more clearly signal its authority and thus ensure that companies comply with self-regulatory systems such as that administered by the ASA. We believe that work needs to be done to develop effective branding for the new enforcement body. A potential improvement would be for LATSS to be renamed the "National Enforcement Office", "National Enforcement Unit", or

"Fair Trading Enforcement Unit". Currently the ultimate threat of referral to the OFT is detailed in correspondence between the ASA and a company under investigation - this serves as a reminder of the ASA's ability to take the case to a statutory body. It is essential that any new enforcement body has a credible, recognisable name which encourages speedy action by companies and we do not think that this is achieved by a model as branded as run by Local Authority Trading Standards Services.

While a strong name or brand for the enforcement body is essential, what is even more important is that the body created is a strong, well publicised national coordination body that is able to manage action on ASA referrals. The new body will be judged by its actions and its ability to function. Therefore, the new body will require proper funding, quality and experienced personnel, and needs to be respected as a genuine authority by Government. The effectiveness of the OFT as a consumer protection body must be recognised and it is essential that the changed structure does not diminish the high level of consumer protection that the OFT currently provides.

While it is important for the consumer protection body to be effective and able to act as the ASA's statutory backstop in the rare cases when the ASA makes a referral, it is essential that the body does not unnecessarily duplicate the work of the ASA. The new body should focus on being intelligence led and must provide effective national leadership for TSS. We believe that the focus should be on consistent and proportionate enforcement action with the core target being against the actions of rogue traders and in the areas where there is evidence of the greatest consumer detriment. The ASA has a proven record of protecting consumers from misleading advertising and as such we anticipate that the advertising related workload for the new enforcement body will be low, as is currently the case with the OFT. Therefore, there is no need for a specific advertising division in the new enforcement body or a Primary Authority with specific expertise in advertising as this would unnecessarily duplicate the work of the ASA.

In conclusion, we ask for the new enforcement body: to be appropriately branded so as to recognise its power; to have sufficient resources so that it can be recognised as an effective body; and to only act when is necessary and not duplicate the work of other, effective self-regulatory systems, such as the one administered by the ASA.

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## Advertising Standards Authority



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03 October 2011

**ASA response to the BIS consultation on institutional changes for the provision of consumer information, advice, education, advocacy and enforcement**

**1. Introduction**

- 1.1 The Advertising Standards Authority (ASA) is grateful for the opportunity to respond to this Department for Business, Innovation and Skills (BIS) consultation on institutional changes to the consumer landscape.
- 1.2 The ASA is the UK self-regulatory body for ensuring that all advertisements, wherever they appear, are legal, decent, honest and truthful.
- 1.3 As a UK consumer protection regulator, the ASA has a strong interest in the Government's proposals. Advertising self-regulation operates best within an effective consumer and competition regulatory landscape.
- 1.4 The Government's preferred reform options would see the loss of the Office of Fair Trading (OFT) as a statutory backstop to the ASA system for non-broadcast advertising, and the allocation of a number of important OFT functions to other organisations.
- 1.5 We appreciate that the proposals have not yet been fully fleshed out, but this does mean that it is difficult to comment in any detail on the ramifications of the proposals.
- 1.6 We welcome the commitment by Government to ensuring the success of self-regulatory schemes such as that administered by the ASA. The ASA operates in the public interest and at no cost to the tax payer. We are grateful, in advance, for the Government's careful consideration to ensure

that the integrity of the ASA system is not undermined as a result of any changes.

1.7 Whilst we agree that the consumer enforcement landscape in the UK has not always operated to best effect in recent years, we do have some concerns about the proposals. We are not opposed to change, but are keen that any changes represent an improvement of the current system. We feel it is important to be frank about our reservations at this stage.

1.8 Our starting point is that we are in favour of an effective competition and consumer regulation regime. As the ASA is a part of that regime, we believe that a key characteristic of the regime must be an effective statutory backstop to the ASA, which has – and is perceived to have - national authority. Our primary concern is that the proposals, as outlined, leave this outcome subject to some uncertainty.

1.9 This submission provides:

- A summary of the UK advertising self-regulatory system. More detailed information can be found on our website [www.asa.org.uk](http://www.asa.org.uk).
- An overview of the ASA's relationship with the OFT.
- Our views on what makes an effective consumer enforcement landscape and what this means in the context of the proposed changes.
- Our response to Question 32 'How can the threat of enforcement needed to back-up self-regulatory schemes be made credible?'

## **2. An overview of the ASA system**

2.1 The ASA is the UK self-/co-regulatory body for ensuring that advertising in all media is legal, decent, honest and truthful, for the benefit of consumers, business and society. It does this by administering the UK Advertising Codes.

2.2 The Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) are the industry bodies responsible for writing and maintaining the UK Advertising Codes. CAP writes and maintains the UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing and BCAP writes and maintains the UK Code of Broadcast Advertising<sup>1</sup>.

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<sup>1</sup> More information can be found at [www.cap.org.uk](http://www.cap.org.uk).

- 2.3 The system is both self-regulatory (for non-broadcast advertising e.g. press, poster, cinema, online, video-on-demand (VOD) services and direct mail) and co-regulatory (for TV and radio advertising). For non-broadcast advertising this means that advertisers, agencies and media have come together to write the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code) and have set up the ASA as an independent body to judge whether ads breach the Code. There is no formal Government involvement in the system. On the rare occasions we are unable to secure compliance with the rules on unfair, aggressive and misleading advertising in non-broadcast media we can refer advertisers to the OFT for further regulatory action under B2C and B2B laws.
- 2.4 For broadcast advertising we operate under a co-regulatory partnership with Ofcom. This means that we have a contract with Ofcom which gives us day-to-day responsibility for maintaining standards and for acting on complaints about TV and radio ads. Broadcasters are obliged to comply with the BCAP Code under their broadcast licences. Non-compliant broadcast advertisers can be referred to Ofcom. The Government's proposals do not impact upon this arrangement.
- 2.5 The Advertising Codes sit within a legal framework, which means that, where appropriate, they reflect the standards required in law, e.g. misleading and unfair advertising. However, they may also contain rules that go beyond legal requirements, such as those relating to harm, offence and social responsibility.
- 2.6 The ASA deals with more than 25,000 complaints per year and operates at no cost to the tax payer. In fact the system is entirely funded, voluntarily, by the advertising industry, by a levy on paid-for advertising.
- 2.7 The ASA is committed to upholding high standards in advertising. The system takes a 360° approach to regulation, which includes pro-active monitoring, comprehensively enforced rules and training and advice for advertisers on the requirements of the Codes.

### **3. An overview of the ASA's relationship with the OFT**

- 3.1.1 **Statutory backstop**
- 3.1.2 In 1988, the introduction of the Control of Misleading Advertisements Regulations 1988 (implementing the Misleading Advertising Directive) provided the ASA with a legal backstop for misleading non-broadcast

advertising. This means that since this date the ASA has been able to refer businesses that refuse to comply with ASA non-broadcast rulings on misleading advertising to the OFT for further action, including the possibility of statutory sanctions. Today these referrals may be made for breaches of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and the Business Protection from Misleading Marketing Regulations 2008 (BPRs)<sup>2</sup>.

- 3.1.3 The ASA is recognised by Government, the OFT and other regulators as being the 'established means' for regulating unfair or misleading and comparative ads in non-broadcast media in the UK. We have a good relationship with the OFT and follow mutually agreed Case Handling Principles. But our relationship is not formal / contractual.
- 3.1.4 This relationship is predicated on the fact that the ASA was established to regulate the vast majority of advertisers who operate within legal and regulatory limits. These businesses willingly work with the ASA and are rarely, if ever, subject to statutory sanctions via the courts. The relationship therefore recognises that there will be some businesses that do require statutory intervention, such as rogue traders. These are best dealt with by bodies underpinned by statutory, rather than self-regulatory, powers.
- 3.1.5 On the rare occasions we are unable to secure compliance with the rules on unfair, aggressive or misleading advertising in non-broadcast media, we can ask the OFT to consider taking action under the CPRs or the BPRs, in line with our agreed Case Handling Principles. The OFT can seek undertakings from a company that it will change its ads. It can also seek injunctions from the Court to prevent companies from making misleading claims in their ads.
- 3.1.6 Over the last ten years the ASA has made just 19 referrals to the OFT. In 2010 the ASA received 25,214 complaints and our work resulted in the removal or amendment of 2,226 advertising campaigns. We rarely have to refer advertisers to the OFT.
- 3.1.7 Although difficult to quantify, we know that the threat of OFT enforcement action is critical to persuading some advertisers to comply with the CAP Code. The ASA refers to the OFT in nearly all

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<sup>2</sup> The CPRs prohibit unfair marketing to consumers, including misleading or aggressive advertising. Whenever it considers complaints that a marketing communication misleads consumers or is aggressive or unfair to consumers, the ASA will have regard to the CPRs.

correspondence with advertisers when taking up cases about misleading, aggressive or unfair advertising and our Compliance teams use the threat of referral to encourage compliance amongst businesses that initially refuse to comply. That threat is a key part of our armoury of sanctions. We believe the low number of referrals is testament to its effectiveness.

- 3.1.8 The ASA has enjoyed a good relationship with the OFT, which has respected and trusted the ability of the advertising self-regulatory system to uphold high levels of consumer protection and maintain a level playing field for the industry. That is not to say that we do not recognise there is room for improvement with the consumer enforcement mechanism at the OFT.

### 3.2 Other OFT roles

- 3.2.1 The OFT performs a number of other roles that are of value to the ASA system beyond acting as our statutory backstop. These include:
- 3.2.2 **Policy and market analysis** - The OFT's policy and market analysis functions can have benefits for the work that we undertake. The OFT provides invaluable advice to help CAP write the rules and guidance for misleading and unfair advertising. Market analysis work (e.g. its recent pricing study<sup>3</sup>) may also help us to interpret misleading advertising rules with reference to robust evidence of actual consumer behaviour. OFT market studies can help inform interpretation of the CPRs and BPRs and critique the available evidence allowing us more easily to base decisions on an evidence base.
- 3.2.3 The OFT provides a single and consistent source of guidance on the interpretation of consumer law and legal precedent relevant to our work.
- 3.2.4 **Single point of contact and advice** - The OFT provides us with a useful single point of contact for queries about issues of relevance to ASA investigations and consumer law. A good example is in the area of consumer credit: if the ASA receives a complaint about a technical element of a broadcast advertisement for consumer credit (e.g. payday loans), we may draw upon the OFT's expertise in interpreting the relevant regulations.

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<sup>3</sup> <http://www.oft.gov.uk/OFTwork/markets-work/completed/advertising-prices/>

- 3.2.5 The ASA maintains open channels of communication with the OFT, exchanging information on a regular basis. For example, if the ASA has received a number of complaints about an issue for which self-regulatory mechanisms can struggle to enforce e.g. hand-delivered leaflets from a rogue operator, we can liaise with the OFT about its experiences and activities. Likewise, if the OFT receives complaints about an issue which relates entirely to matters that we can deal with, it may contact us as the 'established means' for gaining compliance with the CPRs / BPRs in the first instance.
- 3.2.6 **Liaison with other regulators** - The OFT currently chairs a 'consumer concurrencies' group meeting of various regulators, which the ASA attends. The aim is to improve clarity in overlapping areas of responsibility and learn lessons from international best practice. This is particularly important when businesses are increasingly operating not only on a national, but an international basis. BIS will also be aware that the CPRs derive from the EU Unfair Commercial Practices Directive, which requires countries to interpret the legislation in a harmonised manner.

#### **4. Our views on what makes an effective consumer enforcement landscape**

##### **4.1 A strong and credible backstop supports advertising self-regulation**

- 4.1.1 Not everything that the ASA does requires a legal backstop. In fact in many circumstances the standards we administer are not required by law and operate well without any statutory oversight at all.
- 4.1.2 Ultimately, the authority of the ASA both derives from and is dependent on the long-term commitment of all those involved in the advertising industry, who voluntarily created a mandatory system to which no-one can 'opt out' for fear of industry led sanctions. Even where there is statutory oversight, the significant majority of advertisers comply with the Advertising Codes and ASA rulings without the need to refer to statutory authorities.
- 4.1.3 Nonetheless, the ability to refer advertisers, in certain circumstances, to statutory backstops in the event of continuing non-compliance provides a powerful incentive for those few advertisers (who might be tempted to not comply with the ASA) to work within the framework of the self-regulatory system. An identifiable strong backstop that has national authority is, therefore, an important aspect of the self-regulatory system.

- 4.1.4 Under the Government's preferred reform option, the role of legal backstop would be transferred to Trading Standards. ASA type referrals could be made to the Trading Standards Policy Board (TSPB) to be allocated to a relevant Lead authority, or undertaken by a national team somewhere within the Trading Standards Network.
- 4.1.5 The ASA's primary concern is that whatever enforcement landscape emerges from this reform process, our statutory backstop must be adequately resourced, sufficiently well co-ordinated and, ultimately, willing to take on cases referred to it by the ASA (in line with established Case Handling Principles). Should it become apparent to a small minority of potentially rogue operators that this might not be the case, compliance with self-regulatory mechanisms may be undermined, resulting in more referrals to the statutory body in the long-run.
- 4.1.6 We have identified three priority areas that we view as crucial to maintaining an effective backstop to the ASA system: **consistency, funding and independence.**
- 4.1.7 **Consistency** - Should Trading Standards Services (TSS) become responsible for administering ASA referrals, it would be essential for the ASA to retain a single point of contact, as currently exists with the OFT, through which we would be able to refer non-compliant advertisers and liaise with about cases. This will allow for a consistent approach to ASA work. We are keen to avoid a situation whereby we have to track down cases in more than 200 different Trading Standards Services across the UK. We know that the Government has acknowledged our concerns in this area, but it is worth noting again because we already find it difficult to keep track of enforcement action across the UK.
- 4.1.8 In addition, there have already been concerns (both perceived and real) about how to create an environment of consistent consumer enforcement, as required by European legislation, within the present system of national and local enforcement. Consideration of how this will be addressed must be a top priority in the event of the loss of a single national enforcer.
- 4.1.9 If, following referral, national enforcement needs are taken on by lead or regional specialist authorities, rather than by a single national enforcer as now, then care must be taken to ensure that the CPRs and BPRs are consistently applied.

- 4.1.10 We also understand that there is a possibility of creating a lead authority for enforcing advertising cases. We would strongly question why this is needed, given the existence of the ASA.
- 4.1.11 Notwithstanding the confusion for businesses and consumers without this clarity, there is a risk that the credibility of the ASA may be undermined if advertisers are able to cite inconsistent enforcement action or issues with 'double jeopardy'.
- 4.1.12 **Funding** – We welcome the provision in the proposals for a designated pot of money to be made available to Trading Standards in order to reduce the disincentive of local authorities to take on complex or risky cases, cases against large companies, or those types of cases referred to it by the ASA.
- 4.1.13 **Independence** – The current status of the OFT as an independently funded, national enforcer is an asset, in terms of its willingness and freedom to take on complex cases, and its independence from local pressures. The ASA itself, although funded by industry, has an arms-length funding mechanism which is designed to protect the integrity of the system. Those who fund us cannot hold us to ransom as to whether we pursue a case. Indeed, even our directly paid training and advice services are operated by CAP and not ASA, the body that administers the Codes.
- 4.1.14 An increasing number of local authorities act as a Primary Authority for businesses whose operations cross into more than one jurisdiction. Primary Authorities are permitted to reclaim reasonable costs associated with providing advice and guidance, which means that they may have direct financial relationships with those businesses. Therefore, further thought should be given to what steps need to be taken to secure the integrity of Trading Standards in the event that all enforcement rests with bodies that are seeking direct payment from local businesses. The existence of an independent, national enforcer would alleviate some of this concern.

## 4.2 Other important factors:

- 4.2.1 **A strong link between consumer and markets' activities**
- 4.2.2 Consumer and markets policy and enforcement reinforce one another and over the last decade or more, steps have been taken in countries around the world to ensure that the two go hand in hand. The ASA has

operated on that basis since its inception: we operate in the interest of consumers, business and society.

- 4.2.3 When markets operate effectively, businesses have incentives to meet consumer protection objectives. For example in advertising, businesses that mislead, harm or offend their potential customers will lose business. For advertising to work it has to be trusted and welcomed.
- 4.2.4 There is, therefore, a strong case to be made for co-ordination of these consumer and competition activities. There is the danger that if a body is solely focussed on one area, then they can lose sight of the bigger picture by becoming an advocate for a particular cause – be it on behalf of business or consumers.

#### **4.2.5 Allowing effective advertising self-regulation to flourish**

- 4.2.6 The OFT has been successful in allowing the ASA the space to develop as a regulator and has consistently supported other self-regulatory schemes and we welcome the Government's commitment to continuing that support.

#### **4.2.7 The ability to see and co-ordinate the big picture**

- 4.2.8 Businesses operate on a local, national and international level. Indeed consumer protection legislation is developed and harmonised at an international level. It is vital that our regulatory regime is capable of operating in step with that fact of life. Localism can bring enormous benefits, including bringing regulation closer to the priorities of communities and becoming sensitive to the operation of businesses within a community.
- 4.2.9 That said, local activity is only part of the picture and it is important that whatever is in place is well-equipped to operate at local, national and international levels.

#### **4.3 A view on the maintenance of other OFT functions**

- 4.3.1 As outlined in section 3, the ASA interacts with the OFT in a number of ways beyond its role as our legal backstop. We understand under proposals that these roles will be retained in some form in any future landscape, but are concerned that there exists potential for fragmentation, inconsistency and complexity if separating out these various roles to others.

- 4.3.2 **Market studies** – The OFT currently undertakes market research studies which the ASA inputs into and benefits from. Under the Government’s preferred option, the role of undertaking ‘pure’ market studies is to be taken on by the Citizens Advice (with competition and mixed studies to be handled by the Competition and Markets Authority (CMA)). Whilst Citizens Advice does valuable work in their capacity as a consumer advice and advocacy body, we feel that in general such market studies are best conducted by a body that has an ongoing duty to consider the role of both markets and consumer protection in a market (see section 4.20).
- 4.3.3 Presently, the OFT is required to work with both businesses and consumers and come to appropriate decisions. There is a strong risk that an organisation primarily responsible for consumer advocacy and advice might be, or at least be perceived to be, biased, which could undermine our ability to benefit fully from its work.
- 4.3.4 **Consumer Policy** – The ASA values the OFT’s experience and expertise in exercising its consumer policy functions, including at an internal level. This role maybe taken on by the Trading Standards Institute (TSI) or TSPB secretariat. Whatever body is to take on such policy functions would need to be mindful of the importance placed by the ASA - and no doubt others - on the consistency of interpretation and implementation of legislation, both domestic and that originating from Europe.

#### **4.4 Complexity and inconsistency in the wider consumer regulatory landscape**

4.5 The proposals might lead to a situation whereby the ASA, rather than having the OFT as a single point of contact for a number of functions, is now faced with four or five separate bodies:

- **Trading Standards** as our statutory backstop (via TSPB & LATSS)
- **TSI/TSPB secretariat** as our contact for policy issues
- **Consumer Advice** for information relating to market studies
- **CMA** for concurrency work with other regulators

4.6 We are, consequently, concerned that whilst OFT functions look set to be retained in some form, there might be a greater risk of complexity and inconsistency, which are much more likely to arise from a more fragmented regulatory structure.

- 4.7 Should OFT functions become separated out, a concerted effort would be required by the respective bodies taking on these responsibilities to understand the role and importance of the ASA system within the enforcement landscape and the need to take steps to build effective working relationships with the ASA system moving forwards.
- 4.8 Nonetheless, we recognise the potential, should Trading Standards take on a wider consumer enforcement role, of more effective and joined up work with those elements of Trading Standards with which we engage informally already - local enforcers on local compliance issues.
- 4.9 Currently, the lack of a formal relationship with local Trading Standards services means that ad-hoc compliance work against potentially rogue, non-compliant local advertisers, potentially more suited to compliance work by local Trading Standards rather than the OFT (and unlikely to meet the prioritisation criteria of the latter) relies upon the establishment of informal relationships between individual LATSS and the ASA. We would look forward to being able to utilise more constructively the professionalism of Trading Standards currently employed at local level.
- 5. 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?**

### 5.1 Branding

- 5.2 The loss of impact of the well-known, nearly forty years-old OFT brand could considerably weaken our 'nuclear' sanction. Of course there will be responsible businesses that will keep abreast of Government changes or will have an appreciation for local enforcement via Trading Standards. But there will be other businesses amongst whom the loss of a strong and recognisable brand could cause a detriment. For example small or medium-sized businesses that don't have the resources to keep abreast of such changes, or irresponsible businesses that won't take the time or care to understand their regulatory environment. In March this year the ASA extended its remit to cover marketing communications on companies' own websites and in other, non-paid for space under their control. This has brought a large additional number of small and medium-sized businesses under the requirements of the CAP Code for the first time.

5.3 Whilst we are pleased that the Government recognises the importance of a ‘strong national brand’ to provide a deterrent effect against sustained non-compliance, we are concerned that current proposals for an enforcement model branded as run by Local Authority Trading Standards Services, or represented by the TSPB, Joint Enforcement Board or ‘enforcement squad’, simply isn’t a strong enough brand or likely to imply national authority and, as such, deter illegal behaviour.

5.4 Whilst this might be achieved by the creation of, for example, a ‘National Enforcement Office’ or other similar sounding institution or team within the Trading Standards network, in the event that consumer enforcement falls to Trading Standards, we urge the Government to undertake some branding and identity work to establish the right name for the body. It will need to convey its credibility as a body with national authority, but which does not mislead as to its purpose.

5.5 In addition, we understand that under the proposals, cases referred to the TSPB are likely to be tackled by a Lead authority with national expertise. Publicity arising from enforcement action will be greater if it publicised by a recognised body, rather than a LATSS. Indeed publicity stemming from enforcement is important for setting the public record straight amongst consumers and to educate business of what is and is not acceptable. In light of this, the new body would need to be funded, equipped and fully authorised to raise awareness of cases, including through the media, even though it might not have been the body directly taking action. Consistent messaging from a single authority would be much more likely to increase awareness and understanding of a new enforcement regime.

## **6. Conclusion**

6.1 As a UK consumer protection regulator the ASA has a strong interest in the Government’s proposals, and welcomes the commitment by Government to ensuring the success of self-regulatory schemes such as that administered by the ASA.

6.2 Whilst we agree that the consumer enforcement landscape in the UK has not always operated to best effect in recent years, we are uncertain how far the proposals, at this stage, would represent an improvement on the existing regime.

6.3 We believe that an effective competition and consumer regulation regime, fit for the 21st century, must recognise the interdependencies between competition and consumer issues, be able to effectively operate and co-

ordinate on a local, national and international level, and allow for effective advertising self-regulation to flourish within a legal framework. This includes an adequately resourced, credible statutory backstop with national authority.

6.4 Our concern is that the proposals leave this outcome subject to some uncertainty and present the risk of greater complexity and inconsistency within the consumer enforcement regime.

6.5 We hope, therefore, that the Government will take on board our views about what makes an effective and credible consumer protection landscape. As with any changes that are so comprehensive in their scope, we maintain that it is good practice to keep changes under review, enabling adjustments and enhancements to be made if necessary.

6.6 I do hope that you find the comments contained within this response useful. If the Department for Business, Innovation and Skills has any questions about this response, then please do not hesitate to contact me.

Yours sincerely,

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## Age UK

# *Consultation response*

Ref 4911

## Empowering and Protecting Consumers Department for Business, Innovation and Skills

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This consultation from the Department for Business, Innovation and Skills (BIS) proposes radical changes to the current arrangements for consumer advocacy, information and enforcement provision which it considers will ensure consumer advice, representation and enforcement are delivered more effectively and efficiently.

## Key points and recommendations

- We think the preferred proposals for reforming consumer protection in this consultation are completely inadequate and do not address the shortcomings in existing consumer protection identified in the recent National Audit Report. We think it better to build on the status quo rather than, as proposed in this consultation adding even more complexity. We think the proposals are likely to result in less protection for consumers than currently exists
- We think trading standards should be a national and not a local service. If this is not possible in the current climate, a more stringent statutory requirement on local authorities should be introduced which better reflects the current remit and responsibilities of trading standards
- If trading standards remains a service operated at local level we think the proposed Competition and Markets Authority should have the same consumer policy scope as the current Office of Fair Trading. However, the links between this new organisation and local trading standards departments need to be improved to meet the criticisms and shortcomings identified in the recent National Audit report on consumer protection services
- The Competition and Markets Authority should retain responsibility for all market studies, including those arising solely from consumer detriment
- Expenditure on consumer protection should be commensurate with the financial amount of consumer detriment it needs to address
- If the new Competition and Markets Authority cannot continue to operate the Consumer Codes Approval process, this should be undertaken by British Standards Institute. However in this case all Codes must be accompanied by a mandatory requirement to have Kitemark approval
- We do not object to responsibility for consumer information, advice and education being transferred to Citizens Advice. However we think the ability of local Citizens Advice Bureaux to provide more consumer services locally unlikely in the current climate. We would want to see Citizens Advice Bureaux make necessary improvements to encourage more older people to use their services since currently they are significantly under-represented compared to clients of other age groups
- Age Cymru believes there is a strong case that powers to establish a consumer body for Wales should be given to the National Assembly for Wales
- Age Northern Ireland has advised they support the proposal to transfer the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland. They also support the proposal that the Postal Services redress Scheme should continue to apply in Northern Ireland to provide parity for Northern Irish consumers
- We support the proposal to combine the current consumer sectoral advocacy bodies to include CC Water and Passenger Focus as well as energy and postal services

- We are concerned about the ability of Citizens Advice to take on the advocacy functions of Consumer Focus. Citizens Advice does not currently have the market focus, remit for ensuring markets work for all consumers or breadth of research experience that Consumer Focus has. To counter this it will be important to ensure that as many current Consumer Focus staff transfer to Citizens Advice as possible
- Given what this consultation is proposing Citizens Advice should become responsible for, we are very concerned at gaps in their legal powers and statutory public accountability. As a charity, their governance mechanisms were not designed to deal with this breadth of responsibilities currently undertaken by a statutory public body, Consumer Focus. This must be addressed before responsibilities are transferred to them.
- The statutory powers of Consumer Focus to obtain information from regulators, businesses and government must be retained
- The current UK representation at international and European level on consumer issues must be maintained

## **1. Introduction**

- 1.1 Age UK is pleased to respond to this consultation. While not a ‘consumer organisation’ as such, we have an interest in certain consumer issues where they particularly affect older people. Some of these are energy and energy efficiency because older households are the highest group in fuel poverty; water because water bills are becoming unaffordable for older people living in certain areas such as the South West which has a higher than average number of older residents; good trading practices because there is evidence that older people are targeted by rogue traders, distraction burglars and high pressure selling in the home; digital inclusion because 60% of people over the age of 65 have never used a computer<sup>1</sup>.
- 1.2 We also have an interest in more general consumer issues. We recently conducted research into the barriers facing older people as consumers<sup>2</sup>. Some of the issues we identified were age discrimination and stereotyping, a lack of the use by businesses of the principles of inclusive design in the provision of goods and services and payment mechanisms. So for example we campaigned against the proposals to withdraw cheques because, unless there was an appropriate alternative, many older people would have been disadvantaged.
- 1.3 We have no preference for which particular organisation delivers the services provided they have the capacity and expertise to do so and the current level of service to consumers is maintained or improved. We are anxious to ensure that hard won successes for consumer advocacy and protection are not diluted with these reforms. The current services of the Office of Fair Trading (OFT) which we particularly want to see preserved somewhere are:-
- their undertaking of market studies
  - encouraging businesses to comply with competition and consumer law

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<sup>1</sup> Internet Access 2010 Households and Individuals. ONS. August 2010

<sup>2</sup> The Golden Economy. Age UK. December 2011

- encouraging them to improve their trading practices through sponsoring the Consumer Codes Approval Scheme (CCAS)
  - empowering consumers by providing information and education
  - helping them to resolve problems through the provision of Consumer Direct
  - undertaking enforcement of consumer legislation at the national level
  - The supercomplaints process
- 1.4 We are disappointed that the consultation still leaves significant uncertainties about the future which has made it difficult to properly assess the options given. We have particular concerns with regard to the proposals for consumer enforcement which we do not think will be as effective as current provision. For example we are concerned about whether the enforcement action currently undertaken by the OFT can be continued in the new consumer landscape. While it is important to have the necessary consumer protection legislation in place, it is of no use if there is no effective enforcement.
- 1.5 We have also found it difficult to make judgements due to uncertainty about funding. Whilst we understand it is the Government's intention to transfer the centrally funded budgets of both the Office of Fair Trading (OFT) and Consumer Focus to Local Authority Trading Standards Services (LATSS) and Citizens Advice, these will clearly be at a reduced level. This could make the provision of the current level of service to consumers difficult to achieve. Further both of these organisations are dependent on funding from local authorities which has been significantly reduced in 2010/11 and will probably be further reduced in future years. We think these budget cuts will make it impossible for both organisations to achieve what this consultation promises.
- 1.6 These funding cuts in the provision of consumer protection are of particular concern given the current budget is not particularly generous. As a recent report<sup>3</sup> on consumer protection by the National Audit Office (NAO) has found 'the level of spend on consumer enforcement appears low compared to the estimates of detriment suffered by consumers and there is no minimum standard to prevent enforcement gaps appearing.' We agree with their recommendation that BIS 'should establish what level of spend is appropriate for consumers to be adequately protected'. We think the total expenditure of £247 million on consumer protection in 2009/10 (i.e. before the cuts programme begun) to combat an estimated consumer detriment of over £4.8 billion compares inadequately with the expenditure of business on advertising. According to Marketing Magazine's 'top 100 online brands' survey 2011, Procter & Gamble alone had a total media spend of £207 million in 2010.
- 1.7 We must emphasise that our comments should in no way be seen as being critical of either LATSS or Citizens Advice. They currently both provide an admirable service. Our criticisms should be seen in the light of what we see is their capacity to take on the responsibilities proposed in this consultation. Our concern relates to the very unequal strength of consumers with regard to

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<sup>3</sup> Protecting consumers – the system for enforcing consumer law. National Audit Office. June 2011

businesses and we would not wish to see any diminution of consumer support in advocacy or enforcement.

## **2. Information, Advice and Education. Questions 1 to 5.**

2.1 We can see the sense in having one organisation providing most of the consumer information, advice and education. We agree with the proposal to transfer responsibility for providing independent publicly funded consumer information and advice to Citizens Advice. As well as transferring responsibility for providing Consumer Direct and the Extra Help Unit for vulnerable consumers of energy and postal services, the local Citizens advice Bureaux (CABx) will continue to provide consumer advice and information locally. However,, these are very vulnerable to local authority cuts as past history has shown. The 1970s saw a growth in the number of local authority trading standard departments providing high street based consumer advice centres which proved to be very successful. These developed partly as a result of the Molony Committee on Consumer Protection recommendations to ensure consumers should have access to adequate advice and information. However their numbers were radically reduced in the 1980s due to cuts in local authority budgets.

2.2 While we are pleased with the success of the Government funded Consumer Direct, there are many people, older people in particular, who prefer to get face to face help and, clearly, this has to be given at a local level. Local Citizens' Advice Bureaux (CABx) are best placed to offer this service. However, we are concerned that currently older people are under-represented as CABx users. Analysis of their client profiles in Advice Trends produced quarterly by Citizens Advice consistently shows people over the age of 65+ are significantly under-represented compared to other age groups. Only about 10% of their clients are aged 65 and over compared to the 20% people of state pension age in the UK population<sup>4</sup>. Age UK would like to see this increased. We also think CABx will need to give greater publicity to the fact they provide consumer advice and information if older consumers are to be made more aware of this and take advantage of this local service.

2.3 CABx are widely known to provide help for people in debt and advising on welfare benefits. This is reflected in their statistics which show more than half of the enquiries they receive relate to these two issues. Of the 7.5 million problems they received last year, 2.2 million were about welfare benefits and 2.2 million were about debt. The number of consumer problems they receive are significantly lower and of these, debt and problems with utilities form the majority. Of the 517,000 consumer queries received, 305,000 were about water, energy or communications and 266,000 of these were about debts to their utility companies.

2.4 While not underestimating the importance of helping consumers in debt to their utilities, we think CABx should be dealing with wider consumer issues in the proposed new consumer landscape. However, given that all the local CABx are independent organisations they will need to be persuaded to widen their remit. This will be particularly difficult given their budget reductions. We understand that on average the bureaux have seen a 10% reduction. Averages of course hide huge variations and some have had their budgets cut by 50%. In addition there will be further cuts due changes to the legal aid system which are likely to be of the region of

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<sup>4</sup> Mid-2010 Population Estimates. UK Office for National Statistics 2011.

18%<sup>5</sup>. Unfortunately, we do not believe provision of consumer advice and information is a high priority with local authorities which may make them unwilling to have their grants being used by CABx to expand the consumer information and advice aspect of their service. As we noted in paragraph 2.1 above, the demise of the high street consumer advice services was because of cuts in local authority budgets.

2.5 We are happy for the OFT's consumer education role to be transferred to Citizens Advice, provided they have sufficient resources to develop consumer education materials and undertake national and regional education campaigns. Of particular interest to Age UK have been the OFT publications to raise awareness of scams and we have always supported the OFT Scams Awareness month which we would like to see continue.

2.6 We think Citizens Advice should have responsibility for developing materials for use in schools such as the OFT consumer education tool kit but think that responsibility for visiting schools should remain with LATSS rather than be given to local CABx. LATSS should also retain the role of educating businesses, including advising them about changes to consumer legislation. This is because we think local trading standards officers, as enforcers, will have greater in-depth knowledge of consumer law than local CABx staff, many of whom are volunteers.

2.7 However, we have some concerns there could be a loss of consistency in the interpretation of the law businesses will be given. Complaints from businesses about inconsistency was the prime reason for setting up the Local Government Regulation (formerly the Local Authorities Coordinators of Regulatory Services) in 1978. Its role was to co-ordinate advice to LATSS and business on the interpretation of new legislation. It expanded to cover a range of other services such as food safety and standards and private sector housing where consistency of enforcement caused similar problems. Following a budget cut by the Department of Communities and Local Government of 40% in 2010/11, it has been decided to severely reduce this service.

2.8 The OFT supported Local Government Regulation in providing guidance to business on the interpretation of consumer legislation. Recent examples are OFT guidance on competition law and debt management. We think the removal of both Local Government Regulation and OFT will result in businesses being unhappy about the consistency of LATSS interpretation of the law – which will put us back to where we started in the late 1970's. This could also result in increasing the costs to businesses which will inevitably be passed onto consumers in the form of higher prices.

### **3. Consumer Code Approvals. Questions 6 to 11.**

3.1 We think this was an important initiative taken by the OFT which we want to see continued. History has shown that codes that are completely self regulated do not offer consumers sufficient protection. While there is an important role for industry owned codes, to be successful codes need either statutory backing or to be independently monitored and action needs to be taken against offenders. There are

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<sup>5</sup> The Independent. 2<sup>nd</sup> August 2011.

three aspects of the OFT Codes which we consider have contributed to their success and which we want to see preserved if the OFT role is taken on by another organisation. These are:-

- that each code must meet core criteria
- that there should be consumer input into the development of the codes equivalent to the OFT Codes Consumer Advisory Committee, of which Age UK is a member
- that compliance with the Code is independently monitored.

3.2 We do not agree with extending the Primary Authority concept to cover code certification. As we will discuss in Section 5 below, we think local trading standards have sufficient challenges without taking on this role. We also think it will be difficult to ensure standardisation and consumer input with this proposal and prefer to have a national body to oversee the codes such as the Gas Safe Register and Trustmark. Our overwhelming preference should it be decided the proposed Competition and Markets Authority will not continue to operate CCAS is for the British Standards Institute (BSI) to take over responsibility.

3.3 However the Codes must have the status of standards and should not be approved under the Publicly Available Specification (PAS). This is because the making of standards is open to having consumer representative participation but the making of PAS does not. Consumer representation on the development of the codes is important since they can identify areas of particular consumer concern that the Codes should cover. Age UK has found membership of the OFT Codes Consumer Advisory body very helpful, particularly when the British Healthcare Trade Association applied for OFT approval for its Code. We were able to ensure that the resultant code ensured that members could not employ the sharp selling practices we had identified in our research<sup>6</sup> on selling assistive aids in the home.

3.4 However, if they are to be effective the codes must be monitored. Age UK thinks they must be compulsorily required to have Kitemark certification. An added bonus to this proposal is the Kitemark logo is already well recognised by the public, probably more so than the OFT logo, which could result in more consumers being willing to use the services of Kitemarked code members. This will not only benefit code members but also encourage new industries to participate.

3.5 The OFT Codes tend not to attract small businesses for reasons of costs and this is likely to continue. We know that older people prefer to have local, recommended trades people, particularly if they have to undertake work in their homes which is why we supported getting a second tier trade approval scheme operated by local authority trading standards. Small local traders are much more likely to join these Local Authority Assured Trader Networks which aim to complement CCAS.

3.6 They are second tier because they do not offer the enhanced protection that OFT approved codes are required to provide, such as pre-payment protection and independent redress. However, they are subject to an independent and impartial

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<sup>6</sup> Sharp Selling Practices. Age Concern 2002.

application by the local authority. It was recognised there was a need to get greater standardisation between the various local authority schemes and it is the intention to raise the standards of all these local approval schemes to mirror CCAS. To ensure continued improvement in consistency and quality of local trader approved schemes we think it is important that some form of CCAS continues to exist to provide a benchmark. It is important that some agency continues to undertake the co-ordination role in approving the local authority schemes currently undertaken by OFT. We assume this will be done by the Trading Standards Institute (TSI). To maintain and improve standards, it is important that TSI liaise with BSI.

#### **4. Consumer Advocacy. Questions 12 to 18.**

4.1 Unlike the transfer of information, advice and education responsibilities, we have more reservations about transferring the advocacy functions of Consumer Focus to Citizens Advice. These concerns have not been helped by the fact there remains uncertainty about whether there will be limits on the functions currently carried out by Consumer Focus that can be transferred. We think the success of this proposal will depend on:-

- how many staff will be transferred from Consumer Focus to Citizens Advice which will of course depend on the funding available.
- The ability to transfer the powers Consumer Focus currently have to investigate and to obtain confidential information to a charity
- The ability to make a charity such as Citizens Advice publicly accountable
- That Citizens Advice is eligible for membership of BEUC and Consumers International, the European and international umbrella consumer organisations

4.2 Citizens Advice's policy and campaigns are currently based on the problems and issues that clients seek help and advice on at the local level. As we have said in paragraph 2.3 above, these are overwhelmingly based on the needs of people who are in debt and on welfare benefits. Recent successful campaigns have included getting HM Revenue & Customs to provide revised debt recovery guidance, getting the Department for Work and Pensions to persuade mobile phone operators to provide free calls to their helplines and, in conjunction with the Local Government Association, the production of a good practice guide on the collection of council tax arrears.

4.3 To date the Citizens Advice focus has been on a very specific group of consumers and consumer issues that arise mainly due to low incomes or benefit dependency. While we recognise these consumers will be vulnerable, and their work includes areas of interest to Age UK such as rogue traders, scams and fuel poverty, Citizens Advice does not currently have the market focus or remit for ensuring markets work for all consumers that Consumer Focus does.

4.4 Citizens Advice will have to change. We assume Citizens Advice will continue the analysis of data from Consumer Direct currently undertaken by OFT with a view to determining priority areas of complaints that need action at the national level. The transfer of Consumer Direct will affect the traditional areas covered by Citizens Advice. Calls to Consumer Direct will not necessarily come from low income consumers or those in financial difficulties and will, by definition, be more focussed on consumer issues. For example, top categories of complaint to Consumer Direct

relate to home improvements and repairs, second hand cars and mobile telephones which we do not think will be limited to just due to being on welfare or in debt.

4.5 Given the more limited experience of general and sectoral advocacy of Citizens Advice, it is important that, should it be decided to abolish Consumer Focus and transfer their responsibilities to Citizens Advice, current Consumer Focus staff are also transferred. This would ensure their current expertise is not lost. Similarly it would retain their broader research skills.

4.6 We are attracted by the proposal to combine all the current consumer sectoral advocacy bodies. Our experience of dealing with the essential utilities such as water, energy and communications is there are a number of horizontal issues that are common and not sector specific. Some examples are payment methods, mis-selling and tariff complexities. For this reason we think there could be economies of scale in combining these bodies in addition to administration and building cost reductions. It also fits in with BIS's concept of the 'one stop shop' for consumers so reducing consumer confusion.

4.7 However, we are aware that BIS wanted to do this when it consulted on setting up Consumer Focus in 2006. In the end Consumer Focus was only merged the National Consumer Council, energywatch and postwatch, all of which came under the auspices of the Department of Trade and Industry, the predecessor of BIS. We can only conclude this was because the Departments responsible for the other consumer sectoral advocacy bodies were not prepared to see them transferred to Consumer Focus. We agree with the concept and the design principles for the unit as set out in paragraph 4.34 and very much hope the relevant Departments will agree to transfer CC Water and Passenger Focus to Citizens Advice this time.

4.8 Age Cymru has advised that a major strength of Consumer Focus Wales has been its ability to undertake work of specific importance and relevance to Wales. For example, their ongoing work on food safety in response to Professor Pennington's inquiry into the outbreak of E-coli O157 in South Wales has resulted in a new food hygiene law being proposed by the Welsh Government to make the display of food hygiene ratings mandatory. Age Cymru has also worked closely in partnership with Consumer Focus Wales on reducing fuel poverty in Wales through the Fuel Poverty Coalition. This included work on the Welsh Government's re-designed fuel poverty scheme, Nest, and on specific issues with energy bills in Wales.

4.9 They are disappointed that the current proposals do not provide certainty about future governance structures and resources for Wales, and are very concerned that the specific research, representation and advocacy roles of Consumer Focus Wales may be under threat. The Welsh Government has indicated its intention to seek powers to establish a consumer body for Wales. Age Cymru believes there is a strong case for this responsibility to be passed to the National Assembly for Wales, for the reasons outline above. This may not require an additional funding if Wales received the Barnett consequential for the new model established in England. There is cross-party support in the National Assembly for Wales for the transfer of such powers.

4.10 We had some concerns when the Government first announced its intentions to reform the consumer landscape in October 2010 about whether the statutory powers,

duties and functions of Consumer Focus could be transferred to a charity. It is extremely disappointing that this document cannot give greater clarity on this issue.

4.11 The legislation setting up Consumer Focus sets out statutory and other formal duties Consumer Focus must undertake. These are wide ranging from having to produce a forward work programme and Annual Report to very specific requirements relating to the provision of energy and postal services. In addition, as a statutory public body, Consumer Focus is subject to the Freedom of Information Act, Judicial Review and to be audited by the National Audit Office.

4.12 It may be possible that some of these, such as the production of an annual report and forward work programme could be made a condition of receipt of the grant from BIS. However, since Citizens Advice is not a public body they cannot be subject to the Freedom of Information Act or National Audit Office oversight. If all the proposals this document is suggesting are given to Citizens Advice they would have significant powers, influence and responsibility. We are extremely concerned that this will not be accompanied by sufficient accountability.

4.13 Of particular importance in the establishment of Consumer Focus was the legislative powers the organisation was given. It has the right to investigate any consumer complaint where it is of general consumer interest. To help do this and undertake other issues, it also has the power to obtain confidential information from businesses, regulators and government. The legislation also enables other public bodies such as the OFT and LATSS to disclose information to Consumer Focus. It is still not apparent from this document whether a charity such as Citizens Advice can be given these powers, let alone whether it would be appropriate given their lack of public accountability. We think the proposal to allow them to do so via the regulators is not a solution. Not only does this restrict the power to regulated industries but it seems to be unduly cumbersome. In which case these powers will be lost which will be extremely detrimental for consumers.

4.14 We were surprised at the contents of paragraph 4.24 of the document which starts:- 'Consumer Focus and the Citizens Advice service are both active and highly respected in EU and international consumer fora'. We are not aware that Citizens Advice is active on behalf of consumers at the international level which was another of our concerns when the proposals were announced that they were to be made the UK consumer champion.

4.15 Consumer Focus works at European and international levels. It is a UK member of BEUC, the European umbrella organisation representing the interests of independent national consumer organisations from European countries. It is also a member of Consumers' International. It is particularly important to have consumer representation in Europe since a lot of consumer legislation is now passed at European rather than national level. It is not clear whether Citizens Advice will meet the membership requirements of either BEUC or Consumers' International. Citizens Advice is not a national body and it would depend on whether the funding from business it receives would negate it being seen as independent within the BEUC rules. If it cannot be a member this would be of serious detriment to the UK consumer.

4.16 We strongly support the proposal to extend redress schemes that exist in energy and communications to other sectors. However our preference would be to

restrict it to one scheme as currently exists in energy. We think that having more than one ombudsman scheme such as that existing in communications merely adds to consumer confusion without offering a better service.

4.17 Age Northern Ireland has advised they support the proposal to transfer the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland. This is on the basis that it makes sense to strategically align consumer interests in one body. They also support the proposal that the Postal Services redress Scheme should continue to apply in Northern Ireland to provide parity for Northern Irish consumers.

## **5. Enforcement of consumer legislation. Questions 20 to 40**

5.1 Our most severe criticisms of the Government proposals relate to those on the enforcement of consumer legislation. We think the purpose of re-structuring should be to improve. To improve the current consumer landscape we think the following should be addressed:-

- The national consumer protection infrastructure should be simplified
- The considerable variation in capacity and resourcing of LATSS should be addressed
- Cross border enforcement should be encouraged
- UK should be represented at international forums dealing with e-crime and scams
- There should be greater co-ordination including better intelligence, reporting and accountability at national level
- Expenditure on consumer protection should be commensurate with the financial amount of consumer detriment it needs to address

5.2 We think the proposals in this section of the document merely give a sticking plaster solution without resolving the current fundamentally inappropriate infrastructure for consumer protection. There is plenty of evidence on the problems caused by the current fragmented way consumer legislation is enforced. As the NAO report says:- 'The system for enforcing consumer law is not delivering value for money because the architecture in place to bring together what is a very fragmented delivery landscape is not functioning properly and the Department has few levers to directly influence policy delivery.'

5.3 Yet the Government's favoured proposals will bring even greater fragmentation. It is also proposing to dismantle the skills and expertise held by the OFT but suggests nothing that will replace them. We do not think the favoured option, Option 3, in this document will give consumers the protection they currently have and think it is likely to result in a severe reduction. This option proposes to transfer the majority of OFT consumer enforcement functions with associated funding to Trading Standards. The leadership on cross-border enforcement will come from the creation of a Trading Standards Policy Board (TSPB) located within the Trading Standards Institute (TSI) and primarily formed of Chief Trading Standards Officers (CTSOs) and accountable to the Local Government (LG) group.

5.4 Age UK is supportive of much of the Government's localism agenda. We recognise that effective implementation of localism could lead to better outcomes for

older people if it leads to improvements in local services and access to volunteering. However we do not think localism is appropriate to deliver consumer protection. This is not a local issue but very much a national and international issue. This is borne out by the NAO report which found that more than 70% of consumer detriment arises from cross-border abuse with mass scams and intellectual property crime the main contributors.

5.5 Provision of trading standards services by local authorities was a sensible way to ensure consumers were protected when they were primarily responsible for enforcing legislation under the various Weights and Measures Acts and before the introduction of mass pre-packaging. Until the 1960s most consumers bought their goods from local businesses. Even grocery stores that were part of a chain such as Sainsburys or the long forgotten David Greig, Macfisheries and Home & Colonial weighed out their goods because they were sold loose. The accuracy of their scales was an important protection for consumers.

5.6 In 2011 this situation has completely changed. Not only has the number of local shops selling goods using scales significantly reduced but, since the introduction of the Trades Descriptions Act in 1968, LATSS have been made responsible for the enforcement of a substantial amount of legislation. This ranges from dealing with e-crime and consumer credit to policing Energy Performance Certificates, energy and food labelling and compliance with consumer safety regulations. Most of this is not confined to a local area. Scams, rogue traders and energy company doorstep sales people for example do not operate solely within local authority boundaries. We find it incredible given this change that local authorities are still only statutorily required to provide one weights and measures officer in their trading standards service. We think any proposal to change the consumer landscape should include a more stringent statutory requirement on local authorities which better reflects the responsibilities of LATSS.

5.7 Currently there are 198 TSS authorities but there are wide variations in the size and funding between them. The NAO found:- 'There is already considerable variation in the capacity and resourcing of Trading Standards Services, with some services having as few as two members of staff and others employing over eighty...' Given the range of enforcement responsibilities it is inevitable that each local authority will have to make its own priorities. As the OFT has commented with regard to protecting consumers online:- ..'differing local priorities and funding constraints mean that not all LATSS are equipped to deal with online problems. Furthermore, as the internet is not based around local geographies, there is not necessarily a clear local need for all LATSS to develop an internet enforcement capability.'<sup>7</sup>

5.8 The problem with the local nature of LATSS has already been recognised in other areas. Following successful pilots, BIS funded illegal money lending regional enforcement teams across Great Britain and has committed to continue the funding in 2011/12. In 2006 BIS provided funding for three pilot regional scambusting teams which were subsequently rolled out nationwide. BIS is continuing to fund these this year at about the same level as in 2010. However due to the precautionary attitude of some local authorities in the current circumstances, a guarantee of only one year's funding has been insufficient to save the service. The authorities involved in the

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<sup>7</sup> OFT Protecting consumers online. A strategy for the UK. December 2010

largest scambuster region, London and the South East, have decided to close it as from April 2011.

5.9 Fortunately to date we have had the OFT who can take enforcement action under consumer protection legislation in matters that affect consumers generally. Whilst there have been times when a LATSS has taken legal action which has been in the national rather than local interest, it is difficult to see this will be a common event, particularly in current economic circumstances and certainly will not be to the same extent as the OFT is currently able to do. It is hard to see a LATSS taking on the banks about their charges for example in the proposed new consumer landscape. As the NAO report says:- 'Trading Standards Services have strong incentives to deliver against local priorities with 86% of funding for consumer enforcement being utilised for Trading Standards' work and provided by local government.....The incentives for individual Trading Standards Services to take on cross-border work are weak.'

5.10 In 2011/12 some LATSS have had budget cuts up to 50% with more expected in future years. Given the service is a relatively small local authority department, implementing cuts at these levels make it particularly difficult to maintain current levels of service delivery. With the total budget for Trading Standards expected to be reduced from £213 million in 2011/12 to about £140 - £170 million in 2014/15 it is even less likely that LATSS will be doing cross-border work which is where most consumer detriment lies.

5.11 The document recognises that cross-border work, consistency and co-ordination are important and 'must be retained.' However, Age UK fails to see how the Government's preferred Option 3 which we consider adds to the current confusing and fragmented system is expected to work. CTSOs are employed by individual local authorities and their primary loyalty will be to their employer. It also assumes the local authority will be happy to have their CTSO taking part in TSPB. We think accountability of the TSPB insufficient. Given the LG group has shown complete disinterest in consumer protection by virtually abolishing Local Government Regulation it is unlikely that any of the LG board members will have any expertise or interest in consumer protection.

5.12 We do not see that the resources will be sufficient to fulfil the functions TSPB will be required to undertake. Will a 'small secretariat' be able to provide not only day to day co-ordination and case allocation but also maintain enforcement databases and monitor case management to ensure consistency, lack of duplication and correct use of resources? Further why should TSPB and their secretariat be able to resolve the short comings identified in the NAO report, many of which we think arise from the sheer number of LATSS and the considerable variation in their funding and capacity. We do not see why TSPB will be in a position to 'mobilise the wider Trading Standards community around a common agenda.' Nor do we see how CTSOs who, after all, already have a full time job will have the time to deliver the operational principles identified in paragraph 5.54 let alone adequately undertake the other duties described in paragraphs 5.56 and 5.57 of the document.

5.13 Of equal importance, it is difficult to see how LATSS will be able to undertake work at the international level that is needed to combat scams and problems with the internet. Internet scams are on the increase. Whilst older people are more likely to be targeted by scammers, they are less likely to suffer from internet scams mainly

because 50% of people aged 65 -75 and 25% of those aged 75 have broadband at home<sup>8</sup>. However Age UK research<sup>9</sup> has shown that older people, even those who are online, are less likely to use it for shopping or banking because of their fears of being scammed and we have called for better consumer protection for internet activity. It is estimated that £100 billion (7.2% of GDP) is contributed to the UK economy by the internet, This figure does not include the cost savings to national and local government that could come from increasing use of providing services on line. It is vital for the UK economy that consumer confidence in using the internet is maintained. So working at the international level with Internet Service Providers and telecomms regulators will be increasingly important to improve enforcement mechanisms against mis-users of the internet.

5.14 In recognition of internet security problems, the 2009 Consumer White Paper required the OFT to develop a strategy for protecting consumers online. Following a consultation in July 2010, the OFT published its proposals in December 2010. Of particular relevance, it recommended changes to enforcement which it had found to be fragmented. It recommended improved co-ordination between OFT, which has its own Internet Enforcement team, Trading Standards and the police and other enforcement agencies. It proposed that OFT would be the 'central hub' for intelligence sharing and case management between the myriad of agencies involved.

5.15 It is now proposed that responsibility for security of online services will be taken on by LATSS. However, even if they get some of the OFT funding, it is not clear how they will be able to undertake the international co-ordination for either e security or scams that the OFT has been able to do given they do not have the same economies of scale. The NAO report has identified that the cost of consumer enforcement functions currently undertaken by the OFT excluding Consumer Direct is £13 million. We do not see, even given ring fencing of this sum, how LATSS could take on an international role let alone perform all the other co-ordinating functions proposed in this consultation with this budget.

5.16 Our preferred option is to improve the status quo without changing powers and responsibilities, and build on them to improve the shortcomings identified in the NAO report. We think the proposed Competition and Markets Authority (CMA) should have the same consumer policy scope as the current OFT. We are however, alarmed that this option seems to require the creation of a Joint Enforcement Board (JEB) which would comprise representatives of the CMA and Trading Standards in equal numbers.

5.17 We do not see how JEB will address the shortcomings identified in the NAO report. These seem to arise out of the inability of the OFT to impose sensible requirements such as the National Intelligence Database on the myriad of LATTS. If the CMA were given powers to **require** a LATSS to comply with their requests we see no need to create JEB which seems to have no authority over LATSS.

5.18 This is another problem arising from LATSS being primarily a local rather than a national service which we think is the primary cause of the current fragmentation of enforcement. It is disappointing that with the current political environment favouring localism let alone the difficulties in getting the local funding currently available for

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<sup>8</sup> The Consumer Experience. Ofcom. December 2010

<sup>9</sup> The Golden Economy. Age UK. December 2011

Trading Standards re-allocated to fund a national service that under these proposals consumer protection is likely to become even more fragmented and complicated which will be of severe disadvantage for consumers.

5.19 We do not support any of the proposed variants of JEB offered in this consultation. While we think JEB is more likely to be able to deliver the duties and functions outlined in the proposals to establish TSPB than the TSPB would be able to do we do not think any of the proposed models will deal with the NAO report recommendations. We find the second variant, to create a new public body surprising given the reason the Government wants to reform the consumer landscape arose from their desire to reduce the number of quangos. The third variant, to devolve national resources to a central trading standards body such as TSI merely adds further complexity. If pushed we would opt for the first variant suggested in the document, to create a Board with an equal number of CMA staff and trading standards staff but essentially do not see either the need or rationale for creating a JEB. Given this document has given rather a lot of options for the future of consumer protection we think, whichever option is chosen, it should be subject to further discussion and consultation on how the status quo could be improved.

5.20 Despite our preferred option to retain the status quo with regard to consumer protection, we have no objection to the proposal to merge OFT with the Competition Commission to create a new CMA. We have found answering the questions relating to the role of the CMA (questions 25 to 40) difficult given that some of them assume the Government will proceed with their preferred Option 3. We hope that our answers to these questions would be self evident if our preferred option was accepted but our answers in this response relate to the situation if it is decided, unwisely in our view, to proceed with Option 3.

5.21 We are relieved that given the preference of the Government for Option 3, it is proposing that the CMA retain some responsibility for consumer enforcement and we support this proposal for the reasons well argued in the document. We also agree that any procedural restriction to what the CMA can investigate would be excessive and constrain the CMA's flexibility on how to address market problems. We agree that there should not be any procedural limitation to CMA's enforcement role. We also agree that the CMA should enjoy significant discretion over when a market has structural problems and that they should retain responsibility for mixed market studies where there may be competition and consumer issues in the market.

5.22 We would prefer the CMA to retain sole responsibility for market studies even when they are restricted to consumer detriment rather than market structural issues. This is because we think the skills related to investigating market structure and consumer detriment are essentially the same. We think transferring the responsibility to Citizens Advice to undertake market studies in cases where they are restricted to consumer detriment would be a duplication of effort and cost. This seems to be supported by the analysis given in the recent BIS consultation on the creation of the CMA<sup>10</sup> which recognised that the market analysis reports produced by Citizens Advice and Consumer Focus 'are not entirely analogous to OFT market studies in terms of analytical approach' and this could require Citizens Advice to 'build further expertise and capacity.' We think this would be an unnecessary expense in the current climate.

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<sup>10</sup> A Competition Regime for Growth: a consultation on reform. BIS. March 2011

5.23 This is particularly relevant if, as suggested in this document and a proposal which we agree with, the CMA is to retain responsibility for the current supercomplaints system. The OFT investigation into doorstep selling in 2002 for example arose as the result of receiving a supercomplaint from Citizens Advice. Is it being suggested that Citizens Advice could make a supercomplaint to CMA which CMA judges to be solely one of consumer detriment, the CMA will refer it back to Citizens Advice to do a market study?

5.24 We also think the determination of what was solely a consumer issue would not always be apparent. We think it possible that something that initially seems to be solely restricted to consumer detriment would finally be found to have some market failure involved as well. Further, if Citizens Advice is unable to take on the demand for information powers of Consumer Focus and if they cannot be made more publicly accountable, we think it would be inappropriate for them to undertake market studies.

5.25 While we cannot disagree with the Government's proposals to ensure there is effective collaboration between CMA, Citizens Advice and Trading Standards, we think this is easier to say than to achieve. We see no reason why the proposals in the document will have more success than current arrangements. We absolutely disagree with the proposal to have some financial resource (from where?) for investigations that required joint agreement between CMA, TSPB and other consumer advocacy bodies for its release because we think this introduces yet more complexity into an already complex situation.

5.26 We think the prospect of a national body such as the OFT taking enforcement action has more effect on businesses than action taken by an individual LATSS. OFT is likely to get more publicity about a case and more likely to win given its access to its own specialist competition lawyers which are unlikely to be available to any LATSS or TSI. Under Option 3 we see no alternative to giving TSI the responsibility for the current OFT functions of giving professional guidance and training. However, we have already explained our severe reservations of their ability to do so in paragraphs 2.8 above without the support of OFT and LACORS. Similarly we do not think the TSI has the capacity to take on the OFT role with regard to international liaison and general policy functions as outlined in paragraph 5.10 above.

5.26 We agree the CMA should have responsibility for chairing the consumer concurrencies group and taking on the supercomplaints system currently undertaken by the OFT. We think it would be extremely inadvisable to start to implement any change to the consumer enforcement landscape before the necessary legislation to set up the proposed CMA has been enacted.



## **AITO – Assn of Independent Tour Operators**



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

27<sup>th</sup> September 2011

AITO RESPONSE TO CONSULTATION ON EMPOWERING & PROTECTING CONSUMERS

AITO is an Association of around 140 specialist tour operators and has been in existence since 1976.

We very much represent the SMEs of the tour operating industry and through AITO Trust we operate our own, BIS approved, financial protection bonding scheme for consumer financial protection.

We would like to focus our response on just one specific area of the consultation; namely the enforcement of regulations with regard to consumer protection.

We have long campaigned against 'rogue traders' in our industry and indeed, in June 2010, we wrote to Kevin Davis at the Consumer and Competition Policy Department of BIS, explaining how we, being frustrated at the total inaction on the part of the regulators, had decided to contact traders who appeared to be in breach of the regulations, explaining the law to them and warning that if they did not comply, then we would report them to Trading Standards. Indeed, we received a supportive letter from your Department in response.

However, there is only so much assistance the industry can give. If Trading Standards do not have the resources to follow up cases when reported, then the number of rogue traders will simply increase and the law will fall into disrepute. The victims are consumers and those tour operators who are incurring extra costs by complying with the regulations and having to compete on an uneven playing field with traders who are not trading within the law.

AITO held a meeting with LACORS, the group of trading standards officers who oversee and coordinate travel related issues, on the 2nd November 2010. We came away quite depressed.

They readily admitted that they lacked resources, were fearful for their own jobs and stated that they had to prioritise cases that they could investigate. Health and safety was, understandably, seen as key, with the consequence that they could provide only very limited time to the enforcement of the Package Travel Regulations which provide the framework for regulation in the travel industry.

Indeed, your consultation paper recognises that Trading Standards face particular challenges as a result of reduced local authority spending. We were very disturbed to read that local authority funding for Trading Standards is expected to decline from £213m in 2009 to an estimated £140-170m in 2014.

So, we welcome a review on enforcement and protection for the consumer.

We appreciate that the new Competition and Markets Authority will only deal with major national issues and structural market problems, so we will still be very much reliant on Trading Standards to enforce regulations within the smaller business community.

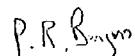
We therefore welcome the Government proposal to deploy national funding to facilitate a more integrated approach to national and cross boundary issues.

The tour operating sector of the travel industry in particular, sells at national or regional levels and is not restricted to a particular local authority market area. Consequently, we would like to see the strengthening of designated lead authorities in designated sectors – one being the travel industry. It is quite clear that the travel industry cannot simply rely on local authority funded compliance.

We need a lead authority specialising in the sector with sufficient, centrally funded resources to provide enforcement on a national basis.

We would naturally be available to discuss the matter and implementation in more depth, with particular reference to the travel industry sector.

Yours sincerely



Peter Burgess

Association of Independent Tour Operators

## **Auty, Allan**

**From:** Allan Auty  
**Sent:** 23 September 2011 16:22  
**To:** Evans David (CCP)  
**Subject:** TRIM: Empowering and Protecting Consumers

I am a retired member of the Trading Standards Institute. Until a year ago I was the Head of Trading Standards at Liverpool and I had spent 38 years in Trading Standards. I would like to take this opportunity to make a couple of general comments on the proposals but will leave detailed comment to those still in post.

Firstly, I have no doubt that Trading Standards (TS) will take up the challenge that these proposals present. TS is a "can do" profession and I have no doubt that those in TS will take up the opportunities and sort out (or get round) the problems. I was very pleased to see the faith that the Coalition Government has in TS.

Two issues concern me. The first one I raised with Ed Davey at the TSI conference in Bournemouth. It is that too many TS services in Local Authorities are small and are low down in the structure of their authority. I had three levels of officer between me and the Chief Executive but was fortunate in maintaining good relationships with those three officers (though the strength of the relationship diminished as they were further up the tree); and the Cabinet Member responsible for TS. This was not the case with many of my colleagues in other authorities who were cut off from the people who made the crucial decisions. The effect of this was especially felt in the financial area and in particular, getting new money that was included in the RSG for TS functions into the TS budget. When new money was put into the RSG for enforcement of the Copyright Designs and Patents Act, Housing Information Packs and Energy Certificates, Liverpool TS was able to ensure that this money went into the TS budget. In this, Liverpool was in a very small minority and in most cases, the additional money was swallowed up in the Local Authority "pot" and did not get to TS. I fear that this will happen again if additional money goes to Local Authorities to allow TS to carry out the additional work that is proposed, especially in those smaller authorities where TS is a small service low down in the structure. Many Local Authority treasurers will see any additional money as a windfall they can use to plug funding gaps across the authority and not allocate it to TS for the purposes it was given. I appreciate that this money is unlikely to be unhypothecated (although it could be and I strongly suggest it needs to be) but there needs to be a mechanism for checking that it goes to where it was intended. One such mechanism could be for BIS to write to Chief Executives explaining that this money is intended for TS and pointing out that Local Authorities will be required to report to BIS on the additional work done with this extra money. In other words, spelling out to Local Authorities that they will be expected to account for this extra money and will be held to account if it is misappropriated.

Leading on from this is that some Local Authorities - I described them as "dinosaurs" at Bournemouth, to Ed Davey's amusement – are very reluctant to get involved in any activity that goes outside their borders. They may see any additional money as something to be used purely for their own TS service and not for regional or national working. There is likely to be considerable correlation between the Local Authorities who will not pass on any additional money to TS and those that will not look beyond their borders. Again, spelling out to Local Authorities that they will be expected to account for this extra money is one way of preventing this from happening. So too will be passing this money to Regional Groups, but I am lead to believe that some Regional Groups are struggling to keep going, as there is less and less support from individual Local Authorities; and individual TS officers are coming under more and more pressure with work from their employing Local Authority.

The second area is that of TS powers. Having been involved in trying (and in many cases, failing) to get cross border authorisations for the Illegal Moneylending Team and Scambusters I am convinced that cross border enforcement will only be effective if there is a codification of TS powers that makes it plain that a TS officer can exercise his/her powers outside of his/her Local Authority. At present, this is not clear and the consensus is that a TS officer cannot exercise powers outside his/her Local Authority (although I do not necessarily agree with this consensus). The risk is that an officer who exercises powers outside his/her Local Authority commits an offence with up to two years' imprisonment so it is crucial this is sorted out.

Some years ago, during the passage of the Regulatory Enforcement and Sanctions Bill, Trading Standards North West suggested a new Part to that Bill could codify TS powers along the lines of Police powers which are codified in the Police and Criminal Evidence Act, instead of being piecemeal and different (or non-existent!) across various pieces of legislation. This also included a mechanism for ensuring that TS had sufficient staff and enforced a core of legislation by making LBRO responsible for suggesting staffing levels and core legislation to Local Authorities. This latter suggestion would not be mandatory for Local Authorities – they would only be required to "have regard" to it – but would be a powerful tool to ensure that TS had adequate resources, with a potential for judicial review if a Local Authority was way out of line with the LBRO guidance. I should add that Graham Russell was not totally enthusiastic!

This proposal is attached to this e-mail. It is for both TS and Environmental Health as so many TS services are now linked with EH but the two can easily be separated. I am also aware that Trading Standards North West made a further representation to BIS a couple of years ago regarding TS powers. I do not have a copy of this, but you should be able to get it (if you do not already have it) from Kate Pike, the TSNW Regional Co-ordinator at Warrington TS.

Please feel free to contact me if you require further clarification or any further information.

Allan Auty

## **Suggested new Part III of the Draft Regulatory Enforcement and Sanctions Bill.**

### **Enforcement Powers for certain Local Authority Officers**

A (1) It shall be the duty of each Local Weights and Measures Authority to appoint such number of officers to be known as Trading Standards Authorised Officers as they see fit to enforce legislation that it is the duty of the Authority to enforce and that the Authority determines shall be enforced by Trading Standards Authorised Officers.

A (2) It shall be the duty of each Food Authority exercising functions under Section 12 of the Food Safety Act 1990 to appoint such number of officers to be known as Environmental Health Authorised Officers as they see fit to enforce legislation that it is the duty of that Authority to enforce and that the Authority determines shall be enforced by Environmental Health Authorised Officers.

A (3) The legislation referred to in A (1) and (2) shall not be limited to legislation concerning Weights and Measures or Food.

A (4) Each Local Weights and Measures Authority and each Food Authority exercising functions under Section 12 of the Food Safety Act 1990 shall maintain a list of the legislation that the Authority's Trading Standards Authorised Officers and Environmental Health Authorised Officers are to enforce and this list may include legislation that the Local Authority does not have a duty to enforce.

A (5) The LBRO shall give advice to each Local Weights and Measures Authority and each Food Authority exercising functions under Section 12 of the Food Safety Act 1990 as to the numbers of Trading Standards Authorised Officers and Environmental Health Authorised Officers the Authority should appoint; the qualifications the officers should hold; and the legislation that the officers are to enforce.

A (6) Each Local Weights and Measures Authority and each Food Authority exercising functions under Section 12 of the Food Safety Act 1990 shall have regard to the advice given by the LBRO under A (5).

### **Test purchases**

B A Local Weights and Measures Authority and a Food Authority exercising functions under Section 12 of the Food Safety Act 1990 may authorise Trading Standards Authorised Officers or Environmental Health Authorised Officers on its behalf to

- (a) make a purchase of a product or service, or
- (b) enter into an agreement to secure the provision of a product or service, for the purposes of determining whether the legislation that Trading Standards Authorised Officers or Environmental Health Authorised Officers are to enforce is being complied with.

### **Powers of Trading Standards Authorised Officers and Environmental Health Authorised Officers**

C (1)) A Trading Standards Authorised Officer or an Environmental Health Authorised Officer may at all reasonable times and anywhere within the United Kingdom exercise the following powers:

- (a) he may, for the purposes of ascertaining whether any breach of the legislation that his authority's Trading Standards Authorised Officers or Environmental Health Authorised Officers are to enforce has been committed, inspect any goods, processes or procedures and enter any premises other than premises used only as a dwelling;
- (b) if he has reasonable cause to suspect that a breach of the legislation that his authority's Trading Standards Authorised Officers or Environmental Health Authorised Officers are to enforce has been committed, he may, for the purpose of ascertaining whether it has been committed, require any trader to produce any documents relating to his business and may take copies of, or of any entry in, any such document;
- (c) if he has reasonable cause to believe that a breach of the legislation that his authority's Trading Standards Authorised Officers or Environmental Health Authorised Officers are to enforce has been committed, he may seize and detain any goods for the purpose of ascertaining, by testing or otherwise, whether the breach has been committed; and
- (d) he may seize and detain goods or documents which he has reason to believe may be required as evidence in proceedings for a breach of the legislation that his authority's Trading Standards Authorised Officers or Environmental Health Authorised Officers are to enforce.

C (2) If and to the extent that it is reasonably necessary to secure that the provisions of the legislation that his authority's Trading Standards Authorised Officers or Environmental Health Authorised Officers are to enforce are observed, he may for the purpose of exercising his powers under paragraphs (1)(c) and (d) to seize goods and documents

- (a) require any person having authority to do so to break open any container or open any vending machine; and

(b) himself open or break open any such container or open any vending machine where a requirement made under sub-paragraph (a) in relation to the container or vending machine has not been complied with.

C(3) An officer seizing any goods or documents in exercise of his powers under Section C (i) shall—

(a) inform the person from whom they are seized; and,

(b) where goods are seized from a vending machine, inform—

(i) the person whose name and address are stated on the machine as being the proprietor's; or

(ii) if there is no such name or address stated on the machine the occupier of the premises on which the machine stands or to which it is affixed.

C (4) In this section “document” includes information recorded in any form.

C (5) The reference in Section C (1)(b) to the production of documents and in Section C (1) (d) to the seizure of documents is, in the case of a document which contains information recorded otherwise than in legible form, a reference to the production or seizure of a copy of the information in legible form.

C (6) An officer seeking to exercise a power under this section must produce evidence of his identity and authority to a person (if there is one) who appears to the officer to be the occupier of the premises.

C (7) Where an officer seizes goods or documents in exercise of a power under this section they may not be detained—

(a) for a period of more than 3 months; or

(b) where the goods or documents are reasonably required by the enforcement authority in connection with the enforcement of the legislation that Trading Standards Authorised Officers and Environmental Health Authorised Officers ) are to enforce, for longer than they are so required.

C (8) An officer entering any premises under this section may take with him such other persons and such equipment as may appear to him to be necessary.

C (9) Nothing in this Section gives any power to an officer of an enforcement authority—

(a) to require any person to produce, or

(b) to seize from another person,

any document which the other person would be entitled to refuse to produce in proceedings in the High Court on the grounds of legal professional privilege or (in Scotland) in proceedings in the Court of Session on the grounds of confidentiality of communications.

C (10) In subsection C(9) "communications" means—

- (a) communications between a professional legal adviser and his client; or
- (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings.

C (11) The LBRO shall give guidance to Local Weights and Measures Authorities and each Food Authority exercising functions under Section 12 of the Food Safety Act 1990 on the exercise of the powers in this Section by Trading Standards Authorised Officers or Environmental Health Authorised Officers outside of the area of their Authority.

C (12) It shall be the duty of Trading Standards Authorised Officers or Environmental Health Authorised Officers to comply with guidance issued under Section C (11).

C (13) If any person who is not an officer of an enforcement authority purports to act as such under this section he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Power to enter premises with a warrant**

D (1) If a justice of the peace by any written information on oath is satisfied—

- (a) that there are reasonable grounds for believing that Condition A or B is met,
- (b) that Condition C, D or E is satisfied, and
- (c) that it is proportionate to do so,

the justice may by warrant under his hand authorise an officer appointed under A (1) and (2) to enter the premises, if necessary by force.

D (2) Condition A is that there are on the premises goods, processes, procedures or documents which an officer appointed under A (1) and (2) has power under section C (1) to inspect and that their inspection is likely to disclose evidence of a breach of the legislation that Trading Standards

Authorised Officers or Environmental Health Authorised Officers are to enforce.

D (3) Condition B is that a breach of the legislation that Trading Standards Authorised Officers or Environmental Health Authorised Officers are to enforce has been, is being or is about to be committed on any premises.

D (4) Condition C is that the admission to the premises under section C (1) has been or is likely to be refused and that notice of intention to apply for a warrant under this regulation has been given to the occupier.

D (5) Condition D is that an application for admission, or the giving of a notice of intention to apply for a warrant, would defeat the object of the entry.

D (6) Condition E is that the premises are unoccupied or that the occupier is absent and it might defeat the object of the entry to await his return.

D (7) A warrant under paragraph (1)—

- (a) ceases to have effect at the end of the period of one month beginning with the day it is issued;
- (b) must be produced for inspection to the person (if there is one) who appears to the officer to be the occupier of the premises.

D (8) An officer entering any premises under this section may take with him such other persons and such equipment as may appear to him to be necessary.

D (9) On leaving any premises which an officer is authorised to enter by warrant under this section the officer shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as he found them.

D (10) In its application to Scotland, this regulation has effect as if—

- (a) the references in paragraph (1) to a justice of the peace included references to a sheriff; and
- (b) the reference in paragraph (1) to information on oath were a reference to evidence on oath.

D (11) In its application to Northern Ireland, this section has effect as if the references in paragraph (1) to a justice of the peace were references to a lay magistrate.

D (12) The LBRO shall give guidance to Local Weights and Measures Authorities and each Food Authority exercising functions under Section 12 of the Food Safety Act 1990 on applications under this Section for warrants in respect of premises outside of the area of their Authority.

D (13) It shall be the duty of Trading Standards Authorised Officers or Environmental Health Authorised Officers to comply with guidance issued under Section D (13).

### **Obstruction of authorised officers**

E (1) Any person who—

- (a) intentionally obstructs a Trading Standards Authorised Officers or Environmental Health Authorised Officers,
- (b) intentionally fails to comply with any requirement properly made to him by such an officer under Section C (1) (b), or
- (c) without reasonable cause fails to give such an officer so acting any other assistance or information which he may reasonably require of him for the purpose of the performance of his functions under the legislation that his authority's Trading Standards Authorised Officers or Environmental Health Authorised Officers are to enforce,

is guilty of an offence.

E (2) A person is guilty of an offence if, in giving any information to an officer appointed under A (1) and (2), he makes any statement which he knows to be false.

E (3) Nothing in this regulation shall be construed as requiring a person to answer any question or give any information if to do so might incriminate him.

E (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 or imprisonment not exceeding six months, or on conviction on indictment to a fine or imprisonment not exceeding two years

### **Notice of test and intended proceedings**

F (1) Where goods purchased by an officer pursuant to Section c are submitted to a test and the test leads to the institution of any proceedings for a breach of the legislation that his authority's Trading Standards Authorised Officers or Environmental Health Authorised Officers are to enforce the officer shall inform—

- (a) the person from whom the goods were purchased, or

(b) where the goods were sold through a vending machine, the person mentioned in Section d,

of the result of the test.

F (2) Where goods seized by an officer pursuant to Section e are submitted to a test then the officer shall inform the person mentioned in Section f of the result of the test.

F (3) Where, as a result of the test, any proceedings in respect of the legislation that his authority's Trading Standards Authorised Officers or Environmental Health Authorised Officers are to enforce are taken against any person, the officer shall allow him to have the goods tested on his behalf if it is reasonably practicable to do so.

## **Compensation**

G (1) Where a Trading Standards Authorised Officer or an Environmental Health Authorised Officers seizes and detains goods in exercise of his powers under Section g and—

(a) the owner of the goods suffers loss either—

(i) by reason of the seizure, or

(ii) by reason that the goods, during the detention, are lost or damaged or deteriorate,

and

(b) the owner—

(i) is not convicted of any offence in relation to the goods,

(ii) is not a person against whom a court can make an enforcement order under section 217 of the Enterprise Act 2002 in respect to the goods, or

(iii) is not a person in respect of whom the enforcement authority has accepted an undertaking under section 219 of the Enterprise Act 2002 in respect to the goods,

the officer's authority shall be liable to compensate the owner for the loss so suffered.

G (2) Any disputed question as to the right to or the amount of any compensation payable under this provision shall be determined by arbitration

and, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.

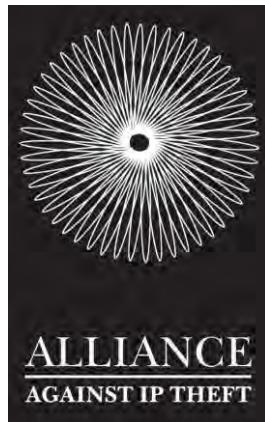
H (1) The legislation in Schedule A is hereby revoked. (*This will be the powers sections analogous to these powers in the various bits of legislation TSOs and EHOs enforce*)

H (2) These powers are in addition to and not a substitution for any powers given to authorised officers or inspectors of a local Weights and Measures Authority or a Food Authority exercising functions under Section 12 of the Food Safety Act 1990 by any legislation they are authorised to enforce.

### **Extent**

I This Part applies throughout the United Kingdom.

## Alliance against IP Theft



## EMPOWERING AND PROTECTING CONSUMERS

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

#### RESPONSE FROM THE ALLIANCE AGAINST IP THEFT

##### **Introduction**

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The Alliance Against IP Theft welcomes the opportunity to submit evidence to the Department for Business, Innovation and Skills (BIS) on the role of trading standards in enforcing consumer law and protecting consumers from illegal activity.

Rights holders and brand owners do everything possible to ensure people are not put in harm's way via the sale of counterfeit and pirated goods. The Alliance works closely with trading standards to raise awareness of the risks associated with, and the harm caused by, IP crime. In addition, individual Alliance members undertake enforcement activities with trading standards departments and local police forces, but do not have the necessary enforcement powers. This means that although they may have clear information relating to IP crime, they simply cannot enter premises, nor can they inspect and seize evidence of the crime, or documents relating to that infringing activity.

The role, therefore, of trading standards as the front line in intellectual property rights enforcement is critical. It is their responsibility, along with the police, to protect consumers and businesses by enforcing the criminal provisions of IP legislation. This means that trading standards perform an important public function by ensuring that trade is fair and lawful, that consumers are protected from shoddy, substandard and potentially dangerous products, that local criminality is combated, and rights owners, shops and traders, who are operating legally selling legitimate products, are protected. They also have powers to ensure companies are not abusing intellectual property rights by, for example, committing copyright offences by knowingly installing or reproducing copyright protected material without the proper licences.

This important role was recognised in the Rogers Review with counterfeiting and piracy (under the fair trading banner) adopted as a key national priority by the Local Better Regulation Office.

##### **Impact of IP crime**

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###### ***Harm to consumers***

The sale of counterfeit and pirated goods, in particular at markets and car boot sales and increasingly online, expose consumers to a real risk of harm which they would not encounter in other legitimate retail environments.

The Anti-Counterfeiting Group, an Alliance member, reports a wide range of potentially harmful counterfeit products found for sale both online and at markets<sup>1</sup>. Specific examples include:

- children's clothing <http://thechildrenplace.blogspot.com/2010/04/let-us-show-you-how-to-differentiate.html>
- toys <http://www.bbc.co.uk/news/uk-england-kent-14755444>
- household cleaning products  
[http://www.cheshirewestandchester.gov.uk/news\\_and\\_events/press\\_releases/2010\\_press\\_releases/media\\_releases\\_for\\_april\\_2010/joint\\_operation\\_thwarts\\_fake\\_w.aspx](http://www.cheshirewestandchester.gov.uk/news_and_events/press_releases/2010_press_releases/media_releases_for_april_2010/joint_operation_thwarts_fake_w.aspx)
- mobile phones and accessories [http://reviews.ebay.co.uk/FAKE-MOBILE-PHONES-SCAM-BEWARE-VERY-IMPORTANT\\_W0QQuidZ10000000007676954](http://reviews.ebay.co.uk/FAKE-MOBILE-PHONES-SCAM-BEWARE-VERY-IMPORTANT_W0QQuidZ10000000007676954)
- perfume <http://blogs.mirror.co.uk/investigations/2011/05/warning-over-fake-perfume-webs.html>
- alcohol and cigarettes containing noxious and harmful substances
- lighters [http://menmedia.co.uk/manchestereveningnews/news/s/1115471\\_firm\\_fined\\_over\\_danger\\_lighters](http://menmedia.co.uk/manchestereveningnews/news/s/1115471_firm_fined_over_danger_lighters)
- appliance batteries which have exploded under testing conditions
- electric drills and chainsaws <http://www.weymouthpeople.co.uk/news/Weymouth-magistrates-fine-fake-chainsaw-man/story-4557401-detail/story.html>
- other electrical goods such as hair straighteners <http://bewareoffakes.ghdhair.com> and cables <http://www.aci.org.uk>
- consumer electrical products such as Nintendo DS's and Wii's
- disposable razors that have caused extensive skin damage
- other personal care products (skin creams, soaps etc)
- car parts <http://www.rx7club.com/showthread.php?t=959132>
- sunglasses <http://spotfakehandbags.com/fakesunglasses.html>

It goes without saying that the safety of counterfeits such as electrical goods and children's toys cannot be guaranteed, but add to this the number of DVDs, CDs, video games and software, and books on sale via such outlets and it can be appreciated just how much damage is caused to legitimate local retailers and businesses.

### ***Harm to communities***

The link between the trade in fake goods and other serious organised crime is increasingly clear and recognised by crime prevention and enforcement bodies such as the Serious Organised Crime Agency (SOCA) and the City of London Police. IP crime is one of SOCA's priorities and the Alliance was pleased to see the Government's commitment to tackling this criminal activity outlined in the recently updated IP Crime Strategy.

### ***Harm to business and the economy***

This multi-billion pound illegal trade hits the UK at every level – effecting large corporations employing thousands of people through to small businesses and local individual traders.

Frontier Economics published a study<sup>2</sup> which showed that counterfeiting cost the UK government:

- €4.1 billion in lost taxes and higher welfare spending
- 380,000 jobs with 31,000 people unable to find new jobs
- €1.7 billion for every 1% increase in crime caused by counterfeiting

It is clear that counterfeiting and piracy has a direct impact on economic growth. The money lost to business and the wider economy is not redirected back into the legitimate economy via the development of innovative legal business services, increased tax revenues and job creation.

<sup>1</sup> [http://www.a-cg.org/quest/pdf/e-Summary\\_press\\_cuttings\\_11.pdf](http://www.a-cg.org/quest/pdf/e-Summary_press_cuttings_11.pdf)

<sup>2</sup> <http://www.iccwbo.org/uploadedFiles/BASCAP/Pages/Impact%20of%20Counterfeiting%20on%20Governments%20and%20Consumers%20-%20Exec%20Summary.pdf>

Investment is also impacted by a lack of confidence and uncertainty in enforcement, making any investment in industries and businesses which rely on IP more risky<sup>3</sup>.

This is why we urge the Government to not just evaluate the role of trading standards in relation to the consumer legislation it is responsible for enforcing - the contribution trading standards make goes wider and deeper.

## **Partnership working**

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Alliance members work very closely with trading standards to protect consumers and businesses by:

- Providing training, information and advice
- Aiding intelligence gathering and sharing
- Assisting with financial investigations and Proceeds of Crime actions
- Aiding enforcement

For example:

- The Real Deal campaign is a voluntary, cross-stakeholder initiative funded by industry which has brought together rights holders and brand owners, trading standards, local authorities and market operators to tackle the huge problem of counterfeit and pirated products being sold at markets and car boot sales<sup>4</sup>. Over 130 markets across 32 local authorities have already signed up. Plans are underway to significantly increase campaign penetration in 2012.
- In recognition of the increasing importance of asset recovery, FACT funds a financial investigator operating out of central Bedfordshire. This is a unique partnership allowing authorities across the country access to a highly experienced Financial Investigator. This FI is not restricted to assisting with cases that originate in central Bedfordshire and any assets recovered go to the originating authority.
- The Anti-Counterfeiting Group (ACG) runs free Roadshows for trading standards, customs and police (which are also attended by some other Alliance members) where brand owners exhibit real and fake items and seminars provide useful enforcement updates. ACG also partners customs to organise regular training days around the country. A series of Internet training days were launched this year to give trading standards the tools they need to investigate IP crime online. A variety of training sessions are also run by other Alliance members.
- The Alliance has partnered with the IPO to fund IP training courses as part of a Diploma in Consumer Affairs and Trading Standards.

## **Response to the consultation document**

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Many of the questions posed in the consultation document are not relevant to the work of the Alliance. Therefore, we have restricted our comments to the following points:

- 1) We understand the thinking behind consolidating the bodies responsible for providing consumer advice into one organisation and for designating Citizens Advice (CAB) as that organisation.

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<sup>3</sup> Further information on this can be found in the Alliance's submission to the Hargreaves Review  
<http://www.allianceagainstiptheft.co.uk/downloads/pdf/Alliance%20Against%20IP%20Theft.pdf>

<sup>4</sup> [www.realdealmarkets.co.uk](http://www.realdealmarkets.co.uk)

However, we do question whether it is the most appropriate body to give advice on IP law. This is a specialised area and one which trading standards have existing knowledge and expertise through their role as lead agency in enforcing the criminal provisions of the Trade Marks Act 1994 and the Copyright, Designs & Patents Act 1988. We would, therefore, recommend that responsibility for providing advice to consumers and businesses on matters concerning counterfeiting and piracy remains with trading standards, with approaches to CAB being redirected accordingly.

There is also an enforcement reason for taking this approach. Often those seeking advice on IP matters are also in possession of valuable intelligence. It is important that this intelligence is received by trading standards given its potential importance to enforcement activity.

- 2) We support the creation of a Trading Standards Policy Board (TSPB). Alliance members have long been frustrated by the patchy enforcement of IP law across the UK. The fact that different local authorities have different local priorities has led to an inconsistent approach to, and inconsistent funding of, trading standards work in relation to IP crime. This has been made worse by the fact that IP criminals are extremely mobile and do not limit their criminal activity to a single local authority area. Internet crime poses a particular challenge to a localised enforcement approach, with victims of a single operation being found all over the UK. We, therefore, welcome the ambition in the consultation document to create a body better able to deal strategically with such cross-border and national cases, and prioritise accordingly. However, we urge the government to take the following into account when making its deliberations:
  - a) Safeguards must be in place to ensure local authorities are required to maintain minimal standards and capability in relation to IP crime. There is genuine concern that given the cuts local authorities are facing any suggestion that there may be alternative funding available for IP enforcement activity (for example via the TSPB) may lead to authorities abandoning investment in this area altogether. This would be highly damaging for consumers and businesses, and would lead to a loss of expertise within trading standards which would be difficult to regain.
  - b) While there is a suggestion that 'lead' authorities could be appointed which would pick up cases from the TSPB, we believe an alternative approach would be to focus on building up GAIN (the Government Agencies Intelligence Networks). This is a multi-agency group that brings together intelligence and investigation officers from public and private enforcement agencies, central and local, across the different regions<sup>5</sup>. The aim of a GAIN is to stimulate the lawful flow of information, expertise and best practice between all enforcement agencies and other sources, to improve the cost efficiency of the targeting of offenders. This network is already in existence in four regions and, therefore, ideally placed to take forward IP cases which cross authority boundaries.

There is also a danger that the creation of 'lead authorities' would lead to an impression amongst other authorities that they no longer need to retain capability in IP enforcement. For reasons explained earlier, we believe it is vital that each authority retains such a capability, particularly to avoid placing undue burdens on authorities which have effective enforcement strategies and who compensate for those which do not.

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<sup>5</sup> GAIN members include: Trading standards, HMRC, Environment Agency, UKBA, Utility companies, SOCA, Regional Asset Recovery Teams, Police, Intellectual Property Office, DEFRA, VOSA, FACT.

- c) It is unclear from the document what becomes of cases which are passed to the TSPB but are not subsequently taken up by the Board. There must be a process in place for such cases to either be sent back to the referring local authority or to be passed on to the police for action.
  - d) We also recommend that the TSPB include representatives from the police. While trading standards have primary responsibility for enforcing the criminal provisions of IP legislation, they lack the power of arrest and require close support and cooperation from the police when mounting operations. In addition, IP crime is viewed more and more by law enforcement as a 'gateway' criminal activity – those involved in IP crime often being involved in other criminal activity. Police input is, therefore, vital.
- 3) The consultation document (in 5.57) refers to Consumer Direct, or its successor, having a key role to play in assisting the Board to prioritise cases. We strongly believe that any prioritisation must not merely be based on the number of calls Consumer Direct receives on a particular issue or case for two reasons.
- i. Consumer Direct is not a logical port of call for consumers complaining about IP crime and is not promoted as such by law enforcement. Consumers are instead encouraged to contact their local trading standards service and/or Crimestoppers.
  - ii. Many complaints relating to IP crime come from legitimate businesses who are finding their trade affected by this illegal activity. They would not view a consumer hotline as an appropriate means for recording a complaint.

In addition, measuring the seriousness of an issue by the number of consumer complaints that have been received is not always appropriate in cases of IP crime. Given the potential for consumer harm in a single instance (be it financial or physical) cases must be looked at on an individual basis. Therefore, in relation to IP cases the TSPB must take into consideration statements from trading standards, the police, the relevant rights holder or brand owner and intelligence from the Intelligence Hub which is located in the Intellectual Property Office's Enforcement Unit.

It must also be remembered that consumer detriment, while an important measure, cannot be the only factor the TSPB takes into account. Trading standards have the responsibility to enforce all aspects of the criminal law in relation to copyright and trade mark offences. This includes section 107 of the Copyright, Designs and Patents Act 1988 which covers the offence of distributing otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright. Therefore, the impact of the criminal activity on the legitimate business must also be a factor taken into account.

- 4) Trading standards also have responsibility for enforcing the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) which gave effect in the UK to the Unfair Commercial Practices Directive (UCPD). This is of interest to the Alliance as parasitic packaging is included on the list of banned practices found in this Directive. Parasitic (or misleading) packaging occurs when traders introduce consumer products in packaging designs very similar to those of familiar branded products. While similarity of packaging makes it much more likely that consumers will purchase the product by mistake thinking it to be the brand, the more insidious problem is the implicit suggestion conveyed by the similar packaging that both products come from the same production line and are of the same quality and reputation when they are not. The effect is to boost the sales of the copy. Please see the submission from the British Brands Group for further information.

However, because of the way the previous government implemented the UCPD, responsibility for enforcing the provisions of the directive was limited to trading standards and the OFT. This has proved a highly unsatisfactory response as the reality has been that, because of issues surrounding resources and prioritisation, neither the OFT nor trading standards have taken action to address this damaging practice. The previous government, under pressure from the then Opposition, promised that its implementation of the UCPD would be reviewed in 2010, but this never happened.

The proposed consumer regime outlined in the consultation offers no prospect of more effective enforcement of the CPRs in relation to misleading packaging. This is required for the UK to comply with the UCP Directive and we urge BIS to take this opportunity to resolve the matter by allowing companies affected by copying to be able to bring the civil enforcement action themselves. This is allowed for under the directive, would mean that the UK meets its obligations under European law, and lead to a higher level of consumer protection being met at no cost to the taxpayer.

**Susie Winter**  
**29<sup>th</sup> September 2011**  
**[susie@allianceagainstiptheft.co.uk](mailto:susie@allianceagainstiptheft.co.uk)**  
**020 7803 1324**

## About the Alliance

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Established in 1998, the Alliance Against IP Theft is a UK-based coalition of trade associations and enforcement organisations with an interest in ensuring intellectual property rights receive the protection they need and deserve. With a combined turnover of over £250 billion, our members include representatives of the audiovisual, music, games and business software, and sports industries, branded manufactured goods, publishers, retailers and designers.

The Alliance is concerned with ensuring that intellectual property rights are valued in the UK and that a robust, efficient legislative and regulatory regime exists, which enables these rights to be properly protected. Our members work closely with trading standards and local police forces to reduce the harm caused by intellectual property crime in local communities and to ensure that legitimate businesses and traders are able to operate fairly.

We work closely with the Department for Business, Innovation and Skills and the Intellectual Property Office to raise awareness of the harm caused by IP theft. We, and many of our members, are also participants in the IP Crime Group, which facilitates cross departmental dialogue and joint working amongst the relevant enforcement bodies and organisations, and SOCA's Programme 18 (where IP crime now sits).

## Alliance members

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Anti-Copying in Design  
Anti-Counterfeiting Group  
Authors' Licensing and Collecting Society  
British Brands Group  
BPI (British Recorded Music Industry)  
British Video Association  
Business Software Alliance  
Cinema Exhibitors Association  
Copyright Licensing Agency  
Design and Artists Copyright Society  
Educational Recording Agency  
Entertainment Retailers Association  
Federation Against Copyright Theft  
Film Distributors Association  
Motion Picture Association  
Premier League  
PRS for Music  
Publishers Association  
Publishers Licensing Society  
UK Interactive Entertainment

**Supporters:**

British Jewellery, Giftware & Finishing Federation  
Video Standards Council

## Anglian Water

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Tel 01480 323270  
Fax 01480 323192

Our ref

Your ref

26 September 2011

Dear David

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

I welcome the opportunity to respond to your consultation about consumer protection and am replying on behalf of Anglian Water which supplies water and wastewater services to more than six million customers in the east of England and Hartlepool.

We believe that it is important for companies to own the relationship with their customers and that there also needs to be a voice, independent of water companies and Ofwat, representing the customer interest. We very much support the conclusions of David Gray's Review of Ofwat<sup>1</sup> that the current arrangements involving the Consumer Council for Water have worked well and should be retained.

While we value the important role of the Citizens Advice service in providing advice and support to consumers, we are concerned that including responsibility for the water sector within their remit would weaken consumer representation.

David Gray's review highlighted a number of particular features of the water sector which he believed mean it requires a greater degree of specialist input from the consumer representative than could realistically be provided by a non-sector specialist body.

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<sup>1</sup> Review of Ofwat and consumer representation in the water industry July 2011  
<http://www.defra.gov.uk/publications/files/ofwat-review-2011.pdf>

These features include:

- limited extent of competition and option to switch supplier
- relative lack of any commercial organisation to represent the consumer view
- complexity of trade-offs required between water quality and environmental issues and water prices.

He also notes that the Citizens Advice service have less experience in representing business customers and currently have more of a focus on vulnerable customers including those with debt. This could potentially cause a tension as they balance advocating the interests of individual vulnerable customers with the interests of consumers as a whole.

At a time of major change in the water sector with a new approach to price setting and review of market reform, we see real value in keeping continuity of consumer representation to ensure that interests of customers are at the heart of the process. We would be concerned whether a body without CCWater's experience and history could perform the role as effectively in time for the next price review.

We wouldn't want to see the functions of CCWater transferred into any proposed regulated industries unit for the reasons we've already explored. However, we support the ambitions behind the proposal to help share best practice, create stronger cross sectoral expertise, take advantage of economies of scale and improve ability to consider cumulative impact on consumers of price change. We welcome the proposed design principle to ensure strong links and act in partnership with consumer advocacy bodies and believe this will help achieve these ambitions without CCWater needing to be incorporated directly into the unit.

I hope that our comments have been helpful in your review, if I can help with any further information please let me know.

Yours sincerely

Jean Spencer  
Regulation Director

## Angus CCTS\*

# **Response to the Department for Business, Innovation and Skills (BIS)**

## **From Angus Council**

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

#### **Background**

This consultation paper proposes radical changes to the provision of consumer information, advice, education advocacy and enforcement. These functions currently undertaken by the Office of Fair Trading (OFT) either in whole or in part are to be concentrated in either Local Authority Trading Standards Services (LATSS) or the Citizens Advice service.

This response has been produced for Angus Council, a local authority that provides a trading standards service. Within Angus Council Trading Standards There is provision for enforcing fair trading legislation alongside consumer safety, metrology, agriculture and health and safety legislation within the service. There is also a provision of consumer advice, information, education and intervention to assist consumers. Angus Council also operates a LAATSN approved trader scheme – Angus Reputable Trader Scheme (ARTS).

The proposed changes affect the fair trading elements of our work directly but it is anticipated that these changes could change the overall provision of the trading standards service as a whole. Angus Council considers that it provides an effective service that is relatively well resourced for the size of the authority.

It is noted that the consultation paper recognises the changes can be different for Scotland because of its separate legal system and governance. A separate solution is likely to be beneficial because the OFT does not and has not taken those considerations into account to any extent, particularly in matters of civil enforcement.

## **Chapter 1 – Introduction**

### **Policy**

The consumer policy proposal is to promote empowerment of consumers to make wise decisions and to be risk averse. They see a role for businesses with high standards based on voluntary codes of practice, underpinned by law that is not too prescriptive but properly enforced.

For many decades Trading Standards (TS) and others have sought to empower consumers. Often consumers will not assimilate the knowledge until they require it. Consumer affairs are not taught in schools to any great extent and consumer education is not priority work within trading standards. We are therefore tackling this cumulative lack of knowledge from a low starting point.

### **Focusing Resources**

The proposal is to reduce the complexity focusing on the front line to achieve empowerment at the lowest cost. Each of the institutions will be given a particular role where appropriate and resources diverted to them.

**The CAB** will be responsible for consumer information, initial advice, education and advocacy.

**A collective trading standards** including Local Authority TS Services, TSI, ACTSO, specialist regional teams will provide the enforcement role. A TS Policy Board headed by Chief TSOs will lead the network and deploy funds as appropriate for consistency of enforcement and capability under the preferred option but a regime for Scotland will be considered.

**Competition and Markets Authority**, being the rump OFT looking at market analysis and competition.

Clearly all of this is untried and assumes that consumers will be aware of the new arrangements. The umbrella body for the CAB are to be given the Consumer Direct function, being a national facility for consumer advice primarily by telephone. There is a definite downwards movement of responsibility with TS being given roles that were the preserve of the OFT in terms of policy and function. It is vital that the intelligence from complaint work continues to be streamed to trading standards from what was Consumer Direct and ideally all CAB enquiries and complaints. The resources to cope with the added burden of the work currently done by the OFT will be crucial for this to operate effectively.

## **Chapter 2 – Information, Advice and Education**

The key proposals transfer much responsibility from the OFT to the CAB.

- CAB to lead on all government funded info and advice to consumers
- CAB to take responsibility for Consumer Direct
- Extra Help Unit from Consumer Focus to CAB
- CAB to take on national co-ordination of consumer education
- Consumer education locally to be a collaboration between CAB and TS

The TS role for face to face and telephone advice is not affected as this has never had funding from central government and can continue. Out of 1077 consumer contacts in 2010/11, Angus Council Trading Standards received 721 of those contacts through Consumer Direct, or 66%. Consumer Education locally on fair trading matters is not currently a significant amount of work, being mostly press releases on specific local problems or campaigns.

The current need to maintain a database of complaints for intelligence purposes will still be required. This was always incomplete because it never included specific information on CAB complaints from local bureaux. The umbrella bodies, CA and CAS do not control the local bureaux; their relationship is not likely to change in regard to consumer complaint handling in the immediate future.

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

Information to consumers has always been an uncoordinated effort from a number of organisations, aided by the Consumer Education Liaison Group (CELG). There are many laudable efforts including Young Consumer of the Year Competition to stimulate consumer information and understanding from an early age. Better coordination and availability across a number of media would be of benefit. Impartiality and balanced information is vital and equality of access should also be a consideration. We acknowledge that there is a balance between availability and cost.

The financially cheapest and simplest solution of publication of consumer information on the internet is not satisfactory from an equality perspective.

Ultimately consumer information and education should be part of citizenship and taught in schools. There can never be a level playing field until citizens have knowledge.

**QUESTION 2. Do you agree that the OFTs consumer information role should be transferred to the Citizens Advice service?**

In principle we have no objection to the OFTs consumer information role being transferred to the CAB but appropriate structures, expertise and consultation must be maintained. CAB should not be assessed on the percentage of cases passed to TS for further investigation or any clear up rate. All intelligence on complaints must be passed and this should include the cases handled by the CAB that are currently not reported to TS.

Although the question relates to consumer information, there is also the matter of consumer advice and intervention to resolve consumer complaints. It should be noted that the umbrella body Citizens Advice Scotland are taking on the functions of Consumer Direct. The original concept of Consumer Direct was to offer a minimum standard of consumer advice across the UK and this must be retained.

This does not affect the provision of the local bureaux, who remain as a largely voluntary organisation. Complex consumer complaints require an analysis of the facts by a knowledgeable person and we anticipate that the trading standards service will retain that capacity to deal with such complaints. There are also a large number of complaints that include a criminal dimension and must be scrutinised by the enforcement authority, namely Angus Council. CAB must not ignore or fail to recognise the criminal aspect of any complaint for convenience of resolving consumer enquiries.

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

If Citizens Advice are to be given other roles in the consumer landscape then it is appropriate that the Extra Help Unit for vulnerable consumers should be transferred to them.

**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?**

Angus Council accepts that the consumer education role, currently provided by the OFT can be provided by the CAB. The most valuable work is in schools for the future generations. This would be best done within the context of a curriculum. Public service broadcasting could also be used to highlight appropriate issues. The coordination that currently exists between the OFT who provide

materials and lead on particular campaigns and TS who operate on the ground should be maintained by the proposed new structure.

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

The trading standards community are the best providers of information for businesses as they are the enforcers of the legislation likely to be the subject of the advice. It is important that there is consistency across the country in terms of business advice and this should be coordinated at a high level. Whatever solution is provided for Scotland, it should include a provision for the consistent support of honest businesses with the information and advice they need.

## **Chapter 3 – Consumer Codes Approval**

### **Key proposals**

- OFT consumer codes approval scheme to be dropped
- Alternative for approval by other bodies

The codes approval scheme seems to be falling between the organisations in the new structure and the solution is to drop them. At the same time the government is keen on this type of self regulation and promotion of higher standards in business. It appears that the rigorous process adopted by the OFT is off-putting for the government who do not wish to put in the resources necessary for this to continue. The problem is giving the codes the backing of a recognised authority to promote consumer confidence. The government is proposing either BSI or a scheme based on the primary authority as the best approving body.

### **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?**

It would be a mistake not to provide a mechanism for the CCAS to continue. Whether this lies within trading standards or BSI is debatable, but our preference would be for TSI to host that function. There is a need for CCAS to be achieved at low cost and this may not be possible within BSI. Local Authority Assured Trader Schemes could also provide the certification necessary for individual traders. Commercial alternatives are poor and mistrusted and there is little integrity within self regulated schemes and this strengthens the case for retention of CCAS.

### **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?**

This should not be left to chance. A definite proposal for continuation of the codes should be in place when the OFT no longer gives that approval. An exploration of the BSI standard alternatives may well offer useful developments as long as they fall within a regulatory framework to avoid them becoming meaningless. The codes are valued by those who use them as it distinguishes their businesses as being of a higher specification when dealing with consumers and inspiring consumer confidence.

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

Clearly the codes approval process is overly onerous and complex at present which has restricted their wide use. The codes are undoubtedly of a high quality giving effective consumer protection and confidence. They can become slow bureaucratic and ultimately frustrating to all stakeholders but equally they must not be watered down to accommodate the marketplace over the protection of consumers. One example is the failure of the Energy Retailers Association to become part of the Direct Selling Association code on the matter of principle in respect to cancellation rights. The maintenance of the integrity of the Direct Selling Association's code is a matter of commendation.

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

The codes are about raising standards in specific market sectors, not about standardisation. BS is a well recognised brand but it would take considerable time to set up a replacement to CCAS. The recent ISO on ethical business practices shows it can be done. It is a concern however that the substance of the code is actionable and that breaches of the code have mechanisms for redress.

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

They would need to show high standards tailored to specific requirements and not a lowest common denominator. Consumers and regulators concerns need to be met as well.

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

A scheme for approval of industry codes, local authority trader schemes and other approvals through the trading standards community is likely to provide the best solution. It should have an element of independence away from any vested local interests. We remain sceptical of the primary authority scheme because of the imbalance between small authorities and their ability to control large multinational companies.

## **Chapter 4 – Consumer Advocacy**

### **Key proposals**

- A single focus to lead for publicly funded advocacy.
- CAB to take lead for Consumer Focus functions
- Redress schemes extended to other market sectors as available for energy and postal services

Possibly the part of this review that affects our services the least. It does seem however to be driving changes in advocacy based on cost and not effectiveness. Consumer Focus is a powerful advocate and can take action in the consumer interest. It also undertakes research and has wide ranging responsibility in some market sectors.

The government puts faith in the “brand” as far as advocacy is concerned and cites CAB and Which? as recognised brands over Consumer Focus although many people might recognise National Consumer Council or Scottish Consumer Council rather than the current branding of Consumer Focus.

### **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 all of the sectoral advocacy functions is a good idea if the mechanisms are the same as detailed. If it is not done in totality then the aim of concentrating advocacy is lost.

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

The design principles appear to be rigorous enough.

### **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?**

I do not see a need to abolish Consumer Focus (CF). It is independent of the other organisations

and that detachment ensures an unbiased approach to their functions. Merely transferring all of the functions from one body to another seems to be based entirely on cost and not their effectiveness. Consumer Focus doesn't depend on direct consumer contact and could combine a number of functions such as those currently attributable to LACORS, LGR and LBRO. Maintaining CF could fill a number of gaps. The existence of CF would not confuse consumers as it would have a behind the scenes role. The strategic specialisms it possesses are significantly different from the skills held by CAB or TS. Its continued existence could complement and enhance consumer protection. If CF is not retained for the UK it may provide part of a solution for Scotland.

**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?**

Whatever the final landscape, the interests of Scotland Wales and Northern Ireland must be considered in their own right and not as an afterthought or accommodation to any English considerations. Clearly there are consumer issues unique to Scotland, Wales and Northern Ireland which need to be considered. It may be appropriate to consider unique models for consumer advocacy as a result.

We must ensure that the differences in jurisdiction does not lead to differences in the standard of consumer protection. Also we must ensure that devolved administrations and the United Kingdom and any international interface is streamlined particularly where cross border issues like intellectual property and doorstep crime impact on the serious organised crime agenda. Structures such as the National Intelligence Model can be utilised to assist in the process of combating criminal activity.

**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 if the functions are transferred. The question is – has the right organisation been chosen for the advocacy role? If so then the powers should go to them.

**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 considered. They all have regulators and standards of service, and it makes sense to have redress schemes. We have concerns however about the poor and otherwise

vulnerable. If this is backed by an effective Enterprise Act regime and consumer redress mechanism, that would be useful.

**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

## **Chapter 5 – Enforcement of Consumer Protection Legislation**

### **Key Proposals**

- Establish a Trading Standards policy Board in England and Wales
- National enforcement in E&W by primary or home authorities backed up by regional teams
- Competition and Markets Authority (CMA) for market studies
- CMA to have powers where competition is inhibited
- CMA to hear supercomplaints
- Shared work plans and partnership across the organisations involved in enforcement
- TSI to take on some of the OFTs policy functions
- TSPB to consider action against businesses referred to them under Codes of Practice
- OFT to continue if CMA is not established in time

Enforcement is seen by government as being a postcode lottery and must be sustained at a minimum level in all authorities. Consumer detriment is substantial – approx £10 billion with current spending on enforcement at £245 million. Robust enforcement is necessary to promote consumer confidence and ensure that the UK maintains its competitiveness internationally.

- Local authority TS services cover a number of functions including fair trading. Fair trading work is regarded to be
- reactive enforcement in response to complaints
- proactive intelligence led enforcement work, investigation and visits to premises
- compliance / education work such as advice to consumers and businesses

Primary and home authority work is in place for national businesses for advice and information which may be extended because of their success.

Spending for all TS services was approx £213 million in 2009/10 and this is expected to fall by 20 – 30% over the period from there to 2014 and fair trading work is calculated as being under half of the total. The National Audit Office has shown that some authorities spend as little as £3 per head of population on Trading Standards services which is highlighted as the reason for some services being ineffective.

LGR provides advice and guidance to authorities and by promoting good practice and delivering improvements through the Guide to Good Practice. Service delivery outcomes in Scotland are tied into the Single Outcome Agreements although the SG has no remit to develop or enforce consumer policy.

Regionally there are coordination networks and most have intelligence capability and specialist teams for regional enforcement. Cross border enforcement is difficult and expensive for local authorities especially if it is perceived that the benefit accrues to its neighbours disproportionately.

#### BIS funds

- Scambuster teams to tackle rogue traders
- Illegal money lending teams to tackle loan sharks
- Internet enforcement for complex online fraud
- Ports funding for product safety
- Fighting fund for regional and national threats

Nationally the OFT undertakes national enforcement against a range of priorities, usually by enforcement orders. It also liaises internationally and gives guidance to local authorities. The OFT addresses the more serious nationally important cases and tries to make markets operate effectively. There are perceived weaknesses in the current structure where cases fall between the OFT and TS. The OFT costs £59.8 million for this year.

There are concerns that rogue traders operate across boundaries and that authorities must work together to counteract this threat. Some authorities are cutting staff numbers in TS to the extent that they cannot operate effectively and become a haven for criminal activity. Scotland is highlighted as being particularly at risk with many authorities being staffed by less than 10 officers. The OFT is not seen as capable of plugging the gaps. There is a perceived high risk of splintering with a resultant undermining of consumer confidence.

#### Options for Reform

1. All OFT enforcement functions to TS (and funding). This option is not favoured because of the capacity issue and complexity of some issues.
2. All enforcement other than local issues by CMA. The enforcement gap issue would not be addressed and there would need to be significant funding to make it work properly
3. Majority of funding to TS who will develop national leadership and coordination for cross border issues with the CMA. The analysis of complex market problems would lie with the CMA. The funding increase would allow for better more consistent enforcement locally and regionally. This is the preferred option.
4. An amended option 3 but resources are deployed through a Joint Enforcement Board. This would create a new organisation and the influence of local TS would be less than option 3.

5. A unique solution for Scotland (and any other devolved administrations of the UK). A proposed Scottish Reaction Team would take the OFTs role and operate at a national level including operational oversight the current teams such as the Scottish Illegal Money Lending Unit.

In option 3, the government's preferred option, The TSPB would provide leadership in partnership with BIS and delivered through LG Group. The model in Scotland would involve SCOTSS, COSLA, The Improvement Service and the Scottish Government along with BIS. The principles for the leadership to be successful are given as;

- Taking responsibility for large complex cases
- Providing a case management system for consistency and prioritisation
- Following the principles of good regulation
- Ensuring that national funds are for national issues and not to plug gaps for failing authorities

The CMA would address market failures National enforcement would be the focus for the TSPB or other solution. The primary objective is to enhance the collective capacity of TS locally. Expanded regional teams are seen as the solution in E&W but individual authorities could act in the national interest in specific cases. An indemnity fund would be made available to authorities willing to take on cases of national importance.

In option 4 the split in responsibilities between the CMA and TS would require a further Joint Enforcement Board for effective leadership and decisions on cases.

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

Trading standards have the skills and experience at present to deliver what the government wants but the current loss of officers in the current economic climate may prevent any meaningful solution. Funding will be vital and any funds must be utilised effectively to provide proper enforcement across all local authorities. It makes sense for Scotland to adopt a unique solution if the proper resources are provided and a suitable mechanism for service delivery with appropriate political and operational oversight can be found that is acceptable. There is no merit in the interests of Scottish consumers being considered as a secondary part of a UK enforcement regime. The OFT has never recognised the requirements of the Scottish legal system leading to subsequent problems with enforcement. The degree of autonomy will depend on the willingness of COSLA to engage with the process and recognise the importance of the consumer landscape and provide a

platform for political oversight. Likewise any willingness of the Scottish Government to become involved must also be considered along with any likelihood of such matters being a devolved matter.

Angus Council would give conditional approval to a unique Scottish solution should any be proposed, if it provides a better way for Scottish consumers.

**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?**

There is likely to be a unique solution for Scotland which would recognise the difference in providing for Scotland without being first considered within the context of the UK (ie from an England and Wales perspective). Specialist teams on a temporary basis can be assembled from within the trading standards community if there is capacity built into the overall structures. There is a capacity issue at present with experienced officers opting for retirement and little recruitment to replace them. An indemnity fund will be necessary should the OFT capacity to take very significant cases be removed. There are circumstances where Angus Council would be willing to take cases of national importance especially where Angus consumers or businesses were involved.

**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?**

If there were no movement in the powers between TS and the CMA there would be no point in abolishing the OFT. In our opinion the most suitable solution would be one that was unique to Scotland.

**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 a JEB was the preferred option it would probably benefit from a wider representation, but a more

informal body between the TS and CMA representatives might make decisions faster and more effectively in terms of allocation of cases and the resources to investigate effectively.

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

Business does play a part in collecting intelligence and offering market advice. There is a role for consultation.

**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. There is a role for OFT and CF as a single entity especially within a Scottish dimension.

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

The National Intelligence Model should be followed as far as possible to determine the procedures appropriate at each level.

**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. Surely this needs to be judged on a case by case situation. Some market sectors could benefit from a collaborative approach between analysing agencies.

**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 CMA should do all market studies for consistency. There is a case for splitting the consumer interest from other interests but there is no reason to believe that the CMA would not be fair in its deliberations. CF could be retained in Scotland to enhance this process.

**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?**

It is vital that there is proper collaboration in cases where the enforcement responsibility is unclear. There should be scope for joint investigations where the skills from each organisation could be beneficial to any investigation. They also need to address the reality that the Enterprise Act regime is failing.

**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 resources are an issue for any investigation it would be prudent to hold that in reserve for such investigations. The level of such funds might need to be allocated at a later date depending on the certainty of the lines of demarcation between the enforcement bodies.

**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 have taken on significant cases with a national impact. Strengthening the Enterprise Act and its effectiveness is necessary. Similarly, the small claims procedure should ensure quick effective and access of all mechanisms to citizens. It must be cost effective compared to prosecution and free up court time and resources. Local TSS are competent at enforcement and it is necessary to maintain effective enforcement locally.

**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. There may be resistance to a professional officers association taking on a government 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?**

TSI at an appropriate level would be an appropriate home for the OFTs international liaison and general policy 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?**

No, we do not believe that this requirement is entirely necessary. This part of the EA 2002 does not run smoothly at present. A central database should go a long way to preventing any duplication of effort.

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

We are not sure that the CMA would have the knowledge in the future to carry out this function. We do not think it is an important consideration at this point.

**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?**

Yes. It is reasonable that a high level body should input into the process where a consumer enforcement issue is to be considered.

**QUESTION 39. Do you think that a lead local authority could take on the OFTs estate agency**

**and related anti-money laundering functions?**

Possibly, if there was an authority that would take it on. There would need to be an equivalent for Scotland. This might sit better with the CMA or the unique solution for Scotland.

**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 current regime could provide the CMA function therefore there is probably no need to delay any changes.

## BAR – British Association of Removers

DEPARTMENT FOR BUSINESS INNOVATION AND SKILLS (BIS) CONSULTATION –  
EMPOWERING AND PROTECTING CUSTOMERS

16 September 2011

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

RESPONSE BY THE BRITISH ASSOCIATION OF REMOVERS

British Association of Removers Ltd  
Tangent House, 62 Exchange Road,  
Watford, Hertfordshire,  
WD18 0TG



## Introduction

The British Association of Removers is the trade association for UK-based removals companies. BAR has nearly 500 full Members, of whom most are engaged in domestic removals within the UK and overseas. All member companies are required to adhere to the Office of Fair Trading approved BAR Code of Practice which was introduced in 2008 for UK removals, and extended in 2009 to include overseas removals. The relatively small number of BAR Members who are engaged in commercial moves, which lie outside the scope of the Consumer Codes Approval Scheme (CCAS), are still required to adhere to the BAR Code of Practice in the wider sense of applying high standards and ensuring customer satisfaction.

This response is made after consultation with long-standing Members of BAR, including the Board of Directors, and it is clear that assuring the future of the Consumer Codes Approval Scheme, of which the BAR Code of Practice is a part, will have a significant impact upon BAR Members and their ability to continue to assure their customers of high standards of service, and ready redress should matters go wrong. It is, however, recognised that the range consumer protection measures, and enforcement of standards, is at present confusing both for customers and businesses, particularly for SME's.

With regard to the questions asked in Annex A to the consultation document 'Empowering and Protecting Consumers' dated 21 June 2011:

### Question 6

6.1 The most important and valued part of the Consumer Codes Approval Scheme for BAR Members is the ability to display the OFT logo, a symbol that has attained wide recognition and trust with the public. Customers are assured that this widely recognised symbol represents a single, nationwide, and well trusted brand, imposing a common standard of service upon all BAR Members, upon which they could rely. BAR Members value the Code, as a unique OFT branded selling point when dealing with their customers

6.2 As the CCAS is government funded, the cost to BAR and to its Members of adopting and operating the Code of Practice is lessened. This is an important consideration at a time of financial and economic stress. All value derived from the CCAS for Members has to be seen against the cost of administering the Code of Practice, both by BAR and internally by its Members. The importance of retaining the OFT brand for as long as possible has to be stressed, as to change this will impose a cost both on BAR and its Members. The lessening of public recognition entailed in the loss of the OFT logo, will add to the perceived cost of the Scheme and a diminishing of its effectiveness in addition to the actual cost of any necessary re-branding.

6.3 Adoption of the Code of Practice enabled BAR to better understand the legislation relating to consumer protection, and to pass this information on to its Members. Compliance with that legislation, while already high as a by-product of companies adopting good business practices, has naturally increased as a result of this process.

6.4 The consultation paper sets out a number of possible alternatives to the Office of Fair Trading as sponsors of the CCAS. Funding is not discussed, so there are concerns as mentioned in 6.2 (above), and of the various alternatives, there is particular concern at the potential involvement of BSI on that score. It is felt that in this event, the cost of the CCAS would significantly increase, and perhaps become unviable, or so unattractive to BAR Members, that adherence and compliance would become hard to achieve. In addition, BSI is

not easily identified as a ‘consumer-facing’ brand, and it is not clear that they have the background experience and knowledge in consumer protection affairs to take the CCAS forward effectively. For similar reasons, concern is also felt that the costs of UKAS taking on the sponsorship of CCAS would be unacceptably high, with doubts once more as to the scheme’s continuing attractiveness and viability.

For ‘Which’ (the Consumers Association) to take on CCAS, would also pose real difficulties, as this is a commercial body, and is unlikely to be seen by BAR Members as having the objectivity demonstrated by the OFT, and to be even-handed, most particularly when considering the application of the customer complaints procedure under the BAR Code of Practice. In very much the same way, it is not felt that Citizens Advice Bureau would be appropriate or capable to take on the sponsorship of CCAS. The CAB core function is to have volunteer advisers, and their approach would not be regarded as even-handed. In addition, the CAB operation would have to evolve out of all present recognition for them to attempt to take over the CCAS sponsor’s role.

It is felt that there is merit in considering the Trading Standards Office as future sponsor of the CCAS, but this should not be at a local office level, as that would make a uniform approach almost impossible to achieve. Therefore, a central TSO function would have to be considered for this to be a viable option. It is felt, though, that the TSO brand is no-where near as well recognised as that of the OFT, and a backward step in consumer recognition and therefore in value to BAR Member of the operation of the Code, would have been taken.

With regard to the possible transfer to a Primary Authority (Future of the Local Business Regulatory Office [LBRO] consultation paper, June 2011 para 2.13), it is unlikely that an easily recognisable badge would be created, and nor is it clear that one Primary Authority would be put in place for the whole CCAS, or alternatively that there should be an authority for each constituent part. One Primary Authority for the scheme would probably be preferable, to ensure a common approach across all CCAS sponsors, and to achieve the stated aim in the LBRO paper ‘to benefit from a consistent regulatory approach’. Once again, for this to be operated by Trading Standards Offices would require a central, standard, approach to ensure uniformity.

In the event that a Primary Authority were to take over the sponsoring of CCAS, the continued use of the OFT brand for as long as possible (for reasons set out in 6.2 above) remains of significant importance. This would also be so, should the yet to be formed Competition and Markets Authority take on the role of sponsor.

#### Question 7

7.1 Others sectors and bodies may respond to the winding down of the CCAS, but the key will remain (a) consumer recognition of the value and validity of the scheme, and (b) how to fund the alternative(s) created.

#### Question 8

BAR would not wish to see any major aspect of the CCAS changing as a result of future arrangements, either in the requirements imposed by the Code of Practice, or in the manner in which compliance is assured and verified, both by BAR, and presently by the Office of Fair Trading. However, improvements might be expected in the ability of the (at present) ten individual code sponsors to have an opportunity to liaise and exchange views, and for those views then to be put to the responsible body in a co-ordinated way. This would, it is felt, both encourage fresh ideas and approaches amongst the present sponsors, and act as an encouragement for more sponsors to enter the scheme.

### Question 9

To transfer the existing codes into range of BSI Standards would, it is believed, result in a diffusion of effort and a loss of cohesion within the CCAS, with a range of new BSI numbers with little immediate recognition amongst customers. Concern at the likely increased cost of BSI involvement has already been expressed in 6.4 (above). A single BSI number for all Consumer Codes, however, might be given further consideration.

### Question 10

The same as those required under the present Office of Fair Trading sponsored CCAS.

### Question 11

Although the cessation of the present OFT Consumer Codes Approval Scheme with no workable replacement would be the worst outcome for code sponsors, this suggestion holds few attractions, for the reasons set out in 6 (above).

### Summary

There are three key requirements to be met if the CCAS, in particular the OFT approved BAR Code of Practice, is to continue to receive support from BAR Members:

- (a) The badge under which the CCAS will operate in future must be instantly recognised and respected by consumers
- (b) The cost of administering (for BAR) and implementing (for BAR Members) the Code of Practice, must remain modest and affordable
- (c) The governing body for the CCAS must be able to maintain the objective approach adopted by the OFT, albeit with continued focus of achieving consumer protection, and redress where necessary.

### Afterwords

#### (a) Question

Will Government fund the changes necessary for the transfer of the CCAS to another sponsor, with the associated re-branding necessary? If so, what budget has been set aside for this?

#### (b) The Way Ahead

A possible way in which the Consumer Codes Approval Scheme could move ahead effectively in the future, might be for the CCAS group to continue to promote and operate the scheme, using the OFT brand, with the necessary regulatory 'umbrella' body being provided by BIS under the terms of a Memorandum of Understanding.

## Barnsley Metropolitan Borough Council



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### Planning and Regulatory Services

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Date: 26<sup>th</sup> September 2011

Dear Mr Evans

**Barnsley MBC Consultation 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”**

Barnsley Metropolitan Borough Council (BMBC) is pleased to provide the attached response to this consultation.

If you have any queries about the content of our response and wish to discuss the matters further, please do not hesitate to contact me on 01226 772541 or at [simonfrow@barnsley.gov.uk](mailto:simonfrow@barnsley.gov.uk)

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Simon Frow".

Simon Frow  
Head of Regulatory Services



#### **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. Each individual enquiry should be dealt with by an officer who provides bespoke advice and guidance relevant to the complain, whether this officer is from the local authority or elsewhere. Barnsley MBC would not support any reduction in the standards of advice from that currently provided. (E.g. 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?***

BMBC would accept 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.

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?***

BMBC has no objection to the 'Extra Help Unit' being transferred to Citizens Advice. The issue is that the same standards of advice (and preferably better) is maintained and available to citizens.

***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?***

BMBC has no objection to the proposals as long as the same standard of education authority (or better) is maintained. However, it is important that in respect of this provision of consumer education, it is delivered at a national rather than a local level to ensure consistency of approach.

***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 websites such as BusinessLink and also Everything Regulation When Its Needed (ERWIN). Also in Barnsley we have been developing the YoHr Regs Hub which is partly aimed at business advice, guidance and support.

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 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.

## **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?**

BMBC response to questions 6-11:

BMBC has no strong preference on the future of CCAS but does recognise that there is an opportunity to revitalise the process. It is essential that LATSS are involved in the application process.

## 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?**

BMBC considers the proposed approach to be sensible, as long as it is carried out to the same (if not higher) standards as provided presently.



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

Yes, BMBC agrees with the principles.

**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?**

Also see answer to question 12. BMBC has no view on any alternative approach, but should one be adopted we make the comment it is the outcome that is important and that standards are maintained or bettered.

**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?**

BMBC has no view on this.

**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 BMBC view is that any organisation charged with taking on the roles of consumer focus must have the associated powers of information gathering, without which it may find itself 'toothless'.

**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 BMBC view is that the redress 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?**

BMBC has no view 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?**

BMBC has no view on this.



## 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?**

BMBC supports Option 3.

BMBC already does work which has a regional and/or national impact via its membership of the Yorkshire and Humber Trading Standards Group and the extension of this work into these other fields brings a consistency to consumer enforcement. Within the Yorkshire & Humber region we have proved we are successful both in coordinated enforcement through our very successful Scambuster team, and by individual action by some of our member authorities against significant rogue trading/scams.

We have well developed regional and local intelligence networks and this is all supported by a significant capacity throughout the region of accredited financial investigators. The region also benefits from access to a local authority run digital evidence recovery and internet crime forensic laboratory.



In all, we are confident that as a region, and similarly as a profession, we are perfectly capable of absorbing and adding significant value through experience and expertise to the proposed new areas of work.

Option 3 has the advantage of removing duplication in responsibility for enforcement in served areas of consumer protection work. Additional resources would enable LATSS to build on the success of local authority delivery of trading standard services to achieve much more.

***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?***

- Yes, BMBC agrees with the Government's principles for the operation of the new TSPB.
- Yes, we do think this model would deliver effective enforcement against large businesses tempted to break this law. This is proved by current LATSS casework now. Indeed, there is clear evidence the LATSS currently tackles far more enforcement/prosecutions than the OFT, many of which are large-scale rogue traders or businesses. It is effective, prompt and focussed enforcement action that makes the difference: professional and experienced investigators knowing how to use the powers provided by government.
- Areas warranting specialised teams include:
  - ❖ E-crime (national & regional)
  - ❖ Consumer Credit, Estate Agencies (including anti-money laundering)
  - ❖ General civil enforcement including:
    - Unfair contract terms
    - Secretariat to TSPB could fulfil the role of the UK's Single Liaison Office in respect of cross border infringements and indeed in respect of the coordinator role under part 8 of the Enterprise Act.
- Indemnity – an indemnity fund is essential. National or regional investigations clearly come with a risk and many local authorities are reluctant to take that risk alone. This reluctance would be nullified by the existence of a robust indemnity fund. Offices seeking member support for such a course of action would be able to provide appropriate assurance to this effect, should a fund exist.

***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?***

BMBC's preference is for Option 3, so we would not prefer status quo. Option 3 provides an opportunity to change/challenge and improve a system that is clearly flawed as highlighted in the recent NAO report. Public money should be used to maximum effect and with reduced budgets across the board, and duplication and bureaucracy should be removed where possible to free up money to do more frontline work.



**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?**

BMBC is not convinced that the JEB model would provide more efficiency or value for money. Indeed, it is likely to provide the opposite with more bureaucracy and barriers to addressing consumer detriment.

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

The preferred Option 3 would remove bureaucracy and conflicting approaches and would bring greater uniformity and consistency. It would put resources where they are needed in tacking rogue trading, allowing businesses to operate in a fair trading environment without being undermined by unscrupulous behaviour. This will give rise to greater consumer confidence and provide the correct environment for businesses to thrive.

#### **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?**

Yes.

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

Yes.

**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 points.

### 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?**

- BMBC response to questions 30-31:
- BMBC agrees 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 minimise the bureaucracy associated with any such scheme.

### 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 the serious 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. BMBC does not believe that there will be any problems with an enforcement model branded as run 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?**

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.

## 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?**

BMBC does consider that TSI could do this role but also considers that the role may more appropriately be carried out by a secretariat to the TSPB. This would provide the TSPB with direct control of policy functions and coordinated enforcement efforts.

TSI is not an enforcement body but a professional institute. Any enforcement role including policy setting should remain within the trading standards service, not with its professional 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?**

BMBC believes this role is best dealt with by the TSPB secretariat.

**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?**

BMBC agrees with the Government that this should be exercised by 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 planned changes in the landscape 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.

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

Yes.

**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.

## BATA – British Air Transport Association

## **Empowering and Protecting the Consumer**

### **Response from the British Air Transport Association**

#### **Introduction**

The British Air Transport Association (BATA) welcomes the opportunity to submit evidence to the consultation on Empowering and Protecting the Consumer.

BATA is the trade body for UK registered airlines. Our ten members cover all sectors of the airline industry – including freight, charter, low fare, regional operations and full service. In 2010, BATA members employed over 71,000 people, operated four-fifths of the UK commercial aircraft fleet and were responsible for some 96% of UK airline output, carrying 119 million passengers and 1 million tonnes of cargo.

The UK airline industry is one of the most competitive of its type in the world. Such competition drives up standards, inspires innovation and ensures consumer benefit in the form of choice and value for money.

BATA agrees that it is important that consumers are well informed in order to make good decisions. As a result, we generally support proportionate measures which help consumers make informed choices, and hold businesses to account when they fail to deliver contracted products and services.

BATA believes that any actions aimed at empowering the consumer must lead to better outcomes for the consumer, business and society as a whole. Furthermore, in regulated industries, we believe that giving the ability to appeal decisions made by the regulator to consumers, or someone who represents their interests, must lead to better regulatory outcomes.

#### **Representing the Airline consumer**

BATA believes that individual airline consumers are not best placed to appeal decisions made in their name. Price control decisions made by regulators are complex matters. They require time, and specialist knowledge to understand, and to debate them with a regulated company or indeed a regulator is both prohibitively costly both in terms of time and money. Therefore we believe that this challenge role should be given to a body whose interests would align with the consumer.

We believe that airlines are best placed to perform such a role, and should be given the ability to appeal airport price control decisions made by the CAA. It is a recognised fact that the interests of companies operating in competitive markets align closely with those of their customers. The airline industry is a highly competitive one, and airlines represent the needs of their current and future passengers. Indeed, the CAA has adopted a rebuttable position for its next round of price controls which reflects the fact that airlines interests align with those of the passenger.

Given that airline interests align with those of their passengers, and that the fiercely competitive nature of our market strongly incentivises airlines to represent their passengers interests vociferously, it is logical that airlines should have a right of appeal.

Although the Department of Transport has argued that granting a right of appeal to airlines would result in a large number of frivolous and costly cases, undermining at least some of the proposed reforms, there was no evidence to support such an assertion. Nevertheless we commissioned an analysis by a respected legal firm with a strong regulatory track record to design an approach which removed any risk of airline abuse. The proposal they produced, based on experience in the telecommunications industry, addresses all of the DfT's concerns. The DfT's own consultants (CEPA) acknowledged that our approach was both valid and workable. Neither the CAA nor the Competition Commission has, to the best of our knowledge, raised objections to it.

BATA does not agree with the Government's proposal to set up a regulated industries unit that would have rights to appeal CAA decisions on the economic regulation of airports. Our objection is based on four factors:

- Duplication: granting appeal rights to such a body is unnecessary as it can be shown that airlines interests align with passengers, and that they are strongly empowered to act on their behalf;
- Cost: such a body would require substantial resources to engage credibly. Without such substantial resources it is unclear how this proposed body would engage with, and indeed understand the needs of current and future passengers;
- Complexity: the process of getting a passenger through an airport and safely to their destination is a hugely complex one. There are parts of the process that the passenger does not see, but would feel their effects if they went wrong (for example the operation of control posts operated by the airport). How would such a sectoral body understand and gather data on such items without asking the airlines?
- Incentives: in regulated industries, the role of the regulator and bodies like the proposed regulated industries unit, is to attempt to ensure the delivery of outcomes for consumers that mimic those that the market would provide. Airlines, operating in a competitive market have the incessant pressure of competition ensuring that passengers get the outcomes they want and are prepared to pay for. Competition must provide a stronger incentive for us to act than a body trying to mimic what they think competition might deliver.

We would be happy to discuss further or clarify any of the points in this submission.

Simon J L Buck  
Chief Executive, British Air Transport Association  
4<sup>th</sup> October 2011

## Bell, Jeffrey

**BIS CONSULTATION ON INSTITUTIONAL CHANGES FOR PROVISION OF CONSUMER INFORMATION, ADVICE, EDUCATION, ADVOCACY AND ENFORCEMENT**

**INTRODUCTION**

In replying to this consultation I have put together a number of initial paragraphs on themes that run through the proposals, before responding to the 40 consultation questions.

**WHO IS CALLING FOR CHANGE AND WHY?**

In making decisions about the future of consumer protection, it is fair to consider who is leading the call for change. In general, it is not consumers nor the consumer protection organisations, but government; which naturally leads to the question, “Why”? Wishing to save money by cutting out unnecessary duplication and waste is understandable. Wishing to save money at the expense of consumer protection, whilst spinning the proposals to make them sound more reasonable, is not.

In responding to assertions that the law is too prescriptive (see ‘Executive Summary’), government must consider who is leading the call for de-regulation. In general, it is not consumers nor consumer representatives but business lobbyists, which, again, leads to the question, “Why”?

If regulation has gone too far and has become detrimental to consumers and the overall economy, then few will quibble at its modification/repeal. If, however, powerful lobby-groups wish to see its demise in order to profit at the expense of consumer protection; then government has a duty to hold the line. On how many occasions in the last 15 years or so, have powerful groups argued for no regulation; or for self-regulation or for a ‘regulation-lite’ regime? And how often has government pandered to their wishes and subsequently had to apologise or do a u-turn when ‘unforeseen’ consequences arise?

One small, but illustrative example of the lobbyists clamour for inappropriate change involves ‘prescribed quantities’ for non-pre-packed bread and draught alcohol. Business interests declare that prescription is arcane; do away with it they say and we will be free to innovate and improve our product range. At first glance, this seems a perfectly reasonable position, but on closer scrutiny it isn’t.

Why have prescribed quantities? Well, restricting options to a small range of prescribed quantities drastically cuts the risk of consumers being misled by appearance and allows them to make an informed choice when comparing one product with another. Nowhere is this more important than in high-demand food-stuffs.

Take a look at non-pre-packed bread loaves. They come in all shapes and sizes, where differing ingredients and ‘innovative’ processing methods (eg. artificially-pumped-in air) makes it impossible to estimate their weight from appearance alone. Take a look at wine (or beer) glasses of differing shape. Placed side-by-side and filled to the same level, they give a false impression of holding similar quantities. If the sale of draught liquids was not restricted to prescribed quantities, the introduction of even more ‘innovatory’ glass containers would make deception easy.

Frankly, this lobby for innovative change should be seen for what it is; a euphemism for maximising profit at the consumer’s expense.

**PROMOTION OF LOCAL DECISION MAKING AND HOLDING SERVICES TO ACCOUNT**

According to the Foreword, the primary aim of the report is to return decision-making powers to a ‘local level’, where service providers can be held to account. Yet the report’s (very laudable) proposals to allocate resources direct to Trading Standards seem contrary to the ‘local decision-making’ process, which has determined that TS resources are to be cut by 20% to 30% in the coming years.

The report suggests that local CABx should take over consumer advice/advocacy from local government. Is a voluntary agency better ‘qualified’ than a democratically-elected assembly for holding services to account?

The report suggests that the functions of Consumer Focus should be taken over by National CAB. Which of the two is more readily held to account by the democratic process?

When rhetoric diverges from performance it risks undermining the report.

**VOLUNTARY CODES OF PRACTICE, PRIVATELY PRODUCED INFORMATION AND ADVICE**

The Executive Summary places great credence in these, but, experience suggests that such an approach is far too optimistic and naive.

We are currently witnessing (in financial circles, the press, utility companies, etc) what Trading Standards has warned and lobbied against for years. Self-regulation, backed by voluntary codes of practice, works well to improve standards in good businesses, but is useless in improving those (often the very worst) that refuse to sign up to the code. Indeed, self-regulation/voluntary codes of practice can be worse than useless, by sometimes raising expectations that can be cleverly exploited by businesses willing to take advantage of loopholes in/ or find other ways around the codes.

As the report says, some private organisations are great at producing information and advice that can be counted upon. But they’ve built up a reputation for doing so and a business model that is dependent on maintaining that reputation. Equally, some internet-based information and comparison sites can be counted upon, but many are based on a business model that relies on taking payment for endorsements and/or a business model that is vulnerable to misleading recommendations/critiques posted by volunteers. It can never be said too often or too loudly, “Misleading information is worse than no information.”

**STREAMLINING/ COOPERATION/ SHARING OF INTELLIGENCE**

The report talks of poorly coordinated services; demands better cooperation; and commends the sharing of intelligence.

Trading Standards has suffered over the last 20 years as the number of local authorities has more than doubled to over 200. Government has split up larger units and created local politicians and chief executives whose power stems from being big fish in small ponds. To some, cooperation equates to a loss of this power. It can be difficult for 4<sup>th</sup> tier heads of service to champion cooperation.

## **EMPOWERING AND PROTECTING CONSUMERS – A BIS CONSULTATION**

In places, the report praises the benefits of localism. And, yes, localism works for some services, but not those with too small a base and too wide-ranging a responsibility. In today's climate of austerity, Trading Standards can only thrive in units that are large enough to exploit economies of scale and with sufficient staff to permit specialisation. Government should employ an aggressive mixture of regulatory encouragement and incentivisation to stimulate amalgamation amongst LATSS.

If the report's proposals are put into practice, government will need to modify the law (or produce much better guidance) to make intelligence sharing much easier. They will also need to be more pro-active in changing mind-sets. Local CABx are independent and proud of it. Much of the data they control is obtained in one-to-one private exchanges, which, because of data protection laws and custom and practice, makes it difficult for them to share. So, calls for greater sharing of intelligence is little more than an application of hope over experience. The more an agency treasures its independence the less it appreciates being told what to do. The greater the number of independent agencies the less they're likely to share intelligence.

### **CENTRAL SUPPORT FOR TRADING STANDARDS**

Ask most trading standards practitioners, particularly those in the smaller units, and they will say that a central coordinating agency is vital: as is support in tackling costly/complex issues and problems caused by large, (multi-)national, well-funded companies. Central support, plus guidance on precedent and other legal and practice issues, is absolutely vital; but recent decisions to close LACORS and these proposals to abolish the enforcement and guidance roles of OFT conflict with these vital needs.

The report suggests that a single, autonomous local authority or a regional team should take on one or more of these roles on a piece-meal basis, but will that work? A number of likely obstacles will surely arise. First, the political leader and chief executive of the allotted authority might take some convincing that an awkward national problem is part of their authority's role/responsibilities/priorities. Second, how would the newly formed QUANGO (the Chief TSO's Policy Board) handle the problem of an 'appropriate' authority that is unwilling to take on a national role? Third, what powers of coercion would it need to have; what sanctions would (or should) be made available to it? Fourth, if no authority is willing to take on the task, what happens next? Finally, even if a willing authority is found, it's unlikely to be involved in a sufficiency of incidents to build-up the necessary experience and expertise. (These and other issues are listed in answer to Q 21.)

### **EDUCATION, ADVICE AND PRACTICAL HELP TO ENABLE CITIZENS TO ASSERT THEIR RIGHTS**

Local government has been very pro-active in providing advice and information on Consumer Law and practical help to consumers. This is recognised by many local CABx who refer clients with problems that are anything more than basic. Consumer Direct was set up to help consumers with basic problems and refer others to Trading Standards.

Difficult consumer issues, or those where a business is deliberately being difficult, can't be rectified by advice and information. Practical help is required if citizens in these situations are to assert their rights. Well trained and experienced consumer advisers, working in local government for trading standards units, are these citizens best hope. In the vast majority of cases a fair outcome is obtained by a process of negotiation. This is because businesses appreciate that these advisers know their

stuff and are backed by trading standards. Where negotiation is rejected, advisers are trained to help citizens go through the Courts. This is a precious resource when it comes to “Empowering and Protecting Consumers” and one which cannot be replaced by giving the duty to another agency.

The Courts are, of course, the ultimate ‘resource’ for asserting one’s consumer rights. Regrettably, they are getting more difficult and expensive to use; and, all too often, their judgements cannot easily be enforced. The ‘Small Claims’ procedure ought to be easy to use, non-daunting, cost-neutral and effective in imposing any awards it makes. In practice, it is a costly minefield, where businesses can simply ignore judgements. Instead of being consumer-friendly and simple to use, its procedures are clunky and, all too often, its judges are unsympathetic and hidebound by custom and practice. If government really desires to empower consumers to assert their rights it must set up a thorough investigation into how the small claims procedure can be given back to the citizen.

The report talks of education. Again, if government is really serious in its objectives it must make consumer law and financial acumen part of the school curriculum. Prevention is much more effective and efficient than cure; trying to teach it to adults is anything but efficient and effective.

### **CONSUMER ADVOCACY**

The argument to consolidate many of the publically-funded consumer advocates is well founded: the justification for abolishing Consumer Focus is not. There might be merit in consolidating the current utility panels and bodies, including those in transport and post: all under the banner of an enhanced Consumer Focus. It is a good brand and a good brand-name and, once amalgamated, would soon gain in public knowledge and trust.

Any additional amalgamation might cut costs, but only minimally. So the justification for doing so must come down to effectiveness. Experience suggests, however, that panels work when they are relatively small and focused and served by appropriate support staff. A single body for all consumer advocacy needs would not be capable of keeping all the disparate balls in the air. How big would it need to be to contain the necessary experience? How soon would it want to break up into sub-groups to keep a handle on specific technical issues? How soon would it need to grow in resource before its ability to act as an effective consumer advocate is compromised?

When it comes to consumer interests, far too much credence is given to anecdote, which has been hyped-up out of all proportion by newspapers and other lobbyists, out of self interest. This, and lazy, self-opinionated perceptions have been responsible for misguided modifications to laws and inefficient use of scarce resources. Ask anyone with experience and they will say that an adequate level of meaningful research is required for a true understanding of consumer needs/opinions. Equally, adequate levels of dedicated, knowledgeable and experienced support staff are required to put together meaningful and succinct reports that are based on evidence and the input of expert panel members. The fact that professional lobbyists have expert staff putting their influential reports together is never queried nor criticised; even though it is just such reports that frequently need counter-balancing if consumer opinion is to be given fair expression.

So, short-term cost-saving might be achieved by imposing a regime based on a single consumer-advocate, but only at the expense of long-term cost increases and an inability to detect, articulate and eliminate systemic consumer detriment.

As for the suggestion to load this task onto an increasingly overloaded Citizens Advice Service; why? Citizens Advice is known to the public as a local service providing advice and practical help to citizens on a one-to-one basis. It is a well trusted brand for these purposes, but it's not known for, nor has a track record as, a consumer advocate. Further, there must be some doubt that an organisation which delivers services, sometimes in direct competition with the private sector, can be considered sufficiently independent to take on the proposed advocacy role.

### **ENFORCEMENT**

The report acknowledges that many trading standards units are small and have limited ability to address the larger cross-boundary threats: and this is before budgets are reduced by swinging amounts.

How many LATSS have fewer than 10 enforcement staff covering the entire range of trading standards duties? What is the minimum amount of enforcement and support staff required to do an effective local (never mind cross-boundary) job? These figures should be known and recognised by government and readily available to anyone responding to this consultation. Government should then be consulting on how local authorities should be incentivised or coerced to pool their resources fairly, so that the minimum amount of staff plus equipment, etc can be brought to bear evenly across the country; leaving no consumers to suffer in a post-code lottery.

In an earlier paragraph entitled “Central Support for Trading Standards” I’ve listed the difficulties that could make the TSPB proposal unworkable. Those difficulties would arise even if all local TS units were adequately funded – but that’s not the case now; and things are due to get worse as the impending cuts take hold.

The TSPB solution would work if, at the same time, government created the conditions for generating appropriately-sized, effective and efficient TS units and ensured the TSPB had sufficient statutory backing for its decisions. Either that, OR leave the OFT with its current central enforcement role.

[Note that TS units in Scotland and Wales are even more fragmented than in England. Perhaps it’s time to recognise that a model similar to that in Northern Ireland is the most appropriate for delivering a 21<sup>st</sup> century trading standards service in the UK.]

### **MISCONCEPTIONS IN REPORT**

Most people (including many of those with the most influence) tend to read the Executive Summary (ES) of reports such as this and do not go on to read the detail. In paragraph 1.10 of the ES on page 15 no recognition is given to the significant role played by Trading Standards units in providing ADVICE AND PRACTICAL HELP TO BUSINESSES AND CONSUMERS. Some TS units recover more in redress for consumers than they spend on providing the service. Figure 1 on page 17 hardly restores the balance, and it is too little, too late to ‘disclose’ this information on p 53 of a long detailed report.

There is a naive assumption that intelligence sharing will happen just because someone in government suggests it. In fact an ill-informed reader of the report would easily be misled into believing that organisations such as the OFT and LATSS have failed to encourage sharing, when the

absolute converse is true. The fact is, independent voluntary organisations such as Citizens Advice and most private sector organisations are reluctant to share because a) they are very jealous of their information, or b) they consider data protection law forbids it. These worries extend to some enforcement agencies also. “How to encourage improved intelligence sharing?” would make a very useful report – with an extended remit to include media organisations, which, because of their ‘Watchdog’ type programmes and their ‘Consumer Help’ columns, sit on vast, untapped reserves of consumer outpourings of discontent.

Paragraph 2.4 suggests that Citizen’s Advice becomes an arm of government – surely that’s never going to happen.

### **ANSWERS TO SET QUESTIONS**

QUESTION 1: Most consumers, especially some of the most vulnerable, tend to be uninterested in consumer information until a consumer problem comes along. It is virtually impossible to provide general information that will be of sufficient interest to be retained.

Long-term - the only reliable answer is to provide it at school. The schools service should have mandatory targets for consumer education and financial acumen; after all, consumer skills are needed nearly every day of one’s adult life, what other life-skill comes in that intense a bracket?

Short-term – improve upon easily accessed and easily understood information sources and promote the gateways to them. Include easily adaptable templates for letters, etc and retain a drop-in service, adequately staffed, to help vulnerable consumers make the most of this information

QUESTION 2: Yes and No. Yes, transfer the short-term responsibility to Citizens Advice. No, place the long-term responsibility on the education system

QUESTION 3: No, it’s a pipe-dream to believe that Citizens Advice can take on all these extra roles without buckling at the seams. The idea stems from an experimental concept, the Big Society, which has failed to inspire public confidence. The public knows it won’t work; and the government has acknowledged the fact by ceasing to mention it and by toning down any promotion of it.

QUESTION 4: No, it’s very inefficient trying to educate adults. (See answer to Q.1)

QUESTION 5: TSI is a private body and should not be asked to take on this role without additional and adequate funding.

QUESTION 6: Third-party accreditation schemes such as this take up a lot of staff time in a) initial scrutiny of the applicant’s systems and procedures, etc and b) in follow-up monitoring. This is what gives them their credibility. Take away third-party scrutiny and the scheme reverts to a form of self-regulation; a concept which is, rightly, losing credibility in the eyes of consumers (see recent high-profile failures). The best option for members of CCAS-type schemes is to pay the likes of BSI to operate their scheme.

QUESTION 7: The voluntary sector? No. Local Authorities? No, unless they are given the staffing and financial resources to do so. Accreditation schemes such as this are too heavy on resources and will

## **EMPOWERING AND PROTECTING CONSUMERS – A BIS CONSULTATION**

not be prioritised by those in charge of hard-pressed local services that are set to lose an additional 20%-30% of their budget in the coming years.

**QUESTION 8:** Voluntary schemes are quite different to the CCA Scheme, which is more like the Kitemark Scheme. So it isn't valid to ask what lessons can be learnt from the operation of the CCA Scheme; just as it isn't valid to ask what lessons can be learnt from the Kitemark Scheme?

**QUESTION 9:** BSI works very well for industry. To obtain a Kitemark means getting through hoops and hurdles that are appropriately demanding. As a result, consumers respect the brand, which is given further credibility by having consumer representatives on the technical panels. The government's proposals to drastically reduce consumer organisations will decimate the number of expert representatives available; thereby reducing consumer empowerment and protection.

**QUESTION 10:** To meet industry requirements such a certification scheme would need sufficient credibility to improve sales of their product/take up of their service beyond the additional costs of complying with the Kitemark criteria.

**QUESTION 11:** Businesses and business headquarters cluster around the south east of the country. Primary Authorities in that area already bear the major burden of operating this scheme. Adding more to that burden will result in direct and indirect costs of employing additional new, untrained staff and other up-front and back-office costs of accommodation and transport, etc. Even if PAs are allowed to recover all these costs, are businesses prepared to pay them prior to receiving accreditation? If not, would government expect Primary Authorities to withstand the loss each time a business fails to achieve, or closes down prior to achieving, accreditation and consequently has no incentive to pay?

**QUESTION 12:** Absolutely NOT in favour of placing any advocacy bodies in Citizens Advice, although there is merit in combining sector advocates. The Public recognises Citizens Advice as a local service providing advice and practical help on a one-to-one basis. It is a well trusted brand for these purposes, but, unlike Consumer Focus, it is not known for, nor has a track record as, a consumer advocate.

[See leading paragraphs on “EDUCATION, ADVICE AND INFORMATION ENABLING CITIZENS TO ASSERT THEIR RIGHTS” and “CONSUMER ADVOCACY” at the head of this response.]

**QUESTION 13:** The Q asks: - “Do you agree to the design principles for the regulated industries unit?” [With the caveat implicit in ANSWER 12].

Yes to “CLEAR AIMS AND OBJECTIVES”.

Yes to “APPROPRIATE POWERS”.

Yes to “INDEPENDENCE”.

Yes to “ADEQUATE RESOURCES”, **but**

**No to “BEING ACCOUNTABLE TO THE SECTOR CONCERNED, which would THOROUGHLY COMPROMISE INDEPENDENCE.**

Yes to “CAPABILITY TO ANTICIPATE and RETENTION OF SECTOR-SPECIFIC EXPERTISE”.

Yes to “LINKS and PARTNERSHIP”.

Yes to a “EUROPEAN VOICE”.

## **EMPOWERING AND PROTECTING CONSUMERS – A BIS CONSULTATION**

QUESTION 14: Absolutely NOT. Consumer Focus should remain as the ‘brand’ for a combined utility and transport advocate. Appropriate numbers of staff should be retained to ensure the above design principles are not compromised. This should still lead to savings.

For reasons see leading paragraphs of this response on “EDUCATION, ADVICE AND INFORMATION ENABLING CITIZENS TO ASSERT THEIR RIGHTS” and “CONSUMER ADVOCACY”.

QUESTION 15: Ask the devolved nations to sign up to the above and share in the expertise and savings. Their proportion of the savings could be used by them to make modifications/additions to any output/outcomes, where their national interests need to be reflected.

QUESTION 16: NEITHER OPTION IS ACCEPTABLE. Nor would they be necessary if Consumer Focus was maintained as the Combined Advocate. It is TOTALLY UNACCEPTABLE to give such powers to a voluntary organisation that operates services that may be in competition with the industries and businesses involved.

QUESTION 17: Redress schemes should be the same throughout. Elsewhere in the report “confusion of roles and responsibilities, overlap and inefficiency” is used as grounds for consolidation of roles/schemes. Surely the same argument applies to “access to appropriate redress”, which is absolutely fundamental to consumer protection and empowerment.

QUESTION 18: Question is appropriate to NI respondents only.

QUESTION 19: Question is appropriate to NI respondents only.

QUESTION 20: Option 3 is preferred, as it is the most likely to work. BUT the following issues and those in the introductory paragraphs to this response must be recognised by government and need to be addressed if this option is to work:

- What incentive will a LATSS have for taking on a case allocated by the TSPB? Even if the Head of TS is onside, up to 4 (more-senior) line managers and the CEO will need to be persuaded that their authority should take on the monetary and reputational risk. This is particularly true where the case is large and complex and involves novel legal issues.
- Note that in most LATSS, legal action is taken through a specialist in-house team with separate line-management structure; meaning another hierarchy of officers (similar in length to the above) will need to be convinced.
- Regional Scambuster teams work through a lead LA. The same two caveats apply re hierarchy of managers; additionally, the Scambuster Board will need to be convinced.
- Will the TSPB have some sort of coercive sanctions at its disposal if no suitable investigative authority is willing to take on the allocated task?
- Beware unintended consequences such as disincentivising local authorities to maintain their TS specialist investigation teams. CEOs may see a cost-saving opportunity here. Why resource a specialist team when neighbouring authorities don’t and a new, centrally-resourced alternative is being created?

## **EMPOWERING AND PROTECTING CONSUMERS – A BIS CONSULTATION**

- Beware creating an even greater post-code-lottery in terms of local enforcement if LATSS start reducing their TS officers below the desired minimum because CEOs and Directors see this new, central resource as an excuse to cut.
- What research has been carried out on the ADMIN; ITC; ACCOMMODATION; EQUIPMENT; TRANSPORT and other EXPENSE needs for supporting the TSPB, recognising that it will need to operate case-management systems; scrutiny processes; intelligence gathering & collating processes, etc? How much of the allocated budget will be taken up by these ‘back-office’ operations? Will the ‘back-office’ operation need to accommodate heavily administrative enforcement tasks such as a credit licensing database or a money-laundering database?
- What thought has been given to encouraging intelligence sharing? LATSS have been trying to encourage other enforcement agencies, public bodies and voluntary organisations to share, but many guard their data jealously, or perceive data-protection as a huge obstacle to sharing. Government needs to lead the way in terms of guidance and example.

**QUESTION 21:** Whilst the proposal might look good in principle, it will not work unless some of the details are thrashed out (see Q 20 and the introductory paragraphs to this response for some of the issues that must be addressed before this ‘scheme-in-principle’ can be endorsed): beware a re-run of the recent NHS debacle.

Specialist national teams should be set up where an insufficiency of incidents are likely to occur in any one LATSS area for its staff to build-up and maintain the necessary experience and expertise.

An indemnity fund is crucial if CEOs are to be persuaded to take on risk. Such a fund could possibly be offset by income from asset recovery or court-costs recovery.

**QUESTION 22:** This option would avoid some of the issues highlighted above.

**QUESTION 23:** Not preferred options

**QUESTION 24:** Businesses could (and should) input intelligence. Their complaints systems contain vast amounts of data on consumer detriment. Research should be carried out to find an acceptable approach to putting this data in the public domain; something capable of counteracting their (understandable) reluctance to share.

**QUESTION 25:** Yes

**QUESTION 26:** No

**QUESTION 27:** Yes

**QUESTION 28:** Yes

**QUESTION 29:** No.

Citizens Advice should not have this role. BUT a retained, more ‘inclusive’ Consumer Focus should have it.

## **EMPOWERING AND PROTECTING CONSUMERS – A BIS CONSULTATION**

There should be NO DUTY to prioritise CMA findings, but a requirement to give due weight to any EVIDENCE CMA produces: just as the TSPB would be expected to give due weight to any other evidential intelligence at its disposal.

QUESTION 30: No.

At first sight this approach to ensuring effective collaboration seems sensible, but it would be too demanding on the TSPB to be practicable. Looked at through the lens of the National Intelligence Model (NIM) the TSPB is being asked to provide the STRATEGIC (high level priority-setting) role, whilst also taking on the TACTICAL (case assignment and monitoring) role. These plus the other proposed duties would make meetings very long and difficult – probably too demanding to be effective.

QUESTION 31: Yes, funds for allocation after joint discussion should be available, BUT NOT to bridge an enforcement gap.

Such funds should be used for research/intelligence purposes, with joint agreement on SUBJECT and on which of the partners should champion the agreed recommendations arising from the subsequent report.

QUESTION 32: Few self-regulatory schemes work in favour of consumers. For every Advertising Standards Authority (ASA) scheme there is the spectre of the Press Complaints Commission. The ASA scheme works because it is backed by specific legislation, BUT more importantly, backed by the media that carries the advertising.

The report asks, what enforcement threat is needed to back-up such schemes? The reply must be “BACK-UP WHAT?” Self-regulatory schemes apply ONLY to those signed-up to the scheme and in many cases include ‘aspirational-type’ requirements. Is it reasonable to press for enforcement against a business that is failing to meet an aspirational standard when businesses outside the scheme may be failing the same and more basic requirements on a daily basis?

QUESTION 33: The question, when read in context with the paragraph on which it’s based, is somewhat ambiguous. This response assumes the phrase ‘professional guidance’ does not include professional standards.

Guidance on the substance of the law and how to apply it is absolutely crucial to LATSS, especially the smaller, less well resourced units, whose effectiveness and credibility will rapidly diminish if deprived of such guidance. It is probably no exaggeration to say that the guidance provided by LGR (LACORS) and OFT was/is referenced by LATSS staff, almost on a daily basis. TSI could provide it, but only with access to appropriate staff and funding. To imagine that reliable guidance could be provided on a shoestring, or provided by an army of dependable volunteers, is naive in the utmost. Dedicated, capable policy officers with appropriate support facilities are needed for such a critical task.

QUESTION 34: TSI could take on the international liaison and general policy functions of OFT, but with the same caveats as Q.33.

## **EMPOWERING AND PROTECTING CONSUMERS – A BIS CONSULTATION**

If it is to be done right, such crucial work couldn't just be added to one or more persons' job descriptions, or left to a volunteer. Adequate resources for dedicated staff, admin, ITC, transport expenses, etc, would need to be provided to avoid serious risk to the UK's credibility.

QUESTION 35: Business interests will demand that central coordination is maintained; as will local authorities whose legal actions could be compromised (or, at best, criticised by the judiciary) if found to be in duplication.

How many 'notifications' of enforcement action are processed by OFT each year? Has any research been carried out into the admin, ITC and other back-office requirements/expenses needed to cover these and all the other processes to be taken over by the TSPB? Has any research been carried out into the practicality of delivering all these functions? As mentioned in an earlier question, there is devil in the detail (don't fall into same trap of proposals for NHS change).

QUESTION 36: Yes

QUESTION 37: Yes

QUESTION 38: Yes, if the TSPB is allocated additional capacity. But note that this would add another, possibly demanding, agenda item to an already long and arduous meeting. (When are the CTSOs on the Board to find time for their everyday duties?)

QUESTION 39: Yes, this role re estate agency and anti-money laundering fits the criteria mentioned in Question 21. A lead local authority should be allocated, but beware the temptation to underfund it.

QUESTION 40: Yes, changes to the consumer enforcement landscape (not necessarily the proposed ones) should be advanced as soon as possible.

## **Benfaida, Laila**

Dear Colleagues,

Thank you for the opportunity to contribute views in connection with proposed reforms.

My response is sent on an individual basis and does not represent the views of my employer or any other organisation.

For context - I am a Trading Standards professional, employed by a County Council. My role is that of prosecutor, and also an advisor in respect of civil law.

I have been a contributor to the establishment of the Buy With Confidence Scheme (BWC), and have held a functional role in the operation of the Local Authority Assured Trader Scheme Network (LAATSN). For this reason I have a particular interest in chapter 3., and have largely restricted comments to this area only.

### Chapter 3 - CCAS.

#### *Q6 - Q.11. Best Options for current prospective CCAS members...etc.*

The full range of options is not known. Current members will have worked hard in order to gain use of the OFT badge (and rightly so, as use of the branding should not be offered lightly). It would doubtless be a disappointment for them to have to rescind the accreditation if CCAS was moved/altered, and it is doubtful that there is a similarly reputable endorsement they could seek at present - however, that in itself should not necessarily drive decision making. Comparisons may perhaps be made between that current potential situation and the historical circumstances of 'Quality Mark' which became 'Trust Mark'.

Credit should be given to OFT for administration of CCAS - in particular for continuing to insist upon high standards. Through involvement in the operation of schemes, it has been my experience that commercial organisations can exert great pressure upon approving bodies to compromise vetting processes. This is natural because the business motive differs from that of regulator - and this leads to the key issue of governance. It is offered that without the involvement of a regulator to police a self-regulation / co-regulation scheme, its direction will be driven by commercial necessity.

For this reason I would question the long-term validity of codes being operated by private organisations unless underpinned by regulatory support or governance.

In addition, the level of public confidence in commercial brands (Including BSI) may be lower than that enjoyed by OFT or other regulators, which may make this option less attractive to business.

Amongst the various options which may emerge, the Buy With Confidence Scheme is able to engage with businesses, including trade associations, based on their individual requirements. BWC's approach is to vet individual business members rather than to accept all members of an organisation - this is in order to maintain integrity of pre-entry checks. New models could be explored which may produce credible options including those which may support CCAS, or which provide alternatives in the event of current proposals being adopted. BWC sits within local trading standards services, and well placed to explore Primary Authority connections, and to offer views on same to relevant parties.

### General observations

### Consumers:

Useful observations are made in the consultation paper to the effect that consumers are not all of one 'type' - several different categories of consumer exist. Each group will have different requirements, habits and vulnerabilities. Consumer protection providers may learn lessons from commercial organisations by researching behaviours to ascertain appropriate marketing methods, and by using entertainment and inertia as a vehicle for delivering education. For example, messages delivered at point of sale, may be an effective way to reach consumers who would not otherwise seek advice.

### Structures:

Many of the questions within the consultation are concerned with 'who' carries out which function - with functions being separated out into different types of enforcement activity, or distinct trade sectors. (E.g. questioning who should deliver advocacy, or education). Although necessary in practice because the landscape is inherited, the delineations are not particularly meaningful to consumers and small businesses. It may be beneficial for there to be a single portal for consumer information, irrespective of which department, authority, or group ultimately performs the required functions. It is offered that DirectGov is unsuitable as a portal because it is too generic to be meaningful.

It is offered that repeated re-branding, and movement of functions results in consumer confusion, and loss of expertise. This should be avoided to the greatest extent permitted within budgetary constraints.

### Funding Criminal Enforcement work:

An 'unsuccessful' prosecution can still benefit the marketplace if the action raises reputational issues the business concerned, and if it send the message that regulators will indeed take action when detrimental practices are not halted. Regulators should be empowered to take on large scale cases, whether they have national, international or local impact.

Recent legal reforms have caused legal service providers to consider alternative niches and service delivery models. A question arises as to whether there may be any scope for engagement with bodies such as the Bar Council, SRA and Law Society in conjunction with MOJ to consider insured or capped costs arrangements for regulatory work in the public interest (e.g. similar to 'no win no fee' - under strict controls).

Thank you for your consideration of stakeholder views - I hope some of the above comments may be useful going forward.

Regards

Laila Benfaida

## BEUC – European Consumer organisation

## BEUC RESPONSE TO

### UK Department for Business Innovation and Skills consultation on

# INSTITUTIONAL CHANGES FOR PROVISION OF CONSUMER INFORMATION, EDUCATION, ADVOCACY AND ENFORCEMENT

September 2011

**Ref.** **Contact:** Monique Goyens – [directorsoffice@beuc.eu](mailto:directorsoffice@beuc.eu)  
: X/2011/090 - 07/09/2011

## INTRODUCTION

- BEUC, the European Consumer Organisation, is an umbrella for 42 well-known consumer organisations in 31 European countries. We welcome the possibility to respond to the consultation launched by the UK government in the context of the reorganisation of the UK landscape of consumer advocacy. It is indeed essential to maximize resources in order to empower and protect consumers in the most effective way.
- BEUC would like to contribute to the reflections surrounding the UK strategy by highlighting the fundamental links between national and EU consumer advocacy. As mentioned in the consultation paper, § 4.24, purely national advocacy is not sufficient anymore in the context of ever more globalizing markets and the growing influence of the digital economy.
- Our long standing co-operation with Consumer Focus and its predecessor enables to stress that Consumer Focus is a legitimate, credible and reliable partner in advocating for a consumer friendly EU and global market. Consumer Focus is a unique link between the EU and UK decision making level in consumer relevant sectors : it strongly contributes to the definition of consumer policies at EU level in the best interest of both EU and UK consumers. Its strong expertise and constructive approach in consumer advocacy with national and EU public authorities, economic regulators and self-regulatory bodies, call for entrusting it with a continued and reinforced mission in this context
- We therefore strongly recommend to provide continuing support to Consumer Focus, in order to build upon the long standing well known and appreciated representation of the interests of UK consumers with EU and international decision makers.

**Contact:** Monique Goyens – [directorsoffice@beuc.eu](mailto:directorsoffice@beuc.eu)

**Ref.**

: X/2011/090 - 07/09/2011

BEUC, the European Consumers' Organisation

80 rue d'Arlon, 1040 Bruxelles - +32 2 743 15 90 - [www.beuc.eu](http://www.beuc.eu)

 **EC register for interest representatives:** identification number 9505781573-45 

## THE NEED TO BE ACTIVE BEYOND THE UK BORDERS

As mentioned in the consultation document, the globalisation and digitalisation of our economies makes national barriers much less relevant when it comes to effectively empower and protect consumers. This has major consequences when it comes to public policy making: a national government cannot on itself take action in many areas that are relevant to consumers and has to liaise with its counterparts in the EU and beyond in order to establish a solid framework of consumer protection in those areas. This has several important implications:

- National policy making has to be fed by comparative experience. For consumer advocacy, this means the need to rely on a firm network of organisations with whom to exchange experience, observation, analysis and tools.
- EU policy making has to be based on strong national experience. For consumer advocacy, this implies the need to rely on strong national consumer bodies that have gathered over the years evidence and knowledge of consumer needs, expectations and behaviour: only that experience can provide legitimate input to the decision makers at EU level.
- International policy making is fed by the EU and national levels. In order to provide useful contributions to this additional dimension, consumer advocates need to rely on a firm global network in order to identify the specific added value of comparative and international cooperation in the area of consumer protection;

## CONSUMER FOCUS AS A BEUC MEMBER, ITS POSITION ON THE EU AND INTERNATIONAL SCENE

Consumer Focus, and its predecessors National Consumer Council, have been a member of BEUC since over thirty years.

Consumer Focus is one of the most active national consumer organisations at the EU level and plays a crucial complementary role in relation to BEUC's other UK member, Which?. The particular focus to develop consumer insights and the policy focus on regulated industries are unique within BEUC's membership and are most relevant for BEUC's policy decisions as well as for strategic decisions. This important role is inter alia illustrated by the fact that Consumer Focus is one of the few organisations which is represented in several of our headline expert teams. Their expert input into various policy headlines within BEUC is highly appreciated.

Consumer focus is not only a very important contributor to BEUC's policy decisions, but has achieved a very strong reputation with EU and international decision makers in the main institutions and at all levels. It has built up a solid and widely respected position of a legitimate, evidence-based, and trustworthy stakeholder, both for EU and international institutions (European Commission, European Parliament, OECD) and for EU and international networks (BEUC, ECCG, TACD, CI) of consumer organisations.

Its valuable and well-implemented research in areas that are linked to essential consumer services, and its in-depth work on regulated industries, such as energy and post, have strongly contributed to the identification by the consumer movement, of the consumer perspective in those complex sectors, and have made it possible, at EU level especially, to participate in the policy debates as a crucial stakeholder.

For BEUC in particular, the expertise developed by Consumer Focus, and its openness to share this expertise with the colleagues of the BEUC network and the BEUC secretariat, have made it possible to organise a strong consumer participation in key debates, such as the one on the implementation of the third energy package, or the one related to sustainable consumption and production. In doing so, Consumer Focus has directly impacted on the EU decision making process, to the benefit of UK and other EU consumers. It has in particular developed strong expertise in the protection of personal data especially in digital communications and allowed to raise awareness on the specific needs encountered in many sectors by the more vulnerable consumer groups.

### **THE CHALLENGES AHEAD FOR THE EU CONSUMER MOVEMENT**

In the years to come, regulated industries will remain an important challenge in terms of protection of consumers : energy, telecommunications, postal services, public transport services all constitute sectors where consumer welfare is still to be monitored and where providers are far from delivering spontaneously. Also, personal data are more than ever at risk in our digitalised economies and it is essential that experienced watchdogs analyse the practices in all business sectors to prevent or correct abuses.

It is therefore crucial for the EU consumer movement to continue to be able to rely on the expertise and experience accumulated by Consumer Focus in its various fields of activities, many of which are highly EU-relevant. Consumer Focus will be able to assist EU and international decision makers in scoping the future consumer strategy for the decades to come. In this context, Consumer Focus is currently extremely key in providing expertise and in advocating the consumer perspective on issues that constitute a high priority on the EU-agenda: on the one hand, energy efficiency and energy infrastructure, with a focus on smart energy and smart meters, and on the other hand, the development of a European contract law, notably via an optional instrument.

More globally, the expertise developed by Consumer Focus on consumer empowerment and its strategy to develop non traditional approaches to this concept will constitute a major asset in the collective representation of the consumer interest at EU level, to the benefit of UK citizens.

Therefore, we strongly suggest continuing to build upon the expertise of Consumer Focus in those areas where there is an EU dimension to their advocacy work.

## Blackpool TS

## **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?**

#### **Advice**

Blackpool Council Consumer Advice Service agrees that the number of organisations providing consumer information are too numerous and confusing. We therefore agree that provide a first step consumer advice service either via Consumer Direct or Citizens Advice is a good idea for those who do not know where to go for advice.

However in Blackpool we choose to provide our own consumer advice service for Blackpool residents and traders for a number of reasons. We feel that to provide good, prompt and realistic advice you need local knowledge. We are also able to extract intelligence from that data to tackle criminality that is not always gathered by the call centre approach.

The majority of consumer issues can be resolved with a bit of knowledge and guidance. However those that require more complex advice, the elderly and the vulnerable, need face to face advice. This is where the problem lies. After the creation of Consumer Direct, many local authorities decided that Consumer Direct would be able to offer enough assistance to consumers and cut their advice services. This has left a gap in many areas that the local Citizens Advice Bureau is unable to fill due to capacity issues..

The plans for the launch of the Citizens Advice run call centre need to ensure that there is capacity to follow up with second tier/face to face advice. The plans need to take into account that there are many Trading Standards offices providing excellent quality second tier advice. To reach that level of expertise in Citizens Advice there will be a need for paid advice workers as volunteers cannot be expected to advise at that level. There are also areas of the country without Citizens Advice Bureau. Therefore it may not be appropriate to have a one procedure fits all model. Local need and provision has to be assessed. Bureau and Trading Standards need to work together on local protocols that can be fed in to the call centre's referral protocol.

The key to improving service to consumers is good joint working between Trading Standards and Consumer Advice at a local level.

## **Information**

The work so far completed on Direct.gov.uk web site is a very good idea, creating a one-stop shop for advice and information. However the transfer of the Consumer Direct Web pages to this medium has resulted in the contact number for Consumer Direct being hidden away behind many pages of text. Our concern is that elderly and vulnerable people will not receive the advice they require.

It is true that a lot of information is available on the internet these days and people can make more educated choices about what they buy and gain some guidance on their rights. However many consumer issues are very technical, e.g. cooling off rights, credit agreements and timeshare to name but a few.

We agree that the provision of leaflets and marketing campaigns would be better placed with Citizens Advice, with more localised campaigns co-ordinated by local CAB's and Trading Standards to meet the needs of the community.

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

Yes

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

Yes, provided that it is kept as one unit, and not split up within the bureau

**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?

I agree that this could be transferred to CA.

Activity regarding Scams, No Cold Calling and general consumer rights are most valuable. Citizens Advice should produce materials to tackle issues highlighted through their statistics as being a problem.

However funds also need to be available for joint working between TS and CA on local level, where issues are highlighted.

**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 national level yes, but a lot of good work goes on locally.

**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?

-

**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?

Yes-

**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?

**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?

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?

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?

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?

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?

**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?

**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?

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

**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?

## **Boleat, Mark**

22 September 2011

## **EMPOWERING AND PROTECTING CONSUMERS**

### **Comments by Mark Boleat on BIS Consultation Paper on Institutional Changes for Provision of Consumer Information, Advice, Education, Advocacy and Enforcement**

#### **Introduction**

1. In June 2011, BIS published a consultation paper, *Empowering and Protecting Consumers*. The paper proposes far-reaching changes to the way that consumer information, advocacy and advice is delivered and to the enforcement of consumer protection legislation. The key points are set out in paragraph 8 of the consultation paper -

- Almost all central government funding for consumer information, advocacy and education will transfer to Citizens Advice.
- National funding for enforcement activity will be co-ordinated by Chief Trading Standards Officers.
- The proposed new Competition and Markets Authority will play a key role in ensuring that markets are operating fairly and in the interests of consumers.

Responses to the consultation are invited by 27 September 2011.

2. This response is a personal one, albeit by someone who has substantial experience in this field as a former member of the National Consumer Council, a member of the Regulatory Policy Committee, Chairman of the Jersey Competition Regulatory Authority, Chairman or Chief Executive of a number of trade associations, consultancy work in this field, including establishing and operating the Claims Management Regulation regime, and author of a number of relevant papers.

#### **Executive Summary**

3.

- The consultation says that responsibility for each of consumer advice, representation and enforcement should rest principally with one of three key institutions, but this is not borne out by the evidence of the paper and also what is not in the paper. Large areas of the economy are left out of the proposals, including legal services, financial services, health services, food standards, education and local government.
- Contrary to what is said in the consultation paper, there is no great confusion at present about consumer advice. There is no strong case for concentrating all funding on Citizens Advice.
- Enforcement is not satisfactory at present, but never will be wholly satisfactory, given that criminal activity does not fit within public administration boundaries. There is a need for greater central direction, but the proposals move in the

- Citizens Advice has a reasonable, but not exceptional, track record in respect of advocacy. It is clear from the paper that in practice there will be no centralisation because, as in the past, government departments and devolved administrations will not agree to transfer responsibility.
- The proposals have already succeeded in disrupting the areas they are covering and for the next three years there will be continued disruption, with key people dealing with architecture rather than getting on with the job.
- The claimed benefits are questionable and very modest, compared with the disruption.
- The consultation process is less than ideal, in that all those directly affected are inhibited from expressing their true views and there is no provision for an objective analysis of the proposals.

### **The Proposals are not Comprehensive**

4. The government's objectives of reducing the complexity of a consumer landscape, strengthening the effectiveness of consumer enforcement and more cost efficient delivery closer to the consumer frontline are admirable, but will not be achieved by the proposals in the consultation paper. Paragraph 8 states that "responsibility for each aspect of consumer advice, representation and enforcement should be clear and should rest principally with one of three key institutions". The word "principally" perhaps gives the game away, but in fact even this is an exaggeration. It is clear from reading the whole of the consultation paper that its remit extends little beyond the remit of BIS itself. It seems that the government's proposals will not apply to large areas of consumer expenditure or services provided to consumers, including -

- Financial services.
- Legal services.
- Healthcare.
- Local government services, including education.
- Some activity in the devolved administrations, which is the responsibility of those administrations.
- Although this is not yet clear, responsibility in a number of regulated sectors, such as transport, which are the responsibility of government departments other than BIS.
- Food standards.

5. These exclusions should have been clearly explained in the consultation paper, so as to facilitate a more informed debate. At present, the paper gives the

impression that everything will come under the new arrangements. The case for the changes is clearly weaker, given that only a proportion of consumer expenditure and services will be covered.

## **Consumer Information, Advice and Education**

6. It is certainly the case at present that a variety of different government-funded institutions are responsible for consumer advice and education. This is hardly surprising. There are any number of private sector bodies that also give advice and education. Some, such as Which?, do so across a wide range of goods and services, although inevitably their coverage in some areas is weaker than in others. Others, such as MoneyExpert.com, give specific advice on financial services and a large number of charities give advice on health issues. This wide range of advice providers is beneficial to the consumer. Competition is generally held to be a good thing, but apparently the government believes it is a bad thing in respect of the provision of consumer advice. There is a world of difference between the sort of advice that Citizens Advice gives to people with real debt problems, and more generic advice on, say, consumer rights or redress arrangements when a holiday goes wrong.

7. Paragraph 13 of the consultation paper is misleading. Consumer Focus does not generally carry out public information campaigns, but rather is an effective advocacy body. Citizens Advice also does not generally carry out public information campaigns, but rather deals with specific consumer issues. The government claims that the current arrangements "lead to confusion of roles and responsibilities and overlap and inefficiency". This is an exaggeration. The National Consumer Direct Advice Line has fairly quickly built a good reputation for being the main source of generic advice (not helped by the recent decision to switch the website to Government Direct) and generally people know, or are directed when they ask for advice, to go to Citizens Advice if they have got a personal, specific problem, particularly with debt, benefits or employment.

8. Paragraph 14 concludes with - "**If you need information or advice, go to Citizens Advice**". In order to avoid misrepresentation, even if the government's proposals are put into effect, this should properly read - "**If you need information or advice, go to Citizens Advice, except in the case of financial services, legal services, health services, local government services, food standards, certain utilities and some other issues in Scotland, Wales or Northern Ireland**".

## **Consumer Codes**

9. The OFT Consumer Codes Approval Scheme has not been a great success, covering only a limited number of codes and being fairly expensive to operate. There were some design flaws that were obvious at the outset – essentially a very bureaucratic process with unreasonably high hurdles in some respects. However, a great deal has been learned from the process and there is scope for a proper regime for consumer codes, which will provide some benefit to consumers where formal regulation is not felt to be appropriate. The government has one firm proposal, that is to abolish the present arrangements, and some vague comments about what might be done to replace them, such as looking at a BSI kite mark, potential for a non-public body such as Which? to play a role and also whether Trading Standards through the Primary Authority scheme could play a role in endorsing codes. At first sight, these all look like non-starters, but what is surely inappropriate is to announce

that there is merit in having consumer codes, that the present arrangements will be abolished and that there is no clear idea as to what will replace them. Those trade associations that have established codes and have invested a great deal of money in them should be entitled to compensation from BIS if the present arrangements are abolished.

### **Consumer Advocacy**

10. The consultation paper says that currently responsibility for consumer advocacy is divided between Consumer Focus and the Citizens Advice service. In practice, it is concentrated on Consumer Focus. The intention is to concentrate advocacy through Citizens Advice, but this is not its mainstream function. That is dealing with specific consumer problems, particularly in the areas of debt, employment and benefits. Citizens Advice work in the advocacy field is concentrated on areas where it provides an advice service and, as an organisation, it has a structure that is very different from that which one would normally find in any advocacy body. Such bodies typically are small, with specialist staff expert in policy matters. Advocacy would be but a small function in a huge Citizens Advice organisation.

11. The paper notes that a number of utilities currently have their own arrangements and that the government is therefore consulting on how these might be integrated into a single, regulated industries unit. However, paragraph 29 of the consultation paper makes clear – “The eventual decisions on the transfer of sectoral consumer bodies into the proposed arrangements are a matter for the relevant departments and devolved administrations.” In practice, these bodies have been resistant to handing over responsibility to a central body and there is no reason to expect that to change, particularly when they are unlikely to have confidence that what is being proposed will be effective.

### **Enforcement**

12. The consultation paper properly notes that responsibility for consumer enforcement is split between Trading Standards officers and the Office of Fair Trading. This is inevitable. What is important is that there has to be partnership working between the two organisations, with a reasonably clear understanding about where responsibilities lie. This has not been done satisfactorily in the past, as is made clear in the National Audit Office report. However, the situation has improved considerably over the last few years and it therefore seems unfortunate that just when reasonable arrangements are operating, they should be broken up. What the government is proposing is unworkable. The intention is that in future all consumer enforcement matters will be the responsibility of Trading Standards, with a Trading Standards Policy Board being established “made up of Chief Trading Standards Officers to provide leadership and coordination of trading standards in identifying and tackling regional and national threats”. Chief Trading Standards Officers are local government employees, generally third or fourth tier, with responsibilities determined at local level. The idea that a committee of such people, with limited resources and powers, can lead the identification of national and regional threats and then mobilise the sources to tackle them is fanciful. It will not happen. In addition, funding for trading standards work is forecast to fall by over 25% over the next three years, making it more difficult for the service to take on a national leadership role.

13. One suspects that the proposal stems more from the separate government decision to merge the Office of Fair Trading and the Competition Commission and to substantially cut back on what were the OFT's functions. Whatever happens in respect of this proposal, there has to remain a national capability to identify and deal with the major areas of consumer detriment, such as estate agency, car servicing and building work. This can be done only by a central unit, with real powers, working with Trading Standards departments. It cannot be done without a central unit.

### **Disruption**

14. It is now more than six months since the government first floated its radical proposals for changing the consumer landscape. It will be two to three years before whatever proposals finally emerge are implemented. If this was the private sector, everything would be done and dusted within a few months, minimising disruption. For the next two to three years much of the considerable intellectual ability that exists in the consumer world and among enforcement bodies will be dedicated not to dealing with consumer problems and tackling rogues and crooks, but rather to negotiating new administrative arrangements, acquisition of office facilities, employment of staff, development of policies and so on. The eye will be very firmly off the ball. Staff will drift away from those organisations under threat (as is already happening) and good staff may well be deterred from joining what will be seen to be an ineffective structure.

15. The impact assessments that accompany the consultation document generally show very small benefits for what is being proposed and these benefits themselves can be significantly questioned. The overall package is calculated to produce a best estimate net benefit over 10 years of just £15.4 million, but the bulk of this comes from what is claimed to be a reduction in the number of consumers experiencing detriment due to expanded contact centre provision under Citizens Advice delivery model and the elimination of duplication between Consumer Focus and Citizens Advice.

### **The Consultation Process**

16. It is worth commenting on the consultation process for these proposals. Most of the bodies affected will be public bodies, therefore heavily constrained in what they can say. Other bodies will be beneficiaries and therefore, even if they think the proposals won't work, are unlikely to say so. There is a risk that the consultation exercise will therefore not be of huge value. This is an area where the process would be assisted by the government either commissioning a modest review by an appropriate organisation, or by putting on some facilitated discussion groups so as to enable the issues to be aired in a private setting.

## Bosch Car Service

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26 September 2011

### **Consumer Landscape Consultation**

Dear Sir

#### **Background**

Bosch has operated and managed repair programmes for independent workshops since the early 1920's and more specifically for the UK market, since the mid 1950's. Throughout this period, Bosch has taken an active role in assuring the quality of work and customer handling standards delivered under the Bosch brand.

Bosch Car Service is a network of independent servicing garages set up in 2003 by Bosch, the household name renowned for producing high quality consumer and industrial goods. The network now has 508 members throughout the UK and has been consistently recognised through its customer satisfaction surveys as providing a high quality and knowledgeable service

Bosch Car Service operates under a Consumer Code of Practice, which was constructed and fully approved under the Office of Fair Trading's Consumer Code Approval Scheme in June 2007. The Bosch Car Service code was the first – and currently only – consumer code of practice in the UK automotive mechanical repair and service sector to be fully approved by the OFT.

This response concentrates on the proposals relating to Consumer Code Approvals in Chapter 3 of the Consultation, and answers the questions posed at the end of that chapter (questions 6-11).

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

26 September 2011

Page 2 of 4

### **General background remarks**

- The CCAS has served to independently recognise and hallmark the commitment that Bosch Car Service members have towards meeting the highest levels of consumer welfare standards.
- Given the variable standards present in the independent garage aftermarket sector, the ability of BCS member garages to display the OFT logo to demonstrate and evidence their superior values is highly prized.
- The CCAS has proved to be a robust means to assure common high consumer welfare standards across different sectors. The uncertain future of the CCAS is of considerable concern to us.
- We believe that the CCAS and use of the OFT logo has been of great benefit to BCS members and especially to consumers.
- The OFT logo is widely utilised by BCS members. Typical applications include business stationery, promotional and communication materials vehicle livery and clothing.
- Our clear preference would be for the OFT logo to be made available for use within the scheme that follows the CCAS. However should the OFT logo be withdrawn, then a realistic and respectful transition time should be applied to allow BCS members to remove this logo without being burdened by unnecessary costs. We recommend this transition period should be no less than 3 years and would request 5 years or longer.

### **Specific remarks**

Any future scheme should feature the following:

- The ability to appeal to a variety of sectors and attract a nationwide wide participation beyond Trade Associations.
- The requirements of the scheme must be challenging to its participants and result in a tangible benefit for consumers
- Completion of the scheme's requirements must be possible within a realistic time frame.
- The scheme must feature meaningful and robust compliance, monitoring and disciplinary processes and standards

- The scheme must be affordable

26 September 2011

Page 3 of 4

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

- This is difficult to predict, but we would fear that any response would be inadequate, and to a lower standard than currently achieved under OFT Stage 2. The specific remarks made under point 6 would apply to any future alternative system.

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

- Overall, little change is required to the general thrust and criteria of the CCAS. It has successfully produced a number of robust codes to the benefit of the consumer and participating member.
- The application of the CCAS scheme seemed unnecessarily slow and inefficient; this coupled with little flexibility has clearly limited participation.
- A more market driven approach needs to be in place to ensure that any future scheme can be actively and effectively sold in to new code sponsors.

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

- We see little merit in this approach as we believe this option would increase cost and complexity, rather than adding to the value and attractiveness of the scheme.

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

- In our opinion, a Kitemark based scheme would not be able to meet our requirements in terms of flexibility, application, attractiveness and/or cost.

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

- This is a possibility and we would suggest the involvement of Trading Standards as being the most attractive option.
- However, there are areas that need further discussion. For example, conflict may arise with other approval schemes run by Trading Standards. Other questions needing answers would include how this system would be differentiated from weaker approval schemes already in place (OFT branding?) and, can such a system be centrally coordinated by Trading Standards

26 September 2011

Page 4 of 4

Yours sincerely,



Howard Price  
Workshop Concept Manager  
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24 November 2011

Dear Mr Evans

**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”**

This response has been produced by the Head of Trading Standards on behalf of Brighton & Hove City Council (BHCC) and formulated in conjunction with the members of the trading standards team. It focuses on the proposed changes in the enforcement landscape as this will have the most impact on the Trading Standards team but comments are made regarding Consumer Advice and Education as well. I am the Cabinet Member for Communities, Equalities & Public Protection which includes responsibility for Trading Standards, and whilst new in this role I am more than happy to be the signatory of this response.

BHCC is a forward thinking organisation and welcomes the opportunity to comment on this consultation paper. We believe that the time is right to make radical changes to the provision of consumer information, advice, education, advocacy and enforcement.

We wish to support any proposal that aims to simplify the confusing and overlapping provision of consumer protection, strengthen the effectiveness of consumer enforcement, with more cost-efficient delivery that is closer to the consumer front line.

We welcome the responsibility that the Government intends to give local authorities and Citizens Advice and wish to encourage the allocation of sufficient resources to make the proposals a reality.

## 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.

Each individual enquiry should be dealt with by an officer who provides bespoke advice and guidance relevant to the complaint. BHCC could not support any reduction in the standards of advice from that currently provided.

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

BHCC would support the transfer of the OFT consumer information role to Citizens Advice. However, CAB must commit to working with LATSS, nationally and locally in a similar way to the OFT. Citizens Advice Bureaux are under intense funding pressures and in some areas are threatened with closure due to lack of funding. Therefore we are concerned that some of the envisaged improvements at local level may be difficult to achieve and gaps in 2<sup>nd</sup> tier provision may continue.

BHCC would support the ACTSO suggestions that each trading standards service should have an 'account manager' within Citizens Advice, and for each LATSS to provide Citizens Advice with a named contact.

BHCC have embraced the intelligence-led approach to enforcement and the referrals and Consumer Direct data provide us with an invaluable evidence base. Therefore BHCC believe that access to this information must continue and if possible improved.

BHCC would wish to continue to receive and act on timely referrals from Consumer Direct and therefore it is essential that there is no reduction in the quality and quantity of information they currently receive from Consumer Direct.

BHCC have developed good working relationships with the local Bureaux with managers and advisors sitting on their Management Committees. These officers know that local bureaux guard their autonomy and there is a concern the CAB may not be able to deliver a national consumer advice service using local Bureaux in the same way as the existing Consumer Direct.

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

BHCC fully support the continuation of the 'Extra Help Unit' for vulnerable consumers under the new arrangements and that the unit and associated finance 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?***

BHCC would prefer that the education role remained with Trading Standards until such time as the transition of consumer advice to CAB has been shown to be successful. Consumers are constantly faced with negative news around economic issues which often causes concern and make people vulnerable through circumstance. This could lead to panic purchases or enticement to make worthless investments.

Simply providing a website and indicating that the information is available is not sufficient for the majority of consumers and often leaves the consumer confused, frustrated and unable to use the information in the correct manner. It is therefore essential that CAB is then able to provide resources to deliver a range of interactive education packages and 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.

BHCC agrees with ACTSO that the 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. We also agree that 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. There must also use the auspices of Trading Standards to tap into the network of other sections of the local authority and third sector who are crucial in getting the message to the wider public.

We would agree that the primary role for overall co-ordination probably sits with Citizens Advice, and if they are given this responsibility they will need to link closely with the proposed TSPB to ensure an effective link between local, regional and national consumer education activities.

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

Whilst the TSI have made a valuable contribution in this area of work, it must be recognised that the certain regional groups have made even more of an impact. It is possible that a regional group may be as able as the TSI to coordinate such activity. However on balance BHCC does agree the proposed TSPB and the TSI should work together to coordinate 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?**

BHCC has no real preference regarding the future of CCAS. If a scheme is to continue, we agree with ACTSO that 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.

BHCC would prefer that CCAS should merge with the Local Authority Assured Trader Schemes. These schemes have been very successful and well received by local consumers and businesses and in the opinion of BHCC provide a much stronger brand than the CCAS model.

## **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?**

BHCC would support 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.

**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?**

BHCC has no strong views on this.

**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 super complaints 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.*

### **General observation**

It is understood that many Trading Standards professionals feel that removing the national consumer protection role from the OFT is a retrograde step and may cause an 'enforcement gap' that cannot be filled. BHCC though, welcomes the proposal as it is felt that the OFT has not fulfilled its coordination role over many years, been inept in the management of information systems and intelligence dissemination and curtailing services that provided direct support to the LATSS.

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

BHCC can evidence its willingness to take action that has a regional or national impact most recently investigation a 'land banking scam' where the business is located within the area but targeting 'victims' across the country. The Head of Trading Standards also spent time on secondment with the regional fraud unit 'SCAMBUSTERS' and suggested the consideration of such an option in a paper on the future of the regional teams.

Therefore BHCC supports Option 3 because the majority of LATSS have the skills, experience and willingness to deliver the outcomes the Government wants to see. On a cautionary note, whilst the Head of Trading Standards in this Authority has a reasonable level of influence that enables them to take action on regional and national issues it is recognised that many senior managers in other local authorities do not have the same influence. Furthermore any decision to take enforcement action generally rests with the Solicitor to the Council and steps will need to be taken to influence these officers if the government's plans are to be effective.

As indicated by ACTSO, BHCC does not believe that this option undermines the principles of the localism agenda. It should give LATSS greater freedom and flexibility to be able to work together nationally, regionally and locally. It should enable the improvement of the regional infrastructures which are crucial to effective and consistent delivery of services.

However successful implementation of this option is dependent on the amount of funds made available.

**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?**

BHCC believes that an effective TSPB will be the most crucial element of ensuring that the changes to enforcement work effectively. 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.

As suggested by ACTSO the Board must be comprised of heads of trading standards and 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 agree with ACTSO that the TSPB should direct this work and 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. Crucially this will need to be led by effective intelligence analysis.

As indicated by ACTSO the TSPB would need to meet regularly to provide the strategic and operational oversight in a co-ordinated manner. It is essential though that the Government empowers 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.

To ensure that the TSPB is an effective coordinating organisation it is suggested that a model similar to that operated by the Association of Chief Police Officers is devised. Members of ACPO have a clear national role which is reflected in their local job description. Whilst heads of trading standards services have attained such a role it is generally only implied in their job description.

### **Political Oversight and Scrutiny**

BHCC believes that 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. BHC would support the lead taken by ACTSO to discuss these options directly with the LG Group and WLGA.

## **Financial Oversight**

Whilst financial oversight and auditing is also crucial, BHCC would caution against micro management of the funds allocated. All decisions about the spending of any money should be the responsibility of the TSPB in accordance with its agreed terms of reference and accountability structures.

## **Membership**

BHCC agrees with ACTSO that Heads of Trading Standards must be responsible for the operational governance and oversight of the project, and that any such board should be based on a similar format of the Trading Standards Policy Forum. The current model works and with the exception of inviting participation by the CAB, CMA and TSI do not require any significant changes.

## **Chairman**

BHCC believes that the TSPB must have a Chairman. As suggested 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 felt that an independent Chairman would be more appropriate then perhaps the ACPO model could be employed as best practice. It is understood that the ACPO Chairman and administrative support was/is funded by the Home Office. The person is always a Chief Police Officer with high standing amongst their peers, and with significant knowledge and experience of running a Police Force. If a similar model was adopted for the TSPB Chair it would enable them to devote all of their time to the role.

## **Secretariat**

BHCC agree with ACTSO that the TSPB must have 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. However BHCC feel that the cost of such a secretariat must be balanced against the need to ensure that the majority of funds are targeted at front line service provision.

## **Delivery Mechanisms**

BHCC agrees that 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 associate with the functions.

We support the ACTSO assumption 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. However we would like to suggest that the National Fraud Authority model could be utilised with lead authorities or regional groups taking responsibility for a particular area of activity.

BHCC agrees that a key strand of the TSPB must be the commissioning of a strategic assessment to identify the priorities for those teams tackling cross border detriment. 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.

BHCC would support the re-introduction and expansion of regional teams and/or national centres of excellence to provide sufficient investigative capacity to take on the larger cases.

We agree with ACTSO that 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 the following:

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

BHCC congratulates BIS for continuing to encourage regional trading standards groups to apply for national funding to deliver e-crime facilities and internet enforcement.

BHCC was concerned at the curtailing of the 'super region' SCAMBUSTERS team and the 'enforcement gap' it has left. Whilst it is understood that BIS cannot require a region or regions apply for funds to operate such a team it seems perverse that this review calls for the expansion of such teams and the development of a national entity.

### **Indemnity Fund**

As indicated previously BHCC have always been prepared to take action to tackle national threats either individually or in conjunction with other LATSS. There is however significant financial/legal risk involved in this work and we agree that it is essential that BIS, ACTSO and the TSPB 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.

We understand that ACTSO would not advise any LATSS to take such action without such underwriting or insurance but BHCC will take such action if the circumstances warrant it.

Of course if others take the ACTSO advice this will lead to inconsistent enforcement and undermine the intended outcome of this Landscape review.

***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?***

BHCC cannot support the maintaining of the status quo in terms of powers and responsibility as this would provide additional bureaucracy and costs associated with a new organisation with few clear benefits.

***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?**

BHCC believes 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).

Effective communication and a good working relationship between the TSPB and CMA will be crucial to ensure that intelligence can be shared and assurances received that cases can be dealt with appropriately.

BHCC agrees with ACTSO that the 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 LATSS and 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?**

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

We agree with ACTSO that 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 minimise the bureaucracy associated with any such scheme. We also welcome the "Fighting Fund" that BIS made available to support LATSS enforcement activity, but agree with ACTSO that the bureaucracy involved 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?***

As we can demonstrate 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. BHCC does 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.

***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?***

BHCC believes that the TSI has the experience of training staff in the trading standards community and producing professional guidance. Therefore the TSI could be the appropriate home for the OFT professional guidance and training functions.

But in the current climate it is essential that trading standards professionals have access to good quality low cost training and materials. BHCC have many officers who are also TSI members and they ought to support the above proposal but they also have a commitment to their employer to obtain 'value for money' and it is possible that there are other providers (that may wish to undertake this function) who may be better value .

**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?**

BHCC knows that the 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. We agree with ACTSO that ultimately any decision will depend on the type of representation required by BIS and the amount of resources allocated.

BHCC also agrees that it may also be appropriate if a lead region or authority is providing certain aspects of national delivery, that they could also fulfil the European or international liaison 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?**

BHCC 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.

**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?**

BHCC agrees with ACTSO that 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 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 sensible. In terms of responding to super complaints, it is assumed that the responsible body would be whomever the TSPB has commissioned to deliver the enforcement function in that area.

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

BHCC believes that a lead local authority or group of authorities could take on the OFT estate agency and related anti-money laundering functions. However many LATSS are dealing with fraudulent activities or activities where consumers are misled by estate agents under current legislation such as the Fraud Act, the Property Misdescriptions Act and the Consumer/Business Protection from Unfair Trading Regulations. Therefore we do not believe that the current negative licensing system for estate agents is necessary.

The enforcement of anti-money laundering regulations is 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. It is agreed that 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?**

It is essential that the proposed changes to the consumer landscape should go ahead from April 2013. This should avoid continued confusion in the current landscape and deliver the financial efficiencies intended.

Yours sincerely



Ben Duncan  
Cabinet Member for Communities, Equalities & Public Protection

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## **British & Irish Ombudsman Association**



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**Consultation on Empowering and Protecting Consumers**

**Submission by the British and Irish Ombudsman Association (BIOA)**

This submission is made on behalf of the Chair and Executive Committee of the Association which was established in 1991 and includes as members all major ombudsman schemes and complaint handling bodies in the United Kingdom and Republic of Ireland. The Association's objectives include:

- encouraging, developing and safeguarding the role and title of Ombudsmen in both the public and private sectors
- setting criteria for the recognition of Ombudsman offices by the Association
- formally recognising those persons or offices who satisfy the criteria
- facilitating mutual learning and providing services to members designed to develop best practice working to raise the profile of Ombudsmen and the understanding of their work

The Association welcomes this opportunity to comment on the consultation on empowering and protecting consumers, primarily in the area of Ombudsmen and complaint-handling schemes.

**Ombudsman schemes**

We welcome the extension of independent consumer redress schemes into other areas of consumer services, especially water and public transport. The model preferred is, naturally, the BIOA compliant Ombudsman model which must meet the following five key criteria:

- Independence
- Fairness
- Effectiveness
- Openness and transparency
- Accountability

This indeed is the model suggested by the Cabinet Office in its 'Guidance to Departments' on Ombudsmen (copy enclosed). Paragraph 4 of the Guidance states:

*An effective (and BIOA compliant) Ombudsman scheme can be the hallmark of fair redress. It is important therefore that anyone establishing such a scheme should consult with the Cabinet Office which acts as the Government liaison point on Ombudsman matters, and also provides the channel of communication with BIOA.*

As indicated above, a channel to BIOA is via the Cabinet Office and both we and our member schemes welcome dialogue with all Departments, especially BIS, on the merits of and procedures for setting up independent BIOA compliant Ombudsman schemes.

We believe that there is a need to retain the requirement of redress schemes within relevant industry sectors with the transfer of Consumer Code Approval Schemes to the British Standards Institute.

#### **Multiple redress schemes per sector**

We wish to take this opportunity to discourage strongly the further establishment of multiple redress schemes (whether Ombudsmen or not) within a single service sector, such has already happened with property and telecommunications. Ofcom decided to approve both the Telecommunications Ombudsman (now Ombudsman Services: Communications) and the Communications and Internet Services Adjudication Scheme (CISAS). The OFT, under the CEAR Act 2007, despite opposition from consumer bodies (such as the NCC as it was then) and others, decided to approve both the Ombudsman for Estate Agents (now The Property Ombudsman) and the Surveyors Ombudsman (now Ombudsman Services: Property). Ofgem sensibly, in our view, decided to approve only a single redress scheme, the Energy Ombudsman (now Ombudsman Services: Energy).

Although the schemes currently involved are all sound and reputable, the Association, and others, feel strongly that it is not in the interest of consumers to have multiple redress schemes. It is very confusing in an already confused consumer redress landscape. Moreover, it permits less scrupulous providers to choose to join whichever redress scheme is more (financially) advantageous to them, rather than to the consumer. This surely cannot be the intention of the legislation. We particularly feel that, whilst the OFT favours competition in markets for consumers of commercial services, it would be a mistake to suppose that competition would deliver any comparable benefits for consumers in this context.

Ian Pattison  
Secretary  
British and Irish Ombudsman Association

September 2011

Enclosure:  
Cabinet Office Guidance to Departments (November 2009)

Sent to:  
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## **British Airways**

## **Empowering and Protecting the Consumer A Response from British Airways**

### **Background – about British Airways**

British Airways is one of the world's largest airlines, carrying approximately 32 million passengers worldwide annually on around 750 daily flights. We employ around 39,000 people, the vast majority of these at sites throughout the UK, and have an annual turnover of around £8.5 billion.

The airline's two main operating bases are London's Heathrow and Gatwick airports, with a smaller base at London City Airport serving New York and European destinations. From these three bases, British Airways flies 237 aircraft to 152 destinations in 75 countries. In addition to its passengers, the airline also transports cargo – more than 750,000 tonnes around the globe each year.

In 2010 BA completed its merger with Iberia of Spain to create the International Airlines Group (IAG). Our combined business offers flights to 205 destinations throughout the world on a fleet of 415 aircraft. We have also commenced a joint business agreement with American Airlines (AA), which further extends benefits for our customers. The combined network of BA, Iberia and AA serves 433 destinations in 105 countries with more than 5,180 daily departures.

### **Introduction**

The airline industry is a tough and competitive one. At British Airways, we expend a great deal of time, money and effort trying to understand what our 32 million customers want, shaping our offering to that, and delivering a first class product at a price they are willing to pay. Airlines that do not deliver what their customers want go out of business – this is the harsh and undeniable truth of our industry.

British Airways has always stood for quality of service. We are proud to serve our customers and to make them the cornerstone of our business. Given our appreciation of our customer, and how an airline operating in a competitive environment succeeds by understanding and delivering for its passengers, we believe that we are uniquely placed to comment on this consultation, and are grateful for the opportunity to do so.

### **Empowering the Consumer – Delivering better outcomes**

BA agrees with the Government that it is important that consumers are well informed in order to make good decisions. As a result, generally we support measures which help consumers make informed choices, and hold businesses to account when they do not deliver the products and services that they have agreed to sell.

In a competitive market, firms are price takers. Firms offer goods and services in various combinations of price and quality, and the consumer chooses which, and indeed, whether to consume. Firms offering what the consumer wants at a price they can afford, succeed, those that don't, fail. In short, where consumers have access to the information that they need, their informed choices discipline firms.

In regulated industries, this is not usually the case. Typically, these businesses are monopolists, and consumers do not have the choice about which service to consume. In these sectors, it is the regulator, rather than the market that sets the price for goods and services and monitors their quality. As the regulator is acting on behalf of the consumer, we believe that it is only right that the consumer should have the right to question or appeal what is done in their name.

In most regulated industries this is not the case, it is only the regulated company that has the right to appeal the regulator's decisions. BA believes that there are significant benefits to the public that would accrue from giving a body representing consumers' interests appeal rights in these industries. Symmetrical rights of appeal (ie where both the regulated company and consumers have a right to appeal price control decisions) could lead to significant benefits for two reasons: public benefits arise in respect of both error correction, and as a consequence of the dynamic impact which symmetrical rights have on regulator behaviour ie it leads to better regulatory outcomes. To illustrate these points, at Annex A we attach a paper which outlines the theoretical underpinning of these points, together with an example of how such symmetrical rights might work in the aviation sector.

In summary, British Airways believes that empowering the consumer must lead to better outcomes for the consumer, business and society as a whole. Furthermore, in regulated industries, we believe that giving the ability to appeal decisions made by the regulator to consumers, or someone who represents their interests, must lead to better regulatory outcomes.

### **Representing the consumer**

British Airways believes that the question is not whether consumers in regulated industries should be given a voice and the power to appeal decisions made in their name. Rather, the question is who is best placed to use these new powers. BA understands that price control decisions made by regulators are complex matters. They require time, and specialist knowledge to understand, and to debate them with a regulated company or indeed a regulator is both prohibitively costly both in terms of time and money. Therefore we believe that this challenge role should be given to a body whose interests would align with the consumer.

We believe that airlines are best placed to perform such a role, and should be given the ability to appeal airport price control decisions made by the CAA. Economic theory tells us, and indeed it is a recognised fact that the interests of companies operating in competitive markets align closely with those of their customers. The airline industry is a highly competitive one, and it is recognised that airlines do represent the needs of their current and future passengers. Indeed, the CAA has adopted a rebuttable position for its next round of price controls which reflects the fact that airlines interests align with those of the passenger.

Given that our interests align with those of our passengers, and that the fiercely competitive nature of our market strongly incentivises us to represent our passengers' interests vociferously, it is inextricable that airlines should have a right of appeal. In order to argue that we should not have a right of appeal, one would need to show

both that there are market failures in our sector which lead to a misalignment of airline and passenger interests, and examples of airlines not acting in the passenger interest.

In fact, there are few examples of market failure, and where they can be found, the evidence shows that airlines operate in the passenger interest. At Annex B, we reproduce part of a paper sent by our trade association, BATA, to the Department for Transport which addresses these points in more detail.

British Airways does not agree with the Government's proposal to set up a regulated industries unit that would have rights to appeal CAA decisions on the economic regulation of airports. Our objection is based on four factors:

- Duplication: granting appeal rights to such a body is unnecessary as it can be shown that airlines interests align with passengers, and that they are strongly empowered to act on their behalf;
- Cost: such a body would require substantial resources to engage credibly. Without such substantial resources it is unclear how this proposed body would engage with, and indeed understand the needs of current and future passengers;
- Complexity: the process of getting a passenger through an airport and safely to their destination is a hugely complex one. There are parts of the process that the passenger does not see, but would feel their effects if they went wrong (for example the operation of control posts operated by the airport). How would such a sectoral body understand and gather data on such items without asking the airlines?
- Incentives: in regulated industries, the role of the regulator and bodies like the proposed regulated industries unit, is to attempt to ensure the delivery of outcomes for consumers that mimic those that the market would provide. Airlines, operating in a competitive market have the incessant pressure of competition ensuring that passengers get the outcomes they want and are prepared to pay for. Competition must provide a stronger incentive for us to act than a body trying to mimic what they think competition might deliver.

British Airways takes its responsibilities to our passengers very seriously. We strive to understand and deliver what they want and are prepared to pay for. The success of our business is built upon our success in developing our expertise in looking after our passengers, who we are proud to serve. We are grateful to BIS for the opportunity to respond to this consultation, and have based our response on our detailed understanding of our customers, industry and business.

We would be delighted to discuss further or clarify any of the points in this submission. Should you wish to do so, please contact:

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## Appendix A

### The Benefits of Symmetrical Rights of Appeal in the Aviation Sector

Having an effective representative of passenger interests, can lead to better regulatory outcomes for passengers in two ways:

- error correction; and
- producing better regulatory decisions.

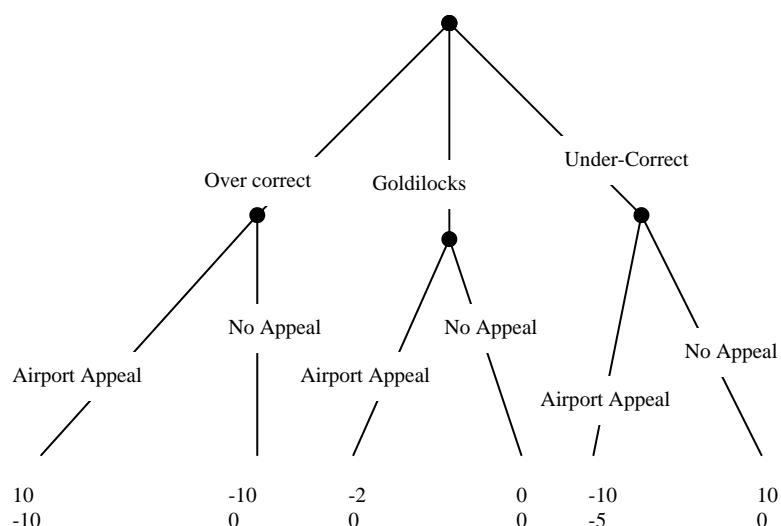
#### **Error correction**

A regulator has limited resources and information to assist in reaching its decisions. These limitations create the possibility of mistakes, which can be technical errors or judgemental ones. If the regulator does not have an incentive for favouring the airport operator in its decisions, it is to be expected that these errors will be as often against the airport operator's interests as for it.

If these mistakes are equally distributed, it seems wrong and unfair that the current appeal mechanism only corrects those errors which work against the airport operator's interests. In short the current regime allows the regulators decisions to be corrected when they find too strongly in the passengers' interests, but not when they are too weak in protecting the passenger. Consequently, passenger interests are more likely to be protected if appeal rights are symmetric.

#### **Producing better regulatory decisions**

It is our contention that granting airlines, as well as the regulated airport, a right to appeal price control decisions would lead to better regulatory outcomes. This is well illustrated by game theory. In order to illustrate the point, it is necessary to make a number of assumptions: that there are only three states of the world – a regulator can over-correct or under-correct for airport dominance, or it can get it right (the goldilocks scenario); and that appeals outside of a goldilocks scenario will always be successful, and that appealing a goldilocks decision will fail. In a world where only the airport has a right of appeal, the game looks as follows:



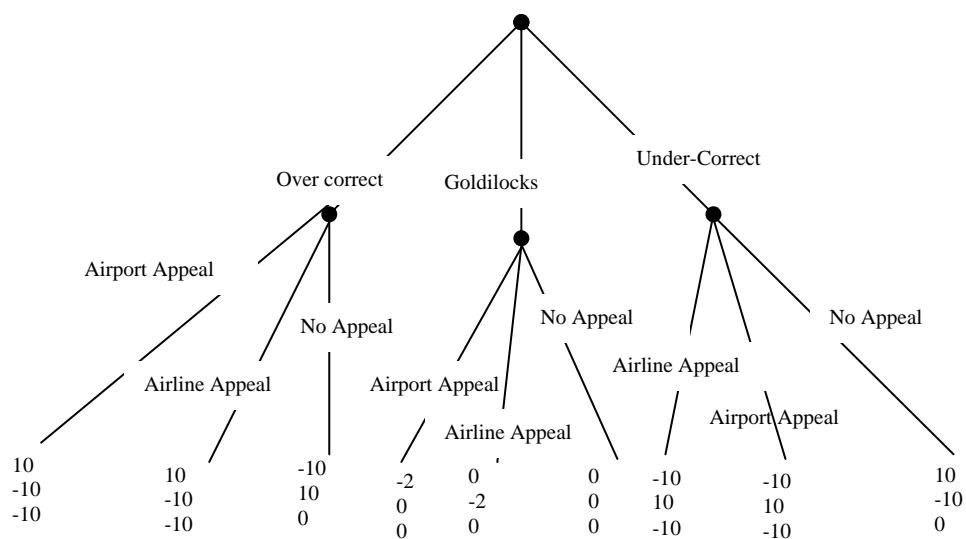
Airport returns shown on top line, Regulator returns shown on bottom line

In this world, the regulator can only be disciplined by an airport appeal. It is always in the airports' interests to trigger an appeal when the regulator has been too harsh and over-corrected for its market power. But the airport will always be worse off if it appeals outside of this scenario. Meanwhile the regulator is always better off trying to get its decision right, but will certainly be worse off if it over rather than under-corrects for airport market power.

In a world with perfect knowledge the regulator should always get it right. However, it is agreed and common ground that a regulator never has perfect knowledge and that price controls involve a good deal of judgement based on incomplete information. In this more realistic scenario, whilst we acknowledge that the regulator may attempt to be objective and fair, the incentive structures are such that when making a judgement call, s/he is always better off tending to favour the airport rather than the passenger. This is because for the regulator under-correcting as a strategy 'strictly dominates' over-correcting. Indeed, given the incentive structure the airport may attempt to push the regulator that way by threatening to trigger an appeal even if the regulator may get the decision right.

To put it more simply, in a world where judgements are made by the regulator, even if they behave honestly and objectively, where only the airport has the ability to discipline 'bad' decisions by the regulator, there may be a tendency to avoid such penalties and find in favour of the airport.

However, in a world where airlines and airports have a right of appeal, the outcome and incentive structures are very different. This is shown below.



Airport returns shown on top line, airline returns on middle line, regulator returns on bottom line

In this game, the airport incentive structure is the same. It should only exercise its appeal right and discipline the regulator if the regulator over-corrects for its market power. In this case, as before, the airport prevents the regulator from exercising its duties too strongly.

However, in this game, the airlines also have a right of appeal. Here, it is not in the airlines interests to appeal if the regulator gets the decision right, or if it over-corrects for airport market power. However, it is in the airlines interests to appeal if the regulator does not sufficiently control for airport market power and therefore leaves the travelling public open to abuse. This has a significant effect on the regulators incentives.

In the previous game, where only the airport could discipline the regulator, it was possible to argue that even though a regulator may always try to get it right, there was always an incentive to avoid being disciplined by the airport, and so it was possible to get outcomes where passengers were left exposed to insufficiently restrained airport market power. In this game, if the regulator over-corrects s/he will be disciplined by the airport, but crucially, if s/he under-corrects then s/he will be disciplined by the airlines. The net result is that, in economic terms, getting it right strictly dominates all other strategies for the regulator, or to put it another way, it is always in the regulator's interests to try and get it right and not err in favour of the airport.

This is not an unusual finding from game theory and indeed such a finding that the threat of symmetrical punishment has shaped major government and international policy for years – for example the principle of nuclear deterrence (mutual assured destruction) is based exactly on this idea of symmetrical threat and punishment.

## Appendix B

### Alignment of Interests – Airlines and their Passengers

#### (extract from BATA paper to Department for Transport)

#### **Alignment of interests**

Competition leads to better outcomes for passengers. Businesses reduce prices and increase quality of their goods and services to attract new customers. The airline market has the following features, which produce a highly competitive environment :

- There are too many airlines and passengers for any party to have a significant degree of individual control over prices.
- Airlines seek to earn profits while passengers search for the flights which best meet their needs.
- Airlines and passengers can freely enter or leave the market.
- Airlines and passengers have access to information regarding seat availability, prices, and quality of flights.
- Flights are a heterogeneous service, but are becoming more substitutable for one another as airlines offer increasingly similar products within their respective markets.

There is no evidence that airline interests are different from those of their passengers in reality (see Appendix A). The highly competitive nature of the airline industry, combined with lack of market failures in practice, should reassure the DfT that we would act in the interests of our passengers if given the right of appeal. In other words, any gains made by the airline industry from the appeal process would almost inevitably be passed on to passengers. The fact that industry profits vary so much across time and individual airlines supports such a conclusion. Any economic rents made by an airline are quickly competed away and enjoyed by passengers through lower prices or better service.

Care needs to be used when drawing on examples from other sectors. For example, the energy regulator (Ofgem) did not grant the right of appeal to energy suppliers, which sit between customers and the regulated network businesses, because it had ongoing concerns that competition in this market was not effective. These concerns led to an Energy Supply Probe in 2008 and a Retail Market Review earlier this year. The fact that energy suppliers do not have a right of appeal should not, therefore, be used as a justification for not providing this right to airlines.

#### **Ability to represent passengers**

Passengers have limited time and resources, as well as the necessary industry knowledge and skills, for assessing proposals made by the airport operator. This means that even if airports are able to provide clear cost and charging information to passengers, the latter's ability to understand it will be limited. While airlines do not enjoy unlimited resources, they certainly have more available than passengers have for evaluating the charges and investment plans of airport operators. We believe that our direct and ongoing contacts with the airport operator means that we have unique knowledge and specific expertise relative to other parties that could represent passengers. Such a conclusion was similarly reached by the Competition Commission :

*“We consider that airlines have specific knowledge and experience that is of special value to the regulator, in particular in regulating... airports with substantial market power where the airlines’ detailed knowledge of the airport is relevant and helps to counteract the asymmetry whereby a regulator inevitably has less knowledge and information about the airport than does the airport operator.”<sup>1</sup>*

Even if passengers do understand the information about an airport’s existing operations and future plans, they may well show “bias” in how they interpret or assess this information. For example, behavioural economics suggests that passengers are likely to want to maintain the status quo and be very keen to avoid spending money now for benefits in the future. These potential biases in passenger behaviour suggest that airlines are more likely to take a considered view. It follows that airlines are a far more effective agent for representing the overall interests of passengers.

### **Evidence of costs (extract from BATA paper Appendix A)**

This section investigates whether airlines have acted in practice against the interests of their passengers. In other words, it examines whether situations that could harm consumers and are possible in theory have actually happened in reality.

#### *Capacity expansion*

One concern is that airlines at capacity constrained airports might try and prevent expansion. They could do this either directly by refusing to fund investment or indirectly by exerting pressure on prices so that they are too low to fund investment. Airlines might seek to do this because capacity constrained airports offer more opportunity for profits. A capacity constrained airport is one that passengers want to use more than is actually possible, which means that prices can be generally higher. If extra infrastructure is built, then prices might fall, and new slots tend to be given to new entrants first instead of the incumbents that might have to fund the investment. However, the evidence does not support that passenger and airline interests are not the same for capacity expansion. In practice, support is provided because of the strategic importance of capacity at the base airport for an airline and because slot trading allows slots to find efficient uses despite the new entrant rule. At London Heathrow, which is the most capacity constrained airport in the UK, British Airways and other airlines have led the case for expansion. We have even criticised BAA at the Competition Commission inquiry for failing to make the case for another runway. Airlines also agreed to fund PSDH in Q5 despite the increase in airport charges. Support is not provided where airlines do not believe that the expansion plans fit with their passenger needs. At Stansted, airlines oppose BAA’s development project, particularly for the terminal design/specification, but had supported the general case for efficient expansion. The airport argued that higher specification facilities were needed for future users, especially longhaul services. In reality, longhaul services failed at the airport, which proved that BAA’s assessment of future demand was not realistic.

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<sup>1</sup> Competition Commission 2009, BAA airports market investigation: A report on the supply of airport services by BAA in the UK, p. 276.

### *Quality of service*

There is some concern that airlines might seek to keep prices low for their passengers when they passengers would prefer to pay for higher quality services. Airlines might refuse to fund investments or pay for extra operational expenditure that will enhance the passenger experience or is needed provide to comply with UK government policy. Examples include providing central search security, reducing the check-in queues or speeding up baggage reclaim.

Occasionally, airlines do fail to deliver the correct services to their customers, which is true for any business. There are also some significant structural differences between airlines, which is again the sign of a competitive industry. Even at the most congested airports, passengers can and do choose between airlines based on differences in the service they receive at the airport. Airlines therefore have strong incentives to address poor service to avoid the loss of passengers.

In practice, airlines have supported various investments to improve the quality of their passengers' experiences at airports. Airlines at both London Heathrow and London Gatwick supported the increase in operational expenditure that was necessary to reduce central search queue lengths from 10 to 5 minutes. We only argued against the cost effectiveness of BAA's initial proposed solution, which again benefits passengers by helping them get value for money. At T5, the airport removed many of the planned lifts, walkways and people movers (at the "value engineering" stage) despite strong airline opposition on grounds of customer service. Despite the long term savings to airlines from a reduced RAB, BA was concerned that a poor passenger proposition would make the airport less attractive to passengers.

### *Retail developments*

Airlines might oppose the development of retail goods and services in the airport where this competes with our ability to sell food, drink or goods on board our aircrafts. For example, an airline might try and stop a sandwich bar from being built at the gate because this might mean that people are less likely to buy sandwiches on the flight. However, passengers might prefer to buy a sandwich in the airport because they believe it tastes better and/or costs less money.

We are not aware of any evidence that airlines have stopped any retail developments that compete with our sales on board our aircraft. Airlines have no influence over an airport's decision to select particular retail supplier. Further, the airlines benefit indirectly from income generated through retail activity at the airport via the single till arrangement which aligns airline, airport and passenger interests.

Therefore, overall we are not aware of any evidence of significant or structural differences between airline and passenger interests on the matters covered by airport regulation.

## **British Brands Group**



# Empowering and protecting consumers

Response to BIS consultation

## SUMMARY

Branding plays an effective and powerful role in informing, empowering and protecting consumers, while encouraging companies to invest in long-term reputations. The parasitic copying of distinctive brand identities, despite representing a breach of European consumer laws, continues unchecked in the UK due to lack of enforcement. This demonstrates a weakness in the current consumer regime which is not addressed in the consultation's proposals. It needs to be for the UK to comply with the Unfair Commercial Practices Directive.

- 1 The British Brands Group welcomes the opportunity to respond to the Department of Business Innovation and Skills' (BIS) consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement..
- 2 The British Brands Group is a trade organisation that provides the voice for brand manufacturers in the UK. Its role is to help create in the UK the optimum climate for brands to deliver their benefits to consumers. Such benefits include broader choice, ever-better products through innovation, strong value and consumer confidence. A list of members is provided at the end of this response.
- 3 The Group supports the Government's aim to empower consumers to make wise decisions when purchasing goods and services. Consumers need clear, unambiguous information about products when making choices. We also welcome the recognition that businesses investing in goods and services need to know they will not be undercut by rogue traders.
- 4 We also concur with Government that regulation is not the sole solution. Branding is a powerful mechanism for empowering and protecting consumers. Consumers understand the provenance of branded products and services, trust them and have the reassurance of a guarantee of quality. Meanwhile companies invest to create long term positive impressions and reputation through differentiation, consistency and a socially-oriented approach to business. Branding itself therefore has an important role in delivering policy goals.

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**The voice for brands**

- 5 It is encouraging to see the relevance of brands recognised in the consultation document, with the brands of the Citizens Advice service and the British Standards Institution acknowledged. Indeed, it is the Citizens Advice brand that will be instrumental in determining its success as a source of information and advice trusted by consumers. The consultation does not give supporting evidence on the Citizens Advice brand. We certainly urge its monitoring and management, and indeed development to reflect its new proposed role (if this is not already being done). It is, after all, a critical “success factor” for the proposed new regime.

## 6 RESPONSE TO THE CONSULTATION

The consumer regime forms an important part of the overall environment for branding in the UK, helping create and shape the conditions for investment and innovation by companies, and trust and confidence amongst consumers. However, we do not have a brand-specific perspective on the questions posed in the consultation that will not be addressed by other business representatives. Rather, we wish to highlight a case study that illustrates one important failure of the current regime and which will not be addressed by the proposals outlined in the consultation.

### 7 Case study: Misleading “parasitic” packaging

Misleading “parasitic” packaging concerns traders introducing consumer products in packaging designs very similar to those of familiar branded products. While similarity of packaging makes it much more likely that consumers will purchase the product by mistake thinking it to be the brand, the more insidious problem is the implicit suggestion conveyed by the similar packaging that both products come from the same production line and are of the same quality and reputation when they are not. The effect is to boost the sales of the copy.



An example of a familiar brand and a parasitic copy (2006)

A selection of examples on the market in 2010 is available on our [website](#). Examples from previous years are also available, demonstrating how the problem persists.

- 8 The impact of such similar packaging has been researched extensively since the early 1990s, with evidence of consumers buying the copy in error and believing the copy to be made by the original brand manufacturer when it is not. Both recent and historical research evidence is available on our [website](#), demonstrating that the practice affects millions of UK consumers.

- 9 The designers of parasitic packaging are careful not to infringe registered intellectual property rights in their copies. Meanwhile the law of passing off is ineffective in tackling the problem, due to the need to show misrepresentation and the very high evidentiary threshold required to demonstrate consumer confusion. The practice however is covered by the Unfair Commercial Practices (UCP) Directive, enacted in the UK as the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) (see Regulation 3, 5 and Schedule 1, Clause 13 – the list of banned practices), hence the relevance of this case study to this consultation.
- 10 During consultation on the CPRs, we were assured by BIS that the OFT and Trading Standards had a duty to enforce the Directive's provisions. Indeed, Article 11 of the UCP Directive requires the UK to ensure there are "adequate and effective means to combat unfair commercial practices..". In reality however neither the OFT or Trading Standards have taken action, despite being presented with the evidence to do so. Indeed, both have advised us that they either do not have the resources or that the problem does not meet their prioritisation principles. The OFT has furthermore added a further barrier to enforcement, requiring an unspecified "consumer detriment" hurdle to be overcome which is not specified or required in the legislation. The Government, under pressure from the Opposition, promised a review of the UCP Directive in 2010 but this has never happened.
- 11 *Implications*
- This case study illustrates:
- How consumers are prevented from making informed choices when similar packaging designs dupe them into believing there to be a link with a familiar brand when none exists;
  - how practices that breach consumer law affect legitimate business and their investments (whether in product quality, innovation and / or reputation);
  - the gap between assurances from BIS on the enforcement regime and the reality of day-to-day enforcement;
  - that, where no authorised body takes enforcement action against a particular type of practice, there is no overall responsibility, accountability or monitoring to ensure the UK's enforcement obligations are met;
  - how a practice persists where there is no enforcement action, to the detriment of consumers and legitimate companies;
  - how a simple solution – providing companies affected by the misleading practice with private rights of action under the CPRs – would have resulted in stronger consumer regime, cost-free to Government. Such rights, which we strongly advocated, were explicitly rejected by BIS during its consultation on the CPRs.
- 12 Under the regime proposed in the consultation, we see no prospect of this situation being addressed, particularly in light of the reduction in resources available to Trading Standards from £214 million (2009) to £140-170 million (2014). This indicates a continued weakness in the UK's consumer regime, with consumers being deliberately prevented from making informed decisions and companies investing in strong, differentiated reputations being disadvantaged.

13 *Remedies*

As the perpetrators of parasitic packaging are often reputable retailers with compliance departments rather than rogue traders, there is potential for both soft and strong enforcement action of existing consumer rules to have an impact:

- The practice may be deterred were Ministers to express explicit censure of the practice, following the example of the European Parliament in its report on a more efficient and fairer retail market (5<sup>th</sup> July 2011):

Considers that 'parasitic copying', ..., is an unacceptable practice that should be addressed without delay (paragraph 31)
- An investigation by the OFT or a test enforcement action by Trading Standards would clarify the scope and efficacy of the CPRs against packaging that misleads, potentially creating a future deterrent;
- Companies affected by copying should have the right to bring civil enforcement action themselves. A narrow right only in relation to misleading packaging of consumer products would suffice. In such cases the interests of consumers and affected companies are wholly aligned, the UK would meet its obligations under the UCP Directive, there would be higher levels of consumer protection and there would be no cost to the taxpayer.

- 14 The purpose of enforcement action would be to force companies that use similar packaging to re-package their goods in distinctive packaging that does not mislead consumers. This would empower consumers and preserve consumer choice, as well as ensure stronger competition.

14 CLOSING REMARKS

Parasitic copying continues unchecked in the UK, due primarily to the ineffectiveness of the country's IP laws (notably passing off) and the lack of enforcement of consumer protection legislation. This submission deals with the latter aspect.

- 15 The proposed consumer regime outlined in the consultation offers no prospect of more effective enforcement of the CPRs in relation to misleading packaging . This is required for the UK to comply with the UCP Directive and we urge BIS to take this opportunity to resolve the matter.

J A Noble  
23<sup>rd</sup> September 2011



# Members

A G Barr	McCormick
Akzo Nobel	Mars
British American Tobacco	Nelsons
Coca-Cola	Nike
Diageo	PZ Cussons
The Edrington Group	Philip Morris International
Elle Macpherson Products	Procter & Gamble
GlaxoSmithKline	Reckitt Benckiser
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**The voice for brands**

## **British Compressed Air Society**

Sir

The British Compressed Air Society (BCAS) is the only UK Trade Association representing manufacturers, distributors and users of compressors, vacuum pumps, pneumatic tools and allied products.

We are aware of the consultation in relation to the future of the OFT's Consumer Code Approval Scheme.

BCAS has recently introduced a Code of Practice, we are in the process of establishing an AirSAFE Register, and we are encouraging members to demonstrating their compliance with this code through the use of customer feedback. All of this follows very similar principles to the OFT Approved Codes scheme and BCAS uses a partner company Referenceline for this purpose.

We suggest that Business to Business codes should be included in any future version of the Approved Codes scheme as businesses, and especially SMEs, face similar problems when trying to find a reputable supplier.

If you are to hold future workshops for interested parties I can confirm that BCAS would be willing to participate.

Yours sincerely

Chris Dee  
Executive Director  
British Compressed Air Society Ltd

## **British Gas**

## EXECUTIVE SUMMARY

British Gas recognises the importance of the institutional landscape in delivering good outcomes for consumers, and shares the Government's objectives which have guided its proposals for reform, namely: reducing the complexity of the consumer landscape; strengthening the effectiveness of consumer enforcement; and delivering all of this in a more cost-efficient manner.

At a time when the energy industry faces a period of unprecedented challenge, it is important that such institutional reforms deliver outcomes that are positive for consumers over the longer term. In our response, we therefore seek to set out those issues key to achieving this objective, and highlight a number of practical issues which must be addressed in order for such fundamental reform to be successful.

Our response is divided into four main sections.

### ***Consumer information, education and advice***

There is significant potential to improve the provision of consumer information. Streamlining the number of public bodies and creating a single 'front' for the provision of all consumer information will offer considerable benefits, and we are supportive of proposals to bring this function together within the Citizens Advice service.

### ***Consumer advocacy***

We recognise the importance of having a strong and well informed consumer advocate and the design principles laid out appear to be a sensible starting point. However, any organisation which carries out publicly-funded duties in this area must also:

- be wholly impartial;
- be publicly accountable for its activities in advancing the consumer interest;
- be experienced and expert in understanding the issues faced by vulnerable customers;
- produce evidence-based advocacy rather than responding to transitory media concerns; and
- possess representation or links in Scotland, Wales & Northern Ireland.

We favour a consumer advocate that has cross-sectoral responsibilities since this would improve the potential for the body to recognise "good" (and "bad") practice across industries and allocate resources where the consumer detriment is greatest.

We understand that the Citizens Advice service and Which? have made a joint bid to carry out the advocacy functions. We currently have very few details of the proposed partnership but British Gas would require a number of important assurances before being persuaded it was in the interests of consumers. We seek firm assurances that:

- any such partnership must meet the Government's stated aim of streamlining the publicly-funded advocacy function;
- a clear and sensible division of responsibilities must be agreed between the two organisations in order to avoid duplication;
- advocacy / policy priorities should be publicly agreed by both organizations;
- the organisations involved must be free from commercial interests which may compromise, or adversely impact, their approach to advocacy. As a minimum we would expect internal Chinese Walls to be introduced to separate commercial activities from the advocacy function, though formal structural separation would be more transparent and help to generate greater confidence among consumers and other stakeholders; and
- any such partnership should have clear governance arrangements, be subject to regular public review and conform to principles of openness and transparency, including being subject to Freedom of Information requests (as is currently the case with Consumer Focus).

***Enforcement***

We consider it essential that any reform in this area ensures a clear division of roles and responsibilities between the various authorities and, and in order to reduce inefficiencies and expense, avoids any duplication between their investigatory and enforcement powers.

We are concerned that Option 1 could result in duplicative investigations by Trading Standards and the Competition and Markets Authority (CMA) where markets raise both consumer and competition concerns, and Option 2 would undermine the primary competition focus of the CMA.

We believe Option 3 could provide an effective alternative, provided the division of roles and responsibilities of Trading Standards and the CMA are clearly delineated.

In the energy sector, consumer enforcement is performed by Ofgem. The consumer enforcement powers of the sectoral regulators is outside the scope of this consultation, however we would urge the Government to consider carefully how the new regime will apply in the regulated sectors and what further measures may be required in order to clearly define the authorities' roles and responsibilities and avoid duplication in those sectors.

***Consumer Codes***

British Gas does not have a strong view on the options set out within the consultation document.

## INFORMATION, ADVICE AND EDUCATION

### QUESTION 1

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

We agree with the analysis presented in the BIS consultation document that the wide number of public bodies currently involved in providing information to consumers can lead to confusion of roles and responsibilities, as well as overlap and inefficiency. We believe this may tend to lead to confusion for consumers regarding where they should turn for help and information.

There is significant potential to improve the provision of consumer information - and there is a compelling rationale for change. Streamlining the number of public bodies and creating a single 'front' / brand for the provision of all consumer information would appear to offer considerable benefits, and we are supportive of efforts to give consumers a simple message such as 'if you need information or advice, go to Citizens Advice'.

We would also expect that streamlining the provision of consumer information should enable the provision of more consistent information, and that this should occur across all mediums (e.g. face to face, call centre or online).

Although the Citizens Advice service could operate as the front end for consumer information, it should not seek to duplicate consumer material produced by other organisations, including businesses and other consumer organisations. Rather, it should make use of existing materials from reputable sources whilst also identifying gaps in the provision of information or in the way in which it is distributed and targeted, and seeking to address these.

### QUESTION 2

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

We agree that the OFT's consumer information role, currently carried out through Consumer Direct's contact centres and website, should be transferred to the Citizens Advice service.

The Citizens Advice service already provides information online for consumers and is at different stages of development in rolling out national telephone advice lines in both Scotland and England and Wales. There are clear synergies in bringing together these initiatives with the OFT's current role under the banner of the well-known and respected Citizens Advice brand.

The transfer of this role will present challenges, particularly given the intention to have the new service operating from April 2012. British Gas supports the transfer and has offered its assistance in providing insights into the operation of large multi-disciplinary contact centres.

Given the tight timescales involved in the transfer of Consumer Direct to the Citizens Advice service, we would suggest that the immediate priority must be on ensuring service levels are at least maintained at their current levels. Opportunities to improve the service should clearly be grasped where this is easily realisable but more fundamental improvements would benefit from a more considered implementation strategy.

### QUESTION 3

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

We believe that the Extra Help Unit (EHU) performs a valuable function in providing assistance to vulnerable consumers and should therefore be preserved. If proposals to abolish Consumer Focus are confirmed, then we agree that the EHU should be transferred to the Citizens Advice service.

The Citizens Advice service already helps many vulnerable people to resolve their problems,

including those relating to energy matters, so natural synergies with the EHU therefore exist. Bringing these two organisations together would appear to be sensible, enabling both organisations to share materials, training and expertise.

In addition, we would also expect that additional benefits should be delivered in moving EHU to the Citizens Advice service. A more holistic service could be offered to people referred to EHU, for example. Rather than dealing solely with the energy-related issue, which in many cases may amount merely to the immediate presenting symptoms, an EHU that was fully integrated with the Citizens Advice service should be better placed to address underlying cause. Resolution to the immediate energy-related difficulty would still be provided but associated assistance could also then be offered – for example, where a caller's wider debt problems became evident an appointment with a free, impartial debt adviser at a local CAB could be arranged, thereby providing a seamless service. A more holistic service should help to reduce repeat visitors by providing a more lasting solution to difficulties experienced by customers.

British Gas has built up a strong and positive relationship with the existing EHU. We recognise and appreciate the fact that the EHU's staff have built up considerable energy-related expertise and an in-depth knowledge of the workings of the energy industry. In our opinion, there would be real merit in seeking to preserve this valuable knowledge base through the transfer of EHU staff to the Citizens Advice service. Such decisions should obviously be subject to consideration of contractual issues and personal decisions but we would see clear benefit if the migration of the EHU's function to the Citizens Advice service was accompanied by transfer of EHU staff.

#### **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 agree with the Government's suggestion that responsibility for any publicly-funded consumer educational activity should transfer to the Citizens Advice service. The intelligence gained from the Citizens Advice service's future expanded role in providing consumer information and advice should be invaluable in helping to determine the priorities for any educational activities. In addition, its bureaux network and wider work within communities should provide one useful means for distributing any such educational materials. We understand that the bureaux network was used successfully in this way during the OFT-financed 'Save Xmas' campaign following the collapse of the Farepak hamper company.

However, Local Authority Trading Standards Services (LATSS) clearly also have an important role to play in this sphere. We therefore concur with the Government's assertion that the Citizens Advice service must work closely with the Trading Standards community to ensure that education provision is well-coordinated. We are pleased to learn that discussions between Citizens Advice and the Trading Standards Institute's (TSI) Consumer Education Liaison Group (which provides a network for consumer education, advice and information throughout the UK) are already taking place to facilitate the proposed transition and ensure that the new arrangements are joined-up and delivering a shared agenda.

There would also be merit in considering whether other organisations such as businesses may want to participate in, or possibly contribute to, such educational activities where appropriate. For example, the energy industry might want to work with Citizens Advice and the wider Trading Standards community to promote the benefits of installing energy efficiency measures and highlight the free help available to some customers.

#### **QUESTION 5**

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

Yes, this seems the most appropriate way forward. LATSS have developed relationships with businesses, and the intelligence gathered from these interactions could be used to positive effect in

British Gas response to the BIS consultation "Empowering and Protecting Consumers"

informing the Trading Standards Policy Board and the TSI in determining priorities and ensuring coordination in business-facing educational activities.

## **CONSUMER CODE APPROVALS**

### **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?**

British Gas does not have a strong view on the options.

However, if the Government's proposed consumer and competition landscape proposals are adopted, it would be consistent with the objectives of (i) the CMA having a primary focus on competition and (ii) simplifying the consumer landscape, for the OFT's current Consumer Codes Approval role to be transferred to an alternative body or to establish an alternative approval / accreditation system.

### **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?**

We have no comment to make in response to this question. .

### **QUESTION 8**

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

We have no comment to make in response to this question.

### **QUESTION 9**

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

We have no comment to make in response to this question.

### **QUESTION 10**

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

We have no comment to make in response to this question.

### **QUESTION 11**

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

We have no comment to make in response to this question.

## 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?**

We understand the rationale for suggesting that as many sectoral advocacy functions as possible should be combined in the Citizens Advice service. Certainly, there would appear to be immediate attractions in terms of increasing the impact of advocacy while reducing overall costs.

A consumer advocate with cross-sectoral responsibilities would have a number of material advantages, including:

- improving the potential for the body to recognise "good" (and "bad") practice across industries; and
- enabling resources to be allocated where the need is greatest (rather than having its activities restricted to one industry which may be a relatively good performer).

However, while British Gas can understand the vision for bringing together sectoral advocacy functions, we would not want this to lead to any diminution of energy sector expertise. Over the coming decades it is anticipated that the energy industry will invest some £200 billion in generation and network infrastructure projects, as well as rolling out enormous projects such as the smart metering programme and the Green Deal – both of which have the potential to profoundly alter consumers' relationship with energy. Decisions about these initiatives will have far-reaching implications for consumers and, in this context, it is imperative that the designated consumer advocate has the expertise and resource to make informed and evidence-based contributions to discussions.

If a decision is taken to combine sectoral advocacy functions then it may be sensible to implement such changes on a staggered basis. Proceeding in this way could help to minimise disruption in the sectors affected and allow Citizens Advice to establish its presence and credentials in a core set of sectors before integrating other functions.

The consultation document suggests (at paragraph 4.44) that an alternative approach might be to move responsibility for sector advocacy to an organisation such as Which? since it has an established track record in identifying problems and campaigning on behalf of consumers in specific sectors. We respond to this suggestion in our answers below.

### QUESTION 13

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

The consultation document sets out (at paragraph 4.34) the design principles which should guide the design of a regulated industries unit, stating that it should:

- have clear aims and objectives
- possess appropriate powers
- be independent of Government, regulators and regulated companies
- have adequate resources
- have the capability to look at emerging issues
- have strong links with other consumer bodies
- work closely with other European consumer organisations

British Gas recognises the importance of having a strong and well informed consumer advocate in the energy sector and these design principles would appear to be a sensible starting point, subject to some important qualifying comments, for example in relation to the exercise of information gathering powers – our views on this are expressed in our answer to Question 16. However, we recommend

that any regulated industries unit – or indeed any organisation which carries out any of the publicly-funded duties in this area - must also meet the following additional design principles:

- be wholly impartial (i.e. free from any commercial relationships or associations which may compromise or adversely impact its approach to, and dealings with, regulated industries)
- be publicly accountable for its activities in advancing the consumer interest – since it will receive public funding then it is right that it should be subject to public scrutiny. As such, we would expect it to produce (and consult upon) an annual forward work plan and annual report. It should also be subject to external scrutiny in the form of reviews by, for example National Audit Office, while Parliamentary scrutiny should be built-in to the oversight framework.
- be experienced and expert in understanding the issues faced by vulnerable customers
- produce evidence-based advocacy and, in particular, possess – or have plans to develop – links with organisations delivering information, advice and education in order that advocacy priorities are closely aligned with the main sources of consumer detriment rather than being determined by transitory media concerns
- possess – or have plans to develop – representation or links in Scotland, Wales & Northern Ireland.

In addition, as we make clear in our response to Question 12, we would favour a consumer advocate that had responsibilities broader than just the energy sector.

#### 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?**

Subject to confirmation that the design principles for a regulated industries unit (which would apply equally to any organisation carrying out publicly-funded duties in this area) laid out above are met satisfactorily, British Gas agrees that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service.

Since publication of the BIS consultation document, we understand that the Citizens Advice service and Which? have entered into negotiations to develop proposals for some form of joint bid to carry out the advocacy functions currently fulfilled by Consumer Focus. We currently have very few details of the proposed partnership but British Gas would require a number of important assurances before being persuaded it was in the interests of consumers. We seek firm assurances that:

- **any such partnership would meet the Government's stated aim of streamlining the publicly-funded advocacy function.** A framework in which two organisations receive public funding to discharge the advocacy function currently performed by one (Consumer Focus) would not immediately appear to represent a move to a simplified system.
- **a clear and sensible division of responsibilities must be agreed between the two organisations in order to avoid duplication.** Such a transparent split of functions would also help to ensure that issues did not 'fall between the gaps' of the two organisations. It would be essential for this line of demarcation to be clearly communicated to stakeholders and industry. We note that initial proposals for the partnership suggest that Which? creates a specialist unit responsible for technical and economic analysis and insight into regulated sectors, focused on providing a detailed advocacy service to regulators, while Citizens Advice and Citizens Advice Scotland take on responsibility for wider and complementary advocacy in regulated sectors. We have concerns that such a split of responsibilities does not provide the clarity required over respective roles and responsibilities, and may therefore lead to business facing conflicting or competing calls from the two consumer organisations.
- **advocacy / policy priorities should be publicly agreed by both organisations.** Some issues will inevitably transcend any division of responsibilities - to address this, it will be essential that advocacy / policy priorities be publicly agreed by both organisations, for example through the publication of a joint annual report on key policy priorities. This should help to reduce the prospect of each organisation taking conflicting views.

- **the organisations involved must be free from commercial interests which may compromise, or adversely impact, their approach to advocacy in the regulated sectors.** There are different ways to achieve this: as a minimum, we would expect robust and secure 'Chinese Walls' to be implemented but would suggest that a more appropriate course of action would be to undertake a more formal structural separation. This would tackle potential concerns about the governance of customer data gathered in the fulfilment of advocacy duties and how this can be used, whilst also protecting the (publicly-funded) advocacy function from operations that may have a commercial self-interest in fomenting discontent in order to prompt energy consumers to switch supplier or to sell subscriptions to publications which campaign on energy issues. In addition, we would be deeply uncomfortable for any consumer organisation that has an interest in - or indeed actively operates - switching services to be part of a partnership that assumes responsibility for their governance, a function currently carried out through the Consumer Focus Consumer Confidence Code for price comparison sites. We also have concerns that it has not been made clear where the Confidence Code would sit within the new arrangements.
- **any such partnership should be subject to regular public review and conform to principles of openness and transparency.** We would be concerned if any revenue derived from the taxpayer were cross-subsidising the commercial work of a consumer organisation - or vice versa - without total clarity and a full public review of accounts and governance arrangements in order to highlight any potential or real conflicts of interest. Partnership arrangements for performance of the advocacy function should therefore have clear governance arrangements and be subject to regular audits conducted by external agencies, for example the National Audit Office, while Parliamentary scrutiny should be built-in to the oversight framework. We would also expect both organisations to be subject to Freedom of Information requests, as is currently the case with Consumer Focus.

Of course, the design principles which a regulated industries unit should meet (as laid out above) would also need to apply to any such partnership proposal.

#### **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?**

Since certain issues and interests in Scotland, Wales and Northern Ireland can differ from those in England, British Gas recognises that it is right that the new consumer institutional landscape should seek to reflect this.

However, we consider that such differing issues should not necessitate the creation of separate organisations, which would run counter to wider efforts to simplify the consumer landscape while also making efficiency savings where possible.

#### **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 our view, it is important to ensure that the Regulated Industries Unit - or indeed any organisation (or partnership of organisations) which carries out any of the publicly-funded duties in this area - has appropriate information gathering powers to enable it to perform its advocacy role effectively. However, it is also important to avoid duplication with Ofgem's own information gathering activities. As we explained in our response to the Government's consultation on reform of the competition regime, Centrica responded to over 50 requests for information last year (from Ofgem and Consumer Focus), at considerable cost in terms of effort and resource. Many of those RFIs were identical in substance, but required a response in different formats.

In the context of the potential strategic partnership between the Citizens Advice service and Which? to deliver sectoral advocacy, we are concerned that such requests – and duplication – may expand further, increasing regulatory burden on energy companies with no benefit to consumers.

On that basis, our preferred solution is option (b) whereby the regulated industries unit - or any organisation which carries out any of the publicly-funded duties in this area - would need approval from Ofgem to exercise its information gathering powers in order to fulfil its regulatory functions and with Ofgem required to give good reasons for any refusal.

**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?**

British Gas is a strong supporter of the Ombudsman Services: Energy. In our view, this redress scheme assures energy consumers that they are dealing with a reputable industry and gives them confidence that they ultimately retain the right to take a complaint to an independent and impartial organisation, at no cost to themselves, whose decision is binding upon the company. The provision of a redress scheme also offers the potential to help drive improvements in the complaint handling performance of companies.

However, we are not well-placed to offer views on the suitability of extending such redress schemes to sectors where they do not currently operate.

**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?**

We have no comment to make in response to this question.

**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 have no comment to make in response to this question.

## ENFORCEMENT OF CONSUMER PROTECTION LEGISLATION

### QUESTION 20

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

By way of introductory remarks, we consider it essential that any reform in this area ensures a clear division of roles and responsibilities between the various authorities and, and in order to reduce inefficiencies and expense, avoids any duplication between their investigatory and enforcement powers.

Option 1 (in which all of the OFT's consumer enforcement functions are transferred to Trading Standards) and Option 2 (in which all non-local enforcement is undertaken by the CMA) have the advantage of providing a clear division of responsibilities between Trading Standards and the CMA.

However, under Option 1, we foresee a risk that businesses could be subject to duplicate investigations on the part of the CMA and Trading Standards, where there are concerns arising from structural problems in markets. In those cases, the CMA may launch a market study or investigation on competition grounds which overlaps with Trading Standards' investigations into market-wide consumer law breaches.

Further, under Option 2, we are concerned that this solution would undermine the Government's proposal for the CMA to have a primary focus on competition law enforcement, as the CMA's consumer enforcement activities would increase dramatically relative to the status quo.

On that basis, we see a number of advantages to Option 3, subject to appropriate measures being put in place to clearly delineate the CMA and Trading Standards' respective roles. This would remove the current overlap between the enforcement powers of Trading Standards and the OFT and define Trading Standards as the sole enforcement body at the supra-local and national level. Further, by preserving the CMA's power to use consumer law to resolve competition issues identified as the result of a market study or market investigation, the risk of overlapping investigations by the CMA and Trading Standards would be minimised. Provided the CMA's consumer enforcement powers are strictly limited to addressing competition problems in markets, this should not undermine the CMA's primary competition role. This approach should also ensure that the efficiencies arising from having an integrated approach to structural market problems can be preserved.

In the Option 3 scenario, it would be important to ensure that both authorities will have sufficient resource and expertise to carry out their respective roles.

We do not favour the additional option of maintaining the enforcement roles of Trading Standards and the CMA in their current form, given the existing overlap between these roles. Further we consider that the Joint Enforcement Board model, by introducing a further independent body into the regime, introduces an additional layer of complexity which should be avoided.

Separately from the OFT, consumer enforcement in the energy sector is performed by Ofgem. The consultation document does not contain any proposals in relation to Ofgem's powers. The consumer enforcement powers of the sectoral regulators is outside the scope of this consultation, however we would urge the Government to consider carefully how the new regime will apply in the regulated sectors and what further measures may be required in order to clearly define the authorities' roles and responsibilities and avoid duplication in those sectors.

### 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 in principle that there should be a central body that can ensure consistency and sharing of best practice across local LATSS.

We are however cautious as to whether the approach would be able to effect the changes which BIS is suggesting, particularly in terms of the need for adequate resources and expertise to be able to deal with complex legal cases.

We suggest that those areas of enforcement activity that relate to important national issues or deal with more complex legal matters (for example unfair contract terms) should be within the remit of specialist national teams.

We have no comment as to whether an indemnity fund is desirable or not.

**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 Joint Enforcement Board (JEB) models be the best solution? Which one and why?**

As outlined in response to Question 20 above, we favour a clearer division of consumer enforcement responsibilities than exists under the current model. In our view the Joint Enforcement Board models would introduce further complexity into the existing regime. We believe the desired reductions in cost and administrative burden will more readily be achieved if each authority has a separate and clearly defined area of responsibility and if its enforcement activities are not conditional upon prior collaboration and discussion with other authorities.

**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 response to Questions 20 and 22 above.

Preserving the CMA's current consumer enforcement powers and responsibilities should not undermine the CMA's ability to carry out its competition enforcement functions per se – in particular if those activities are carried out by separate teams with the CMA. However this approach would necessarily expand the CMA's remit beyond that of a pure competition authority.

**QUESTION 24**

**How can your preferred new model best work with businesses?**

See response to Question 20.

The priorities from our perspective are (i) to ensure that businesses have clarity and certainty as to the respective enforcement roles and powers of Trading Standards and the CMA and (ii) to avoid duplication in the exercise of investigatory and enforcement powers (this includes duplication between competition and consumer law investigations). As regards (ii), the avoidance of overlapping information requests by different authorities and consumer bodies is paramount to ensure that the new regime can deliver efficiencies for business as well as the public purse.

**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?**

We agree that if the CMA is to retain the OFT's existing powers to carry out market studies and market investigations as proposed, then the CMA should also retain the right to enforce consumer law where this provides the most appropriate solution to a structural competition problem. This approach would preserve the competition law focus of the CMA. It will also ensure that the CMA has appropriate tools at its disposal, and sufficient flexibility, to remedy competition problems in a market in an effective and proportionate manner, without having to refer the matter to Trading Standards for resolution.

We consider the appropriate threshold for the CMA to take action under consumer protection law would be the current test for accepting undertakings in lieu of making a referral to the Competition Commission, i.e. where the CMA has reasonable grounds for suspecting that a feature or combination of features of a market or markets in the United Kingdom for goods or services prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or part of the United Kingdom.

In our view, a lower threshold test would not be appropriate in this context as this would risk blurring the roles of the CMA and Trading Standards and create uncertainty for business.

Where the test for CMA intervention is not met but where the CMA has identified a consumer law breach while conducting a market study, we consider it would be more appropriate for the CMA to pass such information on to Trading Standards, who may then pursue the breach, rather than to take enforcement action.

This approach should ensure a clear separation of powers between the CMA and Trading Standards and ensure that the CMA's consumer enforcement powers are strictly limited to remedying structural competition problems in markets.

**QUESTION 26**

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

See response to Question 25.

**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?**

See response to Question 25.

**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. We consider this is the most effective way to avoid duplication in CMA and Trading Standards investigations where there are overlapping and consumer 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?**

We agree that in a model in which the CMA's consumer enforcement role is limited to addressing structural competition problems in a market, it would not be appropriate for the CMA to carry out pure consumer detriment analysis.

However, the Citizens Advice service would not be a direct procedural substitute for the OFT in carrying out such analysis: The Citizens Advice service would be investigating in its role as the advocacy body on behalf of the consumer, whereas the OFT acts as an independent regulator evaluating whether enforcement action is required.

Therefore, Trading Standards would clearly need to satisfy itself that there was sufficient evidence of a breach before taking enforcement action (including carrying out an independent investigation), and any CAB consumer detriment analysis would not constitute a valid substitute for this step.

We do not agree that Trading Standards should have a duty to prioritise cases referred by the CMA as this would undermine the independent status and decision-making powers of the latter.

**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 welcome the Government's recognition of the importance of avoiding duplication between enforcement bodies. Whether this is achieved will depend on ensuring that there are clearly defined roles and responsibilities assigned to each organisation.

Although we do not have strong views on the appropriate process for collaboration between the bodies, we agree in principle that regular meetings and transparency about the matters being pursued by each would provide an opportunity for effective collaboration. However, it will be important to ensure that the independent decision-making powers of each authority are not compromised.

**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 is not clear to us in what circumstances such a resource would be drawn upon and which authority would take forward enforcement in such a case. In the interests of regulatory certainty, we believe that the roles and powers of each organisation should be clearly defined at the outset rather than reserving aspects of enforcement to the discretion of those authorities acting in collaboration.

**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 believe that such a model would deter illegal behaviour assuming that the local service was awarded the appropriate powers.

**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, we agree that this is the logical place for these functions, assuming that Trading Standards is awarded the primary consumer enforcement role.

**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, we agree that this is the appropriate body assuming that Trading Standards is awarded the primary consumer enforcement role.

**QUESTION 35**

**Do you think the requirement for Local Authority Trading Standards Services (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, we agree.

**QUESTION 36**

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

Although CMA would have a more limited consumer enforcement role if Option C were introduced, we do not believe this would materially prejudice CMA's ability to continue its role as chair of the consumer concurrencies group.

**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?**

We agree that the CMA would be the appropriate body to receive supercomplaints under the new regime under the Option 3 model, given that the CMA will remain responsible for conducting market studies.

In the energy sector, we understand that Ofgem will remain the appropriate body for receiving supercomplaints and that the proposals will not affect that process.

**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, we agree that, in the event that Option 3 is pursued, it would be appropriate – and consistent with the rest of the supercomplaints process - for the Trading Standards Policy Board to issue a reasoned response on the subject matter of the complaint.

**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 view on this point.

**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?**

In principle, we agree that the proposed changes to the consumer enforcement landscape are not dependent upon the creation of the CMA. However, in order to ensure effective interaction between the CMA and other bodies, and an integrated approach to enforcement from the outset, there may be benefits to aligning the two processes.

## **British Retail Consortium**

**BIS Consultation**

**Empowering and Protecting Consumers**

**A submission from the British Retail Consortium (BRC)**

**The BRC represents the vast majority of small and large retailers, online and offline**

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## **Preliminary**

The BRC is disappointed with the approach adopted in the consultation in that we believe the proposals are driven more by a desire to reduce the number of public bodies rather than any fundamental analysis of the needs of consumer protection and advice in the 21<sup>st</sup> century.

In headline terms such an analysis might conclude that no consumer protection can be absolute but the vast majority of the billions of transactions every year between retailers and their customers do not go wrong – and where they do the vast majority are sorted out between the retailer and the customer without the need for intervention by a third party. Against that background the real objectives of any consumer protection policy could be:

1. To enable consumers to make informed choices by ensuring they are provided with relevant and useful - but not excessive and overwhelming – advice and information at the point of need
2. To promote and protect competition as the most effective form of consumer protection but to recognise that competition in any particular case is not an end in itself but should be seen in the perspective of whether or not it is in the consumer interest
3. To educate consumers on their basic rights which should be clear and simple and where to go for help or advice if there is a problem
4. To protect consumers from rogue trading practices and ensure enforcement has as its overall objective securing compliance – in other words to promote an enforcement approach that is targeted on areas of greatest consumer detriment, risk based, and with prosecution as a last resort
5. To provide the mechanism to ensure that products placed on the market are safe
6. To provide the mechanisms to ensure that consumers are not misled as to the nature of a product by misleading claims or misleading advertising
7. To enable consumers to pursue claims for redress where goods are not fit for purpose through simple, effective processes that are fair to both consumers and businesses

This paper deals with the first 4 of these requirements.

### **The overall approach in the consultation paper**

It is not clear that these have been the basis for determining the *overall* objectives of the proposed changes – or indeed what those objectives are other than to rearrange the current dispensation in order to reduce the number of public bodies and to enable government to transfer some of its responsibilities out of the public sector. Nor is it clear in what ways *taken together as a package* they would provide any substantive improvement *right across the board* over the current situation. They require an excessive leap of faith for any conviction that they will work in the best interests of consumers, businesses or enforcers or meet the objectives above which we would suggest should form the basis of any policy decision.

On the contrary, in our view they could lead to a less satisfactory outcome than retaining the current dispensation.

One desired outcome – improvements in the Trading Standards Service which could help to achieve our objective 4 - is laudable but we believe the preferred proposal requires an excessive leap of faith if this is to be delivered as effectively as it could be. Indeed, after the submission from the LGA/LGR to the LBRO consultation on Age Restricted Sales it is difficult to see why business should place its faith in enforcement that is centred on the Trading

Standards Service which in this LGA paper is revealed as totally hostile to the whole Hampton approach to enforcement.

The consultation could have adopted two possible approaches – either to propose some tidying up of the current arrangements so they operate more efficiently or to have started with a fundamental analysis of what is required to protect consumers in the 21<sup>st</sup> century and then how those requirements can best be delivered regardless of all current arrangements and external pressures. This would then have at least provided a basis against which proposals could be checked.

Instead it opted for a Third Way which has taken the current arrangements as a starting point and shifted them around without any basic reassessment of their relevance in the 21<sup>st</sup> century. As a result there will be a considerable period of uncertainty as responsibilities are re-assigned and expertise is lost – with no assured overall benefit in the end. It is quite possible that within a short period the whole process will have to be repeated.

In fact the proposals upset the current balance between consumers and business interests in the consumer protection landscape.

#### The approach to enforcement – insufficiently radical or too radical?

The enforcement element in the proposal is to transfer widespread areas of national and cross border enforcement, internet enforcement and international engagement away from a national body (the OFT) to an essentially locally based service (Trading Standards) with less resources in total than currently, though with a ring fenced grant at the national level that would be available to a TSPB located in a professional body (TSI) and responsible to a Board of Chief Trading Standards Officers and/or LG (the body responsible for the anti-Hampton submission on Age Related Sales). We do not support the preferred proposal as it stands.

We recognise that the intention of BIS in advancing this proposal is in fact to improve effective enforcement and at the same time, as a by product, strengthen Trading Standards through an infusion of resources centrally and through providing it with a national role while retaining its roots as a local service. This is a valuable objective. However, we are not convinced that it will succeed in practice with its preferred approach.

The Government's preferred approach to enforcement falls between two stools, either of which would be preferable.

Either the Government should stick with something that works, perhaps with some minor adjustments, or it should make a real leap of faith and establish a national trading standards group with operational capacity and resources in its own right to deal with regional, national, international and internet cases **alongside the OFT/CMA**.

While the Government seems to have recognised the need to improve the capacity of the TSS to work at a national level it has held back from taking the whole step forward that is really needed for that and instead come up with an approach that requires complex interaction and absolute agreement at every stage among a variety of bodies and thus carries excessive risks – and at the same time it is removing the backstop of an existing agency. While the direction of travel and motive in this respect may be right, the government has stopped before reaching the destination.

If we accept that consumer protection requires much more focus on regional, national and internet enforcement - because real detriment derives from activities that do not recognise local authority boundaries – and if we accept that this has to be delivered nationally in one way or another, then we have to ask whether assigning this task one hundred percent to a relatively loose coalition of local Trading Standards Services with only limited additional resources nationally and far less resources locally is the best or even better way forward.

In our view this might be a relatively slow but acceptable route forward if it were accompanied by a continuing role for a completely national body. It would then be possible to put the

arrangements to the test and see in practice whether or not it is excessively complicated and too reliant on the goodwill of all the participants. But that is not a luxury that can be afforded in the absence of a national body.

In our view this requires a national body. We understand there has been criticism of the efforts of the OFT in this area. That may be an argument for a more effective OFT in this area either acting alone or with another body rooted in the Trading Standards Service – but it is not an argument for giving the role to another body.

In our view these activities should be undertaken by a government body of some sort. TSI is a professional body not a public enforcer. The two roles are complementary but different. We do not question the professionalism of TSI or even that it would not be able to undertake the task with sufficient guaranteed resources and proper control of the process - but rather we question the Government's decision to opt out of its own responsibilities in this area and hand them over to a private organisation.

Nor do we believe that a Committee of Chief Trading Standards Officers can effectively deal with national cases or cross border cases. The pressures on the Trading Standards Officers will grow as local resources dwindle – and they will be expected to concentrate on local concerns. We do not believe that local politicians will accept local officers being taken away from local issues in the national interest or the development of local areas of expertise will necessarily proceed apace in a time of expenditure restraint. In any case, reliance on local areas of expertise would be very insecure in that a change of political leadership could see the desire to provide that expertise nationally disappear. It is all very well providing some limited resources but any investigation would require manpower – including manpower prior to the case being adopted nationally.

However, if the decision is confirmed, then TSI **must** be given the resources to undertake the task effectively and to transform itself into a body that can do so – and these **must** be guaranteed for a long period at a guaranteed level.

Against this background our preference would be for the OFT or OFT/CMA to retain this role and exercise it more effectively if the judgement is that is necessary. If our preference is rejected, we believe that a better alternative would be that a national Trading Standards Group, perhaps with Regional Offices, properly staffed with enforcers and funded in its own right, should be created to deliver those functions previously delivered by the OFT. This would include business advice, if removed from the OFT, national cases, and cross border enforcement. This could report to a Board representative of the Committee of Chief Trading Standards Officers, the OFT/ CMA, and BIS. This would be an advance on the proposal for a more informal approach in that there would be a national body with dedicated national enforcers but would meet the linked desires to strengthen Trading Standards through an infusion of funds nationally, to boost activity in the designated areas, and yet to retain local links and co-ordination with local services. Local Trading Standards officers could apply for attachment which in itself would be one way of achieving the culture change and expertise we all seek.

In the absence of such a fundamental change, the BRC believes that it would be far better to retain the current arrangements, perhaps with some minor adjustments to make them more efficient.

### The OFT, CMA and the need to balance consumer and competition interests

The OFT should remain – and should remain as both a business and consumer focusing body. It has been internationally acclaimed for this role. If there is a benefit in merging it with the Competition Commission in terms of efficiency, the new body should retain the powers and responsibilities of the constituent parts. It is not clear why a pure Competition body would be better than one with consumers at the core. Essentially competition is not an end in itself – it is only of relevance to the extent that it serves the interests of consumers either directly or indirectly.

For many years the UK has, quite rightly, spread the word overseas that there are advantages in having a single competition and consumer body. This ensures that consumer issues are examined from a competition point of view and the value of competition can be recognised in dealing with market problems while competition issues are also examined from the point of view of their impact on consumers – i.e. is a theoretical lack of competition actually causing consumer detriment? This avoids a consumerist approach on the one hand and a purist competition approach on the other. .

For that reason we believe that the OFT or a merged OFT and Competition Commission should retain their current roles.

### Consumer Advice needs to be balanced and not consumerist

This also applies to consumer and business advice. The best advice for consumers and businesses is when it is the same advice for both. The practical application of that advice then has a common basis instead of flowing from different concerns and perspectives

We do not believe that Citizens Advice is the best body on which to focus all consumer advice. It is not a body that has ever engaged with business and even now, as it absorbs the Consumer Direct role, it has not indicated any desire to do so. As a charity with no public good remit, it is not required to do so and cannot be forced to do so. In the absence of any business focus, we fear that consumer advice will be in the hands of consumerists and that in the case of Consumer Direct, overall direction will have passed away from an expert body. If it is to be effective it will have to become more outward looking and engaging nationally and locally – and there will have to be greater consistency of advice provision among the CABs, though CA is not set up either for national direction of CABs or for co-ordination of their local activities. This means that it is even less likely than Trading Standards to provide consistent advice services.

Moreover it is clear from the paper that local CABs are to be involved in the whole project (4.41) yet Citizens Advice centrally is separate from the CABs which are locally independent and do not have to follow the central body. How will this ensure consistency?

Nor do we believe that the control of the purse is an effective answer. What will happen if Citizens Advice does not wish to provide a service or to provide a service in the way the Government wishes or with the standards the Government desires. The Government can threaten to withhold the grant but that is an empty threat when as everyone knows there will by then be no alternative.

In terms of individual advice there is a huge variation between CABs and for the most part they have little if any regular contact with Trading Standards Departments, even though it is they that must act on the basis of intelligence gained at least in part from consumer problems. The quality of Trading Standards intelligence will be degraded in that it will not come from first hand information, if at all, remembering too that only 2% of CAB work comes from consumer protection issues.

If advice is to be transferred there needs to be real accountability for how it is provided, with clear standards set and monitored. It needs to be consistent, balanced and based on the law. If the consumer is misled into believing he has rights he does not have then he will ask too

much and instead of enhancing consumer empowerment and confidence, they will be undermined.

For these reasons we believe that the provision of advice should remain with the OFT or its successor, though it could co-ordinate or point to other acceptable advice which meets its standards.

### **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?**

The paper states: 'Central Government and, if they so choose, local authorities, can then stop providing basic consumer information and advice altogether' (2.14)

We believe this is a regrettable decision.

We do not believe the OFT's/TSS consumer information role should be transferred to the Citizens Advice service.

The key element in the provision of consumer advice is that it should be accurate both in terms of general advice and specific advice to individual consumers. It is important that the same advice be provided to both business and consumers in terms of the basis of any more specifically directed advice and that the advice should take into account how businesses operate.

The OFT Sale of Goods Website is an excellent example, now copied in its Distance Selling site, of a site developed in co-operation with business and consumers and providing accurate, targeted advice to both.

In terms of general advice we would suggest asking consumers how they would like advice to be provided. In our view a nationally advertised website might well be the lead provider.

We have found in the past that the advice for individual consumers from Consumer Direct has not always been based on the law or accurate – and even more so the advice from Citizens Advice Bureaux. In part this is because the advice is based on inaccurate information from the consumer to the advisor. Ensuring the real facts of the case are the basis for the advice often requires asking a series of questions of the consumer and even examining documents – and this requires personal contact. Trading Standards Services were able to provide such personal advice and at least a Consumer Direct telephone service could engage in a dialogue – but an online service is less well equipped for such a process except perhaps for the most literate consumers and advisers.

In our experience in the main local CABs manned by volunteers do not have the appropriate skills and knowledge. They may be respected because they are there but the basis of the respect is accessibility and work in other important areas unrelated to retail. It is a *citizens* advice service not a *consumer* advice service. To train the local volunteers to take on all the consumer advice work would take some resource and time.

The proposals also ignore the value of consumer complaints in providing Trading Standards with intelligence on rogue trading practices within their area. It should be remembered that much of the greatest consumer detriment arises from local rogue traders. The best

intelligence comes from direct contact between Trading Standards and the consumer and it is not clear whether there is any mechanism for retaining this link in the new proposals. With pressures on resources it is likely that Trading Standards will not have the resources to talk to consumers directly and they will simply be directed to the CAB.

The paper emphasises that ‘crucially all consumer problems and advice needs would be logged on an integrated system providing a huge dataset on consumer detriment which would inform enforcers...’ (2.2). First there is confusion here between advice needs and problems on the one hand and consumer detriment on the other. They are not the same. Detriment arises when there is a genuine problem that is not resolved. Seeking advice or asking about a problem is quite different. Even if those who analyse the online contacts do so accurately (and we have no confidence that this will be the case) this will only provide national evidence. The local intelligence to provide intelligence led enforcement that enables an enforcer to really deal with the issue will be lacking.

In our view Consumer Direct should have been improved and retained within the OFT/CMA. It is significant that Citizens Advice has not sought contact with business as it develops the new service. As a charity it has no public good remit and has no need to take into account the wider interest. Divorcing business advice and consumer advice as if they are two totally different requirements will be detrimental to a common understanding. In the end, it will mean that consumer advice is developed by consumerists. We do not believe this is in the best interests of consumers who need practical advice to deal with practical problems.

The paper also points to the availability of private sources of advice, including Which? and various online comparison websites. If these are to be regarded as a primary route for providing advice, instead of secondary to a public provision, it is important that they are accurate. For example, the basis on which comparisons are made should be made clear – do the businesses pay to be on the site, for example.

We agree that duplication by a public agency of privately available material is unnecessary – but the Government has a duty to ensure that such material is accurate and that it is comprehensive. To hand over a Government sponsored website which the public believe is run by the Government for citizens – Direct.gov – to a charity which has no public good remit cannot be right, especially if there is no external editorial control or imposition of strict standards.

If Citizens Advice and its bureaux are to take on this role, competence requirements should be built in to the contract for the provision of public money – and also a requirement that the advice should be unbiased and not based on an antipathy to any particular sector or on a wish list of what those responsible would like the law to be rather than what it is. In effect it needs to be accountable to someone for the money it spends and how it spends it – and this needs to be monitored. Given Citizens Advice is a charity this is not possible. The Government cannot just hand over its website to a body over which it has no control and then give the impression this is Government advice.

**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 should they be managed and co-ordinated?**

**Q5 Do you agree that the proposed Trading Standards Policy Board and the TSI should coordinate and support business-facing educational activities?**

The paper identifies 3 elements of consumer education – awareness raising among the public at national and local levels about consumer rights, scams and rogue traders; direct education of the public and provision of materials to teachers; educating businesses about their responsibilities to treat consumers fairly.

The BRC is inclined to the view that only the second of these is strictly consumer education. The first and third are essentially general consumer advice and business guidance or advice.

The first and third should sit in one place because essentially they should be based on the same concerns and advice and not developed separately and competitively. The advice should be developed on the basis of intelligence, local and national, and on the need to educate both consumers and businesses about new and existing rights. It should be authoritative and accurate. The OFT's Sale of Goods Act hub is an excellent example of how this co-operative process can work well.

For this reason we believe that the advice should continue to reside with a single national organisation, ideally the OFT or its successor. Failing that our proposed National Trading Standards Group could be responsible for both, not least because enforcers are best placed to identify consumer scams and to interpret consumer legislation accurately. However, it is somewhat optimistic to believe that Trading Standards locally will continue to see this as a key service as funds are cut.

As far as business advice, we do not believe that the Government should simply wash its hands of its responsibility and hand it over to a private body. We fully respect the work of the TSI but it is a professional body not a Government body and only a government body can really provide authoritative advice, especially if such advice might form the basis for inspection plans and earned recognition. The expertise of TSI lies in advice on how to enforce the law rather than what the law is and it is there it can play an important role. If it is to be given the role envisaged by the government, it will need guaranteed funding and to develop a structure that makes provision for business input. All in all we rather get the impression that the role has been foisted on TSI because the Government cannot think of where else to put it.

Direct education to the public has never been carried out very successfully, if only because nobody is very sure what it entails. Clearly if it is to be provided directly it needs a local network with a degree of central co-ordination to avoid overlap. The CAB service is not centrally co-ordinated and could not be relied upon to carry forward this programme. However we have no strong view on who should be responsible other than that the material should be accurate and should point people in the direction of where to take their problems if they have any.

### Codes

**Q6 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?**

**Q7 Do you think that the private and voluntary sectors, together with local authorities, will respond to winding down of CCAS with effective alternative systems of accreditation?**

**Q8 What are the lessons learned from the operation of the CCAS which may help in establishing (or revising) voluntary schemes in the future?**

**Q9 What is your view on transposing CCAS-approved Codes into standards and related documents such as those published by BSI?**

**Q10 What characteristics would a Kitemark based code certification process need to have to meet industry requirements?**

**Q11 What is your view on extending the Primary Authority concept to code certification?**

The BRC accepts that if the Government's proposals for a CMA with very limited consumer role are adopted, it would be inappropriate for the CCAS to continue in that body. On the other hand if the new body were to be a genuine merger of the OFT and CC that body would be suitable.

It is strange that at a time when the Government is looking at and supporting the extension of ADR systems, which Codes embrace, it should at the same time be seeking to distance itself from the very Codes that could provide a basis for such a system in those areas of most consumer detriment which Codes tend to cover.

It is also strange that at a time when there is a move to assured guidance and earned recognition, the Government should be removing one potential way of providing such recognition or guidance.

We agree that the OFT Code certification process has been somewhat long and arduous. We warned against this when the scheme was first established. However, the implication of the Government's criticism is that a future scheme would be less rigorous.

Whatever system is adopted, including some sort of kitemark, it will need to be administered by a body that is itself reputable and recognised by the public. It will need to be able to effectively assess the code and its implementation and monitor its effectiveness in practice. It will need to establish appropriate standards for the Code itself, not least if the OFT standard is regarded as too high. We do not believe that the BSi is such a body in relation to these sorts of Codes. It is one thing to establish a standard for a product or kitemark a product but quite another to monitor a Code.

Nor should a Code that is aspirational or goes beyond the law be seen as a British Standard. The essence of a Code is that it is voluntary.

In any event the BSi is a business and should not be elevated above other businesses in the provision of standards.

The issue of a Primary Authority role is somewhat different. The Primary Authority can have a role for an individual business and could have a role in respect of specific guidance to a Trade Association. However a Code is usually regarded as going beyond the law and establishing best practice. It is inappropriate for a local authority to enforce something that goes beyond the law as opposed to ensuring compliance with the law.

### **Consumer Advocacy**

**Q 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?**

**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 general 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?**

**Q16 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?**

**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?**

**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 should 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?**

The BRC's interest in this area is essentially the General Advocacy role both in terms of its international and EU role and its domestic role. We note that the questions are mainly directed to other issues other than this important area, which seems to be an after-thought in terms of where they should be placed.

It is interesting that Consumer Focus was only established in 2007 and just 4 years later the Government is looking to abolish it. This in itself should cause the Government to pause as it contemplates wholesale change in this paper without any real sense of the direction in which it wishes to motor.

We do not accept that a consumer advocacy body necessarily needs public recognition or that public recognition of a body for other reasons means that body should become the Consumer Advocacy body. It needs recognition among its peers as a centre of excellence for the role it performs.

However, we do believe that a joined up approach makes sense – and we supported the concept of a Consumer Advocate.

We believe that the expertise and recognition of Citizens Advice is rooted in its local advice bureaux. It tends to be based less on research and more on assessments of clients experience. In our view the Consumer Advocacy role at the policy making level requires a more intellectual approach, though with real life examples to illustrate what is being said. It also requires a balanced understanding of the business interest and how a market operates.

As the proposals in the paper are not designed to save money, we would prefer to see a free standing body such as Consumer Focus complementing the work of others rather than centralising everything on Citizens Advice which will not only face many challenges in the changes it will need to make but also will be in danger of becoming a consumerist organisation rather than one that can effectively represent the consumer interest in a balanced and practical way.

Nor do we believe that a charity without a public good remit should be funded to be the UK's consumer champion in the EU and internationally. This is a role for a public body.

The paper suggests Which? as an alternative. Which? is a successful business but that is what it is. Its 'members' are those who purchase its products. It is not set up as a representative body and it does not engage in day to day contact with the public *in general* – especially the vulnerable.

Our final concern is that we do not believe that Citizens Advice should have any powers whatsoever of investigation or to require information from a business or person that supplies goods or services. It is a totally inappropriate body to receive such powers

## **Enforcement of Consumer Protection Legislation**

The BRC believes that the Government has missed the opportunity to deal properly with the need to improve consumer protection enforcement. Driven by an ideological commitment it has failed to realise that the local agenda can best be driven forward if it is supported by a national element for national cases and this needs to go beyond mere co-ordination. Indeed we believe the preferred model could well lead to more problems than may currently exist. Overall we see no clear indication here of the evidence that problems exist and what they are – and if they do, how this scheme will fix them.

### **Q20 Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?**

In order of preference, the BRC would opt for

- No change
- A merger of the OFT with the CC but with all the current consumer enforcement and advice powers of the OFT remaining in the merged organisation.
- A revised Option 2. The essential elements would be: CMA/OFT retains its enforcement (and advice) powers and responsibilities; Trading Standards retain their powers and responsibilities and would follow the local agenda; there is a new national Trading Standards Group (funded ideally with some resources from CMA/OFT and some from local TSS for regional cases) working alongside the CMA/OFT to deal with regional, national and international cases identified by local Trading Standards; there could be a body that co-ordinates the work of the two but which does not direct it. This would overcome the Government's objection that local authorities would not provide resources for regional or cross boundary work. It would also overcome the objection that there would be no resources for cross boundary work provided by TSS themselves because there would be a central body of TS with some central funds. With regard to the objection that this could have a major impact on the CMA objectives of making competition work, we are of the view that the links created would actually improve the working of the CMA and that a pure competition focus is undesirable.

We reject Option 1 as unlikely to provide the resources necessary for the work involved.

### **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?**

It will be clear from our comments above that we do not believe that the structure provided for in Option 3 would deliver the improvements claimed as effectively as an alternative.

We understand and indeed share the motivation for the Government's Option 3 – to strengthen Trading Standards - but we do not share its optimism that the scheme would achieve that sufficiently to deliver better enforcement of national, international and regional cases. Our preferred model (set out above), if there is to be change that goes in this direction (i.e. other than no change), really builds upon this Option in a way that we believe would be far more simple and more likely to deliver the gains the Government and we are seeking without the drawbacks of what is essentially a compromise based on a misplaced belief that localism requires local control over national and international cases.

We believe that Option 3 provides for a complicated structure that could fail at almost any point in the chain – through lack of commitment and resources from cash strapped local authorities; through lack of agreement on prioritisation of cases; lack of effective co-ordination with business; lack of willingness to take local officers off local cases in order to dedicate them to potentially long running national cases – and lack of capacity to deal with local cases if this does happen; the potential for the TSPB to become in reality a support for local Trading Standards services in complex cases; lack of a desire by local authorities to become centres of expertise given the lack of funding; and fear of the consequences of a long legal case that may be lost even if legal risk were pooled or if the indemnity fund were anything other than open ended.

Nor do we believe the Government has fully thought through the structure of the TSPB at 5.51. As we have noted above, we question whether it is right that the Government should opt out of its responsibilities in this area and transfer them to any other non government body. That is why we question whether TSI, a professional body not an enforcement body, is the most the appropriate place to locate the TSPB (after all if it is to be located there, the implication must be that TSI as a body has some sort of formal relationship to it). However, given its progressive record on enforcement policy we do accept it is the best place if these responsibilities are to be transferred away from a public body. We note that the body will have a small secretariat to provide technical and administrative support and some limited additional resources but the main call on resources will in fact be on cash strapped local authorities.

**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?**

As indicated above our preference is to maintain the status quo in terms of powers and responsibilities in which case the JEB would seem to have some merit but essentially its role should be to ensure close co-operation rather than necessarily to control how cases should be pursued. Close co-operation could involve some of the ideas in 5.66 for assistance from the CMA, for example, but this would be co-operative rather than controlled by the JEB. We would want to avoid the creation of a body that second guesses what everyone is doing.

As noted above we would actually be inclined to go further in that we would combine some of the elements of Option 3 with elements of Option 2. This would be more along the lines of 5.67 but not wholly so. We would create a national Trading Standards Service for national and international cases – and probably internet – responsible to the TSPB or something like it and then require this group to co-operate with the OFT/CMA which could be via a JEB or other structure. The difference compared with 5.67 is that CMA/OFT would retain their power to act; the Trading Standards National Group would also have power to act and be independent; and the JEB role would be to stimulate co-operation.

As we have made clear, while we believe the CMA/OFT with or without a Trading Standards national body with operational capability in its own right is the best answer, we believe a situation where there was a properly resourced and funded national Trading Standards body able to act in its own right and with its own enforcers as the sole enforcer for national and international cases is the minimum necessary.

Whatever the structure there would be a need to interact with business in general and with specific businesses under investigation on the Hampton basis of Regulatory enforcement.

**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?**

If the JEB in any model is to be effective, it needs to be a streamlined organisation and not a talking shop. The decisions it needs to take are operational. As such it is the enforcement community that needs to sit on it together with BIS which will be providing the resources.

The Trading Standards community is best placed to decide how it should be represented – the key requirement being buy in and acceptance of the role of the JEB.

We do not believe that these models need affect the CMA's competition role – rather they would enhance it. Essentially this is a matter of good management ensuring the CMA is focussed on all its roles.

#### **Q24 How can your preferred new model best work with businesses?**

The important point here is that whatever model is adopted the same rules apply to enforcement policy – i.e. the Hampton approach of risk based, targeted, compliance led enforcement where prosecution is the last resort; and application of the Regulators Compliance Code – hopefully reinforced - and of the Enforcement Concordat. These should point the way for the nature of business engagement.

We would not expect business to be involved in determining which cases should go forward. The requirement on the general level would be for the opportunity to exchange views on emerging issues related to lack of compliance, on enforcement priorities, and enforcement culture.

#### **The proposed CMA**

The BRC opposes the proposed new structure because we believe it will lead to more complication not less and will require a huge effort to effectively co-ordinate different strands. Rather than improving the current situation, it will potentially make it worse. For example, a market study may identify a whole range of issues. It would be absurd to stop mid way and for someone else to start all over or for it not to be completed at all.

The issue is what the outcome should be at the end and this cannot be pre-determined. It is for this reason that we believe the current dispensation should be retained or the OFT and CC should be merged with their powers substantially intact.

#### **Q25 Do you agree that the CMA should retain a consumer enforcement role in those areas where a potential breach of consumer law may be connected to a structural market problem?**

Clearly our answer is yes – but the question is misleading. We believe that the CMA consumer enforcement role should be wider than this.

#### **Q26 In an option 3 based model, should this enforcement role be subject to procedural limitations?**

No. It would require excessive time and effort to determine whether the limitation had been reached or not. As we have said it would be absurd to have a study and determine a desired outcome only to be restricted in implementing the change.

#### **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?**

Yes, provided its discretion is based on proper evidence.

**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?**

Yes

**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 Boars to prioritise cases referred by the CMA?**

No, no and impractical.

We do not think the Citizens Advice service, a charity not a public body, is the proper body to carry out such studies. It is unlikely to have the expertise even with some of the Consumer Focus resources. It is unlikely to have the staff expertise either to commission occasional studies or to undertake them. In principle such studies, which require considerable input from business and others and generate considerable cost for business should be undertaken by a public body with a public good remit. In any event it is always possible that what starts as a consumer detriment study could turn out to be related to competition failures.

The idea of stopping a study mid-way and handing it to another body that is then forced to find the resources to complete it or to the TSPB to act on an uncompleted study without proper evidence amply demonstrates the absurdity of the whole suggestion. We oppose it strongly.

**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?**

No. It is far from sensible. It is only necessary to read 5.87 to 5.93 to see the absurdity of the proposal which is a recipe for inaction, mess and indecision. The whole underlying assumption is that everyone will agree on a common path. Life is not like that. The current system is clear and concise. It should be left alone. If something does not need fixing, it is best not to fix it.

**Q31 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. We do not believe this is necessary. If an issue needs to be addressed it should be addressed within the budgets of the various organisations responsible. Additional resources are likely to lead to a lack of prioritisation.

**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?**

The underlying threat of enforcement action is more likely to be effective if it comes from a national body but there is no reason to believe that TSS would be any less effective in this areas than any other. If TSS is to be the route for consumer protection enforcement where there is a real chance of detriment, and it is considered this will be effective, it seems strange to suggest that it will not have enough credibility to enforce an ASA judgement where consumer detriment is unlikely to be very high. However, whoever is responsible should remember that the ASA is only acting as an Established Means. Enforcement by others is

only available for breaches of the law – not for breaches of its codes where they go beyond the law. Moreover, how the judgement is enforced is for the enforcer and the court not the ASA to dictate.

**Q33 Do you agree the TSI would be an appropriate home for the OFTs professional guidance and training functions in the event of the creation of a new single CMA?**

We have no objection to the TSI providing guidance to professionals on professional standards.

However, we do not think the TSI is best placed to provide authoritative guidance on the law or its enforcement or business guidance. That can only come from a public body.

In the absence of any such public body being available the TSI seems the only option – but it should be required to work with business in a co-operative manner and be given guaranteed resources.

**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?**

In principle, we believe these should fall to a public body rather than a private organisation. However, if the TSI thinks it has the manpower and resources to undertake this work, in the absence of such a body it would seem the best placed to undertake it. We hope it will not divert it from its real focus.

**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?**

Yes. It is important for business to avoid duplication.

**Q36 Do you agree that responsibility for chairing the consumer concurrencies group should remain with the CMA?**

Yes

**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?**

Yes. It seems to be the appropriate body.

**Q38 Do you think the supercomplaints process should be extended to require the TSPB to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?**

No. Action should follow examination of the evidence. It is at this stage it should be referred to the appropriate authority.

**Q39 Do you think that a lead local authority could take on the OFT's estate agency and anti-money laundering functions?**

It is not ideal and should not be a precedent.

**Q40 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. We believe that the ultimate shape and role of the CMA should first be determined by Parliament.

However, if the Government wishes to enhance the capacity of Trading Standards there is no reason why it should not establish the TSPB style body to better co-ordinate the national enforcement activities of TSS or the sort of national group of TSS with operational remit in its own right without at the same time removing powers from the OFT.

**BSI**



## Department for Business Innovation and Skills Consultation: Empowering and protecting consumers

### Response by the UK's National Standards Body, BSI

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

#### **BSI response**

BSI welcomes this opportunity to comment on the future of the CCAS. As the National Standards Body, BSI can offer an efficient means of setting future codes with industry and consumer participation, applicable throughout the United Kingdom. BSI's portfolio of consumer-relevant standards includes standards on many aspects covered by the CCAS schemes, including customer service, complaints handling and dispute resolution. The BSI brand has a high level of consumer recognition and trust, in particular through the BSI Kitemark, which has the potential to be developed as a badge to show that service providers are treating their customers fairly.

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

More information about standards should be included in consumer information, to help consumers understand what is considered good practice. BSI already takes steps to inform the public and work with educational institutions, for example by sponsoring the TSI Young Consumers leaflet. Citizens Advice already distributes the BSI consumer leaflet on inclusive service provision (relating to the standard BS 18477, *Inclusive service provision: Requirements for identifying and responding to consumer vulnerability*), and BSI is keen to maintain and extend links with the new central source of information when that is established.

#### *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 and voluntary sectors may respond to options for current and prospective CCAS members to provide effective alternative schemes. However, replacing a single unifying scheme with a proliferation of schemes, marks and certificates would be confusing for consumers, and could mean that effective schemes providing consumer protection are only set up in some parts of the UK. A national scheme is likely to provide more consistent protection for consumers.

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

Whatever scheme is finally adopted will need to provide three outcomes to gain consumer trust:

- Codes or standards setting out the measures needed to protect consumers
- Consumer information about the codes and the service providers who meet them
- A mechanism for monitoring providers' compliance with the codes and taking action when there is a failure

While the OFT CCAS scheme has had some success, there has been criticism of the difficulty of achieving code status and the level of consumer recognition has reportedly been relatively low. The use of established standards-setting techniques with an independent facilitator such as BSI has the potential to simplify and reduce the time it takes to develop approved codes. Similarly the use of recognized brands such as the BSI Kitemark, which already enjoy consumer trust, is likely to gain consumer recognition more easily than creation of a new brand.

At present the OFT scheme branding is used for both the code itself and the assessment mechanism. In some cases, this can make it hard to identify whether any particular organization has had its compliance with the code verified by an external party or not. For clarity, it would be good practice to clearly distinguish between the code, which organizations can voluntarily adopt, and any independent certification against the code so that consumers can decide what level of reliance to place on an organization's use of the code.

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

Translating the CCAS codes into British Standards or other BSI documents offers both an effective means of setting future codes and a high level of consumer recognition. As with other consumer-relevant standards, BSI would be able to develop consumer-facing information to complement the standards (see [www.bsigroup.com/consumerstandards](http://www.bsigroup.com/consumerstandards) for examples).

For BSI to take on the codes it would be necessary to migrate the CCAS scheme to a self-sustaining funding model, which could be through sale of copies of the codes to service providers or through sponsorship of the initial development work.

An alternative model would be for trade associations to adopt or adapt BSI's existing suite of consumer protection standards, which already cover issues such as customer service, billing, complaints management, dispute resolution and dealing with vulnerable consumers. The adoption of a common set of

standards across a number of service industries would reduce the costs associated with standards development and provide greater clarity for consumers.

BSI could develop the codes as either full-consensus British Standards or as Publicly Available Specifications (PASs). Both types of document are developed using an open, transparent approach, with participation of affected stakeholder groups (including consumer representatives) and full public consultation. A PAS offers a faster development route and provides the option for a sponsor to maintain an association with the document through co-branding with BSI.

To be an effective replacement for the CCAS scheme, British Standards would need to be complemented by appropriate assessment and complaints mechanisms developed by the code sponsors and other partners. British Standards are developed in such a way that they are available for use in assessment and certification by any organization – BSI does not have any exclusive rights to certification. One option for independent certification is to use the BSI Kitemark (see question 10).

In addition to the standards, it would be desirable to create a central website with a register of organizations following the codes. BSI has the capability to host such a website (see for example [www.kitemark.com](http://www.kitemark.com) ), or it could be hosted by another party depending on the approach taken to certification and assessment.

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

Kitemark schemes are established by BSI when there is industry support for third-party certification and assessment schemes. The use of the BSI Kitemark is licensed to businesses that have been assessed as meeting the requirements of the certification scheme. The costs of inspection and licensing are borne by the businesses, who use the Kitemark to market their products or services.

It would be feasible to develop a Kitemark scheme to provide independent assurance that businesses are meeting the codes if there is sufficient industry demand. The Kitemark scheme should certify a service. This service would have to have a defined output undertaken by competent people who are recognized as such. The Kitemark scheme should measure the output of the service and ensure there is a process to continually comply with the service. Any operator of this service should be under continuous surveillance.

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

The use of the Primary Authority scheme could promote consumer assurance in the scheme in industries where there is insufficient support for third-party certification. However, the extension of this scheme to trade associations poses some difficulty, as unlike major companies trade associations have limited control over the internal processes and policies of their member organizations. For this to be effective, it would require schemes to be set up based on authoritative national standards, such as those provided by BSI. Trade associations would also need to have the capability of taking action against scheme members in the event of breaches of the code.

*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?*

BSI has no opinion on whether Consumer Focus should be abolished. However, it is important that any changes to consumer advocacy arrangements do not threaten consumer participation in future standards work, which relies on an evidence-based consumer perspective as one of the inputs.

For example, in 2010 BSI worked with the OFT, Consumer Focus and Citizens Advice to develop a new standard drawing upon existing research into consumer vulnerability. The standard *Inclusive service provision* (BS 18477) codified good practice into how organizations from any sector should provide fair, flexible services. The standard was welcomed by the Consumer Minister, highlighted in Citizens Advice Bureau's *Access for All* report and was made a key recommendation in *Too Many Hurdles – information and advice barriers in the energy sector*, a study by the Centre for Consumer and Essential Services.

It is also important that the data which is collected on complaints handling by Consumer Direct, currently through OFT, continues to be made available. This data provides valuable evidence that is used in the development of relevant standards and helps identify the benefits for both consumers and traders. We note that there may be other stakeholders who would have similar concerns. It is not sufficient to only retain existing access agreements as the current access is inadequate for effective and efficient use of the data, given the legal interpretations put onto the effects of the Data Protection Act and Enterprise Act. BSI is happy to provide further information on this subject if required.

## **BSI Background**

BSI is the UK's National Standards Body, incorporated by Royal Charter and responsible independently for preparing British Standards and related

publications. BSI has 110 years of experience in serving the interest of a wide range of stakeholders including government, business and society.

The Kitemark is a registered certification mark owned and operated by BSI. It is one of the most recognized symbols of quality and safety and offers true value to consumers, businesses and procurement practices.

BSI presents the UK view on standards in Europe (to CEN and CENELEC) and internationally (to ISO and IEC). BSI has a globally recognized reputation for independence, integrity and innovation ensuring standards are useful, relevant and authoritative.

A BSI (as well as CEN/CENELEC, ISO/IEC) standard is a document defining best practice, established by consensus. Each standard is kept current through a process of maintenance and reviewed whereby it is updated, revised or withdrawn as necessary.

Standards are designed to set out clear and unambiguous provisions and objectives. Although standards are voluntary and separate from legal and regulatory systems, they can be used to support or complement legislation.

Standards are developed when there is a defined market need through consultation with stakeholders and a rigorous development process. National committee members represent their communities in order to develop standards and related documents by consensus. They include representatives from a range of bodies, including government, business, consumers, academic institutions, social interests, regulators and trade unions.

**British Standards Institution**  
**27 September 2011**

**BT**



## **BIS consultation**

### **Empowering and Protecting Consumers**

response from BT

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

**Introduction**

1. BT welcomes the opportunity to comment on the Government's proposals on empowering and protecting consumers and supports the objectives to simplify and streamline the current landscape and maximise value for money from public funding. We have responded separately to the BIS consultation on the OFT/Competition Commission merger so this response focuses on consumer advocacy and advice.

**Comments**

2. It is important that the future structure of consumer advocacy and protection works well for consumers and British businesses, so that decisions are made taking proper account of consumer interests. Advocacy arrangements should represent consumer interests and protect consumer rights with businesses, regulators, UK Government, the European Union and with wider international bodies. This is particularly important for essential services (such as provided by regulated industries) and for vulnerable consumers and those on low incomes.
3. BT's interest is in ensuring a strong voice for consumers and continuity of expertise, rather than which organisation is best placed to take on what work. Whether consumer advocacy for regulated industries continues through separate bodies or a single regulated industries unit as proposed, there is a need for continuity of expertise in each of the complex market areas and there are areas, such as support for disadvantaged consumers, where a horizontal approach across sectors has potential merit. More detail is required on the governance of any regulated industry unit and how consumer organisations would work together, with regulators and operators.
4. Consumer advocates must be independent of those that provide funding, whether from Government, regulators or regulated businesses. Their expertise should be recognised by policy makers and the consumer interest made a key consideration in policy development from the outset. This includes input from across the UK so that any regional requirements are considered.
5. Strategic areas need to be covered and we would expect any future consumer advocacy organisation to be resourced sufficiently to be able to conduct market and trend analyses in order to identify any potential consumer detriment. The organisation(s) should engage appropriately with UK businesses, to enable potential issues to be understood, vulnerable people protected and best practice shared. They should also provide expert input and advice, based on research and analysis, to consumer policies at national and European level. The interests of UK consumers require a strong voice in European debate and ensuring an appropriate level of regulation and enforcement of consumer law is important.
6. When consumers encounter problems, it can be difficult for them to know where to go for advice, so clarity in the consumer landscape with appropriate promotion is

welcome. Whilst the company concerned should be the consumer's first port of call for information about their products and services or to resolve a complaint, a consumer organisation can support decision making by providing advice on the type of things to consider when making decisions and what to ask a company about. Whilst comparison websites can be helpful as a guide they cannot be considered a complete solution to informing consumer choice because of commercial arrangements which may lessen independence, completeness of suppliers covered, or lack of comparison of all aspects that may be important to the individual consumer. There is, therefore, a key role in any future consumer advocacy arrangements around ensuring clarity, accuracy and usability of information to inform consumer decisions.

## **Summary**

7. The UK needs an independent consumer voice that is adequately resourced for the role and activities being asked of it and any future consumer organisation(s) should provide continuity and expertise at a UK, European and international level. Simplification and streamlining to reduce complexity are admirable principles when the main aim is to empower and protect consumers.

*British Telecommunications plc  
September 2011*

## Buckinghamshire CCTS\*

Cabinet Member  
Community Engagement

Martin Phillips

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Dear Sirs

**Consultation response: ‘Empowering and Protecting Consumers’**

We are grateful for the opportunity to comment on the current “Empowering and Protecting Consumers” consultation (Consumer Landscape Review). This response is on behalf of Buckinghamshire County Council, based on the views of the senior managers within the Trading Standards Service and the elected Member with responsibility for the Trading Standards Service.

We endorse the response to the consultation given by the Association of Chief Trading Standards Officers (ACTSO) and would wish our support for that response to be noted.

We generally welcome the proposals that the Citizen Advice service play an increased role in the provision of consumer advice and education. In Buckinghamshire we have a long history of cooperative working with our local CABs and believe that this legacy will mean we are well placed to work closely with our CABs to deliver a comprehensive service linking consumer information, advice, education and enforcement.

Of particular interest to us are the issues raised by the following consultation questions and our comments are included below.



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

We believe that the current provision of advice should, at the very least, be maintained both in terms of quality and availability. Whilst self help and pushing consumers toward the web may suit some, a significant proportion of consumers and not only the clearly vulnerable, find it very difficult to make successful use of self help based provision. The availability of '2nd Tier' advice needs to be strengthened, in particular face to face assistance for all sectors of the community that are unable to successfully pursue matters for themselves.

**QUESTION 2. Do you agree that the OFT's consumer information role should be transferred to Citizens Advice? QUESTION 3. Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service? 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?**

We agree with the proposals covered by questions 2 to 4. However we have some concerns generally regarding the transfer of all of the services and responsibilities outlined to any single organisation, particularly one such as Citizens Advice that already has a substantial role both in terms of delivery and social policy. We understand that ring-fencing of resources within Citizens Advice will not take place to protect consumer activities. We therefore believe it will be necessary to have robust systems in place to ensure that a continued emphasis of traditional areas of Citizens Advice and member bureaux focus does not cause consumer issues to be sidelined in due course.

We would particularly support the ACTSO suggestion of each trading standards service having an 'account manager' with their local CABs. We had a similar structure in place prior to Consumer Direct, at a time when we provided 1st tier consumer advice and operational liaison with the local CABs was more critical.

**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 have some reservations as to whether one organisation can maintain a focus on such a wide remit as their existing areas of interest and wide range of additional responsibilities.

Continued...

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

The regulated industry unit must be adequately resourced as indicated in the consultation and will require close scrutiny to ensure that the organisation fulfils its obligations across the full wide range of industries. A fine line must be drawn between the need to be, and to be seen to be, absolutely independent; and any accountability for expenditure to those industry sectors that fund it, to ensure true independence of action both from the industry as well as the individual regulated companies.

### **QUESTIONS: 20 – 24 and 25 – 29.**

We support Option 3, i.e. 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, and are in agreement with the comments made in the ACTSO response on these questions.

We do not support the concept of a Joint Enforcement Board. In addition to the criticisms of this by ACTSO we would add that the layer of another body is likely to add delay in addressing consumer issues.

### **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 believe that it is important that the TSPB and a model based upon LATSS is provided with sufficient support from government and its agencies to be a 'force to be reckoned with'. We believe that this model will need to have national and even international standing to be seen to be a body that is appropriate to be dealing with national threats which may have an international origin.

We support ACTSO in not believing **there will be** any problems with enforcement being branded as run by LATSS. It might be better stated that **there need not be**, provided the necessary support is there for LATSS, and the TSPB is not undermined on issues.

We have no further comments on the consultation.

If you have any queries about the content of our response and wish to discuss this further please feel free to contact Amanda Poole.

Yours sincerely

Martin Phillips  
Cabinet Member – Community Engagement



## **CAA – Civil Aviation Authority**

Dear Mr Evans

**Empowering and protecting consumers: a consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement**

I am grateful for the chance to respond to your department's consultation regarding your proposals to reform the consumer landscape.

As the UK's specialist aviation regulator, with concurrent consumer powers, the CAA welcomes BIS' review of the consumer landscape, and shares your objective to ensure that consumer advice, representation and enforcement are delivered effectively and efficiently. Indeed, the CAA sees effective consumer protection as key to delivering against its strategic objective "to improve choice and value for aviation consumers now and in the future by promoting competitive markets, contributing to consumers' ability to make informed decisions and protecting them where appropriate".

The CAA considers that an effective and efficient consumer landscape relies upon: empowering consumers, so that they can drive competition between suppliers; and ensuring that businesses operate fairly, underpinned by effective, and effectively enforced consumer legislation. This combination of empowered consumers and effective enforcement should promote fair competition and avoid the need for overly burdensome regulation. The CAA plays an important role in applying these principles to aviation markets, where consumers can find it difficult to successfully navigate the options available to them, and where there is a need to improve compliance with the complex set of national, European and international legislation.

With this in mind, I have set out below our view on how aviation can fit within the consumer landscape and the CAA's role within it. In summary our view is that there is a strong case for the CAA to provide, industry funded, national advice and enforcement in relation to aviation and to work closely with Citizens Advice and Trading Standards.

**Empowered consumers**

The aviation market is characterised by considerable choice, in terms of: destination, airline and airport service offerings; booking channels; and the protection offered by insurance and by ATOL protected packages. Consumers are assisted in navigating these choices by an increasing number of services that allow consumers to quickly and easily compare a range of products and services, and by the existing network of businesses and charities that offer consumers advice and information.

The complexity faced by consumers is compounded by the range of different legislation that protects their interests, including: general UK and European consumer protection legislation; sector-specific legislation on pricing transparency, assistance and compensation during delays and cancellation; and the protections provided by International Treaty obligations. The sector – by its nature – is also one characterised by large, international companies, many of which operate across the UK's regions.

Against this background, the CAA sees a strong case in a consumer landscape for the CAA continuing to deliver advice and information about aviation markets to consumers, coordinated with and backed by an effective local distribution network.

For local advice to be effective, it needs to be provided by a widely recognised and trusted organisation and be accessible online, by telephone and if necessary provide a face-to-face service. A single organisation providing this service would also help to avoid unnecessary

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duplication of advice, and ensures consumers know where to go in order to quickly and easily access information. For this reason, the CAA is supportive of BIS' proposal to make Citizens Advice (CitA) responsible for leading on all publicly funded information and advice for consumers at a local level. This will achieve the goals set out above and help to ensure consumers are empowered and able to make informed choices.

However, whilst the CAA considers that CitA are well placed to offer general advice to consumers, in the case of the aviation sector this would benefit from support from the CAA, which can bring its expertise and knowledge of the aviation industry, in order to provide effective information and advice to consumers at a national level. This would support CitA in delivering advice that is accurate, consistent and reflects the complex legal framework that applies in aviation markets.

In particular, much of the consumer legislation that provides protection to aviation consumers is complex with relevant legislation drawn from both domestic, European and international treaty law (such as the Montreal and Chicago Conventions). Additionally the development of consumer protection law in the sector can often be wrapped up with the development of safety and other aviation specific rules, as is the case with the Air Services Regulation which combines rules on transparency with the requirements for airline licensing.

The need to maintain consistency is further illustrated by the fact that it is not possible to consider passenger rights in aviation in isolation from other consumer protection legislation. We have therefore taken steps over the last few years to ensure that our policy and enforcement teams are able to apply general consumer legislation, such as the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs) and how these regulations relate to aviation consumers and their interplay with aviation specific consumer legislation. This enables the CAA to provide accurate and appropriate information to consumers on their rights, and would also allow it to support the work of CitA.

In addition to cascading information to consumers CitA should also act as a collection point for consumer complaints. This ensures the information collected is not fragmented, making it easier to analyse complaints data and identify and prioritise issues that may require attention. Where appropriate this intelligence can be fed into a national coordinating body or directly to the CAA as sectoral regulator so that appropriate action can be taken. Again the CAA would be keen to work closely with CitA so that it can have access to this additional source of intelligence and also provide expert advice to CitA where an issue has been identified.

There must also be a proactive approach to educating consumers, ensuring they are made aware of their rights and can exercise choice. Campaigning is effective at a local and national level where it is coordinated with, and backed by, a strong national regulatory capability. For example the rights of disabled aviation consumers, and those of reduced mobility, are protected by specific legislation (EC Regulation 1107/2006). However, these rights have to be considered in the context of strict safety criteria and providing advice to consumers requires an understanding of the complexities of this situation. The CAA possesses the expertise to continue providing such information to consumers and can coordinate this function with CitA where appropriate.

In addition to campaigning there is also a requirement to ensure regulators are acting effectively and ensuring consumers are empowered and, where appropriate, protected. The ability to provide sufficient challenge to a regulator in a complex market sector requires knowledge and credibility. The CAA's plans to set up an Aviation Consumer Advocate Panel (ACAP) are well advanced and when set up will have the capability to act as a 'critical

'friend' to the CAA, and can ensure the CAA is acting effectively in its consumer role. This panel, as with all CAA activity, will be funded by industry.

As set out above the CAA is supportive of the role CitA can play in the consumer landscape but considers that it is necessary for the CAA to continue to use its national presence to complement the role of CitA, make best use of its aviation expertise, and to take the lead role in providing aviation-specific information at a national level.

#### Effective enforcement of consumer protection legislation

The CAA considers that effective competition – with consumers that are able to make informed choices – is the best way to deliver outcomes for consumers by driving price, service quality and choice. For this to work effectively, it is important that competition and consumer laws are applied in order to ensure that markets operate fairly. We recognise that even in competitive markets there will sometimes be the need for regulatory intervention to protect consumer's interests and to make markets work well for them.

The underpinning legislation needs to be effectively enforced. In many circumstances it may be more effective to use 'softer' enforcement tools to ensure businesses do not breach the law. However in some circumstances it will be necessary to take formal action against businesses and there must be the appetite for taking on this work.

In order to ensure a focused and effective approach is taken to intervention there is a need for a strong, appropriately resourced and credible national body, with the necessary expertise and capability to tackle local, regional, national and international businesses. It must also be capable of coordinating enforcement action nationally, ensuring its resources are prioritised effectively and able to coordinate its action internationally and with other sectoral regulators. We recognise that the model favoured in the consultation is that the TSPB will take on the majority of OFT's current consumer enforcement functions. However, the information set out in the consultation document does not provide sufficient detail or assurance that the TSPB will have the capabilities set out above. Additionally the consultation document does not state clearly the role that sectoral regulators will play in the new landscape and how they will integrate and coordinate their work with the TSPB.

The nature of the aviation market poses some specific challenges for delivering an effective enforcement capability. Service delivery in the aviation sector is a complex process and can involve a range of suppliers in delivering the final service to consumers. Indeed, many services which appear to be provided by an airline or airport are actually provided by another party. Additionally many of the airlines are international businesses and the UK may be a relatively small part of their overall operation. Understanding this complexity and being able to engage credibly with the market players is important prerequisite to delivering effective enforcement.

The CAA is responsible for monitoring and enforcing a range of consumer protection legislation. We are a designated enforcer under Part 8 of the Enterprise Act with powers to enforce legislation such as the CPRs and the UTCCRs. Through the ATOL scheme we financially protect consumers in the event of tour operator insolvency, managing the repatriation and refund process. We are also the enforcement body for a number of pieces of consumer legislation that apply specifically to the aviation sector, notably on the rights of disabled and reduced mobility passengers to access air transport, the rights of passengers in the event of denied boarding, cancellation and delay, and on airline price transparency.

In addition to its consumer protection role, the CAA has a number of other responsibilities intended to ensure that consumers are not disadvantaged, in particular the CAA is

responsible for the economic regulation of the three designated airports<sup>1</sup>. We are also the economic regulator of air traffic services in the UK, with concurrent competition powers for this sector. While it does not hold concurrent competition powers for airports, the CAA has sector specific powers to investigate anti-competitive conduct by airports and impose remedial conditions. It is also important to note that the CAA needs to maintain a level of expertise to enforce the aviation specific legislation that provides rights to air passengers and ensures they are not disadvantaged. It is therefore a minimal additional cost to maintain its knowledge of more general consumer protection legislation.

As set out above the complexities of the aviation sector are such that in addition to a strong national enforcement body, capable of taking on and coordinating national enforcement policy, an effective sectoral regulator, with the necessary expertise, credibility and knowledge to effectively regulate the aviation sector is required. We consider that in addition to coordinating our work with the TSPB it will be necessary for us to continue to provide the lead role in the enforcement of consumer protection legislation in the aviation sector.

### Aviation and the consumer landscape

Consumer protection legislation, both aviation specific and general, forms an important part of the CAA's ability to protect consumers and ensure businesses operate fairly. More broadly, the CAA is responsible for safety, airspace and the environment. In particular, the CAA is responsible for ensuring the safe operation of aircraft, the mitigation of noise emissions and other environmental issues, and the financial licensing of UK airlines. Although not all these responsibilities are directed at consumer issues, there are a number of important areas where the CAA's consumer role overlaps with its broader responsibilities. In particular, when assessing consumer issues there are often relevant safety issues that need to be considered and we have access to a wide range of expertise across the organisation to manage these. A further important consideration is that under these arrangements the CAA directly recovers the cost of its activity from the industry it regulates, ensuring it is accountable for the activity it undertakes.

The legal framework underpinning the industry is complex and developed from both domestic, European and international sources. For these reasons, the CAA has to maintain strong links with a range of European and International bodies such as the European Aviation Safety Agency and the International Civil Aviation Organisation. The ability to make an effective contribution into such a diverse policy development arena is key to developing effective regulation, and something that the CAA is uniquely placed to do.

### The CAA's role in the consumer landscape

Given the specific challenges the aviation sector poses in delivering an effective and efficient consumer landscape, we would like to highlight a number of areas that demonstrate the role we are able to play.

We work closely with local trading standards offices in respect of operators selling flights and holidays without the necessary ATOL protection. This typically involves sharing information and expertise and CAA colleagues have acted as expert witnesses in a number of court cases. Trading standards have also provided evidence to the CAA about the complaints they receive about larger operators and potential detriment caused to consumers. This collaborative approach ensures that issues can be tackled effectively at local level, and wider, national issues are recognised and dealt with appropriately. Although

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<sup>1</sup> Heathrow, Gatwick & Stansted

not specifically mentioned in the consultation document we consider we are well placed to continue to work in this collaborative manner in the new landscape.

We have worked with the OFT over several years to develop our expertise and have found the advice and information available very valuable. We have also been able to provide information and expertise about the aviation sector to assist the OFT in its market study on the advertising of prices and more recently in its consideration of payment card surcharges. Working together on national cases has proved a good model which provides considerable benefit to us both and assists industry through providing a joined up view.

For instance when tackling the issue of airline price transparency we adopted a national approach, considering all airlines flying from the UK and focusing on the larger players. Working with OFT we have been able to apply a consistent approach and to tackle a number of large airlines at the same time to ensure a level playing field, as far as is possible. When taking this action it was also necessary to consider the impact of general consumer protection law as well as that applying solely to aviation. We will be following up this work by developing joint guidance with the OFT for tour operators and travel agents on price transparency

The breadth of experience within the CAA means that we have access to the relevant experts on complex issues. For example the legislation providing rights to disabled passengers ensures they can travel with mobility equipment. However, there are safety rules around the carriage of dangerous goods that apply to loading electric wheelchairs in the hold of an aircraft. We have therefore been able to use existing fora to discuss safe handling with the relevant people within the industry and other safety organisations across Europe.

In addition the CAA has a long-standing record of working in partnership with industry. In many circumstances, and because of its relationship with industry, the CAA is able to resolve issues without the need for the use of formal powers. For instance, the CAA can produce technical guidance in order to ensure industry meets its requirements in relation to consumers, as it has done for the implementation of Airport Development Fees. The CAA can also use its relationships to tackle ad hoc issues as they arise – in our role as regulator, we have been able to develop an initiative with airport and airline representative groups to consider a self-regulatory solution to improving the industry's reaction to major disruption. The opportunity to build on work carried out in other areas of expertise and to build on existing relationships has been crucial to developing our consumer role.

We consider that it is vital that we continue to work in partnership with the national body (CitA) responsible for the delivery of information and advice at the local level and the body (TSPB) responsible for the coordination of national enforcement of consumer protection legislation. This will ensure not only are we are able to effectively offer expert advice to these bodies but will also ensure we are able to continually develop our understanding and knowledge of consumer protection legislation. The CAA considers it has an important role to play in ensuring that consumers are empowered and that markets work effectively for them. We look forward to further clarification on the roles that TSPB and CitA will take and how sectoral regulators will be able to coordinate their activity, share their expertise and play an effective and efficient role in the new consumer landscape.

Yours sincerely

**Iain Osborne**

**CCA Group Director  
Regulatory Policy Group**

## **Empowering and Protecting Consumers – Question Responses**

The CAA has responded to these questions in the context of its role as the specialist aviation regulator with responsibility for protecting aviation consumers and for enforcing a number of pieces of specific aviation consumer protection legislation as well as more general consumer legislation.

**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. N/A**

**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.**

1. As set out in the response letter the CAA sees a strong case for the delivery of information and advice to consumers at the local level backed, in the case of aviation, by strong sectoral regulator to support the provision of that information and to ensure consumers are protected. There needs to be effective cooperation and coordination between the national and the local level provision of advice. The CAA is supportive of BIS's proposals to make CitA responsible for the provision of advice at the local level but, as stated in the response letter, in aviation the CAA has an existing complementary role, which makes it efficient to bring the CAA's expertise to bear to ensure accurate information is provided to consumers.
2. The CAA agrees that Citizens Advice, where appropriately funded and resourced, are well placed to take on principal responsibility for the provision of consumer information and education. This arrangement will deliver benefits for consumers in terms of streamlining the existing provision of such services and provides consumers with a 'one-stop-shop' for their information and education requirements, supported by specialist sectoral regulators and, where appropriate, the OFT.

**Q5. Do you agree that the proposed TSPB and the TSI should coordinate and support business facing educational activities?**

3. Under the current arrangements OFT and LATSS provide much of the general information and advice to businesses but in the aviation sector the CAA provides the majority of information to businesses operating in the aviation sector. This reflects the complex nature of the sector and the legislation that underpins it, and that in most cases businesses naturally approach the CAA for information. The CAA considers that it is best placed to continue to provide information and guidance to businesses on the requirements of aviation specific legislation and in many cases the more general consumer legislation. Indeed, given the CAA's other sector specific roles, the CAA can undertake this role more cost effectively than other organisations which need to acquire and maintain the knowledge needed to provide effective advice that fully reflects the safety and international aspects of aviation. However, the CAA regularly provides guidance to businesses in a joint capacity with OFT, such as in relation to compliance with the pricing transparency requirements of the ASRs. We consider that the CAA would continue to publish joint guidance with TSPB and TSI.

**Q6 – Q11 – N/A**

**Q12. Do you consider that, subject to approval 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 general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?**

4. In order for advocacy to be effective in the aviation sector the relevant knowledge, capability and expertise are required. The legislation underpinning the aviation sector is complex and often intertwined with safety requirements. In addition the international nature of the businesses operating in the sector and the way services are provided requires a thorough understanding of the industry in order to analyse and understand issues facing consumers. The CAA has a well established role providing information to consumers through:
  - The provision of a telephone advice and complaints line;
  - Publishing information on its website setting out aviation consumer rights such as those relating to the rights of Persons of Reduced Mobility to access air; transport, Delay and Denied Boarding Compensation rights and the financial protection offered by the ATOL regulations;
  - The CAA also publishes and number of leaflets on consumer rights which are distributed through ATOL holders;
  - Providing compliance information and guidance for businesses on the ATOL regulations and Air Services Regulation;
  - The CAA may also undertake a national campaign highlighting consumer rights in the aviation sector; and
  - Shortly the CAA will be publishing guidance on a range of consumer legislation and the way it relates to the travel industry;
5. The CAA is funded directly by the industry it regulates, rather than through central government funding, ensuring it is clearly accountable to industry for the cost of the work it undertakes. If this funding were to be transferred to a general advocacy body there may be some concerns that it would not be used directly to provide advice to aviation consumers.
6. In addition to providing advice directly to consumers the CAA has consulted on its plans to establish an Aviation Consumer Advocate Panel (ACAP) that will act as a 'critical friend' to the CAA, providing independent advice on the consumer issues that the CAA should be considering. The responses received to the consultation from the aviation industry were generally supportive of the creation of ACAP and its role.
7. The CAA agrees that CitA are well placed to offer general advice to consumers at the local level but in the case of aviation the CAA, with its expertise and knowledge of the industry, is best placed to lead on the provision of this advice, coordinating and cooperating with CitA where appropriate. The CAA does not agree that aviation advocacy should be combined into a single advocacy service, and considers that there is a strong case for an advocacy role acting as a 'critical friend' to provide challenge to the CAA's activity, combined with a more general advocate of consumer interests.

**Q15-16. – N/A**

**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?**

8. Redress schemes, whereby industry voluntarily commits to a system of redress, often backed by an ombudsman, offer a number of benefits to consumers in markets where there is a well established understanding of, and compliance with, the relevant legislation. However, much of the consumer legislation introduced into the aviation market is relatively recent and although there are good levels of compliance with much of it, there have been a number of judicial challenges to some of it, such as the DBC regulations, that are awaiting further clarification from the Court of Justice of the European Union. Additionally there are planned reviews of the DBC<sup>1</sup> legislation to assess its effectiveness and ongoing safety considerations that must be taken into account when considering the PRM regulations. Where the landscape is so unsettled, and until there is a good understanding of the requirements of the legislation, redress schemes are unable to offer the same benefits to consumers. However once the landscape is settled the CAA views redress schemes as an effective tool in the consumer landscape.

**Q18-19 – N/A**

**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?**

**Q 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?**

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

**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?**

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

**Q 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?**

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<sup>1</sup> In April 2011 the European Commission [announced](#) it will launch an Impact Assessment to assess the proportionality of EC 261/2004, Denied Boarding and Cancellation Regulations, in light of the experiences and costs of the regulation for stakeholders. The Impact Assessment will be launched in 2011.

**Q 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?**

**Q 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?**

**Q 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?**

**Q31. 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?**

**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?**

9. As set out in the covering letter the CAA considers it is important that the outcome of any reform to the consumer landscape delivers results that ensure consumers are empowered and the legislation designed to protect consumers is effectively enforced, we consider that this implies a combination of local enforcement and national (including sector specific) enforcement roles.
10. The consultation document identifies a number of options for reform and favours one above the others. We have identified a number of issues with some of the bodies involved in delivering enforcement action that must be addressed in order to ensure the aims of reform to the consumer landscape meet the stated requirements.

### **The TSPB**

- The body responsible for coordinating national enforcement policy should have the necessary resources and capability to effectively analyse and prioritise issues and to coordinate and manage the enforcement of consumer protection legislation at a national level
- Is the proposed small secretariat that will be available to TSPB sufficient to coordinate the likely volume of casework?
- Would the expanded regional teams directed by TSPB, be capable, in terms of expertise and experience, of undertaking national enforcement work?
- Will the expanded regional teams have the capacity to take on national enforcement work in addition to their local activities?
- Where separate regional teams or particular authorities are made responsible for holding expert knowledge of technical consumer law, such as the Unfair Contract Terms legislation, is there a danger that the ability to consider the full range of consumer legislation that may be applicable to an issue is lost? For example in the Ashbourne Management case taken by the OFT both the Unfair Terms in Consumer Contracts Regulations and Consumer Protection from Unfair Trading Regulations were used, as was some consumer credit legislation
- Will sectoral regulators be able to cooperate and coordinate their work with the TSPB

- Where the OFTs consumer functions are moved to Trading Standards will there be a short term loss of expertise, while Trading Standards build their capabilities and expertise, and will this lead to a capability gap in terms of national enforcement?
- The TSPB would be led by Chief Trading Standards Officers representing their regions. Does this structure give the TSPB a sufficiently national outlook when prioritising issues?
- Trading Standards teams have not traditionally tackled large, multi-national corporations, will they be capable of taking on these businesses in terms of experience, expertise and resources?
- Will Trading Standards, supported by CitA possess the necessary expertise and capability to undertake complex studies to assess consumer detriment?
- Can the competing demands of local and national enforcement action be reconciled effectively within Trading Standards and the TSPB?

### **The CMA**

- It is proposed that the CMA will primarily focus on competition issues but it will also retain a role in investigating and analysing markets where there are issues that cut across both the competition and consumer spheres. The CMA will also retain powers to enforce consumer legislation, where these are the most effective remedy to a competition issue, and it is likely to be at the discretion of the CMA as to how and when to use these powers
- Where the CMA, in the course of a market study, identifies a ‘pure’ consumer issue and determines that it will not pursue the study further or that it is not best placed to take action to remedy the situation, will the governance structure of the consumer landscape be sufficient to ensure that either CitA completes the market investigation or that the issue is referred to TSPB and assessed against their prioritisation criteria and where appropriate action is taken to resolve the issue?

**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?**

**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 has only a limited consumer enforcement role?**

- The CAA has benefited from a number of workshops run by OFT on general consumer legislation, such as the UTCCRs and the CPRs, and has used these to build its knowledge of these regulations and how they apply to the aviation sector. It is important that TSI is able to draw on the same level of expertise and knowledge and provide professional guidance and training if this function is moved from the OFT
- The OFT has led on much of the international liaison work and it has been vital to ensuring the UKs position is effectively represented in the formation of policy especially at the EU level. Where this role is removed from OFT it must be effectively maintained in the future landscape

**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?**

**Q36. Do you agree that responsibility for chairing the consumer concurrencies group should remain with the CMA?**

- It is important to ensure that any duplication of effort, especially in relation to obtaining court orders, which can impose significant burdens on businesses, is avoided. Therefore it is important that there is a body coordinating this function
- The concurrences group has acted as an effective forum for sectoral regulators for exchanging information, advice and intelligence. Additionally it helps to ensure cross sectoral issues can be considered and addressed in a coordinated manner
- Where the CMA chairs the concurrences group, it allows sectoral regulators to coordinate their work that involves investigation and analysis of structural issues that align closely with the proposed role of the CMA. However, it presents a difficulty for sectoral regulators as to how they would coordinate their work with the TSPB

**Q37-39 – N/A.**

**Q40. 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 role of the CMA in the consumer landscape is crucial to investigating complex market issues and where appropriate taking action to protect consumers. Where this function is unavailable there is a danger that consumers will not benefit from an effective and efficient consumer landscape

## **Cambridgeshire CCTS\***

**Cambridgeshire County Council Trading Standards Service**  
**Response to 'Empowering and Protecting Consumers' Consultation**

**Introduction**

Whilst writing our response to this consultation, we have considered the response of the Association of Chief Trading Standards Officers (ACTSO). We are in general agreement with the comments ACTSO have put forward so our written response is, therefore, limited to our own additional replies to certain questions only, so as to avoid duplication.

**1. 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 is important there is a more cohesive joined up approach so that more joint campaigns can be undertaken. Consumers need to receive simple key messages as too much information can be confusing and ineffective.

Better partnerships need to be developed in relation to consumer information, so that all partners can do their part to support key messages being distributed both locally and nationally. In order to achieve this, it is important for national organisations to understand the service planning process and timetables in local authorities as currently information in relation to campaigns is often released too late for local authorities to become involved.

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

As it has already been decided that Consumer Direct will be transferred then it makes sense that the consumer information role is transferred to Citizens Advice as well. It will make it easier for consumers to understand where to go for advice and information which will help to reduce the complexity of the consumer landscape.

We would like any final arrangements to ensure that Citizens Advice recognise LATSS as a crucial partner in relation to consumer information and advice.

We do not believe that consumers will distinguish between Citizens Advice nationally and locally, as they do not currently distinguish between Consumer Direct and LATSS. With mounting financial pressure on both LATSS and local bureaux, we would like to see these partners in each local area working closely together so that they can be clear about which partner is going to take on which piece of work (2<sup>nd</sup> tier advice, information and education) so that we do not see a duplication of resources and competing messages on the front line.

With regard to Consumer Direct, Citizens Advice have already indicated that there will be no reduction in the quality or quantity of information that consumers and LATSS receive and we feel that this is absolutely essential for consumer protection in the new landscape.

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

Yes, we feel that the 'Extra Help Unit' for vulnerable consumers 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?**

We feel that it is important for anyone involved in Consumer Education to understand that it is not just about consumer information. Consumer Education is about giving consumers the skills, attitudes, knowledge and understanding necessary to be an effective consumer. The key to valuable Consumer Education activities is that they lead a consumer into making a change to their behaviour.

There is currently a great deal of expertise in LATSS in relation to Consumer Education. A number of TS services employ officers with teaching or educational qualifications and these experts are members of the Consumer Education Liaison Group (CELG), which is a section of the Trading Standards Institute (TSI).

It is encouraging that Citizens Advice has already recognised that this expertise exists in CELG as well as their organisation. The two organisations have already started working together to plan how they can improve consumer education both nationally and locally.

We would support the national consumer education function being transferred to Citizens Advice, but we believe that it is essential that they form an alliance with CELG for this to be effective on the frontline. If these 2 organisations continue to work together, then we believe they can significantly improve the current provision of consumer education both nationally and locally.

The most important area for Citizens Advice and CELG to focus on is setting a strategic direction for Consumer Education. By establishing a board/group of experts from each organisation, they can plan a direction for consumer education and ensure that they set out the fundamental building blocks required to establish strong consumer education activities.

CELG members have already undertaken a great deal of work in consumer education and a number of projects (such as Ask Cedric and the CE Database) already pull some of this information together. It is important that this work in relation to pooling resources is developed further so that we can ensure that local LATSS and Bureaus are not wasting resources by reinventing pieces of work that have already been undertaken and that they can simply pick up use themselves.

We feel that it is important to maintain and develop a local network for consumer and business education to enable sharing and promotion of best practice for LATSS and local bureaus. This network already exists for LATSS via CELG and could be easily extended.

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

Consumer and business education are intrinsically linked so we believe that it is important for both to be planned concurrently. If there is a business education need this is often because there is consumer detriment so, therefore, a need to protect and educate consumers in the same area and visa versa.

We would fully support this function being co-ordinated by TSI and we believe that it is essential that this work is planned alongside the work that is undertaken in relation to consumer education. Above, we have made reference to the development of a strong Alliance between Citizens Advice and TSI (via CELG) and the suggestion that this partnership could establish a board/group mechanism for developing a strategic direction for consumer education.

We believe that the education experts on this Citizens Advice/TSI (CELG) board/group should also be responsible for giving developing the strategic direction for business education. It would, however, be essential for this partnership to work closely with the proposed TSPB to ensure there are effective links between emerging enforcement issues that would benefit from consumer and business education work.

**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

We support ACTSO's view in relation to these questions.

**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?**

Response to questions 12 & 13

We fully support the proposal of combining as many sectoral advocacy functions as possible and we believe that this work could be carried out by Citizens Advice (subject to concerns raised below).

We support the concept of a 'one stop shop' Regulated Industries Unit as this would enable more effective advocacy. We agree with the design principles and feel that it is essential that this RIU is given clear aims, statutory powers and adequate resources to ensure it has the capacity to fulfil its intended role.

**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?**

In terms of pure sectoral advocacy, Consumer Focus (CF) have functioned well and provided action on a number of required areas. Currently CF has strong legislative powers, including the right to investigate consumer complaints of wider interest, power to conduct research and the ability to make an official super-complaint about failing services.

We do not believe, however, that Consumer Focus is a name that is recognised by consumers on the street and they are unlikely to know what CF does on their behalf. We think the main reason for this is that CF does not deal with individual complaints and in fact, as a consumer, it can be quite frustrating to be told by an organisation that although they are the voice for consumers they will not actually assist individual consumers. We, therefore, feel that CF in its current format is not the appropriate model for sectoral advocacy.

If Services are being reviewed, it is important for consumers and their needs to be put at the heart of those services. We, therefore, feel that all General Advocacy work currently undertaken by CF could be transferred to Citizens Advice as they already have a high profile and consumers like to have a single point of contact.

We do, however, have an area of concern with this model around the whole issue of statutory powers and Citizens Advice in relation to whether this is consistent with their charitable purposes, aims, principles and strategies. We also have concerns about whether Citizens Advice and their local bureaus are being asked to take on too much expertise.

Although consideration could be given to establishing a new independent organisation (not CF and separate to Citizens Advice) to deal with all Sectoral Advocacy and complaint resolution, we feel that this approach brings forth its own issues as it moves away from the easy to access 'one stop shop' approach that many consumers desire and which Citizens Advice could offer.

**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?**

These matters have not be commented on as they apply to Scotland, Wales and Northern Ireland

**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 that statutory powers and functions are essential for a Regulated Industries Unit to function effectively. An RIU needs information gathering powers that it can use quickly and efficiently without having to be tied up by a complex process. Although we do have some concerns about the transfer of statutory powers and functions to Citizens Advice, we do not feel the option of transferring these powers to a public body that the RIU would need to request to use is workable.

**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 fully support redress schemes being extended to other sectors and we believe that it is essential to have consistency across all the sectors. Our Officers that currently deal with consumers on a day to day basis would put forward the current Financial Services Ombudsman as a model of excellence, due to the way it handles consumers and also keeps partners up to date on action taken.

We believe that there needs to be one scheme for each area and the redress scheme should not be split across the sector as currently the issue with some schemes, eg - the communications sector, as this is confusing for consumers. Schemes should cover all companies in each Sector and not just those companies that choose to join (eg – CISAS).

**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 questions 18 & 19

These matters have not been commented on as they only affect Northern Ireland.

**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?**

**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 to questions 21 & 22

We would broadly support Option 3 where the majority of the OFT's consumer enforcement function will be transferred to LATSS with some functions remaining with the CMA. We do, however, have a few concerns in relation to these options which we feel are important to the success of these reforms:

- 1) It is important that sufficient funding levels are made available to ensure that work can be truly effective on the frontline.
- 2) We believe that there is a lot of expertise at the OFT and it would be a shame to completely lose this.
- 3) A secretariat will need to be established to help facilitate this Board and we feel that it is essential that this is delivered in the most cost effective way to ensure maximum resources can reach the frontline.
- 4) The current regional TS structure is purely voluntary and local TSS may find that they need to leave their local group due to local funding pressures. We feel that it is important that there is a mechanism for these authorities to still be represented.

5) The opportunity to use the proposed national/regional infrastructure for enforcement and co-ordination should be extended to all areas of TS work, such as food, animal health and metrology.

**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 22-24

We generally support ACTSO's view in relation to these questions.

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 25-29

We agree 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), and we generally support ACTSO's comments in relation to these questions.

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 & 31

We support ACTSO's view in relation to this question.

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?**

We support ACTSO's view in relation to this question

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 in this area and we believe that they are the most appropriate organisation to take on for the OFT's professional guidance and training functions.

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?**

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?**

We do not believe it is necessary to require these to be directed to a central body, however, to avoid duplication and overlap we feel that information should be recorded on a central database, 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?**

We support ACTSO's view in relation to this question.

**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?**

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, we do feel that the supercomplaints process should be extended and we feel that it should be the responsibility of the newly established Board (please see our comments in Q20-21) to issue a response if the subject matter of the complaint 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 support ACTSO's view in relation to this question.

**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?**

We believe that they proposed changes should go ahead from April 2013 regardless of whether the CMA has been created.

If you have any queries or would like any further information regarding this response, please contact

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## Carpet Foundation

**BIS CONSULTATIONS  
EMPOWERING & PROTECTING CONSUMERS**

**CHAPTER 3  
CONSUMER CODES APPROVAL SCHEME**

**A Response from the  
Carpet Foundation to Questions 6 -11**



## **INTRODUCTION**

The Carpet Foundation is the Trade Association for the UK carpet industry and comprises leading UK manufacturers and 900 independent retail members.

We have been successfully running the OFT Approved Consumer Code for some four years and to date have invested over £1.5 million marketing the OFT brand.

This response is submitted after consultation with our Board and with our Campaign Development Team.

**Question 6** – The ability to display the OFT brand name is the most compelling advantage for our members.

In the absence of detailed proposals for the suggested alternatives we would regard these as both costly and second best.

**Question 7** – They might well respond but we would question their effectiveness and their credibility in the minds of consumers. We would need to see hard evidence that the benefits could ever outweigh the costs.

**Question 8** – Ideally reduce the red tape/complexity of getting approval. But.... government backing is vital for credibility.

**Question 9** – Difficult to say as there are no detailed proposals from any bodies such as BSI. However, a major concern expressed by our Board is that of credibility (in the minds of consumers) plus the cost burden to us of any changes.

**Question 10** – See above

**Question 11** – This would effectively mean starting again – and would involve considerable resource/expense. Not an option we would favour.

## **Cartwright, Professor Peter**

**Response to the Consultation on Empowering and Protecting Consumers:  
Institutional Changes for provision of consumer information, advice, education,  
advocacy and enforcement**

Dear Mr Evans

Thank you for the opportunity to comment on the above-mentioned consultation. The views expressed here are my own and do not necessarily represent those of the School of Law or the University of Nottingham.

**Transfer of Functions to Citizen's Advice**

It seems that the decision to transfer a range of functions to Citizens Advice has already been taken. There is sense in having a "one stop shop" for consumer advice, and a transfer of the functions of Consumer Direct to Citizens Advice should benefit from the higher profile of the latter. However, its success depends on sufficient resources being made available. Given the close link between advice and education, transferring information powers/responsibilities to Citizens Advice also makes some sense.

**Consumer Codes**

I await the consultation before commenting.

**Consumer Advocacy**

The consultation treats advocacy as being about representing consumer interests and promoting consumer rights. It is correct that these functions are currently undertaken by a range of bodies, some more visible than others.

There is no perfect institutional structure to deal with these issues. There are good reasons to focus resources on Citizens Advice, and the consultation paper explains these. There will be teething problems, but economies of scale should ensure the viability of a new scheme provided funding is adequate. It is important that the expertise of the separate schemes is not lost; it should be emphasised that the success of sectoral bodies in particular depends on their being experts on the industry in question so that there is less danger if they being hoodwinked by the less reputable members of the industry. Given appropriate resources, and intelligent leadership, I believe that the proposed changes could work.

In terms of redress, I would like to see greater emphasis placed on redress schemes. Litigation is not realistic for many consumers – the transaction costs and uncertainty are too high. The Financial Ombudsman Service is a very good model with high visibility and levels of trust. I would support extending redress schemes to other sectors.

### **Enforcement**

It is vital that enforcement of consumer protection laws is not watered down. Clear, yet flexible legislation bolstered by consistent enforcement is in the interests both of consumers and of honest, competent businesses.

The Coalition Government needs not only joined up thinking and action here. In an ideal world, I would like to see a national trading standards service with local branches. This would best guard against some of the problems that have been identified, including the incentive not to pursue cross-boundary threats. Given that this is unlikely to be acceptable politically, it is important to ensure that whatever structure is put in place can provide the co-ordinated leadership and prioritising necessary. On balance, I would prefer option three: the transfer of the majority of the OFT's enforcement functions to Trading Standards with some powers being retained by CMA. The OFT has high status internationally, and has the expertise to conduct high quality market studies. It would be a concern if these attributes were lost in any transfer of responsibilities. Nevertheless, there is some sense in TSI taking on the responsibilities proposed.

All changes must be viewed in context. Whatever the institutional structure, enforcement will not be adequate if appropriate powers are not available. It is deeply regrettable that the Coalition has not moved forward with the Civil Sanctions Pilot. It is difficult to see how consumers can be protected appropriately without powers similar to those provided for in the Regulatory Enforcement and Sanctions Act. I very much hope that steps will soon be taken to move towards giving such powers to trading standards officers.

**Peter Cartwright**

**CBI**

## Empowering and protecting consumers

CBI response to consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement

September 2011

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1. The Government must set out a clear vision for a 21<sup>st</sup> century consumer environment; institutional changes alone will be insufficient to deliver reduced complexity, better enforcement and cost-efficient delivery.
2. A 21<sup>st</sup> century consumer environment should focus on:
  - Ensuring competitive markets, recognising that promoting choice and competition is the first and best form of consumer protection
  - Targeted information, advice and education at the point of need, recognising that today's consumers are savvy customers; information should focus on product and price comparison, with advice readily available when things go wrong not over-loaded on consumers at the point of sale
  - Consumer advocacy only where there is a proven need for it, again recognising that the majority of today's consumers are intelligent and well informed
  - Genuine risk-based enforcement focused on deliberate wrong-doing, with enforcement activity aligned with where problems occur; and capability to apply both economic and legal skills to determine the best solutions to any structural market problems
  - Consistency of approach for both consumers and businesses, wherever they happen to be located
  - Ensuring a powerful voice for the UK to shape European and international debates, where much consumer legislation emanates from
3. To deliver all of these objectives, in our view, requires both a strong national body coupled with well-co-ordinated and consistent local activity.

## **Consumer information, advice and education**

4. The majority of today's consumers are intelligent and adept at shopping around, so information, advice and education should be targeted at the point of need.
5. The CBI agrees that information, advice and education are key parts of the consumer toolkit; we also agree that this is currently a crowded and confusing landscape that would benefit from simplification.
6. We believe the single biggest reforms ought to be to ensure that information and advice is available to consumers when it is required. Too often at present, consumers are over-loaded with data when they do not need it. For example, detailed information on consumer rights and "how to complain" should be provided on request or in the minority of cases when things go wrong.
7. We believe that there are three key concerns with the current BIS proposals that need to be addressed before reaching a final decision on whether or not to proceed. They are:
  - First, in the centre of gravity between consumers and business, where we feel that the existing balance is about right; Citizens Advice as currently set up do not have an intrinsic understanding of business and markets, and would need to possess this in the future in order to put across information and advice that was balanced between the interests of consumers and business.
  - Second, Citizens Advice is essentially a network of locally focused organisations. We believe the need for greater national accountability would need to be addressed in order to meet the Government's objective of achieving greater consistency in the information and advice provided. Similarly, we do not believe that financial "checks and balances" alone for any new powers granted to Citizens Advice are sufficient to ensure delivery of the Government's objectives and there should be statutory duties or similar measures attached to them.
  - Third, we believe that it is helpful for the organisation making decisions about market interventions to be informed by quantifiable evidence. Part of this would include the type of consumer queries or complaints that are being received, so it is important not to lose this linkage in any new setup.

## **Consumer Codes**

8. Consumer Codes have a good track record of shifting behaviours and helping markets work more effectively, without recourse to regulation. So we believe they should continue to play a role in any future consumer regime.
9. We would be concerned if the proposed reforms resulted in a plethora of accreditation bodies, as this would run contrary to Government's simplification objective, which we support. Similarly, we believe that advice for business needs to be produced by bodies that are authoritative.

## **Consumer Advocacy**

10. We challenge the assumption that there is a need for widespread consumer advocacy, given that the majority of today's consumers are intelligent and very adept at shopping around. Instead we believe that this function and powers should only be established where there is proven need.
11. If the Government chooses to proceed with these proposals in some form, then we believe that there should be a clear line in the sand to ensure that advocacy does not cross over into investigation. We believe that a legitimate role for Citizens Advice is to act as an alert mechanism for potential consumer and market issues, but it must not become an enforcer.

12. We are concerned with proposals for information gathering powers to be transferred to Citizens Advice without a further articulation of what its new terms of reference and public accountability would look like. For example, it would be important for there to be a statutory duty to require it to take into account both consumer and business interests in reaching any position.
13. We firmly believe that it is not appropriate to grant any redress powers to a body such as Citizens Advice, who would be a consumer champion in the proposed new set-up. The CBI is not convinced that new powers of redress are needed at all. In any case, any redress powers should sit with a neutral body, which has a statutory duty to consider both business and consumer interests. This is the case, for example, with the Financial Ombudsman Service.

## **Enforcement**

14. The Government needs to deliver genuine risk-based enforcement, with enforcement activity aligned with where problems occur. It should strive to deliver this through market-based reforms rather than regulation wherever possible.
15. We believe the Government has still to deliver a genuine risk-based enforcement regime, and this should be the focal point for reforms rather than re-arranging enforcement responsibilities between different bodies. This would mean that enforcement of regulation focuses on rogue traders as well as encouraging compliance on the part of legitimate businesses – including enforcers providing advice and support for businesses, with early discussion of problems and how to resolve them.
16. We believe that achieving consistency of enforcement is desirable for both businesses and consumers, and this should be a priority consideration in any reforms. So, for example:
  - We believe that Primary Authorities are really beginning to work effectively, and must continue to play an important role in achieving consistency in this new environment. The Primary Authority regime is a key element in promoting a co-ordinated approach through a single authority for businesses operating across local authority boundaries. There are also examples of Local Authority regulators working to formulate a common approach to the interpretation of existing legislation, to develop appropriate ways of achieving compliance and to provide guidance documents for businesses and consumers – any reforms should maintain and enhance these good practices.
  - Alternative Dispute Mechanisms are based on the important principle of precedence, and it is important that this principle is underpinned by a statutory duty in any future proposals.
17. With a high proportion of enforcement cases relating to regional and cross-border issues, we believe it is important that enforcement bodies and activity is aligned to this. Where businesses trade across local authority boundaries it is important that enforcement is consistent and co-ordinated.
18. National threats which do not respect local boundaries, including large and complex cases which extend beyond the reach of local authorities and internet scams, need to be dealt with by a national body in order to be effective. Individual trading standards departments would not have the skills, resource or capacity to tackle cases which are national in scope.

## **Market investigations**

19. As the CBI made clear in our response to the recent competition regime consultation, market investigations are a major cost to business and we challenge any assertion that the State should routinely intervene from time to time to examine the operation of markets. An enforcement body must intervene within the operation of the market only where there is clear evidence of market failure and / or widespread consumer detriment. In contrast to the Government's view that the present test is too high, we believe it is too low and should be raised.
20. A market investigation should only be carried out if the CMA has a well-founded belief based on the evidence it had found that problems of competition existed across the whole industry. We are concerned at the proposal that the CMA should have significant discretion in deciding what constitutes a structural market problem which would justify carrying out a market investigation; this would be a significant shift from using market investigations primarily as a tool to investigate problems of competition.
21. We would also be concerned at any development of a dual test for market investigations. This could result in a form of double jeopardy if companies could be subject to separate investigations based on different criteria. We believe there should be a single test for all market investigations founded on clear and substantiated failures of competition.

**CBI**  
**September 2011**

## Central England TS Authorities



Central England Trading Standards Authorities  
C/O Old Budbrooke Road  
Warwick  
CV35 7DP

**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”**

The Central England Trading Standards Authorities (CEnTSA) welcome the opportunity to respond to this consultation paper ‘Empowering and Protecting Consumers’.

CEnTSA comprises the 14 Trading Standards Services that cover the West Midlands Region. Its component authorities are Birmingham, Coventry, Dudley, Herefordshire, Sandwell, Shropshire, Solihull, Staffordshire, Stoke-on-Trent, Telford and Wrekin, Walsall, Warwickshire, Wolverhampton and Worcestershire. This response has been prepared on behalf of these authorities.

We agree with the overall proposals that funding should be concentrated on bodies that consumers trust including the Local Authority Trading Standards Services.

The Consumer Advice Service, providing information and advice, is undoubtedly amongst the most popular and essential service. Between Trading Standards authorities and the current ‘Consumer Direct’ a comprehensive service is provided to consumers. This comprehensive service must be maintained through any new arrangements.

With the implementation of Consumer Direct, CEnTSA had a direct involvement with Consumer Direct West Midlands (CDWM). The liaison and governance arrangements employed ensured the development of a highly successful unit and service to the public. It provided for essential intelligence exchange to target priority areas of consumer detriment and the protocols that existed between the unit and this region’s local authorities ensured a rapid response to protect highly vulnerable members of the public. CEnTSA would wish to assist with the development of any new regime to provide similar support.

## 1. 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.

Partners:





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

It is important that the comprehensive nature of consumer advice and information is maintained. The Consumer Direct linking with Trading Standards Services model developed over recent years has proved to be successful giving consumers a choice of internet, telephone and face to face information supported by nation media campaigns. The concern is that this provision may be reduced.

It is most important that all relevant agencies work together to provide information whether that is Trading Standards, Citizens Advice or another. The rise of social media is becoming an essential tool together with traditional media and targeted education campaigns.

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

Of concern to CEnTSA is the ability of the Citizens Advice Bureau, who has limited resources to maintain the levels of consumer information necessary to support the ideals within the Consumer Landscape document. Should the government rely on voluntary input this may seriously deplete current levels of consumer advice support and future needs. Any future arrangement must be properly funded and resourced.

Information exchange needs to be maintained between the Citizens Advice Bureau and Trading Standards services. It is this information exchange that feeds the intelligence led approach that we use to deal with the enforcement of consumer problems. Whilst we respect the Citizens Advice Bureau approach to privacy in dealing with clients it must become a partnership approach to information exchange and the transfer of complex cases that require trading standards assistance or intervention.

Vulnerable consumers may require direct face-to-face assistance and it is important that this is available to them through the emerging new service or by local partnership arrangements with local authorities.

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

If the other consumer advice functions are to be transferred to Citizens Advice it makes sense that the Extra Help Unit should similarly be held there. As with other aspects this should be adequately funded.

***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 follows that the national agency providing consumer advice should also provide national consumer education. The information held by such an agency will ensure correct targeting of priority areas. Therefore the transfer appears to be a sensible approach. National education campaigns however have always relied on local authority support to maximise its effectiveness. These interdependencies must continue if this effectiveness is to be maintained.

Partners:





As a regional partnership CEnTSA also provides extra co ordination of such campaigns through its specialist groups and is a link in the chain to provide consistency of approach. CEnTSA has also involved representatives of the OFT at its management board meetings where details of education campaigns are discussed at an early stage and reviewed as required.

There is also the essential education role played by Trading Standards at a local level. For example doorstep crime can require officers to visit local social groups or even individual households where vulnerable adults are targeted to ensure effective coverage. This is supplemented by the education of other local authority services such as social care and voluntary organisations together with neighbourhood watch and other enforcement bodies such as the police. This has proven to be most effective and valuable.

National media campaigns previously undertaken by the OFT could be as effective if provided by Citizens Advice however to maximise its effect Trading Standards must also ensure that these messages reach the centre of our communities.

These activities are therefore not mutually exclusive and the funding needs to be adequately provided at a national and local level. Also please note the comments above that relate to consumer information and advice.

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

CEnTSA would welcome proposals for national coordination of business-facing educational activities as this has been fragmented in the past between Trading Standards and other agencies. The appropriate vehicle for this would appear to be the Trading Standards Policy Board supported by the Trading Standards Institute. Government support should also ensure that its own agencies are involved where necessary to prevent duplication.

In this region we have been particularly active in this area supplementing the essential one to one discussions with business and the home authority and primary authority principles together with other initiatives. These may be the provision of seminars, the promotion of the ERWIN database and the distribution of a business newsletter both in hard and electronic formats. It is with respect to this later initiative that we have in the past worked with Business-link and we are now to work with the Federation of Small Businesses.

**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?***

Partners:





**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?**

CEnTSA believe that there may be better alternatives to the Consumer Codes Approval Scheme (Q6-11 above). Our authorities operate assured trader schemes that are popular and successful with both traders and consumers. They also tend to protect all consumers including the very vulnerable from some of the worst excesses of criminal activity. They are simple to use and easy to police. It is our opinion that these local initiatives ought to be supported.

Whilst we have little information to draw upon the Consumer Codes Approval Scheme appears to be quite cumbersome with questionable effect. We also question whether the codes are adopted by those organisations that want to provide good service in any event and therefore the increase in consumer protection would be limited. Any successor arrangements should take this into account.

## **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.*

Partners:





**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 Chapter 4 – Due to our current liaison arrangements and knowledge CEnTSA would not wish to comment on arrangements for Northern Ireland. For simplicity and customer clarity it appears to be sensible that the organisation recognised as providing first line consumer advice i.e. Citizens Advice should also deal with matters that would appear similar to consumers.

## 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.

### Partners:



- *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?**

Local authority Trading Standards services have a recognised expertise and experience at all levels of enforcement. They have close regional links and excellent coordination functions that are also demonstrated at a national level. It is for these reasons CEnTSA believes that Option 3 is the correct choice. There is little doubt that this option would be very effective but that as always would be reliant on the transfer of sufficient funding to support it.

Also in favour of this option are the existing arrangements that can deliver policies and priorities at all levels i.e. local, regional and national. This infrastructure is well established and robust but the proposal will go further to strengthen trading standards ability to implement government policies.

**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 new Trading Standards Policy Board offers an exciting opportunity to strengthen consumer protection by utilising and building on existing arrangement and drawing on the well respected enforcement capabilities within Trading Standards. The existing Trading Standards Policy Forum consists of chief officers from Trading Standards authorities representing their regions. This gives the coordination and consistency to enforcement and the furtherance of national policies and is ideally situated to form the backbone of a Trading Standards Policy Board.

Partners:





Individual Trading Standards authorities have for some considerable time deal with cross border and even wider malpractices. By the provision of adequate funding the resources available would be capable of building on existing strengths to deal effectively with national, regional and cross border threats coordinated and led by the Trading Standards Policy Board. A further benefit of this approach would be the mass of intelligence and information available to the Trading Standards Policy Board through its constituent regional and local authority Trading Standards and links with Citizens Advice.

The roles of the Trading Standards Policy Forum and the Trading Standards Policy Board will of course be very different and there would need to be high levels of advice provided from BIS to guide and develop this new role together with the required secretarial support. For it to function effectively it is expected that participant members would need to devote adequate time to their new duties and consequently local authority leaders will also need to be fully briefed by BIS.

The terms of reference and constitution will of course need to be finalised but as a basis the operation of the new Trading Standards Policy Board based on the members of the Forum is recommended by CEnTSA. We would also wish to assist with and support the development of any new regime.

CEnTSA believe that lead regions and the coordination that exists between all regions, given appropriate funding, could deal with national investigations, court cases and also enforcement functions of the OFT. Having said that the costs of those activities would need to be underwritten as no individual local authority could undertake the financial risk.

***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?***

CEnTSA see no benefit to be gained from altering the status quo and developing a more complex enforcement regime.

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

Please see the response to Q5 above.

#### **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?***

Partners:





**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?**

The Competition and Markets Authority should retain a consumer enforcement role where there is a breach of consumer law relating to a structural market problem however there must be a close working relation between it and the Trading Standards Policy Board to share intelligence. The Trading Standards Policy Board should be able to set its own priorities based on national intelligence obtained from all sources and should not be led by other organisations such as the Competition and Markets authority.

#### **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?**

The approach is sensible and it would be helpful to have some resource to be used to investigate or address consumer and market issues to identify any gap however the level of the funds is difficult to establish at this time.

#### **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?**

The local authority Trading Standards service enforcement brand is already well established. Considering that it carries out more of this type of activity and attracts more publicity than any other, the approach would appear to be sensible. We believe this to be the most credible model.

Partners:





## 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?**

Whilst TSI have an established record of providing professional training the answer to the question may depend on the specifics of those training needs. CEnTSA has a well established training function that delivers a comprehensive range of products and also covers a wide field. As such there may be a more effective opportunity by looking at what regions can also offer.

## 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?**

Ultimately this will depend on the subject matter. TSI carry out a significant role but if the matter relates to one of the areas devolved to a lead region then it makes sense that international liaison is conducted by that lead region.

**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?**

There is no need to retain this need.

**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?**

CEnTSA do not hold a view on this as the role of the group is unclear.

**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?**

Yes if that super complaint relates to the work of the Competition and Markets authority.

**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 if that super complaint relates to the work of the Trading Standards Policy Board

Partners:





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

CEnTSA see no problem with properly funded lead local authorities or lead regions undertaking such roles.

**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?**

The proposed changes should go ahead in April 2013.

A handwritten signature in black ink that reads "John Beavon".

John Beavon - Chairman  
Central England Trading Standards Authorities

26 September 2011

Partners:



## **Cheshire East Borough Council**

Cheshire East 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.

We feel that whilst this is the first step towards simplifying the confusing landscape for consumers and businesses, in providing more effective, better value for money cross border enforcement. This consultation only deals with fair trading issues which only account for a portion of our work. We also answer to other central government regulators and agencies and local politicians on a wide range of different enforcement issues. The next suggested step would be to improve co-ordination and simplify arrangements between central government departments and Local authority Trading Standards Services (LATSS).

Our answers to the specific questions we feel we are in a position to answer are detailed below (the response kindly prepared by the Association of Chief Trading Standards Officers has been used as the basis for many of the responses as has the TSNW response which we directly fed into).

**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 which should be available face to face as well as via telephone or online. Some consumers, particularly the most vulnerable ones, are unable to help themselves through an online support system and high level support is still required. We would not want to see any reduction in the standards of advice currently provided.

Each individual enquiry should be dealt with by an officer who provides bespoke advice and guidance relevant to the complaint. Cheshire East would not support any reduction in the standards of advice from that currently provided. (E.g. 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 Citizen's Advice service?**

Cheshire East would be happy for the OFT's consumer information role to be transferred to Citizens Advice, providing Citizens Advice works with Trading Standards Services both nationally and locally in the provision of this consumer information service, as the OFT has previously done.

Cheshire East 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, it would be helpful if each Trading Standards department could provide Citizens Advice with a named contact for trading standards too.

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

We 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 we currently receive from Consumer Direct.

However, Cheshire East 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 2<sup>nd</sup> tier provision may still exist

#### **Question 3**

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

Cheshire East 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 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?**

Cheshire East 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.

Cheshire East welcomes the recognition that local authorities should remain responsible for direct delivery of education to consumers at local level. ‘Skilled to Go’ and ‘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 Trading Standards Officers or by localised training initiatives etc. Nationally there are websites such as BusinessLink and also Everything Regulation When Its Needed (ERWIN).

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 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 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 6-11**

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.

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.

Many local authority schemes already give consumers a method for finding trustworthy businesses via various Local Authority Assured Trader Schemes. These schemes, the Trader Register, Golden Spanner and Buy with Confidence within Cheshire East have been very successful and 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?**

**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?**

### Response to question 12-17

Cheshire East 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.

Some Trading Standards departments currently offer second tier advice and advocacy for consumer complaints. These local authorities still feel it is important to maintain a level of support for their local businesses and consumers. Cheshire East would not wish any changes to undermine any locally delivered support.

### **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 question 18-19

These are matters for those who represent Northern Ireland to comment on.

### **Question 20.**

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

Cheshire East supports Option 3 which envisages 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.

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. (E.g. LATSS 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).

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

Cheshire East believes that LATSS have the skills, experience and willingness to deliver the outcomes the Government wants to see. However, Cheshire East feel very strongly that funding has to accompany Option 3, including funding for regional co-ordination.

**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?**

Cheshire East agrees with the Government principles for the operation of the new TSPB. We would want to see the Board comprised of Heads of Trading Standards from every region, able to take a strategic view and agree on the best national solution for each area of work.

We would want to see one body representing all areas of TS (i.e. TSPF) also being charged with TSPB responsibilities. While we accept that a second meeting could be held specifically to make TSPB decisions, the overall strategic view that will come from the TSPF will be vital background for making such decisions.

While we accept that decisions made by the TSPB are final and binding, we would assume that does not preclude or affect an individual LA's ability to opt in or out of a piece of work i.e. all may not want to participate and this is not necessary to ensure delivery.

We also recommend 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.

We strongly feel that an indemnity fund which recognises the risk to LAs of taking of large cases is necessary rather than just 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 22-24

Cheshire East would not prefer 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.

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

Cheshire East 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 25-29

Cheshire East agrees that there are benefits for CMA to retain a consumer enforcement role for those cases where a potential breach of consumer law is connected to a structural market problem (e.g. the bank charges type cases).

Cheshire East 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.

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 should feed in to the Strategic Assessment and Control Strategy to be discussed at each TSPB meeting. However, we do not believe that there should be a duty on the TSPB 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 30-31

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

It would be useful 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 minimise the bureaucracy associated with any such scheme

**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. Cheshire East does not believe that there will be any problems with an enforcement model branded as run by LATSS.

Cheshire East feel that an enforcement model branded as run by Trading Standards would deter illegal behaviour. There are many examples, but Cheshire East would point to the highly effective model of regulatory compliance which was developed by TSNW to tackle the problems of consumer detriment caused in the second hand car market. Complaints with one particular trader were reduced significantly by working with the company to address issues and while the trader was keen to enhance consumer satisfaction through reducing complaints, the background threat of enforcement action by Trading Standards was important in encouraging the trader to adopt new systems. In addition, on going work within businesses within Cheshire East to tackle consumer detriment have dramatically reduced numbers of complaints.

**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?**

OFT's professional guidance and training functions are currently provided free of charge or at very low cost to LATSS. As TSI do currently charge LATSS for access to their materials, Cheshire East would be concerned that members' access to consistent guidance and training may be restricted to those with the resources available to pay.

**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?**

Cheshire East is 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?**

Cheshire East strongly feel that 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 is largely a rubber stamping exercise which was introduced by the OFT as a knee jerk response to a problematic case and is neither necessary nor helpful to enforcement or compliance.

**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?**

As Cheshire East is unaware of the operation or results of the consumer concurrencies group, we cannot comment on how important it is. We would propose that a review takes place to understand its remit before proposing who should chair.

**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?**

**Response to questions 37-38**

Cheshire East agree that these proposals seem to be sensible.

**Question 39.**

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

Cheshire East believe that a lead local authority or group of authorities, could take on the OFT's estate agency and related anti-money laundering functions.

**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?**

Cheshire East believes that it is essential that the proposed changes to the consumer landscape should go ahead in April 2013.

## **Cheshire West & Chester Council**



## **EMPOWERING & PROTECTING CONSUMERS:**

### **Consultation on Institutional Changes for provision of consumer information, advice, education, advocacy and enforcement**

This is the Cheshire West and Chester Borough Council response to the above BIS consultation.

Cheshire West and Chester is a unitary authority covering with a population of 327,500 and an area of 91,664 hectares. It was established in 2009 and comprises the former districts for Chester; Vale Royal and Ellesmere Port & Neston. In addition to Cheshire East on the east, it is bounded on the West by the Welsh border, to the north by the Mersey Valley and to the south by the Shropshire border. It includes the historic town of Chester, the industrial towns of Ellesmere Port, Northwich, Winsford together with Neston, Frodsham, Helsby and Malpas.

Cheshire West and Chester Council is an innovative organisation with new and enhanced ways of working. It will work hard to improve engagement with customers, individuals, communities and partners and deliver the highest quality of services to all stakeholders. The vision for the authority is: Customers First; Value for Money; Best Practice.

Cheshire West and Chester has high employment concentrations in the chemical and pharmaceutical industry and financial services. Agriculture and farming contribute significantly to the local economy and the pastoral landscape supports one of England's prime dairying areas.

The Regulatory Services Team incorporates Trading Standards, Environmental Health and Licensing. Trading Standards promotes a fair trading environment for consumers and honest businesses in Cheshire West and Chester and helps to protect and support them. This is achieved through advice, education, working in partnership and law enforcement.

Cheshire West and Chester Council does not regard this response to be confidential and is happy for it to be published

If clarification is required on any of the points raised in the response, please do not hesitate to contact Nicki Rose, Team Leader, Regulatory Services. Telephone: 01244 976742 or Email: [nicki.rose@cheshirewestandchester.gov.uk](mailto:nicki.rose@cheshirewestandchester.gov.uk)

## **Consultation Overview**

Cheshire West and Chester Council is in broad agreement with the proposed changes to the current institutional arrangements and welcomes the stated objectives of: reducing the complexity of the consumer landscape; strengthening the effectiveness of consumer enforcement and; a more cost-efficient delivery closer to the front line.

Cheshire West and Chester Council believes that the Trading Standards Policy Board will be the most crucial element in providing the co-ordination and lead in the enforcement effort against regional and national threats. However, the success of these changes is reliant on appropriate and adequate funding and a robust delivery mechanism. We also believe that it is necessary for the proposed Competition and Markets Authority to retain a consumer enforcement role in those cases where there is a connection to a structural market problem.

Please find attached the detailed responses to the Consultation Questions.

## **EMPOWERING & 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?**

Firstly, it must be recognised that the way in which people access accurate and relevant advice is important. As well as all the excellent information available online, there are other sources of information, such as the forum areas of large websites (e.g. moneysavingexpert), where consumer queries are answered by members of the public without any legal knowledge or background and the information given is not always accurate. It is important therefore that a brand be created which will instil consumer confidence.

It is crucial to ensure that consumer advice and information is of the highest standards if consumer confidence is to be maintained. We believe that the relationship between Citizens' Advice and local Trading Standards Services will be a key factor and effective communication and liaison channels must be put in place as well as performance monitoring arrangements.

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

As the Citizens Advice Service is taking responsibility for Consumer Direct it would appear to be appropriate to transfer the OFT's consumer information role to them. Attention needs to be given to how this information will be provided under the Citizens' Advice umbrella, with consideration given to developing a specific branding separate to the other information they provide.

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

As the Citizens' Advice Service is taking responsibility for Consumer Direct the Extra Help Unit would sit well within the service also.

**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?**

Again, with the Citizens' Advice Service taking on responsibility for Consumer Direct, they would be well placed to take on the OFT's consumer education role. The Citizens' Advice Service would be in a prime position to monitor current trends and issues and tailor national education initiatives to suit. Information for businesses and schools is valuable within this area with online resources which can be used on their own or with input through local authorities.

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

Many Local Authority Trading Standards Services (LATSS) provide a range of advice to their local businesses and initiate educational activities where appropriate. There is a concern that the extensive guidance/educational documents currently provided by the OFT (e.g. on debt collection/distance selling) will not be able to be reproduced as necessary under the new proposals. The OFT guidance documents are of particular value as they provide practical guidance in a detailed way.

Current sources of educational materials provided by TSI come at a cost to LATSS and are often only a basic outline of the legislation rather than offering in-depth guidance for either enforcers or specific businesses. Consideration needs to be given to inconsistencies which may evolve if all such guidance comes at a price and is not accessible to all. It would therefore be helpful if funding could be transferred from the OFT to TSI to support this function

**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?**

## **Questions 6 – 11**

The current system for approving codes by the OFT has been shown to be both lengthy and expensive. As a result the take-up by some sectors has been patchy. Any replacement system needs to be more accessible and timely.

It is possible that LATSS could be more closely involved in code certification by use of the Primary Authority concept but there is the need for some central guidance as to the necessary content of a code.

Consideration should be given to the success of LATSS assured trader schemes and the brand strength of Trading Standards. Many of these local schemes have been well received by consumers and businesses and, appear to be viewed with a level of trust that the national codes have sometimes failed to emulate.

### **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 vision suggested would save money. The information that will be available to the Citizens' Advice Service through their current system and as of April 2012 the Consumer Direct intelligence information database, would enable the service to provide direction to sectoral advocates for decision-making and topic analysis.

### **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 regulated industries appear to provide all the essential requirements.

### **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?**

There will undoubtedly be further pressure on consumer bodies to reduce budgets. Bringing the advocacy role of Consumer Focus and other sectoral advocacy under the Citizens' Advice umbrella would, in the long run, reduce costs and provide more support for these services with budget pressures.

### **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 are not best placed to offer a view on this issue

### **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?**

Option (a) is preferable, transferring the power to require information from Consumer Focus to a regulated industries unit in Citizens' Advice. Whilst we understand the concerns that this would amount to the transfer of a public function to a private charitable organisation, other public functions would similarly transfer and so it would make sense

that Citizens' Advice should be fully-equipped to carry out its functions. However, it is very important that the unit should be accountable to Parliament.

**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 redress schemes in place, particularly the Financial Ombudsman's Service, work very well and provide an excellent service to consumers. The schemes in place cover sectors of particular importance and in which large firms operate, and this is one of the reasons that the schemes have worked so well. Providing this type of service in other sectors may not work as well because smaller companies may not have the funding available to support such a scheme and the administration and setup costs involved in setting up redress schemes involving a large number of businesses could be excessive. With the responsibility of Consumer Direct transferring to the Citizens Advice Service, it may be more appropriate to analyse the intelligence received over the next few years to consider which other sectors are causing significant problems and at this stage consider whether establishing a redress scheme would be appropriate.

**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?**

We are not best placed to offer a view on this issue

**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 are not best placed to offer a view on this issue

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

Option 3 offers the best method of helping consumers and businesses, if it is combined with the necessary funding arrangements to undertake the work required..

LATSS are able to provide numerous examples of consumer protection work carried out that have had a regional or national impact. Local examples include: Home Authority business support; supply of fake identification cards over the internet; supply of counterfeit goods; breaches of distance selling legislation; action against rogue traders targeting vulnerable consumers; unfair contract terms; work at Ellesmere Port docks and; the support offered to legitimate traders who comply with the law but face unfair competition from those who do not.

Option 3 will enable the local service to set its own priorities whilst continuing to work regionally and nationally to meet the needs of consumers and businesses.

**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 Trading Standards Policy Board (TSPB) will be the most crucial element in ensuring that the changes to enforcement work effectively.

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.

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.

We envisage that the TSPB would direct the work currently done regionally/nationally by councils and 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.

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 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*

Clear political accountability and oversight is crucial. We believe that this role should be similar to an oversight and scrutiny role within local authorities, 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.

*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. However no matter which organisation provides this service, all spending decisions would come directly from the TSPB.

*Membership*

Heads of trading standards must be responsible for the operational governance and oversight of the project.

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. Given the current financial constraints, it would be appropriate for funding to be available for this regional co-ordination to ensure the necessary engagement across the range of Local authorities who will need to be involved for the TSPB to work effectively. In addition we would expect there to be representation from ACTSO, WHoTS, SCOTSS and TSI on that Board plus other representatives such as BIS.

Others 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 board.

The TSPB will need a Chairman, who will play a pivotal role. This person could be elected from its members 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 significant experience of running Trading Standards Services. Depending on the amount of time required to fulfil this role, it may be appropriate for funds to be made available to fund a Chairman role. If the Chairman was an existing head of trading standards then funds would be provided to their employing authority.

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, for example via ACTSO or TSI or some other arrangements.

#### *Relationship to existing Trading Standards Policy Forum (TSPF)*

The TSPB would be a separate but linked group to the existing TSPF. We believe it is key that the business and decisions of TSPB are kept separate from the broader policy making decisions of the TSPF as the arrangements and accountabilities will be different.

#### *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 the 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 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*

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 associate with the functions.

Based on our assumptions at the moment 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 to others.

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 it is crucial that any region or council that bids for aspects of the work are absolutely confident they can deliver.

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.

In terms of the current Scambusters and illegal money lending teams, we would expect these to continue using the same delivery mechanisms but under the governance of the TSPB rather than direct governance by BIS.

#### *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 it is desirable 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.

#### *Towards a More Coherent Approach to Regulation*

Finally, whilst we very much welcome the Government's proposals to simplify the consumer landscape, we believe that there is also (further) scope to move towards a form of more coherent regulation, but that this should only be done by considering the system as a whole, rather than sections in isolation.

**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?**

**Questions 22 – 24**

We would not prefer to maintain the status quo in terms of powers and responsibilities. If the status quo is maintained, the identified issues in relation to the current system would continue and the creation of an additional level of bureaucracy would be detrimental to the desire to create national and regional infrastructure within Trading Standards.

In order to effect change and enable Trading Standards to effective cross-boundary enforcement there is a need to invest in the Trading Standards infrastructure. The leadership role envisaged by the Government relies on both investment and a clear delineation of the powers and responsibilities of the organisations involved.

**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?**

**Questions 25 – 29**

There are obvious benefits to the CMA retaining a consumer enforcement role for cases where a potential breach of consumer law is connected to a structural market problem. Such cases could include bank charges, drip pricing by airlines and Home Collected credit. In such instances there is some element of competition but, the major driver is consumer protection. The expertise and knowledge required to undertake these studies would be difficult to replicate in Trading Standards or Citizens Advice.

Citizens Advice have undertaken a number of market studies on consumer issues. However, these are not strictly analogous to those consumer based studies undertaken by the OFT – it is estimated that 20% of the OFT reports fall into this category. The Citizens Advice service will need to be able to build expertise and capacity in order to replicate the analytical approach adopted successfully by the OFT reports.

In determining who undertakes any action resulting from market studies there is a need for a good working relationship between The TSPB , CMA and Citizens Advice.

Intelligence received from other parties will be vital in setting priorities for each of these but, we do not believe that there should be a duty on the TSPB to take enforcement action on every issue passed from the CMA to the TSPB – rather this should be a discretionary decision taken by the TSPB.

**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?**

#### **Questions 30-31**

We believe that a collaborative approach is essential and the Government's suggestions represent a sensible approach. Funding to address potential enforcement or advocacy gaps would be helpful, provided the decision mechanism is transparent but not overly bureaucratic.

**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?**

Given that one of the two principal brands in the new consumer landscape will be Trading Standards, on the basis that it is already a 'trusted brand', it makes sense to build on this position. Trading Standards Services take a number of prosecutions, including some very high and challenging profile cases, and, although it is a relatively new Council, Cheshire West and Chester already has a strong record and a reputation for tackling difficult cases. For example, it prosecuted a case involving the national and international supply of fake identity cards, believed to be the first in the country, and has been at the forefront of tackling retailers involved in selling so-called 'legal highs'. For these reasons, we believe that the brand would have deterrent value.

However, given potential future developments (e.g. the possible mutualisation of regulatory services in certain areas), we are not sure that the 'local authority' element of the brand is appropriate or 'future-proof'.

**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 an appropriate home, but there are some concerns about (current and) future charging arrangements, and it would be helpful if funding could be transferred from the OFT to TSI to support the guidance and training function. Current TSI information is

often supplied at a cost and it is fundamental to consistent enforcement that any guidance to enforcement authorities should be provided free of charge of at very low cost

**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, the TSI would appear to be the most appropriate home for these 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?**

We don't believe that the requirement for *formal* direction by a central body needs to be retained. However, this area does still need to be co-ordinated and decisions recorded to avoid duplication of enforcement activity. The role of centrally recording this information could potentially fall within the remit of the TSPB who will already be co-ordinating national and regional enforcement activity.

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

We have no strong view on this issue.

**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?**

**Questions 37-38**

We agree with both proposals.

**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 think that a lead local authority or group of local authorities could take on these roles.

**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 they should go ahead in April 2013

## Children's Commissioner for Wales



## Background on the Children's Commissioner for Wales

The Children's Commissioner for Wales is an independent children's rights institution established in 2001. The Commissioner's principal aim is to safeguard and promote the rights and welfare of children.<sup>1</sup> In exercising his functions, the Commissioner uses the United Nations Convention on the Rights of the Child (UNCRC) as his foundation.<sup>2</sup> The Commissioner's remit covers all areas of the devolved powers of the National Assembly for Wales insofar as they affect children's rights and welfare. He may also make representations to the National Assembly for Wales about any matter affecting the rights and welfare of children in Wales.<sup>3</sup>

The UN Convention on the Rights of the Child (UNCRC) is an international human rights treaty that applies to all children and young people aged 18 and under. It is the most widely ratified international human rights instrument and gives children and young people a wide range of civil, political, economic, social and cultural rights which State Parties to the Convention are expected to implement. The UK Government ratified the convention in 1991 and in doing so committed to bringing all domestic legislation and guidance into line with the Convention. The Welsh Government has adopted this Convention as the basis for all its policy development in relation to children and young people and recently embedded its commitment in domestic legislation for the first time in the UK via the Rights on Children and Young Persons (Wales) Measure 2011.

In 2004, the Welsh Assembly Government adopted the UNCRC as the basis of all policy making for children.

<sup>1</sup> Section 72A Care Standards Act 2000

<sup>2</sup> Regulation 22 Children's Commissioner for Wales Regulations 2001

<sup>3</sup> Section 75A (1) Care Standards Act 2000



## The Children's Commissioner for Wales' response to the consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement – Empowering and Protecting Consumers

Our focus within this consultation is on the rights and welfare of children and young people. We have not responded to all questions within the consultation document but instead noted general comments relevant to questions 14, 15 and 20.

### General comments

The Welsh Government sees children and young people as rights holders and states clearly that:

*"Children and young people should be seen as citizens, with rights and opinions to be taken into account now. They are not a species apart, to be alternately demonised and sentimentalised, nor trainee adults who do not yet have a full place in society"<sup>4</sup>*

The UNCRC affirms that children, because of their vulnerability, need special care and attention. Moreover, the convention reaffirms the need for legal and other protection. Consumer Focus Wales, through its Wales-based governance mechanisms, has added value to the national commitment to children's rights by protecting and upholding children and young people's consumer rights as **full citizens** of Wales.

In particular, we have welcomed the work it has undertaken in areas where the Children's Commissioner for Wales' statutory remit may be restrictive.

<sup>4</sup> Welsh Assembly Government (2004) Children and Young People: Rights to Action. p.4



## Contribution made by Consumer Focus Wales

We value Consumer Focus Wales' contribution to the policy landscape in Wales.

The statutory functions pertaining to Wales in the Consumer Estate Agents and Redress Act 2007 are comprehensive and valued. The general power of investigation to look at any issue which may affect consumers has been used through representative and comprehensive research leading to positive outcomes.

An important element of Consumer Focus' work is that it does not depend on self-referral. Its Welsh population engagement and analysis has enabled it to undertake work in relation to the most vulnerable groups in Wales, groups who traditionally feel they are or are unable to access support and redress mechanisms. One of these vulnerable groups effectively represented by Consumer Focus Wales has been children and young people.

We respect the way in which Consumer Focus Wales has instigated pieces of work that are relevant to children's rights in Wales. These include work on food hygiene in school, fuel poverty as well as the extent and nature of financial exclusion experienced by care leavers in Wales and the non-compliance of public service obligations to this vulnerable group.

## Remit

It is important that consumer protection is afforded in all areas of children and young people's lives and that we do not see this protection restricted to particular sectors or industries.

The Consumer, Estate Agents and Redress Act 2007 refers to the remit of Consumer Focus extending across levels various levels of government and public services. The fact that the current remit allows for flexibility and



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responsiveness is evident in the way in which Consumer Focus Wales has initiated its statutory functions. Its work in relation to children and young people living in fuel poverty, 'Keeping Warm This Winter: Hearing the voices of children and young people in tackling fuel poverty in Wales', ensured that the participation and service aspects of poverty for children and young people in difficult financial circumstances were not overlooked.

We have concerns that proposals restricting this remit, for whichever body is envisaged, will see important areas of consumer issues disappear. In particular, we are concerned that as a consequence of these proposals, important areas of protection and advocacy in a child or young person's life may not be covered, leading to a detrimental impact on children's rights.

## Options

It is pleasing to see the Welsh Government state its aspiration to see the functions of Consumer Focus Wales retained in Wales, as well as the introduction of a National Trading Standards Service for Wales.

We note the potential within the Public Bodies Bill to be amended, devolving functional arrangements to the Welsh Government ensuring a more coherent approach to citizen advocacy in Wales.

The fact that much of the consumer protection legislation is reserved does not necessarily negate the opportunity for Welsh Ministers to establish Welsh specific structures, responsive to Welsh needs. The Equality Act 2010 is an example in case, where UK legislation included provisions for Welsh Ministers to initiate Welsh specific duties on public bodies in Wales which better reflected the needs and aspirations of the Welsh population.

It is our opinion that the funding and functions of Consumer Focus Wales should be transferred from the UK Government to Welsh Ministers. We believe the Public Bodies Bill should be amended to provide the flexibility to



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create a new body in Wales, following consultation. The new body should be accountable to the National Assembly for Wales. This will ensure effective scrutiny by the legislature of the issues facing people in Wales – in the form of reports by the new body – and to provide proper accountability to ensure the structure's efficiency and value for money.

## Conclusion

Within the context of the commitment to the UNCRC as well as the citizen-centered approach to public service delivery in Wales, we fully endorse the necessity for a strong consumer body for Wales, grounded in Wales, to champion the voice of consumers. This should be done through advocacy of the most vulnerable in society, facilitated by robust research and participation within a Welsh policy and legislative context.

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**This response is not confidential**



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## Citizens Advice and CAS

# Evidence



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## Empowering and protecting consumers

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

### Response from Citizens Advice and Citizens Advice Scotland

September 2011



## **1. Introduction**

- 1.1 Citizens Advice and Citizens Advice Scotland welcome the Government's consultation on reform of the consumer landscape.
- 1.2 We wish to ensure that the outcome provides consumers with access to the best possible information and high quality individual advice about their rights; that consumers have powerful advocates representing their views to the Government, industry and regulators; and that there are strong enforcement and consumer protection agencies ensuring fair and effective markets, basing this work wherever possible on evidence that our organisations obtain from providing services to consumers.
- 1.3 The Government has proposed some significant reforms to the consumer landscape so that in future the organisations which have the brief to look after and advocate for the consumer interest are those which are best known and trusted by consumers, are evidence based and have their feet firmly on the ground.
- 1.4 We agree that consumer advocates should have strong support from consumers, and citizens, if they are to have the right to speak on their behalf to influence businesses, regulators and governments.
- 1.5 To earn this support and trust, consumer advocates need to be totally rooted in and in touch with the consumer community; passionate about getting the best deal for consumers, whoever they are and whatever the issue, and competent and creative in arguing for and securing solutions. Consumer advocates should not be remote from consumers and they should support and enable consumers to advocate on their own behalf if they can and wish to do so.
- 1.6 We also agree that there is a need for change to the consumer landscape at this time.
- 1.7 Many consumers today feel extremely uncertain and their confidence has declined in the past year. For example the GfK NOP monthly consumer confidence index reports the overall consumer confidence index, at -31, is now at the lowest it has been since the downturn in 2008/09 and the early months of the 1990s.
- 1.8 Research by Which? is finding that consumers are justifiably more worried about energy and food prices than ever before. And public spending cuts and future tax levels aren't too far behind. Which? also finds that over three in four adults have reduced their spending in the last few months – entertainment, holidays and clothing were most likely to get cut.
- 1.9 In fact, the current situation has caused some people to delay major life changes, with 11% holding back on changing job and 9% on moving house.
- 1.10 For some consumers these financial pressures are, frankly, terrifying - with 5.5 million households now living in fuel poverty; over 4 million households in England, 777,000 households in Scotland and 332,000 households in Wales.
- 1.11 Other consumers are worried about a range of issues from the rising costs of care to the declining value of their pension investments or the lack of local public transport. Some consumers are totally fed up with "choice overload" and overly complex product offers from a range of markets and other consumers have no choices whatsoever.

- 1.12 And whilst consumers feel the pound in their pocket is just not punching at the same weight as it did in the past they are also paying for an estimated £6.6bn of detriment each year caused by unfair commercial practices, such as pressure selling, and scams.
- 1.13 Not surprising then that consumers told the Citizens Advice service last year that tackling scams and rip offs should be a high priority for the Government's comprehensive spending review (CSR) and in a current survey by the Citizens Advice service consumers are saying the scams they are most concerned about are cold calls from debt management companies and unethical energy selling practices.
- 1.14 Low consumer confidence means that many consumers are just not using their market power. The 2009 Consumer Focus report, Streetwise, highlighted that three in four consumers feel big companies treat them as numbers rather than people and three in five think large companies would willingly mislead them to make money. As a result:
- 3 in 4 have never used the internet to leave feedback about a company
  - 1 in 4 of the most wealthy consumers have never taken their business elsewhere due to being treated badly
  - half of the poorest consumers haven't either, and those aged 15 – 24 years old are even less likely to
  - 2 in 5 have not changed supplier after being treated badly
  - 3 in 5 have not made a complaint about bad customer service
  - 2 in 3 have still gone on to buy something even after they heard of others' bad experiences.
- 1.15 Over the horizon every economically regulated market from energy and postal services to water and public transport is throwing up long term challenges about availability and level of services, the cost and quality - significant debates and decisions being taken now about the future financing and operation of those markets will affect consumers, communities and our economies in decades to come. The consumer voice should be heard loudly in those discussions.
- 1.16 And their voice should be heard loudly in Wales and Scotland as well as across Great Britain.

## ***Consumers in Wales***

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- 1.17 Consumers in Wales are bracing themselves for difficult times. They need an effective advocate to represent them and help them get a fair deal from services such as energy and postal markets, as well as goods, justice and redress, public services and welfare, and debt and personal finance. They need an advocate who understands the issues that they are unique in facing.
- 1.18 With a relatively high dependency on the public sector for employment – around 45 per cent of Wales' graduates work in the public sector compared with only 15 per cent of those in London – planned public spending cuts are not surprisingly making consumers in Wales despondent. Beaufort Research's Wales Omnibus Survey, released in late 2010, showed that one in three people in paid work were worried about losing their jobs and 52 per cent said they believed the general economic condition of Wales would worsen over the coming 12 months.
- 1.19 Consumers in Wales are disproportionately affected by health issues, which often prevent them working even when jobs are available. One in three report having a long-term illness

which affects their daily lives, and just over one in five people of working age have a limiting long-term illness. Health problems can cause poverty and increase consumers' costs of living.

- 1.20 The majority of those who are out of work rely on benefits to survive, meaning Welsh consumers will be particularly exposed to the impact of proposed changes to the welfare system; right at the time they are facing rising food and fuel costs.
- 1.21 It comes as no shock to Citizens Advice that a survey carried out by Oxfam Cymru, as part of a global study, suggested that 39 per cent of people in Wales had changed their eating habits in the last two years because of increased food prices and just 60 per cent reported having enough to eat on a daily basis. A growing number of foodbanks have opened in Wales to address the need for emergency food supplies.
- 1.22 Fuel poverty has long been acknowledged as a major issue in Wales.
- 1.23 According to the Wales Fuel Poverty Coalition, nearly a quarter of households in Wales experience fuel poverty. That is over 700,000 people based on the average household size. Recent announcements of further price hikes for gas and electricity have therefore given rise to great consumer concern.
- 1.24 The Consumer Council for Water in Wales has highlighted the issue of increasing water rates recently because one in six customers already say they cannot afford their bills. In September last year, the Council also pointed out that complaints to water companies in Wales had increased for the fifth year in a row, while on average across England and Wales there had been a 17 per cent decrease in the number of complaints.
- 1.25 Consumers in Wales are quite simply finding it more and more difficult to balance their income and outgoings. YouGov's Debt Tracker survey found that, while six out of ten in the South of England 'never' or 'hardly ever' struggle until pay day, in Wales those who do not struggle are the minority at just four in ten. Citizens Advice statistics for 2010/11 also show that debt enquiries in Wales have increased by 10 per cent on the previous year, whilst showing a slight decrease in England. Statistics from the Insolvency Service corroborate this trend, with Wales having a higher rate of personal insolvencies than England, at 31.8 per 10,000 of the adult population compared to 30.4.

## ***Consumers in Scotland***

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- 1.26 The issues facing consumers in Scotland are similar in lots of respects – however, their impact can be felt differently due to the distinct socio-economic and geographic make up of Scotland. The rurality, remoteness and climate affecting many areas of Scotland can mean that consumers in these localities face choice and access issues in the energy, communication and retail sectors that don't affect the rest of the UK in quite the same way. Almost a third of Scottish households are in fuel poverty, compared with a fifth throughout the rest of the UK. In addition, the average household spend on electricity and gas has doubled in the last five years, impacting harshly on low income consumers. Many Scottish householders aren't even on the national grid.
- 1.27 Scotland has six of the top 10 UK towns most in debt, and personal insolvency is rising. Transport and access to goods and services is difficult for many Scottish consumers. An eighth of remote rural households have no car access, and only 14% of rural households have access to cable broadband. A third of all Scottish households cannot access the internet at

all, rising to more than half for those on low incomes. And rising prices are biting hard on particular groups in Scotland - last year, one in every eight people said they weren't coping with their finances, but this increases to almost a third of single parents, and just over a fifth of both young people and those living in relatively deprived areas.

- 1.28 Worries about the future also impact disproportionately in Scotland. Although Scotland has a slightly higher employment rate than the rest of the UK (71.9% c.f. 70.8% in England) just under a quarter of the workforce are employed in the public sector, and these jobs are reducing – they decreased by over 8,000 in the last year.
- 1.29 The complexities of consumer choice and choosing the best deal can also raise challenges for Scottish people. While coping generally with their day to day lives, nevertheless around one quarter face challenges and constrained opportunities due to low literacy levels, and within that quarter, there is a further 4% who face serious problems. The average reading age for Scottish adults is estimated to be somewhere between ages 9 and 11.
- 1.30 All of this impacts on consumer confidence and the need for strong Scottish advocacy representing Scottish interests because of the structure of the present institutional framework for supporting and representing consumers across Great Britain.

## ***Current problems***

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- 1.31 For example, the Consumer Direct service is used by more than a million consumers every year but its profile with the public is too low for such an important service which not only gives advice but feeds vital evidence to consumer protection enforcement officers. And its operations have not delivered an empowering style, or been particularly well integrated with the work of other information and advice providers.
- 1.32 A number of consumer representative bodies exist to promote the consumer interest and conduct research, and a range of organisations are attempting to improve consumer education working locally and nationally. Literally hundreds of organisations are working today to advocate for consumers across our economy, from local consumer groups and fuel poverty forums to national organisations like Citizens Advice, Citizens Advice Cymru, Citizens Advice Scotland, Which? and Consumer Focus.
- 1.33 But whilst this multiplicity of organisations fosters innovation in some respects this also means that resources are locked away in too many individual standalone organisations and the potential benefits of sharing resources, from evidence and ideas to skills and back office functions, are not being realised as quickly as they are across the public sector. Too many organisations are working separately for and on behalf of consumers, with no overall clear leadership that consumers and citizens know and trust.
- 1.34 This also means that consumers are faced by a multiplicity of different information sources and websites and places to go for advice.
- 1.35 Another impact is that evidence about consumer experiences is distributed too widely and the 'hand off' between the different agencies creates inefficiencies, bureaucracy and gives consumers the impression that, apart from themselves, no-one else can or will 'own' solving consumer problems from end to end.
- 1.36 Consumer problems can have knock on effects for individuals, for example, people experiencing problems paying their fuel bills may also have other problems linked to personal

finance, including rent arrears. Services which can assist with and advocate in relation to all the interlinked problems consumers have will be more efficient for the consumer.

1.37 The dissipation of consumer support is also confusing for businesses. And it allows those businesses who do not treat consumers fairly to fall through the cracks in the system, undermining good businesses in the process.

1.38 Addressing these issues is challenging – but important.

## **A new approach is needed**

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1.39 We need to find smarter approaches in future which build on the strengths of our present system and what we know works for consumers.

1.40 The approach should harness all the available resource – whether from the public or private sector and use intelligence and evidence more effectively on behalf of consumers.

1.41 A new approach should provide leadership, co-ordination, be based on partnership and really inspire, support and empower consumers so that in future they can and do take action themselves and in communities, to prevent and resolve consumer problems and to lighten the burden to respond that is on enforcement bodies.

**1.42 As the best known and trusted information, advice giving and campaigning organisations in Great Britain, the Citizens Advice service, working together with Which?, is uniquely placed to work with all governments across the UK, regulators and businesses to take forward a new approach to consumer advocacy and empowerment.**

1.43 We wish to come together in partnership because there is now a significant opportunity for us to do more and better for consumers than we do today.

1.44 We also realize that we cannot do that all ourselves and partnership is key to effective delivery.

1.45 Our offer is to help to create a new approach to consumer advocacy, which plays to the strengths of Citizens Advice and Citizens Advice Scotland working together jointly with Which?.

1.46 We believe that authentic, dynamic, responsive and empowering action for consumers is more efficiently and effectively delivered in an integrated way – learning from information, advice and education activities can be ploughed quickly into advocacy and policy feedback and information, education and advice strategies can be informed by evidence and policy.

1.47 If Consumer Focus is abolished then, subject to the transfer of appropriate functions and resources to the Citizens Advice service and Which?, we will work with governments and regulators and other consumer groups to deliver a more effective system of consumer advocacy across Great Britain.

1.48 We are already well on the path to this partnership and shifting the consumer landscape towards the consumer.

1.49 The Citizens Advice service and Which? have strong and complementary track records of delivering information, advice and advocacy for consumers and are uniquely placed to help empower consumers in a new way.

- 1.50 Our shared vision is to create, in partnership, a comprehensive, accessible, dynamic and responsive consumer empowerment and advocacy system across Great Britain which brings together the information, advice, education and advocacy activities of the Citizens Advice service and Which?.
- 1.51 We have reached agreement in principle on how we might do this by playing to the different but complementary strengths and experiences of our organisations. Our approach preserves the continuing independence of Which? and harnesses the expertise, reach and holistic perspective of Citizens Advice and Citizens Advice Scotland.
- 1.52 We believe that consumers will benefit from our proposed partnership because working together we can deliver:
- Greater cost efficiencies in the production and reach of consumer rights information.
  - More cost effective individual consumer rights legal advice.
  - More effective gathering and use of evidence, drawn directly from millions of consumers being helped at the front line of casework and consumer contact by our organisations, online, over the phone and face to face.
  - A more holistic perspective on consumer issues, approaching and finding solutions to these with a detailed understanding of the pressures facing consumers in both consumer and non-consumer areas.
  - More powerful and dedicated resources for representing consumers in regulated markets such as energy and post.
  - Enhanced policy and advocacy collaboration, ensuring that all consumer markets are effectively covered by at least one of our organisations and avoiding duplication.
  - A stronger forward thinking capability to identify the big issues on the horizon, enhanced through constructive collaboration, mutual challenge and partnership.
- 1.53 We are already working together on the content of information for consumers about their rights, to ensure the Government does not pay for or duplicate information already freely available. We will develop links online and offline to make sure consumers freely access the best information they can. And we are already testing in Wales how the Which? Legal Service can work closely with Citizens Advice advisers to provide legal advice support countrywide. This is just the start.
- 1.54 In relation to sectoral advocacy, we believe that this work should be delivered through a strategic partnership where:
- Which? creates a specialist unit with appropriate governance arrangements responsible for technical and economic analysis and insight into regulated sectors, focusing on providing a detailed advocacy service to regulators, with the ability to use existing resources to complement this work.
  - Citizens Advice and Citizens Advice Scotland would take on responsibility for wider and complementary advocacy in regulated sectors and beyond, providing insight based on their local networks and casework, enhanced by the ability to use existing resources to complement this work, and the creation of local consumer empowerment and advocacy capabilities.
  - Which? takes on responsibility for international advocacy.
  - Data, insight and strategic planning are shared between organisations to ensure that advocacy perspectives are complementary and public resource is not spent on duplicating work.
  - Other functions in these sectors, such as investigations, are carried out by Which?, Citizens Advice and Citizens Advice Scotland, as required, overseen by a strategic partnership.

- 1.55 Simplifying the landscape for consumers in this way will result in a powerful evidence base to support advocacy and action with and on behalf of consumers.
- 1.56 We intend the changes to create a new impetus for other organisations that are on the side of the consumer to work together and with us. None of us has a monopoly on representing the consumer and campaigning for and getting consumers a better deal – we all have impressive track records to learn from and on which to build the future.
- 1.57 With persistently high levels of consumer detriment, a challenging economic environment and significant reductions in public expenditure affecting the level and nature of public services – including consumer law enforcement – it is essential that, together, we work to deliver the most efficient and effective system to look after the interests of consumers.
- 1.58 It is a challenging proposition because it brings major changes to our organisations but we are ready to set aside competition between our brands because the result will be a more powerful offer for consumers.
- 1.59 Our proposals for delivery in each area where action is required are outlined in responses to this consultation on the following issues:

- **Information, advice and education**
- **Advocacy**
- **Enforcement**

We also comment on the proposals for future development of self-regulation.

- 1.60 The changes proposed would need to be backed up by a good legislative framework for consumer rights, simple and low cost mechanisms for obtaining consumer redress; and a sound framework for public enforcement which can and does act promptly when needed. The Citizens Advice service would therefore urge the government to move beyond present moves to reform the consumer landscape and simplify consumer law and look at ways to really improve and enhance consumer rights in future. Such improvements could include enabling economic and market regulators to order companies who breach regulation to pay compensation to consumers affected either instead of or additional to any fines and enabling consumers to take action collectively to secure redress.

## **2. Information, Advice and Education**

### ***The proposal***

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- 2.1 The Government proposes that the Citizens Advice service should in future have responsibility for publicly-funded national advice and education of consumers, working with other organisations as needed.
- 2.2 The Citizens Advice service gives individual advice to 2.5m people each year, concerning 7.5 m problems, over 700,000 of which primarily concern consumer issues. One million people a month visit our <http://www.adviceguide.org.uk> website for information to help them resolve their problems.
- 2.3 Citizens Advice and Citizens Advice Scotland have been asked to take on responsibility for the provision of consumer advice and information (currently provided by the Office of Fair Trading via Consumer Direct) in a move by the Government to streamline the consumer landscape. Responsibility will transfer on 31 March 2012.
- 2.4 This proposal is made because the Citizens Advice service enjoys high levels of awareness and trust among the public. Through its network of local Citizens Advice Bureaux across the country it has access to unique and detailed local information about the issues causing concern for consumers. Rationalising consumer advice and education in the Citizens Advice service therefore has the potential to reduce costs, ensure that activities are targeted on key areas of concern, and provide a more accessible and recognised point of access for citizens.
- 2.5 Our approach will be based on a clear vision that puts the needs and expectations of consumers and other clients first, while providing value for money.
- 2.6 The Government's transfer of responsibility for consumer advice, information and education is not purely about cost savings – it is about making the consumer protection system easier to understand and ultimately more effective. In order for consumers to feel the benefits of the transfer, consumer advice, information and education must therefore be embedded into the wider Citizens Advice service. Beyond 2012, when we first take on responsibility for replacing the Consumer Direct service, we have a programme of work underway to open up new channels of advice by 2014, increasing the options available to clients and growing our total capacity.

## **Consumer information and advice**

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- 2.7 Today our clients can access information and advice online, by phone or face to-face. Face-to-face is by far the most mature 'channel' for the delivery of advice, though face-to-face contact is often preceded by a phone call; sometimes direct to a bureau and other times to our expanding telephone service, Adviceline, in England and Wales which is delivered through a virtual call centre that connects together different sites including bureaux and a small number of physical call centres. Adviceline covers the whole of Wales and is now rolling out in England. At the end of the first full year of operation in Wales Adviceline dealt with almost 2.5 times as many calls than bureaux in Wales answered collectively the previous year. In Scotland Citizens Advice Direct already delivers telephone advice on a variety of topics to callers from across Scotland.
- 2.8 Comprehensive information is also provided online and used widely, although clients do have to use a different channel if they require help to interpret or apply that information.
- 2.9 In 2010 Citizens Advice set out a four year strategy outlining how we will help more people to solve their problems and ensure that those in greatest need can access our services. By 2014 electronic information and advice will have grown from self-help information to include email advice and instant messaging. Our clients will be able to complete the full advice journey through any channel of their choice and they will be able to move seamlessly between channels at any point in the process, as their needs or preferences change:
- Comprehensive information will be available from us 24/7 via the internet for consumers to find information and answers they need on a wide range of consumer topics.
  - The information will include a wide range of web-based decision trees and paths to action – helping consumers to find the right advice on their question or problem and then take action, on the web, to make a choice or seek redress.
  - By capturing user data and using the features of a new Citizens Advice customer relationship management system we will explore how we can use this data to help consumers more, for example by alerting them just in time to new information that would be useful to them based on what they have told us about themselves and their needs and aspirations.
  - The website, and other education, advice and support services will be supported by strong independent, 'on your side' campaigning to get messages, warnings, alerts and advice across to consumers through local and national media – we will build on an already strong media presence to deliver expert advice and briefing for consumers using existing communications channels rather than high cost PR and paid for advertising.
  - Consumers could ideally be able to report problems very easily to regulators via the website, as well as make complaints to companies following tips and advice on the site.
  - Personalised advice will be delivered to individuals over the telephone or, if needed, face to face in every community.
  - Advice will as now continue to be delivered by a combination of volunteer and paid advisers, although the mix of advisers varies from bureau to bureau across Great Britain according to resources available. Citizens Advice bureau advisers already support individuals to resolve their problems, if they need that help. For example vulnerable consumers in particular may need direct assistance to realise their rights and secure fair treatment by service providers by making calls and writing letters on their behalf and supporting them through a formal redress process.

- Vulnerable consumers who need extra help to deal with energy debt and disconnection problems will continue to be able to access services equivalent to those of the Consumer Focus 'extra help' unit to assist vulnerable consumers liable to energy disconnections.
- 2.10 We will work in partnership with a range of organisations, especially Which?, on the content of consumer rights information, to ensure the Government does not pay for or duplicate information already freely available. We will develop links online and offline to make sure consumers freely access the best information they can. And we are already testing in Wales how the Which? Legal Service can work closely with Citizens Advice advisers to provide legal advice support countrywide.
- 2.11 Our immediate priority is matching and where possible bettering the current provision of consumer advice from 31 March 2012. We must do this in a way that is consistent with our commitment to improving access to advice and the client experience.
- 2.12 We are already well on our way to having a system in place that is capable of:
- dealing with up to 1.5 million enquiries a year
  - handling the current range of consumer enquiries (general consumer, post, energy)
  - meeting the data requirements of stakeholders including the Office of Fair Trading, local authority Trading Standards services and Consumer Focus
  - matching current performance levels
  - referring on to other organisations for second tier consumer support, for example Trading Standards or the Extra Help Unit
  - referring on within the service for those clients who have broader issues
  - generating reports for contract management purposes.
- 2.13 As a minimum, the service will:
- be delivered in line with Citizens Advice service values
  - meet stakeholders' and funders' needs and expectations (including data requirements and the ability to identify and refer details of cases where a crime has potentially been committed)
  - provide accurate and clear answers to clients
  - solve consumer problems with the minimum of passing on
  - identify other problems which might compound a consumer problem, or vice versa
  - be accessible to diverse client groups including Welsh speakers
  - refer the client to whatever channel is most appropriate to their need
  - identify the most vulnerable clients for whom face-to-face contact or further assistance from referral partners such as Trading Standards is essential
  - require clients to provide their data only once.
- 2.14 The way we deliver this service will:
- draw on the expertise of Consumer Direct
  - draw on the learning of the Citizens Advice service Adviceline projects and other phone-based gateway services
  - provide demonstrable value for money
  - improve access for clients.

- 2.15 Depending on the nature of the call, those whose problems cannot be resolved quickly and simply will be transferred to specialist consumer advice and support services, for example, Trading Standards provided services or the Extra Help Unit in the case of vulnerable consumers or those at risk of disconnection from energy supplies.
- 2.16 Joined-up working will be taking place between the Citizens Advice service, local bureaux and local Trading Standards services, in many cases building on existing relationships. This work will be aimed at identifying the need for enforcement action from face-to-face enquiries, raising awareness of local scams, ensuring that consumers are well informed before making a purchase, and fulfilling the further advice needs of those who have called with a consumer issue.
- 2.17 In addition, we are enhancing the consumer content on both our public self-help website, Adviceguide, and our online information system for advisers, Advisernet. We are also intending to work more closely with Trading Standards services to ensure that our advisers and systems add value to their work.
- 2.18 To that end, a working group has been established to help guide the implementation of the consumer advice service developments with representation from:

- Citizens Advice and Citizens Advice Scotland
- Trading Standards Institute
- Association of Chief Trading Standards Officers
- Wales Heads of Trading Standards
- Scotland Heads of Trading Standards
- Office of Fair Trading.

Its purpose is to enable the Citizens Advice service and the Trading Standards community to work effectively together on the subject of consumer advice, by creating a small forum within which key matters can be discussed and provisional decisions made. The work of the group currently involves:

- Ensuring that the consumer advice service supplier's specification and contract meets the needs of the Trading Standards community.
- Considering how best to review the collection and recording of consumer and trader data.

The group will meet regularly and in line with key events in the transition timetable.

## ***Consumer education***

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- 2.19 The Citizens Advice service would, subject to resources, be pleased to take forward work based on the OFT's responsibilities for co-ordinating and delivering consumer education. We already have a strong track record in delivering community based financial education, particularly for vulnerable and low income consumers. For example, in England and Wales over 250,000 low income consumers were reached by local citizens advice bureau financial education initiatives in 2010/11, covering issues such as finding a better deal for energy or choosing a safe and appropriate savings scheme for Christmas. The Citizens Advice service

website [www.adviceguide.org.uk](http://www.adviceguide.org.uk) includes leaflets and information materials that are accessed by over 1 million people every month.

- 2.20 We believe that consumers need a joined up and holistic problem-solving service which the Citizens Advice service can provide. We see consumer education as a key element of our proposals for delivering an integrated approach to consumer empowerment by providing opportunities for consumers to gain the skills, attitudes, knowledge and understanding necessary to become effective consumers from the same organisation they can rely on for advice and information, and also advocacy on their behalf.
- 2.21 For those with a consumer problem this means the Citizens Advice service will be able to provide them with information on their rights, responsibilities and choices, advice on how to achieve the resolution to problems they have, education to help consumers avoid problems and get fair deals, and advocacy to ensure a fair and robust environment for consumers.
- 2.22 Given that very limited resources are presently allocated to consumer education, these resources must be targeted for maximum impact. We expect a particular focus of our work will be on the needs of vulnerable consumers.
- 2.23 The first step will be to develop a new strategy for this work if it is transferred to the Citizens Advice service.
- 2.24 Our strategy and priorities would be based on an analysis of consumer detriment, informed by statistics and research from consumer advice and information work, survey data and practitioner input. We will also learn from and build on good practice that already exists and work in partnership with others.
- 2.25 The Enterprise Act 2002 gave the Office of Fair Trading (OFT) statutory powers to carry out educational activities. It initially published a national strategy (2004) and established planning and working groups, but in recent years the programme appears to have narrowed. We note that the OFT makes a distinction between “awareness campaigns”, delivered mostly through distribution of publications, which cover consumer rights, rogue traders and scams and “education” delivered through the Skilled to Go programme, which is primarily aimed at consumers in adult literacy or numeracy classes and requires local delivery. We will want to evaluate the current programme and take forward any elements of the current strategy which are suitable.
- 2.26 A lot of good work is carried out by Trading Standards Departments and this is shared and coordinated by the Consumer Education Liaison Group (CELG). It has developed a very useful definition of consumer education which will help to guide our strategy - *Consumer education is about giving people the skills, attitudes, knowledge and understanding necessary to become an effective consumer.*
- 2.27 We will map the consumer education activities happening at a local level run by Trading Standards, citizens advice bureaux or others and to learn the lessons from previous consumer education work by evaluating outcomes.
- 2.28 In addition we believe there is much to learn from the models used to deliver local financial education.
- 2.29 We expect to undertake the following activities to help us develop and implement the strategy:
  - With support from BIS we would organise a national conference to bring together the outcomes of our mapping, stocktake and evaluation of existing consumer education activities to help us consult about and establish a strategic direction, priorities and agree methods of working between partners.
  - A rolling programme of consumer education campaigns would be developed appropriate to all parts of Great Britain which give priority to benefitting vulnerable consumers; link to evidence

of consumer detriment, or risks of consumer detriment and are supported by and enable a range of partners to engage and help deliver.

- Materials will be provided in support of these campaigns, which providers will be able to adapt and brand before local delivery. We will also support local campaigns that have been developed by others, sharing materials across the network of partners. This will include developing the database already established by CELG so that all providers can access quality materials free of charge.
- We will explore establishing a development fund, so that when a provider (trading standards department, citizens advice bureau or other provider) has developed a consumer education programme of merit this can be supported and further developed then added to the database for delivery by others.

## **Delivery methods for consumer education**

- 2.30 There will be a range of delivery methods, ranging from remote (leaflets, online etc) through to face to face. We will target resources for maximum impact.
- 2.31 In the case of scams we know that those people who have been successfully scammed once are targeted again by scammers. To break this cycle we must ensure education materials are effective and are targeted on the right people when they are in touch with those able to help.
- 2.32 A consumer seeking advice and information on a given topic (e.g. they have been subjected to a scam or ripped off by a rogue trader) will be advised about consumer education options. For example, online this might be short films warning of the dangers of doorstep sales. On the phone or face to face this might be tips to avoid the same problem again.
- 2.33 Another key audience is the network of agencies that support vulnerable consumers. A number of projects have demonstrated the value of working with social workers, care agencies, health visitors, the police, post office and others. Professionals in these organisations can be trained to look out for the signs of vulnerable people being targeted (for example noting high volumes of unsolicited mail which could be reduced through registration with the Mail Preference Service). A lot of detriment comes through the mis-selling of mobility aids, and work with the relevant disability charities could provide an important consumer education channel for this group of consumers.

## **Delivery partners**

- 2.34 Delivery will be through a range of skilled partners including trading standards staff, citizens advice bureau staff and volunteers, other charities and independent providers. All of these should be involved as resources permit - in one location there may be a trading standards department with skills, experience and resources to deliver local programmes, in another it might be bureaux that lead. The objective will be to ensure that all resources are utilised in a focussed way, delivered by whoever can achieve maximum impact.

## **Local action to reach consumers**

- 2.35 A key feature of the approach the Citizens Advice service will take is delivery of consumer empowerment, including education and advocacy, at a local level. Local action across England, Wales and Scotland will:
  - create an integrated advice and support community to enable a range of organisations to pool evidence and influence policy makers
  - advocate for and represent consumers' interests locally to policy makers including through campaigns in which consumers play an active part

- campaign collaboratively with other consumer advice organisations on topical issues, providing leadership and resources
  - work closely with Trading Standards departments to ensure effective enforcement of consumer rights
  - provide data to local authorities and policy makers on how people in the community are affected by their policies and practices
  - deliver local media campaigns and communications
  - expose bad practice and give consumers a voice
  - provide supported access to the internet, giving digitally excluded consumers access to price comparison websites and best deals
  - run forums, meetings and events in the local community
  - provide support services to bureaux and other agencies on empowerment and campaigns.
- 2.36 In England and Wales Consumer Empowerment Partnerships (CEPs) would be formed whilst in Scotland a complementary approach, using the same principles, will build on the Citizens Advice Scotland Local Impact Project. The approach of all these initiatives will be to bring together networks of advice givers, educators and campaigners working together to identify issues, pool evidence, support consumers and campaign for improvements. Local impact projects and Consumer Empowerment Partnerships will work to ensure that consumers get advice and information and appropriate education programmes relevant to the local community. Through these local activities people will hear about and report scams and rogue traders, will find opportunities to develop their skills as consumers and will be able to join campaigns which tackle these issues.
- 2.37 The network of local partnerships and impact projects will report results back to Citizens Advice and Citizens Advice Scotland with evidence of emerging issues requiring policy interventions by the advocacy teams who will be aware of emerging issues that require policy interventions. Being part of a large network, these local projects and partnerships will share best practice and collaborate on national campaigns and benefit consumers on a national level as well as in local communities.

### **Governance structure**

- 2.38 To facilitate partnership working and co-ordination we propose to establish a Consumer Empowerment Board, working with the Consumer Education Liaison Group, which will help us to set priorities, plan broad campaigns and arrange for the development of materials to deliver those campaigns. This will feed into the TSPB or equivalent national body for co-ordinating enforcement.
- 2.39 Regional and local groups will set local priorities, responding to the needs of their local communities, the prevalent problems and their level of resources and arrange for the delivery of consumer education programmes by a range of partners working together.

## **Responses to questions 1-5**

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

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2.40 The Citizens Advice service believes that by integrating the service presently provided by Consumer Direct into the Citizens Advice service, which also provides consumer advice and is better known by the public, this will make it easier and simpler for consumers to find consumer information and ultimately that will help make the consumer protection system in Great Britain easier to understand and more effective. Our plans, outlined above, will maintain and develop the service.

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

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2.41 Yes. The Citizens Advice service already has plans in place to take on delivery of a replacement for the Consumer Direct service from April 2012. Supporting the delivery of that large scale telephone advice service handling consumer problems we intend to provide comprehensive information 24/7 via the internet for consumers to find information and answers they need on a wide range of consumer topics. The information will include a wide range of web-based decision trees and paths to action – helping consumers to find the right advice on their question or problem and then take action, on the web, to make a choice or seek redress. This will build on the capabilities and usage of our existing website [www.adviceguide.org.uk](http://www.adviceguide.org.uk) which has 1 million users per month. We are also working in partnership with Which? on the content of information for consumers about their rights, to ensure the Government does not pay for or duplicate information already freely available. We will develop links online and offline to make sure consumers freely access the best information possible.

### **Question 3 Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service?**

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2.42 Yes. The functions carried out by the Extra Help Unit provide vital frontline support for vulnerable consumers, especially consumers facing the risk of disconnection from their energy supplies, or who have already been disconnected. The service is currently delivered by Consumer Focus, pursuant to a statutory function, and operates on the basis that referrals are made to it by the Consumer Direct service. For a number of reasons, including the fact that it is an intensive front line consumer advice and support service, it makes sense to transfer the responsibility for delivering this service to the Citizens Advice service.

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## 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?

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- 2.43 Educated consumers are essential to avoid market failure. Educating consumers about their rights, responsibilities, markets and products and how to get the best deal is a lifelong learning activity and should be delivered continuously alongside other services – not in short burst campaigns - and should be delivered by a trusted credible source reaching people through all channels, including in communities.
- 2.44 In England and Wales, the Citizens Advice service would, subject to resources, be pleased to take forward and build on the valuable track record of the Office of Fair Trading in this area and work in partnership with the TSI Consumer Education Liaison Group (CELG). If resources allow we would develop and support a workforce of community based consumer empowerment advocates and educators, using a model which Citizens Advice has used successfully in England and Wales to create local financial educators. We could roll out more widely successful initiatives like Energy Best Deal (EBD), which have helped to demystify energy tariffs for consumers least likely to switch and get a better deal. The model used could be applied to other consumer problems, and help to embed the messages of the information service. Similar and complementary local initiatives will be rolled out throughout Scotland, utilising the extensive bureau network to empower local communities by delivering local campaigns and education programmes, placing consumers at the heart of our model.

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

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- 2.45 Yes. We agree that it would be appropriate for co-ordination and support for business-facing **educational** activities to sit with the TSPB in future, or the JEB if that model is adopted provided the JEB has the capability to lead and guide local trading standards departments in this area of work.
- 2.46 However, as part of the consumer landscape changes we think the Government will need to clarify which organisation(s) are to be responsible for, respectively:
  - production and dissemination of 'official' **information** for business about their obligations to consumers under a variety of pieces of existing and new legislation
  - production and dissemination of '**guidance**' for businesses on how they can comply with consumer protection legislation which also outlines the policies that enforcers will adopt;
  - production and delivery of **education** for businesses.
- 2.47 **Information, guidance and education** are all different things – and guidance involves a degree of policy formulation. As policy and practice in enforcement of consumer law is

currently distributed between several hundred governmental organisations, whichever body is responsible for producing guidance must be capable of commanding support from the enforcement community.

- 2.48 We do not think it is essential that the body responsible for producing information (and guidance and education) aimed at businesses is the same body that is responsible for producing information for consumers but there will need to be close collaboration if responsibilities are spread across different organisations in terms of timing, content and methods of distribution.

### 3. Consumer Code Approval

#### *The proposal*

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- 3.1 The consultation paper proposes that the proposed Competition and Markets Authority (CMA) would not continue operation of the OFT's current Consumer Codes Approval Scheme and that alternative options for future accreditation of consumer code approvals to be explored further including roles for BSI, Trading Standards, LBRO and private and/or third sector organisations.

#### *Our response*

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- 3.2 The Consumer Codes Approval Scheme (CCAS) is part of the consumer landscape as the scheme serves to endorse 'good' self-regulatory schemes of benefit to consumers. If this scheme is not to continue then alternatives to it should be considered from the perspective of the role and benefits of self-regulation.
- 3.3 Self-regulation is an important way that consumers are assisted and protected. By committing to particular standards of business conduct either on an individual or collective basis effective self-regulation assists businesses to:
- understand and stay within the law
  - deliver a level of customer service that consumers want which **goes beyond the minimum required by law** without imposing new legal obligations
  - reduce the need for enforcement action and for legal action by consumers to gain redress.
- 3.4 Self-regulation can therefore be an important preventative part of the consumer protection landscape and if it is effective can play a significant role in helping consumers to identify the good businesses, who will treat them fairly, from those who are not committed to customer service, customer care and providing redress.
- 3.5 The consumer protection landscape has relied on self-regulation playing its part for many years. Developing and improving self-regulation has been a key element of successive government strategies to secure a balance between minimizing burdens on business and developing confident consumers, by assisting consumers to identify easily businesses they can trust to treat them fairly. One of the advantages of self-regulation is its potential ability to react more quickly to problems in a market than changing the law.
- 3.6 Modern consumer protection legislation also recognises a role for self-regulation as a part of the enforcement function. The Consumer Protection from Unfair Trading Regulations (CPRs) 2008 requires enforcement authorities, such as Trading Standards and the OFT, to look beyond traditional enforcement and to encourage other '*established means*' for the control of unfair commercial practices.<sup>1</sup> The Advertising Standards Authority code and the PhonepayPlus code are good examples.
- 3.7 There is also evidence of how self-regulation can work alongside enforcement to reduce and end consumer detriment. For example in 2007 the OFT worked with the Association of British Travel Agents (ABTA) to tackle misleading airline ticket price indications. A number of companies had displayed their prices excluding taxes and fuel supplements they knew would always have to be paid. The industry was warned about the problem and, where further action was required, ABTA members involved were dealt with using the ABTA code to

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<sup>1</sup> Clause 19 (4), Part 4 Enforcement, Consumer Protection from Unfair trading Regulations 2008

reprimand and fine and OFT took action under the Enterprise Act 2002 against non ABTA member airlines. To clarify their position and to set out best practice the OFT published their policy statement on the role for self-regulation in their consumer protection work<sup>2</sup> in 2009, detailing the criteria they would use to decide on whether it was appropriate to use self-regulation code sponsors as an enforcement tool in any given case in future. This work is a valuable resource that self-regulation initiatives could use to ensure they can deliver their part in protecting consumers.

- 3.8 Self-regulation is however, a **voluntary** commitment so its role is to complement consumer protection law not to replace it.
- 3.9 Now is however the time for self-regulation to really prove its worth. Consumers facing reduced incomes in the current economic climate cannot afford to lose money as a result of making the wrong decision when they buy. Consumer protection law enforcers such as local authority Trading Standards services are facing resource challenges. In that context improving business practices could alleviate pressure to take enforcement action after the event.
- 3.10 But there are good and less good codes of practice and the CCAS has functioned to mark out the better self-regulatory commitments in a number of market places. We would like to see equivalent arrangements going forward for good codes of practice and self-regulatory commitments to be highlighted clearly to consumers. Some key elements will be essential if the benefits of self-regulation are to be delivered by any new approach going forward:
  - **Offering more than the law.** For consumers to see added value when choosing a trader on the basis of their adoption of self-regulatory standards any scheme of independent endorsement must ensure that traders are complying with all consumer protection legislation relevant to their market sector **and** that their code of practice or scheme of standards provides better protection than the law requires. The terms of the scheme rules must be clearly set out for scheme members and be transparent to consumers, so that they know what it does and does not deliver.
  - **Market coverage.** Any replacement code approval scheme needs to gain brand recognition for delivering best practice so it attracts members who want to enhance the reputation of their business and the sector.
  - **Core criteria.** Any replacement code approval scheme will need to ensure that approved codes meet minimum standards. We believe these should include compliance monitoring, processes for disciplining members who breach the code, dispute resolution schemes and staff training.
  - **Publicity.** If consumers recognise the added value of dealing with businesses that subscribe to self-regulatory standards this can incentivise firms to adopt the standards if it will improve their standing in the market concerned. To achieve this schemes need to be promoted effectively so that consumers can easily identify that a trader has adopted self-regulation and what that means, for example firms using a well recognised logo. It also needs to be very simple and easy to find out at any time which firms subscribe to particular schemes and codes and which do not.

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<sup>2</sup> OFT1115 Policy statement – the role of self-regulation in the OFT's consumer protections work. September 2009

- **Future proofing.** To foster consumer confidence in the self-regulation scheme and the market sector the rules of the scheme need to be flexible and responsive to address new and emerging problems.
  - **Willingness to ensure codes address consumer detriment in the market.** In order to gain and to retain consumer confidence in the code approval scheme, the approvals body must be able and willing to take up evidence of consumer detriment with the code sponsors and ensure that codes take this evidence into account in their commitments.
- 3.11 If self-regulation in the consumer protection field is going to deliver more effectively in future it needs a new impetus to earn greater public recognition and trust.
- 3.12 Joining up and harmonizing the range of existing approval systems for business codes of practice and trader endorsement schemes would in our view be a key step to achieving this. The proposal to disband the OFT run Consumer Code Approval Scheme (CCAS) need not hamper that objective and could in practice facilitate the move to create a more comprehensive and consistent system, if local and national bodies which endorse self-regulatory schemes for businesses work together.
- 3.13 Two government sponsored initiatives and one local authority initiative currently provide processes of independent approval for business codes of practice:
- The Enterprise Act 2002 created a new requirement for the OFT to create and run a scheme for approving codes of practice across a range of business to consumer markets, the Consumer Codes Approval Scheme (CCAS).
  - TrustMark was set up by BIS in 2005 for the home repairs and improvements sector providing endorsement of individual traders.
  - Local Trading Standards services have developed a variety of local approved trader schemes.
- 3.14 The outcome of the above is that there are a multiplicity of different standards being applied and a multiplicity of different ‘badges’ which consumers are invited to look for when choosing a business to deal with and no one single well known brand. This is confusing for consumers, who may find it hard to differentiate between these independent endorsement schemes and a wide range of so-called professional badges and logos used by businesses to suggest they are competent and of quality. And it makes it difficult for advice agencies to promote the schemes to consumers.
- 3.15 As a result of the consumer landscape review we understand only limited work is now being undertaken on OFT code approval and those codes that have already been approved are uncertain about the future location of any independent oversight and endorsement. This is therefore an opportunity for a new approach to establish a single scheme or system and approach which can work at local and national level, and apply to individual traders and trade associations.
- 3.16 For some time the Citizens Advice service have proposed to the OFT CCAS, TrustMark and the local authority trading standards service network of local authority approved trader schemes that they should be working towards harmonising the schemes and amalgamating them under a single easy to recognize logo.
- 3.17 To achieve this would require development since none of the current schemes could simply adopt the OFT CCAS codes without effectively reducing the standards expected in those sectors. TrustMark might be well placed to take on a leading role at national level, in collaboration with local authority trading standards services, by extending its remit. A new and wider TrustMark could share a single logo but adopt an added word, ‘national’ or ‘local’, to

show the scope of a two part scheme and franchise local consumer protection enforcers to award the badge in their areas to businesses consumers could trust.

- 3.18 Both large and small businesses that are complying with consumer protection laws and who trade fairly should be able to join the combined scheme. Local authority trading standards services have a key role in developing any joint scheme, using their membership's proven track record for engagement with local traders including many small traders.
- 3.19 Creating a single harmonized scheme would enable more effective promotion to consumers on a wide scale through all channels.

## **Responses to questions 6 - 11**

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### **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?**

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3.20 We would like to see CCAS members consider transferring their approved code to an existing alternative scheme. We believe that this should ideally be a single scheme which is approved by Government.

### **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?**

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3.21 Yes. Alternatives to the CCAS already exist. But there is a risk of further proliferation and lack of harmonisation in standards and labelling which will not benefit consumers. Firstly the assured trader schemes run by local authority trading standards could be extended to cover the whole country. Secondly, the remit of TrustMark, the government-endorsed approved trader scheme covering repairs and home improvements could be extended to cover more sectors. Finally, both of these schemes could be amalgamated, thus simplifying the number of approved self-regulation schemes. This could have the added benefit of enabling improvements in consumer recognition. We would support an initiative which harmonised the various code and trader endorsement schemes in terms of standards, administration, labelling and promotion.

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

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3.22 The Citizens Advice service has supported the CCAS scheme because it seemed to have the potential to improve self-regulation and provide consumers with confidence in their choices and an alternative means of redress if things went wrong. We particularly welcomed the development of core criteria at the heart of the approval process.

3.23 Over the last eight years we have engaged with the OFT and code sponsors in the code approval process. We have provided evidence of problems in the markets covered by proposed codes which we felt self-regulation needed to address and commented on draft codes of practice.

3.24 Whilst we supported the system, we have had a number of concerns about its operation:

- the time taken for codes to go through the system
- the unwillingness on occasions of either the OFT or the code sponsor to take on board consumer organisations' concerns about the content of codes during the consultation process, making consultation ineffective
- lack of consumer awareness
- some of the approved codes have had limited membership in the market they covered.

3.25 We believe that all the above need to be addressed by any successor scheme or system.

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

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3.26 The option of transposing the CCAS codes into BSI standards should be evaluated against the criteria we have outlined above. This does not however appear to be the best option for preserving the CCAS scheme or developing further those codes of practice. Whilst the core criteria could in theory be transposed into a BSI standard, the approvals process does not appear to us to fit BSI's current work practices and we consider the process of approval, including consultation with consumer groups is a very important feature to establish whether the code content and specific promises given by businesses and groups of businesses is addressing issues arising in a specific market. Also currently BSI standards relate to individual business rather than trade association codes of practice. Of greater concern is that the fact that the BSI do not, to the best of our knowledge, get involved in monitoring compliance with BSI standards unless an individual business pays for a kitemark approval process.

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

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3.27 As we have highlighted in our response to the previous question, the current BSI system relates to individual businesses rather than trade associations. Therefore any code certification process using the Kitemark system would probably need to involve trade associations in the development of the code and establish that they would need to be willing to test and enforce the BSI standard.

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

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3.28 Whilst we can see the potential for Primary Authorities to be involved in the handling of certification processes for approval of self-regulatory codes of practice if this route is chosen it must deliver consistency and significant coverage. There is a risk that if approval of self-regulatory schemes for particular sectors of the economy is devolved to individual Primary Authorities this could result in inconsistency unless the work was being undertaken within an ‘umbrella’ of a policy framework, like the core criteria for the CCAS which aimed to ensure comparability between sectors. We are also not clear how consumer advocates would contribute to a Primary Authority led system of code approvals.

## **4. Advocacy**

### ***The proposal***

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- 4.1 The government proposes that there should be a single focus for the coordination of publicly-funded consumer advocacy functions. A single unit, run by the Citizens Advice service 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.
- 4.2 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.
- 4.3 Consumer Focus's functions in respect of postal services consumers in Northern Ireland, undertaken by its committee known as Consumer Focus Post, are proposed to be transferred to the General Consumer Council for Northern Ireland.

### ***Our response***

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- 4.4 We agree with the Government that there should in future be a single focus for the co-ordination of publicly-funded consumer advocacy functions which:
  - is able to do everything that Consumer Focus is able to do today in relation to both economically regulated markets and the wider economy
  - builds on the track record of Consumer Focus and harnesses the strengths of other organisations which are better known by consumers and have more contact with consumers
  - has more impact than the present arrangements domestically and internationally
  - reduces overlap and duplication in costly research and analysis
  - enhances the available evidence base with consumer intelligence, puts consumers at the heart of consumer advocacy and involves consumers in policy and advocacy
  - is able to advocate for consumers experiencing problems today and also engage effectively with and influence longer term market developments which are 'over the horizon', particularly in regulated markets
  - is integrated with and complemented by information, advice and education services
  - works in close partnership with consumer protection enforcers and regulators at local and national levels.
- 4.5 We agree that the Government should move to enable an alternative approach to be delivered by other organisations which are better known and trusted by consumers and this would simplify the landscape for consumers and policy makers.

- 4.6 By working with the Citizens Advice service and Which? the Government could enable a more active dynamic and responsive system of consumer protection with consumers themselves and communities playing a stronger role.
- 4.7 We would help to get consumers actively looking after themselves and doing this better at a time when resources for formal enforcement are reducing.
- 4.8 Working nationally across Great Britain and locally the Citizens Advice service would take the lead in delivering the consumer interface of the Government's consumer empowerment strategy - covering information, advice education, advice and advocacy.
- 4.9 Consumers will be advised quickly by us, or be able to discover for themselves, if their case is one that should be reported to a regulator so they can take enforcement action, or simply to help them build up a dossier of evidence.
- 4.10 Client data from all our frontline channels will be captured and analysed – with 'hot topics', non compliances and rogue trader rip offs flagged regularly and promptly to relevant regulators. Specialist investigations research and analytics functions based in the Citizens Advice service would work closely with the enforcement community.
- 4.11 Policy analysis and representation and advice to governments and regulators would build on the research and reporting function. Working in partnership with Which? and other organisations as appropriate the Citizens Advice service would act as a respected consumer voice across a wide range of topics – drawing on the evidence from service delivery and polling the public directly about their views – channelling consumers' views into responses to government consultation, fielding representatives for working groups across government which are working on shared solutions.
- 4.12 The Citizens Advice service would use the evidence and contacts with consumers to input to business product and service development - both at a national and local level and across a variety of markets – aiming to prevent problems for consumers as a result.
- 4.13 The power to investigate problems and make a supercomplaint would be used where appropriate to secure significant change and we would establish working protocols to avoid duplication.
- 4.14 With resources and the appropriate legal provisions to enable this, class actions/multiple redress could also be led by us in future.
- 4.15 Together we could lead in advising governments across Great Britain on the state of consumer detriment and empowerment – drawing on our many millions of touchpoints with the public in communities, on the internet and over the telephone, and particularly those hardest to reach.
- 4.16 The Government's consultation paper states that

*'Consumer advocacy is about representing consumer interests and promoting consumer rights on a wide spectrum with businesses, regulators and Government, the European Union and internationally. Effective advocacy requires strong research, analysis and investigation combined with effective influencing and negotiating skills to deliver better outcomes for consumers'*
- 4.17 The Citizens Advice service already has a strong and growing track record of policy advocacy which delivers better outcomes for consumers, using the evidence gleaned from advising millions of people every year to advocate and campaign for policy changes that benefit the population as a whole. And the Citizens Advice service is increasingly involving the public directly in campaigns.

4.18 Between 2009 and 2011 Citizens Advice helped over 15 million people through the influence of our policy work. The Citizens Advice service policy advocacy has a high impact and extends across a wide range of policy areas and markets including:

- fuel poverty
- energy market redress schemes
- post office services
- basic bank accounts
- unfair commercial practices
- access to business conduct information
- access to NHS Dentistry
- contact centre standards
- cash back offers
- mortgage and secured loan arrears
- private parking firms
- responsible lending.

### ***Key policy advocacy successes for consumers include***

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- **Consumers gain £14.2m per annum from doorstep selling rights :** All consumers buying goods in their own home got new cancellation rights in October 2008 – a change recommended by us in our 2002 Supercomplaint on doorstep selling which was backed up by the Office of Fair trading. The government estimated this would benefit consumers to the tune of £14.2m per annum.
- **6.5m people a year get a better deal on payment protection insurance :** Consumers purchasing payment protection insurance are now getting a better deal than before our Supercomplaint about this market was made in 2005. That complaint prompted investigations by the Office of Fair Trading and the Competition Commission which revealed that 6.5 million consumers were being overcharged by £1.4 billion a year. Single premium policies have now been banned, 24 companies have been fined a total of nearly £13 million by the FSA for misselling PPI, consumers are now getting better information from suppliers and regulators and 60,000 consumers have been prompted to make complaints and seek redress from the Financial Ombudsman Service for mis-selling of this product. Changes to regulatory requirements will mean that the 6.5 million consumers expected to purchase a PPI policy each year will be getting a better deal.
- **750,000 energy customers who use prepayment meters better off :** In 2006 Citizens Advice asked all the energy companies with old fashioned pre-payment meters that still used tokens to speed up their programmes to re-calibrate these meters when prices rose. Consumers with these meters were facing significant 'catch up' debts simply because the company had taken a long time to update the charging information in their meter. British Gas agreed to change its policy so that new charges did not apply until the meters had been re-calibrated – benefitting 150,000 customers. Replacement programmes for these meters were sped up. Following a significant campaign involving 140 MPs in 2007 Ofgem ordered all the energy companies to re-calibrate token meters within one month of price changes. This

campaign benefitted 150,000 British Gas customers and 600,000 electricity customers of three different companies.

- **2.4 million people in 600 communities get free to use cash machines :** A campaign led by Citizens Advice in 2006, and supported by the Chair of the House of Commons Treasury Select Committee secured the installation of 600 free to use cash machines in the most deprived areas in the UK without access to free ATMs. The population of these areas totalled 2.4 million people.
- **Poor claims handling practices ended :** Citizens Advice reports on problems with the no-win-no-fee claims market resulted directly in the introduction of a new system to regulate claims handling intermediaries in the Compensation Act 2006 after self-regulatory initiatives failed. Regulatory action by the Claims Management Regulator resulted in over 450 businesses withdrawing their applications for authorisation and over 650 businesses have voluntarily surrendered their authorisation. Effective action has been taken against businesses operating without authorisation.
- **324,000 private tenants get new rights:** In 2009/10 Citizens Advice led campaigns to get the private members legislation, Mortgage Repossessions (Protection of Tenants) Act, passed. The campaign was led by evidence of growing numbers of tenants evicted because their landlord had not paid the mortgage on their property – even though the tenant had paid their rent, often via a letting agent. This new law will bring peace of mind to 324,000 tenants who will no longer risk eviction without notice if their landlord is repossessed.
- **A Tenancy Deposit Scheme has been introduced by the Scottish Government:** This scheme stops landlords unfairly withholding peoples' deposits at the end of a tenancy.
- **50 DWP phone lines free of charge to mobile phone users:** twin campaigns by Leeds Citizens Advice supported by Citizens Advice and by Citizens Advice Scotland persuaded the Department for Work and Pensions to negotiate with mobile phone companies to ensure that mobile phone users are not charged for calls to DWP helplines. High call costs were deterring people from claiming benefits or reporting changes of circumstances. The change of policy led to many more people with mobile phones calling DWP helplines. Before the change, 15 percent of helpline calls came from mobile phones. Just over six months later, this had risen to 52 percent. This is saving money for those who only rely mobile phones, and makes life more convenient for millions of callers who can now call free from their mobile phones.
- **15,000 Scottish DLA claimants are better off:** Citizen Advice Scotland's DWP Disability Living Allowance consultation response highlighted issues for over 300,000 Scottish disability living allowance claimants. The response helped reverse government welfare policy on claimants losing their mobility component of DLA when they are in residential care.
- **300,000 ESA/IB claimants across Scotland directly benefited** from Citizens Advice Scotland's sustained campaign on ESA including the unfit for purpose report, media releases and appearances, lobbying and consultation response. Over half our 'unfit for purpose' recommendations were included in the Harrington Review.

## **A partnership approach**

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- 4.19 Partnership is and will be key to effective advocacy for consumers. A partnership board will be established between the Citizens Advice service and other key partners, including Which?, to oversee our partnership and agree priorities.
- 4.20 The Citizens Advice service will work to establish local activity. In England and Wales Consumer Empowerment Partnerships – led by Citizens Advice bureaux and Citizens Advice Cymru – will be networks of advice givers and campaigners working together to identify the issues, pool evidence and educate, warn and support consumers, with appropriate alternative arrangements in Scotland.
- 4.21 Data about consumer problems gleaned from our contact with the public will be shared with the consumer protection enforcement community, from local trading standards services to economic and market regulators to help them do their job.
- 4.22 Our information and education resources would be available across the information and advice and consumer protection sector and would reduce duplication and cost of separate production.
- 4.23 This would need to be backed up by a good legislative framework for consumer rights, simple and low cost mechanisms for obtaining consumer redress; and a sound framework for public enforcement which can and does act promptly when needed. The Citizens Advice service would therefore urge the government to move beyond present moves to simplify consumer law and look at ways to really improve and enhance consumer rights in future. Such improvements could include enabling economic and market regulators to order companies who breach regulation to pay compensation to consumers affected either instead of or additional to any fines and enabling consumers to take action collectively to secure redress.
- 4.24 The Citizens Advice service, working in partnership with Which? and other trusted consumer organisations would support, engage and educate individual consumers and work with government, regulators and local consumer protection enforcers to ensure that intelligence about consumers' experiences and views are fed into the policy and enforcement solutions and strategies. We would also ensure that consumers' interests are represented to all governments across Great Britain.
- 4.25 We would do this by creating a comprehensive, integrated, accessible, dynamic and responsive partnership.
- 4.26 It would consist of the following features:
  - **information and advice** for consumers
  - **education** and consumer empowerment activity
  - **advocacy** and representation of consumers' interests to support policy makers and regulators
  - a **partnership** model for determining strategy and delivery.
- 4.27 We have reached agreement in principle on how we might do this by playing to the different but complementary strengths and experiences of our organisations. Our approach preserves the continuing independence of Which? and harnesses the expertise, reach and holistic perspective of Citizens Advice and CAS.
- 4.28 We believe that consumers will benefit from our proposed partnership because working together we can deliver:

- greater cost efficiencies in the production and reach of consumer rights information
  - more cost effective individual consumer rights legal advice
  - more effective gathering and use of evidence, drawn directly from millions of consumers being helped at the front line of casework and consumer contact by our organisations, online, over the phone and face to face
  - a more holistic perspective on consumer issues, approaching and finding solutions to these with a detailed understanding of the pressures facing consumers in both consumer and non-consumer areas
  - more powerful and dedicated resources for representing consumers in regulated markets such as energy and post
  - enhanced policy and advocacy collaboration, ensuring that all consumer markets are effectively covered by at least one of our organisations and avoiding duplication
  - a stronger forward thinking capability to identify the big issues on the horizon, enhanced through constructive collaboration, mutual challenge and partnership.
- 4.29 We are already working together on the content of consumer rights information, to ensure the Government does not pay for or duplicate information already freely available. We will develop links online and offline to make sure consumers freely access the best information they can. And we are already testing in Wales how the Which? Legal Service can work closely with Citizens Advice advisers to provide legal advice support countrywide.
- 4.30 In relation to sectoral advocacy, we believe that this work should be delivered through a strategic partnership where:
- Which? creates a specialist unit with appropriate governance arrangements responsible for technical and economic analysis and insight into regulated sectors, focusing on providing a detailed advocacy service to regulators, with the ability to use existing resources to complement this work.
  - Citizens Advice, Citizens Advice Cymru and Citizens Advice Scotland take on responsibility for wider and complementary advocacy in regulated sectors, providing insight based on their local networks and casework, enhanced by the ability to use existing resources to complement this work, and the creation of local consumer empowerment and advocacy capabilities.
  - Which? takes on responsibility for international advocacy.
  - Data, insight and strategic planning are shared between organisations to ensure that advocacy perspectives are complementary and public resource is not spent on duplicating work
  - Other functions in these sectors, such as investigations, are carried out by Which?, Citizens Advice and Citizens Advice Scotland as required, overseen by a strategic partnership.

## **Responses to questions 12 - 19**

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### **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?**

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- 4.31 Yes. We support the vision of combining sectoral advocacy functions so that this will deliver a better outcome for consumers. This will ensure that advocacy in one area is informed by developments and challenges in other areas, resulting in a more joined-up and intelligent regulatory and policy environment for consumers, Government and industry.
- 4.32 We believe a strategic partnership between Citizens Advice, Citizens Advice Scotland and Which? - the most trusted and publicly recognised organisations operating in this area - to deliver these sectoral advocacy functions would significantly enhance consumer information, advice and advocacy, and we are confident that the system would work better than it does today as a result of this partnership, subject to greater clarity from various parties about the resources available and other essential detail.
- 4.33 We believe that consumers in regulated industry sectors would benefit further from our proposed partnership because working together we can deliver:
  - greater cost efficiencies in the production and reach of consumer rights information
  - more cost effective individual consumer rights legal advice
  - more effective gathering and use of evidence, drawn directly from millions of consumers being helped at the front line of casework and consumer contact by our organisations, online, over the phone and face to face
  - a more holistic perspective on consumer issues, approaching and finding solutions to these with a detailed understanding of the pressures facing consumers in regulated consumer, non-regulated consumer and non-consumer areas
  - more powerful and dedicated resources across Great Britain for representing consumers in regulated markets such as energy and post
  - enhanced policy and advocacy collaboration, ensuring that all consumer markets are effectively covered by at least one of our organisations and avoiding duplication
  - a stronger forward thinking capability to identify the big issues on the horizon, enhanced through constructive collaboration, mutual challenge and partnership.

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### **Question 13 Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?**

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- 4.34 Yes. We agree that these design principles represent a sensible approach for how consumer advocacy should work in future, subject to further consideration with relevant regulatory bodies and other stakeholders. We see these as applying to the function of consumer advocacy in regulated sectors more generally, but a single Regulated Industries Unit as conceived by the consultation document would not be the most effective delivery mechanism.

4.35 A strong partnership between Citizens Advice, Citizens Advice Scotland and Which? covering advocacy in regulated sectors – working in accordance with these principles – would achieve the outcomes that effective consumer representation requires today and in the future by playing to the different but complementary strengths and experiences of our organisations. This approach would preserve the continuing independence of Which? and harnesses the expertise, reach and holistic perspective of Citizens Advice and Citizens Advice Scotland.

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## 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?

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- 4.36 We believe that changing how consumer advocacy is delivered has significant potential to improve outcomes for consumers, but that a strategic partnership between Citizens Advice, Citizens Advice Scotland and Which? would offer a stronger service for consumers, government, regulators and industry.
- 4.37 We believe it makes sense to focus resources for general government funded advocacy within Citizens Advice and Citizens Advice Scotland, working in partnership with Which? to share insight, approaches and information to minimise duplication and ensure strategic coordination.
- 4.38 While we agree that advocacy in regulated industries sectors does require an enhanced approach, due to the essential and complex technical nature of much of the work, we think it would be a mistake to isolate advocacy in these areas from wider insight about the pressures facing consumers.
- 4.39 We therefore think that this work should be delivered through a strategic partnership where:
- Which? creates a specialist unit with appropriate governance arrangements responsible for technical and economic analysis and insight into regulated sectors, focusing on providing a detailed advocacy service to regulators, with the ability to use existing resources to complement this work.
  - Citizens Advice and Citizens Advice Scotland take on responsibility for wider and complementary advocacy in regulated sectors, providing insight based on their local networks and casework, enhanced by the ability to use existing resources to complement this work, and the creation of local consumer empowerment and advocacy capabilities.
  - Which? takes on responsibility for international advocacy.
  - Data, insight and strategic planning are shared between organisations to ensure that advocacy perspectives are complementary and public resource is not spent on duplicating work.
  - Other functions in these sectors, such as investigations, are carried out by Which?, Citizens Advice and Citizens Advice Scotland as required, overseen by a strategic partnership.

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## 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?

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- 4.40 We recognise that Northern Ireland already has different arrangements and agree with the proposals for moving responsibilities to NI specific consumer bodies.
- 4.41 In relation to non-regulated sector advocacy, we believe it makes sense to focus government funded advocacy in the Citizens Advice service in Wales and Scotland as it is for England. The Citizens Advice service operates at a national and a local level and is best placed to do this.
- 4.42 The proposed approach to advocacy in regulated sectors should be able to advocate strongly for all consumers, regardless of where they live in Great Britain, when dealing with regulators for energy and postal services. In relation to advocacy for consumers of regulated industries, we note that neither Scotland nor Wales has individual or separate regulatory systems for energy or post from that affecting England. However, the economic and social and public policy differences affecting consumers of these markets in Wales and Scotland mean that it is very important that Welsh and Scottish consumers have a strong voice towards decisions being taken at a Great Britain level affecting energy and postal services. In cases where there are national or devolved differences in the practices of the regulatory regime or impact upon consumers, we believe that these interests should be properly represented by dedicated staff working in Scotland or Wales where appropriate.
- 4.43 The possible Citizens Advice, Citizens Advice Scotland and Which? partnership referred to at Question 12 would include a commitment to ensuring an effective and appropriate consumer advocacy capacity and capability in Scotland and Wales.
- 4.44 Citizens Advice Cymru would lead on advocacy for consumers in Wales. It has devolved responsibilities within the Citizens Advice organisation, it is managed by the Director, Citizens Advice Cymru and governed by a separate Committee in and for Wales. The Committee in Wales, working with the Director, Citizens Advice Cymru has fully delegated responsibility to set and monitor our advocacy work arising from policy and legislation as it relates to citizens and consumers in Wales. This means that decisions on the priorities for advocacy work on behalf of Welsh consumers will be made in Wales. We will need to review and make changes to the committee's terms of reference to ensure they are appropriate to enable us to deliver the functions of Consumer Focus if and when they are transferred to us and are in discussion with the Welsh Government to ensure our arrangements meet their requirements. We believe that this will ensure that Welsh consumer interests will be specifically protected in the proposals to transfer responsibilities to the Citizens Advice service.
- 4.45 It is our intention that work in Wales will be undertaken on devolved and non-devolved matters as they impact on consumers in Wales. Our proposals for the delivery of advice are that our delivery is undertaken in Wales and bilingually for consumers from Wales. In terms of advocacy work we are currently proposing that, as currently within Consumer Focus and subject to retaining all the funding, the same proportion of funding will be devolved to advocacy work undertaken in Wales.
- 4.46 Citizens Advice Cymru has worked with and been answerable to the National Assembly for Wales and the Welsh Government on other matters. For this reason we are content to have a close relationship with and appropriately report to the National Assembly for Wales on consumer matters. It is also important that the organisation undertaking consumer advice and advocacy in Wales works closely with and reports to the UK Government since much of the

work related to the consumer landscape will relate to non-devolved matters. It is vital that the impact on the Welsh consumer is reflected in UK and GB policy work. For this reason the strength of a Wales based body, with decision making at a Wales level, but with the strongest influence and link to the bodies undertaking this work in England and Scotland and across Great Britain will advantage the Welsh consumer. Citizens Advice and Citizens Advice Scotland and Citizens Advice Cymru working together, and with Which? offers this advantage.

- 4.47 While being part of the Citizens Advice family, Citizens Advice Scotland is nevertheless an independent charitable organization based in Scotland, working for the people of Scotland and is Scotland's largest independent advice network.
- 4.48 Scotland has a distinct legal and political system which influences the way in which consumer issues affect people across the country. Whilst consumer policy is reserved to the UK Parliament, many issues that affect consumers are devolved to the Scottish Parliament, including housing, legal services, health and social care. Advocacy for consumers in Scotland must address the Scottish Parliament on devolved issues and represent consumers in the UK Parliament with a distinctively Scottish voice. A detailed understanding of consumers in Scotland and their issues is needed to advocate on their behalf. Citizens Advice Scotland and our member bureaux have an understanding of Scottish consumers, grounded in the evidence gained from the thousands of consumers who seek frontline advice every day, allowing our service to have a strong voice on their issues.
- 4.49 We believe that the service is ideally placed to build on our role with local Scottish communities. The network of bureaux, and the trust the public has in the citizens advice brand - according to an Ipsos MORI survey of our Scottish clients, 98% said they felt able to trust the confidential service – will enable the service to give national prominence to consumer education campaigns as well as to promote campaigns at a local level through front line advice services.
- 4.50 In addition, advocacy is not a new concept to the Scottish service. We are already a powerful force for change, campaigning at national and local levels. We conduct policy research on consumer and other issues, reflecting the Scottish experience and context, and we have a strong track record of changing policy and improving people's lives – both at UK and Scottish levels. Not only does the Scottish public have a strong level of trust in our organization but 6 out of 10 of our Scottish clients are aware that the CAB service "influences government and other large organisations" through our behind the scenes advocacy work. In addition 100% of MPs and MSPs considered we influence both social policy and government, and around 80% of Westminster and Holyrood civil servants felt that we do. These proposals will reinforce our role as an integrated service, to be seen more widely than our client base as an authoritative voice speaking on behalf of Scottish consumers. As with Wales, decision making at a Scottish level, with the strongest influence and link to the bodies undertaking this work in England and Wales will advantage the Scottish consumer. Working across the Citizens Advice service, we will be able to contrast and compare the Scottish experience with the rest of GB. We will lead on issues that are relevant to Scotland, highlighting regional as well as national differences. Advocacy needs to have an evidence base, and our evidence on consumer issues is second to none in Scotland. We believe that advice, empowerment and advocacy are interlinked and should be provided within an integrated service. This places the consumer at the heart of advocacy and Citizens Advice, Citizens Advice Scotland, Citizens Advice Cymru working together with Which? offers this advantage.

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## 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?

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- 4.51 We believe that the information gathering powers are important, and appropriate arrangements should be made to ensure that the benefits of these powers are not lost following the abolition of Consumer Focus. A partnership between Citizens Advice, Citizens Advice Scotland and Which? would have within it clear arrangements for ensuring the careful, proportionate and effective use of such powers in a coordinated manner, effectively reducing duplication of effort.

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## 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?

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- 4.52 We support the proposal to establish redress schemes in as many sectors as possible and note that it may already be possible to do this in relation to water and sewerage services in England and Wales and passenger transport. We also note that in Scotland water consumers have already got access to an ombudsman scheme for dealing with their complaints about water services. Supporting this proposal is not in any way to criticise the commitment to and effectiveness of complaint handling of sector consumer advocacy bodies where they continue to handle complaints themselves. But there would be two clear benefits from establishing further redress schemes. First it would provide all consumers with equivalent redress systems in relation to utilities and essential services they use which included an independently made and binding decision, including award of compensation or redress for consumers. It seems odd that consumers have this right in relation to energy but not in relation to water services, except in Scotland. Second, it would simplify the redress system for consumers because more sectors would have the same approach and process for complainants to follow and ideally would enable the creation of a harmonised 'gateway', one-stop shop portal for consumers to make complaints through. This simplification could remove one of the barriers to consumers seeking redress that the system may seem too complex, and enable co-ordinated action to improve awareness.

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## 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?

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- 4.53 Yes.

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**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?**

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4.54 Yes. this seems sensible.

## 5. Chapter 5 – Enforcement of Consumer Protection Legislation

### ***The need for Enforcement***

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- 5.1 Enforcement of consumer protection law is a vital part of the consumer landscape. Unless consumer protection law is enforced effectively rogue traders will flourish - ripping off consumers, denying them their statutory rights and undermining responsible businesses and the economy as a whole.
- 5.2 The level of consumer detriment resulting from unfair treatment of consumers by businesses is too high in our view, estimates range from £3.3bn to £6.6 billion, in 2008 and 2009 by Consumer Focus and the Office of Fair Trading respectively. As a consequence of the recession we would expect these figures to be higher in 2011 (see Desperate Times; Desperate consumers, Citizens Advice, July 2011).
- 5.3 The range of issues causing consumer detriment is extremely wide – from unfair contract terms and hidden charges, to poor quality of service and lack of redress in all sectors of the economy from building services to banking services. There are also deliberate scams and rip offs. There are many issues for regulators to address, caused by a large number of businesses big and small, and affecting many millions of consumers in different ways.
- 5.4 Establishing more effective enforcement of consumer protection law to remedy, and prevent, this significant consumer, and economy wide detriment is, therefore, a really critical element of the consumer landscape and a key test of the proposed reforms will be whether the enforcement system will be better able to tackle consumer detriment efficiently in future. It is important in today's economy because at least £6bn costs are being paid by consumers which they cannot afford to lose. And its £6bn going to businesses that are performing badly towards consumers, robbing better businesses of market opportunities.
- 5.5 The Government rightly identifies a number of features of the current system for enforcing consumer law which serve to reduce the effectiveness of the system.
- 5.6 The primary issue identified by BIS is that responsibilities for gathering evidence and taking action are divided between hundreds of local authorities on the one hand, and national bodies such as the Office of Fair Trading and sectoral regulators on the other.
- 5.7 In addition some national, short term projects created by government aim to tackle consumer detriment in particular areas such as illegal money lending and scams. As a result gaps appear as it is not clear which organisation will actually tackle an issue and priorities are not co-ordinated. These problems are particularly arising where an enforcement issue is best dealt with nationally. This complex, patchwork system does not in practice form a comprehensive quilt covering the whole country. There are risks that in some cases nothing is done and in other cases scarce resources are not being deployed effectively, and there may even be duplication.
- 5.8 The National Audit Office in its recent report '*Protecting consumers – the system for enforcing consumer law*' have highlighted other aspects of concern including:
  - The overall scale of so-called 'consumer detriment', particularly that caused by doorstep crime, is **not being properly evaluated**, leading to the inefficient allocation of resources.
  - Although much consumer detriment occurs at the regional and national level, incentives on consumer law enforcers are presently weighted against a coordinated approach which goes beyond local areas.

- The governance arrangements for the consumer law enforcement ‘system’ are not clear, evidenced by separate and incompatible intelligence databases being developed.
- A framework for prioritizing and allocating cases, introduced by the Office of Fair Trading, is not being applied as intended and formal structures for supporting the model are not in place in seven of eleven regions, and there is still a lack of clarity over who should be taking cases forward.

And both the Government and the NAO identify significant resource challenges including:

- resources allocated to local trading standards services by local authorities already vary significantly between local authority areas
  - total resources available from local authorities for Trading Standards Services are projected to reduce from £213 million to between £140 million to £170 million by 2014
  - central government resources of £34 million to tackle crime which crosses the borders between local authorities, is relatively low compared to the scale of the problem.
- 5.9 Flat and reducing levels of local resources is expected to mean that in future local Trading Standards Services will have reduced willingness and capability to address issues which are not local to their service. Currently BIS estimate that 70 per cent of consumer detriment arises as a result of practices that are cross-border, in the sense that the issue is not confined to one local area.
- 5.10 In this context it is clear that the present system for enforcing consumer law needs to change.
- 5.11 The Citizens Advice service has evaluated the government’s proposals for change by reference to the consumer perspective. From a consumer perspective an effective consumer law enforcement system that they can have confidence in has the following attributes:
- The system has **clear goals** to the effect that the outcomes achieved must **primarily benefit consumers**, and enforcement is used to protect consumers, and particularly vulnerable consumers, from rogue traders, unfair practices and other instances where businesses disregard their legal obligations.
  - Where the system relies on multiple organisations to deliver the **goals must be shared**, and operational systems and processes must be in place to ensure those are achieved.
  - **Consumers experiences should drive the system** – evidence from consumers is actively sought, captured, analysed and shapes decisions about what, when and how the enforcement system should respond.
  - **Consumers can use and engage with the system easily**, it is responsive to them as individuals, in groups and communities, with consumers only needing to provide the same information once and when they have reported problems they are kept informed about any decisions and action being taken.
  - Enforcement bodies **should not hesitate to act** where it is clearly appropriate to do so, expecting to prosecute where appropriate.
  - **Prevention** is as important as after the event remedies and is a key feature of enforcement practice.
  - The system is **responsive and dynamic** – it secures wider solutions for example by using the evidence of non-compliance to change business and market behaviour, clarify or improve laws that can be side stepped or secure the necessary level of deterrence to those who would deliberately flout their legal obligations.
  - The system is **accountable to consumers and citizens**.

## ***The Proposed Solution***

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- 5.12 To address the problems identified with the current system of enforcement we understand the Government is proposing to:
- Establish a Trading Standards Policy Board (TSPB) to lead prioritisation and co-ordination of national, regional and cross local authority boundary consumer enforcement work, this would develop the co-ordination and leadership roles currently held by the Office of Fair trading in this area.
  - Expect that national enforcement will be undertaken by Primary or Home Authorities and expanded regional teams, with, in addition lead regions/and or authorities on specialist issues. Resources for national and cross boundary threats would be effectively transferred from the Office of Fair Trading, delegated to the trading standards community to manage and deploy and ring-fenced and an indemnity fund is proposed to support local authorities in decisions to take on high risk cases.
- 5.13 Relevant evidence, work plans and market analysis would be shared between the TSPB and the proposed Competition and Markets Authority (CMA) but also the most significant consumer bodies in the future consumer landscape, Which? and Citizens Advice.
- 5.14 The CMA would be able to take action on breaches of consumer law which have an impact on competition, making the CMA a consumer and competition law enforcement body.
- 5.15 A system for market studies and supercomplaints would continue with the CMA having the central role to initiate market studies and consider supercomplaints.
- 5.16 These changes are proposed in the context of other highly relevant changes principally the transfer of a number of responsibilities and functions to the Citizens Advice service from the Office of Fair Trading and Consumer Focus. These are:
- Responsibility for delivering the Great Britain wide telephone based consumer advice service currently known as Consumer Direct. This service currently handles over 1.5m calls from members of the public every year seeking advice on consumer problems and reporting experiences of unfair trading by businesses. According to the recent NAO report Consumer Direct data is the second most important source of intelligence for local consumer law enforcers. Thus the Citizens Advice service will in future have the primary responsibility for collection and national analysis of this data as well as providing individual advice to consumers who use the service, and transferring individual cases of potential enforcement action to the appropriate body.
  - Responsibility for co-ordinating consumer education presently resting with the Office of Fair Trading.
  - Delivery of functions presently held by Consumer Focus to undertake research into and investigate matters on behalf of consumers and represent their interests.
  - Delivery of in depth research into consumer detriment in particular markets currently carried out by the OFT.
- 5.17 The proposals also depend on Which? and the Citizens Advice service continuing to hold a range of functions in relation, in the case of Which? to challenge unfair contract terms and in relation to all these organisations having designations to make supercomplaints.
- 5.18 In the context of the overall proposals for reform to the consumer landscape, including the transfer of a range of responsibilities and functions to the Citizens Advice service and establishing the Competition and Markets Authority (CMA) with a different remit to that of the Office of Fair Trading we consider the proposal for establishing a TSPB to manage

enforcement priorities across Great Britain has a number of strengths which make it the proposal outlined by government which best fits the wider changes to the consumer landscape proposed. It also comes closest to addressing the criteria we have set out, in terms of likelihood of responsiveness and accountability to consumers, and citizens, as well as appearing to be the model most likely to bring about greater co-ordination between local trading standards and national enforcement activity. For the Joint Enforcement Board (JEB) model to match it would require some development, including to the proposed objectives for the CMA so that consumer protection is a primary objective, not a residual one.

- 5.19 The proposal to establish the TSPB will not address all of the problems that the NAO report and BIS consultation have identified. But it could help to significantly improve co-ordination between local and national services and as a result reduce the risk of local regulatory services, which are under resource pressures, taking on national cases when they need not do so. It would develop closer partnership working with consumer advice and advocacy organisations than currently exists or would appear to be proposed by the Joint Enforcement Board (JEB) model.
- 5.20 Other proposals, particularly the proposal to establish a JEB (either under the management of the CMA or as a standalone organisation) might be able to deliver as effectively but the JEB proposal would need to be developed further to show how evidence, expertise and insight from consumer organisations would be brought to bear on decision making and how the model would work effectively with and really help to co-ordinate the work of the local consumer protection enforcement system with the system of national enforcement.
- 5.21 For so long as we continue to have local regulatory services – and we note the government’s commitment to this being a matter for local authorities – then looking to create better co-ordination between those local services is an appropriate place to start to address the issues identified in the NAO report.
- 5.22 We note that the Welsh Assembly Government policy is committed to create a national trading standards service for Wales and thus the landscape at a local level will be changing. We encourage the Westminster Government to work in partnership with local government and the governments in Wales and Scotland to promote not only the benefits of local regulatory services to consumers, businesses and the local economy but the importance of those services working as part of a single system across Great Britain. Establishing the TSPB might assist with that.
- 5.23 A number of underlying issues will remain whichever model is chosen, for example levels of resources available for local consumer protection enforcement and, too, a low level of expenditure relative to the scale of the consumer detriment. Those issues remain outstanding and are a significant cause for concern.

## ***Responses to specific questions on enforcement***

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### **Question 20 which option for reform do you prefer and why?**

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- 5.24 On the basis of the proposals outlined in the consultation paper Option 3 – the Trading Standards Policy Board has a number of merits by comparison with the other options, provided the TSPB has sufficient capacity and resources to deliver its brief effectively. Option 3 would be the option most likely to develop the capability of the professional trading standards community to co-ordinate their enforcement work beyond local issues, and make the decisions on priorities for national enforcement action needed to tackle consumer detriment. It gives access to the CMA to tackle structural problems in markets, including the use of consumer protection enforcement powers in appropriate situations. We particularly welcome the proposal that the TSPB will work closely with the Citizens Advice service, and Which? to consider evidence from frontline advice services in shaping priorities. We would expect the relationship we would have with the TSPB to include joint decision making about complementary activities, short of formal enforcement action such as consumer education initiatives which might alert consumers to risks in the economy.
- 5.25 We note the comments in paragraph 5.69 and 5.70 of the consultation which highlight the potential shortcomings of the JEB proposal which would be more ‘distant’ from the local trading standards services and local councils, and less likely to achieve development towards integration and co-ordination of activities between the network of local services. These shortcomings could potentially be addressed if the JEB proposal was developed further so that it had equivalent features to those proposed for the TSPB.

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### **Question 21 – In relation to option 3 do you agree with the principles outlined?**

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- 5.26 We support the principles for the TSPB to operate outlined in paragraph 5.54 and would expect those to apply if an alternative model is selected. We would also suggest that whichever model is adopted consumer groups are actively involved in decision making and some of the principles we have outlined are adopted, in particular:
- The body should have **clear goals** to the effect that the outcomes achieved must **primarily benefit consumers**.
  - Where the system relies on multiple organisations to deliver the **goals must be shared**, and operational systems and processes must be in place to ensure those are achieved.
  - **Consumers experiences should drive the system** and decisions made – evidence from consumers should be actively sought, captured, analysed and shape decisions about what, when and how the enforcement system should respond.
  - **Consumers should be easily able to use and engage with the system that the body is part of** - it is responsive to them as individuals, in groups and communities, with consumers only needing to provide the same information once and when they have reported problems they are kept informed about any decisions and action being taken.
  - The system is **responsive, dynamic** and innovative– it secures wider solutions for example by using the evidence of non-compliance to change business and market behaviour, clarify or

improve laws that can be side stepped or secure the necessary level of deterrence to those who would deliberately flout their legal obligations.

- The system is **accountable to consumers and citizens.**

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## Question 21 – Do you think this model would deliver effective enforcement against large businesses tempted to break the law?

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- 5.27 If the TSPB model is chosen and is recognised as the relevant national enforcement body and directs the use of resources for national enforcement it should be no less able to deliver effective enforcement against large businesses than the current arrangements. The body and local trading standards services will, however, need to be sufficiently resourced to undertake effective intelligence gathering and enforcement to feed into the national decision making. Our concern here is that the model relies on all local authorities. We are concerned that none of the models address issues of local authority resourcing levels, although the TSPB proposal has the most potential to engage councils in a 'shared' system of decision making and reduces the risk of local services taking on national cases inappropriately or without back up.

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## Question 21 – Which areas of enforcement activity warrant specialist national teams?

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- 5.28 The Citizens Advice service has strongly supported national and regional enforcement initiatives, particularly Scambusters and the illegal moneylending teams, to tackle consumer detriment which is not confined to one area of the country. We would urge the Government to ensure that these services continue providing specialist interventions supporting local enforcement work. This would mean putting the funding for these initiatives on a long-term firm footing (currently these services are subject to time limited funding).

- 5.29 There could be a need for specialist teams for estate agency and unfair contract terms in order to take over the OFT's current responsibilities in this area. These could be contracted out to individual local authorities. If regulation of consumer credit does not go to the FCA, there will also need to be a large specialist team on credit, although regulation of this significant market in the economy is a very different task to general consumer protection law enforcement and our preference would be that consumer credit is regulated by the FCA in future.

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## Question 21 – Do you think that an indemnity fund to enable local authorities to take the risk of losing cases is desirable and deliverable?

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- 5.30 Yes, but it needs to be sufficient for the purpose. The existing fighting fund for cross-boundary cases is only £250,000. As the consultation identifies, a big case could cost £200,000, so this would mean only taking one case per year. This is not sufficient.

- 5.31 As public funds are limited, we agree that it would be worth investigating whether it would be more cost effective to establish a scheme for pooling legal risk through insurance.
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## 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 thing? Which one and why?

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- 5.32 No. It will not address any of the issues identified by the NAO study or be adapted to the wider changes proposed for the consumer landscape, including the transfer of functions to the Citizens Advice service. We agree with the Government's analysis of why this would not resolve current problems.
- 5.33 As indicated above the Trading Standards Policy Board (TSPB) model as described has the most potential to secure greater co-ordination between national and local enforcement activities as well as including consumer organisations in the process of decision making. If the JEB model is selected it would need to be developed so that the key features outlined for the TSPB are incorporated.
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## Question 23 In relation to the various JEB models, how would you ensure effective trading standards participation in the JEB? Should other organisations be involved in the JEB, either as members or as participants in discussions? Do you think that this option would deliver integration of enforcement across local, regional and national levels?

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- 5.34 We note the comments in paragraph 5.69 and 5.70 of the consultation paper which highlight the potential shortcomings of the JEB proposal which would be more 'distant' from the local trading standards services and local councils, and less likely to achieve development towards integration and co-ordination of activities between the network of local services. These shortcomings could potentially be addressed if the JEB proposal was developed further so that it had equivalent features to those proposed for the TSPB. That should include the role envisaged for consumer organisations, including the Citizens Advice service in helping to shape priorities. We appreciate the JEB proposal (with delivery responsibility for national enforcement sitting with the CMA) would involve less change and potential disruption to ongoing case work but the JEB models as presently described seem to simply introduce a further layer of decision makers with no obvious benefits for enforcers or consumers. We do not see how the JEB models proposed would help to integrate and co-ordinate enforcement at local, regional and national levels and this is one area where change is needed in the context of resource constraints at all levels.

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## Question 23 Would retention of such unrestricted consumer enforcement powers and responsibilities affect the CMAs singularity of purpose and distract it from its core competition remit?

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5.35 We would expect the CMA will be guided to use its powers by having regard to its objectives and purpose. If the CMA is primarily a competition authority that would mean consumer protection enforcement would be ancillary to that purpose and need not distract it. We therefore support the CMA being given consumer protection powers to resolve problems with markets that competition law alone cannot address comprehensively. This will enable the CMA to deliver more efficient solutions to the issues that it is set up to tackle.

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## Question 24 – How can your preferred new model best work with businesses?

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5.36 We note it is proposed that the TSPB has an operating principle to develop a strong partnership with business representative bodies in order to ensure dialogue and feedback and that this could be achieved, for example, through LBRO's Business Reference Panel which could facilitate engagement of TSPB with business representatives or help in prioritisation. In practice there will be a wide variety of sector trade bodies that the TSPB could relate directly to and work with to develop consensus on approaches to compliance and prevention and understanding on enforcement. It is not clear that the LBRO panel should be the only channel for the TSPB to have dialogue with business groups.

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## 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?

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5.37 Yes. This seems appropriate to achieve efficiencies, provided there is effective co-ordination with the TSPB and its members on intentions to use these powers and the businesses concerned and the CMA draws on knowledge and expertise in the TSPB and wider enforcement community.

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## Question 26. In an Option 3 based model should this enforcement role be subject to procedural limitations?

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5.38 In an option 3 based model the CMA should only use its enforcement role in cases where there has been a market investigation or market study and the action to be taken by the CMA has been discussed and agreed with the TSPB, to minimise the risk of duplication.

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## 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?

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5.39 Yes. We do, however, feel strongly that the CMA will need to have regular dialogue with the TSPB in order to develop consistent approaches, and to learn from the wider consumer enforcement community who will have more up to date market intelligence. A mechanism to make decisions on and allocate cases and issues that might otherwise fall into a gap between the responsibilities of the new bodies should be established.

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## Question 28. Do you agree that the CMA should retain responsibility for mixed market studies?

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5.40 Yes. It must, however, consult with the TSPB and the Citizens Advice service at an early stage to ensure that all relevant problems are addressed in those market studies.

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## 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?

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5.41 If we are sufficiently resourced to do so the Citizens Advice service could take on the role currently undertaken by the Office of Fair Trading to undertake research studies which are largely about consumer detriment and consumer protection issues. This would build on the role envisaged for us in the revised consumer landscape whereby we are the primary holder of data about the problems which consumers have sought advice on via our services across Great Britain. We already undertake in depth research, advocate solutions and work with business and government to secure agreement to these solutions.

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## Question 29. 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 TSPB to prioritise cases referred by the CMA?

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5.42 Not necessarily because there may still be elements of the problem that will require CMA attention, but which are not initially obvious in a complex and ever changing market.

5.43 We are concerned that if TSPB has a duty to prioritise what amounts to a CMA referral, this could destabilise the mechanisms for allocating and monitoring enforcement. Discussion and reasoned justification about further action should be part of a joined up approach. Such discussion should, however, be prompt to avoid unnecessary delays on important issues of consumer detriment.

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## 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?

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5.44 Yes. We believe that all three bodies will need to be working closely together in order to tackle all the elements of the problem and to avoid duplication of effort.

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**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?**

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5.45 Yes. This would enable the system to be responsive to emerging issues without locking up resources in a single organisation. Having to bid for the fund would ensure a business case was made for its use. Given the wide range of markets that might need investigating and researching at any one time and the cost of new in-depth research we would suggest an amount of at least £1million should be ‘reserved’ for this purpose in any one year. The fund could be allocated by the TSPB in response to evidence based bids and proposals from consumer bodies with arrangements for deployment of unused funds to other purposes if the funds have not been used within the year.

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**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?**

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5.46 Yes, provided it is adequately funded so that trading standards are not deterred from tackling breaches of consumer protection legislation from large well resourced businesses. We support “established means” enforcement, e.g. the Advertising Standards Authority and the premium phone rate regulator Phonepayplus. They do not usually need a back up enforcement provision because everyone in that market knows that the regulators will back up any decisions they make with enforcement if necessary.

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**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 Authority?**

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5.47 Yes. The TSI already undertakes significant activities in these areas.

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**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?**

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5.48 Whether the international and general policy responsibilities should sit with the TSI organisation or an alternative, e.g. the TSPB, it will require a national infrastructure to support it. We recommend further exploration to establish which is most capable of delivering what is required.

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### 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?

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5.49 Yes. This will be necessary as a tool to avoid duplication and achieve co-ordination in some cases. If Option 3 is selected this could be vested in the Trading Standards Policy Board, but the Board would need to be a legal entity.

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

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5.50 On the basis of the proposals in the consultation paper it would not be appropriate if the CMA is not central to the consumer law enforcement system, it is proposed to be an enforcer but not the lead body. It should, however, be represented on this group as it will have some consumer protection enforcement powers. We believe that if option 3 is selected the Trading Standards Policy Board would be best placed to take on this role.

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### 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?

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5.51 Yes. Super-complaints are a valuable means by which consumer bodies can highlight market problems and they have resulted in significant changes to benefit consumers and markets. It is appropriate to the proposed CMA's role to assess such complaints and decide how they should be handled.

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

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5.52 Yes. For example our recent supercomplaint on loan finding companies might be partially resolved through enforcement of existing consumer credit, consumer protection and data protection law.

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

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5.53 Yes. We see no reason why this would not be possible, for example Staffordshire Trading Standards is the claims management regulator for the Ministry of Justice.

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## 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?

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5.54 Yes. It is important and urgent to begin to address some of the issues highlighted by the NAO report.

## **City of London TS**

## **City of London Corporation (CoLC)’s 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*”**

### **CONTEXT**

The Department of Business, Innovation and Skills (BIS) issued its consultation paper on ‘[Empowering and Protecting Consumers](#)’ on 21 June 2011. It 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.

The 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.

This response is based on the response produced by the Association of Chief Trading Standards Officers (ACTSO). ACTSO is the single membership organisation representing Heads of Trading Standards and regulatory services from councils across England and Wales.

### **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 networks and providers such as we have here in the City through Toynbee Hall.

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

CoLC would be happy for the OFT's consumer information role and funding 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.

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?***

CoLC would be happy that the 'Extra Help Unit' specifically for vulnerable consumers, who through age, infirmity, personal circumstances and social issues, cannot access and exercise their consumer rights to the fullest extend without assistance, 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?***

CoLC 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.

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. 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 a currently this not funded.

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 national Trading Standards Policy Board (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 websites such as BusinessLink and also Everything Regulation When Its Needed (ERWIN). 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 therefore 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 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?*

CoLC has no strong preference on the future of CCAS. If a scheme is to continue, there must be an opportunity for LATSS like CoLC to feed into the application process as they have done with the existing OFT Consumer Codes Approval Scheme, so that any concerns or issues can be raised with those seeking code approval. The OFT process for approving codes has proved to be a very long and relatively labour-intensive, although it has been very stringent and 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 the publicly-funded consumer advocacy functions of research and analysis of consumer and trading behaviour with the consequent development of campaigning and lobbying for changes to consumer-related legislation and practice. 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?*

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

**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?*

CoLC 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?*

CoLC believes that the move towards a wider raft of alternative penalties found in the Regulatory Enforcement and Sanctions Act 2008 should have including forms of redress and would be generally welcomed if they act as a deterrent to poor trading practices which in turn protect consumers from detriment.

**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 colleagues in 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?*

CoLC 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. CoLC 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 – e.g. LATSS 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.

Option 3 enables LATSS to have a greater influence over regional and national work and 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.

*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**

CoLC 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. The TSPB must be comprised of heads of LATSS 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. We envisage that the TSPB would direct the work currently done regionally and nationally by LATSS and be responsible for allocating Government funding, under a Service Level Agreement nor similar, for specific activities to deliver many of the functions currently provided by the OFT which would be led by effective intelligence analysis. 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?*, 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**

Clear political accountability and oversight is crucial and the CoLC believe that this role should be similar to an oversight and scrutiny role within local authorities, 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 and we see this being delivered by 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. However no matter which organisation provides this service, all decisions about the spending of any money would come directly from the TSPB.

### **Membership**

Heads of LATSS must be responsible for the operational governance and oversight of the project so it is sensible that any such board should be based on a similar format of the current Trading Standards Policy Forum. The TSPB must have effective representation and leadership from each region of England and Wales and we would suggest representatives would need to be nominated via their local chief officer groups and be mandated to take decision at the TSPB on behalf of their areas. In addition we would expect there to be representation from ACTSO, WHoTS, SCOTSS, TSI and BIS plus others being invited to attend meetings as necessary to share information, intelligence and advice.

### **Chairman**

The TSPB will need a Chair, who will play a pivotal role and this person should be elected from its members. 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 Chair role with funds being 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, for example via ACTSO or TSI or some other arrangements.

### **Relationship to existing Trading Standards Policy Forum (TSPF)**

The TSPB would be a separate but linked group to the existing TSPF. CoLC thinks it is key that the business and decisions of TSPB are kept separate from the broader policy making decisions of the TSPF as the arrangements and accountabilities will be different.

### **Delivery Mechanisms**

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

In terms of the current Scambuster and Illegal Money Lending Teams, CoLC would expect these to continue using the same delivery mechanisms but under the governance of the TSPB rather than direct governance by BIS.

### **Indemnity Fund**

There is a particular concern that any individual LATSS taking on a national case should not be put at significant financial / legal risk and as such BIS, working with ACTSO and the Trading Standards Policy Forum, need to find a method of underwriting or insuring against any such risks. It will be essential that the resources are available to cover all the costs of the investigations and legal liabilities are underwritten.

*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 Joint Enterprise Board (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?*

CoLC would not prefer 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. As the Government identifies in the consultation paper, there would not be the resources to create national and regional enforcement infrastructure in LATSS. Such a JEB would also not be controlled by heads of LATSS and could not be held accountable in the same way.

CoLC 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, and the ability of the network to come together effectively in a national body such as JEB, there 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 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?*

CoLC 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.

CoLC 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.

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 deal with 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?*

CoLC agrees 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 minimise the bureaucracy associated with any such scheme – e.g. whilst LATSS universally welcomed the "Fighting Fund" that

BIS made available to support enforcement activity, they felt 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?***

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.. CoLC do not believe that there will be any problems with an enforcement model branded as run by LATSS.

***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. However this is where advice by BIS on procurement rules would be crucial as the TSPB would need to understand if and via what mechanisms, 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?***

CoLC is 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?***

Yes

**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?**

CoLC believes the Chairmanship of this could 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). 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 took this role then they would be present at TSPB meetings anyway.

**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?**

CoLC feels both these proposals 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?**

CoLC agrees that a lead local authority or group of authorities, could take on the OFT's estate agency and related anti-money laundering functions.

**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?**

CoLC believes that it is essential that the proposed changes to the consumer landscape should go ahead in April 2013.<sup>1</sup>

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<sup>1</sup> This is the date that the enabling legislation is planned to come into effect

## Communications Consumer Panel

## Communications Consumer Panel response to BIS consultation:

### *Empowering and Protecting Consumers*

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#### Introduction

1. The Communications Consumer Panel (CCP) welcomes this opportunity to respond to the BIS consultation: *Empowering and Protecting Consumers*. The last ten years have been a period of significant transition for consumers and their use of communications services. For an increasing number of people, life has been transformed by easy, almost instantaneous access to information and services on a scale previously unimagined. Online communication in particular has become integral to modern life. However challenges remain - some services and opportunities are still not universally available and some elements of inequality are increasing. The rapid pace of change in the communications sector presents both new benefits and challenges. For these reasons, particularly in the light of discussion about a new Communications Act, it is crucial that consumers and citizens continue to have a strong advocate.

#### The Communications Consumer Panel

2. The Communications Consumer Panel was established in early 2004 under section 16 of the Communications Act 2003. It is a group of 7 individuals, appointed by Ofcom with the approval of the Secretary of State, who have substantial knowledge of and expertise in consumer issues in the electronic communications sector. The Panel's remit covers the UK and, by statute, it has amongst its members representatives of the interests of consumers in Scotland, Wales, Northern Ireland and England<sup>1</sup>. Panel members are also expected, between them, to be able to provide informed advice on the interests of older people, those in urban and rural areas, the disadvantaged, people on low incomes or with disabilities, and small businesses.
3. One of the Panel's main tasks is to advise Ofcom on consumer (domestic and small business) issues in the communications sector, excluding issues related to the content of electronic communications. Under the Communications Act 2003, it also has a responsibility to advise other relevant persons and bodies

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<sup>1</sup><http://www.communicationsconsumerpanel.org.uk/smartweb/panel-members/our-panel>



in the telecommunications, broadcasting and spectrum markets. Its role is to act as an advocate for consumers, campaigning on their behalf and ensuring that their interests, including those of small businesses, are central to regulatory decisions. The Panel also provides advice to Government and champions consumers' communications interests with industry and others. The Panel has a memorandum of understanding with Ofcom which defines the relationship between the two bodies. Details about how the Panel operates, what its priorities are and how it is resourced are set out in Annexes 1 and 2.

4. The Panel is making public its response as a contribution to the important debate which this consultation has launched.

### The active consumer

5. The consultation implies that the majority of consumers are inclined to be active in the comparison of products and services. However recent research<sup>2</sup> indicates that consumers in the communications sector are far less likely to switch services than in the utility sectors. Research does highlight instances of particular demographic groups who are less likely to engage in certain aspects of switching behaviour, but this is not borne out across the communications sector - it is therefore not only the 'most vulnerable' who are not active in this market.
6. The research found "*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').*
7. *For multichannel TV, the most common reason for not switching was a combination of hassle (30%) and 'no perceived cost advantage' (29%).*
8. *One barrier to switching supplier, mentioned by at least one in ten consumers who had considered switching in each market but did not do so, was the 'terms and conditions', or being tied into a contract. It is likely that technical literacy and the related problem of speed of innovation may raise particular barriers to switching in the communications sector."*

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<sup>2</sup> The Consumer Experience 2010 Ofcom



9. Whilst it is of paramount importance that the ‘most vulnerable’ are represented, it would be a retrograde step to restrict advocacy and representation to only represent those considered to be ‘most vulnerable’ as it risks excluding the justified concerns and undermining the rights of other consumers.

### **Practical decision-making by consumers - the limits of information**

10. The proliferation of communications services, options and tariffs has brought an increasing level of choice for the consumer. But comparing the different options available in this complex market is not straightforward. The Panel’s work on behavioural economics found that some evidence suggests that too much information, or information that is too complex, can lead to poorer consumer decisions and therefore have a detrimental effect on consumer welfare.
11. The ESRC funded study *Do Consumers Switch to the Best Supplier?* by Chris Wilson and Catherine Waddams Price<sup>3</sup> found that “the inaccuracy of consumers’ switching decisions remains substantial”. Even among people who said they had switched purely for price reasons, only 8-19% of consumers switched to the firm offering the highest level of financial gain - furthermore, 20-32% of switching consumers appeared to have switched to a more expensive option, losing an average £14- 35 per year in increased bills, apart from any other switching costs. The paper concluded “Such a failure of consumers to compare accurately between alternative suppliers can damage their welfare, both directly in lost savings, and indirectly by delivering firms with a source of market power. Indeed, together with the well established effects of switching costs in reducing the willingness of consumers to switch suppliers, such behaviour may seriously impede the competitive process, even after a market has been liberalised or made subject to standard competition policy...”
12. The consultation rightly notes that public money should not be spent generating consumer information where such materials are already freely available from an authoritative source. The CCP does not produce consumer information material. We regard this as the responsibility of operators, Ofcom and accredited comparison sites. The issue here is consumer awareness of what constitutes an authoritative source. Both the FSA and Which? have issued consumer information in relation to the use of price comparison sites.

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<sup>3</sup> Do Consumers Switch to the BestSupplier? Chris Wilson and Catherine Waddams Price, July 2007



## General principles of consumer advocacy

13. The consultation proposes that the existing consumer advocacy functions in a limited number of different sectors should be brought together under Citizens Advice, possibly in a Regulated Industries Unit (RIU). The benefits that the proposal indicates might flow from this reorganisation include being able to draw upon Citizens Advice's local network, to identify issues emerging from consumer complaints and the ability to look across sectors at common issues, such as switching, poverty and disadvantage. We believe that effective consumer advocacy in the communications sector needs to be founded on the following principles.

14. The consumer advocacy body should have:

- the right to be consulted by regulators at an early stage before policy options are hard-baked;
- the capacity to look at emerging issues and research in order to shape policy with regulators and Government and to forestall citizen and consumer problems before they arise;
- strong links with consumer advocacy bodies in the Nations, which we understand might adopt different models depending on their specific circumstances and the existing institutional arrangements;
- the powers to call for information and initiate 'super complaints' that Consumer Focus currently have;
- sector-specific expertise and involvement, especially in a complex sector like communications;
- adequate resources/secure funding; and
- a focus on efficiency - demonstrating real value for money.

## Responsibilities and roles of consumer advocacy bodies and the regulators

15. The Panel welcomes that the consultation proposes enhancing consumer representation in communications. We are however disappointed that the document gives little detail on the relationship and responsibilities between the regulators and the advocacy bodies, which is a key element of our principles listed above. We consider that this is an area that needs more development. We think that it is worth considering exactly where the benefits of scale occur in the organisation of consumer bodies. The consultation gives little detail on how the RIU/CA would interface with regulators. The Panel has been able to champion consumers' interests and influence Ofcom's policy development successfully due to a) its early



involvement in policy development and b) use of robust evidence - be that research or complaints data. A further factor is the Panel's independence; although it sits within Ofcom and thus has unique and expert insight it is wholly and objectively a powerful consumer advocate with the capability to take an inquisitorial approach and hold Ofcom to account. A robust, mutually respected and trusting relationship also allows the regulator to share information early - and in confidence - with the advocacy body. It is this early involvement which also allows the proactive identification of potential areas of detriment on the horizon, rather than waiting until harm has been experienced and complaints received.

### **The capacity to look at emerging issues**

16. The CCP has benefitted from our previous relationship with Citizens Advice - for example CA intelligence informed our work in relation to consumers' difficulties in cancelling their mobile contracts due to poor coverage. There is no reason why that relationship should not continue and indeed, be strengthened whatever the final structure for consumer advocacy. However whilst the consultation rightly refers to the local intelligence that can be gained from contacts received by Citizens Advice, this is potentially only a partial view of consumers' concerns and it is always 'after the event'. In the area of communications, a large number of complaints are also routed directly to the regulator, in addition to those received by the Alternative Dispute Resolution schemes. This allows both the advocate and the regulator to identify, and the regulator to act upon, any immediate issues of concern in addition to those trends which become more problematic due to their persistent nature over time.
17. Because of its working relationship with the regulator, the Panel is also able to look at cross-cutting emerging issues and research - e.g. consumer information in relation to mobile coverage, broadband speeds and traffic management, rather than only in relation to a specific issue.

### **Consumer representation in the Nations**

18. It is vital that there are strong links between consumer advocacy bodies in the Nations, which we understand might adopt different models depending on their specific circumstances and the existing institutional arrangements. The consultation rightly notes that consumer policy is a devolved power in Northern Ireland. If consumers are to be given greater clarity about who is championing their rights, have access to a one-stop-shop and the duplication of research is to be avoided, it is essential that these issues are carefully

addressed and that the rights of consumers in Northern Ireland are not diminished by the existence of two separate systems. Strong links between consumer advocacy bodies in NI and GB will be essential, especially on issues such as communications policy which is a reserved power.

### **The powers to call for information and initiate ‘super complaints’**

19. The consumer experience is an integral element of any healthy market. As such, the role of the consumer advocate must be clearly established and the advocate suitably equipped to represent consumers in the relevant sector. In order to inform and direct its work, and to avoid unnecessary expenditure on research, it is vital that a consumer advocate has the statutory power to call for information which is available to the regulator and complaint handling bodies. Moreover, it requires the ability to initiate ‘super complaints’ in areas where it considers that consumers’ interests appear to be suffering significant detriment.

### **Sector-specific expertise**

20. Like financial services, which is excluded from the review, the communications market is characterised by rapidly changing, complex products delivered in a competitive market with many varied players. To be effective the consumer advocacy body for communications needs to maintain a high level of sector specific expertise. It is not clear from the consultation document how this will be achieved in Citizens Advice.
21. We are puzzled as to why the scope of the consultation identifies as within scope the diverse sectors of water, rail, legal services, energy, postal services and electronic communications but excludes others e.g. financial services. To isolate advocacy for a small number of sectors risks leaving consumer representation for those sectors adrift from the core development of regulation.
22. The Panel would welcome further information about:
  - Without being comprehensive, how Citizens Advice would avoid being dominated by the issues arising in the energy, postal services, water, rail, legal services and telecommunications sectors to the exclusion of others?
  - How it will deal with the many similar issues raised in other sectors - e.g. transport (excluding rail), health and education?



- How will Citizens Advice ensure that it has sufficiently deep and continuous sectoral knowledge to be able to influence the work of those regulators - such as Ofcom - which are regulating fast-changing and highly competitive industries?

### **Resourcing and funding**

23. In order to robustly represent consumers' interests, it is vital that the advocate is adequately resourced - in terms of both headcount and appropriate levels of expertise. Funding must enable the advocate to represent consumers in the short-term as well as allowing it to plan longer term results. It would be a sub-optimal outcome if those sectors which have historically received lower levels of funding were to be marginalised.
24. For regulated industries, the prime responsibility for advice, consumer education etc, should be with the regulator and/or the operators. An independent consumer advocate is vital in ensuring that regulators and policy makers appreciate and address the issues that matter to consumers - but the advocate does not exist to replicate the function of the regulator. That leads to waste and blurred accountability. The same applies to Ombudsman services.

### **The roles of industry players, the regulator and the consumer advocacy bodies and value for money**

25. The consultation gives little detail about how the Panel's principles would be delivered by the RIU/CA and so it is difficult to reach a conclusion at this stage.
26. As noted above, we are disappointed that the consultation does not make clearer its proposals for the respective roles of the industry players, the regulator and the consumer advocacy bodies. These differ significantly from sector to sector and result in very different costs for the industry and the consumer advocacy bodies. Ofcom and the CCP are able to exchange confidential material, including research, relevant to regulatory development. Being able to share research and information in this way represents a significant cost-saving for the advocacy body.
27. The CCP has reduced its budget by nearly 60% over the last year. It is the most economical of all sectoral advocacy bodies other than the Legal Services Panel. In particular, consumer bodies in electricity, gas, postal services and water and transport are each around ten times as expensive as the CCP.

Ultimately consumers bear the cost of these bodies. We would not want to see reform increase the advocacy costs in communications to the same level as in other regulated industries, whilst at the same time carrying the risks outlined earlier of a potential diminution of sector specific representation.

28. We have recently become aware of proposals submitted by Which?, Citizens Advice and Citizens Advice Scotland. We note that these are currently high level proposals and anticipate receiving more details, which we hope will have the potential to address some of our concerns about how our principles will be delivered. Therefore while we look forward to further discussions, currently there is insufficient detail to be able to make a judgment in relation to how effectively it might work.

## Conclusion

29. Ofcom will assume responsibility for the regulation of postal services in Autumn 2011. In the long term it would be sub-optimal to have a bifurcated system of advocacy, with post and communications being represented by separate advocacy bodies. However the Panel notes that this situation is complicated by: the likelihood that complaints about communications and postal services will be handled by different bodies; that the Post Office network itself is not regulated; and different arrangements are likely to occur in Northern Ireland. Ofcom will need to consider this in forming its response to the consultation.
30. As previously noted, the Panel welcomes that the consultation proposes enhancing consumer representation in communications and notes that bringing together consumer advocacy functions could have the benefit of being able to look across sectors at common issues, such as switching, poverty and disadvantage. For that reason, we question why the proposal includes a limited number of sectors, particularly as, in contrast to the ‘traditional’ utilities such as gas, electricity and water, electronic communications have more in common with financial services - both sectors which are characterised by a multiplicity of suppliers and - at least for some products and services - ferocious competition and a high rate of innovation.
31. We believe that effective consumer advocacy in the communications sector must be founded on the principles we have outlined above. The consultation does not provide evidence of how those principles would be delivered in the RIU/CA model - particularly in relation to:

- early intervention with the regulator
- identification of issues at the policy/strategic stage
- efficiencies from sharing data and research
- maintaining sector specific expertise
- maintaining a low cost but effective consumer voice

For these reasons we believe that, as currently presented, the case for change has not been made and that, at least in the short to medium term, the interests of consumers would be better served by the continuation of the current arrangements which are working well at low cost.

## Annex 1

### The Communications Consumer Panel

The main points to note about the Communications Consumer Panel are:

- The Panel aims to protect and promote the interests of consumers in the communications sector by giving advice to Ofcom, Government, industry and others and to ensure that regulators and policy makers appreciate and address the issues that matter to consumers.
- It was set up in 2004 as part of the “better regulation” agenda. The Panel aims to operate according to the five principles of good regulation from the Better Regulation Task Force. These are: proportionality, accountability, consistency, transparency and targeting.
- Its remit includes focussing on the work of a single large regulator, which regulates a fast developing highly competitive industry. This focus gives it a depth of knowledge which is important to enable it to influence the work of a well-resourced industry regulator.
- The Panel has seven members. They have experience in many different fields: consumer advocacy, the telecoms and content industries, regulation, the third sector, trade unions and market research. There are four members of the Panel who represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively. They liaise with the key stakeholders in the Nations to understand the perspectives of consumers in all parts of the UK. These Members also attend the Ofcom Advisory Committee for each Nation and seek to ensure a two-way communication of ideas.
- The Panel engages with stakeholders to inform the advice that it gives to Ofcom and helps to keep the interests of consumers on the agenda across the sector. The Panel also engages on a regular basis with other consumer organisations, such as Consumer Focus, Consumer Focus - Scotland, Consumer Focus - Wales, Citizens Advice, Citizens Advice - Scotland, the Consumer Expert Group, the Consumer Forum for Communications, Which?, the Federation of Small Businesses,

RNIB, RNID, Age UK and Ofcom's Advisory Committee on Older and Disabled People.

- It is evidence-based.
- It does not handle complaints but has access to the complaints-handling and dispute resolution work carried out by regulators and the ombudsman schemes in its sector.
- The Panel has a staff of 1 FTE, seconded to it from Ofcom and in 2011/12 has a budget of £303K. A significant proportion of this budget is devoted to research. In addition, the Panel can, and does, call on the resources of Ofcom to assist in projects and research.
- The Panel's focussed work programme (published annually and attached at Annex 2) enables it both to critique and to influence the work of Ofcom and to provide a degree of assurance to the Board of Ofcom about the regulator's performance in the protection of the consumer interest.

## Competition Commission

## **Empowering and protecting consumers: consultation on institutional changes for provision of consumer information, education, advocacy, and enforcement**

### **Competition Commission response**

#### **Introduction**

1. The Competition Commission (CC) welcomes BIS's objective of creating a strong consumer landscape which complements the UK's competition regime. Competition and consumer policy aim to produce well-functioning markets through delivering vigorous competition between businesses (a strong supply side) and through empowering consumers (a strong demand side). When consumers are able to engage more actively in a market and select products which maximize their welfare, industry is driven to compete more vigorously to deliver products of most value to consumers.
2. The CC has confined its response to the consultation to the issues in Chapter 5—Enforcement of Consumer Protection Legislation, which relate most closely to the reform of the competition landscape.

#### **Background—market investigations and consumer-facing remedies**

3. In the context of market investigations, the CC has on a number of occasions used demand-side remedies which provide consumers with increased market transparency and market access to enhance competition and mitigate customer harm from anticompetitive features of markets. The specific remedies implemented are detailed in [Annex A](#). The objectives of these remedies have been threefold:
  - (a) to provide clear and accessible information to consumers about a product before or after purchase, to enable them to make well-informed choices (Northern Ireland Banks, Payment Protection Insurance (PPI), Home Credit, Store Cards);
  - (b) to facilitate consumers playing a more active role in a market, for example by ensuring publication of comparative tables to enable comparison between products (PPI, Home Credit) and decreasing switching costs (Northern Ireland Banks, Liquefied Petroleum Gas (LPG)); and
  - (c) to change how a business sells a product so that consumers have the opportunity to compare options (for example, PPI and the ‘point-of-sale advantage’).
4. An important benefit of the market investigation regime is that it can identify and remedy business practices in particular markets (or potentially in future, across a number of markets) that are harming consumers, even where they do not breach the antitrust prohibitions or prohibitions in consumer law.<sup>1</sup>
5. In the cases referred to above the CC used its own remedial powers to make orders under Part 4 of the Enterprise Act 2002. A highly attractive, empowering aspect of such measures, from the point of view of consumers, is that where consumers suffer

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<sup>1</sup> As part of a wider competition reform package, the Government has recently consulted on the proposal to provide a new Competition and Markets Authority with a power to promote competition across markets and proactively investigate problematic behaviour across the economy. (Department for Business Innovation and Skills: ‘A Competition Regime for Growth: A Consultation on Options for Reform’, March 2011).

loss or damage as a result of a breach of a market investigation undertaking or order they can take action before the courts. The CC could also, in an appropriate case, take action to modify the licences of operators in regulated sectors which regulated their dealings with consumers directly. In other cases the CC has recommended that action be taken by others, including other consumer-facing regulators; for example, it encouraged the Financial Services Authority to take steps to make more information relating to PPI available to consumers.

6. In deciding whether to take enforcement action itself or recommend action be taken by others, one relevant factor may be the interaction with the substantially EU-harmonised consumer law regime; if the preferable action were to enforce a prohibition under this, the CC would have to recommend enforcement action to the consumer law authorities rather than imposing a remedy itself.

## **Reform**

7. The primary objective of the new Competition and Markets Authority (CMA) should be to enhance effective competition in markets in the UK, and thus consumer welfare, as the Government's consultation on the reform of the competition landscape proposes. Accordingly we see advantage in introducing reforms which create an effective structure for local and national enforcement of consumer law that does not leave the CMA as the main enforcer. In this model it should not be necessary for the CMA to have general enforcement responsibilities for consumer law itself. In general, where it identifies consumer law enforcement issues in a market study or market investigation, we would expect the CMA to refer them to the relevant consumer law enforcement authority. That will enable it to maintain its primary focus on competition.
8. The one situation where there may be some merit in modifying this approach is where, at the end of a market investigation, the CMA has decided that action should be taken to remedy, mitigate or prevent anticompetitive features of markets. In such a case, the CMA and its staff will have gathered very substantial knowledge and expertise in relation to the particular markets which it has examined and practices in them. It will be under a duty to remedy any adverse effect on competition of features in the market, and any detrimental effects on customers resulting from it, and will need to achieve as comprehensive a solution as is reasonable and practicable to them.
9. In that situation there could be cases where the most appropriate action, either as a one-off measure or, more likely, as part of a broader package of remedies, is for an enforcement measure to be taken under consumer law. The CMA would need to be confident that such action was taken or at least fully considered by an enforcement authority. One approach might be for the CMA to rely upon recommendations to Trading Standards, locally or nationally. Another might be to enable the CMA to exercise such powers itself for a limited period of time immediately following a market investigation, as envisaged by Option 3 in the consultation paper.
10. Whatever powers to enforce the CMA is given, it would be sensible to establish a Memorandum of Understanding between the CMA and other consumer enforcement bodies setting out principles guiding whether and when a consumer protection issue identified by the CMA in the course of its work should be transferred from the CMA to Trading Standards, locally or nationally.

## **Responses to specific questions in Chapter 5**

### **Question 20: Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?**

The CC agrees with Option 3 as a model for consumer enforcement. Option 3 enables one consumer body (Trading Standards) to have a clear focus and lead on consumer enforcement matters. The CMA should only have any role in the exercise of consumer enforcement powers as part of its remedial toolkit following a market investigation (see response to question 25).

### **Question 21: In relation to Option 3, do you agree with the Government's principles for the operation of the new TSPB [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 CC has no comment to make on these questions.

### **Question 22: Would you prefer to retain 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 [Joint Enforcement Board] models be the best solution? Which one and why?**

The CC has noted the National Audit Office's comments on the confusing nature of the current arrangements and, as set out in its response to question 20 above, considers that Option 3 would be more likely to deliver Ministers' objectives for reform.

### **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 organizations 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?**

As set out in its response to question 20 above, the CC considers that Option 3 would be more likely to deliver Ministers' objectives for reform and therefore has no comment on the various models for the JEB. If the CMA retains limited consumer enforcement powers, to be exercised only where it is applying remedies in market investigations, the risk of distracting the CMA from its core competition remit is avoided.

### **Question 24: How can your preferred new model work best with business?**

The CC believes that it can safely be left to enforcement authorities to develop their approach to working with business. Its experience suggests that transparency in its process and decisions is helpful to and valued by businesses; we would encourage the CMA and other bodies with enforcement responsibilities to build on this approach.

### **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?**

The CC considers that the CMA should have the role of conducting market investigations that can identify competition problems in markets, and then identifying and, where possible,

putting in place appropriate remedies for them. Not all such competition problems are structural in nature; some relate to the behaviour or conduct of businesses or consumers and the CMA needs to retain powers to address such issues where they give rise to an adverse effect on competition.

**Question 26: In an Option 3-based model, should this enforcement role be subject to procedural limitations?**

As indicated above, the CC believes that such powers should only be exercisable by the CMA, if at all, for limited period following a market investigation.

**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?**

See response to questions 25 and 26 above.

The CC considers that consumer protection law enforcement is not an appropriate remedy for structural problems in a market. So the CMA's ability to apply consumer protection law remedies should not be restricted to structural problems alone.

**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 in the relevant market?**

The CC agrees that the CMA should retain responsibility for market studies (as government proposals for the reform of the competition landscape envisage); these may find both competition and consumer protection issues in the relevant market. The CMA will then have the power to decide how best to address any issues it finds, whether through competition law enforcement, reference for a fuller market investigation, or reference to the appropriate consumer law enforcement authority.

**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 prioritize cases referred by the CMA?**

As set out in the response to question 28, the CMA should continue to conduct market studies and market investigations. If its primary focus is on competition, it would be unlikely to prioritize a study in a market unless it had some reason to believe the consumer detriment arises from competition problems in that market.

Where a market study identifies that there are no competition issues meriting further investigation, the CMA might still refer any other consumer law issues that appear to be appropriate for Trading Standards or TSPB enforcement action to those bodies.

There should be a clear arrangement between the CMA and TSPB for how cases referred by the CMA for enforcement action are taken forward in line with Trading Standards prioritization criteria. The Government is committed to responding within 90 days to recommendations made by the CC following a market investigation; a similar arrangement might be appropriate in this case.

**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. It will be important to ensure that the controls on the handling of confidential information under the new regime do not unduly inhibit the ability of the various bodies to collaborate and operate effectively.

**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 funds be set and how best should they be administered?**

The CC does not consider it necessary to have a fund requiring joint sign off for markets where problems are unclear at the outset. Emphasis should be on effective referral and flexible funding mechanisms rather than joint budgets which risk creating further confusion about roles and responsibilities.

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

The CC has no comment to make on this question.

**Question 33: Do you agree the TSI [Trading Standards Institute] 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?**

The CC has no strong view on the most appropriate location for these functions, but they do not appear to be appropriate for a CMA with a primary focus on competition.

**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 CC has no strong view on the most appropriate location for these functions, but they do not appear to be appropriate for a CMA with a primary focus on competition.

**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 CC has no comment to make on this question.

**Question 36: Do you agree that responsibility for chairing the consumer concurrencies group should remain with the CMA?**

The CC has no strong view on the most appropriate location for this function, but it does not appear to be appropriate for a CMA with a primary focus on competition.

**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?**

The CC sees no reason to change the current supercomplaint arrangements as a result of these proposals.

**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?**

The CC has no comment to make on this question.

**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 CC has no strong view on the most appropriate location for this function, but it does not appear to be appropriate for a CMA with a primary focus on competition.

**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?**

There are significant interrelationships between the proposed changes to the consumer and competition landscape. The CC considers that the two sets of changes should be considered together as far as possible, and the implementation of both sets of proposals should be co-ordinated to avoid confusion and gaps in enforcement.

## **Consumer-facing remedies in market investigations**

### **Store Cards**

Provision of pricing information in a clear and easily accessible format including:

- an annual percentage rate (APR) warning above a certain threshold;
- details of monthly charges and risks of making minimum payments; and
- information on ‘how to pay’ and how to amend or cancel credit arrangement.

### **Northern Ireland Banks**

Provision in an easily accessible format of:

- descriptions of personal current account (PCA) services;
- explanations of the level of charges and interest rates and how and when they are applied;
- key account information;
- annual summary of charges and interest;
- advance notice of charges and debit interest incurred; and
- regular ‘rights’ reminder.

### **PPI**

Provision of:

- key information in marketing material; and
- price information for use in price comparison websites.

### **LPG**

Provision of improved information to consumers about suppliers to encourage switching.

### **Home Credit**

Provision of:

- price information to an independent website operator to enable consumers to compare prices of loans; and
- more information on statements.

## **Construction Licensing Executive**

Construction Licensing Executive (CLE) operates a licensing scheme for traders in the construction sector, mainly operating in Scotland, but with some member companies in Northern Ireland. We have almost 2000 companies in electrical, plumbing and heating, building and decorating trades, who have demonstrated compliance with our licensing scheme criteria. They are committed to adhering to best practice in ensuring that consumer experiences in the construction sector are contrary to the negative perceptions brought about by rogue traders who operate in our particular industry.

CLE is one of the ten applicant code sponsors; our application was submitted to OFT in September 2010, and was accepted for progressing to Stage 1 approval. Disappointingly, we were informed in February 2011 that OFT were not able to proceed with our application, due to lack of resources and uncertainty over the future of the CCAS.

We remain keen to gain recognition for our licensing scheme, to give even greater levels of confidence and assurance to consumers.

Our response to the consultation on the future of consumer code approvals is therefore made from the perspective of a body wishing to engage in:

- a process that is meaningful and cost effective for businesses, to encourage their desire for participation in it
- which results in achievement of a status that has credibility and visibility with consumers as offering high levels of assurance and protection
- and brings benefits to both parties

In response to the specific questions raised:

#### Question 6 – Best Options

In order to achieve the points listed above, any future scheme must include the following features:

- Cost-effectiveness – the benefits and value of achieving approved code status for the code sponsor and for businesses who participate must outweigh the costs of doing so. The scheme has to be seen by businesses to also add to their bottom line – to encourage them (and their trade representative bodies) to join the scheme. While objectives concerned with consumer protection are important, the replacement scheme will need to acknowledge that more participation by code sponsors and businesses must also be a goal, if it is to become sustainable and not present an ongoing resource demand on public budgets.
- Therefore the process for gaining “approved code” status needs to be effective, proactive, responsive and well resourced to attract more code sponsors into the scheme. This will enable more codes to be approved, which will generate economies of scale and promote greater awareness.

- Wider public recognition needs to be a key feature – the current CCAS has not achieved this, although the OFT logo has a much higher public perception for consumer protection, and retention of this brand would be a great asset to any future scheme.

#### Question 7 Private/Voluntary systems of accreditation

CLE is already a voluntary system of accreditation – established by the organisations operating in the construction sector to enable individual companies to distinguish themselves from rogue businesses. Without CCAS we will continue to operate our code, and will still provide protection and benefits to consumers. The value of CCAS is to provide external validation of what we do.

Without CCAS, many other similar codes will continue or may develop. The difficulty arises for consumers who find it hard to distinguish between such voluntary codes – which are the good codes? Which ones offer real protection?

Local authority responses will be limited to their own local areas or at best regional schemes, if at all, given their budgetary constraints and competing priorities.

#### Question 8 Lessons from operation of CCAS

Our own experience of dealing with OFT to gain CCAS recognition was limited, but it was clear that the scheme was not well resourced, with long intervals between responses. The fact that only ten codes were approved (some only at Stage 1) over a ten year period suggests that the function was not given high enough priority and therefore resource, despite the potential that the scheme had to make effective contributions to achieving higher levels of consumer protection across a wide range of sectors which have been known to cause considerable consumer bad experiences.

It has been clear from working with other code sponsors, who have come together very effectively to respond to the impending loss of CCAS, that OFT could have engaged more and achieved more through encouraging joint working. For example, the approved code sponsors could have worked on joint marketing campaigns to raise awareness of the code, and provided peer support for potential new code sponsors looking to join the scheme, thereby speeding up the process of gaining approval.

#### Question 9/10 Transposing CCAS into BSI standards/Kitemarking

The suggestion that each approved code should be rewritten as a BSI standard is not likely to be attractive to many organisations, other than perhaps BSI! The additional costs, though not actually known at this point, are expected to be prohibitive, and it is not clear what would be the added value of rewriting each code in BSI terms. Existing code sponsors, and ultimately their customers, have benefited from them being able to respond flexibly to their environments, developing their codes accordingly and relatively quickly. There is also concern that having codes written as BSI standards would make such responsiveness and flexibility much less achievable.

The suggestion that the CCAS criteria could be rewritten as a BSI code, to which all code sponsors would need to demonstrate adherence, may have more merit, and would have the advantage of promoting the collection of codes under one brand. Is this where the Kitemark might apply? Kitemark has the distinct advantage of consumer awareness and perception of rigorous testing, although the perception may be related more to recognition of product safety than high quality service. The costs of involving BSI, and the rigidity of standards' approvals and auditing procedures, would be a major concern though.

This option may make code membership less attractive to businesses, even those already keen on self-regulation as a means of distinguishing themselves in their respective sectors, because of the knock-on effects of higher costs and added bureaucracy.

**Question 11 Primary Authority Concept**

For this to be workable, it would require one authority to undertake to deliver the scheme, and therefore assess and monitor all code sponsors. This would be a significant task for one authority – to cover code sponsors from all parts of the UK. Many local authorities operate their own local trader schemes and this may be considered to compete with their own priorities.

**Linda McPhillie  
Chief Executive**

27<sup>th</sup> September 2011

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## Consumer Council (Northern Ireland)



**The Consumer Council**

**Consultation: BIS: Empowering and Protecting Consumers**

**Date:** September 2011

**Contact:** Aodhan O'Donnell

**Our (PID) reference number:** PD20010 998

## **BIS: Empowering and Protecting Consumers**

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

The Consumer Council is an independent consumer organisation set up in legislation to safeguard the interests of Northern Ireland consumers, particularly the vulnerable and disadvantaged. We work to promote and protect consumer interest and bring about change to benefit consumers. Our aim is to make the consumer voice heard and make it count.

We represent consumers in the areas of transport, water and energy. We also have responsibility to educate consumers on their rights and responsibilities and to equip them with the skills they need to make good decisions about their money and manage it wisely.

#### **Introduction**

The Consumer Council recognises significant changes are proposed for how consumers are represented, protected, informed and supported within England, Scotland and Wales.

Consumer policy is devolved to Northern Ireland and therefore much of the consultation does not directly apply. However a specific issue in relation to the transfer of postal functions from Consumer Focus to the Consumer Council is directly relevant. Comments on this proposal are included within this response.

Although recognising that most of the policy changes proposed in the consultation document do not directly apply to Northern Ireland the Consumer Council has provided a number of general points in response to the consultation exercise, drawing on our experience as follows:

- The Consumer Council represents an integrated model of consumer representation which brings a strong focus, emphasis and consistency

to key issues of importance to consumers. An integrated approach supports policy interventions which compliment across a range of consumer issues and allows for learning to be shared.

- The Consumer Council has experience in working closely with organisations and bodies which represent consumer interests in England, Scotland and Wales. For example the Consumer Council is a designated body for the purposes of supercomplaints<sup>1</sup> which has supported relationships to be developed with the Office of Fair Trading.
- Many consumer issues extend beyond boundaries and are common not only a regional level but national and European level (e.g. PPI, Air Passenger Rights, Fuel Poverty). It is essential that the consumer landscape supports, facilitates and encourages communication and exchange of information.
- The Consumer Council works across a number of regulated industries. Therefore proposals for a Regulated Industries Unit (RIU) are of particular interest. For example there is a high degree of interdependence in relation to energy issues such as cost, security of supply and customer service across the regions.
- Emerging consumer issues and challenges are shared and can be effectively tackled through co-ordinated and coherent actions.

The comments contained in this response initially focus on the proposed transfer of mail and post consumer representation from Consumer Focus (Post) to the Consumer Council.

The final section includes general comments in relation to the wider consumer landscape.

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<sup>1</sup> The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification)  
<http://www.legislation.gov.uk/uksi/2003/1400/schedules/made>

## **1. Post and post office consumer issues**

The consultation document acknowledges the difficulty that separation of consumer representation on postal issues (Consumer Focus) and wider consumer issues (Consumer Council) has caused for Northern Ireland consumers. It also recognises that all key stakeholders (CFPNI, CCNI, Consumer Focus Board in London, BIS and DETI) accept the benefit for consumers having their interests represented by a single body.

There are clear benefits to transferring the functions of CFPNI to CCNI. Consumer issues are interlinked. Issues of disadvantage, exclusion, accessibility to services in rural areas and sustainability all have major areas of cross-over between CCNI and CFPNI. The Northern Ireland consumer would benefit from a holistic approach from one single organisation and focus.

Of the two options presented within the consultation document the preferred approach for the Consumer Council is **Option (a)**:

**CFPNI is transferred to CCNI with the operation of POSTRS redress system remaining as it is now and still operating in Northern Ireland. CCNI would take on the role currently carried out by CFPNI. Responsibility for advice and assistance to Northern Irish consumers on postal issues currently dealt with by Consumer Direct would transfer to CCNI.**

A transfer of functions from CFPNI to CCNI would offer both the Northern Ireland citizen and stakeholders greater clarity and simplicity in the way consumer issues across the entire landscape are perceived and handled.

The Consumer Council supports this option but recognises there are a number of practical issues and requirements which need to be satisfied to

ensure both an effective transfer of services and effective consumer representation.

- **Reserved Issue and local focus**

The consultation document sets out that as postal issues remain a reserved issue it is envisaged CCNI will report directly to BIS on postal issues should the option be agreed.

This does not present a difficulty and indeed it is not an unfamiliar position for CCNI to deal with a consumer related issue which remains reserved.

Air Transport issues are already handled in Northern Ireland by CCNI, including retained aspects of policy. CCNI work to a contract agreed with the Department for Transport.

- **Handling Complaints and Enquiries**

The Consumer Council works to bring about change to benefit Northern Ireland's (NI) consumers. CCNI takes complaints in the areas of transport, water and energy. It is essential that responsibility for postal service consumer advice & complaints support will transfer simultaneously to CCNI, to ensure coherence in approach with other areas for which we have a statutory remit

This will ensure consumers can expect the same representation, advocacy and consumer protection across the full range of consumer issues in Northern Ireland. This would end the disjointed approach whereby consumers currently are signposted to the GB-based *Consumer Direct* helpline for mail and post office enquiries only. A transfer would remove confusion among NI consumers as to who is responsible for mail and post office consumer policy and enquiry services.

- **Added Value**

CCNI has a clear focus on local issues affecting consumers and works across a broad range issues including financial services, transport, energy,

water and consumer education. Recognising many consumer issues are inter-related there is a high degree of cross-sectional working, sharing of knowledge and research. In relation to transfer of postal services this presents an important opportunity to integrate and support assimilation with wider consumer issues in Northern Ireland.

In addition within the Consumer Council the consumer support section deals with complaints and enquiries from consumers on a daily basis provides. This provides a strong evidence base and intelligence to ensure policy work remains focused on key consumer issues and will ensure mail and post office issues for consumers are effectively identified and tackled.

It is recognised transferring CFPNI to CCNI would bring greater cohesion and a single point of contact within one integrated consumer advocacy body in Northern Ireland. There are strong opportunities to develop synergies between work on postal service and other consumer issues, including – outreach, consumer panels, stakeholder networks and complaints. The transfer of functions would also ensure mail and post office issues are within the remit of an organisation within Northern Ireland that has a strong profile, public acceptance, media presence and political capital.

Ultimately the transfer should provide resource savings and efficiencies however it is essential an appropriate apportionment of resources should accompany the transfer of responsibilities to the CCNI. This is critical to allow CCNI to effectively undertake this additional role and to ensure consumers in Northern Ireland have parity of protection and representation.

## **2. Changes to the GB Consumer Landscape**

The Consumer Council has a strong track record in representing consumer interests in Northern Ireland. As many consumer issues (such as air and fiscal policy) are reserved and/or have a wider national and

European interest, the Consumer Council recognises the importance of key aspects of this consultation exercise which impact on our work in NI. It is this experience and ability to compare with more local arrangements which provides an opportunity to comment briefly on the wider landscape proposals.

## **2.1 Advice, information and education.**

High quality and consistent information is essential for consumers to make sound choices, to express their rights and take appropriate action if things go wrong.

Currently information for consumers is available from a wide array of sources and in a wide variety of formats. It is clear there is a possibility of conflicting advice and information. It is essential in any new consumer landscape that clear information is provided to consumers in a way which meets their needs.

There must be opportunities for consumers to seek specific advice and assistance from trusted sources. In dealing with consumer complaints and enquiries the Consumer Council recognises the need for expertise in areas of energy, water or transport in order to deal effectively with consumer issues and represent them when dealing with service providers.

Dealing with consumer complaints and enquiries provide a powerful source of intelligence to spot trends and issues affecting consumers. It is essential that opportunities to bring together intelligence based on consumer enquiries and complaints is achieved.

## **2.2 Consumer Codes**

The consultation document reflects a Government direction to support '*flexible, non-regulatory approaches to ensuring consumers are protected*'. It is recognised good businesses have long developed voluntary codes of

practice which go beyond the law to reassure consumers and boost their confidence.

The OFT has operated a Consumer Codes Approval Scheme (CCAS) since 2001 but under the proposals to create a single Competition and Markets Authority the OFT will be merged into the new body. It is envisaged the role in consumer codes approval will not be continued.

The document states options for consumer codes will be considered, potentially through Trading Standards or other non-public bodies. The Consumer Council recognises that there were concerns with the length and detail required in relation to CCAS scheme and that there are good models of self and co-regulation which currently exist. However the consideration that other sectors with recognised brands '*would fill the gap*' could lead potentially consumer confusion and inconsistency of standards and ultimately to a devaluing in the eyes of consumers.

Given the preference for a 'non-regulatory approach' it is essential a strong and clear approach to approving consumer codes is agreed. It is not always the case that a business or industry will want to move in this direction and it requires significant pressure to achieve – even if there is a clear benefit for consumers. Therefore a recognised and respected consumer code approval schemes must be supported to ensure consumer confidence is improved.

Consumers must have confidence in a scheme which must be operated by a recognised and respected organisation which has an open and transparent process for setting standards, approving standards and monitoring standards.

### **2.3 Regulated Industries Unit (RIU)**

The consultation recognises the need for strong consumer representation which promotes positive change for consumers and takes an upstream,

proactive approach. This is particularly important within regulated sectors to ensure 'consumer focused' regulation and provide regulators with a balanced perspective and framework in relation to key decisions.

The Consumer Council welcomes the proposal to establish a RIU and is supportive of the proposed design principles. Our experience of working to provide a coherent consumer representation function across a range of regulated sectors has shown that better consumer impacts and outcomes can be achieved through this approach. In particular, the learning that can be absorbed from one regulated sector can be applied effectively to another as there are often interdependent facets to giving consumers a better experience across regulated industries (e.g. energy, transport, water, post, financial services). Effective policy design, implementation, monitoring and change will yield results for both government and consumers and this can, in our view, best be achieved through an adequately resourced RIU which has access to the right intelligence, capabilities and powers.

The real added value of an RIU can come from having responsibility for consumer issues within all regulated industries which impact considerably on consumers - eg energy, post, transport, water. This would ensure lateral policy thinking and lessons gleaned in one industry can be successfully applied to another.

Expertise, industry knowledge and experience working within regulated industries is key to build consumer confidence and ensure their interests are effectively represented within a regulatory framework. It is essential consumers benefit from a successful transition to a RIU. There is a real need to protect and transfer the current policy competence and experience of those organisations currently working to represent consumers within regulated industries. There will be a real detriment to consumers if this is lost in transition.

The Consumer Council, as an integrated consumer representative body recognises the value of sharing knowledge, information and experience across the UK; As such, we endorse the view expressed in the consultation document (para 4.39) recognising whilst local, regional and national differences exist, consistency of consumer **protection** and **advocacy** is vital. We are committed to continuing with strong relations with consumer bodies in England, Scotland, Wales and the Republic of Ireland so that consumers get the best of our collective capacity. We look forward to exploring with those consumer bodies, including the RIU, how best we work, learn and share together. We also look forward to discussing further with BIS as government takes final decisions on these proposals and we move into implementation stages.

## **2.4 Competition and Markets Authority**

The proposed Competition and Markets Authority (CMA) is to be created by merging the competition functions of the OFT and the Competition Commission. It is intended to play a key role in ensuring markets work for consumers and have powers to investigate markets and use consumer or competition law to resolve problems.

The Consumer Council would seek clarification on what, if any, impact this merger will have on the submission of supercomplaints by designated bodies or undertaking market studies. Issues affecting Northern Ireland consumers such as energy prices, banking, insurance have been raised successfully with OFT and it is important this focus is not lost.

## **Conclusion**

The Consumer Council supports changes to the Consumer Landscape which drive benefit to consumers in how they are represented, how their rights are protected and how there are empowered through information, advice and education.

Although recognising key changes contained in the consultation document do not directly apply to Northern Ireland the Consumer Council has provided comment on the proposed structural changes. These are based on our experience of working on consumers behalf but also the interaction we have and continue to have with organisations representing consumer interests at a national level.

In relation to specific changes affecting Northern Ireland the Consumer Council fully supports the transfer of functions from CFPNI to CCNI as it will simplify the landscape for consumers, provide synergies across other policy areas and ensure consistent treatment across a range of consumer priorities.



The Consumer Council



*Making the consumer voice  
heard and making it count*

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## Consumer Council for Water

27 September 2011



David Evans  
Department for Business Innovation and Skills  
Consumer and Competition Policy Directorate  
3<sup>rd</sup>Floor  
1 Victoria Street  
London  
SW1H 0ET

Dear David

**BIS Consultation on Empowering and Protecting Consumers**

The Consumer Council for Water is the statutory consumer organisation representing water and sewerage consumers in England and Wales. Our operation in Wales is different to reflect special requirements there.

We welcome the opportunity to respond to the BIS consultation on the future landscape of consumer representation in England. Whilst the Consumer Council for Water supports any change that will improve the advocacy of consumers, we are concerned that these proposals, whilst possibly creating some cost savings, could be achieved at the expense of delivering real benefits for consumers.

We wish to ensure that the interests of water consumers are maintained or enhanced as the result of any Review affecting them. Hence we are responding in particular to questions about:

1. Government's objectives of the Consumer Landscape Review (paragraph 1.23).
2. Citizens Advice taking over sectoral consumer bodies, specifically water (question 12).
3. Possible extension of a redress scheme to water (question 17).

In our response, we use evidence from the energy sector, as well as water, because we have important comparative customer information about energy.

*BIS should take full account of the Gray Review of consumer representation in water.*

Importantly, you will be aware that a detailed review of consumer representation in water has been recently carried out by Defra and Welsh Government, supported by David Gray, an expert in the field of utilities and regulation. This review, the Review of Ofwat and Consumer Representation in the Water Sector ("the Gray review") was published in July 2011. It took into account the arguments for different approaches to consumer representation in water (including a Regulated Industries Unit). In brief it concluded that the Consumer Council for Water should be retained as it considered that:

- It was essential that the functions currently undertaken by The Consumer Council for Water should be preserved;
- There was real value in retaining the Consumer Council for Water in its current role; and
- There is a degree of risk in making substantial changes to the approach to consumer representation in the water sector at a time when significant changes to regulatory arrangements are under consideration.

Given that this was a comprehensive assessment by an expert of what is needed in water and taking account of a changing regulatory environment in water, we think it is important that you take full account of and observe its findings. Not to do so could be detrimental to water consumers.

## 1. Government's objectives of the Landscape Review (paragraph 1.23)

*We agree with some of Government's objectives for the LandscapeReview. However, we believe that the most important objective is that consumer bodies resolve issues of greatest consumer detriment in their designated sectors and demonstrate impact for customers and value for money in doing so.*

We believe the measure of success for consumer representation in any sector is the extent to which it addresses and resolves areas of greatest consumer detriment in

the area in which it operates. There should be demonstrable returns for customers and value for money in addressing these issues. This includes efficiency as stated in the Government's objectives but goes beyond that to demonstrate both efficiency and added value for consumers.

Since 2005 the Consumer Council for Water has sought to operate in this way with a number of successes including:

- The outcome of the last water Price Review in November 2009 was over £1 billion or over £50 per customer better than the last price Review in 2004 when the Consumer Council for Water was not around;
- £135m in extra benefits negotiated for companies to return to consumers;
- £12.4 million in compensation for poor service has been returned to consumers;
- Thanks to our work with the water industry, consumer complaints to companies are more than 30% lower than their peak. Customer satisfaction with CCWater's service is 75%;
- An increase in take up of the WaterSure Tariff for vulnerable consumers of 134% over the last three years; and
- We reduced our costs to water customers by 10% in 2010/11 with a further 10% planned in 2011/12. We cost water customers 21p per bill payer.

Our success in representing consumers is acknowledged within the sector, as David Gray pointed out. As one water company has said: "The organisation speaks up for customers at both national and local level. It is vital we continue to ensure customers and their concerns such as public health, service and the flooding of homes continue to be raised with water companies. We believe that the Consumer Council for Water provides an effective voice for customers", Yorkshire Water, response to Gray Review.

## 2. Citizens' Advice taking over sectoral consumer bodies, specifically water (question 12)

*Any change to consumer representation should be based on a strong and compelling business case.*

We are strongly in favour of improving things for consumers in general and water consumers in particular.

Any proposals by Government to change how consumers are represented in the water sector should clearly demonstrate a benefit compared to what already exists. Such a case does not appear in the Landscape Review and we are unclear that it can be made.

In our view the proposals for reform would need to deliver an improved service for water customers at a cost of less than 21p per water customer per annum and value added to consumers of over £1 billion over a five year period.

*In considering a merger of several sectoral consumer bodies, Government should be wary of making changes to obtain theoretical and un-quantified “synergies”, potentially at the expense of a loss of the more tangible benefits delivered by a very focused sector specific consumer body.*

BIS' Regulatory Impact Assessment attached to the review suggests that it will take up to eight years before the transitional costs are recovered, with overall cost savings being £2.5m per year. Other “synergies” are stated but their value is vague.

In our experience, most benefits for consumers are delivered by negotiating in detail on key issues at senior level in the sector, backed by real expertise and respect by the parties in that sector. In the water sector there are 22 companies and four main regulators with whom we negotiate. The complex nature and extent of the negotiations in water on behalf of consumers should not be underestimated. We believe these are significantly different from energy, for example. There is a real danger that a multi sector consumer body would necessarily operate at a more detached level in their sectors, observing and commenting on the sectors, rather than negotiating and making a real impact on the industry for the consumers' benefit. This we believe would inhibit their ability to deliver real, tangible benefits for consumers.

Indeed as the Gray Review stated; “The review team doubts whether a body with no history of taking on the advocacy role in water could perform the role as effectively as CCWater does at present. At the very least there would be a danger

of less effective consumer representation during the next price review, PR14, as the consumer responsibility was transferred to Citizens Advice."

*Existing published evidence in energy suggeststhat the multi sector consumer model, despite synergies, delivers less tangible benefits than a well focused single sector body with integrated complaint handling in water.*

Existing evidence available to CCWater from published comparative customer data does not support the proposition that joined up consumer advocacy brings greater benefits to consumers compared to focused consumer advocacy.

The proposal in the BIS consultation envisages a single advocacy unit for regulated industries to exploit synergies across the sectors and fragmentation of consumer complaint handling(including an ombudsman scheme).

However as argued above, consumers would expect synergies to produce cost savings. But much more importantly for consumers, they would expect an effective well targeted consumer body to produce financial and service benefits for consumers and help resolve areas of detriment for consumers that lead to complaints.

The existing published evidence available to CCWater is far from clear that the model proposed in this consultation (a "conglomerate" advocacy function for regulated industries with a fragmented complaint handling system including an ombudsman) is better for consumers than a sector focused consumer body with an integrated complaint handling system.

The nearest existing analogy to what is being proposed in the BIS consultation is the consumer advocacy and separate ombudsman arrangement in energy where:

- Consumer advocacy for energy is carried out alongside that for post and more general consumer advocacy in a single organisation which should therefore benefit from some synergies; and
- The complaint handling system is fragmented, involving an ombudsman (the energy ombudsman) as final resolution of consumers' complaints.

However, published information demonstrates that the conglomerate advocate and separate ombudsman model does not benefit consumers in energy compared to the single sector focused consumer advocate with integrated complaint handling as currently exists in water. In fact as Table one below demonstrates, consumers appear to gain greater benefit from being represented by the latter.

The tangible value of synergy to energy consumers is not clearly evident from advocacy being already shared with post and broader consumer advocacy within Consumer Focus. It should also be pointed out that industry revenues and size of customer bills are several times greater in energy than they are in water, so the potential for value added by a consumer body is arguably much greater in the former. We address the complaint handling aspect of the BIS proposals in Section 3 below.

We believe that BIS should use the actual experience and data from synergies in energy, post and cross sector advocacy in Consumer Focus to build a realistic view of the case for synergies from a regulated industries unit. It should also identify the potential risk to customers of the possible lesser focus of a cross sector regulated industries unit on specific designated industries.

Table one

Current Consumer Representation Comparison - Energy and Water Sectors

	Cost (2011/12)	Financial Benefits Delivered to Customers		Customer Satisfaction with the Industry			Customer Satisfaction with Final Stage Complaint Handling
		Reported value of direct intervention by advocacy body	Other reported financial benefits to sector consumers	Customer satisfaction - with service	Customer satisfaction - with value for money	Customer satisfaction with company complaint handling	
Energy Sector (with multi sector advocacy synergies and separate complaint ombudsman)	£5.7m <sup>1</sup> Excludes costs of Consumer Direct and Ombudsman	£72m <sup>3</sup>	£332m <sup>4</sup>	90% <sup>5</sup>	73% <sup>5</sup>	27% <sup>6</sup>	59% <sup>7</sup>
Water Sector (Single sector focused advocacy with integrated complaint handling)	£5.1m <sup>2</sup> Includes costs of complaint handling	£135m <sup>2a</sup> +£12m compensation	£1bn <sup>2b</sup>	92.5% <sup>5</sup>	74% <sup>5</sup>	44% <sup>9</sup>	75% <sup>8</sup>

1 - Costs exclude complaint handling (figure taken from Consumer Focus Annual Plan 2011/12)

2 - Costs include complaint handling (CCWater Licence Fee, taken from CCWater Forward Work Programme 2011/12)

2a - CCWater Annual Review 2010/11

2b - CCWater Forward Work Programme 2011/12

3 - Consumer Focus Annual Reports 2008-2011

4 - Consumer Focus Annual Report 2008/9 (£500m indirect benefit reported by Consumer Focus across all sectors)

5 - CCWater Customer Tracking Survey 2010/11

6 - Ofgem Customer Complaints Handling Research 2010

7 - Ombudsman Services: Energy Customer Satisfaction 2011

8 - CCWater Customer Satisfaction Survey 2010/11

9 - CCWater Customer Tracking Survey 2010/11 N.B. this statistic is based on a small sample size. However we understand that in the near future, Ofwat will be publishing data based on a much bigger sample. Our expectation is that the Ofwat data will show much higher customer satisfaction with company complaint handling.

This existing evidence in energy and water strongly supports the recommendations of the Gray Review that CCWater should be retained and at least suggests that the better model is one of sector focused consumer bodies, with strong performance and outcome targets. Clearly it is important that sector focused consumer bodies should partner to share experience of cross sector issues. In this way, consumers gain from the more tangible benefits of focused consumer bodies and any synergies of partnering and the avoidance of duplication. This would avoid the significant upfront costs from merger. It also enables consumers and companies of designated sectors to be able to see very transparently that money from customers' bills is being spent clearly on issues in that sector (as is currently the case in water), and is not cross subsidising other sectors.

We believe that separate organisations should, where it is cost effective, share back office services. When the Consumer Council for Water was created in 2005 we shared Finance and Human Resources with Ofwat for nearly five years. More recently, we explored options for sharing with Consumer Focus but were unable to progress this when their future became uncertain.

*In terms of longer term issues, water consumers have benefitted from the focus of a consumer advocate on the particular challenges facing water*

In terms of longer term issues facing consumers, it is also unclear that a multi sector consumer advocate can engage more effectively for consumers than a single sector focused one. In water the Consumer Council for Water has engaged fully and at a detailed technical level to make sure the implications for consumers are central to consideration of the very specific long term issues facing the water sector. We have worked with water companies, relevant regulators and NGOs, Government, Government reviews and parliamentary enquiries and had a real impact on:

- The pacing and scale of major environmental improvements arising from directives, legislation and new regulatory standards;
- The long term security of supply of water. This has involved detailed technical work on:

- Changes to regulation and alternative market mechanisms to use water more efficiently;
  - Questions over the need for major new water resources, particularly new reservoirs;
  - The trade offs between water use and the impact of over-abstraction on the environment;
  - The role of water metering in terms of water charging and its impact on consumers. We have helped shape Government policy on this and vitally had a significant positive impact on the implementation by all companies that are pursuing "compulsory" metering programmes; and
  - Helping consumers save water, in close partnership with water companies, regulators and Government. This is producing real results, with some companies now reporting demand reduction by consumers. Our consumer tracking survey indicates that the percentage of customers who are saving water has increased by four percentage points over the last three years. Over 75% of people now say that they have taken action to reduce water usage and this is an improving trend.
- The challenge of flooding: the impact on consumers, the complexity of how to resolve it, who should pay and how companies' own assets should be made resilient to it. We have also helped consumers play their part to avoid sewer flooding, again in close partnership with water and sewerage companies. This has been extremely successful in changing consumer behaviour. Our consumer tracking survey shows that awareness of this issue has increased by 11 percentage points to 80%, helping to reduce the risk of sewer blockages and any subsequent sewer flooding; and
  - The role of competition in the water sector and how to make this work to benefit different consumer segments.

We believe that the longer term issues in terms of security of supply in energy, for example, have some similarities to water, but are significantly different. These involve issues around cross border gas and electricity markets, questions about the role of renewable and nuclear energy, and difficulties with the upstream market

arrangements in energy. Ofgem has highlighted the challenge of medium to long term security of supply in energy. We are unclear how far a multi sector consumer advocate has or would use synergies to benefit consumers on such issues compared to a consumer body focused on a specific sector. We believe that there is at least a danger that a multi sector regulated industries unit might not engage sufficiently for consumers on the specifics of the longer term in their designated sectors.

*Water has particular issues that mean that this focus on water consumers is vitally important.*

The Gray Review recommended that the Consumer Council for Water should continue in its current role. The Review identified three key features of the water sector which differentiate it from other regulated sectors and which requires that there is a sector specialist body:

- The first is the limited extent of competition in the sector and even if competition was eventually introduced for the domestic market the regulated core network business would still represent a much greater proportion of the final price to consumers than in the energy sector;
- Second, linked to the relative lack of competition is the absence of any commercial organisations that could be said to represent the consumer view. In other sectors there is a debate about the extent to which non-regulated companies can be taken to represent the consumer view (e.g. energy supply companies in respect of network regulation and airlines in respect of airport regulation), but in water that possibility does not currently exist; and
- The third feature is the complexity of trade-offs required between water quality and environmental issues and water prices. This approach clearly requires consumer representation in the sector to be based on sufficient specialist expertise to be able to understand these trade-offs and contribute a measured view on their discussion and resolution.

As the Gray Review said: "The review team doubts whether a body with no history of taking on the advocacy role in water could perform the role as effectively as CCWater does at present."

*The water industry is changing and so is CCWater*

More generally, at a time of major change in Ofwat's approach to regulation in the sector, including market reform, a new approach to setting price limits and a major effort to reduce the burden of regulation, the GrayReview saw real value in continuity of consumer representation to ensure that the interests of consumers are clearly and strongly put forward at all stages.

Highlighted within the Review were some areas in which CCWater could adapt and where new responsibilities could be taken on to improve consumer representation and reflect the changing nature of the water industry. CCWater has already begun to take steps to adapt to meet the forthcoming challenges brought by the evolving regulatory environment and specifically the forthcoming 2014 price review.

The Review also identified some potentially significant risks in the transition to any new arrangements; either in the sense that consumer representation proves to be less effective or a loss of effectiveness during a period in which Ofwat is pursuing major changes to the way it regulates the sector.

The GrayReview stated: "We consider it essential that the functions currently undertaken by CCWater should be preserved in any new institutional arrangements and, while we accept that there are alternative models for achieving this, we see real value in retaining CCWater in its current role. We also see a degree of risk in making substantial changes to the approach to consumer representation in the water sector at a time when significant changes to the regulatory arrangements are under consideration. Our recommendation is that the current arrangements involving CCWater should be retained."

*Giving Citizens Advice a role representing all consumers could affect their current very effective work.*

Citizens Advice are good at what they do, particularly helping vulnerable consumers locally. We work well with Citizens Advice in a complementary way. But if Citizens Advice were to represent all consumers, this might dilute their work

in helping vulnerable consumers.

The valuable advice role of Citizens Advice may conflict to some extent with a wider role in representing all consumers, particularly the advice their local offices give to consumers about water debt.

In commenting on this matter, Gray stated: "Then there was a particular concern raised with us that in dealing with clients' multiple debt problems Citizens Advice encourage clients to prioritise other bills over water bills as there is no threat of disconnection for non-payers. That this raises costs for the majority of water customers does not sit comfortably with the customer advocate role."

The issue of debt is a major one for water consumers; the cost of debt to the industry represents around £14 per year for every household billed for water in England and Wales.

*In water, business consumers need strong consumer representation due to there being limited competition in water. Neither Citizens Advice nor Consumer Focus has this role.*

In 2010/11 the Consumer Council for Water handled over 11,000 complaints, 10% of which were from business consumers. In the monopoly water industry, business consumers need strong representation and will continue to do so as the industry opens to competition over the next few years. The Consumer Council for Water provides this. It is not clear that Citizens Advice would or could provide this. Consumer Focus only has a role with microbusinesses.

The Gray Review pointed out that a strong consumer view will also be important in encouraging newly eligible business customers to test the retail market, and to combat mis-selling, supplier failure and inappropriate cross-subsidy. It also notes that representing business consumers is not a central part of Citizens Advice's current role.

### 3. Possible extension of a redress scheme in water (question 17)

*Complaint handling in water has been significantly improved by the Consumer Council for Water's approach, and on key customer satisfaction measures is much better than energy. Before considering any change to complaint handling in water, Government should review the relative merits of the systems in energy and water and adopt the best for consumers.*

The Consumer Council for Water has been successful in driving improvements to complaint handling in water (both of water company complaint handling and its own). Due to the Consumer Council for Water's continued pressure, the pre-existing upwards trend of complaints to water companies has been reversed, with written complaints being 32% lower than the industry peak in 2007-08.

Despite these improvements we need further to improve complaint handling by water companies in order to improve satisfaction when consumers make a complaint to companies. We believe that customer satisfaction with complaint handling is a crucial metric to measure the success of a complaint handling process of an industry.

For this reason, it is important to note that customer satisfaction with complaint handling in energy is significantly lower than that in water, so it is far from clear that water consumers would get a better service if the system in energy was adopted in water. We understand that data will soon be published by Ofwat as part of the industry's new Service Incentive Mechanism, which will show customer satisfaction with water companies' complaint handling farexceeds the 27% for energy customers reported by Ofgem in April 2010.

As shown in Table one, it is also not clear that the ombudsman service is working as well for energy consumers as CCWater is for water consumers. In terms of complaint handling by CCWater, customer satisfaction with service in 2010/11 was 75%, whereas the Energy Ombudsman reported that in 2010/11 customer satisfaction with its service was only 59%.

This evidence casts doubt over the efficacy of the redress scheme in energy in terms of the key measures of customer satisfaction, certainly when compared to water. It strongly supports the Gray Review's recommendations.

We believe that Government should review the key customer satisfaction and complaint handling performance metrics in the water and energy sectors to ensure consumers experience the best system in both sectors. The Consumer Council for Water would be very happy to help carry out such a review.

If there are any points you wish to discuss further, please contact Jane Morris, Head of Corporate Services, in the first instance on 0121 345 1050 or at [jane.morris@ccwater.org.uk](mailto:jane.morris@ccwater.org.uk)

Yours sincerely

A handwritten signature in black ink that reads "Tony Smith".

**Tony Smith**  
Chief Executive

## Consumer Finance Association



RESPONSE  
TO THE DEPARTMENT FOR BUSINESS,  
INNOVATION AND SKILLS ***EMPOWERING AND  
PROTECTING CONSUMERS***

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

JUNE 2011

## **The Consumer Finance Association**

*The Consumer Finance Association (CFA) is a trade association which represents the interests of businesses offering short term, unsecured personal loans (often referred to as "payday" loans). CFA members are licensed and regulated by the OFT. The Consumer Finance Association represents the larger businesses accounting for around 70% of lending in the UK payday loan market from high street outlets or online. Many other, usually very small, businesses also offer such loans. This type of loan allows customers to borrow a relatively small amount of money (usually between £50 and £800) which they repay over a short period (typically one or two months). Loans are not designed for longer term borrowing, but to improve short term personal cashflow.*

*The typical payday loan customer is a young adult or in early middle age, and relatively free of financial commitments such as a mortgage or dependent children. S/he may be averse to running up long term unsecured debt but would rather choose to borrow and repay over a short period to ease personal cashflow when a number of bills arrive at once, or to fund an acquisition or activity. An OFT review showed that 94% of payday loan customers come from a household with at least one full time worker, and that 76% of customers earn £15,000 or more a year.*

*Consumer Finance Association members:*

- Offer short term loans geared to the borrowing needs of customers
- Assess that customers can afford loans, and are able to repay them
- Provide clear, transparent customer contracts and communications
- Treat customers in a helpful, courteous manner and deliver high standards of service
- Maintain high levels of customer satisfaction

*Consumer Finance Association members do not:*

- Target people with debt problems
- Lend to people who they believe cannot afford to repay
- Deal with customers if there is any question about their identity or authenticity

*Details of the CFA Lending Code for Small Cash Advances can be found at:*

<http://www.cfa-uk.co.uk/codeofpractice.asp>

### **Contact Details**

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26<sup>th</sup> September 2011

Consumer Finance Association 46 Brook Street Chester Cheshire CH1 3DZ

The Consumer Finance Association notes that:

*1.8 The scope of this consultation excludes those bodies active in financial services regulation or the provision of advice on financial services matters. The roles and responsibilities of the Financial Services Authority and its successor bodies the Financial Conduct Authority and Prudential Regulation Authority, the Money Advice Service and the Financial Ombudsman Service are not considered in this paper.*

*1.9 This paper also does not cover the regulation of consumer credit, as this matter was considered extensively in the Government's consultation A new approach to regulation: Consultation on reforming the consumer credit regime.*

The Association's members are involved in the provision of small sum, short term unsecured consumer credit. We would wish to make a very limited response to this consultation in relation to our businesses in as far as the proposals in the consultation document will, in fact, affect consumer credit policy and enforcement.

We have addressed all the other areas in the consultation paper as part of our membership of a CBI Consumer Landscape Task and Finish Group which, *inter alia*, met with a senior Department for Business, Innovation and Skills official to discuss issues in the paper, on 16<sup>th</sup> September 2011. CFA views, apart from those expressed below, are subsumed in the CBI response to this consultation.

Consequently, rather than go through the list of questions in the consultation paper, we would be grateful if the Department for Business, Innovation and Skills would accept the following as our response.

1. Taking the Minister's point in the *Foreword* to the consultation, that: *duplication of effort also leads to waste and inefficiency in the use of public funds* the CFA would like to raise the issue of policy demarcation on consumer credit matters between the Financial Conduct Authority, the Money Advice Service, the Financial Ombudsman Service and the proposals for enhancing the Citizens' Advice Service in this consultation.
2. As we understand it from the CBI discussions with a senior Department for Business, Innovation and Skills official on 16<sup>th</sup> September 2011, there will be no statutory objectives, nor it seems even terms of reference, for the enhanced Citizens' Advice Service. Control over the use of public funds made available to the Citizens' Advice Service by the Department for Business, Innovation and Skills will simply be a matter of contract. We do not consider that this approach would be sufficient to prevent *duplication of effort leading to waste and inefficiency in the use of public funds*.
3. The Money Advice Service has responsibility for the provision of generic financial advice to consumers. This is currently funded by a Financial Services Authority levy on the financial services industry. The Money Advice Service may contract out delivery of such generic financial advice through a range of delivery channels, including Citizens' Advice Bureaux.

4. The Money Advice Service has recently been given responsibility for the coordination of debt advice. The funding has not yet been determined but is likely to be either by a Financial Services Authority/Financial Conduct Authority levy on the financial services industry or a combination of levy funding and funding directly from the credit sector through such debt advice agencies as the Consumer Credit Counselling Service (CCCS) where a proportion of the money due to creditors is retained, by agreement, to fund the CCCS operation. The Money Advice Service may coordinate the delivery and funding of debt advice through the existing and a new range of delivery channels, which include money advisers working out of Citizens' Advice Bureaux.
5. Since April 2008, the Financial Ombudsman Service has had responsibility for handling consumer complaints about consumer credit matters. Consumer Direct (currently controlled by the Office of Fair Trading) also records consumer credit complaints from members of the public, but these are not investigated on an individual basis. They are used by the OFT to determine complaint trends and to inform its regulatory enforcement policies and not be a platform for the formulation of policy matters by the Citizens' Advice Service,
6. Under proposals in this consultation, Consumer Direct would move under the ambit of the Citizens' Advice Service. In our view complaints it receives on consumer credit matters should be passed to the Financial Conduct Authority (or whichever regulator is responsible for consumer credit) to inform its regulatory enforcement policies.
7. If this were to be the case, all consumer credit and debt policy, enforcement and complaint issues would be the ultimate responsibility of the Money Advice Service, the Financial Conduct Authority (or other regulator) and the Financial Ombudsman Service. Delivery channels for financial and debt advice will be varied, but would include the Citizens' Advice Service.
8. Our view is that because the Citizens' Advice Service would be involved only in the *delivery* of financial advice and debt management services, and be only one of a number of delivery channels, it should not be placed in a position where it makes public comment or undertakes research into consumer credit policy matters. These should be clearly identified as the responsibility of the Financial Conduct Authority (or other regulator), and the Money Advice Service, with input as necessary from Consumer Direct and the Financial Ombudsman Service.
9. We consider that it is important that there be clarity in the responsibilities for policy issues and debate concerning consumer credit, otherwise there may indeed be *duplication of effort leading to waste and inefficiency in the use of public funds*.

## Consumer Focus



**Consumer  
Focus**

Campaigning for a fair deal

# **Consumer Focus response to the BIS consultation: Empowering and Protecting Consumers**

**October 2011**

# About Consumer Focus

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Consumer Focus is the statutory consumer champion for England, Wales, Scotland and (for postal consumers) Northern Ireland.

We operate across the whole of the economy, persuading businesses, public services and policy makers to put consumers at the heart of what they do.

Consumer Focus tackles the issues that matter to consumers, and aims to give people a stronger voice. We don't just draw attention to problems – we work with consumers and with a range of organisations to champion creative solutions that make a difference to consumers' lives.

## Contents

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Overview	3
Our 10 tests	5
Conclusion	13
Annex 1 – Advice	14
Annex 2 – Enforcement	15
Annex 3 – Changing future	17
Annex 4 – Selected questions	19

# Overview

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Consumer Focus welcomes the Government's review of the institutional consumer landscape. We strongly support the over-arching objective of improving consumer outcomes through better functioning markets operating within a clear and appropriate framework of regulation, information, protection and advice. The consultation is important not only to the welfare of individual consumers but to the ability of consumers to make an effective contribution to the Government's agenda for growth, as part of an empowered and effective 'demand side'.

We welcome the Government's commitment to avoid any diminution of consumer representation. We hope our response will help policy makers identify how changes can avoid such diminution and improve the current system within the resources available. Any new arrangements should preserve the independence of consumer bodies from Government, regulators and industry and maintain the powers and functions that Parliament gave Consumer Focus within the new system. The capacity to identify and address 'upstream' consumer problems is a key element of the current framework and helps prevent more expensive downstream problems; it should not be lost.

Private markets and public services are undergoing significant change. The Department for Business, Innovation and Skills (BIS) review provides the opportunity to design a system fit to meet the challenges of the 21<sup>st</sup> century. Much can be done to improve the coherence and effectiveness of the current system – by rationalising and streamlining publicly funded provision, by strengthening consumer representation, particularly in complex regulated markets, by improving the effectiveness of consumer enforcement and by delivering more cost-effective advice closer to the consumer.

Given the scale of change in markets subject to economic regulation, and their importance to the lives of all consumers, particular priority should be given to achieving synergy in consumer representation in these areas by creating a Regulated Industries Unit (RIU). We welcome this proposal in the consultation document. We recognise that it may take time to build an RIU covering all regulated sectors, but there should be a clear glide path to such a Unit in the medium term. The current policy advocacy work carried out by Consumer Focus in gas, electricity and postal markets could form the kernel of such a Unit. Much of this work is invisible to those not involved with regulatory issues, dealing as it does with complex technical and economic analysis and working closely with regulators, senior government officials and regulated firms. The powers, skills and expertise we currently enjoy must, in our view, be sustained in the new system in a coherent and fully accountable way. We will shortly publish a further paper on consumer representation in regulated industries to add to the debate.

Since Government announced its intentions last October we have not argued for the interests of Consumer Focus as an organisation, but instead sought to put the interests of consumers first. However, we would regret any decision to abolish Consumer Focus if it was not part of a set of changes which can lead to better empowerment of consumers and protection of their interests. The opportunity costs of getting the new arrangements wrong are considerable. They will not be measured solely in terms of how well new institutional arrangement perform, but on the impact on the welfare of millions of households across the UK and on the drivers for an efficient, innovative and growing economy.

We have identified a set of 10 ‘tests’ which we believe need to be met if consumers are to benefit from the consumer landscape reforms. These are listed below, followed by an analysis of the proposals in the consultation document against these tests. Finally, this document contains Consumer Focus’s response to relevant questions in the consultation document.

## **Consumer Focus’s 10 tests:**

1. Will the new arrangements deliver a system which is stronger and more effective than that which exists now in terms of protecting consumers and promoting their interests across the economy?
2. Will there be sufficient powers, resources, capacity and intellectual capability in the new system to enable this to be done?
3. Will the form of the new system allow for proper accountability to funders, both taxpayers and industry, and to Parliament and the public for the use of money and the discharge of statutory powers?
4. Will the new system be sufficiently durable and flexible to address new issues and concerns as markets develop in unknown and novel ways in future?
5. Will the interests of consumers (including small business users) on complex ‘upstream’ policy issues in regulated industries be properly represented?
6. Will the new system enable sector specific consumer bodies to be brought together in an orderly way to maximise effectiveness, impact and value for money?
7. Will the new system be capable of ranging across the economy in a risk based way, with ability to read across from one sector to another, and with the independent statutory powers to protect consumers which Parliament has given to Consumer Focus?
8. Will the public money available for consumer functions be effectively spent, having regard to the value of prevention rather than cure?
9. Will the central capability to analyse markets that aren’t working for consumers and advocate on behalf of all consumers where markets are UK wide, be retained or will we end up with a more fragmented and less effective system?
10. Will the new arrangements ensure a relevant consumer voice on issues that are within the competence of the devolved Governments, and will issues arising for consumers in the devolved nations be able to be heard and reflected adequately in the development of UK wide policy?

# Our 10 tests

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## 1 Will the new arrangements deliver a system which is stronger and more effective than that which exists now in terms of protecting consumers and promoting their interests across the economy?

In our view, the discussion to date has been unduly focused on institutional change rather than on the primary analysis of what needs to be done to empower and protect consumers, now and in the future. The decision on which organisation is best placed to deliver a particular function should be taken after Government has identified what needs to be done, not before. The choice of form should follow the function required, or there is a danger that function will follow the form. We are not clear how the analysis of policy options has been entirely driven by the stated policy objectives of streamlining the consumer landscape and maximising value for money for taxpayers while ensuring there is no reduction in consumer protection.

We can see strong logic in moving publicly funded consumer information and advice services to the Citizens Advice service, which has a highly trusted and recognised brand and local presence. We support the move of the Consumer Direct and consumer education functions from the Office of Fair Trading (OFT), and the Extra Help Unit (EHU) from Consumer Focus, to Citizens Advice. (*Further comments are at Annex 1.*)

Consumer Focus currently has important statutory powers to investigate matters where it believes there could be material consumer detriment; call for information and evidence; undertake research; publish reports; and make representations to policy makers, regulators and others. Over the past year alone this has included advocacy on public services, insurance markets, digital communications, financial services, post offices, private rented accommodation and, legal services. Our work is driven by this remit set by Parliament, to whom we are accountable. In addition to being able to range across the entire economy, and draw lessons from one sector to another, we have specific statutory duties to represent the consumer interest in complex energy, post and post office sectors. It is not clear to us that a third sector body with a primary mission of providing individual citizens with advice and information represents the best fit for the ‘upstream’ advocacy and representational work that Consumer Focus carries out.

In particular, we are of the firm view that complex advocacy work in regulated industries, funded by industry levies rather than taxpayer funds, must be carried out in an autonomous and independent ring fenced unit with the full suite of statutory powers that Consumer Focus has been granted, and with a strong and appropriate governance and accountability framework. The proposals so far have not convinced us that the proposed new arrangements will be effective.

While we support the principle of the proposed merger of the OFT and the Competition Commission into a single Competition and Markets Authority, we have significant concerns about the loss of central capacity and capability in the new system in terms of consumer market analysis and action by a strong, statutory, pan-economy body. We urge Government to ensure that the new CMA has the same capability as the OFT currently does to undertake the full range of market studies and investigate super-complaints. It is not possible to neatly segregate ‘consumer’ market studies because consumers are active parts of markets and specialist (and expensive) market analysis skills are required to undertake such studies. An ineffective demand side is often the primary reason why ‘competitive’ markets do not work well in the interests of consumers.

The OFT currently brings together both competition and consumer analysis to publish authoritative reports balancing the market and consumer perspectives. It is often extremely difficult to know at the outset of a market study whether a given issue is a consumer, a competition, or a ‘mixed’ problem.

We have high regard for the advocacy work done by the Citizens Advice service which is driven by its charitable objectives and by the evidence of millions of clients who present themselves to the bureaux. However we do not believe the skills, culture and expertise of the Citizens Advice service are sufficiently close to the forensic skill set needed to undertake the sort of market studies described above, which should rather be a function of the new CMA.

While we support any measures that would improve the co-ordination and effectiveness of the trading standards service, we believe the loss of a strong statutory capability at the centre of the new system to enforce consumer law could lead to a real loss of protection for UK consumers. Many markets are complex and providers of goods and services may be powerful global brands. UK consumers need a strong and fearless enforcement agent capable of acting on their behalf in such cases. (*Further comments are at Annex 2.*)

We can see potential benefits and synergies from strategic partnership arrangements between existing consumer bodies and would like to work with Government to explore these opportunities further.

## **2 Will there be sufficient powers, resources, capacity and intellectual capability in the new system to enable this to be done?**

The UK has an internationally admired reputation for strong consumer representation. This is in no small part driven by the work that different consumer bodies have undertaken. Their functions are diverse, ranging from providing consumers with information to influencing major transformations of markets. The activities of existing consumer bodies (Consumer Focus, including Consumer Focus Wales, Consumer Focus Scotland; Which?; Citizens Advice and Citizens Advice Scotland; and sector specific consumer bodies) include:

- Influencing early stage public policy design and thinking – generating creative new policy approaches
- Influencing green papers, white papers, primary and secondary legislation, EU policy proposals
- Inputting formally and informally to policy making by regulators, including making responses to technical consultations, membership of industry working groups, direct involvement in regulatory processes such as price reviews
- Assessing public or private sector pilot projects from a consumer perspective
- Comparing performance of firms across markets
- Encouraging higher standards in specific markets by sharing best practice
- Developing self-assessment frameworks and toolkits for regulators and others who need to promote consumer interests
- Harnessing consumer behaviour to improve performance
- Negotiating with individual companies to put things right
- Helping broker industry-wide solutions in regulated markets
- Stimulating regulatory intervention via super-complaints and other representations
- Representing consumers on decision-making bodies

- Promoting consumer awareness by providing useful consumer information
- Helping promote consumer confidence and choice by providing guidance and advice on switching, best buys, etc
- Providing individual advice and help to consumers, and advocate on their behalf where necessary
- Campaigning publically and privately for changes to market practices that cause consumer detriment
- Helping ensure that consumer complaints and other problems are properly dealt with

The above list demonstrates the diversity of work needed to ensure that consumers can be properly informed and engaged in today's markets and for their interests to be properly taken into account in policy making. The diverse activities needed are all necessary. They are complementary, and are not substitutable.

Providing advice and support to individuals who often have multiple and complex needs requires a particular culture, skill set, brand and geographic capacity. Running high impact campaigns in order to influence opinion and shift the focus of policy makers or private sector providers similarly requires a discrete skill set. Undertaking behind the scenes representational work on complex regulatory issues requires yet another set of skills and expertise. All these functions are important; but the expertise and culture or 'mind set' required to deliver them will be different.

Consumer Focus currently holds crucial statutory powers both across the economy and specifically in the energy, post and post office sectors. In our view it is essential that these powers are retained in the new landscape by bodies that are independent of government but properly accountable to Parliament for their use. We are unclear as to how such arrangements would work if those bodies had charitable status.

Consumer Focus is the statutory consumer advocate for energy and post, where it makes representations to sector regulators, regulated firms and government departments/the EU as necessary on highly complex issues affecting the structure of markets and the behaviour of market participants. The work is largely of a specialist nature and the decisions made in the next three to five years will be crucial to the interests of consumers, retail and small businesses for the next two decades. In non regulated sectors, eg the Post Office network, we will also see significant change. It will be essential to ensure that the critical mass of expertise on these issues built up in Consumer Focus is preserved and safeguarded during the transition to any new arrangements over the critical period ahead.

In addition, industry levy funds available for consumer advocacy work in regulated markets must be safeguarded and ring fenced in order to ensure they are properly used on the raft of upcoming regulatory and policy issues that will affect consumers and small business users in future. There will need to be proper public accountability for the use of these precious resources, which should largely be directed at upstream issues. Proper regard for consumer interests upstream will reduce the likelihood of consumer detriment down the track, and deliver the stable regulatory framework needed to encourage much needed infrastructure investment.

### **3 Will the form of the new system allow for proper accountability to funders, both taxpayers and industry, and to Parliament and the public for the use of money and the discharge of statutory powers?**

As a Non Departmental Public Body, Consumer Focus is accountable to Parliament. Its Accounting Officer is personally accountable to Parliament for spending the funds provided to the organisation either from taxpayers or levies on industry. Parliament has also given Consumer Focus heavyweight powers to force companies, regulators and Government to disclose information and Consumer Focus is accountable to Parliament for the way it uses these powers. Consumer Focus is rightly required to publicly consult each year on its work programme, publish that plan following consultation, and lay its annual report and accounts before Parliament. We are also required to take account of the work of other public bodies and this has been important in avoiding duplication of work with other publicly funded bodies.

Current proposals would provide these funds to charities which, while they have their own accountabilities – principally to their Board – are not accountable to Parliament. We think the loss of accountability, particularly in regulated industries, would be highly regrettable. In our view our successors must be properly and publicly held accountable for the delivery of effective advocacy where they discharge statutory powers and spend taxpayer or levy funds. We do not believe that annual contractual arrangements between a third sector body and BIS would be sufficiently robust in this regard.

### **4 Will the new system be sufficiently durable and flexible to address new issues and concerns as markets develop in unknown and novel ways in future?**

Private and public markets are changing and there is no guarantee that what has worked in the past will work in the future. Consumer Focus is currently looking at a number of developments which we think will be of growing importance. (See annex 3.) Nonetheless it is important to learn from what has and has not worked in the past. Consumer Focus will shortly publish a paper on consumer insights, which distils key learnings drawn from experience of consumer advocacy work over the last 36 years. The paper will identify the emerging themes and patterns of detriment which new consumer landscape arrangements will need to address.

We have found that strong, clearly focused consumer advocacy is needed if consumer interests are not to be neglected or considered as an afterthought. Such advocacy needs to highlight all aspects of consumer experience, based on the best available research and intelligence, and looking across sectors and departmental boundaries for best practices and lessons learned. It can vary in method from ‘think tank’ to ‘watchdog’ to ‘lobbying’ and can adopt range of styles according to need – from stern critic to critical friend.

This can involve getting the right legal and policy frameworks in place, influencing particular decisions, working to improve provider performance, taking direct action on specific instances of detriment, embedding the consumer interest in decision-making processes, and empowering consumers. The Government has rightly recognised that empowering people doesn’t happen on its own – more active intervention is often needed to get things moving.

We are concerned that aspects of the current proposals might quickly become outdated. Advice will remain critically important, especially for vulnerable consumers, but we would urge much greater consideration of how the reform of the institutional landscape can promote the kind of empowerment approaches that can help to condition and develop markets which are more responsive to consumer needs and aspiration.

A modern, forward-looking strategy for the consumer landscape should have such issues at its heart

The new landscape will need a body or bodies with the capacity, resources, powers and will to move nimbly and flexibly into new areas of emerging consumer detriment and address them. The capacity to do this must be protected both from day to day resource pressures derived from the need to deliver front line services, and from the temptation to prioritise work on the basis of short term campaign impact.

## **5 Will the interests of consumers (including small business users) on complex ‘upstream’ policy issues in regulated industries be properly represented?**

We support the proposal to bring together sector regulators into a Regulated Industries Unit (RIU) which would address consumers' medium to long term interests in sectors subject to economic regulation. This would deliver more effective consumer representation in highly complex markets where it is necessary to engage closely with technical regulatory processes, and enable synergies to be exploited and learnings to be shared across sectors in the many areas where there are common policy challenges. It would also enable some financial savings to be made.

Consumer Focus has already published two papers on a RIU, and will publish a further RIU prospectus shortly.

Consumer Focus has increasingly focused on the needs of small businesses as well as retail consumers in regulated sectors. It is vital that their needs are taken into account in designing the new institutional landscape. A particular concern is for micro-businesses whose needs are often similar to those of individual consumers but who fall into a gap and are often not effectively represented in these complex markets.

Consumer Focus is also required by Parliament to have special regard to the needs of disadvantaged or vulnerable consumers. While all consumers can be vulnerable at some stage and in some markets we think it is important that future arrangements should protect the most disadvantaged consumers.

## **6 Will the new system enable sector specific consumer bodies to be brought together in an orderly way to maximise effectiveness, impact and value for money?**

We fully support the Government's objective to streamline the consumer landscape. Consumer Focus was established in 2008 as the result of a previous review of the consumer landscape. This review looked across a wide range of sectors and types of activity, covering a range of Whitehall departments, but as the process developed the scope of the proposed changes was progressively reduced. The result was that it was just the advocacy bodies linked to BIS's predecessor department that were merged by the Consumers, Estate Agents and Redress Act 2007, although provisions were included to incorporate the Consumer Council for Water. The CEAR Act brought the National Consumer Council (including the Scottish and Welsh Consumer Councils), energywatch, and Postwatch together to form Consumer Focus.

The 2008 changes were an incomplete solution to the challenge of creating the strongest possible body representing all of consumers' interests across the economy. For this reason Consumer Focus has always been an advocate for further streamlining of the consumer landscape. The failure to include the wider group of publicly funded consumer bodies in 2008 was, we believe, a missed opportunity which we hope the current review will not repeat.

**7 Will the new system be capable of ranging across the economy in a risk based way, with ability to read from one sector to another, and with the independent statutory powers to protect consumers which Parliament has given to Consumer Focus?**

It is unclear to us whether Government intends for our economy-wide powers to continue to be located in an independent consumer body or bodies, as we believe they must, or whether consumer bodies will be required to request that others seek to gather the information for them. We fear that this latter course would fetter a consumer body's effectiveness, independence and impact.

We are concerned that the loss of the OFT's consumer functions, combined with the loss of Consumer Focus, will reduce flexibility and analytical capacity at the centre of the new system and make it less likely for non urgent, non high profile but important preventative work to be done. This is likely to make the new system less efficient and cost effective than the current one over time.

**8 Will the public money available for consumer functions be effectively spent, having regard to the value of prevention rather than cure?**

We are concerned about the implications for consumer representation of transferring our functions to bodies whose primary function is to provide advice and assistance to individuals. Consumer Focus's work is largely about prevention, and where it is about advice we support its transfer to the Citizens Advice Service. We seek to prevent problems occurring by working with industry, regulators and Government to ensure that policies and products are designed in a way that consumers get a fair deal, for example our work on smart meters which will be installed in every home in a few years. Very few people are reporting problems with smart meters today, but they will do so tomorrow if consumer interests are not built into policies being designed now. Our work on copyright has been highly influential and will hopefully lead to balance the needs of consumers and copyright owners and help drive economic growth in a dynamic and growing communications market. In terms of value for money, the greatest value is usually derived from preventing problems from happening in the first place ie through effective 'upstream' work, rather than through trying to sort them out after the event.

We are disappointed that more radical options have not been considered for reforming and streamlining consumer law enforcement, which currently accounts for the greatest share of public resources available for consumer protection and representation.

Consumer advocacy work on energy, post and other regulated industries is funded through levies on regulated private sector firms. It would, in our view, be a false economy to seek to reduce it. The arguments made for securing greater value from public funds therefore do not apply to regulated industry advocacy, where the key objective should be to ensure the work done is of sufficient quality and scope to be relevant and help ensure robust, fair and durable regulatory decision making.

**9 Will the central capability to analyse markets that aren't working for consumers and advocate on behalf of all consumers where markets are UK wide, be retained or will we end up with a more fragmented and less effective system?**

Consumer Focus's UK wide remit and pan-economy powers enable it to spot common issues, read across sectors, and apply learning from one part of the economy to another. Consumer Focus's constitutional arrangements allow a distinctive voice for Scottish and Welsh consumers to be heard by governments while at the same time ensuring effective co-ordination and articulation of a UK or GB wide voice in markets that do not stop at England's borders.

Consumer Focus, alongside Which?, also ensures that the views of UK consumers are heard in Brussels where many relevant policies are decided. BEUC – the European Consumers Organisation – says Consumer Focus has 'a very strong reputation with EU and international decision makers' and that we are 'key in providing expertise and advocating the consumer perspective on issues that constitute a high priority on the EU agenda'. It is essential that the UK consumers' voice in Brussels is not weakened or diluted.

Under the proposed arrangements, we are not convinced that effective consumer representation will necessarily continue in complex markets and services where issues are not complaints driven and where there is no industry funding. We believe this could result in gaps in the consumer protection system in future, and look forward to understanding more clearly how Government will mitigate this risk.

**10 Will the new arrangements ensure a relevant consumer voice on issues that are within the competence of the devolved Governments, and will issues arising for consumers in the devolved nations be able to be heard and reflected adequately in the development of UK wide policy?**

The Government has said that it is open to alternative proposals for consumer advocacy in Scotland and Wales, and we welcome this openness.

Consumer Focus operates in a devolved context in order to fully represent the interests and priorities of consumers in Scotland and Wales in decision making in both devolved and reserved matters. The 2007 CEAR Act requires Consumer Focus to establish national committees. Consumer Focus Scotland and Consumer Focus Wales exercise powers under the Act insofar as they are exercisable in Scotland and Wales. However, Consumer Focus Scotland and Consumer Focus Wales are not solely requirements of the 2007 Act. They reflect a background of more than 30 years of respected and powerful advocacy for consumers in Scotland and Wales, are an integral part of the policy environment in those nations and play an important role in the public life of the two nations.

It is our view that consumer advocacy arrangements in Scotland and Wales must have the active support of the devolved governments, that they should be able to advocate directly on devolved matters, including public services, and effectively represent the particular interests of consumers in relation to reserved issues, markets and services.

The Scottish Government proposes further devolution of the responsibility and powers for the delivery of consumer advocacy, education, information and advice, which will enable them to build a model of service delivery which is more likely to meet the needs of Scottish and UK consumers than, as happens now (and as would happen under the proposed arrangements), separate Scottish structures having to be supported at a UK level.

The Welsh Government suggests the UK government consider making provision which would permit the transfer of Consumer Focus Wales functions to the Welsh Ministers and allow Welsh Ministers in turn to transfer the functions on to an existing body in Wales or a new body created for the purpose of exercising those functions.

The institutional form consumer advocacy arrangements takes in the devolved contexts should provide a high and direct degree of accountability to consumers in Scotland and Wales for the actions that they take on their behalf. A number of principles are likely to underpin the success of consumer advocacy bodies in Scotland and Wales:

1. Governance – they should have distinct national governance arrangements, responsible for the identification of consumer priorities, work planning and resource allocation
2. Accountability – they should be publicly accountable for their work on behalf of consumers through the Scottish Parliament and the National Assembly for Wales
3. Functions – they should retain the statutory powers, representative, research and investigative functions that Consumer Focus Scotland and Consumer Focus Wales are currently able to deploy
4. Focus – they should work across the economy including on emerging issues and contribute fully to consumer policy development in a devolved, GB or UK context
5. Resources – they should have sustainable funding to allow them to represent the priorities of consumers in relation to devolved and reserved issues including, where appropriate, on issues which are the responsibility of a GB RIU funded through industry levies. They should have the capability to undertake forward looking research to provide a strong evidence base for advocacy

Consumer advocacy arrangements developed and established by the devolved Governments, as well as those proposed in the consultation document (Citizens Advice England and Wales, Citizens Advice Scotland, and the Consumer Council for Northern Ireland), could result in separate bodies and voices for different parts of the UK. It will be critical to ensure clarity on the demarcation of responsibility in relation to UK/GB wide issues, coupled with strong collaborative and co-ordinating mechanisms and sharing of intelligence, in order that the issues arising for consumers in different parts of the UK help shape the UK wide consumer voice. Memoranda of Understanding should facilitate such co-ordination and co-operation.

# Conclusion

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In summary, while we support the objectives of the review, we believe there are a number of risks to maintaining effective consumer protection and representation which could undermine the success of the reforms. These are:

- The proposals for regulated industries need to be strengthened to ensure that an effectively resourced and accountable RIU for energy and post is established in a form that could act as the kernel for further consolidation of sector specific advocacy in the medium term
- Precious expertise, on energy and post consumer advocacy in particular, must not be lost as we transition from the current to the new landscape
- The capacity to undertake upstream advocacy in other complex public and private markets needs to be retained in the system, recognising that detriment is frequently not driven by today's consumer queries and complaints, and that solutions in one market can have relevance to others
- Intellectual analytical capability and powers should be retained at the heart of the new system to ensure market studies and consumer enforcement can be done by a statutory body with teeth
- Levels of accountability to Parliament for taxpayer and levy funded consumer advocacy should not be weakened
- The ability for independent consumer bodies to force companies, regulators and Government to divulge information should not be weakened
- The protection of vulnerable consumers should be maintained

This review is an opportunity to build an advice, advocacy and enforcement system fit for the 21<sup>st</sup> Century. The aim must be both to protect and empower consumers and this in turn can drive economic growth and public services which are responsive to people's needs. We look forward to continuing to work with Government and others to develop these proposals.

# Annex 1 – Advice

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We agree with the proposal for consolidating publicly funded consumer advice into the Citizens Advice service. The Citizens Advice service provides a strong, flexible and trusted foundation on which to consolidate other advice provision and will help make Citizens Advice the ‘go to’ place for advice. The transfer of Consumer Direct, Consumer Focus’s EHU and the consumer education functions of the OFT has the potential to provide a simpler and more intuitive advice resource for consumers and for Welsh speakers to be able to access an equal service.

To be successful, Government will need to ensure that the Citizens Advice service has the resources and support necessary to make the transition work and then to deliver an expanded service. We are particularly concerned that support available to vulnerable energy and post consumers through the EHU and the dedicated capacity within Consumer Direct, is protected in the new arrangements. In addition, a consolidated database of consumer complaint and queries that should result from the transfer will achieve wider benefit to consumer welfare goals if specified consumer groups, regulators and others are given good access to this data and are able to interrogate disaggregated data. As the National Audit Office (NAO) has pointed out, ‘Consumer complaints and intelligence logs do not in isolation provide an assessment of the threat to consumers. Raw data needs to be analysed so that it can be turned into intelligence...’<sup>1</sup>

There are many similarities in the needs of consumers across Great Britain in relation to most markets, including energy and post although there are also differences. Consumers' experience of public services varies more widely. Issues such as access to support for remote communities are particular issues in Scotland and Wales, but they are not unique to these nations. However, as consumer advocacy arrangements in Scotland and Wales may be different to those in England, and as one of the objectives of the review is to maximise the synergy between advice and advocacy, it will be important to ensure that the availability of data on Scottish and Welsh consumer priorities is easily available to national advocacy bodies even if the advice and advocacy functions are not integrated into a single institution.

While consumer policy in general is a reserved issue, it makes sense to organise and coordinate the delivery of advice, support and aspects of advocacy as close to consumers as possible. Levels of appropriate funding are a matter for discussion between the relevant Governments.

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<sup>1</sup> *Protecting consumers – the system for enforcing consumer law*, NAO, June 2011

## Annex 2 – Enforcement

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This consultation provides the opportunity to build a system of consumer law enforcement fit for the 21<sup>st</sup> Century. The publication of the BIS consultation coincided with the publication of a NAO report on consumer enforcement<sup>2</sup> which found that ‘the system for enforcing consumer law is not delivering value because the architecture to bring together what is a very fragmented delivery landscape is not functioning properly and the Department (BIS) has few levers to directly influence policy delivery’. Given the closeness of the publication dates it would be wrong to treat the proposals in the current consultation as a full response to the NAO report.

However, in our view the problems identified by the NAO require decisions which will achieve a greater degree of national co-ordination, if not control, of trading standards, a more rational system of allocating resources in proportion to detriment and stronger and more direct accountability to Parliament.

The proposals for either a Trading Standards Policy Board or a Joint Enforcement Board could both achieve improvements to the current system if properly established and resourced. However, the real benefit they should aim to achieve relates to solving national and regional problems and to providing a joined up consumer enforcement strategy from international, to national, through regional, to the local level. Of the two we favour the Joint Enforcement Board because it is a lower risk approach building on the existing strength of the OFT, which we hope will be preserved in the new Competition and Markets Authority, in collaboration with Trading Standards.

As is the case with the advocacy proposals, there is an immediate attraction of delivering enforcement action ‘closer to the consumer’. It is our view that the proposals tend to stretch the ability of local delivery to provide appropriate enforcement action on complex and national issues and the co-operation models are not a replacement for an effective national agency with the capacity to act. We believe that there are limits to the ability and capacity of local trading standards to deliver effective enforcement action in national and complex cases. As with the advocacy proposals this has nothing to do with the value and commitment of individuals or locally focused institutions, but has everything to do with the diversity of market failure, industry behaviour and the sorts of enforcement action that should follow.

We are concerned that the proposals may lead to the loss of central national capacity on consumer law enforcement. The OFT has over 70 expert professionals working on areas as diverse as international enforcement, unfair contract terms and internet crime. Under the current proposals these services would be provided by local authorities. While some local authorities could do excellent work in these areas, fragmenting the OFT’s assets risks a loss of central capacity and would be a less stable and sustainable regime over time.

We do not support the passing of responsibility for Market Studies to the Citizens Advice service. Separating demand side and supply side perspectives will not achieve better outcomes for consumers or economic growth.

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<sup>2</sup> Protecting consumers – the system for enforcing consumer law, NAO, June 2011

However, we do not make an argument for the status quo. OFT and Trading Standards have not always worked well together and there needs to be improvements. On balance we prefer the approach which seeks to improve existing structures rather than create new ones. It should be noted however that neither of these proposals appear relevant to the Scottish context, where clear proposals are yet to be put forward on national enforcement and co-ordination.

We recommend that BIS takes the opportunity offered by the consultation process to consider more radical options for the reform of the enforcement regime in order to meet the challenges of enforcement in 21<sup>st</sup> Century markets. We recognise the challenges in doing so but nonetheless believe that opportunities should be sought rather than make small changes which will not address long run problems which may grow. We believe that the Welsh Government's proposals for a national trading standards service have merit and as it develops it should be evaluated to judge its ability in England and Scotland. Northern Ireland already has a service covering the six counties.

# Annex 3 – Changing future

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Private and public markets are changing as is consumer behaviour. In designing a new institutional landscape it is critically important to look to the future. Consumer representation, especially in complex regulated markets, must be durable and sustainable in order to maintain long term engagement with complex markets and regulators. If statutory consumer representation is to be delivered from third sector organisations then this vital function must be protected from periodic changes to the strategic focus of the host body.

Our analysis suggests that the following areas of focus will be particularly important in ensuring that consumers get a good deal and decision-makers make the right choices:

- New approaches to consumer empowerment
- Effective advocacy across regulated sectors and public services, and at EU and international level
- Smart regulation, focused on consumer outcomes.
- Evidence-based insight into the diversity of consumer experience and behaviour

Without strong, clearly focused consumer advocacy, consumer interests will all too often be neglected or considered as an afterthought. Such advocacy needs to highlight all aspects of consumer experience, based on the best available research and intelligence, and looking across sectors and departmental boundaries for best practices and lessons learned. It can vary in method from ‘think tank’ to ‘watchdog’ to ‘lobbying’ and can adopt range of styles according to need – from stern critic to critical friend.

This can involve getting the right legal and policy frameworks in place, influencing particular decisions, working to improve provider performance, taking direct action on specific instances of detriment, embedding the consumer interest in decision-making processes, and empowering consumers. The Government has rightly recognised that empowering people doesn’t happen on its own – more active intervention is often needed to get things moving.

The proposals in the Consultation document do not connect closely enough with the sorts of challenge and opportunity to increase individual, collective and strategic consumer empowerment that have emerged from the *Better Choices, Better Deals* White Paper. It is key that the proposed changes are completely aligned with the drive to increase consumer empowerment in relation to private markets and public services.

We are concerned that aspects of the current proposals might quickly become outdated. Advice will remain critically important, especially for vulnerable consumers, but we would urge much greater consideration of how the reform of the institutional landscape can promote the kind of empowerment approaches which can help to condition and develop markets which are more responsive to consumer needs and aspiration. A modern, forward-looking strategy for the consumer landscape should have such issues at its heart

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. Consumers share information within and across networks about the products they are buying and about the companies behind those products and services.

Consumers are also seeing the development of intermediary tools that have the potential to give them greater control over their data and put it to work in their interest and on their terms; as well as ‘apps’ that can bring greater convenience to the customer experience by cutting through the confusion of choice and simplifying pathways to redress, for example.

Not everyone will benefit immediately or directly, and these new developments by no means hold the solutions to every consumer problem. It is clear though that they do provide exciting opportunities to strengthen the consumer interest and rebalance where power lies between providers and consumers.

# Annex 4 – Selected questions

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

Consumers need trusted sources of advice and information. Our research shows that consumers appreciate being able to resolve a range of issues through a single advice agency. The consolidation of publicly funded advice and support services into a brand such as the Citizen's Advice service would provide a more intuitive advice solution for consumers across a wide range of issues and from a single trusted source.

We fully support the Government's proposals in this area.

## **2 Do you agree that the OFT's consumer information role should be transferred to the Citizen's Advice service?**

We support the Government's proposals to transfer responsibility and resources for consumer information from the OFT to the Citizens Advice service.

Effective consumer information will benefit from being developed and delivered by an agency which is close to consumers and closer to the way that consumers experience and use information materials. It should also enable a faster response, to observed trends in consumer detriment.

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

The Citizens Advice service is a natural home for the EHU. Bureaux already deal with such issues and the consolidation of services into one organisation should improve the quality of advice provision from Bureaux staff and the referral of appropriate issues through to case handlers in the EHU. In both cases consumers with immediate and serious issues with their energy supplier would be more likely to receive the appropriate level of support quickly and consistently.

Furthermore, depending on the practicality of such a move, Consumer Focus would support the earliest transfer of this function to the Citizens Advice service in order to support the early and efficient integration of advice services.

## **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 co-ordinated?**

In light of the proposed changes to consumer advice and information, we support an integrated approach to advice, information and education. The co-ordination and in most cases the production of consumer education delivery should transfer to the Citizens Advice service.

**5 Do you agree that the proposed Trading Standards Policy Board and the TSI should co-ordinate business-facing educational activities**

Consumer Focus prefers the alternative of a Joint Enforcement Board over a Trading Standards Policy Board. Both these proposals are designed to combat significant regional and national breaches of consumer protection law. Either could work although from a risk point of view the Joint Enforcement Board is the best option because it builds upon and improves existing structures. Either body would be well suited to the task of co-ordinating business facing educational activities. We are concerned that the proposals to get rid of a central national enforcement body and parcel out their work, eg on internet crime, to local authorities will fragment essential capacity and it would be better to have a centre of excellence on consumer law enforcement.

**6 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?**

Consumer Focus has long argued that the concentration of sectoral consumer advocacy functions into a single body would be the best way to make such advocacy more efficient and effective.

Aside from the efficiencies of scale and reduction in back office costs, these bodies address many common issues, albeit in different markets, and adopting a more consolidated model of advocacy across the sectors would enable cross economy benefits to emerge from detailed sectoral work. However, the vision of bringing advocacy functions together must be informed by the work that these advocacy bodies undertake in their sectors, whether Government wants that work to continue and, most importantly, what the best vehicle to maintain or enhance that work might be.

Government proposes to consolidate these functions into the Citizens Advice service. The Citizens Advice service has a focus on advocacy that emerges from the evidence of their clients experiencing today's problems. This is very different from much of the work that sectoral consumer bodies undertake and that a RIU would need to carry out.

We support a strengthening of Citizens Advice service to undertake more advocacy on behalf of their clients and consumers more generally, but we do not believe that it represents the best vehicle to undertake detailed work in complex regulated sectors.

**7 Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?**

Yes. We will set out more detail of what work consumers need from such a body in a RIU prospectus.

**8 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?**

We would regret any decision to abolish Consumer Focus if it was not part of changes which led to better empowerment of consumers and protection of their interests. Whether in changes to the Post Office network, reform of public services, revision to the copyright regime or the growth of ecommerce and online purchasing, Consumer Focus has been able to represent the interests of consumers at the first sign that such changes may lead to unintended consumer detriment.

In addition to working on these forward looking issues we have secured real immediate benefits, eg the return of £60 million to npower customers who had paid more than expected and savings of £15 million per year to cash ISA savers.

While we recognise the achievements of the Citizens Advice service in advocating on behalf of their clients we do not believe that it is the most suitable vehicle for our detailed work in energy, post and in other areas.

Consumer Focus works as an advocate for UK consumers in the International and European arenas, on the strategic empowerment agenda, on the framework of consumer law and on public services. This work is important and should not be lost in any process of rationalisation.

If Government wants this work to continue it will need to specify which functions it values and where it intends for them to continue. We would hope to see in the Government's decision following the consultation, a schedule of where the various functions and work plan activities of Consumer Focus will transfer and which areas of work will disappear.

Which? and the Citizens Advice service have suggested the idea of a partnership. We believe that this prospect is worth considering and we look forward to seeing more details of the proposal.

## **9 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 set out the key considerations above, in answer to the 10<sup>th</sup> of our key questions. We believe that any consumer advocacy arrangements must provide for effective and credible consumer representation in Scotland and Wales.

To be credible, such arrangements would need to be established with independent governance arrangements and a high degree of accountability to devolved administrations and parliaments for the work priorities of the new advocacy bodies in Scotland and Wales.

To be effective, such arrangements would need to engage in complex consumer and public policy issues which may not be directly informed by client experiences or consumer complaints. In this respect, there are similar issues in a national context as arise in the proposal to transfer Consumer Focus functions to the Citizens Advice service.

We believe it is in the interest of consumers in Scotland and Wales if the primary responsibility for the delivery of consumer advocacy, information, advice and education were to lie with the Scottish and Welsh Governments, supported by an appropriate share of the available funds (as is already the case in Northern Ireland).

## **10 What are your views on these options for the transfer of information gathering powers? Which is preferable and why?**

Consumer Focus supports the direct transfer of information gathering powers to new consumer arrangements and for those bodies to be responsible for their use. Whatever new arrangements emerge, they will need to be able to use information gathering powers to identify the scale of problems, their root causes, whether an issue is company specific or endemic and what workable market solutions may look like.

The ability of a body in the private or third sector to exercise such powers may require clarification. However, the ability to require market intelligence has been a defining quality of Consumer Focus and it must be also for its successor.

While a successor body will need to use these powers with care, it should be able to do so without approval from regulatory authorities and in relation to those sectors of the economy where it identifies significant consumer detriment and where there is insufficient evidence in the public domain about business models and practices.

There will be occasions when consumer advocate and regulator do not agree on the scale or character of the detriment. In those cases it is for the advocate to persuade the regulator through argument and evidence. It would not be appropriate for the regulator to be the gatekeeper of the information which may provide that evidence

**11 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?**

Consumer Focus is strongly of the opinion that redress schemes should be extended to the water and transport sectors, regardless of whether or not the functions of CC Water and Passenger Focus are transferred to a RIU.

The evidence is that redress schemes are of great benefit to consumers not only in providing a free, independent means of resolving individual disputes but also in raising the standards of internal complaint handling and customer service in an industry generally. In addition, our own research indicates that when consumers are asked for their views on what good complaints handling would look like they see the existence of redress schemes as a vital part of best practice. In other words, consumers expect to have access to an external redress scheme to handle unresolved complaints and provide remedies and it is illogical that these do not exist in water and transport. This is particularly important in relation to sectors that provide essential services to consumers and which vary from regional monopolies (water and sewerage supply) to imperfectly competitive ones (local bus services) and where significant sums of public money may be involved (rail transport).

**12 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?**

GCCNI is the logical place to transfer Consumer Focus' post functions in respect of consumers in Northern Ireland. Consumer Focus fully supports the Government's proposals in this regard.

**13 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?**

The numbers of cases reaching the redress scheme from Northern Ireland are likely to be very small and it would not be sensible to set up a separate one in terms of cost or efficiency. It could also lead to inconsistency in adjudication across the UK which could weaken the position in any dispute with Royal Mail on policy about postal services issues and complaints.



**Consumer  
Focus**

Campaigning for a fair deal

## **Consumer Focus response to the BIS consultation: Empowering and Protecting Consumers**

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## Cope, Ray

## **Empowering and Protecting Consumers**

### **Response from Ray Cope**

I am responding to this consultation document as an individual and not on behalf of any organisation. I should perhaps mention however that I was the former operations director of the Gas Consumers Council and have thirty years experience in consumer protection.

The document makes wide-ranging proposals for change and no doubt will be called a leap in the dark by its opponents. The failure to have all departments on side before publication or the enabling legislation in place does leave it open to criticism by those wishing to maintain the status quo.

It might have been better to have delayed publication, as it is far from clear what the chosen direction of all government departments is in regard to some major proposals. Nevertheless change is desperately needed as in my view money is being wasted not just on duplication but also on organisation that do not represent value for money. One word of warning if you will forgive me stating the obvious. Any new structure will only achieve the objectives if the right people with vision and leadership determination and devotion are at the helm. Sadly there are too many of the current regimes headed by people that do not have the panache to do the job. They do not connect with the media they are not outspoken they are not seen as consumer advocates and frankly consumers are unaware of their existence. We need consumer champions to stand up and fight for what they believe in. The government must look again at how they make appointments. Take a look at the background of most of the current appointments and they are all the same, yes the same old people that were school governors, chair of this and chair of that. It seems unless you have that type of background you stand no chance and that is where it has all gone wrong. .... enough criticism of individuals but I do hope you will take these comments on board, as the standard does need to improve.

Turning now to the proposals I do think the basic concept is good and with modifications and further thought could present an excellent way forward. My main concern is that although the document draws a clear distinction between regulated and non regulated markets there is a danger that insufficient emphasis will be placed on the need to counterbalance the powers and authority given to regulators with the interest and protection of consumers. A dedicated experienced and knowledgeable team can only achieve this and there are inherent dangers if all the sectoral bodies were effectively merged into such a large and diverse body. Moreover as all departments are not on side we could end up with some being merged and not others, which would defeat the whole objective of making the new environment transparent and straightforward for consumers.

I think the best example of my concerns is illustrated by the failure of consumer focus to handle the dual role of representing regulated and non-regulated markets. I don't wish to be over critical but in my opinion they have been a disaster and I am not sorry you propose to abolish them. You might argue that the body they engulfed Energywatch was dealing solely with regulated markets and their performance was appalling. That was in my opinion more to do with weak management, serious errors in appointments than the structure, which was basically sound.

I can see no problem with dealing with consumer complaints relating to regulated and non regulated markets at the coal face but I fear that the complexity of the issues that will arise will require the upper tier to be structured in a way that they can handle them and the policy issues that arise, and be capable of confronting and challenging the regulators where necessary. In complaint handling, particularly in the regulated area I prefer to see advice and conciliation followed by arbitration. I know in some areas arbitration has been outsourced and while I do not have first hand experience I wonder if the people dealing with these issues have the depth of knowledge to represent consumers interests effectively. I also wonder if the cost of arbitration is higher than conciliation. Based on the answers to these questions the right balance can be struck. And decisions can be made about the desirability of in house or out sourced arbitration. Where organisations do not deal direct with consumers and their complaints they soon get out of touch and become complacent. It is only by dealing with consumers that organisations can keep their feet on the ground and understand the worries and concerns of ordinary people.

I hope what is finally decided can be non political and be agreed at least in principle with other political parties and can remain in place for years to come. The constant changes that have been made in energy for example led to a serious haemorrhaging of knowledge and this was one reason Energywatch got off to such a disastrous start (not forgetting appointment errors) and no doubt partly why consumer focus is not knowledgeable on some basic metering and supply related issues which I have discussed with them.

Whatever the structure of the new body there is a golden opportunity to bring forward the thinking behind the big society. There are many retired people who have worked in consumer bodies that have a wealth of knowledge if not entirely up to speed with current issues. These people could be used as volunteers to provide back up to the various tiers of the new organisation. If this reservoir of knowledge is not tapped into the new structure could struggle in the early years and consumers will suffer.

I would ask you to give more serious thought on how best to absorb the sectoral consumer bodies into the new structure. To be blunt if you have not convinced

other departments you are unlikely to gain support from the organisations that are likely to respond to this document.

**I will respond only to those questions where I have something positive to say and ignore those where my knowledge is insufficient. Perhaps you could encourage others to do that in the future!!**

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

I believe information can be provided by the CABx in the way suggested providing the new arrangements are carefully consolidated with liaison between all the key players. Trading standards, some if not all, produce lists of reputable traders. I see the availability and awareness of these lists as an important step in driving out the cowboys. All too often people are taken in by these cowboys. Sometimes the work they do is acceptable but the price is not. I am not too familiar with the Trust Mark scheme which if nothing else means it needs more publicity. Perhaps the telephone directory or yellow pages could play a part by flagging up reputable traders. Local free papers could include a directory of good local traders. On line they could have an accreditation number which could be verified on the CABx website. It might be that some of this is already being done in a low-key way. If followed through properly it would be worthwhile and of great value. The proposals do open up all sorts of avenues that can be explored by those closer to these issues than me.

Question 2 Do you agree that OFT's consumer information role should be transferred to the CABx.

Subject to the points made in question one there is no reason why this should not happen.

Question 3 Do you agree that the Extra Help Unit should be transferred to the CABs.

No see answer to question 12.

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

If properly resourced I can see the value of transferring this role to the CABx. An important role will be steering consumers elderly and young alike away from the cowboys by making them aware of reputable tradesmen. To save time and

money I would suggest that all cold calling in person or by telephone be made illegal. And that includes gas and electricity sales people.

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 CAB service is the correct one?

This is of course the big question and after much serious thought I must say no. Whilst I think the present arrangements need a shake up I fear that merging them together would create an organisation that would be too difficult to manage properly and expertise would be diluted during the transition and perhaps for years to come. I can see the value of sharing back office costs but it would become too bureaucratic and in the end would not serve the people it is there to represent. Many years ago when there were Consumer Councils representing nationalised industries the government of the day considered merging them into one but decided against it. History has shown the problems that occurred in merging gas and electricity which I have already touched upon. What I have not mentioned is that the budget of the combined organisation went up and not down. That is not what you are seeking to achieve.

Question 13 Do you agree the design principles for the regulated industries unit as set out?

I think the principles are sound but turning principles into a clear action plan is somewhat different.

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 CAB service? What are your views on alternative approaches?

As I have already said I think consumer focus in its present form is not serving consumers properly and desperately needs to be reformed.

The basic concept of the new structure is good with CABx dealing with complaints at the coalface but mixing advocacy for regulated and non-regulated markets has not worked and should be kept separate. The appointment system needs to be looked at as already touched upon and people with the genuine wish to be consumer champions using the media and knowing their subject is what is needed. Back up from other member with experience is also crucial and not a mix of people that look good on paper because they have held this and that office and were school governors!! If you have ever had the misfortune to sit in on some of the meetings where important consumer issues are discussed you will share my concerns. This document is proposing major changes that will impact on people's lives for a long time to come so it is important to get the structure and the appointments right.

I appreciate that you are seeking to reduce costs and that is one reason I have suggested using retired people as volunteers particularly in the early stages if not on a permanent basis.

If at the end of the day many or at least some of the sectoral bodies continue I do think you need to appoint a public figure to oversee them and to become the general spokesperson to come forward when there are major issues of concern. The recent announcements in gas and electricity prices are of major concern but nobody is standing up for the consumer. An enquiry by Ofgem does not reassure people and they know it will take forever. A powerful advocate could demand the reintroduction of the price formulae and he or she would be listened to. The audit committee have questioned the cost and value of smart meters and here too comments could be made. We have seen the harm a too powerful media can do and perhaps there are other companies that need their wings clipped or at least put in their place. This same person could look at this issue and make pronouncements. The public need someone they can trust to speak up for them. If you do take up this idea please ensure they can do the job and are not in the pocket of the companies or regulators. And please not another school governor!!! If you do decide to go ahead with a merger it may still be worthwhile to consider such an appointment.

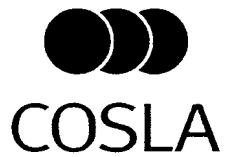
There is nothing confidential in this response and it may be published.

I hope my outspoken comments have been helpful.

Ray Cope

24<sup>th</sup> July 2011

## COSLA – Convention of Scottish Local Authorities



9 September 2011

Edward Davey MP  
Minister for Employment Relations, Consumer and Postal Affairs  
Department for Business, Innovation & Skills  
1 Victoria Street  
London  
SW1H 0ET

Dear Edward

**Empowering and Protecting Consumers Consultation**

I write regarding the current Empowering and Protecting consumers consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement.

The Convention of Scottish Local Authorities and Improvement Service has been engaging with your civil servants from the Department for Business, Innovation and Skills over the summer seeking to analyse and scope out a solution/consultation response that would deliver best value and sustainable outcomes for consumers and businesses in Scotland.

However, our collective ability to analyse a range of potential solutions has been severely hampered by the lack of detailed information regarding the Office of Fair Trading costs and resources attributed to the existing delivery of enforcement functions. Without this finer grained data is it impracticable for us to develop further a series of delivery structures for further local political discussion.

I have requested that COSLA officers raise this point with the OFT at a scheduled meeting next Thursday 15<sup>th</sup> September, however given there are less than 3 weeks before the end of the consultation period, COSLA is not in a position to provide a more detailed and evidenced based response to the consultation.

Generally regarding the enforcement of consumer protection legislation we would be in favour of further exploration of Option 3: Transfer the majority of OFT's consumer enforcement functions to Trading Standards with some consumer enforcement powers retained by the CMA. However, whilst we are keen to find a Scottish solution for consumer enforcement this cannot be undertaken as I'm sure you will understand without access to information on the potential costs associated with the range of solutions proposed.

In addition, COSLA in previously considering the consumer protection landscape has also expressed a desire to utilise the opportunity presented by the proposed reforms to provide a wider delivery structure to support local and better regulation in Scotland.

If you could enable the provision of further information on costs, resources and commitments associated with the current consumer enforcement models, hopefully it maybe possible to continue discussions about the detail and structures of any proposed delivery models following the closure

of the official consultation period and that we can still reach a sustainable and proportionate solution which can be delivered by Scottish local authorities for the communities of Scotland.

Yours faithfully

A handwritten signature in black ink, appearing to read "Pat Watters e.P.S.E." The signature is fluid and cursive, with "Pat Watters" being the most prominent part.

Councillor Pat Watters  
COSLA President

Cc: Mark Prisk MP, Minister of State for Business and Enterprise  
Fergus Ewing MSP, Minister for Energy, Enterprise and Tourism  
Philip Collins, Chairman of Office of Fair Trading

## David Hume Institute

## The David Hume Institute: Consumer Representation Round Table:

**26 July 2011**

The Roundtable took place to consider the challenges & opportunities for Scotland arising from the UK Department of Business, Innovation & Skills (BIS) consultation paper, '*Empowering and Protecting Consumers*' issued in June 2011. It was attended by a wide range of consumer advice and representative bodies across the Scottish public, private and voluntary sectors.<sup>1</sup>

This note records key points made by representatives of the Scottish Government (SG), Citizens Advice Scotland (CAS), Consumer Focus Scotland (CFS), The Society of Chief Officers of Trading Standards in Scotland (SCOTSS), the Scotland Office (SO) and the main interventions from other participants. I have set out my conclusions in the form of suggestions for action within Scotland. They all arise from the contributions made by others; I am, however, solely responsible for them and for the emphasis or otherwise given to them.

The roundtable began with brief statements by SG, CAS, CFS & SCOTSS

John Mason, SG, began by asking why consumer policy should be reserved. The BIS consultation arose from a UK review of public bodies to which SG was not party. He referred to the SG working group paper of earlier this year, setting out the key issues for Scotland, namely, i) while the UK proposals were feasible, they involved considerable risks, including on accountability to Ministers, ii) there were issues about capacity, particularly in relation to Trading Standards on which there were now discussions with COSLA & iii) questions about adequate resources for the new model in Scotland. In its response to the BIS consultation, SG would be indicating that consumer services should be devolved as in Northern Ireland.

Lucy McTernan set out the work of CAS, drawing attention to the public appreciation of a body that dealt with individual people in a holistic way. Much data had been collected, which needed to be blended with that of Consumer Direct, currently managed by the Office of Fair Trading (OFT). CAS has positive relations with the Confederation of Scottish Local Authorities (COSLA) and with CFS, already planning for transfer of functions. It was an independent charitable body with no wish to be co-opted into the public sector by the back door. It was comfortable with the package proposed by BIS.

Marieke Dwarshuis, CFS, said that while consumer protection law should continue to apply to the whole UK, consumer advocacy and advice should be devolved. Scotland (both consumers & business) needed predictability & stability as conditions for growth and early and informed consumer representation to industry and regulators can increase these. She said individual consumers needed expert and accessible advice services, and there needed to be strong consumer advocacy for the collective consumer interest. To achieve this, statutory powers, as possessed by CFS were needed, and there should be public accountability for the discharge of these powers. She therefore proposed i) consolidation of consumer advice services for *individuals* within CAS and ii) consolidation of consumer advocacy services for the *collective* consumer interest into a single expert body, able to represent Scottish consumers across all markets.

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<sup>1</sup> A list of Attendees is at Annex 1

Neil Coltart (Glasgow City Council, speaking as Chair of SCOTSS), argued for rationalisation of public bodies to make life simpler for consumers - but not along the lines proposed by BIS. TS in Scotland involved 32 Local Authorities; they were not all equally resourced to deal with issues. The numbers employed in TS varied between 1 & 50; local authorities' priorities varied, some no longer providing consumer advice (e.g. Edinburgh). Consumer enforcement required intelligence from a range of sources, legal powers & good links with the criminal justice system. Allocation of funds destined for consumer protection was not protected and statutory objectives for local authorities are needed to secure resources.

Nadine Brown (SO) expressed interest in the work of SG. There were constitutional issues; the key point was what best protected consumers.

The following points were raised **in discussion**:-

Competition policy should go hand in hand with consumer protection. Consumer policy instruments might be used differently where markets were working well from areas where there were serious market failures.

Consumer protection needed to take proper account of public and non-market services as well as private sector services. The BIS paper neglected public services. There were important issues with respect to tenants' rights in public housing and to policies for rural transport. Where would resource and expertise come from to deal with consumer issues in specific sectors, such as utilities and public services? How, e.g., would the consumer voice be heard in relation to large prospective investment in infrastructure and how this is best paid for (by consumers and/or taxpayers). Complaints based systems were not sufficient in these areas.

Health also raised special issues, where advocacy went wider than the provision of individual advice.

Local needs were important; while financial services consumers were similar across the UK, there was a need to ensure proper engagement on EU matters. In some areas, such as banking and bus services, Scottish consumers faced situations that were distinct from those in England & Wales. In the (devolved) water services, the regulator (WICS) was financing a special consumer panel to act at the next price review.

The arrangements in the BIS consultation for co-ordination of consumer enforcement (the TSPB & JEB models) were unconvincing but regional, national and UK co-ordination was called for by business. Given the different levels of spending by different LAs on TS, was there a case for some consolidation of these services, as had happened in police & fire? Alternatively, functions could be carried out by cross-Scotland teams rather than teams in each LA.

There was a history of abolition and re-creation of consumer bodies. Did consumers always know which consumer body to approach? Was the cycle of change about to be repeated? Consumers became confused when frequent institutional changes were made. Despite the volume of research on consumer issues, there was little evidence in the consultation document about what consumers most worried about and how they wanted to be supported.

Small businesses looked both ways as buyers as well as sellers. Consumer policy was important for business; a stable environment was highly desirable. And a strong consumer voice was needed in Scotland as elsewhere. At the retail level, it was desirable to rationalise the landscape, paying due attention to Scottish nuances.

What benefits would the changes proposed in the BIS consultation to Scotland? Would they outweigh the costs, especially any loss of talent in this area?

There is devolution in this area in Northern Ireland

**In conclusion,** the following points emerged from the discussion:-

People had come together from a whole range of areas for a wide discussion; such discussions were less likely to happen in the wider UK. This showed the strength of looking at consumer policy at a devolved level.

While there was considerable commonality among consumers in the UK, there were a number of important nuances concerning Scottish consumers and the situations they faced in Scotland.

The interaction of competition and consumer policy is significant and complements the role of consumer advocacy which is critical, e.g., in the provision of utility and government services. Such advocacy must be properly based on research by respected bodies. The BIS consultation floats the idea of regulated industries unit; it may be possible to build on this at a devolved level.

Evidence is needed on what consumers require and how they want to be supported.

A Scottish perspective on consumer policy should reflect a discussion of objectives as well as institutional arrangements, covering the case for appropriate devolution within a constitutional framework. This meeting provided much material for such discussions.

August 2011

Ian Byatt



**Consumer Representation Round Table**  
**26 July 2011 at the RSE**  
**Attendees – Final**

Name	Organisation
Mr Richard Ackroyd	Scottish Water
Ms Kay Blair	Business Perceptions
Mr Colin Borland	Federation of Small Businesses
Ms Kyla Brand	Office of Fair Trading
Ms Nadine Brown	Scotland Office
Ms Margaret Burns	NHS Health Scotland
Sir Ian Byatt	David Hume Institute
Mr Neil Coltar	Glasgow City Council
Ms Marieke Dwarshuis	Consumer Focus Scotland
Dr Alison Elliot	Christie Commission (SCVO - Scottish Council for Voluntary Organisations)
Mr Cowan Ervine	Dundee University
Ms Janette Harkness	Scottish Council for Development and Industry (SCDI)
Mr Norman Kerr	Energy Action Scotland
Mr Jeremy Mitchell	Various
Professor Russel Griggs	Various
Mr Jon Harris	COSLA
Mr John Mason	Scottish Government
Ms Lucy McTernan	Citizens Advice Scotland
Mr Jim Metcalfe	Carnegie UK Trust
Mr Jeremy Peat	David Hume Institute
Ms Catherine Russell	WICS
Mr Ian Shearer	Scottish Retail Consortium
Mr Alan Stewart	OFCOM

## Debt Managers Standards Association

## **BIS – Department for Business Innovation & Skills EMPOWERING AND PROTECTING CONSUMERS**

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

### **RESPONSE BY DEMSA – DEBT MANAGERS STANDARDS ASSOCIATION**

West Point  
Westland Square  
Leeds  
LS11 5SS



## **Introduction**

The code holders appear to fall into two categories. Those who use it as a marketing tool to distinguish their products from those who are not code approved and those code sponsors who find themselves as QUASI-regulators, where the code, under the aegis of OFT has significant impact.

The DEMSA code runs alongside OFT, the market regulator, and so has very significant impact on the sector. The sector itself has been heavily criticized over the years and it is commonly acknowledged that DEMSA is to some extent the “paragon of virtue” within it.

If the OFT Consumer Codes Approval Scheme (CCAS) was withdrawn and another Primary Authority, which itself was not immediately recognizable as an enforcer was put in its place, then the dilution of its effectiveness in a difficult marketplace, often accused of consumer exploitation, would have a serious impact.

## **Questions within Annex A**

6. Without question, the ability to display the OFT logo by DEMSA and its members is the most powerful and prized element of the CCAS. Attainment of this has involved DEMSA in a lengthy and costly process over many years and the ability to display a widely known and powerful brand is of enormous importance to us. The loss of this and the possible substitution of another, less well known logo/organisation, would have much less impact on our members and their customers.
7. It is uncertain whether any other bodies within the private and voluntary sectors would have the resources to take on the CCAS.
8. The CCAS process although it is a very lengthy one, ultimately has been a successful model, and has had significant positive value for DEMSA and its members. There can always be improvements, which can be made following working parties and discussions but the fact remains that the OFT's Codes Team have the expertise and knowledge within this very important area, which would be very hard for an alternative organization to replicate.
9. To transpose CCAS approved codes into BSI standards would again prove difficult for consumers to appreciate, whereas the OFT logo is instantly trusted and recognized.
10. The same as the current OFT CCAS scheme.
11. We feel this has little merit.

## Derbyshire CC

Email

From: Taylour, Robert (Cultural & Community Services)  
Sent: 27 September 2011 15:07  
To: Evans David (CCP)  
Subject: TRIM: Empowering and protecting consumers

Dear Mr Evans, I write on behalf of the Cabinet Member for Regeneration confirming Derbyshire County Council's support for Government's 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 and to transfer funding and responsibility for decisions on national consumer protection enforcement to this Board. I attach the relevant minute from a Cabinet Member meeting confirming Derbyshire's support for this option and below are links to the relevant papers published on the Derbyshire County Council website.

[http://www.derbyshire.gov.uk/images/Empowering%20Protecting%20Consultation\\_tcm44-177711.pdf](http://www.derbyshire.gov.uk/images/Empowering%20Protecting%20Consultation_tcm44-177711.pdf)

[http://www.derbyshire.gov.uk/council/meetings\\_decisions/meetings/cabmemport/regeneration/12\\_9\\_2011\\_regeneration.asp](http://www.derbyshire.gov.uk/council/meetings_decisions/meetings/cabmemport/regeneration/12_9_2011_regeneration.asp)

With regard to the specific consultation questions detailed below I have added Derbyshire's response.

#### Questions

##### Consultation Questions

###### Question 20

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

###### Derbyshire Response

Option 3 as this will give local authorities the best opportunity to prioritise and resource national as well as regional consumer enforcement decisions.

###### Question 21

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

###### Derbyshire Response

- a) Yes
- b) Yes
- c) Derbyshire recognise that there may be occasions whereby the scale or consumer detriment or obscurity of legislation lends itself to a central team of specialists dedicated to investigating and taking appropriate enforcement action. However, we feel that in the vast majority of cases it is essential that resources are committed to sustaining and developing regional enforcement teams to support local, regional and national enforcement. The existing East Midlands Scambuster team has been highly successful both in terms of tackling level 2 enforcement issues and also adding capacity and expertise to more local enforcement and we feel that it is vital the this team receives sustainable funding.
- d) Yes

###### 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?

**Derbyshire Response**

No. OFT have not been able to demonstrate that they have successfully prioritised and tackled national consumer enforcement issues or established an effective means of communication and liaison with trading standards enforcement colleagues. However, it is essential to maintain the links between structural market failure – ie abuse by business of dominant market position to the detriment of consumer interests – and consumer enforcement issues, and therefore it is vital that there is improved collaboration between TS enforcement and OFT/CMA.

Kind Regards,

Robert Taylor

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Robert Taylor  
Assistant Director / Head of Trading Standards  
Cultural and Community Services Department  
Trading Standards Division  
Derbyshire County Council

## Devon CC

From: Cllr Roger Croad  
Address: Higher Newlands  
Godwell Lane  
Ivybridge  
PL21 0LE  
Tel: 01752 892223  
Fax: 01752 895538  
Mobile  
E-mail: roger.croad@devon.gov.uk

26 September 2011

**Dear Sirs**

**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”**

Thank you for the opportunity to respond to the above consultation paper, in preparing this response on behalf of Devon County Council I have attended various meetings where these issues have been discussed by a range of central government and local authority officers and by representatives of other interested organisations. I have also spoken at length with the Head of Trading Standards for Devon County Council and with other members of his management team.

## **INTRODUCTION**

The above consultation paper issued by the Department of Business, Innovation and Skills (BIS) on 21 June 2011, 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 by concentrating public funding on those bodies that consumers recognise and trust – Local Authority Trading Standards Services (LATSS) and Citizens Advice.

The first of two key proposals is that all consumer protection functions delivered nationally by the OFT could be delivered by LATSS. It is the belief of Devon County Council that, given appropriate time, LATSS are well equipped and capable of taking on that challenge and that this will result in a more effective and simpler consumer protection regime.

The other key proposal is that Citizens Advice 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. Once again this is a proposal that Devon County Council would broadly support in the belief that it will help deliver a simplified, more effective and transparent consumer protection landscape. However, it is critical that there is close liaison between Citizens Advice and LATSS not only to ensure an efficient flow of the intelligence that LATSS rely on to carry out their enforcement role but also to maintain that more fundamental, innate link between advice and enforcement.

The consumer landscape proposals focus on the fair trading elements of Trading Standards work. It needs to be recognised that LATSS operate across a number of other legislative and social areas and answer to other central government departments and agencies and local politicians for those issues. In assessing the implications of any changes and the impact of LATSS work the inter-relationship between these activities needs to be properly evaluated.

## 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 is important that a high level of consumer advice is maintained. BIS has been explicit about the importance of consumer confidence to the local and national economies in their research into the consumer landscape which has led to the current consultation document. The amount of detriment to consumers from unfair trading practices has also now been widely researched and published.

Consumers should be able to get a range of consumer information and advice. Advice should be available via the telephone, online and, increasingly, through other social media in order to meet the expectations of different groups of consumers. Where necessary, this advice should be available face to face, as well as via the telephone and online. The internet and other social media provide a valuable resource of information to empower consumers to take action or seek

information. However in some cases, for example due to the complexity of the matter, individual enquiries should be dealt with by an officer who provides bespoke advice and guidance relevant to the complaint. Moreover, 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.

General consumer information and pre-shopping advice for consumers have a key role to play in raising consumer awareness and education. To be fully effective, there needs to be continued and meaningful engagement with LATSS in planning, coordinating and delivering these aspects.

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

Devon County Council agrees that if the consumer information role is to be taken from the OFT, then the most logical step would be to transfer it to Citizens Advice, providing consumers with a trusted, recognisable brand for consumer advice and information.

It will be important that Citizens Advice works closely with LATSS both nationally and locally in the provision of this consumer information service, as the OFT has done previously. However, we are aware that in some areas local Citizens Advice Bureaux themselves are under intense funding pressures. Therefore some of the envisaged improvements at local level may be difficult to achieve and gaps in second tier provision may increase.

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 Bureaux may lack central direction and control. This also gives rise to the question of how close cooperation with LATSS at a local level can be ensured.

At a national level, Devon County Council is unaware of the long-term funding proposals for Consumer Direct but sustainability of a system which includes the key elements indicated above will be essential to maintain adequate consumer advice and provide intelligence for LATSS and other relevant organisations. We would suggest that heads of trading standards should be represented on the new Consumer Direct governance board.

There will also be the need for close liaison at an operational level between individual LATSS and the new "Consumer Direct" part of Citizens Advice to deal with any problems, issues or concerns. This should be embedded as a formal requirement in the new system.

The proposals already recognise how important Consumer Direct data is for LATSS. LATSS have an intelligence-led approach to enforcement and the Consumer Direct referrals and data provide 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.

Consumer Direct has also provided a trader tracking system for the Buy With Confidence approved trader scheme. These sorts of schemes are an important source of information to local consumers about reputable businesses. We would wish to see the facility for Consumer Direct to provide this service remain in place.

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

This would seem to make sense within the overall proposals.

***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?***

Again it makes sense, given the overall proposals, that the OFT's publicly-funded consumer education role at national level be transferred to Citizens Advice. As noted in the consultation paper, consumer education activities for the public at a local level are usually carried out by LATSS, therefore 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:

- raising the profile of approved trader schemes
- basic education on consumer rights and practical assistance on how to complain and pursue redress
- financial literacy
- continued work on scams and doorstep crime

Given the recognition of the importance of local delivery, it is vital that the Government achieves the right balance of funding between Citizens Advice and local authorities to ensure the system works efficiently and effectively.

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 liaise closely with the proposed TSPB to ensure the most appropriate and effective links between local, regional and national consumer education activities.

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

Most business facing educational activity is carried out face to face with local businesses by LATSS staff or by localised training initiatives. 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. There are also several existing, website resources including, TS Broadcast and Everything Regulation When It's Needed (ERWIN), some administered by TSI others not.

It is not clear, without further detail, what is meant by the term "coordinated" in this particular context. However, Devon County Council can see a clear role for TSPB, at a strategic level to join up initiatives and avoid duplication. TSI are an important contributor to resources at a national level but are not the only one, we would see them as having a role primarily through a position on the TSPB.

It would also be of considerable value for Government to charge an appropriate national business agency with the responsibility to engage with TSPB and contribute to a national advice resource pool from a business perspective.

### **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?***

Whilst the concept of having a mechanism to recognise codes of practice that meet certain minimum requirements is correct, one would have to question what evidence there is to demonstrate the value-for-money impact that CCAS codes have had in protecting consumers. There has not been a high demand from code owners for the CCAS approval process and one would also query its economic value to business.

Devon County Council would suggest that the consumer protection aims and objectives of CCAS are clearly better met by approval schemes which require independent vetting of individual businesses. Furthermore, that with appropriate support and backing this type of scheme could more effectively meet business needs than the existing CCAS system.

Where you effectively have a system of registration or "negative licensing" of members or where vetting, redress and disciplinary procedures lack independence or integrity then the reputation of the Code and the vast majority of its reputable members is damaged by the actions of the non-compliant minority. This small minority will also account for a disproportionate amount of resources from Code Sponsors.

***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?***

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.

The largest and most successful of these is the Buy With Confidence (BWC) scheme. BWC has been in existence for over 10 years and has successfully stood the test of time; it is now operated by around 45 local authorities.

The growth and expansion of BWC has only been restrained by limited resources, however it has now developed to a stage where it feels able to accommodate national businesses and trade organisations (a number of which are actively pursuing membership). BWC is also examining appropriate sponsorship and advertising income streams.

I am aware that BWC is also exploring the possibility of working in partnership with Which? to develop a credible national approved trader scheme based on the BWC model. Such a partnership would present the opportunity to introduce elements from CCAS Codes of Practice which have hitherto not been regular features of local authority schemes.

With adequate funding and support BWC could be extended to fill the CCAS gap, albeit under a different shape and structure, as well as empowering consumers and supporting reputable business.

It would be important to ensure that any expansion was managed by those who know and understand how the scheme works and its underpinning principles. The continued success of the scheme is based on its premises based audits of businesses, its access to local intelligence and the integrity and independence of the Trading Standards profession. Some national schemes have previously suffered from trying to do too much too soon and in being too removed from their business members.

***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 OFT process for approving codes has proved to be very long and relatively labour-intensive. It is essential that whatever new scheme is developed the process for code approval should be completed in a timelier manner.

Although the bar for CCAS approval was set high, the fact that so few codes were able to meet these standards must question the effectiveness of the codes themselves as genuine vehicles for consumer protection and raising standards in their industries, rather than as a reflection on the CCAS process/criteria. Therefore, one would again ask what evidence there is to demonstrate the impact of CCAS codes on measures of consumer detriment or consumer protection.

Public recognition and understanding of CCAS remains low despite the relatively generous amount of funding which has been available to the Scheme over its lifetime. The current consumer landscape review suggests that Trading Standards is a strong and trusted public “brand” and it would seem to make sense that any future scheme was linked to a brand which was immediately identified with consumer protection. The consumer trust and confidence that this would lend to the Scheme would be equally advantageous from a business support perspective. The experience of Devon County Council is that its business members place far more value on the Trading Standards Approved element of its promotion than on recognition by the OFT (under LAATSN) or any other central government agency. If the CCAS scheme is to continue in any form, then there must be an opportunity for LATSS to feed into the application process, so that any concerns or issues can be raised.

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

While we have no particular objection to this, I am not convinced that this would be any more successful than the CCAS system. The CCAS system does not on the face of it seem to fit well with the BSI Kitemark brand. As indicated above we believe that there are other options which should also be explored fully.

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

We are concerned that this question looks only at industry needs, in our view the ultimate purpose of Codes of Practice should be to improve customer service and confidence and raise standards, any certification process should reflect this.

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

We are in favour of extending the Primary Authority concept to trade associations and it is something that the Buy With Confidence scheme has already discussed with one trade association.

Further consideration should also be given to broadening the range of organisations which can operate a Primary Authority Scheme - for example, regional groupings of regulators, local authority approved trader schemes such as Buy With Confidence, etc.

## **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?***

Response to questions 12 to14

Devon County Council 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. However, any coordinated, publicly-funded, consumer advocacy function needs to have real teeth to be able to take on cases that would not otherwise be taken.

It is vital that Citizens Advice in England and Wales work closely with LATSS, many of whom continue to offer second-tier consumer advice and assistance as well as local business support to maximise the benefits that the new regime may bring for consumers and businesses. As well as the creation of a system for liaison and communication at a national level it is important that local ties are encouraged and supported

***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?***

Devon County Council has no comment to make on this issue.

**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?**

Devon County Council has no comment to make on this issue.

**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?**

Devon County Council has no comment to make on this issue.

**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?**

Devon County Council has no comment to make on this issue.

## **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?**

Devon County Council 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. We believe that LATSS have the skills, experience and willingness to deliver the outcomes the Government wants to see. However, it is very clear that appropriate 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 and I am aware of and have supported numerous examples of this from within my own authority.

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. Devon County Council would also like to see consideration be given to extending the proposed model to a broader range of trading standards functions. In the future this could offer significant improvements to the current infrastructure and coordination in areas such as food and animal health, giving clearer accountability and greater flexibility in delivery, response and use of resource. Whereas, creating any division between different elements of trading standards work at a local, regional or national may have consequences which have not yet been fully considered.

Given the key role that BIS see for LATSS in the new consumer landscape, this is the only model which gives them the requisite ownership and authority to ensure that the proposals work. Empowerment and engagement will go hand-in-hand.

As Citizens Advice also run their services at all levels then this model has the potential to 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?**

Devon County Council has seen the ACTSO response to this question and support the principles outlined there and, as such, will not repeat those in detail here.

With respect to the section on "Delivery Mechanisms" in the ACTSO response, Devon County Council believes that this is the most appropriate short-term model and that the collective commitment of the national trading standards community will ensure that it works well. Longer-term we believe that there should be further consideration of other options, for example the creation of one central employment body for the national resources which might offer greater operational flexibility, both logically and in terms of expertise, and be perceived as offering a more stable career path facilitating recruitment and retention of appropriately skilled and talented personnel. Other advantages might be the ability for the TSPB to more directly control activities and resources and, arguably, a higher profile and the perception of greater "clout" to deal with the bigger national organisations and/or 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? 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.

Devon County Council would not support the status quo in terms of powers and responsibility as this would involve the additional bureaucracy and costs associated with a new organisation but few clear benefits.

As BIS identifies in the consultation paper there would not be the resources to create a 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 and it is unlikely that such a model would achieve the necessary buy-in and commitment from all LATSS

Therefore it would be 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 LATSS in cross-boundary enforcement in any integrated national system.

This model also fails to achieve the simplicity in the “consumer landscape” which has been identified as an advantage for both consumers and businesses.

#### **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?***

Devon County Council 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. However, this must not be used as an excuse to divert resources from LATSS

***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 questions 26 to 27**

Devon County Council believes that, under an option-3 based model, the key factor will be the need for close communication between the two bodies. However, certain procedural guidelines would assist in identifying and clarifying roles

***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 26 to 27

Devon County Council, like many LATSS, follows a National Intelligence Model (NIM) or similar approach to take an intelligence-led, problem solving approach to consumer protection issues. This approach can help promote consistent enforcement and effective intelligence sharing between TSPB, LATSS and the CMA. 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.

It would seem to make sense to give the role of market research into pure consumer issues to Citizen's Advice, as this would fit more closely with their intended sphere of operation.

Devon County Council does not believe that there should be a duty on the TSPB to automatically prioritise 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?***

### Response to questions 30 and 31

Devon County Council agrees that the proposed approach is a sensible way of ensuring effective collaboration between the various bodies.

It would be helpful to have some resource that could be used to investigate or address consumer and market issues that could risk an enforcement or advocacy gap. The exact mechanism required to obtain those funds would depend on the amount of funds allocated for this and who "held" the funds. An alternative to the proposed model might be for release to be approved by a central government fund holder, providing certain criteria were met. Whichever model is used we would want to minimise the bureaucracy associated with any such scheme.

### 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?***

On a minor point, there appears to be some confusion between the operating model and “brand”. Although operated through LATSS, Devon County Council believes the brand should simple be “Trading Standards”

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. Devon County Council has taken a number of major trading standards cases over the last few years with national ramifications. 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. Devon County Council does not believe that there will be any problems with an enforcement model branded as run by Trading Standards.

### **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?***

Devon County Council believes that 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, 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?***

Devon County Council has no comment to make on this issue.

***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?***

Devon County Council 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.

It did not appear to play any significant role in avoiding the possibility of businesses being subjected to multiple interventions; 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?***

Devon County Council has no comment to make on this issue.

***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

Devon County Council would support these proposals

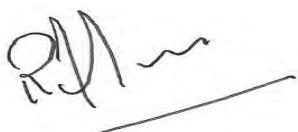
***QUESTION 39. Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?***

Devon County Council 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. Other issues with estate agents are 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. We do not believe that the current negative licensing system for estate agents is necessary.

***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?***

Devon County Council believes that it is essential that the proposed changes to the consumer landscape should go ahead in April 2013. This would avoid continued confusion in the current landscape and deliver financial efficiencies by streamlining the processes and structures. Delay in implementation will prolong the current uncertainty and will risk a loss of credibility in the government's stated aims.

Yours faithfully



Cllr Roger Croad

## Direct Selling Association



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## Consumer Landscape

**BIS Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement (June 2011) – the Consumer Landscape Consultation.**

### RESPONSE FROM THE DIRECT SELLING ASSOCIATION

#### **Introduction**

The Direct Selling Association (the DSA) is the trade association which represents over 50 member companies operating in the direct sales industry. The DSA has become the recognised voice of the direct sales industry in the UK and its members generate annual sales of £1.5 billion, making a significant contribution to the economy. Around half a million independent sales people are contracted to DSA member companies and generate in excess of 70 million consumer transactions per annum.

The DSA is one of 10 code sponsors whose codes have been approved by the OFT under its Consumer Codes Approval Scheme (CCAS). The DSA's Consumer Code of Practice currently enjoys that approval.

This response concentrates on the proposals relating to Consumer Code Approvals in Chapter 3 of the Consultation and answers the questions posed at the end of that chapter (questions 6-11).

#### **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 codes approval or accreditation scheme will be successful unless and until a critical mass of code sponsors gains approval/accreditation. Any such scheme must therefore be such that a significant number of code sponsors can gain approval/accreditation easily, quickly, efficiently and affordably - and will be motivated to do so.

The best option is a Consumer Codes Accreditation Scheme which has the following features.

1. It must be a nationwide scheme (covering the whole of the UK) with a name or title which has, or can quickly gain, public respect and cognition.
2. It should be an accreditation, not an approval, scheme.
3. Accreditation criteria must require that any accredited code includes provision of a complaints handling/dispute resolution procedure which is available to a consumer who is dissatisfied with the result of a complaint made direct to a member company.

4. Accreditation criteria should not include requirements which it is unrealistic for relevant companies to accept on a voluntary basis. [In particular, protection of 100% of all consumer pre-payments, though an entirely desirable policy objective, is nevertheless a commercially unrealistic *requirement* for many consumer codes; it imposes significant costs on companies signed up to a code which are not imposed on non-member companies. It was on this rock that ABTA's continued approval under the CCAS foundered.]
5. The costs to a code sponsor of gaining and retaining accreditation must be kept to a minimum.
6. It must not simply be a continuation of the current CCAS unchanged other than by being run by a different body. It must reflect lessons to be learned from the failure to sign up a critical mass of consumer codes to the OFT CCAS.
7. Satisfying the accreditation criteria and meeting the cost of gaining accreditation must both be comfortably within the resources of code sponsors. The criteria and cost must be such that a large number of code sponsors are attracted to seek accreditation.
8. The process of accreditation must be straightforward, smooth, quick, clearly set out in writing and efficient in operation.

It is against these features that the DSA will make its judgement as between different possible successors to the current CCAS.

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

It is difficult to know. Key issues would be: (i) the cost to code sponsors; (ii) the public/consumer recognition accorded to the accreditation. The DSA's clear preference is for a code accreditation system operated by a public body with public recognition/respect.

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

The CCAS operated by the OFT was and is:

- (i) bureaucratic, inefficient and slow, and
- (ii) hamstrung by inflexible approval criteria [notably the requirement for 100% protection of consumer deposits, a laudable objective but for many code sponsors a costly and commercially unrealistic one in a commercially competitive environment].

These shortcomings need to be avoided in any replacement for CCAS. See further the response, above, to question 6.

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

This is unlikely to be a workable idea, for the following reasons:

- (i) There would likely be a significantly increased cost in the event of BSI involvement.
- (ii) A "standards" based approach would very likely be hamstrung (as has been the OFT scheme) by inflexibility of accreditation criteria.
- (iii) Certain code sponsors currently CCAS members would be most unlikely to wish to be accredited or approved under a BSI standard.

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

This is unlikely to be a workable idea. See the response to question 9 above.

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

Trading Standards are nationally recognised and have a positive public profile. A problem could be that there are competing “good trader” schemes run by some trading standards departments.

Extending the Primary Authority concept, or some variation on it which involves trading standards oversight, could be possibly be a workable idea, provided:

- (i) It was a single nationwide scheme, not one with various different Primary Authorities taking different approaches; and
- (ii) The scheme had the features set out in the response, above, to question 6.

The first of these provisos, however, identifies a possibly insuperable problem, in that it is difficult to see how this solution would include Scotland within its scope.

The DSA understands that TSI is willing to offer to operate a code accreditation function to fill the vacuum created by the winding down of the current CCAS. The TSI has a national brand which enjoys a good degree of public recognition. Of the options currently known to be available, the DSA believes that this possibility offers by far the best chance of success. It appears to offer the best chance of a CCAS replacement which has the features identified by the DSA as essential (in its response, above, to question 6).

- Ends -

Date: 22 September 2011.

For any further comments or queries, please contact:

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The Direct Selling Association Limited

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## East Midlands Trading Standards

**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”**

This response has been produced by the Trading Standards East Midlands (TSEM). TSEM is a partnership representing the eight Trading Standards services in the East Midlands region. This response was formulated in conjunction with the Heads of Service in those authorities.

In formulating this response, TSEM 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.

The consumer landscape proposals focus on the fair trading elements of our work, we also answer to other central government departments and agencies and local politicians for other enforcement issues. A further improvement would be to better coordinate and simplify arrangements between central government departments and LATSS.

## 1. 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.

Each individual enquiry should be dealt with by an officer who provides bespoke advice and guidance relevant to the complaint. TSEM would not support any reduction in the standards of advice from that currently provided (e.g. 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).

TSEM have some concern that the full range of consumer advice that is currently provided may not be fully appreciated. There are many different aspects to 'second tier' advice and it is not just a question of enabling people to have face to face access to an advisor. It is essential that advisors also have the skills and competencies to not only understand and interpret contract law, and associated criminal law, but also practical steps for resolving any dispute. Intervention and mediation both require a high level of knowledge and experience, and also time, to successfully resolve the more complex consumer issues.

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

TSEM 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 2<sup>nd</sup> 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.

TSEM 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, it would be helpful if each LATSS could provide Citizens Advice with a named contact for trading standards too.

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.

TSEM recognise that Citizens Advice Bureaux locally 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?***

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 also 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?***

TSEM 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 know 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.

TSEM welcomes the recognition that local authorities should remain responsible for direct delivery of education to consumers at local level. '*Skilled to Go*' and '*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 to11

TSEM 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. 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. TSEM believes that there are great opportunities to build on these existing Local Authority Assured Trader Schemes 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 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 to questions 12 to15

TSEM 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.

Some LATSS currently offer second tier advice and advocacy for consumer complaints. These local authorities still feel it is important to maintain a level of support for their local businesses and consumers. TSEM would not wish any changes to undermine any locally delivered support.

TSEM would be happy to work with 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?

TSEM 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?**

TSEM 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. TSEM believes that LATSS have the skills, experience and willingness to deliver the outcomes the Government wants to see. TSEM members have been very positive about the new proposals. However, it is with the very clear proviso that funding has to accompany this option for reform as we do have reservations about taking on a lot more responsibility but with less funding than was previously available.

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. (e.g. LATSS 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).

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 TSEM does not believe that 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 then 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

TSEM 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 direct this work and 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 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. ACTSO will discuss these options directly with the LG Group and WLGA. 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 decisions 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 ACTSO, 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.

### 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 significant knowledge or experience of running Trading Standards Services. 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 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, for example via ACTSO or TSI or some other arrangements. In accordance with the values agreed by all the Chief Officer Societies across Great

Britain, there is a commitment to ensure 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.

#### Relationship to existing Trading Standards Policy Forum (TSPF)

The specific accountability and role of the TSPB is different to the existing TSPF, both in terms of scope, role and ability to deploy resources. The business and decisions of TSPB will need to be distinct from the broader policy making role of the TSPF. However, to use heads of trading standards time most effectively, and avoid confusing the landscape further, we are confident that the functions of the two can be dealt with via the same people and at the same meetings as long as the recording and accountability processes are clear. The exact details about timing, frequency, locations etc of meetings will be resolved as proposals become clearer as to the range and scope of responsibilities of the TSPB.

#### 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 associate with the functions.

Based on our assumptions at the moment 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.

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 it is crucial that any region or council that bids for aspects of the work are absolutely confident they can deliver.

TSEM 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 prioritise regionally and nationally delivered work and will also help trading standards services with their local prioritisation of work.

TSEM 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.

We 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 scambuster and illegal money lending teams, TSEM would expect 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 should not be put at significant financial/legal risk and as such BIS, 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 that legal liabilities are underwritten. Without the indemnity fund TSEM 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.

TSEM 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 LATSS. The JEB would also not be controlled by heads of trading standards and could not be held accountable in the same way.

TSEM 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 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

TSEM 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.

TSEM 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 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 LATSS and the CMA.

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 prioritise 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?*

### Response to questions 30 and 31

TSEM agrees 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 minimise the bureaucracy associated with any such scheme. Whilst TSEM 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.

### 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. TSEM 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. TSEM are aware that some regional groups and indeed other external providers may also want to bid for this type of work.

#### 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?*

TSEM 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?*

TSEM 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. TSEM believe that the role could pass to either TSI or the CMA but it will be dependent on the final scope/role that the Government would wish the CMA to take. TSPB would need to be aware of any key issues arising from the group but intelligence could be shared using TSPB meetings.

*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, TSEM 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?***

TSEM 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 TSEM 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. We do not believe that the current negative licensing system for estate agents is necessary.

The enforcement of anti-money laundering regulations is 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. 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?***

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

## **East of England TS Association**

## RESPONSE

Comments on Consumer Empowering and Protecting Consumers Consultation	
Emma Head – EETSA Regional Co-ordinator	<a href="mailto:Emma.head@tradstan.suffolkcc.gov.uk">Emma.head@tradstan.suffolkcc.gov.uk</a>
Response to David Evans, BIS	<a href="mailto:David.a.evans@bis.gsi.gov.uk">David.a.evans@bis.gsi.gov.uk</a>
14 August 2011	

This response represents a consensus view of the East of England Trading Standards Association (EETSA) members to the consultation paper on the Empowering and Protecting Consumers Consultation. It does not necessarily reflect the opinions of the employing authorities.

### **EETSA 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”**

#### **Introduction**

In developing our views on this consultation, EETSA have considered the response of the Association of Chief Trading Standards Officers (ACTSO). We are in general agreement with ACTSO's comments, and endorse their views as put forward. Our written response is therefore limited to our own additional replies to certain questions only, so as to avoid duplication in submission.

#### **1. 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?**

We believe that there is a dazzling array of consumer information providers across the public, voluntary and private sectors. This causes confusion and duplication and a rationalisation of the number of providers is needed to rectify this.

We are aware that Citizens Advice intends to deliver part of its consumer advice service through local bureaux. Local CABx are locally autonomous, and there is an element of separation from Citizens Advice at national level. Moreover, there is fragmentation of CABx at local and regional level, and funding is very sharply contracting for local bureaux across the whole country. This therefore raises challenges that will need to be addressed in ensuring that local bureaux work effectively and consistently with local authorities, especially in the areas of intelligence sharing and campaigns.

The consultation document does not provide enough detail about the level of advice and education that will be dealt with by CABx. This leads to an obvious need for their advisors to possess the necessary skills and competencies if they are to provide second-tier consumer advice. Indeed, the consultation is silent on plans for the provision of second-tier consumer advice, apart from stating that Citizens Advice will 'lead on all information and advice for consumers'. Equally, it does not specifically address the provision of 'face-to-face advice'.

Given the fragmentation at local CAB level, there is a risk of second-tier advice becoming likewise very fragmented. We therefore believe that there must be some control mechanism for this.

Similarly, there is a complex relationship between second-tier consumer advice and civil/criminal law implications. There needs to be clarification of expectations and definition of roles to ensure that duplication of advice provision is avoided.

Equally, the exchange of intelligence between local bureaux and trading standards is critical, and will be a challenge in the light of CABx championing of client confidentiality. We therefore believe that much more clarification and definition is required to ensure the necessary intelligence exchange both at national and local level. At present we do not know enough about the proposed referral processes from Citizens Advice, but we are of the strong belief that Trading Standards needs access to intelligence not just equivalent to the current 'referrals' from Consumer Direct, but also 'notifications' so that developing detrimental trends can be effectively tackled.

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

Yes, although again we have concerns how this will translate to delivery at the level of local CABx, in the context of the fragmentation referenced above. Clearly, it will be imperative for Local Authority Trading Standards Services to develop close working relationships with their local CABx. These relationships are of course complicated by the fact that CABx are reliant on local authority funding, and that overall CABx funding is sharply reducing.

Consistent delivery of proactive advice at local CAB level will pose challenges, particularly as CAB advice provision has historically been reactive. This re-emphasises the importance of the development of close working relationships between bureaux and local Trading Standards services to prevent a ‘postcode lottery’ of consumer information provision.

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

Yes, though we find it interesting that there is no mention of expanding this into other sectors.

**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?**

Yes, though please see our comments to Q2 above in relation to the potential challenges relating to delivery by local bureaux.

We note that funding will pass to Citizens Advice for this activity, so clarification will be necessary in due course of the extent of local authority involvement.

There is clear evidence that UK consumers are not ‘savvy’ enough. This is evidenced by the fact that consumer detriment costs the UK £6.6bn annually (referenced in the NAO report). In our opinion, one of the most valuable consumer education activities must be those in our schools. However, provision of meaningful consumer education at this pivotal stage is significantly hampered by the absence of consumer education from the national curriculum. Until this is addressed and consumer education is included in the national curriculum, the opportunity for a generational change in consumer awareness and empowerment will be frustrated.

Norfolk and Suffolk Trading Standards have recently launched ‘Consumer Champion networks’ which seek to embed consumer resilience to scams and rogue traders across our varied communities. Such community-based peer education is showing promising signs of creating the desired consumer awareness and self-protection. This is based on the premise that while national campaigns can be useful, local education and empowerment also key.

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

Yes. The need for business-facing educational activities should be linked to detriment to consumers (ie. risk-based) and so, in many cases, must be sector-specific. This is one of the reasons why information sharing is so important.

**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 6 - 11

EETSA has no strong preference on the future of CCAS.

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. Similarly, if changes are to be made to the scheme, we believe that Trading Standards services should be included in consultation on proposed changes.

If there is to be an approval mechanism in future, the TSPB should be involved in this.

### **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?

**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 12 - 19

EETSA does not have strong views on this, but clearly Citizens Advice need to be in agreement with the proposals. The sharing of information and intelligence will clearly be key and, where appropriate, there will need to be consultation with the TSPB.

We do amplify the concern that for organisations such as Citizens Advice to take on statutory powers and functions, these need to be consistent with their charitable purposes, aims, principles and strategies.

### **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?*

Option 3 is our only preferred option. This is for the reasons clearly portrayed in the ACTSO response to this consultation.

We would like to add that whilst we recognise that the scope is currently limited to BIS' areas of responsibility, the proposed model provides the opportunity to be potentially widened to embrace Trading Standards Services' wider range of functions (for example, a national intelligence hub offers advantages across the whole range of Trading Standards local regulatory activity). The opportunity to use the proposed national/regional infrastructure for enforcement and co-ordination is not just confined to longer-term possibilities in areas such as food, animal health and metrology, but potentially beyond to other local regulatory services.

It therefore has the potential to unlock and co-ordinate resource across a wide range of consumer protection areas, to give clearer accountability, and to create flexibility in response and resource-sharing across local authorities.

*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?*

Yes, for the reasons explained in the ACTSO response.

We support the proposition relating to the TSPB in section 5.51 of the consultation document.

We believe that the specialist areas warranting national teams should include Illegal Money Lending, 'Scambusters' (including internet enforcement expertise), and import surveillance for consumer goods at ports of entry. It is important that these activities are intelligence-led.

We must point out that local authority powers to deal with cross-border infringements need to be carefully considered, not least because of the Local Government Act 1972 provisions which limit legal proceedings to only those cases that concern the interest of their inhabitants. Inconsistent use and application of delegated authority agreements (s.101) causes further confusion. We believe that clear legislative provisions will need to be enacted to enable action in other geographical areas and to avoid potential challenge to such cross-boundary enforcement.

Similarly, we would like to see the implementation of a general 'duty to co-operate' provision between local authorities, to provide an absolute assurance of engagement. An indemnity fund to enable local authorities to take the risk of losing cases is desirable; local authorities need to be assured that a mechanism is in place for a fund for high costs arising from taking important court cases.

#### Intelligence

The consultation recognises use of intelligence is key to ensuring that consumer detriment is effectively identified and tackled, and that enforcement is successful.

We are also conscious of the comments made within the NAO report on the issue of intelligence databases. The picture of database provision is currently much more complex than suggested. There are currently a number of databases in existence within the TSS. These include bespoke intel databases, such as the Memex and EETSA IDB, but also include other proprietary systems such as I2 and Clue2. Local TSS also, almost universally, use a number of back office databases (eg. APP, Mastertrader, etc ) which hold a significant amount of data used to support intelligence led activity. For many LA's current CD data as well as LA data is held on these back office systems. This issue holds true for many agencies, including the police.

At the present time, there is not a connector available between the two systems in question due to financial and contractual constraints regarding the OFT procurement of Memex.

The proposals, particularly in giving TSS the role on most regional/national issues creates a great incentive to develop a cross function coordination of intelligence, an 'intel hub' that could have long reaching benefits for all consumer protection activities.

*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 22 – 24

EETSA would prefer not to maintain the status quo in terms of powers and responsibility as this would create a further layer of bureaucracy but few benefits.

## **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 25 - 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), and support ACTSO's comments in this regard.

## 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 30 - 31

We agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies, and that it would be helpful to have the resource identified in Q31.

## 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?*

Local Authority Trading Standards Services have years of enforcement experience of dealing with rogue traders and illegal behaviour within their own communities including many with a national impact. Given the array of enforcement tools available to us, and the benefit of close, regular partnership working with the police, HMRC, and other enforcement bodies, if rogue traders are not deterred by this, it is unlikely they will be otherwise deterred.

## 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?*

We believe that TSI is the only option, given their central position. We welcome the creation of a single body responsible for business advice, given the multitude of information providers (some at government level) and who occasionally offer conflicting information. Business advice must be about what businesses want, and should have the potential to expand across regulatory functions. An example of this is the current ERWIN website.

## **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?*

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?*

Yes, in order to avoid duplication and overlapping, ineffective enforcement. It should sit within TSPB, but will need a mechanism to support it. This aligns with the Consumer Regulation Website. We believe that this has potential to form part of a wider intelligence database and it is desirable to aim for this in the longer-term.

**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?*

We believe the Chairmanship of this could 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). 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 took this role then they would be involved as part of 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 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 37 - 38

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?*

Given that other means and legislative provisions are being used to control the activities of estate agents, we believe the whole operation of estate agency regulation should be fundamentally reviewed. We are therefore unsure whether a specific estate agency-focused regulatory function is necessary.

**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?*

We believe that it is essential that the proposed changes to the consumer landscape should go ahead in April 2013, regardless of the timing of the CMA creation. Further delay would mean the postponement of consumer protection improvements, and so leave consumers open to detriment and reputable businesses at a disadvantage.

*(Response submitted by EETSA Specialist)*

If you have any queries or would like any further information regarding the EETSA response to this consultation, please contact

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**[END]**

## **East Riding, Yorkshire**

# EAST RIDING OF YORKSHIRE COUNCIL

**Report to:** The Cabinet  
20 September 2011

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## Government Consultation – Consumer Landscape Review

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Report of the Director of Environment and Neighbourhood Services

### A. Executive Summary

The Government has issued a consultation on reform of the national structures relating to consumer advice and protection. The reforms may have an impact on the services provided by the Council by affecting the capacity of services provided by partners. Responses are required by 27 September 2011 and the Government has indicated that those endorsed by elected members will carry added weight.

### B. Corporate Priorities 2008-11

Safer communities  
Supporting vulnerable people

### C. Recommendation

That CMT accept the report and agree that a report be presented to The Cabinet on 20 September 2011.

That CMT agree the responses to the consultation and request that Cabinet endorse them.

### 1. Background

1.1 The Department for Business Innovation and Skills (BIS) has launched a consultation on the future of bodies responsible for consumer protection at a national level. Setting out the objectives of:

- Reduce the complexity of the consumer landscape
- Strengthening the effectiveness of consumer enforcement.
- More cost-efficient delivery, closer to the consumer front line

1.2 Ed Davey, the Consumer Minister, wishes to address “the bewildering array of public, private and voluntary bodies with overlapping responsibilities”. He goes on to say that Citizens Advice and Trading Standards “enjoy high levels of public awareness and public trust” and his “preference is to focus almost all Government spending on consumer policy on these two groups”. The consultation poses a number of questions on how the existing mechanisms can be transformed into the new delivery model vision. Various options are provided in the consultation but the preferred approach proposed by BIS is to make three key institutions responsible for consumer protection activity as follows.

- 1.3 **The Citizens Advice service.** The Citizens Advice service comprising Citizens Advice and Citizens Advice Scotland. The Government proposes that almost all central government funding for consumer information, advice, advocacy and education will transfer to the Citizens Advice service which enjoys high recognition and trust among the public as well as a track record of effective advocacy. The Government would expect the Citizens Advice service to work closely with Which? and other organisations in developing and delivering its advice and advocacy functions.
- 1.4 **Trading Standards** comprising Local Authority Trading Standards Services (LATSS), the Trading Standards Institute (TSI), the Association of Chief Trading Standards Officers (ACTSO) and the support infrastructure offered by the Local Government Group. A national Trading Standards Policy Board (TSPB) is proposed to coordinate this area. The recent NAO report concluded that £4.8 billion (73 per cent) of consumer detriment from unfair and rogue practices arises as a result of threats that span more than one local authority area but Trading Standards are overwhelmingly funded by local authorities. The Government proposes to deploy national funding to facilitate a more integrated approach to national and cross-boundary threats. This activity would be more effectively coordinated at national level by the TSPB to ensure that enforcement gaps do not arise and that activity overall is better targeted.
- 1.5 **The proposed new Competition and Markets Authority (CMA)**, to be created by merging the competition functions of the OFT and the Competition Commission, would play a key role in ensuring that markets are operating fairly and in the interests of consumers. It would have powers to investigate markets in which there are, or may be, structural problems and to use competition or consumer law to resolve these.

## 2 Implications

- 2.1 The proposals do NOT seek to usurp the current delivery of trading standards service work, that is funded through the RSG and aimed at addressing local needs and priorities. It does however seek to consolidate funding which currently goes to bodies such as the Office of Fair Trading (OFT) or is administered through grants from the Department of Business, Innovations and Skills (BIS) to be used to collectively enforce consumer law against national and regional threats to the fair trading environment. The consultation is looking at ways the current fragmented approach can best be governed, financed and targeted to provide more effective outcomes. However, by extrapolation the report sets out very well the decline in LATSS across the UK but puts forward no proposals for addressing this, it only address the cross border issues and leaves LATSS to wither on the vine. LATSS are a key element of this area of enforcement a comment on the resourcing of services is included in the response to Q32.
- 2.2 The proposed national structures, especially the TSPB, are felt to be constitutionally unacceptable on a number of levels. The TSI is a professional body and as such should not be involved in any aspect of service delivery and particularly not in an enforcement context. The CTSOs group is only open to members of TSI. There are no accountability or governance arrangements through an elected body. Any form of law enforcement must be accountable to an elected body. It is suggested that the TSPB includes a cross section of membership with an independent chair that reports to a government minister. The response to the consultation includes comments to this affect in the response to Q21.
- 2.3 CMT will already be aware how specialist Illegal Money Lending and Scambuster teams have been created to deal with particular types of rogue trading. The proposals build on

these principles and ring-fenced funding is being identified to create other national specialisms such as: internet enforcement/e crime; international scams; estate agency regulation and several others. It is important to note that these build on the existing framework of local delivery and are not meant to replace locally funded activities. Indeed the consultation draws attention to the risk of local authorities abrogating their funding responsibilities in the light of these developments.

2.4 East Riding officers already work closely with the existing regional and sub regional structures. Examples include:

- Hosting the Calibration Test Centre on behalf of the four Humber authorities.
- Providing a Measuring Instruments Directive (metering) service to the Yorkshire and Humber region.
- Participating in regionally funded test purchase work on issues such as tobacco.
- Working closely on joint work including raids with the Scambusters team.
- Sharing intelligence and information regionally.
- Coordinating advice functions with Consumer Direct

2.5 The consumer advice service which is likely to be contracted through Citizens Advice may alter the levels of service provision. Any reductions in the level of national funding and resources will result in increased demand for the services of the Council's consumer advice and education staff who currently deal only with the more complex cases. This could give rise to a budget pressure, or reduced quality of service and delayed response times from the Council, or the introduction of a tighter priority system.

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Background Papers

The consultation paper can be found on this link  
<http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/e/11-970-empowering-protecting-consumers-consultation-on-institutional-changes.pdf>

**RESPONSE TO CONSULTATION ON EMPOWERING PROTECTING  
CONSUMERS**

**BIS Consumer Landscape Review**  
**Response of East Riding Of Yorkshire Council**

Please find below the response of East Riding of Yorkshire Council to the BIS review of the consumer Landscape.

**Information, Advice & Education**

**Question 1**

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

The current arrangements with Consumer Direct work well and the council does not expect improvements to the existing level of consumer advice and information. The current mix of first tier advice and information provided by Consumer Direct with specialist second tier advice and information provided by Local Authorities is a model that has delivered considerable improvements to consumers (and businesses) over the last seven years.

It is important that all consumer advice continues be provided by specialised advisors who have demonstrated competency. Consumer problems are nearly always complex and need specialists to advise on them. Specialists are trained to see “beyond the obvious” and spot problems that may for example also require criminal enforcement.

It is crucial that the complaint information which currently flows from Consumer Direct to LATSS is maintained both for the purposes of local consumer advice provision and intelligence for LATSS criminal / civil enforcement. We do not believe that the majority of consumer problems can be solved by a simple internet based flow chart or similar, because not all consumers have access to the internet. Further more,

**Question 2**

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

We would support the transferring of consumer advice and information currently provided by Consumer Direct to Citizens advice providing a number of conditions are met:

- No additional pressures from demands for service are transferred to LATSS.
- The current data transfer that takes place between Consumer Direct and LATSS continues. This includes the continuation of the arrangements which currently allow LATSS to access the database holding this information. The continuation of this arrangement is vital for the continuation of intelligence led enforcement work. This information currently allows us to quickly identify problem traders.
- Citizens Advice work closely with LATSS to enable the provision of a fully comprehensive advice and Trading Standards service. This should include Trading Standards representation on both national and local working groups.
- The current system of account managers in each LATSS should be maintained.
- Specialist second tier advice remains the remit of LATSS.

**Question 3**

*Do you agree that the Extra Help Unit should be transferred to the Citizens Advice Service?*

We have no comment to make on this question.

#### **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?*

We are happy with this proposal providing that the current standards and volumes of demand for service are maintained or improved. It is vital that there is effective coordination of the work of Citizens Advice in this area with that of LATSS. We welcome the recognition that the provision of consumer education at local level will remain the responsibility of LATSS. Nationally coordinated media information works well, reduces costs and avoids duplication of effort at local level. Nationally coordinated campaigns are also effective. These should be managed and run by Citizens Advice with some input for the Trading Standards profession perhaps in the form of TSI.

#### **Question 5**

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

No, we feel strongly that business advice and education should continue to be predominantly provided by LATSS. The role of TSI should be limited to the provision of certain nationally coordinated educational material and support. The role of the TSPB should be limited to national coordination only. It would be impractical for a national body to provide business education to the predominantly local business community.

#### **Consumer Code Approvals**

##### **Questions 6 – 11**

*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?*

*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?*

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

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

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

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

We have no comments to make on these questions as they are primarily of concern to certain business sectors only.

#### **Consumer Advocacy**

##### **Questions 12 – 15**

*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?*

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

*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?*

*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 generally agree with the proposal to combine as many sectoral advocacy schemes as possible in the Citizens Advice Service. However, we believe strongly that it is important to maintain the 2<sup>nd</sup> tier advice service currently provided by many LATSS as this provides valuable local support for businesses and consumers alike.

### **Questions 16 – 17**

*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?*

*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 no strong views on these questions

### **Questions 18 – 19**

*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?*

*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 questions are not relevant to an English Authority

### **Enforcement of Consumer Protection Legislation**

#### **Question 20**

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

Of the models suggested our strong preference is for option 3 which involves the transfer of most of the OFT enforcement powers to LATSS with those involving structural market problems remaining with CMA. For the purposes of this question the definition on LATSS should not include TSI or ACTSO as these organisations cannot perform any legal enforcement duties.

LATSS are already vastly experienced in the field of consumer protection enforcement work and frequently take on cases that are of regional or national importance. LATSS, therefore have the skills and expertise to take on that work currently done by the OFT. The transfer of functions would help to enhance and secure the role of the valuable regional Scambuster teams.

In supporting these proposals we believe strongly that when functions are transferred they must be accompanied by adequate and realistic levels of funding.

#### **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 generally agree with the proposals for the TSPB within option 3. However, in order for it to remain credible with business and consumer groups alike we feel that it needs to be made up of a mixture both heads of LATSS and business / consumer representatives. This would bring a mix of expertise and help to ensure that it was seen as independent and fair. We would suggest that the Food Standards Agency Board be looked at as a possible model. It is important that the TSPB has a powerful, influential chair (similar to Lord Rooker of the FSA) who has considerable political / BIS experience. The TSPB should be directly accountable to the Government minister or BIS senior official as this will improve its influence and status.

It is vital that the TSPB is provided with adequate secretarial support and is subjected to rigorous overview and scrutiny. This could be provided by the LG Group.

We envisage that the majority of those enforcement roles currently performed by the OFT would be devolved to LATSS through the TSPB. Specialist LATSS or regional groups would deliver the functions on behalf of the TSPB nationally. LATSS and specialist regional groups already have a proven track record of delivering on national enforcement cases so this model would deliver a powerful message to those who were tempted to break the law.

In order for this model to work it is crucial that an indemnity fund is set up. Without this many LATSS or regional groups could not afford to take the risk of failure on large national cases. A lack of such a fund could cause the model to fail.

### **Questions 22 -24**

*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?*

*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?*

*How can your preferred new model best work with businesses?*

The Council prefer not to maintain the status quo through the establishment of a Joint Enforcement Board. This would appear to create additional bureaucracy and costs with few clear benefits. The Government identifies in the consultation paper that there would not be the resources available to LATSS to support this model. The JEB would also not be controlled by heads of service and 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 the Trading Standards infrastructure, the ability of the network to come together effectively in a national body such as JEB would be much less certain.

### **The Role of the 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?*

Yes we agree the CMA should retain some enforcement powers but any action taken under them would need to be well coordinated with LATSS and TSPB

#### **Question 26**

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

It should be mandatory that the CMA should coordinate its actions with LATSS and TSPB

### **Question 27 – 28**

*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?*

*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?*

We have no strong views on these questions

### **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?*

There needs to be clear definition of the roles of each organisation although the exact nature of their roles is not something we are in a position to comment on. We do not think the TSPB should have a duty to prioritise cases referred by the CMA. Any case referred should be prioritised entirely on its own merits otherwise priorities could become distorted.

### **Questions 30 – 31**

*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?*

*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 agree with the general approach set out by Government in this area but until more detail is available it is difficult to comment further.

### **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 have a high level of experience and proven track record in Trading Standards enforcement at both local and national level. We believe that this will continue to create a considerable deterrent effect. Our only concern to this would be a situation where functions were devolved down to LATSS with insufficient resources which causes our effectiveness to be either reduced or none existent.

### **Questions 33 & 34**

*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?*

*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 we agree that TSI would be an appropriate home for these functions as they already have considerable expertise in this fields.

### **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?*

There does need to be a central coordinating body for Enterprise Act actions. This allows all LATSS to be aware of either actions that have taken place or are proposed. It helps to avoid duplication of effort. We have also found that the coordinating role currently undertaken by the OFT offers valuable advice and feedback which we have been able to act upon.

### **Questions 36 – 38**

*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?*

*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?*

*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?*

We have no comments to make on these questions

### **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 the duties currently performed by the OFT in relation to Estate Agents and anti money laundering could be performed by a specialist authority or region. The current negative licensing system of estate agents is a powerful tool in dealing with this trade. It also acts as a considerable deterrent.

### **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 it is essential that the proposed changes go ahead in April 2013.

For further information or clarification of any of the matters outlined in this response please contact:

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Dear David Evans

**Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement – BIS June 2011**

At a meeting held on 6 September 2011, Carl Maynard, Lead Member for Economy, Transport and Environment and Member of the Cabinet of East Sussex County Council was appraised of the content of the above consultation by Brian Johnson, Head of Trading Standards for this authority.

The minutes of the meeting record that I was duly authorised by the Lead Member to express support in principle for the proposals in the consultation.

This authority is a member of the company Trading Standards South East Limited a limited liability company registered in England and Wales which operates Trading Standards South East (TSSE) a partnership of 19 local authority Trading Standards services in the southeast of England.

TSSE has prepared a detailed response to the consultation and this authority has contributed to that response which will be submitted under separate cover. Consequently, this authority wishes to endorse that response in its entirety.

Yours sincerely

Rupert Clubb  
Director of Economy, Transport and Environment



**ebay**



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David Evans  
Consumer and Competition Policy Directorate  
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rec'd 10/10!

22 September 2011

Dear Mr Evans,

## CONSULTATION ON INSTITUTIONAL CHANGES FOR PROVISION OF CONSUMER INFORMATION, ADVICE, EDUCATION, ADVOCACY AND ENFORCEMENT

eBay welcomes the opportunity to comment on the Government's consultation on reforms to the consumer protection landscape in the UK.

### Introduction

Founded in 1995 in San Jose, California, eBay Inc. (NASDAQ:EBAY) is about connecting buyers and sellers. We do so through eBay, the world's largest online marketplace, which allows users to buy and sell on eBay platforms in nearly every country on earth; through PayPal, which enables individuals and businesses to securely, easily and quickly send and receive online payments; and through GSI, which facilitates ecommerce, multichannel retailing and digital marketing for global enterprises. We also reach millions through specialized marketplaces such as StubHub, the world's largest ticket marketplace, and eBay classifieds sites, which together have a presence in more than 1,000 cities around the world. For more information about the company and its global portfolio of online brands, please visit [www.ebayinc.com](http://www.ebayinc.com).

As a marketplaces of buyers and sellers, eBay has a strong interest in ensuring both strong consumer protection and effective, proportionate regulation for its sellers and its business. eBay therefore welcomes the objectives underlying the consumer landscape review, namely the empowerment of consumers and the simplification of the consumer protection regime. We also understand the potential benefits from greater devolution to local communities. However, we believe that the move towards more

principled-based consumer protection at EU level necessitates the retention of a coordination function at a central level, most obviously through the OFT/CMA. These points are set out below.

### **Principles Based Regulation and Consumer Law Enforcement**

The passage of the EU Unfair Commercial Practices Directive (UCPD) in 2005 and its transposition into UK law via the Consumer Protection from Unfair Trading Regulations (CPRs) in 2008 herald a significant shift in consumer protection legislation away from prescriptive rules to principles-based law. While the underlying objectives of such legislation are entirely laudable – namely, to move away from overly detailed and prescriptive regulations – our experience is that its implementation in practice has led to considerable regulatory uncertainty.

For example, legal concepts such as the ‘average consumer’, ‘transactional decision’, ‘misleading omission’ and ‘misleading action’ are capable of being interpreted either narrowly or broadly, depending on the particular law enforcement body. Even those activities contained in the so-called ‘black list’ of unfair trading practices are often not clearly defined. As a result, guidance to business as to the interpretation of the law may differ considerably between different local authority boundaries, with local variation only partially mitigated by the Home Authority principle. Clearly, the greater the number of law enforcement bodies, the greater the potential for variation.

As we move towards greater decentralization of consumer protection law enforcement, this problem is likely to be exacerbated. At the moment, the only means of obtaining clarity as to how principles should operate in practice is through a court of law. This is clearly not a realistic option for most businesses and is a costly means of obtaining regulatory certainty. While guidance has been produced by the European Commission and the OFT, these do not have primacy in a legal sense over the advice of local Trading Standards. This creates problems for businesses like our own who operate not just across local authority boundaries but also across national boundaries. Similar problems are created for the 180,000 businesses who trade on our UK site alone.

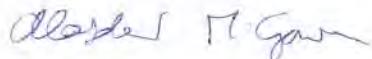
We do, however, understand that there is a need for reform of the consumer landscape which is currently fragmented and complex with considerable overlap and duplication between the various consumer protection bodies. We would fully support an enhanced role in terms of consumer advice, advocacy and education for the Citizen’s Advice Service and a clearer demarcation of responsibilities for enforcement between central bodies such as the OFT and Local Authority Trading Standards Services.

In terms of enforcement, however, we have concerns that almost full decentralization of powers to Trading Standards (except for those cases which impede the effective operation of markets) would lead to further variation at local level.

The Consultation Paper suggests that the status quo in terms of roles and responsibilities could be combined with significant reform to deliver better coordination between OFT and Trading Standards than exists at present. For example, the OFT/CMA and Trading Standards could retain largely overlapping enforcement powers with the CMA retaining consumer enforcement capacity across the board, but with a Joint Enforcement Board (JEB) established between Trading Standards and CMA to direct that capacity, so that decisions on how to enforce against national and cross-boundary threats could be taken collectively. We would support this option as a means of ensuring that valuable legal and economic expertise which has been amassed at central level is retained without having to be replicated at local level in a climate of reduced budgets.

More importantly, we would also recommend that the responsibility for producing central guidance on the interpretation of consumer law remains with the OFT, rather than being transferred to the Trading Standards Institute. While the TSI performs a valuable role as a professional body for Trading Standards professionals, we feel it currently lacks the OFT's experience of working with the Government on legislation and taking enforcement action in the higher courts. Such experience is vital in helping to provide regulatory certainty to businesses and is likely to be lost in any transfer of responsibilities.

Yours sincerely,



Alasdair McGowan  
Head of Public Affairs  
eBay UK Ltd

## EDF Energy

David Evans  
Department for Business Innovation & Skills  
Consumer and Competition Policy Directorate  
3<sup>rd</sup> Floor  
1 Victoria Street  
London  
SW1H 0ET

27 September 2011

Dear David,

**Empowering and protecting consumers: consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement**

EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, coal and gas-fired electricity generation, renewables, combined heat and power plants, and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including both residential and business users.

We would like to make the following general points:

**Advocacy**

- With increased use of the internet and abundant information availability in the energy sector, many of today's consumers are now extremely savvy. Information, advice and education should therefore be targeted at the point of need.
- The consumer advocate must be free from commercial interests. We believe that there is a strong risk that if an advocate has, for example, a commercial arm, regardless of any business separation arrangements it will have an incentive to misuse information obtained through its advocacy work.

**Accountability**

- Government should set out a strategic policy framework for the new consumer body for whatever organisational structure is agreed. This would be consistent with DECC's proposals for Ofgem.
- We do not see why an organisation partly funded by licence fees should not be subject to the same accountability framework. As a general observation the consultation seems to be rather light on accountability mechanisms given the potential negative impact on business of unfounded accusations (which often get reported as fact in the media).

**Information**

- The advocacy body and Ofgem should coordinate information requests and any associated advocacy functions to avoid duplication, and ideally should share information. A clear separation of roles should be set in a memorandum of



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understanding or equivalent transparent agreement.

### **Market Investigations**

- Market investigations are potentially a major cost to the energy industry. They should only be initiated if there is a clear failure of competition. Furthermore, the CMA will have too much discretion in deciding what constitutes a structural market problem which would justify it carrying out a market investigation. A market investigation, even if inclusive, could have an impact on share prices or investment plans (e.g. it may impact the cost of capital).
- We would also be concerned at any development of three tests for market investigations (i.e. from the consumer, competition authorities and the regulator). This could result in a form of treble jeopardy if companies could be subject to separate investigations based on different criteria. We believe there should be a single test for all market investigations founded on clear and substantiated failures of competition.

Our detailed responses are set out in the attachment to this letter. Should you wish to discuss any of the issues raised in our response or have any queries please contact my colleague Sebastian Eyre (0)20 7752 2167, or myself.

Yours sincerely,



**Paul Delamare**  
**Head of Regulation**

## Attachment

### **Empowering and protecting consumers: consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement**

#### **EDF Energy's response to your questions**

#### **QUESTION 1**

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

With increased use of the internet and abundant information availability in the energy sector the majority of today's consumers are now extremely savvy. Information, advice and education should therefore be targeted at the point of need.

The provision of consumer information is complex and fragmented largely due to evolution rather than conscious design. Consumers can seek face-to-face advice (Citizens Advice Bureaux and Trading Standards), telephone (Consumer Direct, the Citizens Advice service, Consumer Focus for some specialist advice to vulnerable consumers and Trading Standards) and online (direct.gov, OFT, Consumer Direct, the Citizens Advice service, BIS, Consumer Focus and Trading Standards). A single public offering delivered through the Citizens Advice service would, we believe, simplify matters considerably (e.g. avoiding the need to transfer a consumer inquiry between different organisations with different specialities which can be frustrating for the consumer).

The existing Citizens Advice service is a strong brand which can be built upon in the coming years, but key to maintaining its reputation will be the orderly transfer of responsibilities resulting from these reforms and the willingness to work openly with the industry in resolving issues.

Finally, EDF Energy believes that the provision of information and advice to consumers is primarily a role for energy suppliers themselves. They are the first point of contact when a consumer is seeking information and advice and have both the information and capability. The consultation does not acknowledge this observation yet it is critical for the process to work.

#### **QUESTION 2.**

##### **Do you agree that the OFT's consumer information role should be transferred to the Citizens Advice service?**

Yes.

Critical to the successful transfer will revolve around five familiar issues

- **Continuity of service:** It is important that consumers do not experience any interruption in service provision during the transfer period.

- **Transfer of live cases:** The system that will be used by Citizens' Advice needs to take into account needs of reporting and transferring cases to energy suppliers.
- **Enhanced Training Requirements:** Training materials need to be comprehensive and frequently updated, especially considering that the energy market is highly regulated and there is a high level of competition amongst energy suppliers. This means that services and products are frequently revised and updated; Citizens' Advice agents will need to be aware of these changes.
- **Supplier interface:** It is important for collaboration between suppliers and Citizens' Advice for suppliers to understand early the potential increase or decrease in number of referrals.
- **Cost Reductions:** the transfer should reduce overall costs.

### QUESTION 3.

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

We have no objection to this, but note that this creates some major management challenges. In particular the EHU should be encouraged to work more closely with suppliers to understand the possible solutions for consumer difficulties and the regulatory constraints placed upon suppliers. This is an opportunity for the consumer organisation to develop a holistic approach to social issues as customers with debt from unpaid energy bills may also be for example in general poverty or could require more general debt counselling.

### 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.

Customers will require a number of different approaches to be effectively educated. This being the case we see no reason why Citizens Advice should have the exclusive right to do so. This might for example, foreclose some effective multi agency approaches.

We note that educational material is actually difficult to compile:

- Averages or other similar type of generalisations in the form of say consumption data are particularly misleading in the energy sector. Consumers need to be aware of a number of details about their account to make the most out of the market.
- As consumers' lifestyle change so will their consumption. While obvious, the implications are important for selecting the correct tariff.

- The regulatory environment can in some circumstances complicate matters.
- The value of discounts and associated products e.g. Nectar points, Air Miles etc.
- Consumers have both rights and responsibilities. Explaining both to consumers will help them make informed choices based on a clear understanding of the issues.

We believe a variety of mechanisms should be used to ensure that messages reach consumers in the most appropriate and useful format for them. This could include web-based information, leaflets, take home material, road shows and social media.

#### **QUESTION 5.**

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

Yes.

Careful consideration needs to be given as to what educational material is actually produced as businesses face similar problems as domestic customers described in question 4 above

#### **CONSUMER CODE APPROVALS**

#### **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?**

EDF Energy has no direct experience of developing codes under the Consumer Codes Approval Scheme. We have been involved in developing the EnergySure Code and the Billing Code through our involvement with Energy Retail Association (ERA). The ERA found that the process was not responsive enough to the industry's needs and in particular would have taken around two years to clear. We would expect any future code development process to overcome this difficulty.

#### **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 comment

**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 comment

**QUESTION 9.**

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

No comment

**QUESTION 10.**

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

No comment

**QUESTION 11.**

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

No comment.

**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?**

Yes.

Citizens Advice service is in a good position to combine different sectoral advocates:

- The Citizens Advice service will be able to collate national complaint information and act on it from an evidence based perspective. It has the potential to raise issues that are of real and immediate concern for consumers.
- We think that energy and other utilities should be subject to the same general principles of consumer policy with only certain exceptions made where it is demonstrated that utilities are different from other sectors in the economy. A single advocate would be in a good position to ensure this is the case.

- With consumer functions within one body we should see a greater degree of consistency of treatment across utilities.

#### **QUESTION 13.**

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

Yes with a caveat.

We broadly agree the principles defined on page 4.34 but note that we do not see the need for international consumer representation. In the age of austerity it seems profligate to spend resources on international travel when compared with following national or European issues. We feel this activity will also constitute poor value for money for consumers.

#### **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.

Given the description of the advocacy function it would seem logical to concentrate the advice and advocacy functions in one organisation. This would be consistent with the wider objective to limit both the complexity and number of organisations involved in consumer policy.

#### **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?**

EDF Energy believes that option b is preferable.

The information gathering power should be transferred to Ofgem. This would avoid duplication of information requests which place unnecessary burden on energy suppliers which we think would be a compelling reason for the regulator not to grant a request.

The process of persuading the regulator that information is required would be a powerful check on the usefulness of the information required. We have suffered from a lack of clarity, with supplier resources used to produce the same information for two different organisations in different formats.

We also have concerns that any information gathered will have a commercial significance and should not be handed over to third parties such as consultants for analysis.

**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 Comment

**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

**ENFORCEMENT OF CONSUMER PROTECTION LEGISLATION**

**QUESTION 20.**

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

We have no specific preference for the proposed enforcement power options and note that BIS appear to favor option 3 as the "best option". What ever option is adopted there should be a clear boundary between local level enforcement and Competition and Markets Authority enforcement to avoid double jeopardy or duplication of effort.

### **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?**

It makes sense to rationalise operations. Our concern is the ability of TSPB to coordinate with national businesses that also have a sectoral regulator.

### **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 Joint Enforcement Board (JEB) models be the best solution? Which one and why?**

This model could work in practice and of course could be relatively risk free but requires more information on what "improved" would look like.

### **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?**

Again, this model could work but requires more information. We think that the competition policy should be core to CMA's work.

### **QUESTION 24.**

#### **How can your preferred new model best work with businesses?**

Whichever model is chosen we would want:

- Clear boundaries between the responsible organisations.
- Cooperation with industry and understanding of commercial practices, license conditions and the regulatory environment.
- Transparency in objectives, practices and potential investigations.

### **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. We want any market investigation linked to the existing competition standard.

However, collaboration with Ofgem would be preferable in the case of the energy sector, to ensure that all legislative and regulatory conditions are taken into account.

### **QUESTION 26.**

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

Yes

### **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?**

Market investigations are potentially a major cost to the Energy industry and we do not think that the state should routinely intervene from time to time to examine the operation of markets. Market investigations should only be initiated if there is a clear failure of competition. Furthermore, the CMA will have too much discretion in deciding what constitutes a structural market problem which would justify it carrying out a market investigation. A market investigation, even if inclusive, could have an impact on share prices or investment plans as the assessment of regulatory risk in the cost of capital.

### **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?**

We would also be concerned at any development of a dual test for market investigations. This could result in a form of treble jeopardy if companies could be subject to separate investigations based on different criteria. We believe there should be a single test for all market investigations founded on clear and substantiated failures of competition. Furthermore, the competition test is more analytically rigorous in its application and this is reflected in the wide ranging remedies available to competition authorities. In contrast a consumer based test is based on the notion of "fairness" and is likely to entail a more subjective assessment of consumer interest in marginal cases. Interventions potentially carry more risk of unintended consequences given that it is set against consumer behaviour which is sometimes difficult to predict. Finally we are subject to Ofgem market

investigations, such as the Retail Probe, which are conducted to a different standard again.

**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?**

Consumer detriment analysis should link to enforcement action or policy change and must also be subject to challenge. While we have no objection in principle to the Citizens Advice being responsible for detriment analysis, we would not see this as a reason for the CMA being prohibited from doing so. We have argued that there should be high standards for the initiation of an investigation in the first place. The impact of a sector investigation should not be underestimated.

**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.

The CMA should retain oversight and overall responsibility, deciding on funding levels when such cases arise.

**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?**

No Comment.

**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 comment

**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.

Given Government spending priorities international work seems profligate as it is unlikely to add any real value as jurisdictions outside of Europe have a fundamentally different legal environment. We of course see the need for co operation concerning complex merger cases etc but this is likely to be ad hoc and specific to staff working on the case.

**QUESTION 35.**

**Do you think the requirement for Local Authority Trading Standards Services (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 Comment

**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?**

We would prefer a reasoned response to justify the initiation of a super complaint.

**QUESTION 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.

**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?**

Given the centrality of the CMA it seems inconceivable that reforms should go ahead without it being in place.

**EDF Energy**

**September 2011**

## Electricity North West

**Electricity North West**  
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David Evans  
Consumer & Competition Policy  
Department of Business, Innovation and Skills  
1 Victoria Street  
London  
SW1H 0ET

20 September 2011

Dear David

### **Empowering and Protecting Consumers**

I write in response to your consultation published in June and welcome the opportunity to comment at a time when a number of these issues are in the process of being developed.

Electricity North West Limited is the electricity distribution network operator based in the North West of England, with no supply or generation interests. Our comments are therefore from the perspective of an energy network provider regulated by Ofgem and a member of the redress scheme with the Energy Ombudsman. The consultation paper identifies three main strands as the foundations of the government's approach. Our comments are based on the two strands of primary importance to us namely, The Citizens Advice Service resulting in the abolition of Consumer Focus and the proposed new Competition and Markets Authority (CMA).

#### The Citizens Advice Service

We have always argued that greater clarity was required for the role of consumer advocacy and the need to avoid duplication of activities. However, it is fair to say that there was a great deal of surprise within the industry when it was originally suggested that the Citizen Advice Service should assume these streamlined responsibilities. As the consultation rightly states the service enjoys a high recognition and trust among the public, but the role and rights the service will assume will require the service to acquire an experience of regulated industries both at a high level and detailed operational level that they currently do not have or have needed in the past.

The paper acknowledges that this would mean a "substantial change for the Citizen Advice Service" and whilst we support the move to one national lead body, we have doubts whether the Citizen Advice Service is the appropriate body. In any event, if the service is to assume the role, the change that will be required to enable the service to assume these powers will be substantial in terms of the experienced personnel it will need and the time needed for these changes to happen and for the Citizens Advice Service to acquire the necessary expertise. A high level of knowledge that already lies within Consumer Focus should not be lost and will need to be transferred to the Citizens Advice Service.

If the Service is to be the new lead body, then it also makes sense for the Extra Help Unit to be transferred to the service.

We support the establishment of a regulated industries unit. We agree with the proposed principles and in particular we support the sector-specific expertise requirement which will be needed to reflect the diversity between the various industries.

In paragraphs 4.43/4.44, the paper describes the reasons for not maintaining the status quo and suggesting an alternative for sector advocacy. In a sense this is a question of brand recognition. A separate “home” for sectoral advocacy maybe a good idea and allow Citizens Advice to concentrate on their “core” business and what they do best in representing consumers.

In a similar vein, we would support alternative (b) in paragraph 4.49. It would be unusual to transfer such information gathering powers to a charitable body.

#### The role of the proposed Competition and Markets Authority

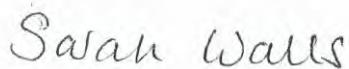
We have previously noted in our response to the June 2011 “A Competition Regime for Growth: A Consultation on Options for Reform” consultation that there may be significant benefits from the merger of the Office of Fair Trading (OFT) and the Competition Commission (CC) into a single body. However, the new Competition and Markets Authority (CMA) must retain the duties and protections that the existing entities provide to customers and companies.

Our main concern is that under the existing legislation, the Competition Commission acts as our ultimate arbiter for licence modification references, Energy Code modification appeals and price determination appeals. Ensuring that the CMA has the appropriate expertise and resources to discharge these responsibilities is of paramount importance to the energy sector. The adoption of the new regulatory framework by Ofgem (known as Revenue = Incentives + Innovation + Outputs or RIIO) which has fundamentally altered the financeability and risk profile of the energy companies and provided customers with the option to appeal, could result in a significant increase in the number of price control referrals.

We have also raised our concerns that our licence will need to change as a result of the transfer of responsibilities in order to avoid potential double jeopardy issues where a company might be penalised for a licence infringement as well as being in breach of the Competition Act following an investigation in respect of the same circumstances.

I hope our comments will be duly considered. If you have any questions regarding our response please do not hesitate to contact me.

Yours sincerely,



Sarah Walls  
Head of Economic Regulation

## **Essex CCTS\***

# **Essex County Council's 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"***

## **Introduction**

In developing our views on this consultation, **Essex County Council** have considered the response of the Association of Chief Trading Standards Officers (ACTSO) and the response of the East of England Trading Standards Authorities (EETSA). **Essex County Council** are in general agreement with both ACTSO's & EETSA's comments, and endorse their views as put forward. The **Essex County Council** written response is therefore limited to our own additional replies to certain questions only, so as to avoid duplication in submission.

## **1. 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?**

**Essex County Council** believes that there is a wide and diverse array of consumer information providers across the public, voluntary and private sectors. This potentially causes confusion and duplication of advice. A rationalisation of the number of providers is needed to rectify this.

**Essex County Council** understands that Citizens Advice intends to deliver part of its consumer advice service through local bureaux. Local CABx operate autonomously, and there is an element of separation from Citizens Advice at national level. There is also fragmentation of CABx at local and regional level, and funding is reducing for local bureaux across the whole country. This therefore raises challenges that will need to be addressed in ensuring that local bureaux work effectively and consistently with local authorities, especially in the areas of intelligence sharing and shared campaigns.

The consultation document does not provide enough detail about the level of advice and education that will be dealt with by CABx. Advisors need to possess the necessary skills and competencies to provide second-tier consumer advice. The consultation does not

address the provision of second-tier consumer advice, apart from stating that Citizens Advice will 'lead on all information and advice for consumers'. Equally, it does not specifically address the provision of 'face-to-face advice'.

Given the fragmentation at local CAB level, there is a risk of second-tier advice becoming likewise very fragmented. This needs to be considered in any policy planning.

Similarly, there is a complex relationship between second-tier consumer advice and civil/criminal law implications. There needs to be clarification of expectations and definition of roles to ensure that duplication of advice provision is avoided.

The exchange of intelligence between local bureaux and trading standards is critical, and will be a challenge in the light of CABx championing of their client confidentiality. **Essex County Council** therefore believes that much more clarification and definition is required to ensure the necessary intelligence exchange both at national and local level. At present we do not know enough about the proposed referral processes from Citizens Advice, but we are of the strong belief that Trading Standards needs access to intelligence not just equivalent to the current 'referrals' from Consumer Direct, but also 'notifications' so that developing detrimental trends can be effectively tackled.

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

Yes, although again Essex County Council has concerns about how this will translate to delivery at the level of local CABx, in the context of the fragmentation referenced above. Clearly, it will be imperative for Local Authority Trading Standards Services to develop close working relationships with their local CABx. These relationships are of course complicated by the fact that CABx are reliant on local authority funding, and that overall CABx funding is sharply reducing.

Consistent delivery of proactive advice at local CAB level will pose challenges, particularly as CAB advice provision has historically been reactive. This re-emphasises the importance of the development of close working relationships between bureaux and local Trading Standards services to prevent a 'postcode lottery' of consumer information provision.

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

Yes. Could this type of help be expanded to other trade sectors?

***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?***

Yes, though please see our comments to Q2 above in relation to the potential challenges relating to delivery by local bureaux.

We note that funding will pass to Citizens Advice for this activity, so clarification will be necessary in due course of the extent of local authority involvement.

Consumer detriment costs the UK £6.6bn annually (referenced in the NAO report). In our opinion, one of the most valuable consumer education activities must be those in our schools. However, provision of meaningful consumer education at this stage is significantly hampered by the absence of consumer education from the national curriculum. Until this is addressed and consumer education is included in the national curriculum, the opportunity for a generational change in consumer awareness and empowerment will be limited.

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

Yes. The need for business-facing educational activities should be linked to detriment to consumers (ie. risk-based) and so, in many cases, must be sector-specific. This is one of the reasons why information sharing is so important.

### **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?*

**Essex County Council** has no strong preference on the future of CCAS.

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. Similarly, if changes are to be made to the scheme, we believe that Trading Standards services should be included in consultation on proposed changes.

If there is to be an approval mechanism in future, the TSPB should be involved in this.

## 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?*

**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?*

**Essex County Council** does not have strong views on this, but clearly Citizens Advice need to be in agreement with the proposals. The sharing of information and intelligence will also be key and, where appropriate, there will need to be consultation with the TSPB.

For organisations such as Citizens Advice to take on statutory powers and functions, these need to be consistent with their charitable purposes, aims, principles and strategies.

## 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?*

Option 3 is **Essex County Council's** preferred option. This is for the reasons clearly portrayed in the ACTSO and EETSA response to this consultation.

We would like to add that whilst we recognise that the scope is currently limited to BIS' areas of responsibility, the proposed model provides the opportunity to be potentially widened to embrace Trading Standards Services' wider range of functions (for example, a national intelligence hub offers advantages across the whole range of Trading Standards

local regulatory activity). The opportunity to use the proposed national/regional infrastructure for enforcement and co-ordination is not just confined to longer-term possibilities in areas such as food, animal health and metrology, but potentially beyond to other local regulatory services.

It therefore has the potential to unlock and co-ordinate resource across a wide range of consumer protection areas, to give clearer accountability, and to create flexibility in response and resource-sharing across local authorities.

*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?*

Yes, for the reasons explained in the ACTSO and EETSA response.

We support the proposition relating to the TSPB in section 5.51 of the consultation document.

We believe that the specialist areas warranting national teams should include Illegal Money Lending, 'Scambusters' (including internet enforcement expertise), and import surveillance for consumer goods at ports of entry. It is important that these activities are intelligence-led.

We must point out that local authority powers to deal with cross-border infringements need to be carefully considered, not least because of the Local Government Act 1972 provisions which limit legal proceedings to only those cases that concern the interest of their inhabitants. Inconsistent use and application of delegated authority agreements (s.101) causes further confusion. We believe that clear legislative provisions will need to be enacted to enable action in other geographical areas and to avoid potential challenge to such cross-boundary enforcement.

An indemnity fund to enable local authorities to take the risk of losing cases is desirable; local authorities need to be assured that a mechanism is in place for a fund for high costs arising from taking important court cases.

### Intelligence

The consultation recognises use of intelligence is key to ensuring that consumer detriment is effectively identified and tackled, and that enforcement is successful.

We are also conscious of the comments made within the NAO report on the issue of intelligence databases. The picture of database provision is currently much more complex than suggested. There are currently a number of databases in existence within the TSS. These include bespoke intel databases, such as the Memex and EETSA IDB, but also include other proprietary systems such as I2 and Clue2. Local TSS also, almost universally, use a number of back office databases (eg. APP, Mastertrader, etc ) which hold a significant amount of data used to support intelligence led activity. For many LA's

current CD data as well as LA data is held on these back office systems. This issue holds true for many agencies, including the police.

At the present time, there is not a connector available between the two systems in question due to financial and contractual constraints regarding the OFT procurement of Memex.

The proposals, particularly in giving TSS the role on most regional/national issues creates a great incentive to develop a cross function coordination of intelligence, an ‘intel hub’ that could have long reaching benefits for all consumer protection activities.

*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?*

**Essex County Council** would prefer not to maintain the status quo in terms of powers and responsibility as this would create a further layer of bureaucracy but few benefits.

### **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?*

Essex County Council 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), and support ACTSO's comments in this regard.

### **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?*

**Essex County Council** agrees that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies, and that it would be helpful to have the resource identified in Q31.

### **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?*

Local Authority Trading Standards Services have years of enforcement experience of dealing with rogue traders and illegal behaviour within their own communities including many with a national impact. Given the array of enforcement tools available to, and the benefit of close, regular partnership working with the police, HMRC, and other enforcement bodies, if rogue traders are not deterred by this, it is unlikely they will be otherwise deterred.

### **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?*

Essex County Council believes that TSI is the only option, given their central position. We welcome the creation of a single body responsible for business advice, given the multitude of information providers (some at government level) and who occasionally offer conflicting information. Business advice must be about what businesses want, and should have the potential to expand across regulatory functions.

*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?*

Yes, in order to avoid duplication and overlapping, ineffective enforcement. It should sit within TSPB, but will need a mechanism to support it. This aligns with the Consumer Regulation Website.

**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?*

**Essex County Council** believes the Chairmanship of this could 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). 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 took this role then they would be involved as part of 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 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?*

**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?*

Given that other means and legislative provisions are being used to control the activities of estate agents, **Essex County Council** believes the whole operation of estate agency regulation should be fundamentally reviewed.

**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?*

Essex County Council believes that it is essential that the proposed changes to the consumer landscape should go ahead in April 2013, regardless of the timing of the CMA creation. Further delay would mean the postponement of consumer protection improvements, and so leave consumers open to detriment and reputable businesses at a disadvantage.