

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

Pennington, Professor T H .....	2
PFEG - Personal Finance Education Group .....	3
Phillips, David .....	4
Phonepay Plus .....	5
Pickering, Professor John. F.....	6
Plymouth City Council.....	7
Portsmouth City Council TS .....	8
R&T Jebbett & J Purvin .....	9
REA – Renewable Energy Association .....	10
REAL Assurance Scheme .....	11
Reference Line .....	12
Rhondda Council .....	13
RMI – National Franchised Dealers Association .....	14
Royal Mail .....	15
Sainsburys plc .....	16
SCOTSS .....	17
Scottish Government .....	18
Scottish Legal Aid Board .....	19
Scottish Power .....	20
Scottish Water .....	21
Severn Trent Water .....	22
Shelter Cymru .....	23
Sky Broadcasting Group plc .....	24
Somerset CC .....	25
South Gloucestershire Council TS .....	26
South West Water.....	27
Southampton City Council .....	28
St Helens Metropolitan Borough Council.....	29
Staffordshire CC .....	30
Stockton on Tees Borough Council TS .....	31
Sustain- alliance for better food and farming .....	32
Swansea City & County .....	33
The Property Ombudsman .....	34
Trading Standards North West .....	35
Trading Standards South East (Buy with Confidence) .....	36
Trading Standards South West .....	37
Trustmark.....	38
TSI .....	39
TSI North East .....	40
TSI Scotland .....	41
Turton, Howard .....	42
UKAS .....	43
UKCTA – UK Competitive Telecommunications Association.....	44
Underage Sales .....	45
University of East Anglia.....	46
US Federal Trade Commission to UK .....	47
VBRA – Vehicle Builders & Repairs Association.....	48
Virgin Atlantic Airways .....	49
Wandsworth Council TS .....	50
Warwickshire CCTS* .....	51
Water UK .....	52
Welsh Government .....	53
West Yorkshire TS .....	54
Which? .....	55
Woods, Helen .....	56
York City Council .....	57
Yorkshire & Humber Trading Standards Group .....	58

## **Pennington, Professor T H**

**Individual response of Professor T H Pennington to the Consultation regarding  
'Empowering and Protecting Customers'**

I am Professor of Bacteriology (Emeritus) University of Aberdeen and a Fellow of the Royal Society of Edinburgh, the Academy of Medical Sciences, the Royal College of Physicians of Edinburgh, and the Royal College of Pathologists.

My response is to 'Institutional Changes' questions 12 and 14.

I note that the Governments favoured response is that the Citizens Advice Service should be the publicly funded consumer champion and that for general advocacy work funds would be transferred to it that otherwise would have gone to Consumer Focus for this purpose. I also note that the Government believes that the influence on the policies of Government and regulators would be more effective if delivered as a single, seamless message.

I chaired the Public Inquiry into the 2005 *E.coli* O157 outbreak in South Wales. My main concern after publication of my report was that sufficient attention be paid to its recommendations. This concern was put to rest by the establishment of the Consumer Food Safety Group, a forum led by Consumer Focus Wales. The independent status and expertise of Consumer Focus Wales enabled it to act as an 'honest broker' and push forward the implementation of my recommendations - as well as using this opportunity to drive the consideration and implementation of other food safety measures. (See the report 'Protecting consumers from *E.coli* O157: Progress on implementation of the Pennington Report in Wales. March 2010). Operating as a Welsh organisation in Wales gave Consumer Focus particular strengths in its work. However the beneficial outcomes of this outstanding initiative are having an impact throughout the UK.

I regard the work of Consumer Focus Wales in this regard as exemplifying advocacy work at its best. I do not think that Citizens Advice has expertise in this area and I consider that for this work to continue the best solution would be to leave Consumer Focus Wales as it is. If the two organisations are joined it is essential that the strength that Consumer Focus has established in this field and the links it has established with others be transferred to and maintained in Citizens Advice.

Better food safety pays. I point out that the 2011 Food Standards Agency Chief Scientists Annual Report gave the estimated annual cost of foodborne illness in England and Wales in 2009 as £1.762bn. I believe that the food safety initiatives stimulated by the work of Consumer Focus Wales will lead to a significant reduction in this burden.

**T H Pennington**

17 September 2011

## **PFEG - Personal Finance Education Group**



## **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?

It is best to start early. Children and young people should have access to consumer education at school. This could be within subjects such as mathematics, where appropriate, but also and primarily be through personal, social, health and economic (PSHE) education.

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

**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 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 do agree that roles relating to adults should be transferred to CAB but we still feel that there should be a requirement to start education early at school. The responsibility for this should be with the Department for Education.

Money Advice Service should have the financial aspects of consumer education within their remit. Currently, they are not going to be required to help to educate children and young people in school.

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

**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?

**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?

**The Personal Finance Education Group (pfeg)** is a charity whose mission is to ensure that all young people leaving school are equipped with the confidence, skills and knowledge they need in financial matters to take part fully in society. **pfeg** works within schools across the UK.

Celia Allaby  
Programme and Policy Director

## **Phillips, David**

September 2011

Dear Mr Evans

**Empowering and protecting consumers**

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

I have pleasure in enclosing my response to this consultation.

To put this into context, perhaps it would be appropriate for me to say that for the period 2000 to 2009 I was Head of Trading Standards at Cornwall County Council. During my tenure;

- I restructured the service to provide functional teams dedicated to delivering;
  - Advice and support to consumers;
  - Advice and support to local businesses; and
  - Enforcement.
- I was project director for the 15 South West Authorities during the Consumer Direct tender process, resulting in a new call centre being designed and built in Cornwall, creating up to 50 new advisor posts and delivering one of the few consistently high achieving units in the national service;
- I worked with the Legal Service Commission and local advice providers to evaluate new ways of working.
- I appointed a full-time facilitator with the clear brief to improve relations between the not-for-profit advice sector and my Service (which were virtually non-existent when I took office);

Let me say from the outset that I am wholly in agreement with the general thrust of your proposals. Focusing resources on the two strongest brands in the sector has to be the right approach, enabling the de-mystification of provision so often sought but never delivered.

However, I doubt that your proposals will address the classic dichotomy – central policy and direction versus local needs-based delivery. This manifests itself on two fronts;

- The 394 local Citizens Advice Bureaux(CABx) are charitable organisations, operated mostly by volunteers for the benefit of local citizens and managed by an independent board of trustees. Citizens Advice (CA) is also a registered charity and acts as the member organisation for bureaux. In my experience, local bureau managers, whilst taking direction and policy support from CA, act in the local interest to whatever extent their local funding allows.
- The 197 Local Authority Trading Standards Services (LATSS) have huge levels of variation in funding, capacity and political support. Just look at the differences between Kent or Surrey and somewhere like Bath and North East Somerset or

any Welsh authority. Capacity and ability to act differ widely, as does the ability of heads of service to co-operate or support national initiatives.

My concern is that you will be relying on local managers, politicians, trustees, etc. to deliver on strategies and policies that are handed down from their dis-connected central bodies. Even worse, you appear to be suggesting the creation of an officer-based Trading Standards Policy Board which local politicians and managers are expected to heed. Having been involved with a number of central bodies (DTI, OFT, LACORS, TSI, LSC) over many years on such matters as the National Intelligence Model, Consumer Direct, Information Exchange, Community Legal Service, Quality Assurance, etc. etc., I know how difficult it is for many Heads of Service to engage at a regional or national level. This inevitably results in a select few who have the support of their authorities becoming the policy makers and national figureheads – a situation which can deliver a completely un-representative view unless the full range of authority types are involved. Of course, including bodies like TSI and LGA will help, but in some instances, their representatives will be the same.

You will be aware that the National Audit Office recently published their assessment of Consumer Law enforcement (Protecting consumers – the system for enforcing consumer law). To emphasize the point I make, I have extracted some salient points from this report;

*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, but there is no required minimum standard of service in place to guard against weaknesses in coverage.*

*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.*

*The profile and position of each Trading Standards Service within their local authority varies widely, with the Head of Service occupying a very senior position in some authorities and having much less responsibility in others.*

Following publication of the National Audit Office report on Consumer Protection, the Public Affairs Committee took evidence from Gillian Guy (CA), Mike O'Connor (Consumer Focus), Philips Collins (OFT), Martin Donnelly (BIS) and Ron Gainsford (TSI). It is not necessary for me to include extracts – you will have seen it for yourself – but I have taken (from the uncorrected transcript) a batch of salient expressions in support of my points;

*The system is very fragmented*

*The trick is how you marry greater national co-ordination with local accountability.*

*The Hampton report in 2005 recommended the setting up of a central consumer and trading standards body.*

*Trading standards do not have a high enough priority with locally elected politicians.*

*We need to keep local accountability but somehow bring about national integrity.*

*A completely disproportionate amount of money is spent locally.*

*We spend twice as much per head in Wales as we do in London.*

*The Government's proposals carry an awful lot of risk of fragmenting and dissolving central capacity.*

*We have got to strengthen the trading standard; we've got to co-ordinate and direct it, and we've got to get value for money out of it and make sure the resources are going to where they can make the most difference.*

*20,000 CAB volunteers and 6,000 paid staff currently.*

*Bureaux are free-standing, independent organisations with a local board of trustees - you are an amalgam, if I can use that word, of freestanding organisations-of independent trustees - how do you get to a point where you have cross-boundary co-operation between citizens advice bureaux, given the independent nature of your structure?*

*the Committee may be aware that we have also lost, by decision of the Local Government Group, the central co-ordinating machinery that local government once provided;*

*The great challenge..... has always been how to convert that local capability into a regional, national and now international capability.*

*What the country needs, and what we certainly need, is to ensure that there is an infrastructure in place that enables that local presence to convert effectively into a regional, national and international presence.*

*What happened with small services, like trading standards and often discretionary services, was that when the committee structure broke down in local government and went to a cabinet structure, to be quite frank those small services had an increasingly difficult job by way of reach into both the elected member hierarchy and the senior officer hierarchy. The Report in many ways exposes that in that some of my colleagues are at fifth tier in terms of the management structure.*

If I might make one last point regarding fragmentation and variance. Philip Hampton, in his 2005 report, proposed the creation of a central co-ordinating body for all of LATSS work. This was significantly watered down by the Government when it created the Local Better Regulation Office – which has struggled to deliver co-ordinated consistency. Whilst I accept that the world has moved on, BIS could do a lot worse than re-examining Hamptons evidence and proposals.

As I said above, I am fully supportive of the general thrust of these proposals, but I worry about the national versus local disconnect.

Yours sincerely

David Phillips FTSI

## Phonepay Plus



# Response to the BIS consultation on *'Empowering and protecting consumers'*

---



# Table of Contents

About PhonepayPlus.....	3
Summary .....	4
Chapter 1 - Introduction .....	5
Chapter 2 - Information, Advice and Education .....	8
Chapter 3 - Consumer Code Approval .....	12
Chapter 4 - Consumer Advocacy .....	14
Chapter 5 - Enforcement and Consumer Protection.....	17
For more information contact: .....	19

---

# About PhonepayPlus

PhonepayPlus (previously known as ICSTIS) is the ***industry funded, non-statutory*** and ***independent*** regulator of premium rate services (PRS) in the UK. These are the premium rate goods and services that you can buy by charging the cost to your phone bill and pre-pay account.

We regulate services using our Code of Practice. This sets out the rules with which all providers of PRS must comply. Among other things, we require:

- Clear and accurate pricing information;
- Honest advertising and service content; and
- Appropriate and targeted promotions.

We investigate complaints about PRS. Where our independent panel decides that the rules have been broken, we can fine the company responsible (up to £250,000 per breach of our Code), bar access to its services and even bar the individual behind the company from running other services under a different company name. Our investigations and adjudications service is free to consumers and fully independent.

Over the last three years, PhonepayPlus has significantly shifted its approach to regulation to one that favours pre-emption and prevention of consumer harm, through closer engagement with industry on driving up standards and developing services that comply with regulation.

The next stage in the evolution of this approach has been the publication of our new Code of Practice in March 2011. The new Code, which came into force on 1 September, sets out just six objectives that PRS providers must meet, which in combination should deliver a positive outcome for their customers.

Under the Communications Act 2003, Ofcom has responsibility for the regulation of premium rate services. In December 2007, it was confirmed that PhonepayPlus would act as the agency which carries out the day-to-day regulation of the PRS market on Ofcom's behalf. The [Formal Framework Agreement between Ofcom and PhonepayPlus](#) can be viewed here.

We are non-profit making and our Board consists of seven non-executive part-time Board members and the Chief Executive of PhonepayPlus. Our Board is supported by a full-time Executive. For more information please view the [PhonepayPlus governance statement](#).

PhonepayPlus Limited is a non-profit-making Company Limited by Guarantee, registered in England under Company Number 2398515. View [PhonepayPlus' Report and Financial Statement 2010/2011](#).

# Summary

PhonepayPlus welcomes the Government's wide-ranging review of the consumer protection and enforcement landscape that exists today. Empowering consumers has never been more essential, given the ever increasing complexity of the various markets that consumers – which increasingly includes children – have to face in their daily lives. There is an abundance of choice and offers, especially on the internet, but information is not a substitute for genuine empowerment.

We at PhonepayPlus are on the front line of this change, regulating as we do a digital environment that is converging content, services and payments across a proliferating range of platforms, devices and, especially, smartphones.

Our non-statutory regulatory model nevertheless has 'teeth', which means that we can be nimble and react to this fast-changing environment. Our proactive approach to regulation is no longer driven just by consumer complaints (as important as they are), but also by state-of-the-art in-house monitoring as well as a collaborative industry dialogue. That said, we are a one-stop shop for consumers who use premium rate services and need information or advice about them. We have 25 years' experience of drawing up Codes of Practice for such fast-moving markets, and our enforcement powers are effective and give redress to consumer harm which, like in any market, can occur.

Given our experience in all of the matters that form part of this wide-ranging review, we have structured our response to be aligned with the chapter headings of the BIS consultation.

We are keen to support the Government as it progresses these plans, which are ambitious. We would caution, however, against moving to implement any changes without first making sure that the right structures, funding, governance and expertise are in place for any body taking on new functions. To do otherwise could undermine the many interesting proposals set out in the consultation paper.

# Chapter 1 - Introduction

Premium rate services (PRS) typically offer some form of content, facility or other service that is charged to users' phone bills and/or pre-pay accounts. They can offer information and entertainment services via fixed or mobile phone, fax, computer or interactive digital TV. Regulation of PRS is designed to ensure that consumers can use these services with confidence and have access to effective redress when they encounter problems.

Examples of premium rate services include, (amongst others):

- Charitable donations via text message (including Vodafone's 'JustGiving');
- Games;
- Directory enquiry services;
- Gambling;
- Adult services;
- Ringtones.

## Consumer harm

The PRS market has characteristics which carry specific risks of consumer harm, which requires niche and specific regulation.

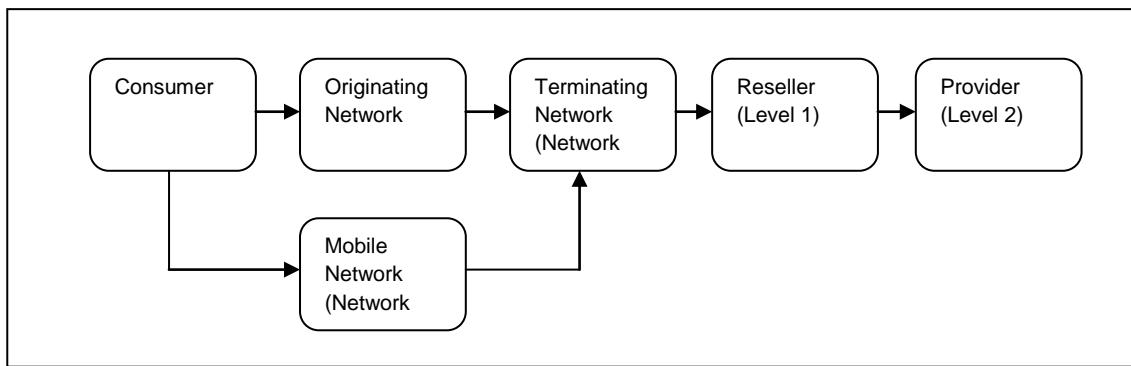
In general, we consider consumer harm to include incidences where:

- Consumers pay higher prices than expected;
- Services delivered are of a lower quality than expected;
- Innovation in the market is reduced;
- Consumers encounter difficulty in seeking redress;
- Consumers inadvertently access inappropriate and offensive content;
- Providers behave in an opportunistic manner (including the potential for scams);
- Consumers' privacy is invaded;
- Consumers suffer a loss of reputation;
- Consumers suffer a loss of dignity; and
- Consumers suffer anxiety and distress (such as that caused by nuisance phone calls).

## The characteristics of the PRS market

For PRS, the network which bills the consumer (such as BT or Vodafone) does not generally supply the service (an issue described by Ofcom as, "bill-supply separation").

In simple markets, the person who charges you for a good or service generally has a role in its supply; however, in the PRS market, there is a complex and fragmented value-chain, with large numbers of suppliers operating at different levels in the chain (as described below). As a result, consumers often find it difficult to establish responsibility when they suffer harm or detriment.



The services consumed through PRS are generally electronic or relate to information (such as voting or information services), which mean that consumers are only able to ascertain the quality of the service at the point of purchase. Additionally, many services require little or no authentication, which encourages consumers to purchase on impulse, without properly checking the charges they may face. As a result, there is an enhanced risk that that consumers may not receive the services that they expect.

For organisations who wish to offer PRS, barriers to entry and exit are low – particularly at the Level 2 (or ‘merchant’) level. This means that consumers who suffer harm are left with no means of redress.

The price of PRS is generally low, when compared to other goods and services; this generally discourages consumers from seeking redress in all but the most extreme of circumstances.

Some PRS services that lead us to investigate them relate to inappropriate or offensive content, which is only suitable for the adults who request them.

Consequently, Ofcom recently noted that for consumers,

*“because the retail price is set by the OCP (Originating Communications Provider [a consumer billing network such as British Telecom]) rather than the PRS supplier it can be difficult for consumers to obtain precise pricing information. Secondly, when the consumer has a complaint, it is not always easy for them to identify who is responsible and how to obtain redress. Thirdly, low barriers of entry and exit, a complex supply chain and rapid technological change could incentivise opportunistic behaviour towards consumers.”*

***Ofcom: Review of premium rate services,  
an application of the analytical framework,  
July 2011***

---

Additionally, Ofcom noted the existence of incentives in CPR services:

*“to provide low quality or high priced services. This raises particular problems for consumers as services such as digital content are typically “consumed upon purchase”, which means that they are exempt from some provisions of the Consumer Protection (Distance Selling) Regulations 2000 in respect of the right to cancel”<sup>1</sup>*

---

**Ofcom: Review of premium rate services, an application of the analytical framework, July 2011**

---

## PhonepayPlus

In 2011, the PRS market was worth **£816 million**, up from **£810 million** in 2010. PhonepayPlus regulates some 3,000 organisations – of which 9% of those are based overseas.

Over 70 public limited companies use PRS – with many smaller companies, including publishers, broadcasters and software companies using PRS services. New ways of paying for electronic goods and services are also being developed, such as virtual currencies which can be ‘topped up’ through PRS – such purchases increased by 400% in 2010.<sup>2</sup>

Charities are increasingly looking to PRS (through the use of text donations) as a way of providing flexible charitable giving. Charitable giving through PRS is estimated to grow to £96 million by 2014.<sup>3</sup>

---

<http://stakeholders.ofcom.org.uk/binaries/consultations/review-prs/summary/condoc.pdf>

<sup>2</sup> Brands such as Boku and Zong use PRS to allow payment through social network sites, such as

<sup>3</sup> Such as ‘JustGiving’ by Vodafone, the recent West African aid appeal and Comic Relief

# Chapter 2 - Information, Advice and Education

PhonepayPlus supports the view that, for consumers to be empowered, they must be able to understand their rights and how to employ their rights to prevent problems occurring, or to gain redress (generally a refund) when a problem is unavoidable.

There are many effective blogs and websites that relate to PRS – such as '[Who Calls Me](#)' and '[Money Saving Expert](#)' – which allow consumers to share information about services that have caused them harm. PhonepayPlus engages with these sites in order to provide an effective resolution to the problems consumers describe.

PhonepayPlus has unique knowledge of the PRS market and its specific characteristics that can sometimes cause consumer harm. This knowledge allows PhonepayPlus to address structural market problems, especially in relation to a consumer's billing network's (such as BT or Vodafone) inability to provide accurate information about the service supplied on a consumer's telephone bill (see below in relation to our Number Checker).

## Call Centre

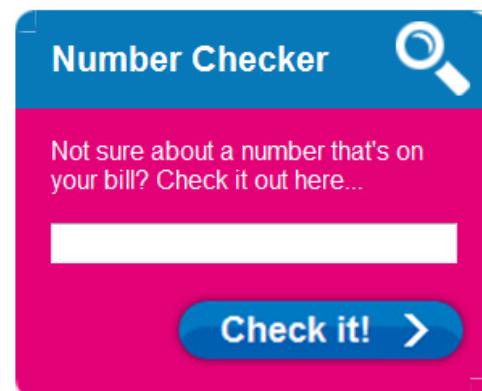
PhonepayPlus assists consumers in navigating what can be a complex market. One way we achieve this is through a dedicated consumer call centre. Our call centre has dealt with nearly 27,000 complaints in the last three years. All complainants are kept informed throughout our investigation cycle of the progress of their complaint.

## Registration

PhonepayPlus requires all organisations which supply PRS to consumers to register on our website. Registration is a simple and quick process. It gives PhonepayPlus access to data which allows us to quickly target the organisations that are causing consumer harm, as well as to track the individuals who repeatedly cause damage to the market and consumers through unscrupulous behaviour. One way we empower consumers is by putting this data into their hands in the form of our Number Checker service.

## Number Checker

One unique service we provide to consumers is our Number Checker. This allows consumers to analyse their telephone bills or pre-pay accounts and find information about the premium rate services which have been billed to them. Our Number Checker received 707,997 requests for information about the organisations that appeared on their bills in 2010. The data behind Number Checker is currently populated through a manual intelligence-gathering exercise based on the previous month's most-checked numbers.



21:47	Other Mobile Network	talk	1200 mins	y	0:00:03	0:000
21:54	Other Mobile Network	talk	1200 mins	y	0:00:57	0:000
22:05	Other Mobile Network	talk	1200 mins	n	0:00:03	0:000
22:23	Other Mobile Network	talk	1200 mins	y	0:00:24	0:000
22:51	Magic Numbers	talk	n	n	0:00:04	0:000
23:00	Payfort	content	n	n	0:00:00	8:511
23:55	Magic Numbers	talk	n	n	0:01:33	0:000
23:57	Other Mobile Network	talk	1200 mins	y	0:02:24	0:000
00:00	Magic Numbers	talk	n	n	0:00:49	0:000
03:21	Magic Numbers	talk	n	n	0:00:54	0:000
04:06	Magic Numbers	talk	n	n	0:04:27	0:000
10:19	BT 'b' Rate	Voice	UnLim	y	0:11:05	0:000
12:02	BT 'b' Rate	Voice	UnLim	y	0:00:39	0:000
12:05	Other Mobile Network	talk	1200 mins	y	0:00:03	0:000
12:18	Other Mobile Network	talk	1200 mins	y	0:00:04	0:000
12:25	BT 'b' Rate	Voice	UnLim	y	0:00:57	0:000
12:26	Other Mobile Network	talk	1200 mins	y	0:01:51	0:000
13:01	Other Mobile Network	talk	1200 mins	y	0:00:08	0:000
13:08	Other Mobile Network	talk	1200 mins	y	0:04:48	0:000
13:14	BT 'b' Rate	Voice	UnLim	y	0:02:10	0:000
14:14	Magic Numbers	talk	n	n	0:00:05	0:000
15:40	Orange	talk	1200 mins	y	0:02:24	0:000
15:45	BT 'b' Rate	Voice	UnLim	y	0:00:09	0:000
19:28	Other Mobile Network	talk	1200 mins	y	0:00:19	0:000
19:40	BT 'b' Rate	Voice	UnLim	y	0:01:19	0:000
20:21	BT 'b' Rate	Voice	UnLim	y	0:01:28	0:000
00:51	Orange Answering Service	talk	n	n	0:00:10	0:000
20:46	#Multimedia Services Sent	text	n	n	0:00:00	0:000
20:46	#Multimedia Services Recd	text	n	n	0:00:00	0:350
20:47	Other Mobile Network	talk	1200 mins	y	0:00:38	0:000
20:49	Mobile Text Messaging	talk	600 texts	y	0:00:00	0:000
21:23	BT 'b' Rate	Voice	UnLim	y	0:05:04	0:000
22:24	Other Mobile Network	talk	1200 mins	y	0:00:03	0:000
22:26	Magic Numbers	talk	n	n	0:00:47	0:000
22:28	Other Mobile Network	talk	1200 mins	y	0:00:03	0:000
02:34	Other Mobile Network	talk	1200 mins	y	0:00:04	0:000
14:22	Other Mobile Network	talk	1200 mins	y	0:00:56	0:000
14:21	Orange	talk	1200 mins	y	0:01:00	0:000
14:22	Orange	talk	1200 mins	y	0:00:11	0:000
14:30	Other Mobile Network	talk	1200 mins	y	0:00:24	0:000
14:52	Other Mobile Network	talk	1200 mins	y	0:00:25	0:000
14:55	Other Mobile Network	talk	1200 mins	y	0:01:13	0:000
15:40	Orange	talk	1200 mins	y	0:00:09	0:000
16:37	BT 'b' Rate	Voice	UnLim	y	0:00:38	0:000

This has generally resulted in about 80% of ‘number checks’ concluding in data being returned.

Our unique position in the market, trusted by consumers, has enabled us to complete an industry-funded project which allows PRS providers to directly populate the information on Number Checker.

We hope that this new mechanism for providing Number Checker data will result in virtually every query resulting in more accurate data being provided.

This should lead to greater transparency in the market and reduce the ‘friction’ involved in a consumer making an enquiry about a PRS. PhonepayPlus believes that this transparency should better allow PRS providers to compete on areas such as consumer service, and, accordingly, to ‘nudge’ PRS providers in to less detrimental behaviours.

## Consumer Literacy Working Group

In 2010, PhonepayPlus established a Consumer Literacy Working Group (the CLWG). Made up of representatives from industry, consumer groups and other regulators, the CLWG acts as a sounding board for PhonepayPlus’ consumer literacy work, helping to develop individual projects and offering professional expertise.

With an emphasis on campaigns aimed at consumers who could be considered vulnerable – whether it be because of their age, their economic situation, their lack of technical knowledge or a variety of other different circumstances – and with a commitment to employing a partnership approach wherever possible, PhonepayPlus’ consumer literacy programme is an important part of our pre-emptive, collaborative approach to regulation

Members include:

- Citizens Advice Bureau
- 118 118 (The Number)
- Association for Interactive Media & Entertainment (AIME)
- BT agilemedia
- Channel 4
- Citizens Advice Bureau
- Consumer Focus
- Directgov
- Mobile Entertainment Forum
- Ofcom
- Parentline Plus

## PhoneBrain

Mobile phone ownership is becoming ubiquitous amongst children. Ofcom reports that today 49% of 8-11 year olds have a mobile phone and that number rises to 82% in the 12-15 age bracket. Parents are correctly concerned about children's access to inappropriate material, and also the possibility of tying themselves into expensive subscription payments for PRS (such as weekly mobile ringtone or games clubs). PhonepayPlus recognises this vulnerability and we conduct consumer literacy projects in order to prevent any harm occurring – our key project in this area is our award-winning PhoneBrain schools programme.<sup>4</sup>

This programme aims to help young people recognise PRS and understand the potential costs involved, while at the same time highlighting the opportunities associated with PRS. All of this is done through free-to-download, curriculum-relevant teaching resources that are available on [the project website](#).

Over the past two years, over 800 teachers in England and Wales have signed up for the PhoneBrain resources, with thousands of secondary school students creating their own mobile ringtones (linked with Information Communications Technology) or producing business plans for new, compliant PRS (linked with Enterprise/Business Studies) in the classroom. The project's success was recognised in PhonepayPlus winning a Hollis Sponsorship Award in the education category in 2010.

## Know your numbers

[Research published by PhonepayPlus in March 2010](#) showed that 54% of people aged 55+ do not know what an advertised premium rate service will cost – a finding that led PhonepayPlus to devise the 'Know your numbers' campaign, which ran in Spring 2010.

Working with the charity Age Concern (now Age UK), PhonepayPlus produced and printed posters, bookmarks and memo boards that explained the types of services that operated on 09, 0871/2/3, 118 and mobile text shortcode numbers. Written in simple and easy-to-understand language, with input from Age Concern as to the most favourable print requirements for older people, these materials were then distributed through various Age Concern channels as well as free of charge to 1,000 libraries across the UK.

## Response to consultation

**PhonepayPlus notes the Government's ambitious plans to integrate publicly-funded support services into a single public offering delivered through the Citizen's Advice service.**

<sup>4</sup> <http://stakeholders.ofcom.org.uk/market-data-research/media-literacy/medlitpub/medlitpubrss/children/>

PhonepayPlus works closely with Citizen's Advice within the CLWG and receives referrals from consumers who initially contact Citizen's Advice offices on PRS matters.

PhonepayPlus supports the Government's initiative through Trading Standards to log all complaints on an integrated system. Furthermore, we would like to offer our assistance to inform the design of the dataset coding, so as to most productively capture specific consumer harm in PRS and low-cost (or micropayment) transactions generally.

PhonepayPlus notes the advantages in efficiency for Government spending in centralising all funding for consumer education into one place, such as the Citizen's Advice.

Whilst we reiterate that, much like the work of Which?, PhonepayPlus' activities are not dependent on public funding, our view is that some specialist sectors (such as the PRS market) require specific expertise in terms of management and co-ordination in order to gain the most effective benefit to any relevant consumer education campaign.

## **Question 2**

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

PhonepayPlus notes the Government's proposals and urges that any body which takes on the OFT's consumer information role should have the necessary resources, budget and relevant expertise to deal with both the volume and the variety of issues that consumers are likely to raise.

## **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?*

PhonepayPlus notes the Government's proposals in respect of the transfer of OFT powers in relation to consumer education to Citizen's Advice. PhonepayPlus urges that Citizen's Advice be granted sufficient budget, resources and expertise to exercise its function properly.

Any consumer education activity should always be measured against criteria of being valuable, targeted, and meeting an identified and a measurable consumer need.

## Chapter 3 - Consumer Code Approval

In March 2011, PhonepayPlus published its [new Code of Practice](#), the twelfth edition. Previous Codes had sought to prescribe precise rules which suppliers must comply with; however, as few prescriptive rules as possible are included in the new Code, with these being replaced by guidance on achieving compliance.

This guidance is non-binding on industry, allowing providers to develop approaches to compliance that best suit their business and their services. To assist further with this, PhonepayPlus offers industry a free compliance advice service.

In drawing up the new Code in close consultation with the PRS industry and other stakeholders, PhonepayPlus recognised the need to move away from a set of rules tied to specific technologies and service types – such an approach all too easily runs the risk of being overtaken by new technologies and innovations in the market.

Working with other regulators, consumer groups and industry, we aimed to future-proof this new Code as much as possible. The best way to achieve a flexible, nimble Code was to focus on the positive outcomes for consumers that providers should always achieve.

These positive outcomes are:

- [Legality](#)
  - Outcome: “That premium rate services comply with the law”.
- [Transparency and Pricing](#)
  - Outcome: “That consumers of premium rate services are fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.”
- [Fairness](#)
  - Outcome: “That consumers of premium rate services are treated fairly and equitably.”
- [Privacy](#)
  - Outcome: “That premium rate services do not cause the unreasonable invasion of consumers’ privacy”
- [Avoidance of harm](#)
  - Outcome: “That premium rate services do not cause harm or unreasonable offence to consumers or to the general public.”
- [Complaint handling](#)
  - Outcome: “That consumers are able to have complaints resolved quickly and easily by the Level 2 provider responsible for the service and that any redress is provided quickly and easily.”

These outcomes and our approach allows us to protect consumers now as well as in the future when they are making electronic payments. Naturally, the Code applies nationally, as PRS is a national issue that does not recognise administrative boundaries – so the same standard is applied across the UK (and for providers operating from outside of the UK's

borders but that use UK premium rate numbers). This allows PhonepayPlus to ensure a level playing field and a consistent consumer experience.

Although PhonepayPlus' Code of Practice is compulsory, not voluntary, and therefore is outside of the CCAS system<sup>5</sup>, PhonepayPlus' Code did evolve from a voluntary network code, following the privatisation of the telecommunications market in the 1980s.

The PRS market has moved on from that and the specific characteristics of the PRS market now make a voluntary Code of Practice unlikely to sufficiently deter consumer harm.

PhonepayPlus has maintained the relevance of its guidance through regular iterations of the Code and has relevant current experience in the process of code approval with the EU Commission.

### **Response to consultation**

PhonepayPlus notes the possibility that, in the absence of an OFT-operated CCAS scheme, the commercial and voluntary sector (along with recognised brands, such as Which?) may arise to fill the gap that is left.

**PhonepayPlus supports the need for national codes of practice, where possible, and offers its expertise to assist any Primary Authority seeking a model for code approval and certification.**

---

<sup>5</sup> In that it is supported by the Communications Act (2003) and the CPRS condition

# Chapter 4 - Consumer Advocacy

PhonepayPlus is an independent, industry funded, non-statutory regulator. Our Code is proportionate and evidence-based. To this end, we collect and collate evidence of consumer attitudes to PRS, and use this to inform our regulatory policy to make sure that consumers as a whole are treated fairly when using PRS.

Regular users of PRS represent around one third of the wider population. To ensure that the policy we develop and the regulatory actions we follow best serve this subset of consumers, PhonepayPlus carries out bespoke market research, working with specialist research agencies who recruit actual PRS consumers to ensure regulation properly serves their needs.

## 0871, 0872 and 0873 issues

In 2009, PhonepayPlus commissioned Analysys Mason to conduct research into the use of 087 numbers through online surveys of consumers, as well as face-to-face interviews. Amongst other issues, the research found that:

- 44% of 0871 callers have either made a complaint about or had an issue with a 0871 service in the past six months.
- Lack of understanding on price: When asked how much an 0871 call costs, one in three users said they did not know and 40% were unaware of the additional cost of calling from a mobile.
- Delays are a significant annoyance to callers: 70% of callers said they would complain if kept on hold for more than 10 minutes.<sup>6</sup>

This assisted PhonepayPlus in drafting relevant rules in the new Code of Practice for these number ranges. Since PhonepayPlus has assumed responsibility for regulation of the market, there have been improvements in pricing transparency and more information is provided when consumers are kept on hold. Furthermore, in terms of revenue, the 0871/2/3 market, following years of decline, has now stabilised and is slowly growing.

## Consumer feedback on the new Code of Practice

During the consultation process for the new Code of Practice, PhonepayPlus engaged researchers to conduct a qualitative study of the proposed rules. Whilst the research highlighted a general gap in consumer knowledge about the existence of a PRS regulator, it did re-enforce that the issues they are concerned about when using PRS are addressed by the Code of Practice.<sup>7</sup>

<sup>6</sup> <http://www.phonepayplus.org.uk/News-And-Events/News/2009/6/Research-reveals-need-for-greater-price-transparency-in-087-services.aspx>

<sup>7</sup> <http://www.phonepayplus.org.uk/For-Business/~/media/Files/PhonepayPlus/Research/PhonepayPlusCode12TheViewFromConsumerresearch.pdf>

## Consumer refunds

A key part of PhonepayPlus' role is to assist consumers in seeking refunds. One key power under the Code of Practice is the ability to mandate that organisations found in breach of the Code offer specific refunds to complainants. This service is free to consumers.

Furthermore, following the introduction of our new Code, PhonepayPlus' independent Tribunal can now order a blanket refund to all consumers who engaged with a service.

These powers nudge PRS providers to resolve complaints, without the need to refer to the regulator at all, and furthermore create an incentive to, when the consumer harm is sufficiently minor, deal with the complaints on a fast-track basis.

In an effort to further encourage this behaviour, PhonepayPlus established its Complaint Resolution Team in 2010. This dedicated team is designed to deal speedily with minor complaints that might warrant redress, without the need for a formal investigation.

Since its inception in 2010, PhonepayPlus' Complaint Resolution Team has secured just under £24,000 worth of refunds for consumers and has helped PRS providers operate better services for consumers.

## Response to Consultation

**PhonepayPlus notes the Government's proposals to create a single focus (run by Citizen's Advice) for the co-ordination of publicly-funded consumer advocacy functions.**

PhonepayPlus also notes the importance of a strong consumer voice to provide a contrasting, balanced opinion to regulators in respect of the substantial resources that regulated firms expend. To this end, PhonepayPlus supports any initiative which adds further weight of opinion in its process of developing codes of practice and guidance, provided that that body has sufficient resource and expertise to execute its function.

**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 Government's approach to combining as many consumer advocacy functions as possible in Citizen's Advice may be the best approach. However, PhonepayPlus urges that great care be taken in respect of Citizen Advice's structure, governance and funding, in order to deliver on what will be (by definition) a wide remit.

**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?**

PhonepayPlus notes the Government's plans to abolish Consumer Focus and transfer its sectoral and general advocacy functions to Citizen's Advice. PhonepayPlus' view is that this approach can only be successful if the governance, funding and competence is in place to successfully deliver mechanisms and regulation which support consumers.

# Chapter 5 - Enforcement of Consumer Protection Legislation

Despite PhonepayPlus' best efforts to build compliance in the market through collaborative, relevant guidance and a free compliance advice service, PhonepayPlus inevitably must still deal with instances of consumer harm. As mentioned in the previous chapter (under the heading 'Consumer refunds'), PhonepayPlus has developed a Complaint Resolution Team which, where appropriate, seeks to resolve issues informally on behalf of consumers.

However, some incidences of harm are sufficiently serious and far-reaching to warrant a formal investigation. PhonepayPlus' enforcement action is backed up by significant powers of sanction. These include:

- The requirement to remedy the breach (specific advice to prevent further harm);
- The requirement to obtain compliance advice on specified services;
- The ability to bar an organisation from operating a service or category of services;
- The ability to prohibit named individuals who operate behind an organisation and prevent them from operating in the market for a defined period;
- The requirement to undertake a compliance audit to improve systemic failings;
- The requirement to refund complainants in a suitable manner;
- The requirement to issue blanket refunds in particularly serious instances; and
- The capability to fine up to £250,000 per breach of our Code of Practice.

In cases of an immediate and significant threat of consumer harm, PhonepayPlus can initiate an 'Emergency procedure', which can result in a service being removed from the market immediately (within 48 hours), while a full, formal investigation is launched as soon as is practicable.

PhonepayPlus' adjudication procedure is independent of the organisation, and those subject to investigation have a right of appeal to a further independent body, the Independent Appeals Body (the IAB).

The overwhelming majority of our cases are national, affecting consumers irrespective of county lines, and therefore PhonepayPlus is a 'one-stop shop' for PRS enforcement. We have worked in the past with the police and others (such as the Information Commissioner's Office and the Gambling Commission) where the law may have been broken and those other organisations are the competent authority best able to prosecute the case, thus avoiding a 'double jeopardy' situation from arising.

## Response to consultation

PhonepayPlus notes the Government's plans to establish a Trading Standards Policy Board to lead the co-ordination of national, regional and cross-local authority boundary enforcement work in England and Wales; however, PhonepayPlus remains unaffected by the proposed changes since we are not reliant upon the OFT's enforcement powers. PhonepayPlus recognises the difficulties in estimating consumer detriment in the UK, and notes that, by various measures, it potentially exceeds \$6.6 (or £3.3) billion in 2011. Furthermore, PhonepayPlus notes that UK spending on consumer enforcement measured less than £247 million in 2009/10. Therefore, PhonepayPlus notes the potential value that can be gained by reducing consumer detriment by increasing spending on enforcement by bodies, such as Trading Standards.

PhonepayPlus is a 'one-stop shop' for education, enforcement and consumer protection in a niche market. Our unique position in the market allows us to continue to serve both consumers and the PRS market without incurring an expense to the Government.

PhonepayPlus has always looked to build constructive and collaborative relationships with other regulators and consumer protection agencies, especially in terms of sharing intelligence and working together to ensure effective consumer protection,

**QUESTION 32.** PhonepayPlus notes the Government's commitment to self-regulatory schemes (such as that run by the ASA, as well as PhonepayPlus). We support and welcome the opportunity to be able to refer appropriate cases to an appropriate enforcement authority, with wider powers to gather evidence and greater powers to injunct and enforce against those who (for whatever reason) fall outside of our ability to deliver effective consumer outcomes.

PhonepayPlus has no specific view on whether such a referral should be made to the proposed Trading Standards Policy Board or Joint Enforcement Board or a national enforcement squad within the Trading Standards Network, provided that body has sufficient resource and expertise to act swiftly to prevent consumer harm.

## Consumer Protection Framework

PhonepayPlus has recently responded to the Government's call for inputs for the Communications Review being led by DCMS. [Our response](#), sent jointly with leading PRS industry trade bodies, asked the Government to take the opportunity of this review to examine the consumer protection framework in place in the wider digital micropayment sector, including when consumers are using payment mechanisms that are underpinned by financial services-based legislation. If consumer confidence and trust in the UK's digital services is to be maintained and lead to significant growth, then ensuring that there is an effective, proportionate and accessible consumer protection framework in place will be critical.

PhonepayPlus response to the BIS consultation on 'Empowering and Protecting Consumers'

## For more information, contact:

Alex Littlemore, Senior Strategy Executive, PhonepayPlus

Email: [alittlemore@phonepayplus.org.uk](mailto:alittlemore@phonepayplus.org.uk)

Tel: 020 7940 7413



[www.phonepayplus.org.uk](http://www.phonepayplus.org.uk)

Copyright: PhonepayPlus

Published: September 2011

## **Pickering, Professor John. F**

## **BIS**

### **EMPOWERING AND PROTECTING CONSUMERS, CONSULTATION JUNE 2011**

#### **Submission by Professor John Pickering**

1. I welcome the attention being given to this issue, especially as it comes hard on the heels of the consultation regarding the competition regime. I note that in both consultation documents a similar structural solution, namely the merger of organisations, is proposed. It is not clear to me that this is a desirable solution. It seems unlikely that the outcomes of mergers of public bodies will be any more successful than the mergers of private companies. Indeed, since public bodies do not have external shareholders to satisfy or a profit "bottom line", there may be even less likelihood of achieving a beneficial outcome from that particular solution.
2. I note that there is no reference in the consultation document to evidence of good practice and experience in other parts of the world. The list, at Annex E, of organisations consulted during the preparation of the document rather tends to suggest that individuals with knowledge and experience that could have been relevant have not been consulted.
3. An issue needs to be addressed about the relationship between the apparent poor performance of some current organisations. In the view of BIS, as reflected in the document, poor leadership is to be solved by major organisational change. If those currently responsible for delivering the policy outcomes required of them are failing, there should be a change in personnel, not necessarily organisational restructuring.
4. The case for major restructuring of the relevant organisations is not adequately addressed in the consultation. For example, there is no prediction as to how long it will take, and at what cost, to bring about the proposed new structure. Given the high time discount rates that should apply in relation to public policy initiatives, will the inevitable delays and costs be acceptable? Are the relevant skills available in Consumer Advice and Trading Standards? It may well be that the proposals envisage the merging of too many agencies. This may well reduce effective competition in the market for the supply of consumer empowerment services. There seems likely to be too much bureaucracy introduced, e.g. with the proposed creation of a Joint Enforcement Board. The driving considerations for change in this area should be simplicity, decisiveness, competence, clarity and accountability. Generally, it is important that significant outcomes are quickly achieved and are recognised to create binding precedents which will apply across all sectors of trade.
5. An impression is gained from the consultation document that voluntary and private organisations are to be drawn into the web of public enforcement. This would be unfortunate. Organisations such as *Which?* should be left to pursue their own policies and approaches.
6. I have a number of concerns about the analytical framework that seems to lay behind the actual consultation document. In particular:
  - a) The concepts of "competition" and "structure" as supply-side issues alone are too limited. "Structure" is multi-sided and includes buying power, consumer

behaviour, etc. It is such demand-side activity that is often needed to generate competition.

- b) How suppliers relate to consumers and how consumers respond are fully a "markets" issue. So demand-side issues are relevant to all work concerning competition and markets. The proposals to hive off the consumer side into separate bodies seems to me to be unfortunate and a retrograde step.
- c) While Codes of Practice have many things to recommend them (and their use goes back to the early days of the Fair Trading Act 1973) they can also raise issues of cartelisation and tacit collusion. The ability of a dominant firm in a sector to influence the way in which the Code is applied and enforced, through its financial muscle as the main provider of finance for the operation of the Code, is a market problem and, in some cases, a significant one.
- d) There is an implicit assumption that consumer needs and behaviour are common in all markets. However, this is not the case. The following considerations ought to be taken into account:
  - Consumer motivations differ between different types of consumer and across different types of purchase of products and services. Do they all wish to make "wise" choices if that means optimising rather than satisficing?
  - How do they make such "wise choices" with necessities where the price elasticity of demand is low?
  - The frequency of purchase, degree of risk associated with particular purchases and consumption, the extent of available choice, the role of learning effects and of informal information sources are all pertinent. If public policy is to engage in this area, it also needs to recognise the role of transactions where choice is limited or has to be made on non-price grounds – especially with public services.
  - Analytically, it needs to be recognised that not all consumers have to be "empowered" in a market for it to be effectively competitive.
- e) It is wrong to suggest (Para. 5.80) that structural market problems and issues of effective competition in the relevant market will go away. The reality is that they merely change their nature!
- f) The notion of dynamic competition (and the evidence that this truly occurs in the market place) means that the top performers at one point in time will be overtaken by others at subsequent points in time. It is very important that consumers should not be left to assume or believe that last year's best buy remains so this year.
- g) Reference is made in the document to the concept of consumer confidence. This is normally treated as a macro-economic concept, and measurable through survey questions regarding views on the state of the economy, price expectations and personal household experiences and expectations. This is frequently argued to have a predictive influence on consumer discretionary spending. This concept does not seem to feature in the discussion document. Rather, the approach in the document seems to relate more to concepts of risk and post-purchase

dissonance with individual purchases. Perhaps some attempt ought to be made to distinguish the two.

7. The proposals for consumer representation in relation to sector regulation cause me concern. May I suggest that strong consumer representation needs to be on the Boards of sector regulators (not necessarily wearing a specific "consumer" badge) rather than separated from the main decision taking bodies. The suggestion that there should be separate consumer bodies associated with the regulated sectors leads me to conclude that the existing sector regulators are not properly discharging their responsibilities to consumers and hence to effectively competitive outcomes.
8. In order to make markets work better, the contribution of consumer empowerment requires:
  - A legal framework for enforcement – the proposal for a national trading standards service seems attractive, but easier redress and class actions are also needed.
  - A variety of means of accessing information.
  - Effective choice and ethical conduct by business within markets bounded by competition and consumer law.
9. The 1973 Fair Trading Act was a key innovative development by bringing together the competition regime and consumer protection. My plea would be that we try to fix it where it is failing rather than break it altogether!

J F Pickering  
11<sup>th</sup> August 2011

## Plymouth City Council



**ENVIRONMENTAL SERVICES**  
Department of Community Services

Plymouth City Council  
Civic Centre  
Plymouth  
PL1 2AA

Tel: 01752 304530  
Fax: 01752 226314  
Email:[public.protection@plymouth.gov.uk](mailto:public.protection@plymouth.gov.uk)  
[www.plymouth.gov.uk](http://www.plymouth.gov.uk)

If you have any queries about the content of this response and wish to discuss the matters further, please do not hesitate to contact Robin Carton Head of Public Protection Service, Plymouth City Council.

Tel: - 01752 30 4530.

email: - [robin.carton@plymouth.gov.uk](mailto:robin.carton@plymouth.gov.uk)

**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**

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 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 has been written by the Head of the Public Protection Service for Plymouth City Council. Plymouth is a unitary authority and as a result the Public Protection Service is responsible for enforcement of a wide range of Consumer Protection legislation much of which is not covered by the scope of this review. The brigading of Environmental Health, Licensing, Environmental Protection, Street Scene, Health and Safety, Food Law and Trading Standards enforcement within one service within the local authority is very effective method of regulation. It enables consistent and proportionate enforcement of local business without placing undue burden on them. This arrangement enables a holistic one stop approach to regulation and allows very effective working where national and local priorities can be met.

The consumer landscape proposals focus on the fair trading elements Trading Standards work, which is only a proportion of the much wider range of duties undertaken by LATSS. This proportion is even smaller when considered across the breadth of regulatory work undertaken by Unitary Authorities.

When due consideration is given to the volume of consumer protection regulation undertaken by Local Authorities analysis will show that very high levels of compliance are achieved at very little cost. This demonstrates the effectiveness of the local delivery model in protecting this country's trading environment. The recent NAO report focused on fair trading cross border issues and national scams but did not give consideration to the vast range of work undertaken successfully by LATSS.

Local Authority enforcement strengths are; local knowledge, local intelligence, an ability to respond to changing priorities, an ability to provide a one stop holistic regulatory services, an ability to respond to local priorities with partner agencies and an ability to provide innovative sustainable solutions.

Where LATSS are not as strong is in maintaining consistent levels of resources and in their ability to deal with national or international threats. LATSS recognised these difficulties and subsequently engineered solutions such as regional groups and the national policy forum. The landscape proposals builds on these existing LATSS solutions.

Enforcement by LA is ideally placed to support the localism agenda. LA maximises opportunities for innovation and uses local knowledge to prioritise enforcement activities. Many consumer problems, especially with vulnerable clients are not limited to simple breaches of law. Too frequently they are complex requiring solutions dependent on a range of services. LAs can provide a co-coordinated, joined up, holistic approach through their ability to bring this range of services knowledge and expertise to bear on these problems, which enables effective sustainable solutions to compliance problems.

LA regulators have to answer to a number of separate Government Departments who appear work in silos and do not effectively align their approach or coordinate their demands on LA regulators. At the moment the Food Standards Agency, BIS and the HSE are all consulting on new proposals for the way national and local regulators work together. It is disappointing that Government Departments and Agencies appear to be working in isolation and are not proposing a single framework for regulation that takes account of **ALL** of the agencies involved in regulation and enforcement. Ideally this country should have a single framework that provides for delivery at International, National, Regional and Local levels.

It is not clear in any of these consultations how the strengths and weaknesses of the existing systems of enforcement meet the needs of the regulatory landscape across central and local government. Any proposals for a new system should be built on a body of evidence that understands the need, defines the objectives and understands the strengths and limitations of all of the agencies involved. It is not clear that these wider considerations have been taken into account when these proposals were drafted.

This consultation uses evidence from the NAO report produced in June 2011. However this consultation doesn't give full recognition to the limited scope of the NAO report which, although looking at fair trading enforcement by LATSS, did not take account of the many other bodies that are part of the fair trading regulatory landscape. E.g. Police, HMRC, Private Investigation Companies, IPO, BIS, OFT, FSA. Nor did it take account of and give due recognition to the work of LATSS outside the limited scope the report.

The most effective model for splitting enforcement between the local level and the national level is one that allows for national direction, policy and technical guidance, and leadership. It is one that provides accountability and minimum standards of regulation. It is one that allows agencies to work closely together in collaboration at local and national levels and across agencies. It is one that provides central

expert support, policy guidance and direction and training. It is one where joint work planning is undertaken.

All local / national regulation should be built round a model where a central body takes responsibility for national/international regulation, provides policy guidance, identifies national priorities and provides the strong leadership. It is envisaged that this body would have a commissioning role and the body would commission services to be delivered by LA's at regional and local level. Ideally this body will have some responsibility for guiding on the level of resources and funding provided for LATSS. The current scope of the TSPB should be widened to cover all Unitary Authorities public protection enforcement duties as they are all integral to consumer protection outcomes.

The TSPB would adopt a commissioning role contracting LATSS and regional LATSS groups. Perhaps there are lessons to be learned from the Public Health commissioning arrangements being constructed in local authorities at the moment.

The main focus of the remainder of this response is on the proposals relating to changes in the enforcement landscape. Whilst recognising all other aspects of the proposals, it is in the enforcement arena where LATSS could have a fundamentally different role in future.

## 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?***

The provision of consumer information is different from the provision of consumer advice. Consumers should be able to get a range of consumer information and advice suitable for their needs and capabilities.

Information should be available in a range media from national TV down to face to face, as well as via the telephone and online. Its presentation should be designed for the audience it is aimed at and should have a life span designed in recognition of the information need being dealt with. The mechanism for providing consumer information needs to be considered as part of a strategic communication plan.

The internet provides a valuable resource of information to empower consumers to take action or seek information. However, sometimes information needs to be disseminated to deal with very local issues very rapidly. This requires local solutions, often using local media, mail drops, word of mouth, libraries and local businesses. Local Authorities have effective mechanisms for informing their local populations. The proposals place responsibility with the Citizens Advice Bureaux. To make this an effective solution will require LATSS to work with local Citizens Advice Bureaux. The success of this will be 3

dependent on the management of the local Citizens Advice Bureaux and the resource constraints of the authority. LATSS should receive direct funding from Government to in recognition of their role in consumer advice, education and consumer information.

Consumers, particularly the more vulnerable, are often happier speaking to someone face to face. With the current system a range of agencies are able to identify information gaps and act to fill them. The proposals for the new model focus the responsibility with the local Citizens Advice Bureaux who may not have the ability to recognise an emerging information gap nor have the ability to provide a fast response. Any new model should take into account the role of LATSS and their ability to communicate with their local consumers.

Consumers will also require advice. This is likely to be specific to their own circumstances and will require a degree of analysis of the problem by the advisor. Many factors have to be taken into account by the advisor which makes it unlikely that the internet can be a suitable advice option in many cases. Unfortunately it is unlikely that a mechanism will exist within the internet product that will identify those clients that are not suitable for internet advice.

It is important that the high quality and accessibility 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. I would not support any reduction in the standards of advice from that currently provided. (E.g. I do not believe that 'pick-lists' could be used to answer all 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?**

It will be necessary for Citizens Advice to work 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 local 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. LATSS are themselves under financial restraints. None statutory elements of their work is often the first to be stopped. LATSS are not funded to provide consumer advice or information and in these proposals such duties are **not** placed on LATSS. The proposals however do increase the complexity of the advice provision at a local level and as a result of a need for greater liaison with local Citizens Advice Bureaux do place additional cost on LATSS. Without clear statutory responsibility for LATSS and without additional funding there will be an inconsistent local response to by LATSS to consumer assistance, advice, education and information across the country.

At a national level in England Scotland and Wales, heads of trading standards should be represented by on a governance board for the replacement for Consumer Direct services. I would also recommend that regional arrangements are made as well. In this way LATSS can maintain the strengths of partnership working at national, regional and local levels.

At the local level I would like to see each trading standards service have an 'account manager' within

Citizens Advice to liaise on issues such as joint planning, intelligence analysis and the identification of information gaps. This liaison would also deal with issues or concerns.

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** remain secure to LATSS and continue and be improved where possible. It currently provides an efficient and effective reporting line that enables LATSS to identify problem traders, consumer detriment, scams and any other problems that may require them to take enforcement action or provide advice to businesses or consumers.

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

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

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

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

The OFT's publicly-funded consumer education role at national level should 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.

The education of consumers is an important part of Governments strategy for empowering consumers and delivering growth. There has been a lack of strategic direction, planning and delivery of consumer education and information. Like all consumer protection activity consumer education should prioritised and be based on intelligence. As a first step a comprehensive plan is required setting out short medium and long term outcomes. All agencies should then feed into tactical coordinated delivery plans. Government should take a holistic approach to Consumer Education and encourage engagement through schools and LA education services.

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.

Consumer education and advice are both part of a system that benefits consumers and businesses - making markets work better.

It is good that LATSS skills in providing direct delivery of education to consumers at local level is recognised. 'Skilled to Go' and 'No Cold Calling Zones' have been very successful initiatives developed by LATSS. It is essential that Government achieves 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 is as a commercial provider of appropriate products for LATSS to use. TSI also act as a commercial training provider dealing direct with businesses. It is not appropriate for TSI to have any role in coordination of business support and education. The TSPB should have sole responsibility for strategic leadership, policy and coordination of LATSS. If necessary they can commission work from commercial suppliers of training, including TSI.

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

### **Chapter 3 – Consumer Code Approvals**

#### *Key Proposals*

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

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

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

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

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

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

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

#### **Response to questions 6 to 11**

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 LATSS already give consumers a method for finding trustworthy businesses via various Local Authority Assured Trader Schemes. These schemes have limited membership but have been well received by local consumers and businesses. They are associated with a much stronger brand than the CCAS model i.e. Trading Standards itself. There is a great opportunities to build on the existing Local Authority Assured Trader Scheme by bringing them together under one national identity.

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

## **Chapter 4 – Consumer Advocacy**

### **Key Proposals:**

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

- All Consumer Focus functions in relation to gas, electricity and (except Northern Ireland) postal services
- Key, non-sector specific advocacy functions of Consumer Focus

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

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

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

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

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

#### **Response questions 12 to 15**

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 is supported.

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 N power 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.

LATTS, through TSPB should 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?**

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?**

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?**

Option 3 is the preferred option. This involves 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. However the success of this proposal depends on a realistic level of funding that matches Government expectations, being transferred to LATSS .

LATSS have the skills, experience and willingness to deliver the outcomes the Government wants to see. . However, it is with the very clear provision that funding has to accompany this option to facilitate the necessary reform.

As well as helping local consumers and businesses, LATSS already do consumer protection work which has a regional and/or national impact. Much of this work was established prior to Government funding being provided to make it more effective. For example 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 will enable LATSS to have a greater influence over regional and national funding and crucially should provide much needed continuity of funding that will enable proper development of regional enforcement resources. It will enable the continuing development of business resilience within the 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.

I 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.

Option 3 enables support to be given to 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 has the potential to facilitate engagement between trading standards and Citizens Advice at a local, regional and national level.

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. The organisation of the TSPB is crucial to the success of option 3 and all parties need to take a realistic approach to amount of work and consequently the amount of administrative and executive support that an effective board will require.

The Board must be capable of representing the views of **all** heads of trading standards and their authorities 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. It is essential that LA political oversight exists. The LG Group could have a key role in providing this.

It is anticipated that the TSPB will 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.

The TSPB will need to meet regularly to provide the strategic and operational oversight in a co-ordinated manner. The TSPB must empower strategic and tactical, operational decisions, based on evidence of consumer detriment. BIS will clearly want to ensure that national consumer protection issues are dealt with in a timely and effective manner but the Government must not dictate what action should be taken. 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.

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 should come directly from the TSPB in accordance with its agreed terms of reference and accountability structures.

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. I would also expect the BIS and other Government Departments/ Agencies responsible for consumer protection / consumer protection activities of LATSS to have representation.

Effective co-ordination at a regional level is also essential to the success of this option and I would envisage that a key priority of the TSPB would be to ensure sustainable funding of regional or sub-regional infrastructure in each English region and in Wales.

Other organisations could 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.

The TSPB will need a Chairman, who will play a pivotal role. I would recommend that this role is an independent person with significant knowledge of the full range Local Authority Regulatory functions. The demands on this role will be high and I would anticipate that the role is either combined with a full time executive role or is supported by a fulltime executive.

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 .

An adequately funded, robust and effective TSPB will by providing strong leadership to sustainable regional teams, ensure sufficient investigative capacity to take on the larger cases.

TSPB will maintain a hands on role for the policy, priority setting and national standards of delivery. TSPB would have the power to decide the most appropriate delivery mechanism and this could be through the appointment of national centres of excellence who would then work in partnership with

regions and LATSS to ensure functions are carried out on behalf of the TSPB. TSPB can use this framework for any of the functions that are currently done by OFT. In particular: -

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

It is believed 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, I would expect these to continue using improved delivery mechanisms but under the governance of the TSPB.

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 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.**

I do not think the status quo is an option if Government is to achieve the step change improvements desired. These models do not meet the Governments stated objective of improving national leadership and co ordination capability of Trading Standards. The JEB option would make it far more difficult to achieve the leadership role that the Government had hoped to create and would split responsibility and accountability.

The Government identifies in the consultation paper there would not be the resources to create national and regional enforcement infrastructure in LATSS. The TSPB provides a flexible governance framework that can deliver desired outcomes.

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. I 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**

There are benefits for CMA to retain a consumer enforcement role 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, it is sensible for the CMA to retain the resources to deal with cases that reflect structural market problems. This should not be allowed to reduce the resources available for LATSS to deliver the new consumer landscape under the proposals. The CMA in accepting that consumer law should be dealt with when dealing with structural market problems should accept that the funding for dealing with structural market problems should be used to deal with those consumer law issues. Otherwise the CMA will be funded twice for the same work.

The TSPB will 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. The TSPB must ensure sustainable funding and control of the intelligence network and associated intelligence database.

### **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**

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 the bureaucracy associated with any such scheme should be minimise. Whilst welcoming the "Fighting Fund" that BIS made available to support LATSS enforcement activity, 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?**

Trading Standards is a very well recognised brand that has strong public support. LATSS already have years of enforcement experience of dealing with rogue traders and illegal behaviour within their own communities and across boarder, 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.

LATTS have a fantastically successful record of sensible and pragmatic enforcement and have succeeded in ensuring very high levels of compliance across a vast and constantly changing regulatory landscape. This has been delivered against a background of very low resources. 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.

It is noted that the current consultation does not address the issue as to how those rogue traders and businesses who are based overseas will be dealt with. I am confident that LATSS will have the capability to deal with these also should government provide the correct level of resources and a suitable regulatory framework.

## **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?**

LATSS have considerable experience of training staff in the trading standards community and producing professional guidance. However LATSS have suffered constant frustration that there has been a lack of central co ordination and leadership in this important aspect of ensuring compliance. TSI are part of the current delivery model however they are a professional body and would in this proposal be acting as a contracted training provider. This is not their core function.

I propose that TSPB should have responsibility for this aspect of Consumer Protection. They should have ultimate responsibility as they are accountable to Government. They should, as with enforcement duties, contract out the delivery of professional guidance and training functions to other bodies who would have the capacity and expertise to deliver a cost effective service. TSI **could** be one of those suppliers if they can meet the necessary quality and price standards.

## **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?**

TSPB should have responsibility for this work. Their role is to provide leadership co-ordination and to ensure delivery at a national level. I anticipate they will achieve some aspects of this work through a commissioning role however TSPB has to have the ultimate responsibility.

TSI's role and expertise in relation to European and international work in areas such as food and product safety and they could make them candidates for this role but TSPB would be free to commission the most appropriate and cost effective partner. Other candidates could be the ex OFT staff with in the CMA.

Ultimately the choice 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?**

No. 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). The HA and Primary Authority schemes will also have a role.

**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?**

An understanding of the full work of the consumer concurrencies group is required before considering who should chair the group. The 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 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 and 38**

These proposals seem 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?**

There is 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 the question presupposes a solution. The enforcement responsibilities and resources should pass to the TSPB. The TSPB should decide how these duties are performed and by whom. I would anticipate that any fraudulent activities or activities where consumers are misled by estate agents are being dealt with by LATSS under current legislation such as the Fraud Act, the Property Misdescriptions Act and the Consumer/Business Protection from Unfair Trading Regulations.

The enforcement of anti-money laundering regulations 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?**

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. Regional funding of officers will stop if the transfer is delayed and this will necessarily mean a loss of key expertise and invoke increased costs should regional units be re started

## Portsmouth City Council TS

## **Information, Advice and Education**

### **Key Proposals:**

- **The Citizens Advice service to lead on all publicly funded information and advice for consumers (outside financial services and health).**
- **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.**
- **The Citizens Advice service to take on national coordination of consumer education (except on financial services and health). Coordination of consumer education activities locally to be done by collaboration between the Citizens Advice service and the Trading Standards community.**

### **Information and Advice**

QUESTION 1. How do you think the provision of consumer information to consumers can be improved upon? Page 27

Answer - Independent accredited consumer information on demand, by a variety of channels in appropriate locations, format and circumstances. e.g. one stop shop provided by an independent (from business) provider via face to face, social media, written or verbal, funded by business thus saving staff training costs for detailed knowledge provision. A collaborative approach with information being shared between the various consumer groups and agencies including 'Which?', 'Moneysaving expert' and Consumer Focus. Utilising online resources and apps for smartphones and printed materials - in digestible formats - suitable for the average consumer. Educational units built into the national curriculum that Trading Standards can be actively involved in it.

QUESTION 2. Do you agree that the OFT's consumer information role should be transferred to the Citizens Advice service? Page 27

Answer - We do not agree that consumer advice should be transferred to the CAB because:

- The appointment making process in which to access CAB advisors is off putting for many consumers
- Drop in's often involve a long wait - real time issue
- Do not provide home visits
- Cannot cope with capacity
- People only go to the CAB when they have a problem - not prior to.
- More preventative means necessary (see Q1)
- Consumer issues are not currently top of CAB agenda - issues such as debt, homelessness, benefits take priority

- When funding is lost - will consumers lose out?

It should go towards the independent body identified in question 1. CA needs to focus on its area of expertise and react to things that have gone wrong i.e. post transaction issue resolution. People requiring pre-shopping advice need it generally in real time - they do not necessarily think about this before going shopping and therefore the information needs to be available at or near the point of sale when they have their 'shopping head' on.

In recognition of how the consultation crosses both the Community Safety and Health and Social Care portfolios, the following response is supported by Cllr Madden the Cabinet Member for Health and Social Care and reflects these wider issues:

This consultation appears to be mostly focused on consumer advice and representation in relation to the purchasing of goods and services, rather than the Citizen's Advice's wider advice and representation services in relation to areas such as debt, benefits, employment and housing (although with some cross over).

We would equally not endorse these latter functions being transferred to one single provider. Each locality will have its own needs (and thus solutions) to these areas of advice, and services should be commissioned and informed by this local need, rather than being prescribed with a 'one size fits all' approach. Whilst this consultation does not seem to be proposing that these wider functions transfer to Citizen's Advice, it does state in 2.4 that:

*'Integration would also establish the infrastructure within the Citizen's Advice service to provide efficient information and advice to citizens in all the other areas they cover such as social housing and social security benefits. This has the potential to transform the capability of the Citizen's Advice service to reach a much greater number of citizens within a much richer service offering across all their public service advice sectors'.*

This suggests that one provider is preferable across these other, wider public service advice sectors. We believe however that Local Authorities need to be able to commission services with their local needs in mind, particularly for the very vulnerable, and should therefore be able to exercise choice in determining the most appropriate form of provision. Transferring these types of advice services to one provider would in our view stifle competition and innovation (and ultimately best value for money).

QUESTION 3. Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service? Page 27

Answer - Only if all other functions from Consumer Focus and OFT are being transferred to the CAB - rather than lose the service. It means that there is no hand over in which a consumer can become lost. We are in favour of the continuation of Extra Help Unit, and our concerns are:

- Will CAB be able to transfer cases to the Extra Help Unit where a consumer cannot pursue their complaint - issues may arise regarding capacity to deal with complaints - as already mentioned?
- Extra Help Unit may be a service that functions better separately from the CAB.

## **Education**

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? Page 28

Answer - No, a more flexible approach is required blending Social Enterprise and Commercial activity (e.g. sponsorship). The best types of pre shopping consumer education are target locally at those who will benefit most i.e. identified vulnerable consumers (e.g. young consumers, older consumers, people with learning disabilities and other disabilities (e.g. Deaf people), digitally excluded and people in areas of deprivation). This is best provided at a local level managed and co-ordinated by LA's supported by volunteers and or Community Interest Groups. We are concerned that the CAB will not have the capacity to coordinate consumer education campaigns including national campaigns such as Scamnesty, National Consumer Week, Rogue Traders Day - this could go to the CELG/TSI - already do YCOY, Consumer Challenge etc. CAB can be a partner as can consumer groups – provide materials, sponsorship, staffing i.e. additional volunteers to support campaigns and education.

QUESTION 5. Do you agree that the proposed Trading Standards Policy Board and the TSI should coordinate and support business-facing educational activities? Page 29

Answer - No. The TS policy board should not become a delivery mechanism and will have no control over the activities of LA TSS. The Trading Standards Institute is a members organisation and again should not become involved in these activities. This should be put out to tender to establish the best placed and best value delivery mechanism.

## **Consumer Code Approvals**

### **Key Proposals:**

- **The proposed Competition and Markets Authority would 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 roles for BSI, Trading Standards, LBRO and private and/or third sector organisations.**

## **Consumer Codes**

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? Page 33

Answer - Consumer Codes often give a distorted consumer perception of security because individuals have an expectation of being protected when that protection is not in fact in place and this does seem therefore to be value for money.

The investment that the government makes in this area could be better used in providing a compensation fund for victims of rogue traders.

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? Page 33

Answer – Please see question 6

QUESTION 8. What are the lessons learned from the operation of CCAS which may help in establishing (or revising) voluntary schemes in the future? Page 33

Answer – Please see question 6

QUESTION 9. What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI? Page 33

Answer – Please see question 6

QUESTION 10. What characteristics would a Kitemark® based code certification process need to have to meet industry requirements? Page 33

Answer – Please see question 6

QUESTION 11. What is your view on extending the Primary Authority concept to code certification? Page 33

Answer – Please see question 6

## **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? Page 45

Answer - Yes, this is what the CA is there to do in relation to post shopping consumer advice it will create clarity for consumers and a more streamlined service, as long as there is access to intelligence for the regulatory functions.

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

Answer - Yes

**QUESTION 14.** In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches? Page 45

Answer - Yes, no 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? Page 45

Answer – No opinion as this does not affect Portsmouth directly.

### **Statutory Powers and Functions**

**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? Page 46

Answer - It is inappropriate to vest enforcement powers in a body with charitable status for a number of reasons not least of which is transparency as the charity is not subject to FOI. An alternative would be to give the powers to experienced regulators in local Authority Trading Standards services where they will be exercised within existing enforcement procedural controls thus ensuring Human Rights compliance, proportionality, transparency and consistency

### **Redress Schemes**

**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? Page 48

Answer - In line with the Civil Sanctions pilot, Civil Sanctions was an opportunity for Trading Standards to seek redress for consumers.

### **Transfer of functions from Consumer Focus Post in Northern Ireland to the General Consumer Council for Northern Ireland**

QUESTION 18. Do you support the transfer of the functions of Consumer Focus Post Northern Ireland to the General Consumer Council for Northern Ireland and agree that as a result Consumer Focus Post Northern Ireland be abolished? Page 50

Answer - Not relevant

QUESTION 19. Do you agree that the Postal Services Redress Scheme should continue to apply in Northern Ireland to ensure that Northern Irish consumers retain the same access to redress as consumers elsewhere in the United Kingdom? Page 50

Answer - Not relevant however it would be sensible to have a consistent approach across the UK

### **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 of consumer enforcement powers and responsibilities**

The Government has considered 3 main options for reform of consumer enforcement powers and responsibilities:

Option 1: All of the OFT's current consumer enforcement functions (and associated funding) are transferred to Trading Standards

Option 2: All enforcement other than at a local level is undertaken by the proposed Competition and Markets Authority

Option 3: The majority of OFT's current consumer enforcement functions are transferred to Trading Standards which develops a new national leadership and coordination function for cross-boundary and national enforcement, but with some consumer enforcement powers being retained by the CMA

The Government considers that Option 3 is the best reform option. It offers the best prospect of **both** improving leadership and coordination of Trading Standards enforcement across local authority boundaries **and** maintaining the advantages of integrated analysis of markets at national level from both a competition and a consumer perspective.

The new Trading Standards Policy Board which would be formed under this option would have clear policy responsibility and corresponding funds to allocate for combating all regional and national threats except those relating to structural market failings, which would be for the CMA. Working through its regional representatives the Board should be in a position to mobilise the wider Trading Standards community around a common agenda. This should improve the efficiency with which local authority funding of LATSS is spent by counter-balancing any temptation to retreat into small-scale actions against low-level threats and instead mobilising LATSS resources to act against the most economically important targets. By devolving power to local government to set the strategic direction, albeit collectively, this would reflect the Government's strong commitment to localism.

**QUESTION 20.** Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why? Page 67

Answer - Option 1 as long as ring fenced funding is provided. TSS are competent and experienced enforcers. Option 3 as Trading Standards does not have the capacity to analyse structural problems in markets, the TSPB is a good idea

**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? Page 67

Answer - 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? Page 67

Answer - This would be better delivered in the same way that the Birmingham Illegal Money Lending Team operates on a National basis. Using a board is nice in theory but will experience conflicts in practice. Whatever model or body is in place there needs to be collaboration and sharing of information and resources on a higher level. Our preference would be to keep the current situation.

**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? Page 67

Answer – Please see the answer to question 22

**QUESTION 24.** How can your preferred new model best work with businesses? Page 67

Answer – Please see the answer to question 22

### **The Role of the proposed Competition and Markets Authority**

The Government is proposing that a single, streamlined, expert Competition and Markets Authority be created by the merger of the Competition Commission and the competition and markets investigation functions of the OFT. This new body would have greater effectiveness and efficiency to investigate mergers, markets, cartels and anti-competitive practices. It would also retain the function of independent market investigation and analysis which cuts across the consumer and competition spheres. The recently completed consultation on the CMA included a chapter on its intended scope indicating the intention that it should be primarily competition focused. The primary role of the CMA would be to ensure fair and effective competition between companies and to promote competitive markets conducive to stability, growth, innovation and consumer welfare. But this does not exclude some consumer enforcement role.

**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? Page 70

Answer - Yes

**QUESTION 26.** In an Option 3-based model, should this enforcement role be subject to procedural limitations? Page 70

Answer – The implementation of a new organisation is one which is not supported

**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? Page 70

Answer – Please see answer to question 26

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? Page 70

Answer – Please see answer to question 26

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? Page 70

Answer – The idea of a Trading Standards Policy Board is not supported

#### **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? Page 71

Answer - No

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? Page 72

Answer - No

#### **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? Page 72

Answer - Enforcement authorities have to follow their own enforcement policies otherwise they would be acting unlawfully (Adaway case); therefore any prosecution decision will have to be taken locally and not externally to the authority.

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?? Page 73

Answer - TSI is a members organisation which should be acting in the best interest of its members and not acting on behalf of employers. LBRO should have a key role still and BIS could perform the function?

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? Page 74

Answer - 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? Page 74

Answer - A central record of actions needs to be kept i.e. the CRW, the functionality needs to be available and this could be provided by the EETSA IDB or by another method if funding were to be available. Guidance and consistency needs to be in place.

QUESTION 36. Do you agree that responsibility for chairing the consumer concurrencies group should remain with the CMA? Page 75

Answer - No

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? Page 75

Answer - 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? Page 75

Answer - No

QUESTION 39. Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions? Page 75

Answer - Yes as long as the Local Authority is funded as Trading Standards can cope with the demands of the role with expertise in specific areas.

#### **What if the CMA is delayed**

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? Page 76

Answer – Yes

## R&T Jebbett & J Purvin

Dear Mr Evans

Herewith is our submission on the work of Consumer Focus Wales.

### The Case For Consumer Advocacy in Wales

We are residents on a mobile (park) home site in Powys and herewith present our views on the proposed abolition of Consumer Focus (and therefore Consumer Focus Wales) by the UK Government.

Until we were introduced by Kirsty Williams AM/AC to Consumer Focus Wales in February 2011, no-one with any authority to support and empower us against the criminality of unscrupulous park owners could be persuaded to do so. In this short time CFW have significantly broadened our horizons by engaging effectively and economically on our behalf with many regulatory bodies who at present consistently close their doors to us. They have initiated excellent and hopefully supportive contacts with Welsh Government Assembly Members, Members of Parliament, Senior Police Officers, Trading Standards and other local council departments.

The consultation paper issued jointly by Communities and Local Government and the Welsh Assembly Government in 2008 under their New Approach for resolving disputes relating to Park Homes, estimated that there are 2,050 park home sites in England and Wales housing 170,000 residents, and stated that it is a valued part of the housing market and the Government attaches great importance to a well run sector.

There is an urgent need for the radical overhaul, redrafting and thereafter robust enforcement of the Mobile Home Act 1983 and its subsequent amendments. This would require work on legislative change, the education of the judiciary and the police, and the necessity for local councils to redraft their site licences and be charged with the duty to enforce them, while being given support to do this by relevant agencies when confronting unpredictable, violent, abusive park owners.

Consumer advocacy, advice, empowerment, education and protection have never been more important than they are now, and Wales is in a very good position to spearhead an initiative relating to this area of consumer neglect. Part of CFW's strength in Wales is that they have already made significant inroads into resolution of the problems we face and it would be practically and economically counterproductive to abandon this now in the face of the Government statement "the Government's prime objective for consumer policy is to empower consumers to make wise decisions when purchasing goods and services."

And the declared manifesto pledge of the Welsh Government which states:

"We also believe that the citizen should be closely engaged with service providers, especially front-line staff, in the design, delivery and scrutiny of public services in Wales. To further develop a citizen focus in our public services and utilities.

We will: Seek to establish a national trading standards service and to preserve the function of Consumer Focus ensuring that the people of Wales have an independent voice in the delivery of public services and protection from consumer exploitation." Welsh Labour Manifesto 2011.

All park homes should carry a warning: BEFORE YOU BUY BE SURE YOU CAN SELL.

Each monthly issue of The Park Home and Holiday Caravan magazine includes park home purchasing advice which has become more comprehensive of late. However, although the advice refers to the existence of the Mobile Home Act 1983, Written Agreement, Implied Terms (Part III), Express Terms, and offers a website address, we question how many people seeking to live on a park home site are going to be able to wade through this information, understand it and make a successful purchase with all the ends neatly

tied up and watertight. The judiciary doesn't understand the legislation; a conveyancing solicitor would be well out of his depth. It has been known for a solicitor to charge Stamp Duty and for HMRC to accept it.

The Mobile Home Act gives the resident the right to sell his home on the open market, but also allows the site owner to 'approve' the potential buyer. At this point a rogue park owner will put the buyer off the sale. Popular tactics to achieve this are: making false claims about the state of the home, i.e. its age or condition; the need to remove the home from its pitch to repair the concrete base on which it stands; the seller owes him money. This latter charge especially is never true since any money he considers owing to him is money that has been unlawfully demanded by him, a situation which has occurred twice on our park in the recent past. Having lost a succession of potential buyers, the seller is in such a desperate state that he will sell his home at a huge loss to the site owner, who then sells it at its true market value, making a handsome profit for himself over and above the 10% of the sale price to which he is entitled

When a park home is purchased on the open market from its current owner, the Written Statement is re-assigned to the new owner and the monthly pitch fee does not change. Over the duration of the Agreement the only increase in the pitch fee permitted is an annual rise in line with the RPI index, which is too little for the rapacious greed of the rogue park owner. He therefore has to make up the deficit by increasing his profit on the sale by means we have become familiar with. He can block the sale and buy the home himself for a pittance to sell on at a large profit. Better still, he can claim the home is too old/in too bad a state of repair to remain viable, and attempt to evict the owner from the site, ordering him to pay the site owner's costs of several thousand pounds to remove the old home from the site, leaving the pitch clear to receive a new home. This has happened to an 87 year old widower on our park who suffers from leukaemia. At the point of accepting a buyer for the new home the site owner is then permitted to introduce a new Written Statement and raise the pitch fee to a level of his choice. A nice little earner for the longer term.

Another major issue affecting park home dwelling over the whole spectrum of the industry is the lack of any perception by governments, lawmakers, law enforcers and the general public of what a park home actually is and how this lifestyle should be perceived; whether a legitimate, viable housing sector, or cranks, old buffers and misfits living on the fringe of real society, i.e.'trailer trash' mentality. A knowledgeable and much respected associate of ours of about four years' standing, in this very small rural community, last week referred to our park as a 'campsite'. This was not intended as a derogatory comment but was simply an expression of lack of familiarity with the concept of park home dwelling. Our profile in the national consciousness is extremely low and ways to raise it should be addressed as part of this campaign, to eliminate the inadequacies and discrimination contained in current legislation. The site licence leads the way with the disdainful title:

+++++ County Council  
Caravan Sites and Control of Development Act, 1960  
Residential Caravan Sites

Please note that the Caravan Sites and Control of Development Act is 51 years old.

We don't live in bricks and mortar dwellings; our houses are made of wood. They are good-looking, well constructed, secure and well insulated. The law considers park (mobile) homes to be chattels. i.e. private property that is moveable like a vehicle, as opposed to realty (real property or real estate) with permanent foundations. In the current climate of rising levels of park home site criminality by unscrupulous owners, it becomes very difficult for residents to make the wider community aware of what happens to them. Elderly, very often widowed, residents in poor health are ideal targets for criminality, and their fear of reprisals by the owner and even their neighbours, should they try to make themselves heard, is by no means misplaced, and renders them voiceless and powerless. This latter observation is explained by our own analysis of the fragmentation that occurs on a park such as ours, and which inhibits forward movement towards the resolution of problems by majority support from residents themselves, as follows:

Where a park owner has bad intentions in any degree, fear rules the park. Some residents get treated badly and live in fear of further problems if they try to stand up for themselves, while others on the same park are

problem free. They in turn fear action by those being badly treated in case it changes the status quo. The park owner fears being caught out in illegal exploits and takes steps, such as distancing and non-communication, to cover their tracks, resulting in the loss of open dialogue between the owner, the badly treated and the problem free. The owner now has his or her chief advantage established – divide and rule. And this park is divided.

This view is very lucidly and succinctly supported by A/DCI Mark Colquhoun of West Mercia Constabulary in his recently published Best Practice Guidance on 'Criminality Within the Park Home Industry' which it is hoped will become the basis of police education over the whole of the UK in the field of achieving a desirable level of law enforcement in this area.

A successful campaign by Consumer Focus Wales and their partners is essential in order to get to grips with the many facets of the face of indifference and apathy that is turned towards those who live with crime and casual disregard on sites run (read 'exploited') by unscrupulous owners. It would lay the foundations of empowerment and confidence in the industry as a whole, to eradicate criminality and establish park home dwelling as a lifestyle of choice which is a desirable and successful part of the housing landscape.

Consumer Focus Wales is currently achieving resourceful, meaningful results with striking efficiency and economy. Graham Watts of Park Home Legal Services Ltd. is, to the best of our knowledge, the only independent expert on park home legal matters. Mr Watts also has six years experience of assisting what was the Office of the Deputy Prime Minister, now the Department of Communities and Local Government, to produce new legislation which was never implemented.

A campaign spearheaded by Consumer Focus Wales, Graham Watts and Welsh MPs has many advantages for Wales itself and eventually the whole of the UK. Scotland and Northern Ireland have already produced successful models in some areas, which have been shared with other Consumer Focus colleagues across the UK. Small areas of the UK such as Wales, Scotland and Northern Ireland, with specific local attributes requiring embodiment in a national initiative, have already made good progress, and knowledge and expertise will be developed more easily in this environment than tackling the whole of the UK at once. Models produced in this way can then be rolled out across larger areas of the UK without losing the ability to promote inclusion and respect for all the different variations in culture of a diverse population.

For the purpose of securing a successful Welsh model, the Welsh language and those issues and opportunities particular to Welsh culture and economic drivers, must not be allowed to slip through the gaps, which would be the inevitable result of an England and Wales combined initiative. Consumer Focus Wales understands Welsh issues, and solutions already achieved for the citizens of Wales were the result of their understanding of the consumer and legislative landscape in Wales and their statutory powers. Only an organisation with sufficient resources in Wales could undertake the kind of influencing work necessary to result in urgently needed changes to the law in Wales.

Funding for the campaign would be greatly enhanced by the recovery by HMRC of illegal gains by rogue park owners, the use of which would help repair the widespread damage inflicted on this housing sector by these criminals. Consumers would feel encouraged to develop pride in responsibility for their own providence, and would be empowered by the satisfaction of seeing justice at least partly served on behalf of the thousands of park home residents whose lives have already been ruined by unscrupulous park owners, and those whose lives still await ruin by the same people.

Significant success has already been achieved in a very short time in this area in Wales with the minimum of fuss and expense, thanks to the integrity, professionalism and drive of Consumer Focus Wales. To invest further resources in the solid foundation of what has been gained so far is the way to demonstrate in the smaller geographical confines of Wales a tried and tested frame of reference to support development of a similar standard in larger areas of the UK. This would save much duplication of research and effort and thereby cut costs as well. It would also ensure that the Welsh language was protected.

If people with a problem were assured that they would be listened to, and their request acted upon, and they knew that protection against reprisals would automatically follow, more people would supply information readily/voluntarily and these situations would gather momentum until a confident exchange of information became second nature which would clarify, strengthen and simplify all aspects of problem solving.

It is felt that the funding and functions of Consumer Focus Wales should be given to a Welsh Minister. The Public Bodies Bill as drafted enables this to take place. However, this would limit the Welsh Government's choice as to which model would give the best consumer advocacy in Wales. The Public Bodies Bill should be amended to allow the Welsh Government the ability to form a new body and thus the opportunity to consult in Wales. This would not constitute an increase in devolution or a transfer of consumer policy, merely the delivery of consumer advocacy. It would also give the Welsh Government the opportunity to decide how a strategic advocacy and empowerment body can fit best with its new National Trading Standards Service in Wales.

An organisation based in Wales, sensitive and responsive to the issues and opportunities in Wales, able to forge partnerships with other organisations in Wales and beyond and to use these and its own resources to produce evidence-based work, should be the basic requirements of this organisation.

Possibly, there is an opportunity for the Government in Wales to consider their desire to achieve citizen-centred services by creating and part-funding an organisation capable of providing them with the insight, scrutiny and citizen-focused solutions that will help to develop effective public policy.

The organisation could be charged with providing citizen representation and advocacy across the board, not just in markets and areas funded by levies, but in all or any areas that affect people in Wales. With a broad remit, the organisation could remain flexible and responsive to new areas of work and responsibility as they were devolved or exercised by the Welsh Government.

We understand that this is a time of budgetary constraint but we suggest that with shared funding via levies and direct UK Government funding, allied to shared resources with other organisations and savings built in by the removal of the need to pragmatically recreate the function across multiple Welsh Government portfolios, this spend is minimised and practical.

We believe that a new statutory organisation in Wales could fulfil this role, could provide the flexibility necessary whilst still delivering on the remit dictated by UK Government, could provide the accountability required by both Governments, generate confidence in the way it accounts for public funds and utilises statutory powers, and, via its actions, create confidence in citizens that it was their champion. We see this as the best way of creating the independence and accountability in a Welsh context that will be necessary to deliver on behalf of the people of Wales.

It is difficult to envisage work of this nature being undertaken by a voluntary organisation such as Citizens' Advice whose role seems simply to be to direct those seeking advice to other agencies. To whom will Citizens' Advice successfully refer the victims of intimidation, harassment, violence, deception, fraud, theft and slander, a situation familiar to many park home residents? Also, Citizens' Advice lack the funds, especially in the short term, to widen their scope to this extent. Citizens' Advice's 2010-14 Strategy states that it will need cash injections of millions of pounds to implement its plans for the near future. Consumer Focus Wales is currently achieving resourceful, meaningful results with striking efficiency and economy, to combat the presently uninterrupted rise in the level of criminality in this housing sector. This stunning achievement must not be squandered by ill-conceived, random cost-cutting exercises.

Rachel & Tim Jebbett & John Purvin

## REA – Renewable Energy Association

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

27 September 2011

Dear David,

**Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement: Response from the Renewable Energy Association**

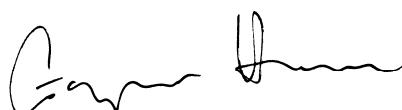
The Renewable Energy Association (REA) is the country's leading trade organisation representing renewable energy producers and suppliers across a wide range of electric and heating energy sources. The REA's main objective is to secure the best legislative and regulatory framework for expanding renewable energy production in the UK.

The REAL Assurance Scheme (REAL) is the consumer code for installers of small scale renewable energies and was set up by the REA. Its aim is to ensure that consumers wishing to install a small-scale heat or power generation unit for their homes have the necessary confidence and service standards so that they can make an informed choice. All members of the REA who provide products and services to domestic consumers must join the REAL Assurance Scheme. It is also open to companies who are not members of the Association.

With the advent of Feed-in Tariffs in 2010 and the anticipated extension of the Renewable Heat Incentive to domestic customers in 2012, renewable energy deployment in the UK has entered an important new phase – that of volume deployment to the domestic sector. The number of companies active in the sector is growing dramatically and, with that growth, the need for protection of the consumer has risen to the top of the agenda. We are acutely aware that the long-term success of the sector depends on setting and maintaining high standards of consumer protection, and ensuring that the emerging industry is properly regulated.

The REAL Consumer Code has benefitted hugely from operating under this very valuable model for co-regulation. I would like to strongly support the response to the consultation made by Virginia Graham, Chief Executive of REAL. It is essential that robust standards are maintained through the industry, with an effective body in place for approving Consumer Codes. It is also important that there is a smooth and effective transition to the new arrangements..

Yours sincerely



Gaynor Hartnell  
Chief Executive, REA

Cc Virginia Graham, Chief Executive, REAL Assurance

## REAL Assurance Scheme

**Response to**  
**BIS Consultation on institutional changes for**  
**the provision of consumer information, advice, education, advocacy and enforcement:**  
**'The Future Consumer Landscape'**

## **Executive Summary**

- CCAS is a valuable example of effective co-regulation across difference trade sectors
- It is essential that CCAS is replaced by an independent, objective, authoritative arrangement
- REAL operates in a sector that is key to Government environmental policy with a high potential for consumer detriment
- REAL's preferred option is the transfer of CCAS to the new Competition and Markets Authority
- REAL does not consider that BSI, in and of itself, is a suitable substitute for CCAS
- REAL can see some potential in closer working with a reformed Trading Standards service but this option needs further elaboration
- REAL does not support the transfer of CCAS to a commercial body
- Going forward Codes approval will be on a self-financing cost-recovery basis and will not represent any burden on public finances.

## **Introduction**

1. The Department for Business, Industry and Science (BIS) is considering the future of the Office of Fair Trading (OFT)'s Consumer Codes Approval Scheme (CCAS) as part of its proposed reforms to the Future Consumer Landscape, set out in its Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement published in June 2011. At the heart of this is the proposal to abolish the OFT and re-allocate its principal functions from 2013. This will make it necessary to find a new home for the CCAS from that date.

2. The REAL Assurance Scheme (REAL) welcomes the inclusion of a specific chapter in the Government's consultation covering the future arrangements for the CCAS. REAL is concerned that this very valuable model for co-regulation risks being lost completely. In our view it is essential that there is an effective body in place for approving Consumer Codes within the new arrangements from 2013 and that there is a smooth and effective transition to it.

## **Consumer empowerment as a driver of growth**

3. The OFT's current mission is 'to make markets work well for consumers'. REAL wholeheartedly supports this mission which the OFT pursues *inter alia* by<sup>1</sup>:

- encouraging businesses to comply with competition and consumer law and to improve their trading practices through self-regulation;
- acting decisively to stop hardcore or flagrant offenders;

---

<sup>1</sup> OFT website at [www.oft.gov.uk/about-the-oft/what/](http://www.oft.gov.uk/about-the-oft/what/)

- studying markets and recommending action where required; and
- empowering consumers with the knowledge and skills to make informed choices and get the best value from markets, and helping them resolve problems with suppliers through Consumer Direct.

4. This is precisely the ambition behind the Government's strategy to empower consumers to drive forward growth, entitled Better Choices: Better Deals. This strategy recognises the importance of well-informed, confident consumers who can make the right choices, and thereby promote honest and dynamic businesses to stimulate growth. In REAL's view, it is essential that the Consumer Codes are seen in this context: they are an excellent way for businesses in multiple sectors to promote themselves.

### **The co-regulation model**

5. The BIS website helps to clarify the public policy objectives behind industry codes through its exposition of the benefits and disbenefits of self-regulation and co-regulation, compared with statutory regulation. The benefits are identified as follows:

- they allow for rules to be developed that are specific and accurately tailored to the individual industry sector objectives and thus easier and cheaper for business to comply with;
- they allow for greater flexibility and responsiveness to legal and technological change;
- they result in a greater sense of ownership from business, and a greater willingness to comply with the rules;
- they allow for complex and subjective areas to be addressed where values and assumptions are widely shared;
- they help to improve the reputation of those subject to the regulation;
- they can be more responsive to consumer demand, informed by the complaints mechanism and other feedback;
- they allow for quicker and cheaper redress than do legal remedies.

### **Consumer Codes Approval Scheme**

6. The CCAS is based on the OFT's statutory objective under the Enterprise Act to approve and promote Consumer Codes that meet certain set criteria. Code sponsors must require their members to:

- have in place arrangements that underpin good standards of customer service, going beyond legal requirements
- have a commitment to provide customers with adequate and accurate information about goods and services
- use clear and fair contracts
- protect any prepayments made by consumers
- be subjected to effective compliance, monitoring and audit procedures

- agree to take part in independent, low-cost dispute resolution arrangements, where complaints have not been dealt with adequately.

*Setting and enforcing meaningful, sector-wide standards*

7. It is important to understand that the CCAS core criteria are more demanding and further-reaching than those that underpin any other consumer protection scheme, mark or code. This fact was acknowledged by the Department of Communities and Local Government in its consultation on Building Regulations Competent person self-certification schemes<sup>2</sup>. Therefore, members of CCAS-approved Codes are providing consumers with a higher level of consumer protection than members of or subscribers to any other scheme.

8. There are currently 10 CCAS Approved Codes and a further ten working towards full approval with one, the REAL Consumer Code, at a very advanced stage. The Codes have all been prepared with the active participation of the relevant trade associations in the relevant sectors. CCAS has thus encouraged industry self-regulation of a kind that is flexible and responsive to public needs but with objective and stringent enforcement on the part of the OFT. Indeed, having the OFT as a backstop has been an essential element in enabling Code sponsors to enforce compliance in their sectors – an excellent example of the co-regulation model working very effectively to deliver business-led solutions.

9. The Codes have provided significant and welcome advances in consumer protection at the instigation of the OFT and under their surveillance. Sectoral trade bodies have taken the lead in raising standards, improving consumer rights and enforcement compliance across whole sectors of the economy (worth over a billion pounds annually), and providing simple, effective redress for consumers.

10. The CCAS is distinctive compared with other quality marks (such as Trustmark, for example, which falls some way short of the CCAS standards) in that it works through the sectoral trade bodies rather than through direct assessment of individual traders. The relevant Codes are sponsored and drafted by those trade bodies, either directly or indirectly through a subsidiary body. Compliance with the Codes is a condition of continued membership of these trade bodies. They therefore provide a means of engaging individual sectors in ‘owning’ the objective of high consumer standards and the way in which these are delivered through effective compliance.

*Reducing consumer detriment*

11. The BIS Consultation cites a recent National Audit Office (NAO) study in its consultation<sup>3</sup>. This study estimated the annual cost of consumer detriment from unfair trading and sharp practices as £6.6 billion.

---

<sup>2</sup> Department of Communities and Local Government, 2010.

<sup>3</sup> NAO (2011) *Protecting consumers – the system for enforcing consumer law*  
[http://www.nao.org.uk/publications/1012/protecting\\_consumers.aspx](http://www.nao.org.uk/publications/1012/protecting_consumers.aspx)

In contrast the study estimated that the cost of consumer law enforcement in 2009/10 was £247 million, and that each £1 spent in consumer law enforcement reduced consumer detriment by £6.

12. Where approved Codes are in place, they have significantly reduced the burden on public sector enforcement by preventing consumer detriment. The impact assessment that accompanies the BIS Consultation has failed to take adequate account of this. The OFT has evaluated consumer experiences with Codes approved or on the point of being approved under the CCAS. They found evidence of increased consumer satisfaction, confidence and perception of value for money in respect of consumers of Code members compared with non-members in some sectors<sup>4</sup>.

#### *Going forward*

13. It is essential that, going forward, there is no diminution in the consumer protection standards required by CCAS. It is also essential that consumers are not confused by a. Without a strong and rigorous Code approval process there risks being a proliferation of code approval marks without any guarantee that the codes concerned are fit for purpose or that there are effective mechanisms in place to ensure compliance with them. Under this scenario consumers will be faced with a bewildering array of marks and badges the significance of which is either unknown or unclear to them.

14. Any new arrangements will not involve a burden on public finances. REAL accepts that it will not be possible in future to rely on public funds for Code approval, and looks forward to working constructively to develop the self-financing, cost recovery model. With this arrangement there may well be scope to streamline the process so that approval can be secured more rapidly and efficiently and the costs reduced.

#### **The REAL Assurance Scheme Consumer Code**

15. Renewable Energy Assurance Ltd, a subsidiary of the Renewable Energy Association (REA), runs the REAL Consumer Code which operates under the CCAS. Full details about the Scheme can be found on the website: [www.realassurance.org.uk](http://www.realassurance.org.uk) The Code was launched in early 2006, and achieved ‘part one’ OFT approval in November 2007. It is anticipated that the Code will achieve ‘part two’ or full OFT approval before the end of 2011.

16. The main barrier to full approval has been the challenge of ensuring full compliance among the membership the size of which has grown very rapidly since the announcement of the Government’s Feed-in Tariff incentive scheme for small-scale renewable electricity generators in February 2010. Membership of an OFT-approved Consumer Code is a condition of the Government’s Microgeneration Certification Scheme (MCS) which certifies products and installers of small-scale renewable energy

---

<sup>4</sup> Office of Fair Trading (June 2010) *Consumer Codes Approval Scheme: Evaluating consumer experiences*, a report by IFF Research.

generators on the basis of which consumers can benefit from the Government's financial incentive scheme.

17. REAL currently has over 4,000 members. Over 3,000 of these are active in the solar PV sector that is currently turning over some £700 million per annum and accounts for some 10,000 employees in the UK. The small-scale renewable energy sector is an essential element in the Government's drive to reduce UK carbon emissions and switch away from its dependence on fossil fuels.

18. The potential for consumer detriment in the sector is very large since the average cost of a system is around £12,000 and consumers are in general very unfamiliar with how the technologies work. Unscrupulous traders can engage in a range of practices from exaggerating the performance and financial benefits of renewable systems to charging excessive prices and then offering generous discounts for signing up on the day, failing to tell consumers about their right to cancel and refusing to refund deposits and advance payments.

19. The REAL Assurance Scheme Consumer Code outlaws all these practices (some of which are in any event unlawful). We provide model documents and guidance to assist our members to comply with the Code and thereby offer consumers a high level of consumer protection. These include a model contract, quotation, workmanship warranty and cancellation form as well as guidance on presenting performance estimates and frequently-asked questions on protection deposits and advance payments. We have also developed training in consumer protection legislation for our members. We enforce compliance with the Code by carrying out random and risk-based audits of around a quarter of its members each year, by carrying out mystery shopping and by measuring consumer satisfaction.

20. In line with the CCAS core criteria, the Scheme requires its members to protect all deposits, advance payments and workmanship warranties. We work to resolve complaints to the satisfaction of both parties. In the event that we do not succeed, we provide a free conciliation and mediation service for members and consumers as well as access to a low cost arbitration scheme which avoids having to go to court.

21. The Scheme also works closely with the Government, MCS and industry to improve standards in the sector. As a result of joint working, revised standards have recently been approved for heat pumps and solar PV. This has provided a valuable contribution to consumer protection standards in this sector.

## **Consultation questions**

**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?**

REAL's preferred option would be a direct transfer of the existing OFT arrangements to the new **Competition and Markets Authority (CMA)**. It would take on much of the OFT's existing work,

especially its market surveillance. Given that the Codes will be self-funding, and that the secretariat within the OFT is modest, this seems the most straightforward option that will guarantee continuity and maintain high standards of consumer protection.

The main advantages that we see with this option are that:

- it links Code approval to a respected public authority, independent of Government
- it is independent and free of commercial bias
- it reinforces the link between Codes and competition policy
- it allows building up of links with sectoral regulators and enforcement bodies
- the shift of institution would allow streamlining of policy and processes generally
- it could be done on a cost recovery basis without difficulty.

REAL urges the Government to consider this option very seriously. Although the CMA is not being set up as a consumer protection or enforcement body, it will have an interest in identifying problem markets, and will have a direct concern in relation to the potential pro- or anti-competitive impacts that Codes may have. It will also have a link with enforcement bodies and with sectoral regulators. Given the relatively modest size of the CCAS the CMA could easily absorb it without a disruption to its other functions or mission.

REAL considers that the fit with the future CMA is reasonably close. The Authority's clout would continue to encourage respect for the Codes and thereby continue to facilitate and incentivise compliance with them on the part of members. Transfer of the CCAS to the CMS would allow the progress that has been made so far with Code approvals to be retained and developed, in a way that builds on the strengths of the present system. The implementation of the new cost-recovery model would, however, call for greater accountability in the CMA's use of resources than was possible under the OFT system, together with a degree of streamlining and simplification.

**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?**

BIS has suggested that dismantling the CCAS would leave space for market-based and third sector organisations to fill the gap. It suggests that these organisations could come from a range of sources including private sector consultancies, charities, local authorities and membership-based bodies such as Which? Under this scenario, the Government would not play any part in designating approval bodies, or in vetting their suitability, leaving it entirely to the market to decide.

REAL is fundamentally opposed to this approach. We consider that, without a strong, independent, objective and rigorous Code approval process, consumers will be faced with a

bewildering array of marks and badges the significance of which, if anything, is unclear to them. The BIS website makes the following statement in this respect<sup>5</sup>:

*'having too many codes can make it difficult for businesses and consumers to find out about their rights and obligations'.*

For this reason REAL considers it essential that, going forward, consumers are not confused by a proliferation of code approval marks without any guarantee that the codes concerned are fit for purpose or that there are effective mechanisms in place to monitor compliance with them.

REAL has serious reservations about this option. We consider the risks to be enormous and potentially deeply damaging to the existing Codes. It would jeopardize both the progress made in the sectors concerned and the prospects of future gains through Codes being established in new sectors. Lack of clear standards for small-scale renewable generation risks destroying the market and many jobs associated. We have seen this happen in other countries already, for example in France with heat pumps. Government Ministers would ultimately get the blame for an erosion of these standards since they link directly to their incentive schemes. There has recently been media interest from programmes such as Watchdog and You and Yours who have investigated those elements of the sector that fall outside the co-regulation net.

The main disadvantages we see from this option are:

- it is high risk as there is no guarantee that any bodies will come forward; voluntary bodies in particular are likely to be resource-constrained going forward
- purely commercial approaches to code approval would invite a 'levelling down' of consumer protection in favour of low-cost schemes with eye-catching logos but little substance behind them and little or no commitment to enforcing compliance
- it is impossible to ensure genuine independence from the interests of individual sectors or from individual firms' interests
- it places great pressure on current schemes that deliver effectively for consumers but with significant financial and opportunity cost
- alternative approaches would be needed where adherence to an approved Code is a requirement to trade e.g. Estate Agents and small-scale renewable generation.

In our view, one possible consequence of this would be for existing Codes simply to attempt to go it alone, outside any formal approval mechanism, with a risk that over time it would get progressively more difficult for any Code sponsor to secure compliance with no body overseeing the Code. Another possible consequence of this would be for Code approvals to be continued by commercial bodies in a way that meets one form of market test: the demand from firms for consumer-friendly endorsements that will help sales, and the desire of commercial Code bodies

---

<sup>5</sup> Source BIS website at [www.bis.gov.uk/policies/better-regulation](http://www.bis.gov.uk/policies/better-regulation)

to make money from this; but not the other form of market test: the demand from consumers for accurate, fair and not misleading information about the goods and services they are buying. Over time, poor reputation would drive some approval marks out of business, but not before significant damage had been done.

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

REAL considers the following to be the salient lessons learned from the operation of the CCAS to date:

- CCAS-approved Codes have allowed **trade bodies to lead rather than follow the market**, aiming for best practices rather than lowest common denominators. The objective of gaining third-party Government approval has provided an important incentive for trade bodies to set the pace and ensure that internal divisions are overcome.
- Third-party Government approval has been crucially important in **securing the compliance of all trade body members** with the agreed standards.
- Code members know that failure to comply can lead not only to the risk of having to compensate consumers but also to having to leave the Code and the trade body, and lose all its benefits.
- The CCAS has visibly **linked Code compliance with the activities of a nationally-recognised enforcement body**. The OFT is widely respected in most of the sectors it deals with, and feared by some, especially those who have had to sign undertakings or been subject to other sanctions in the past. This in turn has given natural authority to Code Sponsors in dealing with their respective sectors.
- The CCAS has provided a **neutral and independent process that treats all businesses equally**.
- The CCAS core requirements have been **applied with rigour and fairness** across all sectors: the approval process has been very strict. This has been in some contrast to other schemes where pressure to maximise membership can be the overriding consideration.
- OFT staff involved in CCAS approval have been **very helpful in providing access to the relevant areas of expertise within the OFT**. For example, OFT lawyers have assisted REAL in preparing a suite of robust model documents (contract, quotation, warranty, cancellation notice &c.) that members can use, and in practice most do. OFT lawyers have also assisted REAL with answering detailed queries about individual terms and conditions arising from the compliance checking, auditing non-compliance processes. OFT statisticians have also assisted REAL with the analysis contained within our regular reports to the OFT.

In addition REAL would make the following observations regarding the operation of the CCAS:

- The voluntary nature of self-regulation is clearly a problem, especially in sectors that are prone to attract ‘rogue’ businesses. Code approval can help significantly here by strengthening the attractions of trade body membership where traders have an option; furthermore, there are circumstances where sector-specific regulatory or standards requirements can lay down that membership of an approved Code is essential for any firm to be able to conduct business – as with the examples of estate agents and renewable energy installers. Without a clear approval mechanism, however, it is very difficult for such requirements to be made effective.
- An effective and credible approval mechanism can prevent Codes from becoming anti-competitive, by ensuring that individual Code provisions are proportionate, properly grounded in consumer protection legislation and that they do not create unreasonable barriers to entry.
- Approval processes can (and do) stipulate that there are effective compliance mechanisms in place, and that there are independently audited systems for monitoring their effectiveness.
- Undue proliferation of Codes in a sector is always a theoretical possibility, but is rendered less likely if there is sufficient momentum behind a given Code as a result of the approval process.
- Approval can and should be withheld if there is insufficient resource behind a given Code.

REAL considers that core criteria for Approved Codes going forward must include:

- a strong and effective trade body commanding respect and support across at least a reasonable proportion of the relevant market sector
- clear commitment on the part of the trade body to identify consumer detriment and drive change
- high standards of information for consumers about goods and services on offer, and about their performance
- clear and unambiguous rights for consumers, where appropriate elaborating or going beyond basic legal requirements
- the ability to identify non-compliance, through monitoring, audit, market intelligence and consumer complaints
- the ability to secure compliance through negotiation, persuasion and effective sanctions where necessary
- in extreme cases, willingness to take decisive action to stamp out rogue behaviour – even if this means courting unpopularity with non-compliant firms
- independent, user-friendly complaint schemes including low-cost dispute resolution procedures, where complaints cannot be resolved at the first stage.

REAL offers some further observations about any new arrangements that are put in place:

- success will depend heavily on level of enthusiasm in host organisation
- any new arrangements will require some initial work and ongoing oversight by Government to ensure new arrangements fit for purpose
- some transitional costs will be incurred by the host organisation
- some host bodies would need to develop new but related brands to cover CCAS Codes alongside any existing marks.

**9. What is your view on transposing CCAS-approved Codes into standards and related documents such as those published by British Standards Institution (BSI)?**

BSI has an established relationship with Government, notably with BIS but also with many other departments. It has a strong track record as a promoter of innovation, not just in relation to technical product standards but also in relation to areas such as social responsibility. In this respect, REAL considers that codifying the CCAS-approved Codes as PAS documents is a proposal that merits consideration. This is the route that the Green Deal is going down.

Nonetheless, REAL considers that this option would not resolve the key requirement for a body with significant consumer protection and legislative credentials to oversee and enforce the Codes. We question whether the BSI would be sufficiently flexible and entrepreneurial in running a CCAS-type scheme, and whether there is a risk of costs rising as a consequence of its very thorough, but at times bureaucratic, approach.

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

British Standards Institution (BSI) is the owner of perhaps the best-known quality mark of all time – the Kitemark™. Although mainly used for products, the mark does extend to some services, such as installation of windows, garage repairs and removals. BSI as a whole has increasing involvement in the services sector. BSI has also been at the heart of debates over the future of quality marks and the need for a more joined-up approach across sectors, including policing and enforcement, as a means of reducing consumer confusion and maintaining the value of marks with genuine value behind them.

It is not clear how extending the Kitemark™ to a scheme such as CCAS would work, given CCAS' reliance on trade bodies as intermediaries in specific sectors. Kitemark™ standards may also be too strict and too expensive for schemes such as CCAS – with the risk that even fewer would pass through the approval process than is the case at present. There could also be confusion for consumers who are members of those Codes that currently dovetail with product or service certification standards, as is the case with the REAL Assurance Scheme and the Microgeneration

Certification Scheme (MCS), a certification scheme for products and installers based on EN standards accredited by the UK Accreditation Service (UKAS).

It may be possible to devise a mark that uses the BSI's brand at reasonable cost in a way that commands recognition amongst consumers and confidence amongst businesses, without affecting the Kitemark™ brand. However, REAL is not convinced that BSI would provide the knowledge, expertise and commitment to driving forward consumer protection standards necessary in an effective Codes approval body.

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

REAL can see some potential in the option of transferring the CCAS to a restructured Trading Standards service. There would be some significant advantages – notably the continued link with enforcement, which is one of the key strengths of the OFT scheme, and the reputation and role of Trading Standards in the public eye.

However, this proposal will require very considerable additional elaboration if we are to understand how the arrangement could work in practice. REAL has particular concerns about consistency between different Trading Standards departments, and the availability to them of sufficient resources to enforce consumer protection standards effectively. Given that they are funded and administered by local authorities, they are by definition diverse and set up to respond to local rather than national needs.

REAL is aware that BIS is consulting on establishing a Trading Standards Policy Board (TSPB) to lead the prioritization and co-ordination of national, regional and cross local authority boundary consumer enforcement work. We are aware that BIS is also consulting on supplementing the Primary or Home Authority principle with expanded regional teams supported by a small number of lead regions and / or authorities with specialist areas of expertise. Further, it is consulting on ring-fencing funds required for enforcement against national and cross-boundary threats. REAL considers these proposals to be interesting and worthy of further investigation. However, without knowing what the outcome of the consultation process will be, we are not able to form a view as to how effective the Trading Standards service could be at providing a CCAS-type scheme nationally.

As they are currently set up, individual Trading Standards departments are highly unlikely to have sufficient resource for this kind of function, although they are increasingly working together as consortia, along the lines BIS is proposing. REAL supports a greater level of leadership and co-ordination in the Trading Standards service; and the creation of a centrally-resourced agency working closely with the CMA, for example through a Board with joint representation.

It is true that many local authorities, often working together, already run 'assured trader' schemes designed to give consumers a reliable way to find trusted local businesses. The companies concerned agree to maintain certain standards, and in exchange get support and promotion from the local authorities concerned. The OFT has also set up a national network to ensure greater consistency to local schemes, and to promote the value of such schemes to consumers and businesses. This is welcome in as far as it goes.

## Reference Line

David Evans  
Consumer and Competition Policy Directorate  
3<sup>rd</sup> Floor  
1 Victoria Street  
LONDON  
SW1H 0ET

27 September 2011

Dear Mr Evans

**EMPOWERING AND PROTECTING CONSUMERS - CONSUMER CODE APPROVALS  
REFERENCeline RESPONSE**

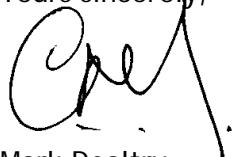
Referenceline's independent service publishes traders' Track Records - often hundreds of reviews compiled over several years - helping consumers make a more informed choice when they are looking for a reputable business. Our website offers simple tools to help consumers set their individual preferences for distance, rating, budget and so on, helping them to select the right business for their needs.

Referenceline is a corporate affiliate member of the Trading Standards Institute and an approved member of the Buy with Confidence scheme. We operate 6 good trader schemes in partnership with Local Authority Trading Standards, providing a consistent website and feedback system, including 4 under the Trusted Trader brand.

We support the Property Ombudsman and the British Association of Removers, helping them to monitor Customer Satisfaction and Code Compliance for their members and providing independent reports to the OFT as required for Stage 2 of the Consumer Codes Approval Scheme.

Referenceline was given the highest rating of all the schemes examined by the National Consumer Council (now Consumer Focus) in their detailed Trading Information report, prepared for the DTI in 2002. We commend this report to those conducting the current review as we believe that its detailed research and recommendations remain substantially valid today.

Yours sincerely,



Mark Dealytry,  
Managing Director

*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?*

**Scheme Operator**

The NCC's Trading Information report concluded that consumers want a single source of advice about businesses, delivered by an authoritative provider. The OFT is clearly authoritative as a body, but has proved less successful in operating the Consumer Code Approval Scheme (CCAS).

If the CCAS is no longer to be operated by the OFT, a co-regulated service is the right way forward, operated by independent, non-profit company following existing models adopted by BIS:

- BSI is a private company, recognised as the body for Standards.
- UKAS is a private company, similarly recognised for Accreditation.

*"Government established UKAS as a private company in part to bring private sector discipline, skills and expertise, as well as commercial nous, to the delivery of accreditation in the United Kingdom."*

Source: BIS response to comments on SI and MoU appointing UKAS as the National Accreditation Body. (November 2009)

**RECOMMENDATION**

We recommend that there should be a private company (perhaps "Approved Codes") run along similar lines to UKAS under a Memorandum of Understanding with BIS.

**OFT Logo**

Existing Code sponsors and their members have a huge investment in the existing OFT logo and are understandably concerned about the potential loss of such an authoritative symbol.

The agreement between BIS and UKAS sets a precedent for licensing a logo to sponsors and members.

*"BIS has licensed UKAS to use the national accreditation logo and national accreditation symbols featuring the Royal Crown, and to sublicense the use of the national accreditation symbols to UKAS accredited organisations."*

Source: National Accreditation Logo and Symbols. Conditions for Use by UKAS and UKAS Accredited Organisations. (July 2009)

**RECOMMENDATION**

Approved Codes should license the use of the OFT CCAS logo, at least for a transitional period until the future of the scheme is clearer and perhaps recognition of the OFT name has declined following its demise.



*Q7. 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 already offer many different schemes. The NCC's report urged Government to lead cooperation between these schemes:

The NCC report listed the following contributors to a coordinated service:

- BIS / DTI
- OFT CCAS
- Trading Standards
- Registry Trust
- Health & Safety Executive
- Advertising Standards Authority
- Approved Trader schemes
- Code Sponsors
- Referenceline

We would also add:

- British Standards Institution
- UKAS

*"Our research has uncovered numerous good and well-intentioned schemes, which now need to be rationalised and joined-up.*

*Individual initiatives could achieve more by combining their resources than by working alone. In fact, having too many schemes may be counter-productive. Faced with an ever-proliferating range of logos promising peace of mind, consumers will find it difficult to distinguish meaning between individual schemes.*

*It is frustrating for the consumer to know that the information they need to choose competent and reliable traders is available but not accessible to them.*

*We ask information providers, business, information intermediaries and other stakeholders, led by government, to work together to deliver the right solution for consumers."*

Source: National Consumer Council Trading Information Report. October 2002.

#### RECOMMENDATION

Referenceline believes that the NCC's observations remain as valid today as they were almost 10 years ago. We don't need more schemes, we need more cooperation between those that are meaningful. This won't happen without the "nudge" from Government.

We suggest:

1. BIS should set up the process of cooperation
2. BSI may suggest an approach for minimum standards
3. UKAS may suggest a process for accreditation
4. Sponsors and businesses must ensure that the result is low cost and effective.



*Q8. What are the lessons learned from the operation of CCAS which may help in establishing or revising voluntary schemes in the future?*

**Website**

The scheme suffers from the lack of a dedicated website. It is not even clear which page within the OFT website is the "home page". The closest we could find is:  
<http://www.oft.gov.uk/consumer-advice/approved-codes-explained/>.

**RECOMMENDATION**

The scheme needs a dedicated website and domain, e.g. [www.approvedcodes.com](http://www.approvedcodes.com). We have taken the precaution of reserving this domain name and will be pleased to contribute it to any future service if the idea is adopted.

**Logo**

The current logo suffers from two major shortcomings.

1. It is not clear that the OFT CCAS logo represents accreditation / endorsement of the Sponsor's Code. The two logos are often not even shown side by side on business websites. The UKAS logo treatment does this better.
2. There is no reference to a scheme website, so consumers are not prompted to find out more.

**RECOMMENDATION**

The standard logo treatment for the existing OFT CCAS should be revised as soon as possible along the lines of the "initial revision" shown.

There is no need for any expensive web development. The new domain can simply be pointed at the current OFT website, helping consumers to find out more about the scheme.

It may take some time to decide on the future of the scheme, including any alternate branding to take the place of the OFT, but by then there will already be some awareness of the new domain and any new branding can be applied in due course. A redeveloped website can then follow.

OFT logo treatment



UKAS logo treatment



Initial Revision



Potential Migration



## Consistency

Individual Sponsors are held to very different requirements.

Some Sponsors are required to carry out regular inspections/audits, others are not.

Some sponsors are required to monitor customer satisfaction continuously, others conduct member surveys on average every 5 or 10 years.

### Inspections

- Annually
- Never

### Customer feedback

- Continuous
- Surveys (every 5 or 10 years)

## RECOMMENDATION

Different considerations will apply to different industries, but there needs to be greater consistency in the basic principles applied.

## Business Codes

The OFT scheme targets businesses dealing with consumers, but businesses can face the same difficulties when selecting a supplier.

Referenceline is pleased to work with the British Compressed Air Society, who operate a Code of Practice and have recently established the AirSafe Register. They have expressed their interest in any extension of CCAS to include B to B activities.

We also work with Norfolk and Suffolk Trading Standards to expand their local Trusted Trader scheme for consumers to a Trusted Business scheme for business.

The Property Ombudsman supports Commercial, as well as Residential activities. The present CCAS structure would exclude the Commercial activities, which seems an artificial restriction.



## RECOMMENDATION

The demand for a BtoB Code scheme clearly exists. The word "Consumer" should be dropped from the scheme name and Sponsors of B to B Codes should be invited to apply.



## Communication: Social vs Authority

Both consumers and businesses place enormous value on word of mouth and there is an increasing lack of respect and trust for "authority". (Source: OFT Research - Four)

The scheme must be based on rigorous internal processes, but needs to find simple and powerful ways to reach out to consumers.

Modern techniques like 3D wordclouds, which can be displayed on businesses own websites, can help to attract attention to the scheme and communicate its values.

The examples shown here summarise the words most often used by customers when describing a member of the Property Ombudsman and the British Association of Removers



## RECOMMENDATION

The scheme needs to find modern ways to communicate, while still retaining the "gravitas" appropriate to a national scheme.



## Setting Expectations - Transparency and Independence

Consumers are unimpressed by traditional authoritarian promises "all of our businesses adhere to our code of practice..." and are much more likely to trust the transparent reporting of social media results "97% of customers would recommend a BAR member" provided that this information comes from an independent and trusted source.

Referenceline's experience over 10 years, with various Sponsors and Trading Standards schemes shows unsurprisingly:

- 80% of members cooperate promptly
- 10% need a reminder
- 10% have to be chased



As might be expected, members who cooperate with their Sponsor show higher levels of:

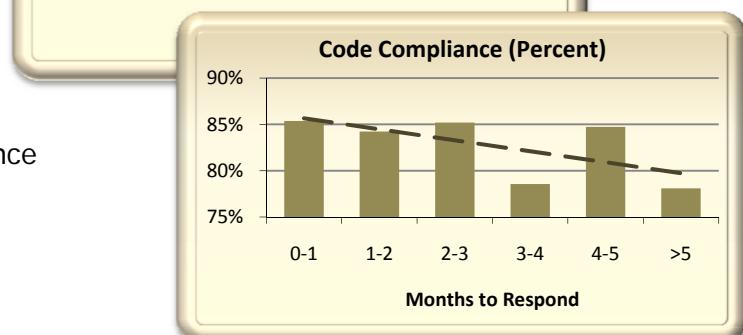
Customer Loyalty



Customer Satisfaction



Code Compliance



## RECOMMENDATION

The scheme should publish independent annual reports which give consumers and regulators a proper understanding of the strengths and weaknesses of the scheme. This will not only help to set reasonable expectations "Nobody's Perfect", but will also help consumers understand just how hard the sponsors have to work to ensure that high standards are indeed maintained.



## Scheme Growth

The Approved Codes scheme can only be a success if it grows substantially. Many Trade Associations have considered it in the past and decided not to go ahead.

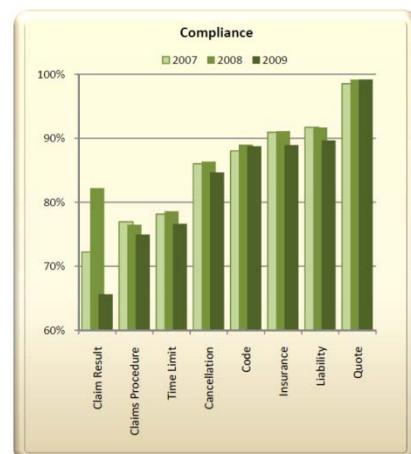
If the scheme is to be relaunched, these Associations will want to know what has changed and the existing Code Sponsors can help by helping to promote the benefits they have experienced:

Codes with high Satisfaction levels create a virtuous circle which can attract new members with similar high standards.



Source: 35,000 consumer responses for TPO 2004-2011

Compliance is harder to achieve in some areas (+/70%) than others (+/-90%). This helps identify issue which the industry as a whole may need to address, rather than failings on the part of any individual member.



Source: 20,000 consumer responses for the BAR 2006 - 2011

Member businesses can help get the message across that Approved Codes really work:

*"At long last we can prove to our customers why they should choose a BAR company. What better way of attracting new business can there be than being able to show the public glowing endorsements of previous customers? All members now have the opportunity to help BAR promote the Association as being one of quality!"*

Source: BAR member



## Local Authority Trading Standards Schemes

One area for growth and greater consistency is to find a way to work with the many local authority schemes, including those under the LAATSN umbrella.

Referenceline is a member of Buy with Confidence and we support 6 other Local Trading Standards schemes, shown below.

Our systems offer a consistent approach and user experience, not only across the Trading Standards schemes, but also with the Property Ombudsman and British Association of Removers CCAS Codes.

*"Empowering consumers to make informed choices when buying goods and services is a common aim across national and local governments. So there are several schemes designed to help consumers. The schemes all aim to drive up business standards and boost customer confidence."*

Source: OFT Website

The brands present a bewildering array of logos involving ticks, shaking hands and so on:



## RECOMMENDATION

These schemes should have more than a common aim ... They should at least find ways to complement, recognise and support one another and preferably join up.



*Q9. What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?*

It is vital that the scheme should grow, encompassing a much larger number of Sponsors and industries. It is important that this does not lead to any dilution of the quality of the scheme and it may be that Standards are one way to ensure consistency.

However:

- a). Most Codes are very detailed and industry specific. There is little value in simply transcribing the entire existing code into a new document and a simple summary of the general principles may not be very helpful either.
- b). In our research for this consultation, we discovered that we had to pay £80 simply to download the pdf of a standard from the BSI website, whereas existing Codes are freely available on Code Sponsors' websites.

**RECOMMENDATION**

Standards may be appropriate to ensure consistency in a growing scheme, but we would need to see a more detailed explanation of how this might work and the standards should be available free of charge to consumers.

*Q10. What characteristics would a Kitemark based code certification process need to have to meet industry requirements?*

Kitemark is a Superbrand and for that reason appears to be an attractive way to keep or increase consumer awareness if the OFT name is dropped. The brand is most associated with products, rather than services, but the connection with Standards is clear. Nevertheless, there is a perception that this is associated with high costs.

**RECOMMENDATION**

BSI should provide more information on how Kitemark might be expanded to cover CCAS and some indication of likely costs.

*Q11. What is your view on extending the Primary Authority concept to code certification?*

Referenceline is pleased to work with a number of Local Authority Trading Standards schemes across the country, operating "Trusted Trader" and other schemes.

In our experience, the staffing levels, budgets and priorities are very much dictated locally, so consistency could be a major issue. Add to this the enormous financial pressures to reduce staff and budgets and it does not seem reasonable to ask these often small local teams to take on more responsibility without additional funding, especially if a small local authority happens to be home to a large Code Sponsor.

**RECOMMENDATION**

The scheme most definitely needs an excellent working relationship with TSI and with Local Authorities, but a realistic assessment of resources and funding would be needed before commenting any further.



## Rhondda Council



Tel/Ffôn: 01443 425777, Fax/Ffacs: 01443 425301

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 comment on the BIS consultation paper.

We broadly support the responses made by Wales Heads of Trading Standards and the Association of Chief Trading Standards Officers.

The following answers to the consultation questions reflect Rhondda Cynon Taf's specific perspective.

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

We welcome the new access to CAB consumer data to improve intelligence to inform targeting of consumer education, enforcement and consumer advocacy. We acknowledge the CAB's advice giving expertise. Their proposals to provide information online in a variety of ways and to provide a variety of other channels for consumers to access advice remotely, face to face or by phone are promising. We hope that CAB will give proper weight to this new function and also be adequately resourced by central government to deliver it.

**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. We also hope that they will make full use of our existing second tier advice service provided by our Trading Standards service and are encouraged by Fran Targets' assurance that they will do that in Wales where the appropriate local service exists.

**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. Selection of topics based on priorities identified through analysis of consumer contact with TS, CD, OFT, BIS, CAB etc would ensure that we respond rationally to identified consumer needs. Central production of campaign materials will ensure consistency of message and will avoid duplication of effort locally. This message can then be delivered locally.

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

Yes. TS services are well placed to deliver advice and education to businesses and we do that routinely during our inspections. We also have web-based facilities *viz* TS Broadcast and a link to ERWIN. WHOTS have also provided specific advice to Welsh businesses through leaflets and electronic guidance available through LA and WHOTS website.

**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?**

Voluntary codes are worthless unless they are properly audited and that appropriate sanctions are given consistently by the organisation in the event of non-compliance. This could be achieved through Trade Associations vetting and accrediting members but there is a need for independent scrutiny.

**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 do not think that the private and voluntary sectors will see this as a priority unless there are external drivers. It will be a challenge for the Trading Standards Service in Rhondda Cynon Taf CBC to lead on this with reducing budgets and conflicting demands on our time. We will not consider doing this unless we are asked to do it by other stakeholders. Even then, it may not be a priority for us.

**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 experience of this and so cannot comment.

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

That could be done but BSI processes are also complex and so the anticipated low take up rate by the trades may not provide the solution the government is hoping for.

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

Best to ask Industry.

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

It could in theory be done via a Primary Authority partnership (if this proposal is brought into scope of the existing legislation) but it would impose a big burden on the LA (although this could be charged for). It should be noted that the Primary Authority scheme has not been favoured by any businesses in Wales to date. We are not confident that this option would be supported by Welsh businesses. A single national body should ensure consistency between these codes for different trades.

**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. But there should be a specific advocacy function for Wales.

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

Yes.

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

Yes.

**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?**

Have a properly resourced advocate, like CAB, in Wales.

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

We have no strong views on this as it does not directly affect our service.

**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?**

Some redress schemes work better than others. Extension throughout all sectors may prove problematic and lead to inconsistency unless carefully managed.

**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?**

This is a question for Northern Ireland to answer.

**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?**

This is a question for Northern Ireland to answer.

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

Option 3. The proposals for greater collaboration in Wales are designed to deal with the inconsistency of standards achieved between LAs Trading Standards Services. The LACORS Good Practice Guides can be used to benchmark our processes.

**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, we agree with the proposed principles behind the TSPB but we would like the WLGA to be represented on it.

The proposed structure will only provide effective enforcement if LAs take up the challenge to act as lead authorities for the UK. This will be daunting for many LAs and must be facilitated and supported with financial, staff and technical resources. An indemnity fund is absolutely necessary to facilitate enforcement action by any individual LA acting in the national interest. Without it, the risk will be so great that few LAs will be willing to take bring prosecutions against big businesses in which case there will be no effective deterrent.

In Wales, the smaller LAs may not have capacity to contribute by taking on UK wide responsibility although they may feel more comfortable acting to deal with issues in Wales with support from WHOTS. We will have greater capacity to contribute when the collaborative arrangements proposed by the Welsh Government will effectively provide 6 large regional regulatory services authorities in Wales rather than the existing 22 smaller ones. However, there is a risk that these arrangements will not be in place early enough to enable the new collaborative services to bid for the functions that must be handed down from central government. With continuing cuts there is a risk that we will not have the manpower to take on these new functions. We would need to bid for the available funding (long term) in order to employ the staff (perhaps seeded by displaced OFT staff with relevant expertise) on long term contracts to ensure security of the service and jobs. The size of these new teams will be dictated by the resource provided by central government. Training will be required. We are also mindful that there may be special requirements for Wales arising from separation between Westminster and the devolved Welsh administration.

To avoid loss of coverage and service to the consumer LA's will need to lead on each of the areas that will be lost from the OFT. If funding is not available to cover all of these, decisions will need to be made to determine priority areas and the level of activity devoted to them. The TSPB would be best placed to make those decisions.

**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?**

No, we prefer Option 3.

**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?**

We prefer Option 3.

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

The LBRO's Business Reference Panel and Regulators Forum could provide one channel for engagement with the TSPB.

**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 questions.

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

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, a top sliced resource held back for use on projects agreed by all partners would be helpful. It is difficult to say how much this fund should be. That would depend on the overall funding available for the whole service. Funding could be allocated to lead partners for delivery of agreed projects.

**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 Trading Standards enforcement is credible in Rhondda Cynon Taff because the service is well managed and well resourced. I accept that this is not the case in all local authorities. The collaborative agenda in Wales is intended to provide a more consistent service across Wales for local issues. The credibility of Local Authorities dealing with issues of national or regional importance will clearly depend on the quality of the co-ordinating mechanisms and the resource put into it by central government. We will do the best we can with the resource provided but expectations

must be realistic. The huge expected reduction in the national resource (previously available to and through central government departments) is bound to have a negative impact. This funding gap cannot (and will not) be made up by local authorities and can only result in a lesser overall service.

**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. That would be a good option for us, if TSI can accommodate that.

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

We have doubts about this. The TSI is an organisation that represents its individual Members and provides a professional voice. However, it neither always reflect the views of all its Members nor of the LAs that employ the majority of them. Indeed, professional bodies often express views that are diametrically opposed to central and local government policy. We believe that international policy decisions and liaison should be in the realm of central government not a professional body (although the TSI should be consulted).

**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?**

In essence this was just a bureaucratic requirement with little benefit, so there is no need for the requirement to continue.

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

Yes.

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

Yes

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

Yes.

**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, but the principles set out in our answer to 32 above apply

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

Yes.

## RMI – National Franchised Dealers Association



National Franchised Dealers Association

201 Great Portland Street

London

W1W 5AB

Tel: 020 7580 9122

Fax: 020 7580 6376

David Evans  
Consumer and Competition Policy Directorate  
Department for Business, Innovation and Skills  
3<sup>rd</sup> Floor  
1 Victoria Street  
London  
SW1H 0ET

*By Email*

[david.a.evans@bis.gsi.gov.uk](mailto:david.a.evans@bis.gsi.gov.uk)

27 September 2011

Dear Mr Evans,

### **Empowering and Protecting Consumers: Consultation Response**

The National Franchised Dealers Association (NFDA) welcomes the opportunity to comment on the BIS consultation 'Empowering and Protecting Consumers' (the **Consultation**).

The NFDA has, for many years, been pro-active in championing consumer welfare, which is aligned to the welfare of its members (whether in terms of greater commercial independence, more transparency in dealings, improved choice, better quality services or lower prices).

### **About the NFDA**

The NFDA is part of the UK's Retail Motor Industry Federation. The NFDA represents the interests of franchised motor vehicle dealers and authorised repairers operating in the UK motor retail sector.

The motor retail sector is one of the most important business sectors in the UK. NFDA research suggests that the annual turnover of the motor retail sector in the UK is around £14 billion and it employs approximately 570,000 people in around 70,000 businesses.

The NFDA is the UK's leading retail trade association in this sector, with over 8,000 dealer (retailer) members. The vast majority of the NFDA's members are SMEs who sell directly to consumers (as well as corporate customers, fleets etc).

The NFDA has not responded to the Consultation in its entirety; however, it has set out below some preliminary observations in relation to those parts of the Consultation that are most relevant to the NFDA's activities.

The chapter references below correspond to the chapters of the Consultation document.

### **Chapter 3 – Consumer Code Approvals**

The NFDA recognises certain drawbacks associated with the current approval process applied by the OFT, for example, the time taken to gain approval.

At the same time, the NFDA considers that it would be disappointing if, as a result of the proposed OFT/CC Competition and Markets Authority (**CMA**) deciding not to continue the Consumer Codes Approval Scheme (the **Scheme**), either:

- the credibility and profile of the industry/consumer codes associated with the Scheme were diminished (because of the loss of association with the OFT); or
- representative/trade bodies and their members were obliged to revisit and pursue new and differing accreditation requirements with a variety of new bodies.

In other words, the NFDA considers that, whatever replacement is adopted, it is important that the time, effort and expense already invested in codes under the Scheme, and the benefits associated with OFT approval, are not wasted.

In the NFDA's view, any new system of accreditation should recognise and/or fast-track any codes that have already gone/ are passing through the Scheme.

For any code to be effective and respected, it must deliver benefits to the businesses that apply the code as well as consumers. Membership of any code is not an end in itself. Indeed, in the absence of mandatory regulation, a code must reward membership by delivering greater customer confidence and, as a result, enhanced trade.

Put simply, a code (**and the system which provides for its implementation**) must be:

- proportionate (focused on sensible and relevant industry/consumer issues);
- straightforward to apply and measure;
- cost-effective; and

Importantly, in light of the potential consequences of the present Consultation,

- highly recognisable/visible in the eyes of customers/consumers.

If accreditation schemes proliferate or become too fragmented (amongst a range of quasi public and commercial organisations), not only does this risk confusing consumers, the commercial benefits for members (ie being part of a trusted scheme with a high profile) are greatly diminished.

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

On a related note (albeit not entirely within the scope of the Consultation), it is worth pointing out that consumer facing codes potentially only address up to half of the questions that are relevant to consumer welfare.

In industries such as the motor industry, characterised by huge disparities in commercial bargaining power, the need for a meaningful B2B industry code to help regulate relationships between powerful manufacturers and weaker retailers is also vital<sup>1</sup>.

Without prejudice to the normal application of competition law, such a B2B code would seek to provide greater fairness and transparency in these relationships and guard against undue pressure being applied to weaker retail parties to restrict their pro-competitive behaviour (whether in terms of delivering greater choice or lower prices for consumers). In the absence of specific legislation/regulation, such a code helps to remedy consumer welfare issues indirectly/upstream.

To date, manufacturers have been unwilling to progress self-regulation in this way<sup>2</sup> which has been disappointing. In the NFDA's view, BIS should, at the earliest possible opportunity, examine this issue as part of a joined-up or holistic approach towards achieving a better deal for consumers. Of course, it is difficult to see how such a code could be policed effectively other than through the industry itself (possibly policed by a recognised trade body such as the NFDA) or a public body with a national enforcement remit.

Indeed, an industry body, such as the NFDA - possibly in conjunction with its manufacturer counterpart, the Society for Motor Manufacturers and Traders (SMMT) – may be well placed to

<sup>1</sup> Of course, in certain industries, such as groceries, the position is reversed, in which case the industry code should help to alleviate restrictions placed on suppliers by retailers.

<sup>2</sup> Except some minimal terms published by the European manufacturers' body, ACEA, in 2008, which are generally regarded by retailers as wholly inadequate.



take on a greater monitoring role (given its wide membership and industry knowledge). This would, in light of the potential change in the OFT's role, enable the trade body to reinforce its relations with any replacement nominated public/local authority, either along the primary authority model or with the proposed Competition and Markets Authority.

Either way, the NFDA believes that the enforcement of consumer (and competition) law in the motor vehicle sector would benefit from a specialised/dedicated unit within such an authority. This unit would liaise regularly with the NFDA and other industry bodies in order to develop a more focused understanding of how the industry works (and the consumer issues relevant to it, both direct and indirect).

The NFDA would welcome further opportunities to discuss any of the above comments with BIS in due course.

Yours sincerely

A handwritten signature in black ink, appearing to read "Sue Robinson". Below the signature, the name is printed in a standard black font.

Sue Robinson  
Director, NFDA

## Royal Mail



# **Empowering and Protecting Consumers**

Royal Mail Group's response

September 2011

DRAFT v2

## Contents

1. Introduction .....	3
2. Changes to the postal landscape .....	3
3. Consumer body arrangements.....	5
4. Proportionate consumer advocacy.....	6
5. Conclusion .....	10
Annex 1 - A Note on Post Offices .....	11

# **1. Introduction**

1. Royal Mail is honoured to be the universal postal service provider in the United Kingdom. Under the terms of the universal service recently reconfirmed by Parliament in the Postal Services Act 2011, this means we deliver 62 million items a day, 6 days a week to 28.8 million addresses in the UK. The universal service obligation (USO) is designed to ensure that a minimum level of service and quality is provided at an affordable price for all users.
2. Royal Mail Group includes Post Office Ltd, which operates in four distinctive and competitive marketplaces – the Postal market, the Telephony market, the Financial Services market and the market for Government services. A note is provided on the specific circumstances of Post Office Ltd at Annex 1.

# **2. Changes to the postal landscape**

3. The Postal Services Act 2011 received Royal Assent in June 2011 and contains measures to:
  - Remove the restrictions on ownership of Royal Mail, to enable the introduction of private sector capital and disciplines to Royal Mail.
  - As part of the process for private sector investment in Royal Mail, make available at least 10% of shares in Royal Mail for its employees in the future, and transfer the historic deficit in the Royal Mail Pension Plan to a new public sector scheme.
  - Maintain the Post Office in public ownership, and allow for a mutual ownership structure in the future.
  - Reform the regulatory framework for the postal services sector, including transferring regulatory responsibility for the postal market from Postcomm, the existing regulator, to Ofcom, the regulator responsible for the wider communications sector.
4. The new legislation will result in the separation of Post Office Ltd from the rest of Royal Mail Group and the Government has begun consulting on the mutualisation of the Post Office.<sup>1</sup> This separation is relevant to consumer advocacy because currently Consumer Focus has specific functions in relation to post offices which are discussed in more detail below.

---

<sup>1</sup> see <http://www.bis.gov.uk/Consultations/post-office-mutualisation>

5. We expect responsibility for the regulation of postal services to transfer from Postcomm to Ofcom from 1 October 2011. The Act introduces a general authorisation regime to replace existing regulatory licences, and sets Ofcom the primary duty of securing the provision of the universal service, having regard to its need to be both “financially sustainable” and “efficient”.<sup>2</sup> The Act specifically recognises the link between the universal service provision and costs by stating that the universal service provider should be able to earn a “reasonable commercial return” on “any expenditure incurred by it for the purposes of, or in connection with, the provision... of a universal service.”<sup>3</sup>
6. The consultation about the future regulatory arrangements was begun by Postcomm. In June 2011, in “Royal Mail’s vision for a future regulatory approach: Delivering benefits to all”,<sup>4</sup> we set out clearly the case for significant change to the existing regulatory structure based on four pillars:
  - a sustainable and self-financing universal service, where the provider can earn a reasonable commercial return;
  - complete removal of the regulator’s forward-looking control on postal prices, products and conduct;
  - network access negotiated on commercial terms; and
  - increased transparency to demonstrate we are competing fairly.
7. Royal Mail faces competitive constraints because of the way people communicate today and the way in which this could develop. In the UK, mail volumes have been falling since 2005/06 and have fallen by an average of 4.6% per annum since then. Unlike other regulated industries, such as water and energy, mail is no longer essential. It can be substituted with other forms of communication, such as e-mail, ‘phone, text messaging and social networks. The threat from these other options means that Royal Mail must manage carefully its pricing and customer service decisions. We have every incentive to be as efficient as possible, and to meet customer needs.
8. The wider communications context means we welcome the transfer of regulatory responsibility to Ofcom. We understand Ofcom is likely to consult on its preferred option for the future regulatory arrangements to apply to the postal sector from Spring 2012 shortly, once it becomes the regulator of postal services. The Government’s consultation on the consumer landscape is therefore timely. It provides a welcome opportunity for Royal Mail to set out its view on the dedicated consumer arrangements for postal services which run alongside the regulatory regime. We do not see the case for

---

<sup>2</sup> Postal Services Act 2011, section 29

<sup>3</sup> Postal Services Act 2011, section 29(4)

<sup>4</sup> see Executive Summary at

[ftp://ftp.royalmail.com/Downloads/public/ctf/rmg/RoyalMails\\_vision\\_for\\_future\\_regulation\\_E\\_XECSUMMARYPUBLICDOMAIN.pdf](ftp://ftp.royalmail.com/Downloads/public/ctf/rmg/RoyalMails_vision_for_future_regulation_E_XECSUMMARYPUBLICDOMAIN.pdf)

dedicated consumer advocacy arrangements for post, regardless of the regulatory approach adopted by Ofcom.

## 3. Consumer body arrangements

### **Current arrangements**

9. The current role of Consumer Focus in respect of post is set out in a combination of statutory powers and functions, and the licence granted to Royal Mail by Postcomm. Its statutory powers and functions are largely set out in the Consumer, Estate Agents and Redress (CEAR) Act 2007, as amended. These were set out in Annex C of the consultation paper, and include:
  - the application of Consumer Focus's representative, research and information functions to the postal sector;
  - the investigation of complaints made by vulnerable consumers of postal services;
  - the duty to refer matters to the postal regulator;
  - the power to investigate any matter relating to the number and location of public post offices;
  - the power to require information to be provided for the purpose of exercising its functions; and
  - the power to refer to the postal regulator a postal operator's failure to provide information which Consumer Focus has given notice that it requires.

10. Postcomm has further defined the role of Consumer Focus by giving the body particular roles under the current postal licensing regime. For example, provisions in Royal Mail's licence require Consumer Focus to be consulted by the regulator about exceptions to the universal service and certain changes to services, and require Royal Mail to provide particular information to the consumer body, such as latest delivery times, complaint handling and quality of service statistics. The future of these detailed roles depends on the nature of the future regulatory regime, and we await Ofcom's proposals.

### **Government consultation**

11. The consultation paper suggests the transfer of existing Consumer Focus duties to a different body, and suggests Citizens Advice might take on this role. It seeks views on the proposal that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions transferred to the Citizens Advice service (Question 14).

## **4. Proportionate consumer advocacy**

12. Royal Mail agrees that Consumer Focus should be abolished. However, we do not support the transfer or continuation of the sectoral advocacy functions for postal services; we conclude these functions should simply be abolished and postal sector consumer advocacy absorbed within general consumer advocacy arrangements.
13. By transferring consumer advice, representation and advocacy from Consumer Focus, the Government hopes to reduce complexity in the consumer landscape and ensure more cost-efficient delivery, closer to the consumer front line. In its impact assessment, the Department suggested that abolition of Consumer Focus without transfer of its duties would generate the greatest savings to the Exchequer, but would diminish unacceptably consumer protection.<sup>5</sup> It did not consider separately the abolition of only the postal sectoral duties. We conclude that the complexity of the consumer landscape can be further reduced by abolishing sector specific duties for post. This would still permit consumer advocacy about postal services under the general duties – currently imposed on Consumer Focus – but would be more proportionate with the current position of post. This would also reduce the disproportionate costs of the current arrangements to Royal Mail.
14. Our position flows from the following evidence:
  - **The statutory postal consumer advocacy arrangements are now out of proportion to the reality of consumer postal usage.** Post is no longer as important to consumers as it once was, and alternative communications methods are of increasing importance. The comparable consumer advocacy arrangements for telecoms in the UK are less intrusive. Other EU countries do not have consumer organisations with specific statutory duties in the postal sector.
  - **The current consumer arrangements do not deliver significant benefits for postal consumers.** The arrangements cost Royal Mail over £3m per year, which is a high proportion of the return earned from regulated postal services, but there is no clear evidence of a return in benefits to consumers. The investigation by the consumer body of complaints from vulnerable consumers of post includes the referral of these cases to Royal Mail customer services, where they are handled effectively.
  - **The current consumer arrangements have slowed Royal Mail as we try to meet customer and market demand,** like any commercial company. In consultations, the consumer body has recently urged caution with even the limited reforms which Postcomm proposed. The involvement of the consumer body in the regulatory process has also slowed limited changes to existing services and processes.

---

<sup>5</sup> BIS Consumer Landscape Review Impact Assessment: June 2011, p. 41 and para 163

## **The existing arrangements are out of proportion to the importance of post**

15. The average UK household now spends just under £21 per year on post, according to 2009 official statistics (the latest year for which figures are available).<sup>6</sup> This is less than 0.1% of household expenditure. It compares with average household expenditure of £587 (2.5%) on telecoms, £1,034 (4.4%) on gas and electricity and £395 (1.7%) on water. Royal Mail is becoming a niche player in communications and delivery. By 2008, post accounted for only 2% of personal messaging, with text messages making up 50% and social email 9%. Since that time, social networking has had explosive growth and social mail has declined further. Letters – 46p for a first class stamp – compete with emails, text messages and social communications with a marginal cost close to zero.
16. Yet specific postal sector consumer advocacy duties still exist. These are performed by Consumer Focus and Royal Mail continues to fund them. In 2010/11, Royal Mail paid more than £3.1m for Consumer Focus's postal activities. This represented 12.5% of the profit Royal Mail made from regulated postal services in 2010/11. (Our understanding is that Government shares our view that this funding covers only activity relating to postal services; Consumer Focus activity to investigate the number and location of Post Offices under section 16 of the CEAR Act is not funded by Royal Mail Group.)
17. We have compared in Table 1 (overleaf) average household expenditure with the cost of consumer advocacy arrangements in different sectors, based on the Government's consultation paper and publicly available information. The arresting conclusion we reach is that households spend 25 times less on post than they do on telecoms, yet the consumer advocacy arrangements for post cost over 10 times as much as the telecoms arrangements. Royal Mail pays 12.5% of its profit on regulated postal services to fund Consumer Focus, while the energy industry pays 0.36% of its equivalent profit. This reinforces the disproportionate nature of the current arrangements.
18. According to the information available to us, no other European Union member state has established specific consumer body duties for postal services.<sup>7</sup> Although ombudsmen in some countries perform the role of the postal redress scheme in the UK, there is no consumer oversight and advocacy role on post similar to that of Consumer Focus, despite recent liberalisation of postal markets in other Member States.

---

<sup>6</sup> Household Expenditure data from ONS Family Expenditure Survey, Table A8 (2009)

<sup>7</sup> Source: International Post Corporation Regulatory Database

		Annual Cost (£'000)	Funded by	Average household expenditure /yr	Regulated sector revenue (£m)	Regulated sector profit (£m)	Cost of consumer body as % of profit of regulated area
Consumer Focus	Electricity & Gas	5,774	Electricity and gas licensees	£1,034.80	36,493	1,609	0.36%
	Postal Services	3,124	Postal services licensees	£20.80	5,355	25	12.50%
Consumer Council for Water	Water E&W	5,480	Water and sewerage licensees	£395.20	9,268	3,518	0.16%
Communications Consumer Panel	Communications in GB	303	Authorised companies in the sector	£587.60			

**Table 1: Cost, funding arrangements, household expenditure, regulated revenue, profits and relative costs of consumer arrangements.**

Sources: Government consultation paper, ONS Family Expenditure Survey 2009, Royal Mail regulatory accounts 2010-11 (USO and non-USO price controlled services), Energy companies: consolidated annual statements (supply only), Water companies: June 2011 submissions to Ofwat

### **The existing arrangements do not deliver enough benefit**

19. In its 2010-11 Annual Report, Consumer Focus reports that its work led to more than £50m being repaid to consumers by energy companies, and that its intervention in the ISA market is leading to savings of £15m per year for financial services consumers.<sup>8</sup> There are no similar hard measures for consumer benefits from consumer advocacy in the postal sector. The Government's consultation paper also notes that the Consumer Focus Extra Help Unit has assisted 17,000 vulnerable consumers and won £1.9m in compensation for them since 2008.<sup>9</sup> Consumer Focus has made clear that 99.5% of contacts to the Extra Help Unit related to energy in 2009/10.<sup>10</sup> We do not find it surprising that it is difficult to demonstrate the impact of consumer advocacy in the postal sector, because the stakes are not as high for consumers and households for post as they are for energy.
20. Nevertheless, the Government did not pursue the option of abolishing all Consumer Focus functions without transferring them to another body on the grounds that this would significantly reduce consumer protection.<sup>11</sup> The Government's Impact Assessment states that the continued requirement under the CEAR Act to provide

<sup>8</sup> Consumer Focus Annual Report 2010/11, p.4

<sup>9</sup> para 4.8, p.35

<sup>10</sup> Consumer Focus Annual Report 2009/10, p.21

<sup>11</sup> BIS Impact Assessment para 163

facilities to aid vulnerable post consumers means it is unlikely that abolishing the advocacy duties would lead to any saving to firms which pay a levy to Consumer Focus.<sup>12</sup> This argument does not hold in the postal sector. The facilities to aid vulnerable consumers are provided by Consumer Focus's Extra Help Unit, and it dealt with 7,000 cases in 2009/10.<sup>13</sup> By Consumer Focus's own figures, 35 or fewer of these were about post.<sup>14</sup> In practice, calls about postal services are most often referred on by the Extra Help Unit to Royal Mail Customer Services. Therefore, the abolition of the advocacy duties on post would result in a significant cost saving to Royal Mail, because advocacy policy development drives most of the Consumer Focus costs which are funded by the levy. The facilities to aid vulnerable consumers have little cost impact.

### **The current arrangements slow our response to consumer and market demand**

21. The current consumer advocacy arrangements are closely associated with the existing regulatory regime. The involvement of the consumer body in decision-making has slowed down Royal Mail's ability to respond to consumer needs. For example, in early May we began discussing with Consumer Focus our proposals to deliver undeliverable items to neighbours when consumers are not at home. We are not yet even able to begin a trial, despite the fact that we are the only major delivery company which is not able to do so and that 84% of consumers are in favour of us running a trial. With competition already fierce in some delivery markets, and increasing in all postal markets, Royal Mail needs to be able to act in the same way as any commercial company.
22. The regulatory arrangements set out in the Postal Services Act 2011 allow Ofcom to impose "consumer protection conditions". These are defined in section 5(2) as "a condition requiring the operator to do one or more of the following: (a) to assume specified liability in respect of specified loss of or damage to specified postal packets, (b) to establish and maintain procedures, standards and policies with respect to consumer protection matters, and (c) to make payments relating to qualifying consumer expenses of the National Consumer Council or the Office of Fair Trading." "Consumer protection matters" include complaints handling, dispute resolution (along with remedies and redress) and information about service standards in relation to postal operators and users of their services.
23. In our view, statutory consumer advocacy duties specifically for post are not necessary to help Ofcom reach a view about the use of its consumer protection powers, as the advice could be provided in other ways, including through general advocacy arrangements. Ofcom has also demonstrated its ability to regulate successfully in the telecoms sector with its consumer panel arrangements, which also cost the telecoms industry much less than the current arrangements for post. Postal services can now

---

<sup>12</sup> BIS Impact Assessment, p.42 and para 163

<sup>13</sup> Consumer Focus Annual Report 2009/10, p.21

<sup>14</sup> because 99.5% of calls in 2009/10 were about energy – see paragraph 19

safely be absorbed within general consumer advocacy arrangements with no detriment to consumers.

## 5. Conclusion

24. Royal Mail Group concludes that the Government should simplify and reform the consumer landscape by abolishing the sectoral consumer advocacy duties for post. Based on the evidence we have gathered, this would not result in consumer detriment. Instead, consumer advocacy in the postal sector would be absorbed within general consumer advocacy, undertaken by whichever body or bodies the Government considers appropriate, but in a way more proportionate with its importance to consumers. The postal regulatory framework is constructed in a way which allows Ofcom to take consumer protection action if needed. Without the statutory consumer advocacy arrangements for post, Royal Mail would be able to concentrate more closely on delivering excellent customer experience.

# **Annex 1 - A Note on Post Offices**

Post Office Ltd operates in four distinctive and competitive markets – postal, telephony, financial services and government services. In each of these markets, there are systems for consumer protection and representation that operate irrespective of Post Office Ltd's involvement in those markets. These arrangements apply to any activities that Post Office Ltd might undertake in these markets, as they would with any other operator in these competitive environments.

- **Postal Market** – consumer advocacy is the subject of the current BIS consultation, and Royal Mail argues that specific post duties should be removed, leaving the general advocacy arrangements as adequate
- **Telephony market** – arrangements in place via Ofcom Consumer Panel
- **Financial Services Market** – arrangements in place via Financial Services Authority
- **Government Services Market** – general consumer legislation applies and specific arrangements may be in place depending on Government Department.

There is therefore no need for an additional layer of consumer representation that should apply solely to Post Office Ltd as one company amongst many in these competitive markets. Furthermore, to the extent that there is general consumer legislation and representation that applies across all UK companies and markets, these apply to Post Office Ltd (as they would also apply to, say, Marks & Spencer or PayPoint). In economic terms therefore, with respect to the markets in which it operates, Post Office Ltd is subject to the same consumer arrangements as any other player in those markets. It is not necessary to have additional arrangements that are applicable only to Post Office Ltd.

There are two further areas where a specific, defined consumer role might be under consideration with respect to the suggested transition from Consumer Focus.

1. Issues related to the size and coverage of the Post Office Network
2. Issues related to the development of, and investment in, the Post Office network as a result of the Government funding package and policy document announced in November 2010 entitled 'Securing the future of the Post Office Network in the Digital Age'.

With respect to network coverage and size, the Postal Services Act 2011 (section 11) makes clear that Post Office Ltd will provide an Annual Report to the Secretary of State covering such matters – a report which will be laid before Parliament. These network matters will therefore have a full degree of Parliamentary scrutiny as envisaged by the Act, and it is not therefore necessary, nor cost effective, for a consumer body to replicate this role.

With respect to the development of the post office network through to 2015 as outlined in the Government policy and funding document 'Securing the Future of the Post Office Network in the Digital Age' (November 2010) - piloting and preparatory work has now commenced prior to more significant investment in the network which will occur over the period 2012-15. It has been made clear that this is not a programme of closures and that the network will remain at a similar size through this period. The timeframe straddles the period in which Consumer Focus will be dissolved and functions potentially transfer to Citizens Advice. The arrangements that are being established for consumer consultation and information through this investment period should therefore be set up so that they can work at local level in a way that means that they need not be disrupted by such changes. Such arrangements will need to be in place by April 2012, and, as well as being cost effective and appropriate, will have to be nimble enough to straddle any transition between consumer bodies.

On the more general issue of Post Office Ltd liaison with Citizens Advice (CitA), it is recognised that Post Office Ltd will, irrespective of any consumer arrangements, continue to have an important and constructive relationship with CitA. In many of the customer advocacy areas in which CitA specialises the Post Office plays an important role in service provision.

Finally, Post Office Ltd is, as a result of provisions within the Postal Services Act 2011, being considered as a potential candidate for mutualisation. A Government consultation is currently underway on the best potential mutual structures and this includes the concept of Post Office Ltd being at least partly owned by its customers (with appropriate representative systems put in place). The potential outcome of these arrangements needs to be taken into account in determining future consumer representation structures with respect to Post Office Ltd.

In summary, customer representation is therefore built into Post Office Ltd in a very fundamental way. These points need to be taken into account when considering the public cost and added value of any additional layers of consumer representation that might be envisaged.

## Sainsburys plc

### ***Consultation numbering vs. Impact Assessment numbering***

- 1 The option numbering in the Consultation differs from that in the Impact Assessment, as set-out in the table below.

<b>Consultation</b>	<b>Impact Assessment</b>
Option 1	Option 2
Option 2	Option 3
Option 3	Option 1

- 2 The text below uses the numbering from the Consultation document, unless otherwise stated.

### ***The role of the OFT/CMA***

- 3 We strongly support Option 3 and the proposal that the OFT/CMA should retain its consumer enforcement role as a solution to structural market problems. In particular:
- (a) The OFT has demonstrated in a number of market studies that consumer law is often the optimal solution to address market failure. In its studies on Debt Consolidation, New Car Warranties and Internet Shopping, for example, the OFT relied on its suite of consumer remedies in order to address the concerns it had identified;
  - (b) To remove these powers would either prevent the OFT/CMA from pursuing the optimal outcome in certain cases, or require the OFT/CMA to involve Trading Standards at a late stage in the study, duplicating work and increasing cost; and
  - (c) The knowledge that it has such consumer powers allows the CMA to analyse markets with an open mind, without pre-judging whether failure might lie on the supply or demand side.

### ***The role of Trading Standards (or Citizens Advice, as appropriate)***

- 4 We are not opposed to Trading Standards taking on the market analysis role in relation to matters of pure consumer law. However, we see it as critical that Trading Standards and the OFT/CMA be subject to equivalent thresholds when opening market studies, both in terms of cost/benefit analysis and evidence.
- 5 If Trading Standards were free to open a (consumer) market study based on less robust criteria than the OFT/CMA, we see a material risk that:
- (a) in borderline competition/consumer cases, when choosing a body with which to raise a concern, the decision of a complainant could be distorted by its perception of which body is likely to be more receptive; and
  - (b) the resultant bias towards bringing complaints to Trading Standards would create an unfair and unnecessary burden on consumer-facing businesses.

6        Taking each of the cost/benefit and evidential thresholds in turn:

*Cost/benefit*

- (a)      Before carrying out a consumer market study, we consider it critical that Trading Standards should apply cost/benefit checks equivalent to those of the OFT/CMA. Currently, prior to commencing a market study, the OFT would:
  - (i)      typically carry out an initial assessment of the market, as well as its history of complaints;
  - (ii)     prepare a market study proposal, including a description of the market in question, the theory of harm, possible remedies, an assessment of the potential impact the market study may have on consumer welfare and an estimate of the resources required to carry out the study; and
  - (iii)    consider the proposal against the OFT/CMA's prioritisation principles.

*Evidential threshold:*

- (b)     We have reviewed the suggestions in Annex D of the Consultation and agree with the Government's proposal that the OFT/CMA must identify a structural market problem before opening a market study. However, we are concerned that no equivalent threshold is proposed for Trading Standards.
- (c)     We would have serious concerns if Trading Standards were free to open a consumer market study whenever the OFT/CMA did not have jurisdiction (i.e. whenever there were no structural market issues). Accordingly we would expect to see an equivalent threshold imposed for Trading Standards, based on (for example) a requirement to identify serious consumer harm.

***Delineating the remits of the CMA and Trading Standards***

- 7       It is critical that the lines of responsibility between the two authorities are clearly delineated, in order to remove the risk of dual investigations into overlapping issues. In this respect, we entirely support the statements made in paragraphs 341-2 of the Impact Assessment, that the various bodies should agree the most appropriate body to act before launching any action.
- 8       Given that technical competition enforcement expertise will sit with the OFT/CMA, we would expect to see a mechanism for transfer from Trading Standards to the OFT/CMA, in the (albeit unlikely) event that the former identifies a requirement for competition remedies arising from a consumer market study.

## SCOTSS

**SCOTSS 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 UK 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 Citizens Advice Scotland. The acronym LATSS is used to represent Local Authority Trading Standards Services in England, Wales and Scotland. Where the term Citizens Advice Service is used this refers to the full spectrum of the Citizens Advice family i.e. Citizens Advice, Citizens Advice Scotland and the Citizens Advice Bureaux network throughout the UK. 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 Society of Chief Officers of Trading Standards in Scotland (SCOTSS). SCOTSS is the single membership organisation representing Heads of Trading Standards from councils across Scotland. SCOTSS 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. SCOTSS is a section of the Trading Standards Institute (TSI).

1.4 In formulating this response, SCOTSS currently anticipates that there is likely to be one solution for England and Wales, and a different separate structure for Scotland.

1.5 Also SCOTSS 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.

1.7 SCOTSS 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 animal health, giving clearer accountability and greater flexibility in delivery, response and use of resource.

1.8 SCOTSS believe that this consultation and the discussions surrounding it would be an ideal opportunity to devolve the majority of the legislative areas that Trading Standards Services are responsible. This would ensure that any legislation properly reflects the Scottish legal system. Although SCOTSS believe that the devolution of "trading standards" legislation would improve the effectiveness of the system of consumer and business protection in Scotland the options being put forward in response to this consultation paper are not dependant on this change.

1.9 Although not within the scope of the consultation paper SCOTSS have been seriously concerned for sometime with the capacity of some authorities to provide an effective Trading Standards Service because of limited resources and the profile of the service within local government. On that basis together with the further cuts either already proposed or likely, SCOTSS believes that the discussions and negotiations surrounding the consultation paper and the implementation of the agreed options would also be an opportunity to discuss the future of the Trading Standards functions and how they could be best delivered in the future. Any such discussions should include whether a national service or the joining up of existing services would be the most effective delivery mechanism.

## 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. 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. SCOTSS would not support any reduction in the standards of advice from that currently provided.

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

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

SCOTSS accepts that the OFT's consumer information role will 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 where Citizens Advice Bureaux exist they are under intense funding pressures. In some areas of Scotland there are no Citizens Advice Bureaux. Therefore some of the envisaged improvements at local level may be difficult to achieve and gaps in provision may still exist.

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

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

The proposals already recognise how important the Consumer Direct data is for LATSS. LATSS have an intelligence-led approach to enforcement. The referrals and Consumer Direct 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. LATSS should be able to access the data from a single source of information.

SCOTSS recognise that locally Citizens Advice Bureaux fiercely guard their autonomy and a concern remains that any proposals by Citizens Advice nationally to deliver parts of the service using local Citizens Advice Bureaux centres may not materialise.

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

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

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

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

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

As the UK Government notes, consumer education activities for the public at a local level are usually carried out by 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.

SCOTSS welcomes the recognition that local authorities should remain responsible for direct delivery of education to consumers at a 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 LATSS 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-Gateway. 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.

**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

SCOTSS 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. SCOTSS believes that there are great opportunities to build on these existing Local Authority Assured Trader Schemes when developing any new code certification, however, this would need to be adequately funded, supported by the Government and nationally recognised.

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

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

#### **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

SCOTSS recognises the importance of consumer advocacy and it's effective delivery. SCOTSS also believes that the proposal to combine as many sectoral advocacy schemes is sensible. Anyone taking on the coordinated, publicly-funded, consumer advocacy function needs to have real teeth to be able to take on cases that would not otherwise be taken.

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

- In October 2010, following many years of strong advocacy by Consumer Focus Scotland, a new statutory duty on public sector scrutiny bodies to promote continuous improvement in user focus under the Public Services Reform (Scotland) Act 2010 came into force.
- Following their sustained campaign, for an improvement in the digital services available to consumers across Scotland, the Scottish Government has published a national digital strategy in March 2011. This includes a number of the key issues raised by Consumer Focus Scotland, including broadband availability and digital participation.
- They have played a key role in helping to shape the content of the Private Rented Housing (Scotland) Act 2011, which will introduce new protections for tenants, including the provision of better information about landlords and their properties and improved regulation of the sector. They also called repeatedly for the introduction of a tenancy deposit scheme to protect tenants and ensure their deposits are not withheld unfairly, and the Scottish Government passed regulations for such a scheme in March 2011.
- Consumer Focus Scotland campaigned for many years for the introduction of the Home Report in Scotland, and was closely involved in its implementation, leading to greater certainty and better upfront information for those buying or selling a home in Scotland.
- Consumer Focus Scotland called repeatedly for greater choice and protections for people who use legal services, to increase their access to justice. The Legal Services (Scotland) Act 2010, which opens up the legal services market by removing restrictions on ownership of legal firms, paves the way for the development of a legal services market which better meets the needs of the public.

Some LATSS currently offer 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. SCOTSS would not wish any changes to undermine any locally delivered support.

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

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

In view of our earlier response SCOTSS would assume that Consumer Focus Scotland should retain its existing information gathering powers and therefore make no further comment on this question.

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

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

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

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

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

## **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?**

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

As well as helping local consumers and businesses, LATSS already do consumer protection work which has a regional and/or national impact. Numerous examples can be provided to demonstrate this. For example 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).

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

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

## Political oversight and scrutiny

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

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

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

## Governance

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

**Figure 2: Proposed Future Consumer Landscape**

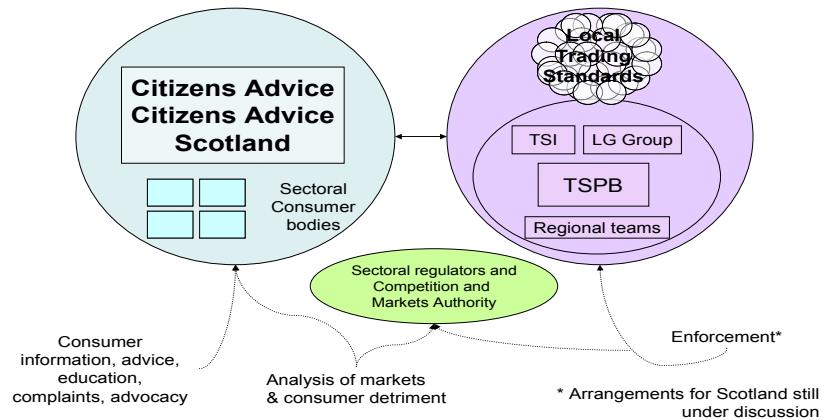
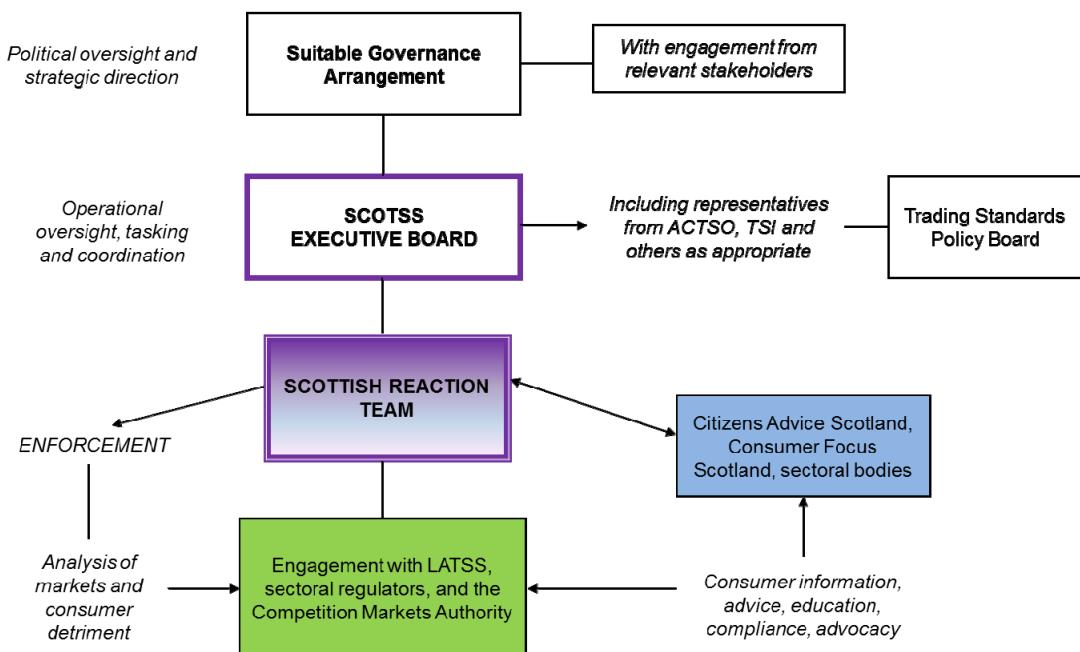


Figure 2 makes it very clear that arrangements for Scotland are still under discussion. The consultation paper states that *"In Scotland, BIS will work with COSLA, SCOTSS, the Local Government Improvement Service and the Scottish Government to identify suitable governance and operational models. This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

Figure 3 shows how the alternative solution for Scotland could operate

**Figure 3: Scottish Alternative Solution**



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

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

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

#### Delivery mechanisms

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

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

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

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

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

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

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

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

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

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

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

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

#### Financial Oversight

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

#### Indemnity Fund

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

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

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

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

Response to questions 22 to 24.

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

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

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

SCOTSS 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.

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

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

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

#### **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**

SCOTSS 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, SCOTSS Executive Board, TSPB and the consumer advocacy bodies for its release to be used to investigate or address consumer and market issues that could risk an enforcement or advocacy gap. The exact mechanism required would depend on the amount of funds allocated for this and who "held" the funds. However we would want to minimise the bureaucracy associated with any such scheme. Whilst SCOTSS welcomed the "Fighting Fund" that BIS made available to support 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?***

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

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

#### **Guidance and training**

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

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

**Most international liaison and OFT's general consumer policy work**

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

SCOTSS 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 Scottish Reaction Team / TSPB nominated representative to attend as well. This would avoid duplication of effort and reduce costs to the UK.

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

**QUESTION 35. Do you think the requirement for 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?**

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

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

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

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

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

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

**Response to questions 37 and 38**

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

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

In SCOTSS view this would be dealt with by the Scottish Reaction Team in Scotland.

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

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

### **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 Neil Coltart Chair of SCOTSS ([neil.coltart@glasgow.gsx.gov.uk](mailto:neil.coltart@glasgow.gsx.gov.uk)) or Tony McAuley, Secretary of SCOTSS ([tmcauley@eastlothian.gsx.gov.uk](mailto:tmcauley@eastlothian.gsx.gov.uk)).



Neil Coltart  
Chairman SCOTSS

## Scottish Government

Minister for Energy, Enterprise and Tourism  
Fergus Ewing MSP



T: 0845 774 1741  
E: scottish.ministers@scotland.gsi.gov.uk

Edward Davey MP  
Minister for Employment Relations, Consumer and Postal Affairs  
Department for Business, Innovation & Skills  
1 Victoria Street  
London  
SW1H 0ET

22nd September 2011

*Dear Edward,*

The consultation paper *Empowering and Protecting Consumers* invited views on a range of specific questions and proposals. While I know that many Scottish organisations will respond (or have already done so) I expect you will be particularly interested in the views of the Scottish Government. As you know, when these consumer landscape reforms were first announced in October 2010 my predecessor, Jim Mather, confirmed that the Scottish Government's main interest is to ensure that, in relation to these reserved matters, the people of Scotland have access to the same standard of relevant and targeted services as the rest of the UK, albeit adapted as necessary to suit the Scottish situation. That remains our primary focus.

We have of course been liaising and working with organisations such as COSLA, the Society of Chief Officers of Trading Standards in Scotland, Consumer Focus Scotland and Citizens Advice Scotland. I enclose a copy of a joint working group report published earlier this year which has informed this response and which highlights key issues for Scotland. I welcome the very positive response from each of these organisations and their determination to engage with this process, collectively and individually. There is a great deal of support for aspects of your proposals, including the high-level case for simplifying the delivery landscape in order to empower those who provide these services, thereby improving outcomes for consumers and also for businesses. There is support for the idea of a regulated industries unit which delivers more efficient and effective sectoral advocacy, notwithstanding the challenge of finding the right structure for interaction between devolved and reserved matters. Of course the consultation process has also identified a range of possible alternatives, including whether the extended responsibilities for Citizens Advice should be restricted to information, advice education, and the SCOTSS concept of a "reaction team" overseeing national enforcement in Scotland. However, it is unclear to us if available funding levels will sustain these changes and deliver the outcomes we all wish to see. I would ask that your officials discuss with mine the viability of such options.

In particular it is very disappointing that COSLA's formal response to the consultation necessarily signals their frustration around the level of information and support currently being provided by your officials. I trust you will take urgent steps to ensure that they get all the information needed to develop a national enforcement model for Scotland. Almost one full year after the original announcement we are little closer to the "specific arrangements for Scotland" you set as a goal. COSLA volunteered to take this forward, but responsibility rests with the UK Government.

That said, there is another way. The proposals set out in *Empowering and Protecting Consumers* aim to deliver a fundamental change and put in place parallel but separate systems in England, Wales and Scotland for national trading standards enforcement and consumer advocacy, advice, information and education. I believe this ought to be viewed in the context of principles set out in the report of the (Calman) Commission on Scottish Devolution and the Coalition Agreement respectively:

*"A principle which was widely supported amongst those who gave evidence to us was that in general responsibilities of government should be exercised at the level of government closest to the people, unless there are good reasons not to. This principle, subsidiarity, is one with which we wholly agree. It should be applied in setting the balance between devolved and reserved functions." (Calman)*

*The time has come to disperse power more widely in Britain today. (The Prime Minister and the Deputy Prime Minister, Coalition Agreement 2010)*

Consumer policy, advocacy, education, information and advice are already devolved in Northern Ireland. That arrangement has not undermined competition policy within the UK, trade and investment, or the interests of businesses or consumers. In fact it demonstrates clearly that it is possible to develop appropriately integrated systems and structures which concurrently deliver at a local, devolved and UK national level. There is therefore an established and compelling precedent for devolution of consumer-focused powers, subject of course to more detailed work on legislative, financial and operational considerations. Furthermore, the wider landscape within which consumer advice, advocacy and trading standards operate in Scotland is already largely devolved, including local government, the courts and the legal system. Further devolution provides an opportunity to build a model of service delivery which is more likely to meet the needs of Scottish and UK consumers than, as happens now, separate Scottish structures having to be supported at a UK level.

While I do not expect an immediate commitment from the UK Government on such a proposal I strongly favour asking our officials to work together to examine the detail of devolving relevant additional powers to the Scottish Parliament in due course, as part of the legislative process required to implement your wider reforms. I hope you can agree.

A copy of this letter goes to Michael Moore, the Secretary of State for Scotland, whose officials may also wish to contribute to the process.

*Yours truly  
Fergus Ewing*  
FERGUS EWING

## Scottish Legal Aid Board

## **Scottish Legal Aid Board's response to the UK government's consultation on Empowering and Protecting Consumers – Department of Business, Innovation and Skills**

### **Scottish Legal Aid Board**

#### **Introduction**

The Scottish Legal Aid Board was set up in 1987 to manage legal aid in Scotland. We are a non-departmental public body responsible to the Scottish Government.

Our work includes:

- advising Scottish Ministers on how legal aid is working, and ways to develop it
- managing the Legal Aid Fund and deciding whether to grant applications for legal aid
- deciding if people have to pay towards the cost of legal assistance, then collecting these amounts
- assessing solicitors' and advocates' accounts for legal aid work, and paying them for the work they have done
- registering firms and solicitors who do legal assistance work and making sure these firms and solicitors maintain high standards, including funding civil quality assurance which is run by the Law Society of Scotland
- investigating and tackling fraud and abuse of legal aid
- developing a network of Board employed solicitors who offer criminal legal advice and representation, and also under Part V of our legislation, developing advice services on civil matters using Board employed solicitors
- exploring and funding new ways of delivering legal aid services
- grant funding organisations to provide targeted access to justice.

#### **Response**

The Board welcomes the opportunity to respond to the UK Government's proposals to streamline the institutions responsible for consumer advice, advocacy and enforcement and to reconsider the role such institutions have to play to empower consumers in the 21<sup>st</sup> century.

As both a funder of advice and an organisation involved in the Scottish Justice policy process, the Board welcomes the opportunity to contribute to the discussion as to what the structures for a new consumer landscape should be. The consultation provides an opportunity to consider the specific needs of Scottish consumers and how those needs can most effectively be met within the proposed new institutional structure.

While Scottish consumers face many of the same issues and challenges as their counterparts in the other areas of the United Kingdom, there are particular differences to the Scottish consumer landscape that the Board believes require a particularly Scottish response, for example a different justice system and legal aid system.

The Board believes that any proposed change to the consumer landscape must take account of the particular Scottish approach to funding, providing and enforcing consumer information, advice and avenues for redress, such as the courts. If it does not, the UK Government's aim of empowering consumers could be undermined by the various structural and institutional differences between Scotland and the rest of the UK.

The Board's response to the consultation is dealt with through a combined response to consultation questions 14 and 15. It has focused on those aspects of these questions on which it feels it has a unique view, given its role, rather than provide a general opinion on matters that other bodies are better-qualified to comment.

**Consultation 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?***

**Consultation 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?***

## **Advocacy**

The Board understands the attractions of the proposed transfer of Consumer Focus's sectoral and general advocacy functions to the Citizens Advice service. The desire to channel such funding through a single, high-profile, highly-regarded and extensive single service is both logical and an effective use of reduced public funds. However, this would appear to represent a very significant change to the role of Citizens Advice Scotland. CAS is a national umbrella body that provides support services to Scottish CABs and produces reports based primarily on bureau clients' experience 'to shape policy in Scotland and the UK.' (source: [www.cas.org.uk](http://www.cas.org.uk)).

The majority of CAS social policy reports are based on the evidence provided by CABx through their social policy returns which are regularly collected and analysed by CAS. Recently, CAS has widened its evidence base for reports, conducting surveys via Adviceguide and using social media to incorporate the views and experiences of non-CAB users into its reports. However, its great strength remains its emphasis on the actual experiences of CAB clients who are using services or are subject to the various institutional and bureaucratic processes that make up modern life.

Incorporating the experiences of non-CAB clients is a welcome development and provides an opportunity for CAS to broaden the evidence base of its social policy reports. However, the majority of CAS reporting remains focused on the needs of particular consumer groups, especially vulnerable consumers (rightly, given the needs of the communities served by CABx).

This is very different from the role of Consumer Focus Scotland. While it does not have a network of bureaux and clients on which to base the content of their publications, its separate research and analytical roles enable CFS to cover the interests and concerns of all consumers, not just those defined in the consultation as 'vulnerable consumers' and therefore the widest possible range of consumer issues.

The Board is of the view that, whatever organisational structure is put in place following the consultation, the broader view of consumer interest should be retained and appropriately resourced, as this has been of especial importance in work previously and currently being done on the legal service market and access to justice; precisely because they are not a provider of legal services, CFS has been able to bring a distinct perspective to these debates.

In terms of the direct delivery role, we welcome any initiatives to improve consistency of advice delivery across the UK, and to enable smoother referral between different types of assistance as envisaged in the consultation document. As a key funder of legal assistance in Scotland we would be very keen to see any such move to be able to adapt to the specific advice provision landscape in Scotland.

### **Informing policy and practise**

The Board welcomes the UK Government's commitment to improved data provision about the needs and concerns of consumers. It would suggest that to be effective, any proposed data-collection system would need to be adjusted to reflect Scottish institutions, processes

and the Scottish justice system and access to that information to be made available to Scottish policy bodies such as Scottish Government and the Board, not just the UK government. This data could provide vital information about the operation of the justice system within Scotland and highlight gaps in the supply of advice as well as the particular needs of consumers in different parts of the country and across different demographic and other groups.

## **Planning**

Another factor pointing to a particular Scottish approach to consumer empowerment, is the framework of other planning work being undertaken by Scottish Government and set out above in the introduction to this consultation response. The Making Justice Work programme represents an attempt to co-ordinate all aspects of the Scottish Justice system to make it fairer, more accessible and, crucially, more cost-effective. The needs of consumers are part of this, from the provision of advice and information allowing them to make the best consumer choices to advice and information if things go wrong, through to the ultimate source of redress through the courts. The UK government proposes to channel all consumer advice and information through the Citizens Advice service whose front-line services are funded primarily by Scottish local authorities to deal with social welfare issues alongside consumer issues. The Board believes that the proposed changes to the consumer landscape must take place within the wider Scottish Justice programme to enable the bodies involved in the Making Justice Work programme to integrate the UK government's consumer agenda within the structures and institutions who will be given the role of making it work in Scotland.

## Scottish Power

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

0141 568 3231  
[heather.swan@scottishpower.com](mailto:heather.swan@scottishpower.com)

27 September 2011

Dear David,

### **Empowering and Protecting Consumers**

Scottish Power welcomes the opportunity to respond to the Department for Business Innovation and Skills consultation "Empowering and Protecting Consumers" on the institutional changes necessary to reform the consumer landscape.

We are responding in our capacity as an energy supplier in Great Britain. Our experience shows that empowered, proactive consumers are vital to a well-functioning market. We welcome the scale of change that the Government anticipates. Fundamentally, we agree with the goal of empowering consumers through a simplified and efficient advice and advocacy structure, as well as the aim of making markets work better through a streamlined competition authority.

We have not sought to answer every question in the consultation, but rather opted to comment more broadly on the key issues from the perspective of energy consumers. Our thoughts on the specific proposals are outlined in more detail in the Annex to this letter, however, I have summarised our key points below:

- The consumer landscape review must deliver an efficient organisational model, which represents consumers fairly and effectively in the market place, and leads to clear and effective enforcement. We agree that the proposals set out in the consultation broadly meet this standard.
- Consumer education and advice and complaint handling must be fair, transparent and truly independent, complementing the primary role played by service providers - who should be the first point of contact when a consumer is looking for advice and support. Customer contact is a crucial means for organisations to identify their customers' needs and improve their services in response. This is particularly true for energy

suppliers who have specific responsibilities in respect of disadvantaged groups of customers, who may be in payment difficulty or have a special need. We would welcome acknowledgement of this primary role for service providers in the proposals for the new landscape. It is important that each stakeholder in the customer journey should have the chance to help and inform consumers.

- The proposals involve some major organisational changes and transfers of responsibility. It will be important to ensure that these changes are properly coordinated to enable continuity of service to be maintained without detriment to consumers. This is particularly important where vulnerable consumers may be affected, such as the transfer of the Consumer Focus Extra Help Unit to the Citizens Advice service.
- We support the proposal to combine sectoral consumer advocacy bodies into a single Regulated Industries Unit (RIU) within the Citizens Advice service. However, we would welcome some ring-fencing of sector-specific resource within the RIU to preserve the high level of expertise which exists at present and to ensure fair allocation between sectors.
- Where the new Trading Standards structure has concurrent enforcement powers with sectoral regulators, for example in respect of consumer protection legislation, there will be a need to develop protocols or procedures to define how these powers are shared, and to avoid 'double jeopardy' issues.

Please don't hesitate to contact me on the above details if you would like to explore any of the points in this response in further detail.

Yours sincerely,

ScottishPower Energy Retail

## ANNEX

### Citizens Advice service

We support the proposal that all government funding for consumer information, advice, advocacy and education will transfer to the Citizens Advice Service (CAS). In providing consumer education, advocacy and advice there are some key principles that we feel lie at the heart of an effective consumer advice structure:

- Single point of Contact. Consumers should be clear on who to go to when they need advice, and be able to clearly identify a trusted voice.
- Independent. An advice and education service must be completely independent and not driven by any commercial gain, whether directly or indirectly. Consumer advice and education must be transparent, unbiased and based on robust evidence or analysis where appropriate.
- Identifiable. As well as having a single point of contact, consumers should have a recognised single brand to provide confidence and reduce potential confusion or mistrust.
- Transparent. All conclusions and analysis drawn by the advice or advocacy service must be well-informed, objective and transparent.

We think there is value for consumers in a single point of contact to provide trusted, independent support in all aspects of the consumer experience. We also think that there is merit in encouraging the Citizens Advice service to engage with other consumer groups.

We recognise the value currently provided by Consumer Focus and the danger that some of the expertise and experience gained by Consumer Focus agents in supporting vulnerable customers may be lost. We therefore agree with the proposal that the Consumer Focus Extra Help Unit (EHU) function should transfer to the Citizens Advice service, at least in the interim, to ensure that there are no gaps in the protection of vulnerable customers.

We feel that the transfer of existing services to the Citizens Advice service must also take into account the fact that a consumer's overall needs may differ from their needs in a particular case, and the advice service should concentrate on understanding the wider underlying causes of potential consumer difficulties. For example energy debt is not always a true reflection of what the consumer's overall difficulties are.

In terms of advocacy, it is important that the same key principles are enshrined within the new landscape, specifically a transparent, independent, single point of contact for consumers and stakeholders. Again, while we support the requirement for the Citizens Advice service to recognise input from other consumer groups, we are concerned about a suggestion raised subsequent to the consultation, namely the potential sharing of the advocacy function between the Citizens Advice service and Which?, and the implications that this may have on the future landscape. We have particular questions around how this

would work in practice which we don't believe have been adequately considered within the current consultation, including practical, logistical questions such as how would information be shared between the two groups, and how would any conflicting views be managed, so as not to undermine the case for consumers. We think that it would be preferable for a single body to have responsibility for advocacy and think that the Citizens Advice service, with its wide-ranging experience would be best placed for this.

The consultation has also made reference to a requirement for an integrated ombudsman to deal with complaints and redress. A dedicated Ombudsman service is currently in operation for Energy consumers, and we believe that this is working well, with Ombudsman staff gaining strong knowledge and experience of the energy market in order to hear cases and provide robust and valuable redress for consumers. We are concerned that this expertise would be lost and that energy consumers could ultimately be disadvantaged by a move to a more general system. We would therefore encourage further consideration around the proposal for the new Ombudsman service, particularly how this service would be organised and the implications of a merger of services.

The future of consumer representation in Scotland and Wales must be supported by the devolved administrations and so we think it would be beneficial for consumer advocacy in Scotland and Wales to have strong links to the Scottish and Welsh Governments.

There is a need for consumers to be educated on the new arrangements and how they will differ from the current structure. Indeed, we believe that this will be key to the successful implementation of whichever service is eventually chosen. We would like to see further information for stakeholders on how the transfer of services will be communicated to consumers.

### **Regulated Industries Unit**

The Government is proposing to create a single advocacy unit within the Citizens Advice service, known as the Regulated Industries Unit (RIU), to bring together existing sector-specific advocacy bodies in water, energy, rail etc. We can see the potential value for customers from such a body, but think there is a need to develop the detail.

The RIU would need to have a clear structure with specific aims and objectives and carefully defined powers. However, the scope for the RIU to adopt a consistent approach across sectors will be limited by the fact that existing powers stem from different pieces of legislation. We would welcome more detail around any proposals to harmonise these powers and the way in which the RIU interacts with the relevant sectoral regulators.

As the RIU will cater for domestic and micro-business customers careful consideration should be given to how the RIU would operate in practice for different consumer groups. For example, we feel more thought needs to be given to 'vulnerability' for micro business customers, as often the circumstances of micro business customers can significantly differ from those of domestic customers. If this subject is not explored and clear guidelines supplied, it could have a detrimental impact on how individual issues are managed and lead to a potential degradation in the quality of support for different customer groups.

We would also welcome more detail to help us understand how the RIU would interact with other consumer bodies, such as Which?, particularly where their roles may overlap, eg in consumer advocacy.

Given that the RIU would have consumer advocacy responsibilities in specific regulated sectors, these sectors should be carved out from the general advocacy responsibilities of the Citizens Advice service, to avoid any unnecessary duplication or confusion. Therefore, the RIU must have close working links to the main part of the Citizens Advice service and be accountable to it for its actions and activities.

The interaction of the RIU with the relevant sectoral regulators needs to be carefully considered. In some regulated sectors such as energy, the RIU has overlapping information gathering powers with the sectoral regulator. In our experience, Consumer Focus has refrained from exercising these powers in matters which were already the subject of investigation by Ofgem. This is clearly good practice as it avoids the risk of imposing inefficient burdens on industry, and we would suggest that with the creation of the RIU, the opportunity is taken to formalise such arrangements in protocols between the RIU and sectoral regulators. In terms of advocacy, it is important that the RIU can promote the specific interests of customers in a knowledgeable way to influence the ‘behind the scenes’ development of regulatory policy. We think it more appropriate that the RIU should seek to influence the relevant sectoral regulator to consider a particular issue, rather than investigate the issue in its own capacity.

### **Competition and Markets Authority**

We are generally supportive of the proposal to establish a single CMA to focus on the effective operation of markets and think it is generally sensible to exploit synergies from merging the Competition Commission and relevant parts of OFT. Ultimately, the responsibilities of the CMA would be to ensure fair and effective competition between companies, but this does not exclude some consumer enforcement role.

It is important to understand how this body would operate in relation to the sectoral market regulators who currently have some concurrent powers with the Competition Commission and OFT and it will be essential to understand how the balance between competition policy and consumer protection policy will be struck.

The consultation notes that the CMA would need to decide where they believed there was a structural problem in a market and when it wished to resolve that problem through enforcement of consumer protection legislation. We think that the primary focus of the CMA should be issues of market operation, in order to ensure a continued focus on the promotion of competitive market structures to benefit consumers.

We have not had much direct experience of the Consumer Codes function of the OFT to date, although it appears to provide valuable reassurance for consumers over the protections provided by some industry codes of practice. We think this role should be continued and we would suggest that an organisation such as the British Standards Institute could provide input

in to the development of this process going forward. The BSI kitemark is already a recognised standard of quality for British consumers and a similar approach could be developed in relation to consumer codes.

We generally agree that the Super complaints system to the OFT should be retained in respect of the CMA, should the proposed changes go ahead. However we do not think it would be necessary to have a fast track process in which the Trading Standards Policy Board (TSPB) would receive complaints related simply to consumer enforcement, as the system should not be burdened with requests that are not related to market failings.

In relation to the points noted above we would also like to be clear that Ofgem should maintain overall responsibility in terms of the energy market as the relevant regulator.

### **Trading Standards**

The Government proposes to strengthen and align the current Trading Standards structure to move from a regional focus to a more joined-up national structure. This would create a stronger focus on enforcing consumer protection legislation, with 4 tiers of responsibility under Trading Standards supported by Local Government.

We think that more detail around how the overall proposed structure would work is necessary, but in particular how the new Trading Standards structure would operate alongside the sectoral regulators, particularly where they have concurrent enforcement powers. At present, where sectoral regulators have concurrent Competition Act powers with OFT, there are procedures in place to ensure effective coordination and avoid 'double jeopardy' issues. As far as we are aware, there are no such procedures in place where sectoral regulators have concurrent consumer legislation powers with Trading Standards. This may not be an issue at present, given the national and local focus of sectoral regulators and Trading Standards respectively. But if, as is proposed, Trading Standards assumes responsibility for more strategic national level issues, there will be a greater need for such procedures.

We generally agree with the proposal that the OFT's professional training and guidance functions could be transferred to the TSI, but we are concerned that there are a few aspects of the OFT's training and guidance functions that may not be suitable for transfer to TSI. For example the OFT has previously worked together with Ofgem to produce guidance on competition law training. We would question whether this aspect of the OFT's role should be transferred to the TSI or whether it might better fit with CMA.

## Scottish Water



**Scottish  
Water**

Always serving Scotland

23 September 2011

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

Castle House  
6 Castle Drive  
Carnegie Campus  
Dunfermline  
KY11 8GG  
  
T: 0845 601 8855  
F: 01383 848323  
W: [www.scottishwater.co.uk](http://www.scottishwater.co.uk)

Dear Mr Evans

**Empowering and protecting consumers**

Scottish Water is currently working in partnership with Consumer Focus Scotland in order to ensure a smooth transition of the changes to the consumer advocacy framework in Scotland as a result of the Public Sector Reform Act 2010.

We welcome a fresh approach to shaping the consumer landscape for Scottish Water customers and we envisage that this new partnership will bear fruit for the benefit of our customers.

Scottish Water looks forward to working in partnership with Consumer Focus Scotland, the Scottish Public Services Ombudsman and other stakeholders in the years ahead.

Yours faithfully

Mark Dickson  
**General Manager Customer Service**

## Severn Trent Water

**Empowering and protecting consumers**  
Severn Trent Water response

27 September 2011

**Severn Trent Water**  
**Response to consultation on empowering and protecting consumers**

Severn Trent Water welcomes the opportunity to respond to the consultation on the future approach to consumer advice and representation.

We are one of the largest ten privatised water and waste water companies providing water to 7.4 million people and sewerage services to 8.5 million people in an area covering 21,100 square kilometres in the Midlands and Mid-Wales.

**Our overall view**

Our response focuses on the sectoral advocacy issues raised in Section 4 of the consultation, in particular the future approach for water industry consumer representation. We recognise that there will be a separate decision by Defra on consumer representation for the water sector but we consider that it is important to consider the potential inclusion of water within the new arrangements at this stage.

We support the aims set out by the Minister in the Foreword to the consultation of “handing power over to people. This means returning decision-making powers and services to those at local level best able to exercise them to meet public need and then giving citizens the ability to hold the local decision-makers to account”.

We believe that the framework for involving customers in the next water price review will achieve these aims. This framework includes a key role for the current sector advocate, the Consumer Council for Water (CCWater). It is important, therefore, that changes to the approach to consumer representation do not adversely affect this process. We, and other stakeholders in the water industry, believe that CCWater is generally effective in carrying out its role.

Therefore we support the recommendation of the review of Ofwat and consumer representation in the water sector, carried out by David Gray for Defra, that the current arrangements should be retained. If, however, there is to be a single regulated industries unit, then it is important that it is structured in such a way that the specialist knowledge of the water sector is retained, with a team dedicated to the water sector.

Our response to the questions raised is set out below.

*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?*

### **Involving customers in water price reviews**

We have some concerns about the impact of the potential transfer of the functions of CCWater to a new regulated industries unit within Citizens Advice. CCWater, with its regional structure and knowledge of the sector, can effectively represent water customers at a local level. The structure of Citizens Advice, with considerable autonomy for individual branch offices, is probably not well suited for the regional representation required for water industry involvement. Making substantial changes to the structure of consumer advocacy in the water sector, at the same time as significant improvements are being made to the framework for involving customers in the price review, could lessen the effectiveness of the new arrangements. We consider that continuity of consumer representation is needed to ensure that the interests of consumers are adequately represented at all stages of the price review process.

### **Requirements for consumer representation in the water sector**

The differences between consumer representation needs of the water sector and other regulated sectors are such that there is little overlap of activities. Therefore there would be very little benefit from forming a single regulated industries unit. In the current economic climate, we recognise that it is appropriate to seek cost savings, but we consider that there is more potential gain from avoiding overlap of activities between CCWater and Ofwat. For example, at the last price review both organisations commissioned work on the cost of capital – we consider that a joint approach to commissioning work on this issue would have been more appropriate.

Many of the consumer issues in the energy sector are about issues arising from a competitive market:

- Providing comparative information on pricing.
- Protection from mis-selling
- Ensuring that vulnerable customers do not lose out from competition.

In contrast, in water there are no plans to introduce competition for domestic customers and much of the requirement for consumer representation relates to

service issues affecting the whole customer base. There are trade-offs to be made

between water quality, environment, customer service and water prices. This needs consumer representation in the sector with sufficient specialist expertise to be able to

understand these trade-offs. We would be concerned that the relevant knowledge

might be diluted in any transfer of functions from CCWater.

### **Conflict with the current role of Citizens Advice**

Citizens Advice has a role which is currently focused on dealing with individuals' problems and providing advice. This completely different from, and has some conflict with, a general water customer advocacy role. In dealing with clients' debt problems CAB encourage clients to prioritise other bills over water bills as there is no threat of disconnection for household non-payers. This does, however, increase bills for the majority of water customers, so could conflict with the customer advocate role. In addition, representing business customers is a completely new area for Citizens Advice.

### **Conclusion**

Water sector advocacy would be best achieved by continuing to have a separate body to represent water customers.

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

We consider that, if there is to be a regulated industries unit, then the design principles are reasonable. In terms of capability, we would put particular emphasis on the need for relevant sector-specific expertise, with a team dedicated to the water 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?*

We are not sufficiently closely involved in other regulated sectors to comment on whether the sectoral advocacy functions of Consumer Advice should be transferred to the Citizens Advice Service. If, however, these functions are transferred, we consider that water sector representation should remain with CCWater.

If CCWater were not to be retained, then we consider that the proposal of transfer to Citizens Advice would be preferable to the other option discussed of transfer to an organisation such as Which?.

*QUESTION 16. What are your views on these options [transfer of powers to Citizens Advice or sectoral regulators] for the transfer of information gathering powers? Which is preferable and why? Are there any other options for information-gathering powers?*

The consultation raises the issue of whether the powers to require information to be provided should transfer from Consumer Focus to Citizens Advice. CCWater has similar information-gathering powers but we do not consider it appropriate for a private organisation to have such powers. Therefore we propose that, if CCWater's functions were to be transferred to Citizens Advice, the information-gathering powers should transfer to Ofwat, to be used at the request of Citizens Advice.

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

We consider that the arrangements for redress and resolving complaints currently operated by Ofwat and CCWater work satisfactorily so there is no need for change. In addition, Ofwat Service Incentive Mechanism provides significant incentives for companies to resolve complaints themselves and avoid them being taken to a disputes process. If there is to be a new scheme introduced, with an ombudsman, this would probably be more costly, and existing provisions would need to be removed to avoid duplication.

We would very much welcome the opportunity to discuss our submission further in person, and will be pleased to provide further information on any of the points raised.



**Dr Tony Ballance**  
**Director of Strategy and Regulation**

Contact for further information: [tony.ballance@severntrent.co.uk](mailto:tony.ballance@severntrent.co.uk)

## **Shelter Cymru**

# **Shelter**

Cymru

## **Response to the Department for Business Innovation & Skills consultation on Empowering and Protecting Consumers**

26 September 2011

### **Summary**

- Independent advocacy for disadvantaged and vulnerable people must not be weakened in the current economic climate
- Consumer Focus Wales has been a valued statutory partner, enabling work to be done on issues that have fallen between remits, or beyond resources, of third sector organisations.

### **Our submission**

1. Shelter Cymru welcomes the opportunity to respond to this consultation on proposed changes to the consumer landscape. We propose to limit our response to those matters directly concerning Wales.
2. We believe that the current economic climate is an inappropriate time to lose a source of independent advocacy with a remit to defend the interests of vulnerable and disadvantaged people. Financial problems and homelessness are widely predicted to increase due to reform of the welfare benefits system, reductions in public spending and rising fuel prices, with corresponding impacts on public health and social exclusion. People on low incomes are predicted to bear the brunt of austerity measures, with a six per cent drop in income among the lowest 20 per cent of earners, compared with a four per cent drop for the highest 10 per cent of earners, according to the Institute of Fiscal Studies.
3. Third sector organisations such as Shelter Cymru are facing significant challenges, coping with reductions in income and consequent job losses at a time when the urgency of our work is increasing, both in terms of casework and campaigning. Our concern is that, at this critical time, the loss of Consumer Focus Wales may result in a weakening of the citizen/consumer perspective in policy formation at Welsh Government level.

4. Consumer Focus Wales has provided an authoritative voice for vulnerable and disadvantaged people in Wales and, thanks to its general remit, has addressed issues that fell between the remits of other non-statutory groups. Their ongoing Park Homes project is an excellent example of a piece of work requiring resources way beyond the capacity of the majority of third sector organisations, which has the potential to lead to significant improvements in circumstances for a group of people who have struggled to defend their interests alone. Furthermore, Consumer Focus Wales recently commissioned Shelter Cymru to investigate financial exclusion among young people leaving care, a piece of work which would not have been carried out without Consumer Focus Wales' attention to this issue.
5. The advent of full law-making powers for the Welsh Government has brought with it an increased need for policy advocacy. This cannot be effectively provided from London and demands expertise at a Wales level. Our overriding concern is that any new arrangement of consumer representation may not take the new devolution context into account and hence overlook the unique set of pressures faced by citizens in Wales.
6. We believe the UK Government should consider a different solution for Wales that is accountable to the people of Wales through the National Assembly, and should amend the Public Bodies Bill to allow for this.

John Puzey, Director, Shelter Cymru  
01792 469400

[policy@sheltercymru.org.uk](mailto:policy@sheltercymru.org.uk)

## Sky Broadcasting Group plc



## BIS consultation on Empowering and Protecting Consumers

### Sky response

1. This is the response by British Sky Broadcasting Group PLC ("Sky") to BIS' consultation document "*Empowering and protecting consumers: a consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement*". We have not responded to BIS' specific consultation questions but have provided more general views on the proposals. Our responses relate to three areas: consumer advocacy, consumer enforcement and concurrent regulation.
2. By way of background, BIS will recall from our response earlier this year to its consultation document "*A competition regime for growth: a consultation on options for reform*" that Sky does not support a merger of the OFT and CC to create the CMA. We stated in our response that we do not consider that the creation of a single competition body would, of itself, lead to improvements in how competition law is enforced in the UK. Many of the concerns raised in that consultation document related to procedural issues, and to address them does not require the creation of the CMA. We have similar views in relation to Government's proposal to elevate Trading Standards, overseen by a Trading Standards Policy Board (TSPB), to the role of national consumer regulator. Whilst we recognise the important role that Trading Standards currently plays on the consumer protection landscape, we are concerned that Trading Standards does not have the resource or experience to take on the role of national consumer regulator that the OFT currently fulfils. However, Sky does support BIS' proposal to consolidate the various consumer advocacy groups into one consumer service.

### Consumer Advocacy

3. Sky supports BIS' efforts to reduce the duplication of consumer information and advocacy roles and provide a "one stop shop" for advice in the form of the Citizens Advice Service. We consider that once consumers are aware that there is a single organisation to complain to and from which to seek advice, their interests will be better served. Having one consumer advocacy body will also assist in gathering complaint data which will allow whichever organisation takes on the consumer enforcement role to prioritise casework and base investigations on robust evidence of consumer harm.
4. Sky *does not* support the creation of a Regulated Industries Unit (RIU) within the Citizens Advice Service. In the communications sector, we are not convinced that the role played by the Communications Consumer Panel (CCP) is justified and needs to be replicated in a new unit. Ofcom has a very active consumer group and significant resources to carry out consumer research. Independent of Ofcom, organisations such as Which? and Moneysavingexpert.com are championing consumers' interests. Which? also has the ability to make super-complaints as a designated body under the Enterprise Act 2002. Consequently, Sky considers that the creation of another layer of consumer representation is unnecessary and does not reflect Government's commitment as part of the Comprehensive Spending Review to reduce the number of regulatory bodies.

5. Sky does not believe that the RIU should have its own information gathering powers. Industry is already under pressure from regulators requesting information. By way of example, since 2009 Sky has received well over 20 information requests (and in addition we submit a number of recurring monthly responses to Ofcom information requests). Responding to information requests is extremely resource intensive and time consuming for businesses and diverts companies from serving their customers. Sky urges BIS to avoid introducing any regulatory structure which results in further duplication. It would place an unreasonable burden on industry if it were faced with the prospect of information requests coming from the CMA, the Citizens Advice Service, the RIU and the Trading Standards Service.
  6. BIS suggests two options for bestowing an information gathering power on the RIU:
    - a) Transfer the power to the Citizens Advice Service and rely on the protections of Part 9 of the Enterprise Act 2002;
    - b) Transfer the power to a public body or bodies, such as the sectoral regulators, to be used at the request of the regulated industries unit.
  7. Notwithstanding Sky's disagreement with the creation of an RIU or that it should have information gathering powers, Sky considers that option b) would be least burdensome to industry whilst still achieving transparency for consumers. Sectoral regulators would have full visibility of *all* proposed information requests (from themselves and the RIU) and would be able ensure that information requests were proportionate, prioritised and did not place an unnecessary burden on recipients.

## **Consumer Enforcement**

8. Sky agrees that consumer law should be enforced by one body with sectoral regulators concentrating on sector specific legislation, but we are not convinced that Trading Standards is the appropriate body. We are concerned that Trading Standards does not have the right resources or experience to take on the role of national regulator or the UK's consumer law representative in Europe and internationally. We note that BIS acknowledges this fact by highlighting that the proposal would "*require the transfer of significant resource and capability in tackling national threats from the OFT or the CMA which would be potentially disruptive and could result in temporary or permanent loss of capability in some areas. There is also a risk that seeking to clarify accountabilities would reinforce separation rather than promote partnership working.*"<sup>1</sup>
  9. We appreciate that to overcome the disparate and local nature of Trading Standards authorities, BIS is proposing that a new Trading Standards Policy Board (TSPB) be established. The TSPB would provide leadership and co-ordination in identifying and tackling national issues and ensure that Trading Standards "*sustained or acquired the necessary reputation and credibility*"<sup>2</sup>. It is proposed that the CMA would take responsibility for investigating and addressing enforcement where there are structural market problems or consumer-related market failures. However, Sky remains concerned that whatever policy and co-ordination boards are in place, unless the right resources and experience are at the TSPB's disposal, consumer law may be enforced in a fragmented and inconsistent fashion. We would be interested to understand whether it is the intention that the TSPB would have a centralised legal resource to ensure that Trading Standards were providing consistent advice? Given that

<sup>1</sup> Paragraph 39 “Empowering and protecting consumers: a consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement” (“the Consultation”)

<sup>2</sup> Paragraph 5.95 of the Consultation ibid

one purpose of this review is to streamline the various consumer regulators, Sky is unclear how moving from the current OFT model for national regulation, to a TSPB co-ordinating various Trading Standards offices, cross boundary teams, regional teams and leading authorities and liaising with the CMA and Citizens Advice Service to create a joint co-ordination board and a joint annual plan, will in practice streamline regulation. The current proposal appears to be adding a new layer of bureaucracy with the attendant necessity of meetings, internal briefings and decision papers.

10. Further, although pages 85-87 and Appendix 2 of the Consultation attempt to set out which cases might fall to Trading Standards and which to the CMA, there still appears to be a grey area as to extent to which the CMA would enforce consumer law. Some areas of the consultation suggest that the CMA would have a limited role in the enforcement of consumer law and Appendix 2 refers to some recent OFT cases to highlight where competition elements of cases indicate that the CMA would investigate. However, there are cases cited in that Appendix where the conclusion as to whether the CMA would act is "*probably*".<sup>3</sup> The term "*structural market problem*" is not defined in the consultation and the examples given in pages 85-87 and Appendix 2 do not provide any clarity as to what the test for the CMA's involvement might be or where the sectoral regulators' responsibilities would lie. Therefore it would appear that the proposed regime would preserve the ability for the CMA to look at consumer issues without it being part of a competition-based investigation. Sky is concerned that such a proposal may well result in the CMA having a greater role in consumer enforcement than envisaged, in which case their role may well closely reflect that currently fulfilled by the OFT but with less certainty. We understand that BIS will be championing a new Consumer Bill of Rights to streamline overlapping consumer legislation and to implement the Consumer Rights Directive which was approved by the European Parliament in June. Sky questions how this new legislation will impact the proposals in this consultation?
11. We note that BIS proposes that within the Trading Standards enforcement model, national enforcement would 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. This causes Sky concern, even with the co-ordination role to be played by the TSPB. Sky fully supports the role that Trading Standards currently perform but we do have reservations about their suitability to take up the national enforcement role. The enquiries that Sky receives from Trading Standards rarely include any legal analysis, often without references to the legislation that might be relevant. Sky is concerned that there may be a low level awareness of legal principles by Trading Standards personnel, or it may be that they are too under resourced to thoroughly investigate cases. Sky questions whether current Trading Standards personnel have the skill set across the board to assume a comprehensive national enforcement role or the ability to engage at a level necessary to ensure effective enforcement of all consumer law or represent the UK in European or international fora. We would question, for example, whether Trading Standards would have the expertise to negotiate the UK's position on consumer-focused European Directives?
12. Our experience of working with Trading Standards is that it appears to be a heavily fragmented organisation and learnings and approaches are not shared with, or consistent across Trading Standards offices. Sky has worked closely with Trading Standards on a number of issues, for example on our advertising materials. It is our experience that we can reach agreement with one Trading Standards office, implement changes to our advertising material and processes as a result, only to have the same issue raised by another office. There have also been instances of

---

<sup>3</sup> Page 94-95 of the Consultation referring to the OFT cases on Retirement Homes and Airlines and Misleading Holiday Pricing.

different Trading Standards officers disagreeing with another's previous decision, leaving Sky with absolutely no regulatory certainty. We appreciate that BIS' proposals attempt to resolve this fragmentation but we are not convinced that the TSPB would be capable of unifying such a disparate organisation. As a result, we would also question the proposal that the Trading Standards Institute should take up the OFT's professional guidance and training function.

13. We note that BIS acknowledges that "*the absence of a clear boundary between responsibilities allows some local authorities effectively to opt out of enforcement against all but the most local of threats. It also fails to place responsibility clearly on the national body or larger neighbouring Trading Standards teams to cover cross-boundary cases which are inadequately addressed as a result. Even the larger local Trading Standards teams and the BIS-sponsored regional teams are not always clear which cases should be passed up for the OFT to handle and which should not.*"<sup>4</sup> Sky is not persuaded that it is the lack of co-ordination and national leadership that leads to confusion about roles and responsibilities but rather inadequate resources. Whilst we appreciate that BIS intends to establish a board of Chief Trading Standards officers and facilitate knowledge transfer between the OFT in the first instance and then the CMA, Sky is not convinced that this will be enough to yield a credible national regulatory body. Sky notes that BIS proposes effective partnership working and prioritisation of activity between Trading Standards and the proposed CMA but Sky questions how liaising with the proposed CMA would be any different than current liaison with the OFT? We would also be interested to hear more about how the disparate requests coming into Trading Standards offices would be managed by the TSPB in practice and what the trigger would be for an issue to be considered centrally by the TSPB.
14. We note that BIS states that it has considered "*how maintaining 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. It may be possible, for example, for the OFT/CMA and Trading Standards to retain largely overlapping enforcement powers and for the CMA to retain consumer enforcement capacity across the board, but to set up a Joint Enforcement Board (JEB) between Trading Standards and CMA to direct that capacity, such that decisions on how to enforce against national and cross-boundary threats could be taken collectively.*"<sup>5</sup> Sky considers that this may be a better solution than Options 1-3 but our concern remains that lack of co-ordination is not the only reason that national enforcement is not as effective as it might be and that creating joint boards may only lead to increased bureaucracy and inconsistent policy.

#### **Enforcement and consumer education role**

15. Sky notes that the OFT has fulfilled both an enforcement and a consumer education role, in many cases with the education piece being informed by the OFT's enforcement role. Sky considers that this is a valuable link and trusts that such an arrangement would continue in the event that BIS's proposals are implemented.

#### **Concurrent Powers**

16. Sky believes that in considering the role of the OFT/CMA and Trading Standards, the consultation should also consider the issue of the concurrency and sectoral regulators. In the communications sector, Ofcom frequently utilises general consumer protection law in areas

---

<sup>4</sup> Paragraph 35 of the Consultation ibid

<sup>5</sup> Paragraph 5.38 of the Consultation ibid

that have already been or are being considered by the OFT. This can create confusion. For example, in 2008 Ofcom published Guidance on unfair terms in contracts for communications services shortly after the OFT had published its Guidance on the Unfair Terms in Consumer Contracts Regulations and at a time when the OFT was challenging contract terms providing for unauthorised bank and building society overdraft charges in the case of *Office of Fair Trading v Abbey National plc and others*. As a result, the Ofcom Guidance was cavedated until the judgment was handed down in November 2009. Ofcom subsequently reissued its Guidance in November 2010 to take account of the Supreme Court's ruling. This led to considerable uncertainty for an extended period.

17. More recently Ofcom has issued a Final Statement on the use of Automatically Renewable Contracts in the fixed line and broadband sector. To the extent that automatically renewable contracts are an issue, Sky believes that they should be dealt with by applying general consumer law principles rather than through the implementation of a new Ofcom General Condition relating specifically to one industry and indeed to one sector of one industry.
18. Sky is concerned that consumer law is applied differently in the communications sector than in other industry sectors. We accept that the EU Telecommunications Framework Directives require the implementation of specific consumer protection rules in the communications sector and we support Ofcom's role as regulator for those areas but we are concerned that Ofcom has taken an unduly onerous and interventionist approach in other areas. Unfair terms in communications contracts and automatically renewable contracts are just two examples; Ofcom has also imposed new requirements for sales and marketing practices and complaints handling, amongst others. None of these requirements are mandated by the EU Directives and, while there may be a need for consumer protection in these areas Sky is concerned that Ofcom is developing sector specific regulation for issues that should more properly be dealt with under general consumer law if necessary. To do otherwise, risks double jeopardy between regulators and means that contracts in the communications sector may be treated differently to those in other sectors. Consumers' interests should be protected in an equivalent manner across the board.

**Sky 27 September 2011**

## Somerset CC

## Somerset Trading Standards Service

Somerset County Council  
County Hall  
Taunton  
TA1 4DY

DX: 122470 – TAUNTON 7

Please ask for: Andy Fowler  
Direct Dial: (01823) 357262  
Fax: (01823) 356846  
Email: afowler@somerset.gov.uk  
My ref: PC/AF/CC  
Your ref:



**Paula Hewitt BSc, MCD, MRTPI** – Service Director for Environmental Management & Regeneration

Department for Business, Innovation and Skills  
1 Victoria Street  
London  
SW1H 0ET



26 September 2011

Dear Sir/Madam

## EMPOWERING AND PROTECTING CONSUMERS CONSULTATION

On behalf of Somerset County Council the answers to the above consultation are set out below:-

### Specific Consultation Questions

#### Information, advice and education

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

It is important that consumers continue to be able to access a range of consumer information and that the high level of consumer advice is maintained, through face to face contact (particularly for the more vulnerable), the telephone and online. Whilst the internet provides a valuable resource of information to empower consumers to take action or seek information, individual enquiries should be dealt with by an Officer to provide specific advice and guidance relevant to the complaint.

It is equally important that Local Authority Trading Standards Services develop specific local partnership arrangements with local Citizens Advice Bureaux to enhance intelligence relevant to both organisations in assisting and educating consumers.

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

It follows and is appropriate for the OFT's consumer information role to be transferred to Citizens Advice assuming that the expected links between CAB and Trading Standards works nationally and locally in the provision of this consumer information service.

Consumer Direct data is essential for Local Trading Standards Services which have an intelligence-led approach to enforcement with referrals and Consumer Direct data providing valuable evidence. Access to this information is essential as it currently provides an efficient and effective reporting line that allows the identification of problem traders, consumer detriment, and scams to protect both consumers and local businesses.

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

This Authority 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 also 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?**

This Service is happy with the Government's proposal that the OFT's publicly-funded consumer education role at national level is transferred to CA, who will need to work closely with the Trading Standards service to ensure coordination of all activities

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 should rest with Citizens Advice if they are given the key national responsibility for this work area, recognising the necessity to work closely at a local level with Trading Standards.

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

This Service provides business education at the local level through face to face dealings with local businesses and by local training initiatives.

The national strategic level business education should be coordinated, commissioned and scrutinised by the TSPB. Nationally there are websites such as Business Link and Everything Regulation When Its Needed (ERWIN). To work effectively there needs to be a policy and support from central government as to how Business Link intends to develop and the necessity for it to engage with trading standards.

### **Consumer Code Approvals**

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

**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 "kite mark" 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?**

Many Local Authority schemes have developed to give consumers a method for finding trustworthy businesses via various Local Authority Assured Trader Schemes. These type of schemes have been very successful

If a scheme is to continue Trading Standards Services must be able to feed into the application process as with the OFT Consumer Codes Approval Scheme, so that any concerns or issues can be addressed. Further, if a scheme is to continue the development process and implementation must be enhanced with strong links to the Trading Standards Approved Trader Scheme and done in a much shorter timescale.

**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?**

**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?**

As many advocacy schemes as possible need to be put with the Citizens Advice Service, if that is where most consumer advice type provision is to be located, and 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?**

Simple to use and well serviced redress schemes should be readily available for all consumers so it would be appropriate to extend these opportunities to all consumers.

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

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

N/A

## Enforcement of Consumer Protection Legislation Options for reform

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

Option 3 which envisages the transfer of the majority of the OFT's consumer enforcement functions to Local Authority Trading Standards Services with some functions (for cases involving structural market problems) remaining with the Competition and Markets Authority. Trading Standards across the country have the skills, experience and willingness to deliver the Governments desired outcomes.

Trading Standards, as well as supporting their local consumers and businesses, already undertake consumer protection work having a regional and/or national impact. Option 3 will enable Trading Standards Services to have a greater influence over regional and national work. It will enable the development of better resilience for existing regional infrastructures which are crucial to effective engagement and delivery between the local and national levels, changes within the services in terms of strengthening leadership and influence in order to support more effective action against cross-boundary threats.

This is subject to the appropriate funding being made 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 Trading Standards Policy Board is an essential element in ensuring that the changes to enforcement work effectively, 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 being central to the operation. The TSPB would direct the work currently done regionally/nationally by councils and be responsible for allocating government funding, under a service level or similar agreement, for specific activities to deliver many of the functions currently provided by the OFT. This would be led by effective intelligence analysis.

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.

Accountability should be delivered by the LG Group, including financial oversight and auditing. Further, there is a real need that the Board takes on the same role in respect of Trading Standards functions relating to other Government areas especially Food Standards Agency and Animal Health DEFRA to start to provide a comprehensively joined up service.

The TSPB must have effective representation and leadership from each of the Trading Standards regions. The 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. The TSPB will need a Chairman, a pivotal role. This person could be elected from its members or for preference would be an independent person with substantial regulatory experience. Where

an independent chairman is appointed they must be someone with significant experience of running Trading Standards Services, which will probably need to be a funded appointment. Others, representing relevant organisation e.g. Citizens Advice, CMA etc. would be invited at attend meetings to share information, intelligence and advice as necessary to the operation of the board.

A 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, etc. will need to be supported, as well as a decision as to the best organisation to deliver the function, e.g. LG or ACTSO (although TSI may appear an option it is difficult to see how an organisation responsible only to its members could fulfil such a role, considering the small proportion of professionals that are members and the potential for membership to change, perhaps in a relatively short time).

The existing Trading Standards Policy Forum will need to be strongly linked to the business and decisions of the TSPB where membership may be the same for regional representation.

Expanded regional teams or national centres of excellence will provide sufficient investigative capacity to take on the larger cases, with funded support to Trading Standards Services in that region being able to provide additional specialist resource.

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 scam buster and illegal money lending teams it is anticipated that these would continue using the same or similar delivery mechanism but under the governance of the TSPB rather than direct governance by BIS.

An individual Local Authority taking on a national case must not be put at significant financial/legal risk and as such BIS working with the Trading Standards policy forum must find a method of underwriting or insuring against any such risk, and it will be essential that the resources are available to cover all the costs of the investigations with legal liabilities 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 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?***

There would continue to be far more confusion and overlap of powers and responsibility which without clarity of responsibility will result in few clear benefits and increased bureaucracy. The leadership role in this area of consumer protection envisaged by the government would not occur with this model

The Primary Authority/Home Authority protocols will continue to support, and are tools that will enhance, a single Trading Standards for business particularly when linked strongly with LG and LBRO.

Without the control of substantial national enforcement resources within the Trading Standards network, it would be much harder to engage Trading Standards 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?**

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 case). Where there are consumer cases that have a competition implication the CMA will want to retain the resources to deal with cases that reflect structural market problems as long as this does not reduce the resources for Trading Standards Services to deliver the new consumer landscape under the proposals.

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

It would be helpful to have a 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 fall into an enforcement or advocacy gap. The mechanism must be improved on that currently operated for the BIS fighting fund and should be a more flexible resource with funds available to adequately address the potential need.

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?***

Yes, Trading Standards Services have years of enforcement experience dealing with rogue traders and legislation breaches in their own areas including many with a national impact, and have always used a wide range of tools to ensure compliance including warning letters, simple cautions, fixed penalty notices, civil orders, etc.

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, who clearly have considerable experience of training staff in the Trading Standards community and producing professional guidance.

Most international liaison and OFT's general consumer policy work

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

TSI already has a 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?***

***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?***

Chairmanship of this could pass to TSI or the CMA but the TSPB would need to be aware of any key issues arising from 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?**

Yes, both these proposals seem to make sense.

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

There is 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.

**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 to the consumer landscape should go ahead in April 2013.

Yours sincerely



**Andy Fowler**  
Team Manager – Community Support

0911c03afl.

Comments about the service? Contact Miss Tina Jackson, Quality Officer, 01823 357695, E-mail: [tjackson@somerset.gov.uk](mailto:tjackson@somerset.gov.uk) or by post to the above address.

## **South Gloucestershire Council TS**



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

Date : 26 September 2011  
Your Ref :  
Our Ref : M Pullin 260911  
Enquiries to : Mark Pullin  
Tel: 01454 863489  
EMail : Mark.pullin@southglos.gov.uk

Please find enclosed the response from South Gloucestershire Council Trading Standards Service to the 'Empowering and Protecting Consumers' - Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement".

### 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. Some consumers, particularly the more vulnerable, are often happier speaking to someone face to face and this service should still be available in the future.

It is important that the high level of consumer advice is maintained including pre-shopping advice. National advice campaigns on the television, in the press and via various social media networks can be valuable and these should be continued.

Each individual enquiry should be dealt with by an officer who provides bespoke advice and guidance relevant to the complaint.



INVESTOR IN PEOPLE

**Steve Evans, Acting Director of Environment and Community Services**

**Postal - PO Box 2078 Council Offices Castle Street Thornbury South Gloucestershire BS35 9BJ**

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

We 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. We are, however, concerned that there will be lack of recognition of the problems which should be passed to trading standards services.

At a national level in England and Wales local authorities should be represented on the governance board for the replacement for Consumer Direct services, perhaps through their regional groupings.

Intelligence-led enforcement is embedded in Trading Standards services with the referrals from Consumer Direct providing an essential part of this. Any future solutions must ensure this is strengthened and certainly not diluted.

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

If other related advice services are transferred then we agree with this proposal.

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

South Gloucestershire Council 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.



INVESTOR IN PEOPLE

---

Steve Evans, Acting Director of Environment and Community Services

Postal - PO Box 2078 Council Offices Castle Street Thornbury South Gloucestershire BS35 9BJ

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.

We welcome the recognition that local authorities should remain responsible for direct delivery of education to consumers at local level. 'No Cold Calling Zones' have been very successful locally for South Gloucestershire. The right balance of funding between Citizens Advice and local authorities must be agreed to properly support both national and local consumer education.

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

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.



INVESTOR IN PEOPLE

Steve Evans, Acting Director of Environment and Community Services

Postal - PO Box 2078 Council Offices Castle Street Thornbury South Gloucestershire BS35 9BJ

**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 have 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.

Across the South West and South East, our Buy With Confidence scheme already gives consumers a method for finding trustworthy businesses. This scheme has been very successful and well received by local consumers and businesses. We believe that there are great opportunities to build this existing scheme 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 adopted / developed that the process for code approval should be completed in a timelier manner.

I am concerned that leaving the response to a range of different organisations will result in different approaches emerging which will lead to inconsistency. I think we



INVESTOR IN PEOPLE

should be arguing for a coordinated approach to ensure that outcome is clear for businesses and consumers alike. Different schemes, operated to different standards under different names and by different groups will simply lead to confusion.

South Gloucestershire Council also fully supports the submission to this consultation by the Chair of the Buy With Confidence Management group.

#### 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



INVESTOR IN PEOPLE

South Gloucestershire 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.

This coordinated, publicly-funded, consumer advocacy function, will have to have effective power to take on cases that would not otherwise be taken. There needs to be a proper structure in place so that people know where to go to and have someone from a particular sector to help them.

We 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?***

South Gloucestershire Council has no 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?***

This seems a sensible way forward.

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

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

We do not feel it is appropriate to comment on this proposal.

## 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.



INVESTOR IN PEOPLE

Steve Evans, Acting Director of Environment and Community Services

Postal - PO Box 2078 Council Offices Castle Street Thornbury South Gloucestershire BS35 9BJ

- *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?**

South Gloucestershire Council is supportive of Option 3. We believe that LATSS have the skills, experience and willingness to deliver the outcomes necessary if the appropriate level of funding is available. South Gloucestershire Council Trading Standards, along with many other services, already tackle issues that extend beyond its own boundaries.

Option 3 would enable a greater influence over regional and national work, developing 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.

It is also worth noting that we 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.

**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?**



INVESTOR IN PEOPLE

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

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 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 effective 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.

### 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



INVESTOR IN PEOPLE

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. 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.

### 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.

We 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.

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

In terms of the current scambuster and expect these to continue using the same governance of the TSPB.

illegal money lending teams, we would use the same delivery mechanisms but under the

### Indemnity Fund



INVESTOR IN PEOPLE

There is a particular concern that any individual local authority taking on a national case 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 we 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.

South Gloucestershire Council 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. The JEB would also not be controlled by heads of trading standards 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 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**

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

There must be effective communication and a good working relationship between the 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.



INVESTOR IN PEOPLE

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.

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

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

**Response to questions 30 and 31**

We agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies. We are concerned, however, as to how complex enquiries with overlapping legislative issues will be dealt with if they do not fit into discreet pots of funding. 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.

**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. We do not believe that there will be any problems with an enforcement model branded as run by LATSS.



INVESTOR IN PEOPLE

Steve Evans, Acting Director of Environment and Community Services

Postal - PO Box 2078 Council Offices Castle Street Thornbury South Gloucestershire BS35 9BJ

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. Some regional groups and indeed other external providers would also wish to be able 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?***

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



INVESTOR IN PEOPLE

---

Steve Evans, Acting Director of Environment and Community Services

Postal - PO Box 2078 Council Offices Castle Street Thornbury South Gloucestershire BS35 9BJ

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

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

***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, we 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



INVESTOR IN PEOPLE

Steve Evans, Acting Director of Environment and Community Services

Postal - PO Box 2078 Council Offices Castle Street Thornbury South Gloucestershire BS35 9BJ

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?**

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

**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. This would avoid continued confusion in the current landscape and deliver financial efficiencies by streamlining the processes and structures.

If you have any questions regarding this response please contact me.

Yours sincerely,



**Mark Pullin**  
Trading Standards & Licensing Manager



INVESTOR IN PEOPLE

## **South West Water**



**SOUTH WEST WATER**

Peninsula House, Rydon Lane, Exeter, Devon, England EX2 7HR . Tel: 01392 446688 . Fax 01392 434966 . southwestwater.co.uk

David Evans  
Consumer and Competition Policy Directorate  
Department for Business Innovation & Skills  
3<sup>rd</sup> Floor  
1 Victoria Street  
London  
SW1H 0ET

Direct line: 01392 443312  
Email: sdavy@southwestwater.co.uk  
Minicom: 0800 169 9965  
Our ref:

27 September 2011

Dear Mr Evans

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

**Response from South West Water**

We are pleased to provide comments on the consultation on empowering and protecting consumers. South West Water is the appointed water and sewerage undertaking serving 1.6 million people in Devon, Cornwall and parts of Somerset and Dorset. As such we operate in a highly regulated sector, with economic regulation provided by Ofwat. The Consumer Council for Water (CCWater) play an important role as a consumer representative within the water and sewerage industry.

We have ongoing dialogue with CCWater at a local, regional and national level. A wider range of issues are covered, concerning those raised by individual customers to matters of national policy affecting the industry. Consumer representation has a key role in the water and sewerage industry. The industry remains a regional regulated monopoly where most customers have no choice of supply and little day to day choice about the nature of service that is provided. It is a long term industry that concerns complex matters of public health and environmental protection. The need to protect customers, both in terms of services provided and prices charges, means that the regulatory regime is detailed and complex to understand, even for informed stakeholders. As a company, it is a fundamental part of our responsibilities to inform, educate and consult customers about the services they receive. Consumer representation, such as that provided by CCWater, contributes to our responsibilities in this regard.

CCWater represents a strong and independent consumer body. The sector benefits from having environmental and quality regulators (Environment Agency, Drinking Water Inspectorate and Natural England) which are independent from Ofwat's role as economic regulator. The recent recommendation of the "*Review of Ofwat and consumer representation in the water sector*" undertaken by David Gray highlighted the importance of CCWater to this regulatory regime and recommended that it should retain its existing role. We agree with this conclusion and hope that the future of consumer representation in the water and sewerage industry is clarified as soon as possible.

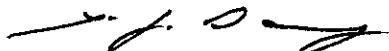
Customer satisfaction in the sector is around 90%, with water companies more trusted by consumers than those in the energy sector. CCWater's consumer advocacy role as a visible route for customers who are dissatisfied with the response from their supplier helps to maintain high levels of trust in the industry.

We note in the consultation suggests a vision of combining many sectoral advocacy functions into the Citizens Advice service. As a company, we have worked closely with individual local Citizens Advice services to enhance the delivery of support to vulnerable customers and those who are struggling to their bills. For instance, we have established an advice 'gateway' with the Plymouth Citizens Advice Bureau, which offers specialist water debt advice. To support this process, the company also sponsors Institute of Money Adviser training for the voluntary sector in Cornwall and Devon, as well as training for the debt collection staff it uses. South-West Water also invested in the "Fresh Start Fund", which provides grants to clear arrears for customers who encounter a change in circumstance that leads them to debt. This is administered by an independent body led by the Citizens Advice Bureau. Individual Citizens Advice Bureau vary in the way that they wish to work with us.

The work of Citizens Advice is not specific to the water sector, which has been invaluable to us in exploring approaches that combine water efficiency, energy efficiency and benefit checks as a service to vulnerable customers. They have an important role to play, but it is different from the independent customer advocacy role carried out by CCWater that is specific to the water sector. It would be hard to work with Citizens Advice in delivery of support to vulnerable customers if they also had a formal customer advocacy role as part of the regulatory framework for the industry. Providing Citizens Advice with formal information gathering powers as suggested in the consultation would also have the potential to change the nature of the working relationship that has developed.

Please do not hesitate to contact me if you require any further information.

Yours faithfully



Susan Davy  
Finance & Regulatory Director

## **Southampton City Council**

# **Trading Standards Service**

## **Southampton City Council**

Civic Centre  
Southampton SO14 7LY  
Direct dial: 023 8083 4921  
Email [clive.robinson@southampton.gov.uk](mailto:clive.robinson@southampton.gov.uk)

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

**BY EMAIL TO [david.a.evans@bis.gsi.gov.uk](mailto:david.a.evans@bis.gsi.gov.uk)**

Dear David

**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 Southampton City Council Trading Standards Service with reference to that provided to us in draft by 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). The ACTSO 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 Southampton City Council is in broad agreement with the ACTSO response, save for the role of TSI as a policy setting organisation. We have therefore indicated our specific agreement with the ACTSO response where relevant and added our own perspective.

1.5 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.

1.6 Southampton City Council is a unitary authority in which Trading Standards forms part of a Regulatory Services delivery group alongside Environmental Health, Parking Services and Bereavement & Registration Services.

1.7 This has particular relevance as in this context the scope of the BIS review excludes some significant areas of work, some major priorities and exposes a considerable disjoint between BIS and other central government agencies. In particular we identify the review of food law enforcement carried out by the FSA, priorities delivered by the HSE and the work being done by BIS itself in the area of product safety. As a major port we are also charged by UK government bodies to deliver EU duties.

1.8 Whilst we therefore welcome this review we urge BIS to consider the proposed outcomes not only in the light of responses from LATSS but, particularly when setting timetables for change, the proposals of other government departments and agencies. In this context the expectations of the Treasury and DCLG in relation to local authority budgets will be a major influence on LATSS ability to deliver.

## 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.

We have commissioned reports as to effective communications routes with our citizens and this has revealed that a significant percentage does not communicate with official bodies by email or web based services. By way of example 18% of the Southampton population fall into the top 10% of deprivation measured by achievements in education skills and training

This research has also identified a key role for local media, both newsprint and radio, in providing information to specific sectors of the community.

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. It is our view, and this coincides with previous Government papers, that informed consumers play a key role in delivering an effective market place. With the increasing complexity of what initially seem to be simple transactions, as an example the proliferation of energy supply contracts and tariffs, consumers need to be able to access information prior to making the shopping decision.

Each individual enquiry should be dealt with by an officer who provides bespoke advice and guidance relevant to the complaint. We would not support any reduction in the standards of advice from that currently provided. In particular 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 and it is our experience that the problem initially presented can frequently be but one symptom of more serious matters. This is particularly the case with more vulnerable citizens and those under significant financial stress.

Our understanding of the current provision of services by local Citizens Advice Bureau (CAB) is that pure consumer advice, in the sense that the consumer issue is the sole reason for the citizen to seek advice, is given a low priority. The level of such work within bureaux is low, around 3% locally, and the bureau are at maximum capacity delivering other services focussed on welfare, benefits, matrimonial disputes, child maintenance and custody, immigration and so on. Were the responsibility to deliver 2<sup>nd</sup> tier advice be placed on local CAB it would seem unlikely that the bureaux would have the capacity or ability to reschedule priorities to deliver the level of service provided at present by Southampton City Council.

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

We 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.

However the scope of the 'Extra Help Unit' is currently tightly defined and there is an inherent tension in providing what appears to be a higher level of intervention for matters within this scope as against pressing issues elsewhere.

***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 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.

However it is important to state that the OFT role does not include interaction with consumers but rather the passive presentation of materials, albeit frequently based on some very good research. The interactive role has always been the responsibility of LATSS, indeed it is difficult to see how a national body can engage with communities and individuals at a local level

Retaining the LATSS role in consumer education also carries the benefit of local knowledge and contacts. We deliver between 45-60 presentations to local groups every year focusing on issues identified from local intelligence, delivered to groups where we can identify the audience as vulnerable. We are able to deliver a holistic message around matters such as doorstep crime, child safety, food issues, under age sales etc purely by the virtue of being based within a unitary authority.

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.

We therefore welcome 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.

At a corporate level we recognise the importance of business to the local community and economy, as regulators our role in working with business to deliver compliance is seen as critical. To this end we have a commitment, 'Open for Business', which defines our approach. Business advice, working with businesses to assist them in developing their own competencies to achieve compliance whilst targeting enforcement resources on persistent offenders is engrained in our approach.

We operate a risk based targeted inspection programme and all businesses visited receive a survey questionnaire. This feedback indicates that a significant majority of businesses welcome the opportunity to discuss regulatory issues, appreciate the business advice offered and in many cases request a higher level of interaction. We therefore believe that LATSS are the most appropriate agency to deliver business advice and education, particularly to SMEs and micro-businesses where face to face interaction is most effective

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

We have 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.

Along with many other local authorities we actively promote the Buy With Confidence (BWC) scheme as giving consumers a method for finding trustworthy businesses. The scheme has been very successful, is well received by local consumers and businesses and forms a key part of our services to both consumers and businesses. We believe that a locally promoted scheme, linked directly to the strong Trading Standards brand carries a high level of confidence with both the public and business. We submit 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. However there is a real question of proportionality in the way that such stringency has been applied with some surprising outcomes. By way of example we consider that clear, concise and fair contract terms are key to consumers and businesses alike in understanding their rights and obligations. However few, if any CCAS schemes require individual businesses to adopt model terms and conditions and those operators that provide them rarely seem to check that business continue to use them. It is essential that whatever new scheme is developed the process for code approval should be completed in a timelier manner.

We submit that there is a clear interaction between CCAS, PAP, BWC and proportionate regulation including the provision of business information and advice. The current PAP processes are more suited to large businesses, indeed this is the target audience, whereas BWC is more suited to SME's and micro businesses. There is a clear potential to build a degree of earned recognition into BWC to deliver a PAP inspection plan model for smaller businesses, even if only at a single local authority level, and a proportionate and third party accredited trade/professional association could well deliver a route for compliance on behalf of its members.

**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

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

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.

We currently offer second tier advice and individual advocacy for consumer complaints, this is delivered in accordance with a specific policy that gives priority to local vulnerable citizens. We see the provision of 2<sup>nd</sup> tier advice and the ability to address both individual and local issues as supporting both local businesses and consumers.

We recognise our limitations in carrying out this work, in particular we are frequently only able to address matters at a local level and major systematic market failures are outside our remit and would welcome working 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?**

We have 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?**

We support 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 demonstrated the skills, experience and willingness to deliver the outcomes the Government wants to see. However, it is with the very clear proviso that funding and a commitment from all parties has to accompany this option for reform.

As well as helping local consumers and businesses, we already do consumer protection work which has a regional and/or national impact. Numerous examples can be provided to demonstrate this. We provide Home 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 our council area 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.

Additionally we actively support regional co-ordination through our membership of TSSE, being represented on the TSSE Ltd board, leadership of the BIS funded national Ports Project and active participation in many regional activities. Our officers currently chair an operational focus group, we have funded work on BWC and the development of Support With Confidence and have developed a number of innovative approaches to regulatory work.

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.

We support the ACTSO belief that Option 3 does not undermine 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

We support the ACTSO view in respect of 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.

We submit that the membership of the board should be restricted to officers employed by LATSS representing regional groupings on the basis that this delivers a political legitimacy to the board. This arrangement would in many ways reflect the existing regional arrangement, by which the TSSE Ltd board comprise of LATSS representatives and is well known and understood. The representatives would thus have a dual accountability, to the TSPB and their employing authority/regional body and the latter accountability provides a link to local political accountability. In respect of this it is our view that the TSPB should **not** include representatives of TSI or ACTSO acting on behalf of those organisations, however we would consider it appropriate for the TSFB to consult and receive expert guidance from such organisations.

Others could 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 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 support the ACTSO belief 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.

We welcome 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 Illegal Money Lending Team we submit that the value of the team has been established and 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.

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

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

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

Response to questions 22 to 24.

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

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

We support the ACTSO view and agree that there are benefits for CMA to retain a consumer enforcement role only in those cases where a potential breach of consumer law is connected to a structural market problem (e.g. the bank charges type cases). Where there are consumer cases that have a competition implication, we understand that the CMA will want to retain the resources to deal with cases that reflect structural market problems but we remain concerned

that this may reduce the resources for LATSS to deliver the new consumer landscape under the proposals.

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 deliver a response to cases referred to them by the CMA.

We have some experience of operating a NIM-based approach at a regional level including tasking LATSS to carry out work and whilst this is achievable it must be recognised that LATSS priorities and resources will rightly be influenced by local councillors and stakeholders. This can present tensions but provided that there is a commitment from all parties to openness, real intentions to deliver and clearly defined responsibilities this can be made to work.

### **Cases that cross over institutional boundaries**

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

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

### **Response to questions 30 and 31**

We support 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. We therefore 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. Some regional groups and indeed other external providers may also want to bid for this type of work and a single supplier poses some conflicts with achieving best value contracts.

We would regard TSI as potentially a suitable contractor for the provision of training and professional guidance but this ultimately LATSS are the employers of relevant staff and the duty to determine competence must lie with them. In this regard the determination of consumer protection and regulatory policy must remain with LATSS in conjunction with government departments and agencies.

#### **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?**

We make the distinction between TSI as a membership body representing the views and interests of its members, many of whom are employed by LATSS but with a significant and growing private sector membership, and the delivery of contracted services. TSI delivers a range of excellent products and has demonstrated the ability to deliver contracted services. However we do not see TSI as having a political legitimacy to represent any group other than its members.

We would therefore not support TSI as representing the views of LATSS on any forum nor the appropriate body to formulate policy on matters within the LATSS remit

TSI, by way of its commercial trading company, has established 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. 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?**

We support the ACTSO belief 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.

However we repeat our concerns as to the status of TSI as expressed in our response to Q34, above

***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, we 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?***

We have no strong views on this matter but it is likely that a lead local authority or group of authorities, could take on the OFT's estate agency and related anti-money laundering functions. The existing OFT function is both time consuming and bureaucratic, the benefits of a negative licensing system governing the activities of persons involved in the biggest financial transactions consumers undertake are open to question and the future of this role should be fundamentally reviewed.

The enforcement of anti-money laundering regulations is dealt with in an extremely "light touch" way by the OFT, and we have no experience or information as to outcomes. However there are a number of other agencies delivering anti-money laundering compliance, not least of all the FSA who may well be regulating other activities undertaken by estate agents, and it would seem more relevant to explore such an option.

***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?***

In proposing the review BIS has created a significant degree of uncertainty, any further changes in dates would be unwelcome and as such the proposed changes to the consumer landscape should go ahead in April 2013. .

### **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 Clive Robinson, Trading Standards Team Leader, on 023 8083 4921 or [clive.robinson@southampton.gov.uk](mailto:clive.robinson@southampton.gov.uk)

Yours sincerely

Clive Robinson

Trading Standards Team Leader

## St Helens Metropolitan Borough Council

## **Empowering & Protecting Consumers Consultation September 2011.**

### **Response From St Helens Metropolitan Borough Council**

#### **1. Foreword**

The response to this consultation, although compiled and completed by the Chief Trading Standards Officer for St Helens, is submitted with the approval and support of both the Director for Environmental Protection and the Cabinet Member for Environmental Protection.

Given the requisite support and resource we are in broad agreement with the Governments preferred option of the trading standards community coming together under direction from the proposed Trading Standards Policy Board ( TSPB ) to enforce against regional and national threats. We also look forward to working with Citizens Advice (CA ), sharing intelligence and jointly delivering consumer advice, publicity and education initiatives.

#### **2. Context**

St Helens administratively sits within Merseyside and is 12 miles from Liverpool and 25 miles from Manchester. The population at mid year 2007 was 177,400. The proportion of people from BME groups is estimated at 3.4%, and although this is increasing it is still lower than the regional ( 10.1%) and national ( 15.8% ) averages. The age structure of residents in St Helens mirrors the national picture of an ageing population, with 18.9% aged 65 or above ( male ) or aged 60 and over ( female ).

In terms of the average score of SOAs (Super Output Areas ) St Helens is ranked as the 47<sup>th</sup> most deprived authority in England. In terms of employment, 32 SOAs in St Helens are ranked amongst the most deprived 10% nationally.

The Trading Standards Team in St Helens consists of a Chief Officer, 2 Principal Officers, 1 Senior TSO, 2 Trainees, 3 Enforcement Staff , 2 Advisors and 1 Support Officer. With the exceptions of animal health & petroleum licensing provisions the Team enforce the full remit of consumer protection legislation and deal with around 2000 enquiries and undertake over 1000 trader visits each year.

### 3. Responses to Annex A- Consultation Questions

Please note the question numbers listed below, and their associated answers, is as listed in Annex A of the consultation. We have not reproduced the questions in full.

Q1. Current provision of consumer information would benefit from rationalising and synergising. The proposed TSPB, working in partnership with CA nationally, could lead on national education and information campaigns which, through local TSS ( Trading Standards Services ) and CAB's, working closely together, could deliver the message locally, and adjust for local need if necessary. There is a role for both CA and TSS in delivering consumer information but this must be done in partnership. For example TSS are best placed to take the lead when publicising product recalls and other information for businesses. Also press releases emanating from prosecutions or survey work often contain advice and guidance for consumers, which TSS could deliver. CA, via intelligence observed through complaint trends from CD ( Consumer Direct or its successor), may wish to publicise emergent consumer facing issues. In either case it is important CA and TSS communicate at the local level. While this may readily occur in some locales, it may not in others. Consideration needs to be given to formalising this intercommunication process via National direction, perhaps under the auspices of the TSPB working with CA. It is also important to distinguish between *information*, recently discussed, and *advice*. Again there is a role for both TSS and CA in advice provision. We suggest CA ( following its takeover of CD from the OFT ) continue to provide 1st line consumer advice and to refer more complex cases, and potentially criminal cases, to local TSS. It is vital intelligence accrued by CA continues to be shared with TSS. TSS are well positioned to action more complex and wide reaching civil cases, including advising consumers. Increased use of the injunctive processes provided by the Enterprise Act has blurred the once distinct lines between "civil" and "criminal" interventions.

Caution needs to be taken in creating a potential over reliance on commercially provided information and advice. Clearly on-line unregulated feedback is open to abuse and advice offered on a suppliers own web site might be anything but impartial. Even price comparison sites run the risk of directing consumers towards favoured "partner" suppliers. While such fora have their uses we still need to maintain the unbiased, respected and trustworthy advice provided by public bodies.

Q2. As discussed in Q1 it is important CA and the TSPB work together in commissioning and providing national consumer information and local CAB's and TSS work together at the local level. Information provided by regional Trading Standards teams such as scambusters needs to be considered by the TSPB/CA partnership in order to ensure a more unified and consistent message.

Q3. Yes.

Q4. As with information and advice discussed in Q1 and Q2, for national education and awareness raising initiatives there is a need for TSPB and CA to work together to ensure a consistent and comprehensive message. Again, locally, it is important that TSS and the CABs liaise over local campaigns. TSS should continue to deliver business specific education and we think it would be a really positive development if TSS and CAB's worked closely together with consumers around education provision. Direct education delivered in schools etc by local TSS, due to resource restrictions, can often only target a limited number of students. It would be more beneficial and consistent to include consumer education as part of the curriculum. The TSPB/CA could work with academia in helping to develop and update the curriculum in this area. For certain issues, such as recent OFT work around airline pricing transparency, there is a need for national publicity and this should fall under control of the TSPB and CA. Other issues, such as local licensing review outcomes, are more relevant locally and need to administered by TSS and CAB's. The CD presence on the Government Connect website needs to be increased and its profile enhanced.

Q5. We think the TSPB should certainly have a role in co-ordinating and commissioning national business-facing educational initiatives. We are unsure of the role of TSI in this area. A number of business facing resources are currently available, for example ERWIN administered by the EETSA Group. There is no reason other Trading Standards regions, and indeed private suppliers, couldn't work with the TSPB in providing education to businesses. A role for TSI alone would seem restrictive.

Q6. External impartial moderation and approval of consumer codes undoubtedly reassure both members and their customers alike. BSI and trading standards have sufficient levels of trust and public awareness to provide this assurance but if we were considering one overarching approving body for all codes, BSI solely would have the resource and infrastructure to currently offer this. TSS would perhaps be better

positioned to offer approval for codes on an individual trade sector basis, perhaps through the primary authority system for example. Many successful partnerships continue to operate through this and the home authority arrangement.

Q7. There is no guarantee that an overarching body or bodies will step in to approve approval codes. The administration of individual codes is generally influenced and funded by individual members. It is questionable that there is a voluntary appetite to set up an unrecognised, none public, code approving level above this.

Q8. CCAS appears to have been slow and unwieldy and has attracted relatively few members since its inception. TSS local schemes, such as Trade Register which we operate here in St Helens, seem to be much more reactive and efficient and carry the minimum, but still retain the necessary, bureaucracy. A national body such as BSI may also struggle to react at a local level , so perhaps a “joined up” TSS system whereby a local authority looks after only one code but the TSS community as a whole ensure common standards etc between all codes would be more effective.

Q9. As discussed above BSI may inherit the same issues as appear to be exhibited by the OFT.

Q10. It would need to be efficient, reactive and approachable and offer value for money.

Q11. As mentioned above we feel although the primary authority may be one mechanism for delivering this, but not necessarily the only one. As previously discussed there is an option for individual TSS “sponsoring” one or a number of codes and then coming together with other TSS sponsors, perhaps overseen by the TSPB, to ensure consistency and transparency and to form a mechanism to accredit the codes as a whole.

Q12. Yes. Combining as many consumer sectoral advocacy functions as possible together will aid consistency and be less confusing for consumers. It is important CA will have the support and expertise to address these varied sectors and it is vital agencies such as TSS have an input and to be kept updated. Communication will be vital.

Q13. Yes. Again this would seem to streamline and simplify the system.

Q14. Yes. Given the caveat of requisite funding etc

Q15. Particularly in an increasingly global marketplace, for clarity and consistency we think they should mirror the model in England as far as possible.

Q16. Clearly there will be initial skill gaps and performance concerns with CA being given statutory powers in this area for essentially the first time, but if they are to fulfil the advocacy role effectively the right tools are essential. Approaching sectoral regulators for authorisation just adds a further layer of bureaucracy and a potential barrier to progress.

Q17. Yes. The benefits of existing schemes are listed in the consultation and there are no reasons why these can't be replicated in other sectors. For example the Furniture Ombudsman currently provides a similar service in the furniture industry.

Q18. No comment. Specific to NI

Q19. No comment. Specific to NI

Q20. Option 3 is by far our preferred option. The TSPB headed by senior and experienced Chief Trading Standards Officers will be well positioned to galvanize and lead the trading standards community and partners in the fight against regional and national threats. The TSPB is crucial to the success of this option and it is important it is representative of the trading standards community across the regions. Our suggestion is Chief Trading Standards Officers in each region elect a regional representative to the TSPB annually. These elections could be staggered across the regions monthly to ensure some consistency within the TSPB. It is important to have a regular refresh of membership to ensure continued engagement from every TSS. A static board on the TSPB could lead to local TSS feeling disenfranchised and withdrawing their cooperation. Particularly for smaller local authorities, any potential lack of input and influence will be perhaps the largest factor which could cause a threat to the success of Option 3. This option is the only one that potentially links up local, regional and national enforcement successfully. Option 1 places market analysis in the hands of trading standards where, currently at least, its expertise and priority does not lie. Specialists such as the CMA best perform such analysis. For analogous reasons option 2 would have significant drawbacks ; CMA would not have the local linking to regional linking to national synergy of option 3 and in effect would lead to an even greater disconnect than the current one between LATSS and the OFT.

Q21. As outlined in Q20 we do agree with the Governments principles for the operation of the new TSPB. As discussed the detail is very important to ensure the buy in of every local TSS and if formulated correctly will be able to deliver effective enforcement against both large multi-site businesses and itinerant rogue traders alike. Current effective regional teams in the North West include the Illicit Tobacco Team and the Illegal Moneylending Team. We think most other regional and national areas of threat can be effectively addressed by dynamic project teams assembled from regional officers to address particular emergent issues. If sustained complex issues emerge the formation of longer term “fixed” regional, or even national teams, can be considered. An indemnity fund, administered and authorised by the TSPB, to support LA’s taking action for the wider good would certainly be desirable.

Q22. Option 3 is preferred.

Q23. Option 3 is preferred.

Q24. The Primary Authority and Home Authority systems would still be relevant under option 3 and additionally the TSPB would allow a previous unavailable strategic access point to the trading standards community for large companies and trade associations for example.

Q25. Yes. This would clearly allow the CMA increased flexibility when undertaking its proposed role.

Q26. No. We think the CMA should retain discretion as to how and when it uses its consumer enforcement powers. Clearly excellent communication with the TSPB and CA is vital.

Q27. Yes. Again, such flexibility is vital.

Q28. Yes. For a holistic approach to such cross-cutting issues a CMA able to deal with both market and consumer issues would be most efficient and effective.

Q29. Yes with certain caveats. It is important that useful work undertaken by the CMA is just not dropped and discarded once no structural issues are identified. CMA must work closely with CA on potentially joint investigations and CA must be in a position to pick up the baton and use effectively consumer work passed over from the CMA where no structural problems are identified. By their nature referrals to the TSPB from the CMA are likely to be important and wide reaching issues and

must be treated by the TSPB as such. It is important however the TSPB retain absolute control and discretion over what action is taken in matters referred to it.

Q30. Yes. Nationally we are confident the TSPB, CA & CMA will be able to work together as effective partnership working will be fundamental to their raison d etre. More of a concern is the need to ensure all TSS and CAB`s work together at the local level. Consideration needs to be given to formalising these partnerships perhaps through prescribed regional programme boards for example.

Q31. We are confident in the vast majority of cases an effectively functioning CMA/TSPB/CA partnership will be able to agree and task the most appropriate agency to investigate a given issue. Accepting there will inevitably be occasions issues which are less clearly defined, it would be beneficial to have a shared resource which could be used to inform targeting and establish scope and clarity. The results could then identify which agency is best positioned to take the matter forward. At this stage the level of funding is difficult to predict and the call on it will no doubt vary year on year. In acknowledgement of this, particularly in the formative years, flexibility needs to be built into this provision. The funding could be administered by BIS and its release agreed by CMA and the TSPB. Like the proposals for the CMA, the TSPB and CA must also have self-determinacy pertaining to their decisions. It is not desirable for the CMA to be in a position where any problem they may not wish to pursue must automatically be picked up by the TSPB or CA. The joint resource for market investigations should go some way to alleviate such problems.

Q32. As highlighted in the consultation the trading standards brand is widely known and trusted. The term “trading standards” is generally perceived as a nationwide network with concomitant authority and influence. We think retaining and developing the “trading standards” brand, the profile of which can only increase given the formation of the TSPB and other proposed changes, would act as a significant deterrent to illegal behaviour.

Q33. We have some reservations around TSI being the automatic home for professional guidance and training functions in the new proposal. TSI`s development of the trading standards qualification framework has been problematic and is proving prohibitively expensive with a focus which feels as if it is based on income generation for TSI rather than the development of officers. TSI membership is, presently at least, voluntary

and its benefits, real or perceived, not always apparent. Allied to the crippling qualification framework training costs, it is becoming increasingly difficult for smaller authorities to support TSI members attending meetings and payment of member subscriptions is certainly not an option. The move towards compulsory membership of TSI in order to register as a “Trading Standards Practitioner” is particularly worrying and is indicative of a move towards a potential money making professional monopoly. An independent and impartially constituted TSPB would be well positioned to commission professional training and guidance from a number of competing private, public ( for example individual or groupings of local TSS) and educational providers. The input of a competitive element should encourage expediency and innovation and help drive down costs. Such opening up of the market would also fit within the ethos of the Governments “Open Public Services” agenda.

Q34. We think this role should sit within the TSPB secretariat. It is important that in areas such as policy, which impact upon the whole of the trading standards community, the whole community is involved, consulted and informed. TSI, as it stands in its current form, only represents its members and therefore is not necessarily representative of the majority of the trading standards network.

Q35. No. We agree the TSPB will be well placed to fulfil this coordination role.

Q36. Yes. Obviously input from the TSPB and CA etc will be available as and when required.

Q37. Yes. As most complaints seem to highlight market failing this would seem appropriate.

Q38. Yes. This would allow parity with the process governing structural markets and the CMA.

Q39. Yes. There are already a number of successful examples of TSS undertaking work on behalf of Central Government. For example we have undertaken local checks on credit brokers on behalf of the OFT and are currently undertaking feeding stuffs surveillance work on behalf of the FSA and DEFRA. There is no reason to believe longer term, sustained work undertaken in this way should be any less effective.

Q40. Yes, clearly with contingencies should the inception of the CMA be significantly delayed.

---

Councillor Alison Bacon Cabinet Member for Environmental Protection.  
St Helens MBC

Paul Sanderson. Director, Environmental Protection. St Helens MBC

Darrell Wilson Chief Trading Standards Officer. St Helens MBC.

August 2011

## Staffordshire CC

## **Staffordshire County Council – Response to Consultation**



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

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

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

It is important that the high level of consumer advice is maintained. It is important that the service levels put in place should reflect the standards that were in place before the OFT agreed a lower standard for the interim contracts last year; i.e. at least 80% of calls should be responded to within 20 seconds with an abandoned rate of less than 5%. The service delivery performance must be robust and transparent. Each individual enquiry should be dealt with by an officer who provides bespoke advice and guidance relevant to the complaint. We do not support any reduction in the standards of advice from that currently provided. And would expect that any member of staff dealing with an enquiry would have sufficient knowledge and skills to deal with the query on an individual basis, not by use of pick lists.

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

We would be happy for the OFT's consumer information role to be transferred to Citizens Advice, providing Citizens Advice works with Trading Standards both nationally and locally in the provision of this consumer information service, as the OFT has previously done.

At a national level, heads of trading standards should be represented on a governance board for the replacement for Consumer Direct services.

We would wish the trading standards service have an ‘account manager’ within Citizens Advice to deal with any problems, issues or concerns and vice versa, and for Citizens Advice to have a named contact for trading standards too.

Currently Consumer Direct provides data which is invaluable to Trading Standards as an evidence base to target enforcement activities. The proposals already recognise how important the Consumer Direct data is for Trading Standards but 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 them to take enforcement action or provide advice to businesses or consumers.

It is imperative that we 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?**

We would be happy that the ‘Extra Help Unit’ for vulnerable consumers should continue under the new arrangements

**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 are 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 Trading Standards sometimes using materials developed by the OFT and this should continue with Citizens Advice

We agree 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 should sit 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 staff or by localised training initiatives etc. Nationally there are websites such as Business Link and also Everything Regulation When Its Needed (ERWIN).

TSI's role to date has been to provide very valuable educational materials for Trading Standards 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.

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

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

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

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

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

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

Q6 – 11

If a scheme is to continue, there must be an opportunity for Trading Standards to feed into the application process as we 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 and less resourceful.

Staffordshire County Council already gives our consumers a method for finding trustworthy businesses via our Trader Register Scheme. This scheme has been very successful, well received by local consumers and over 800 businesses participate.

**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 are transferred to the Citizens Advice service? What are your views on alternative approaches?**

Q12-14

Staffordshire County Council 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.

Staffordshire Trading Standards currently offer second tier advice and advocacy for consumer complaints for our most vulnerable consumers however would support 2<sup>nd</sup> tier advice being available for those who are unable to receive it from their local Trading Standards.

**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 strong view, however we would wish that when dealing with big national issues the system would be flexible enough to be able to bridge differences between the countries if appropriate.

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

No 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 would be supportive of redress schemes being extended to other sectors although realise that there would be difficulties in setting up schemes and would depend on participation of major companies.

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

No comment

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

No comment

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

Staffordshire County Council support 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

Competition and Markets Authority (CMA). Local trading Standards have the skills, experience and willingness to deliver the outcomes the Government wants to see.

As well as helping local consumers and businesses, Trading Standards already do consumer protection work which has a regional and/or national impact.

In Staffordshire we already carry out Regulation of Claims Management Businesses across England and Wales on behalf of the Ministry Of Justice since 2006. This has proved a very successful arrangement resulting in the Contract being extended until 2013. Numerous other examples demonstrate Trading Standards ability to work at Regional and National levels , e.g. local Trading standards 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 Trading Standards to have a greater influence over regional and national work. It will enable the development of better resilience for existing regional infrastructures which are crucial to effective engagement and delivery between the local and national levels. It will also enable transformational changes within Trading Standards in terms of strengthening leadership and influence in order to support more effective action against cross-boundary threats. The Option should allow flexibility to engage with a single Local Authority or though a Regional approach or a combination of these; whichever is the most appropriate and cost effective delivery mechanism

Clearly the success of this 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?**

Staffordshire County Council agrees with the Government's principles for the operation of the new Trading Standards Policy Board (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 nor similar, for specific activities to deliver many of the functions currently provided by the OFT. These specific activities could be delivered by an individual authority or by a lead region. The activity 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 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.

#### 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.

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. In addition we would expect there to be representation from Association of Chief Trading Standards Officers (ACTSO), Welsh Heads of Trading Standards (WHoTS), Society of Chief Officers of Trading Standards in Scotland (SCOTSS) and Trading Standards Institute (TSI) on that Board plus other representatives such as Department for Business Innovation and skills (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.

#### Chairman

The TSPB will need a Chairman, who will play a pivotal role. We strongly believe that the Chairman should be independent to ensure complete objectivity in the allocation of specific activities to a particular region/authority. We do not believe the Chair would be seen as completely objective if he/she had been employed by a Trading Standards local authority previously. 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.

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

The TSPB would be a separate but linked group to the existing TSPF. We think 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 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 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.

We see that the delivery mechanisms is 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. Staffordshire County Council are an example of a local authority carrying out a specific activity on a national basis (Enforcement of the Compensation Act) and would wish that the option of a single lead authority is included in the range of options available to the TSPB to consider

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

We believe that national centres of excellence or expanded regional teams 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.

### Indemnity Fund

There is a particular concern that any individual local authority taking on a national case 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.

**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 Empowering and protecting consumers 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

Staffordshire County Council do not wish to maintain the status quo in terms of powers and responsibility as we believe 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 Local trading Standards. The JEB would also not be controlled by heads of trading standards and could not be held accountable in the same way.

We consider that this option makes 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 local Trading Standards 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**

Questions 25 – 29

Staffordshire County Council can see 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 believe that this should not reduce the resources for Trading Standards to deliver the new consumer landscape under the proposals.

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

**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

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 and suggest that the application and decision process needs to be simpler to access than the "Fighting Fund" that BIS made available to support Trading Standards enforcement activity.

**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?**

Staffordshire County Council believe that an enforcement model branded as Trading Standards would operate with no problems; Trading Standards already have years of enforcement experience of dealing with rogue traders and illegal behaviour within our own communities including many with a national impact. Trading Standards within Councils nationally 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. Staffordshire County Council Trading Standards carried out 44 prosecution cases during 2010/11, many other authorities will have done similar levels and this excludes the regional cases taken on by Scambusters and Illegal Money Lending teams. We believe that their threat of enforcement can help to deter non-compliance and can effectively back up self-regulatory schemes. Trading Standards have always used a wide range of tools to ensure compliance over the years such as warning letters, cautions, fixed penalty notices, civil orders, injunctions etc.

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

TSI could be the appropriate home for the OFT's professional guidance and training functions. TSI have considerable experience of training staff in the trading standards community and producing professional guidance.

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

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**

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

Staffordshire County Council considers that 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. Therefore the TSI route is favoured.

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

Yes

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

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 Staffordshire County Council believe that a lead local authority or group of authorities, could take on the OFT's estate agency and related anti-money laundering functions. It should be noted that any fraudulent activities or activities where consumers are misled by estate agents are already being dealt with by LATSS under current legislation such as the Fraud Act, the Property Mis-descriptions Act and the Consumer/Business Protection from Unfair Trading Regulations.

**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 consider that the proposed changes to the consumer landscape should definitely go ahead in April 2013 and it may be appropriate to set up a shadow arrangement in advance of this date.

## **Stockton on Tees Borough Council TS**

**Stockton on Tees Borough 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”**

**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 We have 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 Local Authorities could have a fundamentally different role in future.

1.4 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 Local Authority Trading Standards Services (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. Stockton Council 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?**

Whilst Stockton 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, 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 a local level may be difficult to achieve and gaps in 2<sup>nd</sup> tier provision may still exist.

Where local authorities do provide 2<sup>nd</sup> tier consumer advice services, we feel it is important that these services are not be undermined by any new arrangements. At Stockton we currently offer second tier advice and advocacy and hold the CLS Specialist Quality Mark for Consumer Advice. We feel it is important to maintain support at this level for local consumers and would not wish any changes to undermine locally delivered LATSS support.

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, trading standards should be represented on a governance board for the replacement for Consumer Direct services. We would expect trading standards in Scotland to be represented in the same way in any Scottish solution.

Stockton 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, we would be more than happy to continue to provide Citizens Advice with a named contact for trading standards in Stockton.

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.

It is recognised 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?***

Stockton would not object to 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

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.

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

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

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

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

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

**Chapter 3 – Consumer Code Approvals**

***Key Proposals***

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

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

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

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

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

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

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

## Response to questions 6 to 11

Stockton 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. Stockton 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 to 15

Stockton 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.

**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?**

Stockton 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?**

Stockton 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. Stockton believes that LATSS have the skills, experience and willingness to deliver the outcomes the Government wants to see. However, our support 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 we do not believe Option 3 necessarily undermines the principles of the localism agenda. It gives LATSS greater freedom and flexibility to be able to work together nationally, regionally and locally. Furthermore, given that Citizens Advice also run their services at all levels, this model will make engagement between trading standards and Citizens Advice at a local, regional and national level much more cogent.

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

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

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

#### Principle

Stockton 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 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. 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 BIS.

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

## Scotland and Northern Ireland

There will need to be further discussions between SCOTSS, CoSLA and the Scottish Government on how this could work in Scotland. We are assuming at this stage that a separate Scottish solution is likely. In this case 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 leading Regulatory 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. 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 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.

Stockton believes 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.

Stockton is of the view that expanded regional teams or national centres of excellence should 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, these should 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 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 it is unlikely that any council would 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.

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

Stockton considers 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

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

There must be effective communication and a good working relationship between the 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

The Government's proposed approach suggests 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 we welcomed the "Fighting Fund" that BIS made available to support LATSS enforcement activity, we felt that the bureaucracy associated with the application and decision process was disproportionate to the funds available.

### **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. We 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.

It is important that a model is found that ensures trading standards professionals have access to good quality low cost training and materials whoever ultimately takes on this responsibility.

### **Most international liaison and OFT's general consumer policy work**

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

TSI has evidenced 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. 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?**

We do 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?**

We do not have any strong views on who should have responsibility for chairing this group.

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

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

Response to questions 37 and 38

These proposals seem sensible. In terms of responding to supercomplaints, we 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?**

We have no doubt that a lead local authority or group of authorities, could take on the OFT's estate agency and related anti-money laundering functions. We are 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?**

We consider that it would be beneficial for the proposed changes to the consumer landscape to go ahead in April 2013. This would avoid continued confusion in the current landscape and deliver financial efficiencies by streamlining the processes and structures.

## Sustain- alliance for better food and farming

**From:** Jeanette Longfield  
**Sent:** 30 September 2011 14:40  
**To:** Evans David (CCP)  
**Subject:** TRIM: Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement

Dear David Evans

I am responding to the BIS "Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement". Please accept my apologies for missing the deadline. I understand that late responses are being accepted and I am most grateful for this.

Sustain advocates food and agriculture policies and practices that enhance the health and welfare of people and animals, improve the working and living environment, enrich society and culture and promote equity. We represent around 100 national public interest organisations working at international, national, regional and local level, including Consumer Focus and Which? Food and agriculture policy is central to sustainable development, and policy changes in this area are vital to improve public health, protect the environment and enhance community and economic development. Our efforts to secure those improvements have long been hampered by, among other things, being heavily outnumbered by representatives of industry. It is therefore vital, in our view, to protect all the strong and independent voices for consumers, including Consumer Focus in England and all the devolved administrations. The abolition of Consumer Focus would silence one of these important voices for consumers and it is step we oppose.

Our work with Consumer Focus goes back to the National Consumer Council, the Scottish Consumer Council and the Welsh Consumer Council, all of which carried out important work in the food area. While Consumer Focus has increasingly provided a powerful voice for consumers we are very disappointed that, due to significant budget cuts, they have been less able to do so in areas of food and agriculture.

We understand it is proposed that some of the work which Consumer Focus does will go to Which? with other parts passed to Citizens Advice. We await details but we fear that the fragmentation of Consumer Focus will mean a loss of capacity which consumers need. Both Which? and Citizens Advice service are very fine organisations. However, Citizens Advice services are in increasing demand in difficult economic times, and they are also facing cuts to their budget. Thus they will be bound to focus on dealing with the pressing needs of citizens, with the bulk of their work concentrating on debts and legal rights/disputes. We also understand that they are taking on the huge challenge of running the Government's Consumer Direct service. We believe, therefore, that it would be entirely inappropriate - and damaging to the interests of consumers - to pass some of the forward-looking, research-based work of Consumer Focus onto the Citizens Advice service.

Moreover, Consumer Focus was also given legal powers by Parliament to force companies to disclose information. It would be a major blow if these powers were lost, or given to a Government body to whom consumer organisations would have to seek permission to use them. This would make a mockery of the independence of the consumer advocate.

In short, Sustain opposes the abolition of Consumer Focus. A better alternative would be to combine existing publicly funded consumer bodies, Consumer Focus, the Consumer Council for Water and Passenger Focus. This could form a stronger, more efficient body standing up for consumers at a time when this function is needed more than ever.

Yours sincerely

Jeanette Longfield, MBE  
Co-ordinator  
Sustain: the alliance for better food and farming

## **Swansea City & County**

# $\beta \chi \delta$

David Evans,  
Consumer Competition Policy Directorate,  
3<sup>rd</sup> Floor,  
1 Victoria Street,  
London SW1H 0ET

Mr D J Picken  
01792 635600  
[David.Picken@swansea.gov.uk](mailto:David.Picken@swansea.gov.uk)  
TS/DJP/429

27th September 2011

Dear Sir,

## **Department of Business Innovation & Skills Consultation Paper on Empowering and Protecting Consumers.**

The response from the City & County of Swansea to the consultation identified above which was issued on 21<sup>st</sup> June 2011 is as follows.

### **Question 1.**

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

Consumers need information and advice to enable them to make informed choices when buying goods and services. The information needs to be provided so that it is readily available and easy to access by all sections of the community. This cannot be achieved by relying solely on a web based solution as this excludes large sectors of potentially vulnerable people.

Consumer advice cannot be provided from a traditional call centre menu as the problems are individual and these days need to include an examination of contract and finance documents for advice to be effective and accurate. Incomplete or partial advice confuses the consumer, fails to equip them with the ability to resolve an issue themselves and usually results in their return for further advice and assistance.

### **Questions 2.**

#### **Do you think that the OFT's consumer information role should be transferred to Citizens Advice?**

This is a sensible proposal provided that a proper referral relationship exists to allow intelligence, case work and second stage advice to be properly implemented by Trading Standards consistent with their statutory enforcement function.

### **Question 3.**

#### **Do you agree that the extra help that would be transferred to the Citizens Advice Bureau Service?**

Yes but it must incorporate a reliable system to share information with Trading Standards for statutory enforcement purposes.

**Question 4.**

**Do you agree that OFT consumer education role should be transferred to Citizens Advice?**

**What are your views about the type on consumer education activity that are most valuable and ho should they be managed and co-ordinated?**

The government has acknowledged that Citizens Advice and Trading Standards are two recognised “brands” trusted by businesses and consumers. Therefore transferring consumer education to Citizen Advice will be most effective provided there is a co-ordination with Trading Standards on specific campaigns and consumer education initiatives designed to protect the most vulnerable. Successful initiatives implemented by OFT, Trading Standards and Consumer Focus e.g. Young Consumer / Skilled To Go and No Cold Calling Zones must be retained to enable consumers to protect themselves. Activities of this nature need to be co-ordinated to be successful and can be introduced strategically but delivered locally by the most appropriate organisation.

**Question 5.**

**Do you agree that the proposed Trading Standards Policy Board and the TSI should co-ordinate & support businesses facing education activities?**

Yes, this is appropriate but local Trading Standards service should be recognised as an asset which assists legitimate businesses in complying with regulations effectively and efficiently. Business education has long been incorporated into inspection and themed projects despite anecdotal myths suggesting that the service is a burden on businesses.

**Question 6-11.****Consumer codes approval.**

Consumer codes have merit and can be used by legitimate business operators in marketing their goods and services. Good quality consumer education will encourage consumers to undertake pre shopping enquiries before making purchase decisions. Codes can be effective in influencing consumers choice provided the codes are effectively supervised by the professional body of the industry and there are transparent redress procedures if things go wrong.

The weakness in any code or approval scheme is that they are adopted by legitimate businesses but shunned by rogue traders.

**Question 12-15 Consumer Advocacy.**

The proposal to implement a single focus for the co-ordination of publicity funded advocacy functions in a single unit run by Citizens Advice will only be successful if it is sufficiently resourced with experts appropriately experienced in a wide variety of consumer goods and services, e.g. the knowledge and skills required for energy related issues are distinctly different to those of claims management. A menu of advice chosen from a ‘pick list’ by general call centre operatives will not be effective and will not protect the most vulnerable.

**Question 16.**

**What are your views on the option for the transfer of information gathering powers?**

The council has no strong views on the options but existing powers must be transferred so that information gathering to see how a market is working can be achieved effectively.

**Question 17.**

**What are your views on whether redress scheme such as those established in electronic communication, financial services, energy and postal services should be extended to other sectors?**

This is sensible provided proper consideration is given to the particular issues within an industry sector so that any scheme is applicable and effective.

**Question 18-19.**

Relate to Northern Ireland.

**Question 20-24.**

**Enforcement of Consumer Protection Legislation.**

The council supports option 3 to transfer the majority of OFT enforcement work to Trading Standards. Trading Standards has the capability to deliver enforcement locally and regionally so that it is most effective subject to appropriate funding being made available. Investigation of industry sectors involving structural market problems will require a different expertise and should be allocated to the proposed Competition & Markets Authority.

The principles for the operation of the new Trading Standards Policy Board appear to be sensible provided there is a structure to examine the issues and allocate them for enforcement in the most appropriate manner. This system must be flexible and prompt in order not to impede the commencement and progress of any statutory investigation.

**Question 25-29.**

**The role of the Competition & Market Authority (CMA)**

For the CMA to be effective in dealing with structured markets problems, enforcement powers are essential so that a full range of options are available to deal with those problems. Enforcement action will be most effective when the most appropriate action is taken having been agreed by the different agencies involved. Each agency must work to the same guidelines so that a consistent approach is achieved. The National Intelligence Model (NIM) is recognised as being capable of being used to achieve consistency and determine whether action should be local, regional or national.

**Questions 30-31.**

**Cases that cross over institutional boundaries**

In the event that the Consumer Markets Authority and Trading Standards Policy Board are implemented it will be essential that fair trading matters which cross institutional boundaries are dealt with by the most appropriate organisation. Complex procedures to allocate funding will impede prompt investigation and resolution of the issue. Bureaucratic procedures inhibit the ability to protect legitimate business and the public. Some application of common sense is needed and an understanding that home authority/primary authority protocols are professionally observed.

**Question 32.**

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

Trading Standards services have developed experience when dealing with rogue traders. Illegal behaviour within local communities can have an impact on local legitimate businesses as well as consumers. Councils have long recognised the need to demonstrate that their activities make a contribution to the economic well being of the area and that rogue traders can impact locally, regionally and nationally. Self regulatory schemes must be viewed with caution as they are

frequently observed by legitimate enterprises and ignored by the irresponsible and rogue element.

### **Question 33**

#### **Guidance and training**

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. Regional groups and indeed other external providers may also want to bid for this type of work.

### **Question 34**

#### **International liaison and OFT's general consumer policy work**

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?**

It is not anticipated 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 take the lead. It is anticipated 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. Once the structure is implemented effective communication of issues will be essential.

### **Questions 37 & 38**

#### **Super complaints**

These proposals seem sensible. In terms of responding to super 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?**

Yes but resources will be essential to ensure this is successful

**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?**

Prompt implementation of proposed changes will assist in removing the uncertainties generated in the review process. It remains unclear how the raft of trading standards functions that fall outside the remit of BIS/OFT will be dealt with. Given that the process is about saving money little consideration has been given to the economies of scale that are achieved currently, particularly in smaller Councils and Unitary Authorities where staff are capable of dealing with a range of issues across the whole spectrum of services allocated to trading standards.

Yours faithfully



**M. Saville**

Head of Public Protection Services

## The Property Ombudsman



The Property Ombudsman

Milford House, 43 - 55 Milford Street, Salisbury, Wiltshire SP1 2BP

tel: 01722 333306 fax: 01722 332296 e-mail: admin@tpos.co.uk web: www.tpos.co.uk

Mr David Evans  
Consumer and Competition Policy Directorate  
3<sup>rd</sup> Floor  
1 Victoria Street  
London  
SW1H 0ET

26 September 2011

Dear Mr Evans

**RESPONSE FROM THE PROPERTY OMBUDSMAN TO BIS CONSULTATION  
'EMPOWERING AND PROTECTING CONSUMERS'**

This response to the BIS Consultation on Empowering and Protecting Consumers is made on behalf of myself as The Property Ombudsman and the independent Council to which I am accountable. The Council's constituency includes Bill McClintock in his role as Chairman of the Board and as a representative of the Board of the scheme.

My jurisdiction as Ombudsman extends to the independent and impartial resolution of disputes between consumers (buyers, sellers, tenants or landlords) and agents marketing property for sale or to let. The scheme was originally established as the Ombudsman for Corporate Estate Agents in 1990, developing into the Ombudsman for Estate Agents as it extended its membership in 1997 to encompass independent estate agency firms and has since 2006 broadened its scope to cover lettings, commercial property transactions, residential leasehold management and chattels auctions. The scheme was renamed The Property Ombudsman (TPO) in 2009. It has gained the status of an OFT Approved Redress Scheme under the Consumers, Estate Agents and Redress Act 2007.

TPO is pleased to have the opportunity to respond to the consultation. As a general comment we welcome the principle of making matters easier for consumers by reducing the number of local and national government departments which have responsibility for consumer protection. However the current structure has developed because of different needs and purposes and a changed landscape will need to ensure that the coverage of issues and priorities encompasses all that is presently identified as necessary to a comprehensive and co-ordinated approach to consumer protection.

Our interest in the consultation and how the future structure will appear is in regard to a number of areas.

1. *Consumer Education and Advice.*

Many of the complaints referred to TPO would not have arisen if the consumer had been properly informed and equipped before entering the property market. Such a position can result from a lack of clear information about how the market works or as a consequence of consumers not adequately preparing themselves by referring to what information is available. Many organisations make available leaflets and publications about what to consider when buying, selling, renting or letting properties and indeed TPO has a series of guides for such individuals highlighting potential pitfalls for the consumer. However there is no concerted and all-embracing strategy



giving direction to the issue of information or to creating a culture amongst consumers that there is a need to carry out basic research.

We note the suggestion that the Citizens Advice service could take such a role but in our experience that service is inevitably interacting with those who are seeking advice generally as a result of being embroiled in a dispute or have already suffered poor service; and possibly is dealing with those less well equipped to pursue their own resolution of the matter. The broader role perhaps envisaged for Citizens Advice needs to be more proactive than that, equipping consumers such that they have a clearer understanding of the relevant industry or service sector and the commitments they are taking on. This will require a broader knowledge and experience with a significant commitment to consulting and co-ordinating with relevant stakeholders and other groups. The abolition of Consumer Direct would mean its consumer advocacy expertise being lost.

## 2. *The Consumer Codes Approval Scheme (CCAS).*

TPO sponsors two Codes of Practice, one relating to Residential Sales and one relating to Letting and Management of property. We estimate that these Codes are being followed by 95% of sales agents and 60% of lettings agents. The Codes therefore, we believe, play an important role in terms of consumer protection. Their credibility is materially enhanced by the independent accreditation of the OFT under its CCAS. In that context the TPO Residential Sales Code has held full approved status for 5 years with those firms signed up to the Code able to display the OFT Approved Code logo displaying to consumers that the firm is operating in accordance with a comprehensive set of standards. The TPO Lettings Code has attained Stage 1 of CCAS although has been adhered to by firms for a similar length of time. The lack of progress in gaining full approval has solely been due to shortcomings in the OFT's ability to consider the matter in a co-ordinated and efficient manner.

Nevertheless we see it is important that a move by the Government away from regulating any business sector through legislation can be mitigated by the encouragement of such codes. The enhancement of consumer protection and promotion of consumer confidence can be achieved through the existence of a robust facility for independent accreditation. The 'OFT brand' is clearly a strong confidence creator for consumers and whilst our view that the current process for code approval is entirely unacceptable, any replacement accreditation mechanism (for example it has been suggested that the Trading Standards Institute might deliver that service) must be able to carry that credibility and have the experience and profile to undertake the role.

The CCAS is we believe worth keeping because it helps all consumers and businesses but it needs to operate to agreed standards and within agreed parameters. The Competition and Markets Authority has an aim to ensure that markets are working well. The standards applied by the approved codes already help to set standards for markets to work well and promote fair competition.

## 3. *Trading Standards as an Enforcement Body.*

As a redress mechanism TPO has a role in ensuring that those who have been disadvantaged by the actions of an agent receive compensation. There is no role for any Ombudsman to penalise a firm subject to jurisdiction although during the course of considering individual cases I will see aspects of operation that indicate potentially fraudulent action or other dubious business practice which is clearly systemic (with

the likely consequence that other consumers are being disadvantaged). In such circumstances it is for properly empowered authorities to enforce compliance with the law. TPO and Trading Standards work together under a Memorandum of Understanding. Nonetheless the protection of consumers could be further enhanced through more structured exchange of relevant information about businesses between the various bodies which will have that intelligence.

Whether such an information sharing regime can be put in place or not Trading Standards offices need to be equipped to act swiftly on situations where consumers are being disadvantaged at that moment.

While it seems a positive step to use the local trading standards services for regulating, controlling and/or advising businesses in their areas rather than having to turn to a central government department for ultimate control, this could lead to problems. Whilst we recognise that the Government has Localism and Big Society as priorities this will have the potential consequence, no matter how hard the Government tries to prevent it, of local authorities still being able to pick and choose what priority they give to trading standards resources and to consumer protection issues. It would appear that central government proposals need a nationally based trading standards service rather than a local one. Trying to be national but operating locally will present challenges of co-ordinating actions where resources are already stretched.

The following are responses to certain of the questions in the consultation document where TPO feels it has appropriate experience to answer.

Q1. Provision of consumer information can be improved through greater co-ordination of that information which is provided and by placing responsibility on relevant bodies to take a proactive role. Whilst it is not necessarily the case that information about a particular business sector and consumer commitments resulting from involvement in that sector has to come from a central body there has to be some requirement or encouragement that individual sectors have an obligation to inform. The Consumer and Markets Authority could have this as a particular aim and in providing the format, style of communication and in encouraging the drawing up of Codes of Practice. Facilities for on-line advice would be a simple way of delivering the advice but there is also a need for precise advice to be given at the 'coal face'.

Q2/4. We have already expressed reservations about this aspect being picked up by Citizens Advice. It is clear that the regulation of consumer information is a vital part of enhancing consumer experience in whatever sector. It would appear that such an important task should be subject to a regime that is accountable directly to government.

Q3. Wherever the responsibility for consumer advice is located the Extra Help Unit should be in the same situation to provide consistency of approach and advice across all consumers whilst noting that there are those with specific needs.

Q5. The role of the TSPB and TSI is critical to the aspect of educating businesses. The experience of Trading Standards on the ground will be a valuable contribution to making businesses understand the concept of 'getting it right in the first place'. Consistency of approach, both in terms of education and enforcement is needed.

Q6/7. Whilst the OFT may not have gained credibility in the way it has approached code approvals, it is clear that the OFT 'brand' associated with a Code of Practice, carries significant weight for agents (the ability to display their commitment to an independently accredited set of standards) and for consumers, who can recognise a degree of safety when

transacting business with that agent. Whilst it is hoped that the use of the OFT Approved Code logo can be maintained for as long as possible, TPO would have to look for an alternative structure for code approval possibly forming a property sector code approval scheme but the key to any future approach is that it must provide robust examination and be entirely independent of those subject to the code's obligations. We note the suggestion that BSI or the Primary Authority approach could fulfil this role but other bodies such as the Trading Standards Institute or Asset Skills could be relevant.

Q8. Clearly speedy and consistent consideration of the Code being submitted for approval is vital. Codes submitted to the OFT have come from a wide range of sectors and the standards those codes are detailing need to reflect the market practicalities in those sectors with a basis of flexibility rather than legal rigidity. Consideration of those codes for approval therefore could benefit from expert industry input and an application of broader and realistic thinking.

Q9/10. We recognise the value of the work of BSI in setting standards but do not see there being an easy fit between broad standards or principles and the necessarily detailed Codes of Practice. The 'Kitemark' brand is perhaps as recognisable as an OFT logo and any process of approval under that brand should be able to maintain that credibility through recognising the need for specific understanding of the relevant market and robust but realistic examination.

Q11. Certification of Codes of Practice by a Primary Authority, (that of the Code sponsor), would raise the question of availability of resources to conduct the necessary comprehensive review prior to approval. We have identified earlier in this response that any accreditation scheme needs to be robust and have the appropriate experience; and we have cautioned that Trading Standards services will be subject to local priorities although charged with a national matter. The effectiveness of the Codes is enhanced by the monitoring of compliance and enforcement in terms of maintaining business standards thus requiring further commitment.

Q17. The section discussing redress schemes does not appear to recognise that under the Consumers, Estate Agents and Redress Act (CEARA) 2007 estate (sales) agents were required to register with an OFT Approved Redress scheme. TPO was so approved as was another scheme. We would highlight that fragmentation of redress is not a positive way forward leading as it can to potential consumer confusion and perhaps, albeit in extreme cases, firms looking round for the best option (softest option) for them. There is no overall regulator of the property sector, legislation relating to property matters currently emanating from OFT / BIS for house sales and CLG for lettings which may have avoided such fragmentation and would have meant consistent treatment across sales and lettings, but certainly at approval stage the drawbacks of that approach should have been assessed. TPO has been in existence for 20 years providing an informal, speedy and (to the consumer), a cost free method of resolving a dispute. It is a private sector scheme but nonetheless now draws its powers under CEARA for sales dispute resolution but retains a voluntary membership basis for lettings dispute resolution. Redress schemes are a positive element in any consumer protection regime but the distinct difference in approach between an Ombudsman and a court process needs to be recognised by those responsible for approving schemes.

Q20/21. Our preferred solution from the options presented would be Option 3. It brings about a body (the Competition and Markets Authority) with a clear strategic and leadership role whilst having a national network of locally based enforcement bodies. We recognise though that there will have to be real co-ordination between the 'lead' body and the local enforcers; but also between the local enforcers themselves. The proposals allow for a Trading Standards Policy Board to oversee the co-ordination and our concern would be that

this introduces an additional layer of bureaucracy and policy responsibility when what is needed is an overseer that ensures prompt, co-ordinated and consistent action at ground level. It is unclear why the Competition and Markets Authority cannot exercise the responsibilities of the Trading Standards Policy Board. A model that recognises businesses operate nationally and reacts swiftly to issues is what is needed and if Trading Standards are given a clear mandate by the Competition and Markets Authority, there does not appear to be the need for a further policy organisation.

Q30. Having noted our cautionary approach to introducing layers of non-operational units to the process of enforcement we would like to emphasise that whatever bodies are introduced there is a clear need for effective and structured collaboration between the various bodies in the proposed new landscape.

Q39. Having already expressed caution about the concept of one lead local authority having responsibility for Codes of Practice, the same concern would apply to one local authority having responsibility for the OFT's current estate agency functions. This really requires a national approach to ensure proper co-ordination and oversight of local enforcement but more relevantly it needs clear definition of powers, appetite to use them and speed of reaction to those agents with systemic issues that are bringing about consumers detriment.

Should you have any questions on our response or wish to seek further views please contact the undersigned.

Yours sincerely



Christopher J Hamer  
The Property Ombudsman

## Trading Standards North West



**Response to the Department for Business Innovation and Skills (BIS)  
Consultation on institutional changes for provision of consumer information,  
advice, education, advocacy and enforcement – Empowering and Protecting  
Consumers**

Trading Standards North West (TSNW) is a partnership of Trading Standards Services in 23 local authorities, working together to provide a safe, healthy and fair environment for nearly 7 million consumers across the North West of England.

We welcome the opportunity to respond to the BIS consultation and overall we would like to state our commitment to helping to simplify the confusing landscape for consumers and businesses, to strengthening the effectiveness of consumer enforcement for cross border issues and to support more cost effective delivery of cross border enforcement.

We would suggest that the proposals could be further enhanced by recognition that the fair trading issues considered are only part of our work. We also answer to other central government regulators and local politicians for regional and national enforcement issues. A further improvement for clarifying the consumer landscape would be to better co-ordinate and simplify arrangements between central government departments and those departments and Trading Standards Services

Our answers to the specific questions we feel we can answer are below (with grateful thanks due to the response prepared by the Association of Chief Trading Standards Officers, which has been used as the basis for many responses).

**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

## **Question 2**

**Do you agree that the OFT's consumer information role should be transferred to Citizen's Advice?**

TSNW 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.

TSNW 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, TSNW 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?**

TSNW agree 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?**

TSNW agree with the Government's proposal that the OFT's publicly-funded consumer education role at national level be transferred to Citizens Advice, if

other related advice services are transferred. We believe that Citizens Advice will need to work closely with the Trading Standards community to ensure that education provision is well coordinated, including the distribution of educational materials and sharing of best practice.

TSNW 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?**

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 have been very successful and well received by local consumers and businesses. Nothing should be put in place which weakens the validity of successful schemes, places increased financial burden on their operation or adds a tier of bureaucracy to the approval and delivery of these schemes.

**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?**

TSNW 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.

Many Trading Standards departments currently offer second tier advice and some offer advocacy for consumer complaints. It is important to maintain a level of support for local businesses and consumers. TSNW 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?**

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?**

TSNW 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. TSNW believes that Trading Standards departments have the skills, experience and willingness to deliver the outcomes the Government wants to

see. However, TSNW 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?**

TSNW agree 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?**

TSNW 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.

TSNW 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**

TSNW 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).

TSNW 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?**

TSNW 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

**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?**

TSNW feel that an enforcement model branded as run by Trading Standards would deter illegal behaviour. There are many examples, but TSNW would point to the nationally recognised regulatory compliance model 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 by 50% with Customer Satisfaction and complaint resolution increasing by 86%. This was achieved by educating and supporting the business through a self-regulatory approach. The model is transferable to other trade sectors however the background threat of enforcement action by Trading Standards is important to encourage traders to adopt new systems.

**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 Local Authorities. TSNW would want to see resources continue to be made widely available on the same basis to ensure access to consistent guidance and training is not restricted to those with the ability 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?**

TSNW is aware of TSI's strong role and expertise in relation to European and international work, and therefore would be in a strong position to deliver 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?**

TSNW 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 TSNW were 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 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?**

TSNW agree that these proposals seem to make sense

**Question 39.**

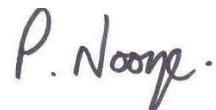
**Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?**

We think it is much better to do it outside of the OFT and that a lead authority or region could take on these 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?**

TSNW believe that it is essential that the proposed changes to the consumer landscape should go ahead in April 2013.



Paul Noone  
Chair of Trading Standards North West  
Chief Trading Standards Officer  
Lancashire County Council  
Trading Standards Service  
Preston  
Lancashire  
PR1 3NU  
Tel: 01772 534123  
Email: [paul.noone@lancashire.gov.uk](mailto:paul.noone@lancashire.gov.uk)

## Trading Standards South East (Buy with Confidence)

# **Trading Standards**

---

## **South East Ltd**

TSSE is a partnership of 19 local authority Trading Standards services in the South East of England operated by Trading Standards South East Ltd, a limited liability company registered in England and Wales with registered number 5259365 & VAT number 834 585 307.

Registered Office: C/O Surrey County Council, Fairmount House, Bull Hill, Surrey, KT22 7AY

26 September 2011

Dear David Evans

Ref: 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 comment on the above consultation.

I am responding on behalf of Trading Standards South East, (TSSE) a partnership between 19 Local Authority Trading Standards Services from the following councils: Bracknell Forest, Brighton & Hove, Buckinghamshire, East Sussex, Hampshire, Isle of Wight, Kent, Medway, Milton Keynes, Oxfordshire, Portsmouth, Reading, Slough, Southampton, Surrey, West Berkshire, West Sussex, Royal Borough of Windsor & Maidenhead and Wokingham. TSSE is operated by Trading Standards South East Ltd, a limited liability company registered in England and Wales with registered number 5259365 & VAT number 834 585 307.

Our response to the consultation is sent as a separate attachment and covers the 40 questions posed, however, in preparing for its response TSSEL felt that it should respond as follows outside of the questions asked in the consultation:

### **1. Financial Oversight**

Clear financial oversight and auditing of the arrangements proposed in the consultation will be crucial. TSSEL believe that funding, necessary accounting and audit services should be held by an organisation representative of Local Authorities to ensure total transparency and probity.

Deleted: ¶

TSSEL is an established limited company and has contracted with central government since its inception in November 2004. Our governance and accountability through our limited company infrastructure provides transparent and robust political oversight through our elected member company membership. TSSEL engage the services of an independent accountancy firm and provide quarterly management accounts, from which a cash & reserve position is produced detailing future commitments and a bottom line. We would welcome the

TSSE is a partnership between 19 Local Authority Trading Standards Services from the following councils: Bracknell Forest, Brighton & Hove, Buckinghamshire, East Sussex, Hampshire, Isle of Wight, Kent, Medway, Milton Keynes, Oxfordshire, Portsmouth, Reading, Slough, Southampton, Surrey, West Berkshire, West Sussex, Royal Borough of Windsor & Maidenhead, and Wokingham.

opportunity to discuss how our existing infrastructure could be utilised to facilitate the funding arrangements and provided added value in doing so. In providing this service, TSSEL recognise that 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.

## 2. National Threats

Funding from BiS during 2010-11 has enabled TSSEL to assess and resource regulatory activity regarding the market surveillance of consumer goods at the port of Southampton and Enhanced Regional Transit Sheds (ERTS) in the South East region as identified in the 'Strategic Assessment refresh: risk assessment of product safety market surveillance activity' prepared by the Local Better Regulation Office (LBRO) for the Consumer and Competition Policy Directorate, Department for Business, Innovation and Skills, (BIS) published in February 2011

Strong progress has been made to date and this activity has led to an increase in enforcement action and effectively prevented unsafe and non-compliant goods reaching the UK market, thus helping to reduce national threats. Furthermore, greater intelligence sharing with Suffolk Trading Standards at the port of Felixstowe and neighbouring London boroughs have identified a specific location causing considerable concern identified as Charles House, Bridge Road, Southall in the London borough of Ealing.

Charles House is a former factory complex converted into numerous offices and light industrial units. It is a key location with lots of importers using it and approximately 300 businesses are based there. Our partnership working has identified intelligence that provides clear evidence that this area is a hotspot of companies importing consumer goods that do not comply with product safety legislation, many of which represent significant safety hazards to the public nationally.

Unfortunately, since 1995, Ealing Trading Standard's resources have reduced from 17 FTEs to just 3. Charles House was once a priority and a high level of proactive interventions and Trading Standards referrals were responded to, however, as a consequence of staff reductions all but the most serious reactive work at Charles House ceased.

In recognition of this hotspot and as part of our 2010-11 evaluation prior to the confirmation of further funding from BiS for 2011-12, TSSEL, in partnership with Ealing Trading Standards approached the LBRO with a proposal for funding to specially address the problems identified from the intelligence sources. A copy of this proposal can be supplied under separate cover.

Unfortunately, LBRO advised that the "The Charles House project appears to be additional to the work planned by TSSE at the port of Southampton and surrounding ERTs. We are aware that local authorities have concentrations of importers like Ealing but the purpose of the pilot is to focus on market surveillance at the ports of Felixstowe and Southampton. You will appreciate that there are many demands on resources and the pilot is intended to concentrate on these two key points of entry. Whilst the Charles House Project seems very worthwhile it is not within the scope of this pilot funding".

We were disappointed with this response, because our intelligence led approach clearly indicates that this location is integral to flow of unsafe goods entering the distribution chain and whilst we appreciate the varying demands on resources, we firmly believe that a concentrated approach at this location would provide added value nationally.

In recognition of this and the fact that problems caused by non-compliant products extend far

TSSE is a partnership between 19 Local Authority Trading Standards Services from the following councils: Bracknell Forest, Brighton & Hove, Buckinghamshire, East Sussex, Hampshire, Isle of Wight, Kent, Medway, Milton Keynes, Oxfordshire, Portsmouth, Reading, Slough, Southampton, Surrey, West Berkshire, West Sussex, Royal Borough of Windsor & Maidenhead, and Wokingham.

beyond the boundaries of Ealing, TSSEL have committed to work with Ealing Trading Standards and whilst we are not able to provide any direct funding, TSSEL have committed to providing officer resource to assist in establishing the extent of consumer detriment. Furthermore, Suffolk Trading Standards, with the support of other East of England Trading Standards authorities have also agreed to engage in this exercise and provide officer resource. A detailed project plan is being developed for implementation in the New Year and we would welcome the opportunity to discuss this with BiS.

I would be happy to discuss these matters further should you have any queries, please do not hesitate to contact me.



Brian Johnson  
Chairman, TSSE Ltd  
t: 01323 463421  
m: 07876 036882  
e: [brian.johnson@eastsussex.gov.uk](mailto:brian.johnson@eastsussex.gov.uk)

TSSE is a partnership between 19 Local Authority Trading Standards Services from the following councils: Bracknell Forest, Brighton & Hove, Buckinghamshire, East Sussex, Hampshire, Isle of Wight, Kent, Medway, Milton Keynes, Oxfordshire, Portsmouth, Reading, Slough, Southampton, Surrey, West Berkshire, West Sussex, Royal Borough of Windsor & Maidenhead, and Wokingham.

# Trading Standards

## South East Ltd

TSSE is a partnership of 19 local authority Trading Standards services in the South East of England operated by Trading Standards South East Ltd, a limited liability company registered in England and Wales with registered number 5259365 & VAT number 834 585 307.

Registered Office: C/O Surrey County Council, Fairmount House, Bull Hill, Surrey, KT22 7AY

### **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.

1.4 TSSEL 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.

1.5 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. TSSEL 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?***

TSSEL 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 heads of trading standards should be represented by on a governance board for the replacement for Consumer Direct services.

TSSEL 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.

TSSEL 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?***

TSSEL 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.

TSSEL 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?***

TSSEL manage and coordinate a Local Authority trader approval scheme called Buy With Confidence (BWC), in partnership with Trading Standards in the South West of England (SWERCOTS) on behalf of BWC scheme operators.

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.

Buy With Confidence 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 48 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.

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.

Government should also take this opportunity to address the continuing proliferation of schemes and the fact that they operate to widely different standards. The role of self-regulatory approval schemes could be greatly enhanced if consumer confusion could be reduced.

***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 a 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 measure 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 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 BWC 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. Where significant concerns are raised by LATSS there should be a required feedback process and if agreement cannot be reached then some form of independent adjudication panel.

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

Whilst we have no particular objection to this, we are 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. Whilst BSI and the Kitemark brand are well recognised in certain sectors, this would be a new area for them. Would it not be better to build on an brand which it already operates in the consumer protection arena, such as "Trading Standards".

As indicated above we believe that there are other options which should also be explored fully.

Buy With Confidence would support the retention of some sort of minimum standards for schemes and scheme operators but these need to be enforced.

***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 my view the ultimate purpose of Codes of Practice should be to improve customer service and confidence and raise standards and 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.

#### **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

TSSEL 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. TSSEL would not wish any changes to undermine any locally delivered support.

TSSEL 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?**

TSSEL 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?**

TSSEL 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. TSSEL believes that LATSS have the skills, experience and willingness to deliver the outcomes the Government wants to see. TSSELs 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 TSSEL 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

TSSEL 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. TSSEL believe that this should be an organisation representative of Local Authorities.

TSSEL is an established limited company and has contracted with central government since its inception in November 2004. Our governance and accountability through our limited company infrastructure provides a transparent and robust political oversight through our elected member company membership. TSSEL engage the services of an independent accountancy firm and provide quarterly management accounts, from which a cash & reserve position is produced detailing future commitments and a bottom line. We would welcome the opportunity to discuss

how our existing infrastructure could be utilised to facilitate the funding arrangements. 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, and TSI on that Board plus other representatives such as BIS but they would not form part of the decision making process of the board.

Others would be invited to attend meetings to share information, intelligence and advice (e.g. Citizens Advice, CMA etc), as required, but again 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. 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, lead authorities or 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 delivered by regional groups.

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.

TSSEL 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.

TSSEL 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.

TSSEL 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, TSSEL 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, 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 TSSEL would not recommend that any council should undertake any of these national high risk cases.

We believe 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.

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

TSSEL 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

TSSEL 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.

TSSEL 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

TSSEL 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. TSSEL 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. TSSEL along with other regional groups using a robust, tried and tested infrastructure 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?***

TSSEL 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?***

TSSEL 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. TSSEL 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, TSSEL 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?***

TSSEL 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 TSSEL 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?***

TSSEL 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

**26 September 2011**



# Trading Standards

## South East Ltd



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

**Paul Thomas**  
**Chair of the Buy With Confidence Management Group**  
**Devon Trading Standards**  
**County Hall, Topsham Road**  
**Exeter EX2 4QH**  
**tel: 01392 382728**  
**fax: 01392 382732**  
**email: paul.thomas@devon.gov.uk**

### **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 is from the Buy With Confidence Management Group (BWC), BWC is a Local Authority approved trader scheme managed by Trading Standards in the South East and South West of England on behalf of BWC scheme operators. As such, the response confines itself solely with Chapter 3 of the Consultation Paper.

#### **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.

Buy With Confidence 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.

Buy with Confidence is co-ordinated centrally by Trading Standards South East Ltd  
on behalf of the Buy With Confidence scheme operators

Trading Standards South East Ltd is a limited liability company registered in England and Wales  
with registered number 5259365 & VAT number 834 585 307.

Registered Office: C/O Surrey County Council, Fairmount House, Bull Hill, Surrey, KT22 7AH

**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 48 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.

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.

Government should also take this opportunity to address the continuing proliferation of schemes and the fact that they operate to widely different standards. The role of self-regulatory approval schemes could be greatly enhanced if consumer confusion could be reduced.

**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 a 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 measure 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 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 BWC 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. Where significant concerns are raised by LATSS there should be a required feedback process and if agreement cannot be reached then some form of independent adjudication panel.

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

Whilst we have no particular objection to this, we are 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. Whilst BSI and the Kitemark brand are well recognised in certain sectors, this would be a new area for them. Would it not be better to build on a brand which it already operates in the consumer protection arena, such as "Trading Standards".

As indicated above we believe that there are other options which should also be explored fully.

Buy With Confidence would support the retention of some sort of minimum standards for schemes and scheme operators but these need to be enforced.

**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 my view the ultimate purpose of Codes of Practice should be to improve customer service and confidence and raise standards and 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.

I would like to thank you on behalf of those authorities which operate the Buy With Confidence approved trader scheme for the opportunity to respond to these issues.

Your sincerely



Paul Thomas  
Chair of the Buy With Confidence Management Group



## Trading Standards South West



Shire House  
Mount Folly Square  
Bodmin  
PL31 2DQ

01208 78772  
[swercots@cornwall.gov.uk](mailto:swercots@cornwall.gov.uk)

**SWERCOTS Response to 'Empowering and Protecting Consumers' - Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement"**

I am pleased to enclose the response of the Trading Standards Partnership in south west England (SWERCOTS) to the above consultation document. This response has been prepared by Lisa Peters, regional policy manager for SWERCOTS. All enquiries regarding the response should be referred to Lisa: email [lcpeters@cornwall.gov.uk](mailto:lcpeters@cornwall.gov.uk)

Yours sincerely

**Paul Thomas**

SWERCOTS Chair

**About SWERCOTS**

Fifteen SWERCOTS authorities work together to maintain and improve the quality, consistency and efficiency of Trading Standards Services provided to consumers and businesses in the South West of England.

## 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. SWERCOTS 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?***

We 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. We are concerned that there will be lack of recognition of the problems which should be passed to trading standards services. It is imperative that the final arrangements will emphasize the crucial importance of developing close working relationships between local bureaux and LATSS.

At a national level in England and Wales, regional groups should be represented on the 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.

We 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.

We 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?***

We agree 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?***

SWERCOTS 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.

We welcome 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**

We have 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.

Across the South West and South East, our Buy With Confidence scheme already gives consumers a method for finding trustworthy businesses. This scheme has been very successful and well received by local consumers and businesses. We believe that there are great opportunities to build this existing scheme 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 adopted / developed that 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**

SWERCOTS 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 it is difficult to comment at length without any of the detail.

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. There needs to be a proper structure in place so that people know where to go to and have someone from a particular sector to help them. We cannot see that current CAB local structure will allow this. CAB may collect together an overview of what's happening in a sector but we are not sure if CAB will be able to help individuals other than providing general advice.

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. We would not wish any changes to undermine any locally delivered support.

We 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?***

We have 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?***

N/A

## **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?**

SWERCOTS are in support of 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. Our 15 local authorities 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 we 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**

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 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. We 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 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. 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 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 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.

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,
- Distance selling issues,
- Homeworking schemes,
- Issues relating to import docks/airports etc.

SWERCOTS 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, we 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 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 we 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 we believe 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.

SWERCOTS 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. The JEB would also not be controlled by heads of trading standards 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 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

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

There must be effective communication and a good working relationship between the 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**

We agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between the various bodies. We are concerned, however, as to how complex enquiries with overlapping legislative issues will be dealt with if they do not fit into discreet pots of funding. 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 local authorities welcomed the "Fighting Fund" that BIS made available, 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. We 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. Some regional groups and indeed other external providers would also wish to be able 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?***

We are aware of TSI's strong role and expertise in relation to European and international work in areas such as food and product safety and they could undertake this work. Ultimately this will depend on what European and international representation the UK Government want and the amount of resources they wish to have devoted to it. For example if BIS already attend a forum or group, as the UK representative, then it may not be necessary for a 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?***

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

***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, we 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?***

We are of the opinion that the OFT's estate agency and related anti-money laundering functions would sit better with a regional team than with a single trading standards authority. 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.

***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. This would avoid continued confusion in the current landscape and deliver financial efficiencies by streamlining the processes and structures.

**22 September 2011**

## Trustmark

# Empowering and Protecting Consumers

## - Response by TrustMark, Sept 2011

---

TrustMark is pleased to have the opportunity to respond to this critical consultation on the future of the consumer protection landscape. We also offer views that touch on topics raised in the strategy document 'Better Choices: Better Deals'.

Our views relate primarily to how these proposed changes will impact on the UK's domestic **repair, maintenance and improvement (RMI) sector** – in other words, the consumer information, education, advice and protection of householders looking to carry out repairs or improvement work in and around their homes.

Views have been gathered from representatives on TrustMark's joint industry/consumer forum, and from TrustMark's Board which includes independent, industry and consumer representatives.

### Why do TrustMark's views matter?

1. The domestic RMI sector is worth an estimated £27 billion per annum (OFT research, June 2011). While recent figures from OFT suggest that only 3% of consumers surveyed reported being dissatisfied with the outcome of home improvement and repairs work, we do know that cowboy builders and rogue traders generally in the RMI sector present a considerable consumer detriment. For example, in the year to March 2011, Consumer Direct received 70,000 complaints from consumers about general home improvements, maintenance and repairs, and an additional 15,000 specifically about the glazing sector.
2. The RMI market is growing, boosted in part by a depressed housing market which encourages homeowners to 'improve not move'. We also anticipate a substantial increase in RMI work triggered by initiatives next year to refurbish and improve the UK's existing housing stock via the proposed Green Deal. Early estimates suggest that even just a 25% uptake of Green Deal work in pre-1980, owner occupied homes would add another £2 billion a year to the RMI sector for associated works and repairs required over and above the Green Deal work itself.
3. Much of this work may begin just at the same time that the consumer landscape changes are taking effect. We are very keen to ensure consumers will know where to go for advice and will be signposted to reputable firms during this period of change and for the future.
4. TrustMark is a good example of co-regulation and a flexible, cost-effective approach to consumer empowerment. A Social Enterprise, we signpost consumers to reputable tradesmen who are vetted, inspected and monitored and who work to Government-endorsed standards. (See more about TrustMark in Appendix A). We have six years' experience of the sort of consumer empowerment and safeguards that the Government now wants to extend, so in our responses below we are able to offer insights based on real life experience.

## 1 Information & Advice

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

5. When it comes to the provision of consumer information in the RMI market, our view is that additional regulation in the sector is unnecessary. What matters most is **reducing fragmentation** and **more joined-up signposting** by the key agencies, independent third sector organisations, trade bodies and advisory services that touch the consumer throughout the process of finding help to repair, maintain or improve a home.
6. In terms of reducing fragmentation in the consumer landscape, we support a **one-stop-shop approach**, effectively integrating and rationalising the offering, bringing the best together in one place or syndicated to many places. Citizens Advice may be in a position to take the lead with other organisations to achieve this. TrustMark will certainly continue to give Citizens Advice our full support to deliver RMI advice to consumers. Success of this approach will also depend largely on the visibility and promotion of this service, particularly online and at local grassroots level, so it is vital that the proposed changes do strengthen central support structures to ease the pressure on local Citizens Advice Bureaux.
7. The joined-up approach is particularly important in the provision of information to the most **vulnerable groups**. Research by OFT in the RMI sector shows these groups include younger consumers too.
8. **Good examples of a joined-up approach** must be encouraged, for example:
  - Collaboration on public information campaigns which use social media as well as traditional media channels to reach consumers, such as the recent OFT Doorstep Selling campaign which was supported by TrustMark.
  - Partnerships between bodies like TrustMark and Citizens Advice to ensure RMI advice, leaflets and information is provided via every Citizens Advice Bureau.
9. **We must caution consumers about reliance on ‘consumer feedback’ websites in the RMI sector.** We are aware of many websites which claim to put consumers in touch with local tradesmen where no initial vetting has been carried out and the ‘consumer feedback’ is entirely unreliable. Many sites are simply glorified advertising directories which charge firms for listings or job leads. With so much of the work either hidden or of a technical nature, this also makes it very hard for a consumer to judge the performance of a tradesman – this is also why TrustMark is the only scheme in the UK to require onsite inspections of registered firms carried out by qualified inspectors who know the trade in question. Further information on our grave concerns about ‘consumer feedback’ sites in the RMI sector is in Appendix B.
10. We agree that public money need not be spent on generating consumer information where such material is available free of charge from an authoritative source. However, Government should provide **clear endorsement of the most reputable sources**. For example, research shows that it is the visible support of Government which keeps co-regulation schemes like TrustMark working and creates confidence among tradesmen and consumers alike. We agree with the consultation statement 1.5 regarding public body endorsement of voluntary codes of practice and standards.

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

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

11. Yes, TrustMark supports the transfer of these roles and responsibilities.
- 

## 2 Education

**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?**

12. Education of consumers when they embark upon RMI work is critically important, particularly for first-time householders (anyone who has responsibility for the upkeep of a property and its grounds). Consumers need to know where to turn in a home repair emergency, as well as how best to approach a planned home improvement project.
13. The most valuable consumer education work in the RMI sector comes at important milestone events – typically when people first enter the housing market, or when they prepare to alter a property to reflect changing lifestyles (arrival of a new child, empty nesters etc).
14. We must get to such people before they make a purchasing decision in order to signpost them to reputable firms, and we must then help them become better clients – able to negotiate a mutually acceptable contract, proactively manage the job, communicate with confidence, understand the work that is being done and treat the tradesman with respect.
15. Education about a home's upkeep is also going to become increasingly important as our homes and gardens are impacted by the uptake of renewable energy technologies and other systems which are not yet well understood.
16. We believe that the consumer education role could be transferred to Citizens Advice to coordinate with other organisations, making these educational campaigns available to other organisations such as TrustMark to promote. This proactive and coordinated approach will also help to address any potential consumer perception that Citizens Advice is there to help after a problem, rather than as the best source of advice beforehand to prevent the problem in the first place.
17. TrustMark will pursue continued opportunities to join forces with Citizens Advice and other bodies to promote its new tools which help consumers know how to deal with tradesmen. We are also keen to partner with Citizens Advice on awareness-raising campaigns with estate agents, mortgage lenders, housebuilders, surveyors, garden centres and DIY retailers, all of whom touch homebuyers and property owners at critical stages in the RMI journey.

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

18. Education of business in the RMI sector is also very important, particularly making SMEs more aware of the laws regarding consumer protection and best practice in customer care and treating consumers fairly. A coordinated response through the Trading Standards Policy Board and the TSI delivered to others including TrustMark would be a model that TrustMark would support.
  19. Regular discussion and information-sharing meetings in the RMI sector (such as TrustMark's quarterly joint industry/consumer forum meetings) also provide an essential opportunity for trade associations, certification bodies, retailers and private organisations specialising in building and associated trades to meet with representatives from Trading Standards and other consumer protection bodies. TrustMark is the only organisation to facilitate this sort of dialogue and collaboration in the RMI sector, and we would hope that the Trading Standards Policy Board and the TSI will continue to support and take an active role in these meetings.
  20. TrustMark scheme operators distribute important information to members' firms to raise their awareness of critical consumer protection issues, and we will support the ongoing provision of relevant business information provided by the TSI and others.
- 

### **3 Consumer Code Approvals**

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

21. TrustMark has considered the benefits and processes that currently exist with the CCAS scheme. We believe that there is value to businesses and consumers from a Government-endorsed code approval system. However the current system is recognised as too bureaucratic and tardy. We feel that should the BSI standards/PAS route be taken this will remain the case, and will lose attractiveness to future code promoters.
22. The alternative suggestion of involving Primary Authorities is potentially more streamlined, but our experience shows that assessing and auditing trade associations and other scheme operators is very different to the work of assessing and auditing individual big businesses.
23. TrustMark's view is that CCAS needs a central body to own, amend and develop the codes. A single national body would ensure consistency of standards across a variety of codes, and would deliver a single point of reference for consumer complaints. It could also help to provide consistent feedback and legal support that has been so valuable to code promoters to date. This coordination role needs to be both proactive and reactive. TrustMark already operates a similar role liaising with scheme operators in a tiered system. We believe this model could be adopted to continue and develop the CCAS system, and we are interested in further opportunities to discuss this option with Government and with code promoters themselves.

***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?***

24. There would be a negative effect and therefore it would be inappropriate to wind down CCAS which has achieved a great deal. However a review of operations and procedures could enable a national replacement body to become more efficient at introducing more codes within new business sectors. If CCAS was wound down, there would be little if any incentive for anyone to reinvent the wheel. The time and effort put in to achieving CCAS status by those organisations and their members must not be underestimated.

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

25. One point that is already clear is the need for continued rigour in approach but faster processing of applications – TrustMark has achieved this by close working throughout the application process of our scheme operators, providing feedback at all stages. The charging of a non-refundable application fee also ensures real commitment to the process.

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

26. See above.

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

27. We do not yet see the benefits of Kitemarking codes.

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

28. See above.

---

## **4 Consumer Advocacy**

***QUESTIONS 12 - 15***

29. TrustMark believes that an overriding principle for advocacy should be non reliance upon subscription arrangements i.e. a free service. Equally the combining of advocacy services can only help to provide efficiency and ease for consumer access. In relation to the specific suggestions, we believe that others may be better equipped to answer these points.

## 5 Information gathering powers

**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?**

30. Giving statutory powers to Citizens Advice to be able to demand information from any regulator, business or individual could fundamentally change the nature of the organisation and its relationship with the public. Others will be better able to comment on the legal issues this creates, but TrustMark's instincts are that all statutory powers should stay with public bodies and that these responsibilities may be better served as part of the enforcement role, rather than consumer information and education role.
- 

## 6 Redress schemes

**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?**

31. TrustMark is in favour of redress schemes generally. But we would advocate different ways of achieving this in differing sectors. For instance, the tiered complaints process with TrustMark achieves redress in the highly fragmented RMI market without the need for individual sectoral ombudsman schemes to be created. This approach also helps to ensure effective consumer redress does not put unnecessary additional costs on business, particularly SMEs.
- 

## 7 Transfer of functions from Consumer Focus Post in NI

**QUESTIONS 18 - 19**

32. These issues are outside the areas of our expertise and there are others better able to answer these questions.
- 

## 8 Enforcement of Consumer Protection Legislation

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

33. TrustMark has a long-standing relationship with Trading Standards Services and we value the expertise and professionalism that is apparent. We therefore agree that the best model would be option 3, which again builds upon current best practice. The Policy Board has worked effectively as a voluntary network and to assist it with funding and this responsibility would create a model far stronger than that it replaces.

34. However, with the imminent arrival of the Green Deal and the wave of associated building and repairs work that we expect it will cause, TrustMark shares the concerns outlined in consultation statement 5.34 regarding the very difficult financial and resource restrictions currently affecting Trading Standards Services and the ability of some services to pursue high visibility enforcement action against rogue traders in the RMI sector.
35. It must be recognised that much more could be done by effective education of the public, thus reducing complaints and consumer detriment. Extra effort put into the provision of good advice and consistent signposting by Citizens Advice and its trusted partners to consumers before they undertake RMI work would reduce the need for Trading Standards' involvement and enforcement later on. In our sector in particular, prevention is always better than cure.
- 

## **9 Role of the Competition & Markets Authority**

### **QUESTIONS 25 – 29**

36. TrustMark believes that the model proposed with Citizens Advice and the Trading Standard Policy Board would be an effective means of considering consumer detriment analysis. This will build upon the work that the organisations involved already conducts and so would be an effective and efficient model.
- 

## **10 Cases that cross over institutional boundaries**

### **QUESTIONS 30 – 31**

37. We believe that the proposed collaboration is the best way to achieve outcomes for consumers. The level of resource required is something that others may be better able to comment upon.
- 

## **11 Other current OFT roles, and potential delay to CMA**

### **QUESTIONS 32 – 40**

38. With regard to questions 32 to 39, we agree with the Government's analysis and suggestions in these regards. However, TrustMark wants to see the consumer enforcement landscape settled as quickly as possible. There are many opportunities that arise that will substantially develop and strengthen the landscape. The consolidation, integration and utilisation of existing processes is a step forward to simplify and deliver effective protection for consumers as well as encourage economic recovery. We therefore feel that the proposed changes should be implemented as soon as possible irrespective of any delays to the creation of the CMA.
-

# Appendix A – About TrustMark

---

- For a long time there was no national scheme to signpost consumers to the good firms. This is why TrustMark was set up in 2005 and launched in 2006 as a Government-backed quality mark scheme for tradesmen. It operates under licence from the Department for Business, Innovation and Skills (BIS). TrustMark provides a **free and easy service to householders to select a tradesman with confidence**, knowing the firm's competence and fair trading practices have been independently checked.
- Tradesmen/firms are vetted and then registered with TrustMark via Scheme Operators. TrustMark acts as the oversight body for 38 Scheme Operators (trade associations, commercial organisations, local authorities, certification schemes etc). This ensures consistency of standards across a wide range of trades.
- Scheme Operators and their registered tradesmen/firms sign up to a carefully-monitored and audited code of practice that includes insurance, good health and safety practices and customer care. **TrustMark is the only organisation to require on-site inspections to check tradesmen's workmanship – and these checks must be carried out by independent, qualified inspectors.** These standards are developed by a range of consumer and industry interests in order to achieve the right balance between consumer protection, industry practicalities and costs.
- TrustMark registered firms are able to offer an insurance backed warranty to homeowners for jobs over £250. This insurance covers deposits, pre-payments and work in progress should the firm cease trading. It also covers, as a minimum, two years warranty on materials, design and workmanship. TrustMark is currently reviewing options for making such a warranty mandatory.
- TrustMark is wholly funded by the construction industry (a fee is charged for every registered firm). It does not get any funding from the tax payer. It is a registered Social Enterprise, has no shareholders to pay and is run as a not-for-profit company limited by guarantee.
- TrustMark meets Government's needs in terms of:
  - **Providing consumer empowerment** – including advice and user-friendly ways (via web and telephone) for consumers and vulnerable people to find trustworthy and reliable tradesmen to carry out repairs, maintenance and improvement (RMI) work.
  - **Supporting and strengthening SMEs in the construction industry** – increasing public confidence in their work and creating opportunities for growth in the RMI sector, with a low cost self-regulatory mechanism that does not impose excessive bureaucracy or costs on business.
  - **Strengthening the Green Deal agenda** – providing an established scheme to ensure robust standards, monitoring and consumer redress for all the associated repairs and building work that will inevitably arise as a result of a major retrofit of the UK housing stock (and which will also impact on the success of the Green Deal measures and promised energy savings).
- TrustMark has the support and involvement of various consumer affairs organisations including the Trading Standards Institute and Citizens Advice, and acts as a conduit to bring industry and consumer groups together which helps to inform and improve consumer affairs policy.
- TrustMark has the largest database of accredited tradesmen in the country, providing national coverage with almost 20,000 trades listed on its database. Over 90% of TrustMark-registered firms are SMEs, but it also includes some much larger national firms.
- In 2010 TrustMark tradesmen's details were viewed 3.5 million times – an increase of 8.7% on the previous year. There are about 300,000 viewings of firms' details per month on [www.trustmark.org.uk](http://www.trustmark.org.uk)

# Appendix B - 'Consumer feedback' websites and the RMI sector

---

*"Consumers can shortcut traditional accreditation schemes and instead get access to the opinions and experiences of people just like them."* (Consultation statement 2.6)

**Unfortunately this statement is not necessarily true or a wise option in all cases, and reliance on 'consumer feedback' sites potentially creates greater vulnerabilities for consumers in the RMI sector.**

Feedback sites are ideally suited to regular, uncomplicated consumer purchases which do not rely on the customer having technical knowledge and where all the work/product/service is visible and easily understood. This is not the case in the RMI sector. Consumer feedback may be useful on elements of customer service (the tradesman turned up on time, left the site tidy etc) but this gives no reliable indicator of a firm's competence or suitability to do the work that's required.

TrustMark is acutely aware of the risks caused by websites which claim to be a "cowboy free zone" and purport to give reviews from consumers who have used tradesmen to do work in and around their home:

1. In many cases, firms are paying a fee to appear on the website. They are not vetted properly, if at all. They are often sent unlimited numbers of 'feedback forms' to give out to customers (or anyone else), with incentives to get as many of these forms returned as quickly as possible.
2. There are very rarely any checks that such feedback is genuine. Out of 10 or more websites we surveyed that claim to offer this consumer service at present, we found just one that claims to do any "spot checks" – and this is only on 10% of their users' reviews.
3. Even Which? Local, which is able to check up on reviews because it has a lot of detailed information about its subscribers (who are the only people who can use this service), tells us that it rejects about 15% of customer reviews because they think they are faked and agree that others are probably slipping through the net. This unreliability is why they won't allow businesses to use these customer reviews or claim any endorsement.
4. In most cases, consumer feedback websites in the RMI sector do not publish negative reviews at all, or build in long delays before this feedback is visible to other users. Mumsnet and other discussion forums are full of public comments complaining about this, and anecdotal evidence suggests that when a negative review is published it can sometimes result in more problems or even abuse to the householder afterwards. Unsurprisingly, people are therefore reluctant to give less-than-positive feedback when a tradesman has already been in their home.
5. In one case we saw, a website urges users not to worry about negative comments anyway: "Don't discount those [firms] that have an occasional bad result – they may be a good bet."

6. Where positive comments are visible online, it is clear that in many cases these are coming about as a result of business-to-business relationships – for example, roofers, electricians or other tradesmen used as sub-contractors by a local builder or developer. For example, it is unlikely that typical comments like “have used this firm to do roofing work five times in the last year” relate to a householder’s experience. Comments can never be assumed to be coming from “someone just like me”.
7. Ultimately, in the first instance what consumers need is to be signposted to reputable firms who have been checked properly (including onsite inspections of their work by inspectors who know what they are looking at). Only then might some additional feedback mechanism be helpful – so long as that feedback can be properly verified. TrustMark’s view is that this is very difficult to do properly.
8. In the meantime, consumers using these ‘find a trader’ type sites must still do their own checks and must continue to treat the firm with caution – which defeats the object of these sorts of websites anyway.
9. As the ‘Better Choices’ strategy document states: *“The challenge for consumers is often in knowing what is relevant information and what is not; knowing what is accurate and what is not; and what can be trusted and what cannot.”* TrustMark supports the Government’s ideas about creating a quality mark for web and comparison sites, and particularly welcomes targeted enforcement action against any websites in the RMI sector that are failing to protect the integrity of genuine consumer feedback and are undermining any trust consumers might have in this market.

**TSI**

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

**BIS Consultation 2011**

**Response of  
The Trading Standards Institute**

**27 September 2011**

## About The Trading Standards Institute

The Trading Standards Institute is the UK national professional body for the trading standards community working in both the private and public sectors.

Founded in 1881, TSI has a long and proud history of ensuring that the views of our 3,200 members are represented at the highest level of government, both nationally and internationally.

TSI provides accredited courses, events, IT solutions and campaigns on behalf of our members to get consumers and businesses a better deal. It is also a forward-looking social enterprise delivering services and solutions to public, private and third sector organisations in the UK and in wider Europe.

In compiling this response, TSI has sought the views of its members by initiating the 'national trading standards conversation' through several electronic channels as well as organising and delivering a series of cross sector engagement events throughout Great Britain during the last few weeks.

The response has been composed by a team of TSI staff and members led by TSI Operations & Policy Director Andy Foster. If you require clarification on any of the points raised in the response, please do not hesitate to contact Andy at email [andyf@tsi.org.uk](mailto:andyf@tsi.org.uk) or by telephone on 0845 608 9623.

TSI does not regard this response to be confidential and is happy for it to be published.

Trading Standards Institute  
1 Sylvan Court, Sylvan Way  
Southfields Business Park  
Basildon  
Essex  
SS15 6TH  
Tel: 0845 608 9400  
[www.tradingstandards.gov.uk](http://www.tradingstandards.gov.uk)

## **Headline Summary**

- TSI supports the overarching aims of the review
- Government's proposals rely on re-creating the national / local infrastructure and acquiring a local government mandate
- TSI, through its UK-wide network of Branches and Sections, can offer and support that solution in a cohesive manner
- TSI supports the principle of devolution of national / regional enforcement to trading standards but has significant concerns about local enforcement capacity and funding loss
- TSI prefers the Trading Standards Policy Board option for enforcement within a UK-wide context
- TSI believes that CMA should retain consumer powers for remedying structural market problems
- TSI believes the review and TSPB model offer the greatest potential of coherence within the landscape and will bring together key players tackling consumer detriment in a more holistic way
- TSI / Trading Standards is a long standing brand that enjoys huge trust and confidence by consumers and businesses alike.

## Foreword

The Trading Standards Institute welcomes the institutional review by Government and generally agrees with its overarching aims of:

- Reducing the complexity of the consumer landscape
- Strengthening the effectiveness of consumer enforcement
- More cost-efficient delivery that is closer to the front line

We are pleased that Government recognise the role that consumer policy (and in particular our members) can play in empowering and protecting consumers and its relationship with fair markets and economic growth.

## Context

The recent and timely value for money study carried out by the National Audit Office sets out evidence behind its conclusions that the consumer protection system within the UK is 'fragmented and ill-equipped to deal with a whole range of consumer scams'. Whilst this report makes uncomfortable reading for our profession and those dependent on its effectiveness, we agree with its findings and that is why we welcome wholesale systemic change to the consumer landscape.

That said, for many of our members this institutional review does not go far enough in addressing some of those key NAO concerns.

A real issue for many of our members is accountability for cross-boundary consumer detriment. Accountability lines are hazy when it comes to matters picked up by national teams or a collaboration of local enforcement capacity or in some cases an individual authority. Couple this with savage budget cuts at local level and there is a risk of a weakening system at a time when consumers, honest enterprise and the economy need the system to be stronger than ever. Indeed, the Public Accounts Committee on 5<sup>th</sup> September 2011 made the point that "it is not the case that everyone is accountable, it is more the case that no-one is."

The NAO puts forward that some £4.8bn of visible consumer detriment cannot be solely dealt with at a local level. If, therefore, the landscape is to be strengthened, then a more robust national, regional and local infrastructure needs to be built with appropriate accountabilities identified and implemented accordingly.

Of course this will require resources, and in the unlikely event that this could be taken from local government this would need to be identified from a central source. We acknowledge that this may be a challenge in the current climate, but if Government are serious about consumer protection then we are very clear that a falling £247m (of which 89% is local funding and the remainder comes from central resources) to possibly £140m

or less is a woefully inadequate amount when compared to some £6.6bn of consumer detriment.

Resource is of course pivotal to the success of many of the policy proposals detailed in this consultation and we remain concerned that to date BIS are unable to identify how much resource may come across to the new national enforcement infrastructure. If the new machinery is to have teeth and be effective then this can only be achieved with appropriate funding. If funding is low then we would have serious concerns about the effectiveness of the proposals.

Indeed, during the Public Accounts Committee hearing (5<sup>th</sup> September) which followed the publication of the National Audit Office report, committee member Austin Mitchell MP described the amount of national money allocated to national and regional fraud as "peanuts".

In addition, the Chair of the Committee, Margaret Hodge MP, when making comment about the BIS fighting fund, said, "*I think we are all absolutely gobsmacked. You are going to deal with a dodgy builder and the banks out of a fund of £250,000.*"

Whilst we accept this is just part of the 'system' it evidences our point that the whole system is under-funded.

### **Joined-up Government**

The second reason why our members feel that the review does not go far enough is that the 'consumer landscape' review does not cover the whole consumer landscape. The consultation appears disconnected from other initiatives stemming from the Better Regulation Executive (Transforming Regulatory Enforcement, Primary Authority, LBRO) and the BIS policy areas only stretch as far as the 'fair trading' elements of trading standards work. In its Open Public Services White Paper Government also identifies trading standards as one service that may be subject to its locally commissioned services policy aims. We would welcome BIS articulation on the synergy between its proposals for trading standards and the potentials in the White Paper.

There are other areas of review which, whilst falling within different policy areas, are essentially trying to solve similar problems. An example of this is the review of official controls delivery currently being carried out by the Food Standards Agency and the Simpson reform agenda for a 'national' trading standards service for Wales.

Cross-boundary enforcement is not unique to 'fair trading' issues and we believe there are some efficiencies to be realised in exploring how these models might apply to the UK's resilience to animal health, food standards, tobacco control, food nutrition etc so that enforcement and response to consumer detriment is improved and bolstered across the whole market place, not just for a sector of it. The strength of trading standards and its special contribution to UK affairs is its comprehensive scope and the resultant holistic approach to its intelligence led work and activities. We want to see this sustained.

On a general point, we don't necessarily feel that the proposals contained within this consultation are any less complicated than the current system, with the exception of sectoral advocacy, and we can see how bringing the other utilities' consumer advocacy machineries together would be the biggest simplification from that continually complex part of the consumer landscape.

#### **Case Study – TSI – A crucial cog in the national machinery**

*A founding partner of the PROSAFE group in 1990, TSI's contribution to market surveillance initiatives continues to expand internationally. Embracing a range of crucial communication and coordination activities, TSI finds itself at the heart of lively debate and at the centre of important day-to-day service delivery.*

*With a broad range of skills under one roof, the UK's recent fridge freezer safety alert saw TSI action on a number of fronts.*

*Trading standards professionals employed TSI's secure ts interlink extranet to disseminate early manufacturer warnings during April with TSI's public-facing tradingstandards.gov.uk website serving 189,000 visitors in the hours following June's ensuing media storm. Our media centre coordinated responses to the many press enquiries throughout.*

*TSI subsequently disseminated associated RAPEX and Article 9 notifications on behalf of the Department of Business, Innovations and Skills, cementing its role as a trusted service provider.*

#### **A Sustainable National Machinery**

The regulatory sector is probably yet to discover the full consequences of the loss of Local Government Regulation (LGR, previously LACORS) following the restructure of the Local Government Group. In our view this body was crucial to ensuring consistency of interpretation and enforcement action on regulatory matters. It also acted as a useful national conduit for Government grants to pass through so that national initiatives could be funnelled to regional and local level.

The consultation is silent on how this would be done in the new landscape but, nevertheless, such arrangements need to be found and we believe that TSI is the obvious solution. The business community we have talked to are extremely concerned that the regulatory consistency 'gap' left by the demise of LGR and the further narrowing of the scope of the Local Better Regulation Office is widening.

The 'Joint Statement of Commitment' that brings together TSI, the Chartered Institute of Environmental Health and LBRO will serve as a useful foundation for a successor model that we intend to build upon in time for the new policies to be implemented.

TSI has welcomed and been an enthusiastic part of the 'Joint Statement of Commitment'. The JSOC was launched at the TSI Annual Trading Standards Conference in June 2011 and is intended to provide market reassurance to local authority regulators and the business community alike. On the same TSI Conference platform the Local Government Group formally passed responsibility for the Home Authority scheme to TSI.

The JSOC model has the aim and growing capability of delivering support services to local authority and national regulatory services and to business. But there will be challenges ahead, notwithstanding the shared commitment held by our three organisations and those others that we hope to embrace, including the current trading standards and environmental health policy forums supporting the local authority associations.

We do not, and could not, intend to create a new LGR, but we will if appropriate ensure that mechanisms are in place to deliver constancy and proportionality, and to bridge the national with the local in a way that helps Government deliver on its goals.

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

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

TSI believes that key to the new consumer landscape is the empowerment of consumers to make informed decisions which negate the need for enforcement agencies and advice services to 'mop-up' after the event.

In our interim statement (August 2011), we said that the combination of empowerment, education and enforcement need to come together to improve the system of consumer policy.

The Government paper '**Better Choices: Better Deals. Consumers Powering Growth**' (April 2011) set foundations that were intended to switch the balance of power from business to consumer so that consumers were better able to get the best deals for themselves individually and collectively. We realise that not all consumers have access to, and some choose not to access, the internet, but a crucial part in our consumer empowerment journey will be the use of the power of knowledge by creating the right climate so that consumers can be 'nudged' into making beneficial decisions. We want to see Government take appropriate action so that the gaps in information can be filled and those who already play their part ('Which?', 'moneysavingexpert.com' and others) are supported.

Multiple public and private players in the 'approved trader' market place do, however, pose another problem for consumers. When the words 'approved trader' are entered into

a 'Google' search, a list of 23.4m hits is returned. The consumer is faced with a dazzling array of Government-backed, non-profit and pure commercial solutions, all claiming to make the task of choosing a tradesman easier and without risk. But all offer different levels of protection. The features of such schemes range from insurance-backed schemes and traders who have been vetted by trading standards to the other end of the spectrum where the scheme is a simple registration offering almost no protection whatsoever.

If a consumer is to be empowered and reassured by such schemes then the choice needs to be made easy - easy to find and easy for peers to recommend and understand - and signed up to by the majority of the sector. We would like to see these schemes rationalised so the message to consumers can be made simpler, "look for the X sign".

As for advice, we are supportive of the transfer of management of Consumer Direct to the Citizens Advice service; the service has proved itself to be of integral importance to the consumer landscape since its inception and we pay tribute to those involved in its development to date, including trading standards services and the Office of Fair Trading. What is important now is that those successes are built upon in its successor model and we are active in helping the Citizens Advice service to do just that.

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

Yes, we support this in principle. However, we believe that information and education should not be delivered in isolation from the rest of the 'landscape' and that more structural links should be designed so that appropriate responses (either information or enforcement) can be implemented as market detriment becomes evident. It should be recognised that trading standards professionals still deliver a lot of education locally and this should be joined up with Citizens Advice and Citizens Advice Scotland (which we shall term 'Citizens Advice service') strategy for consumer education.

We would like to see greater engagement at local level to supplement the strong links that are being built on a national basis. We support the ambition behind the 'consumer empowerment partnerships' (CEPs) that are a part of the Citizens Advice service proposal. These could build on the successes of the consumer support networks that were widely supported. We look forward to hearing more about how this would work and what resource might be available to each CEP to ensure they are supported by all regions.

The issue of second tier or complex case work is an area that requires further development. At present consumer advice is a non-statutory function performed by most, but not all, local authorities. We understand that Citizens Advice service intends to expand their provision in this area to ensure uniformity of service provision to consumers across Britain. Whilst we applaud this move, care needs to be taken that duplication is avoided where that function is performed by both trading standards and citizens advice and that each service complements the other.

The other risk that concerns our members is that some local authorities may choose to rationalise their advice provision if Citizens Advice service are providing the same service in that location, and take it as an opportunity to withdraw resource from that area.

Whilst we would not advocate using public funds to provide two similar services, some of our members are concerned that this may lead to a de-skilling of the trading standards profession and so a good degree of transition management needs to take place at local level.

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

Yes, it makes logical sense for this to happen as other information and advocacy functions are also transferred.

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

Yes, we see merit in bringing all these activities within one single organisation. We believe that Citizens Advice are well placed to deliver consumer education activity. Consumer education is a crucial cog in our vision for consumer empowerment which we set out in our interim statement (August 2011).

In the past our members have felt as though some national campaigns have not truly reflected the areas of detriment that should be targeted the most. In particular we feel that, given education funding is likely to be scarce, such activities should be targeted to areas of detriment that have the greatest disproportional effect on citizens, particularly those who might find themselves in a 'vulnerable' position at some point in their lives.

We would also make the point that we don't see education as a stand-alone activity. Education needs to reflect emerging market threats and, as such, a link with trading standards (through the policy board or other mechanism) is essential so that there is a seamless cycle of threat assessment, market intelligence, enforcement, and education. TSI feels that we are well placed to take the lead role in bridging this mechanism with Citizens Advice, particularly through our Consumer Education and Liaison Group (CELG) who are already active in helping Citizens Advice with their plans to deliver a more dynamic and holistic approach to education activities.

For many years TSI has led on raising consumer awareness through National Consumer Week and Young Consumers of the Year competition, and has supported the Consumer Challenge Quiz. We look forward, therefore, to developing initiatives like this further with Citizens Advice.

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

Yes, we see business education as being slightly different to consumer education and feel that trading standards have extensive experience in this field. We should be clear at this point that we understand this to mean activities that support and raise awareness around consumer-facing educational activities but through businesses.

Whilst we will continue to support the use of locally-delivered business education locally, we feel that TSI (either directly from Government or through the Policy Board) already has a strong foundation on which to take on this coordination role.

We have a distinct expertise, through our lead officers and technical authors, which has allowed us to deliver sustainable and high quality advice solutions for many years. An example of this is the 'Know Your Rights' campaign which TSI led on behalf of Government. In particular this led to the creation of the Fair Trading Award® which has led to hundreds of businesses benefiting from class room delivery and on-line training in recent years. Some units of the Award are also available free of charge to businesses through Business Link and its Scottish, Northern Irish and Welsh sister organisations.

We also provide a portfolio of on-line business advice through our 'ts broadcast' solution which covers a range of consumer law topics designed to help businesses obtain quick and assured advice. Its syndication to local authority websites means efficiencies are also driven into local authority budgets at the same time.

Again, we would ensure that there is a structural link with Citizens Advice in planning these activities through CELG and our executive so that business education is joined-up with the rest of the landscape, can be continually responsive to market threats, and continues to give practitioners on the ground consistent, high quality, sustainable material that enables businesses to receive consistent advice in a form that suits their needs.

**Consumer Code Approval Scheme**

**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?**

Whilst we understand the need to modernise the delivery of approved codes, we feel the system would be weakened unless the CCAS scheme is replaced with something similar.

Sector-specific rather than business-specific 'approval schemes' have their place and help businesses raise their operational effectiveness as well as offering a simple sign of reassurance to consumers.

That said, any such code approval scheme needs to be modernised so that it is less bureaucratic and slow in the approval process. We feel that the CCAS desire to raise the

bar to the highest level has come at a cost in that it is considered by many as being simply too difficult to achieve. With only TEN approved codes in the network, this has limited its value to consumer policy despite the best of intentions.

Sometimes 'approved trader' type schemes can be too generic in their aims. Whilst this is necessary to reduce complexity, we feel that sector-led improvement through the codes still has its place in the landscape.

So rather than effectively abolish the extensive work that businesses and code promoters have invested in their codes, as well those code schemes in the pipeline which are working towards approval, we feel that the best option is to find a successor arrangement for the codes process and that the successor arrangements should be based upon improvement rather than delivering the status quo. Such arrangements should be of little or no cost to public funds.

### **TSI as a Code Accreditor and Partner**

Whilst we have no desire to develop another approved trader scheme ourselves, we do see merit in establishing a successor model to CCAS. We have talked to some of those involved in the process (Motor Codes Limited, Direct Selling Association, British Association of Removers) during this consultation and it would seem that TSI providing this function has more support than other alternatives.

We have a long and credible track record as a professional body and social enterprise, and we can see that having a close link with the trading standards profession is appealing to the codes operators and the businesses that subscribe to the schemes.

We can also see merit in allowing other local schemes who operate as part of the Local Authority Assured Trader Scheme Network (LAATSN) to be part of the new arrangement we may create where this is appropriate and we are supported in doing so. This would allow local schemes to continue to be managed locally, respecting their independence whilst harmonising the benefits they bring to consumers. This will reduce the complexity of the message to those who use the businesses involved.

For CCAS, this would allow a chance to build on its foundation and also to explore how the scheme can be better used to empower consumers as well as resolving disputes that may occur post-transaction. We will also ensure any successor arrangements facilitate trading standards input as well as the voice of consumers, perhaps through consumer empowerment partnerships.

TSI has recently taken custody of the 'Home Authority' database as part of jointly managing the Home Authority scheme with partners the Chartered Institute of Environmental Health and the Local Better Regulation Office. TSI, through our Chief Executive Ron Gainsford OBE, also chairs the Independent Compliance Assessment Panel (ICAP) for Motor Codes.

ICAP supervises the work of Motor Codes as part of government requirements for Motor Codes' self-regulation of the automotive retail, service, and repair and warranty sectors so we are no stranger to running centrally managed alternative dispute resolution schemes that have national benefit. We believe that such schemes reassure and add confidence in markets by creating competence, visibility, and consumer empowerment.

In our response to Government on the consultation '**Transforming Regulatory Enforcement**' (September 2011) we expressed our thoughts on how the Primary Authority (PA) scheme could be expanded. Whilst we don't object outright to the extension to trade associations, we would like to better understand how assured advice given under PA could be implemented in organisations which may be members of that trade organisation but which trade independently from it as a separate entity.

We believe that co-regulatory approaches are becoming ever more important in the emerging landscape and this institutional review should not lose sight of how the third and private sectors can play their part.

TSI supports co-regulatory approaches as can be seen through our support for Primary Authority and its work with sector trade associations. We believe that initiatives that work with the grain of how businesses operate are more likely to be successful and TSI bringing its brand confidence and value and helping deliver a coherent CCAS successor we see as part of that.



### Let's secure e-commerce

Why we need a trust scheme to unlock the UK's e-trading potential

- **VISION:** *Secure the UK's position as world leader in e-commerce certification to create 4 million jobs and contribute an additional £1trn to the economy by 2020*
- **STRATEGY:** *Provide a holistic e-commerce consumer protection framework and associated utilities that promote, foster and secure confidence in UK-certified e-commerce, e-merchants, e-skills and e-services*
- **TIMING:** *Develop the ISIS/TSI alliance immediately; roll-out in concert with the 2012 Olympics build-up; implement completely by end-2012*

**Case-study:** TSI and IMRG are developing a strategic alliance to develop a UK (and potentially European and global) trust framework by which the consumer will know that their supplier is trustworthy, legal, decent, honest, truthful and fair. The framework will be accredited by TSI who will provide best practice guidance and support to suppliers and retailers such that the benefits of implementation of the trust framework are clear and evident, trading standards are made aware of the emerging threats and consumers are reassured by the familiarity reassured by the familiarity of the mark.

## One Industry – One Code case study

*This is a joint initiative by TSI, Institute of Motor Industry and Motor Codes for the motor trade sector. Its purpose is to:*

- Ensure compliance with regulatory requirements;
- Drive efficiencies into business;
- Consumer complaint reduction;
- Increasing Consumer confidence;
- Increase productivity.

*Embedding this type of co-regulatory approach could be achieved by a Code sponsor entering a primary or home authority partnership to formally recognise the Motor Codes. This would be underpinned by the Institute of Motor Industry's professional training scheme and supported by TSI's Fair Trading Award that provides ongoing competency requirements.*

*Regulators engaging with businesses that operate the Motor Codes should engage with the business in a way that reflects the way the Codes operates. This could be achieved through a Primary Authority Inspection Plan.*

TSI fully supports the proposal of combining as many sectoral advocacy functions as possible. We believe that this will create the most effective and efficient organisation that represents consumers.

We feel less able to comment on who is best placed to carry out these functions but are sympathetic to the rationale put forward by Government. We particularly support the concept of a 'one stop shop' Regulated Industries Unit (RIU) as this would enable more effective advocacy on behalf of a wider spectrum of consumers who are increasingly challenged by utility industry practices, prices, and product offerings.

## Case Study – Cold Calling of Energy Sales & TSI

*It is important to note that trading standards and TSI play more than a minor role in consumer advocacy.*

*It was TSI that first called for a ban on cold calling for energy sales several years ago, much to the resistance of some consumer bodies including Consumer Focus at the time despite widespread evidence of declining consumer confidence.*

*We are now very pleased to see that we are making progress in that area and three of the big six energy companies have recently agreed to cease selling energy through cold calling.*

Whilst we agree with the design principles set out in the consultation document, we feel it is essential that the RIU is given clear aims, statutory powers, and adequate resources to ensure that 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?**

Consumer Focus has functioned well and has provided action on a number of required areas, and we pay tribute to them for the work they have done and the support they have given across the GB network for trading standards. What is important now is that we reflect on the needs of the consumer landscape for the future and build on those successes whilst realising the efficiencies that the new arrangements need to produce. We have sought in this debate to look towards the 'what' rather than the 'who' in assessing consumer and market needs.

Currently Consumer Focus (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. Consumer Focus is not, however, a name that is sufficiently widely recognised by consumers on the street and they are unlikely to know what CF does on their behalf. We recognise of course that Consumer Focus is itself a relatively new brand and that lack of consumer recognition or awareness may be due to this.

We feel that new advocacy arrangements need to embrace consumers and consumer views in a much greater way than happens now. Citizens Advice appear to enjoy a higher profile and trust amongst consumers and that is why we can see the merits in transferring general advocacy functions to Citizens Advice.

We can see the challenges in bringing statutory powers and responsibilities to a charitable organisation such as Citizens Advice service and how this may materially affect the type of organisation it is.

Such changes are, however, a matter for the trustees and executive of Citizens Advice service to manage. If they are satisfied that these new responsibilities do not compromise their charitable aims then we support Citizens Advice service in taking on such responsibilities in the new landscape. There is no doubt scope for the Citizens Advice service to work in an appropriately formal alliance with other appropriate consumer bodies to address this challenge. TSI will perhaps play a role in supporting any new arrangement to help further underscore the desired coherence of the Trading Standards/Citizens Advice collaboration envisaged by the Secretary of State and Minister.

**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 landscape going forward, our members and the consumers of the devolved nations will expect a strong voice that reflects their needs and we wouldn't disagree with that. The model that emerges needs to achieve the best of UK coherence, but with a bespoke component which meets the needs of consumers, business and government in Scotland and Wales.

Having said that, we don't see extensive evidence that the consumer demands of Scotland, Northern Ireland and Wales are particularly different to those of England. We are not necessarily advocating a need for there to be separate organisations in all the nations of the UK at a time when the public purse in every part of the UK is under stress. This may be a matter for the governments in the devolved nations to address rather than BIS itself as part of the 'bespoke process'.

As far as consumer policy is concerned for Great Britain, this largely remains a reserved matter for the Westminster Government and, while Scotland and Wales may wish to see that further devolved at some point (and perhaps soonest), there is no evidence that this will synchronise with the more imminent implementation timetable for this review.

TSI will be the first to respect the wishes and ambitions of the reserved and devolved Governments, but our overarching will is to help to build a system that creates the most efficient resilience throughout the UK. In that regard we look forward to seeing further evidence, information and the will to provide more strongly the evidence for the BIS suggestion that a separate enforcement system is needed in Scotland. Again, however, if this is the preference and the will of the devolved nations we would respect that and seek to support it.

We feel that because of our UK-wide membership base, appropriate delivery mechanisms can be designed that suit the needs of England, Wales and Scotland, and should the devolved settlements change in the near future then this can be reviewed and adjusted to suit such changes.

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

We have set out some of our thoughts on the transition management issues this may bring Citizens Advice in Question 14.

Whatever the solution, statutory powers and appropriate resources are essential for an advocacy body to function and so if Citizens Advice service are to be given the mandate for this portfolio then this should be accompanied by appropriate funding and powers. We are not convinced that using the sectoral regulators as the home for these powers would be without conflict of interest and we believe that this may hinder rather than help effective advocacy proceedings.

**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 believe that this could bring large benefits to the consumers of such sectors, but the essential feature is to have consistency across all the sectors.

TSI members who 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.

Such an extension should be based on the principle that there needs to be one scheme for each area and the redress scheme should not be split across the sector as is currently the situation with some schemes, e.g. the communications sector, as this is too confusing for consumers.

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

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

Following engagement with our membership in Northern Ireland we can see the benefits such changes will bring and are supportive of them.

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

**"Enforcement Matters!"**

Strong and timely reaction to consumer infringements that undermine markets is absolutely essential to restoring or maintaining confidence. Low consumer confidence will lead to a slow-down in transactions which in turn stifles innovation and growth.

The NAO reported recently that the consumer protection system is 'fragmented and significantly underequipped to tackle a whole range of consumer scams.' TSI strongly believes that this position is not acceptable and must be addressed.

As we engaged with our colleagues around Great Britain it became very evident that there is substantial concern at the level of cuts to local authority trading standards services. Indeed this week (20<sup>th</sup> September 2011) the Local Better Regulation Office announced that they estimate that trading standards have seen a reduction in budget of 11.4% on average when compared to the previous year.

With cuts ranging from 10-40% it is no surprise that some of our membership feel uneasy about the future and many we have talked to feel that the institutional changes presented in this document do not address a much bigger issue of local enforcement which risks undermining the consumer protection system unless properly addressed.

Indeed, almost all of the 350+ people who attended our 'national trading standards conversation' events felt that the proposals do not go far enough in creating a system that meets the demands of a 21<sup>st</sup> century consumer market. £230m (and falling) of local authority resource to tackle £6bn+ of visible consumer detriment is woefully inadequate. Whilst the rest of our response will concentrate on the specific proposals put forward, we can't help but feel that unless the 'elephant in the room' of local authority cuts is addressed we risk losing the valuable skills, knowledge and capacity that will be needed if the regional and national mechanisms that will be created are to perform as they are envisaged.

Yet, despite the backdrop of cuts, there is a strong sense of optimism amongst the trading standards community that this institutional review will allow the freedom of thought to embrace some of the findings of the NAO report and to re-design the system so that the system is stronger and more coherent than it has been before.

### **Preferred Model for Enforcement**

TSI's preferred option (and one shared by 90% of those who attended our events) as to the model for enforcement is identified within the document as '**option 3**' which sees a new Trading Standards Policy Board being created and enjoying responsibility for almost all enforcement activity. The competition wing of the OFT or new Competition and Market Authority (CMA) should also keep consumer powers, but it should only act where there is a clear breach of supply or demand-side market failure.

The new TSPB will only be as powerful as the resource allocated to it, so TSI's vision is for the three new consumer players (Citizens Advice, Trading Standards and OFT / CMA) to forge an alliance for the future, not three silos (which would be a backwards step for consumers and businesses).

We believe that this model would allow the CMA to have a clear brief on competition whilst still having access to the tools they need to rectify market failures. This model would also free up resource to give the TSPB the capacity and 'teeth' it needs to be effective.

We don't see any reason why the TSPB needs to be a legal entity in its own right. We see the mechanisms for TSPB delivery and governance being delivered through a tri-party arrangement between: the appropriate local government association ( Local Government Group, Welsh LGA, COSLA, NILGA) who will provide accountability and political oversight; TSI (including our constituent sections, ACTSO and SCOTSS) providing an obvious home for the secretariat, financial management and some project management functions if required; and Heads of Trading Standards Services through the TSPB itself who will be responsible for the bulk of delivery.

These three bodies have a long track record of delivering cost effective, outcome focussed solutions, and have done so for many years. Our trading standards practitioners are trained to the highest level of competence and we have trust in them rising to these new challenges.

That said, the consultation document is silent on the amount of resource that will be invested into the new consumer protection regime, and we believe the amount of resource that could be invested into new national machinery is directly proportional to the new regime's success.

### **Wales and the Simpson Reform Agenda**

Following the Labour Party manifesto commitment and Simpson review for collaborative public services in Wales it is becoming clear that a different model from providing trading standards will be explored over the next year.

Our colleagues in Wales are very optimistic about the prospect of bringing together 22 trading standards services into perhaps a 6-region collaborative pact. Our members feel this would re-engineer economies of scale and efficiency that are currently missing from some Welsh Authorities.

Whilst we see no reason why the TSPB model wouldn't work in synergy with the Welsh review, we would like to see the institutional reform offered by this consultation better reflect the vision for public service reform in Wales and to explore how this fits in to a UK policy remit.

### **Scotland**

In our response to Question 15 we set out our thoughts on how we feel the devolved nation's interests can be best served whilst still delivering a coherent enforcement mechanism for what is a Westminster reserved policy matter.

There has been some debate amongst our Scottish members about the best model for delivery of regional or national enforcement. Options range from the TSPB model either in a GB or Scotland context or a national enforcement team for Scotland.

It is clear that there is still some modelling to do, particularly around how political oversight with the Scottish Parliament could be achieved and which model of enforcement would deliver the best outcomes.

TSI is clear that, through our UK-wide reach, our Vice-Presidents in the Scottish Parliament, and our emerging roles for England and Wales, we can find the best solution that suits Scotland whilst still providing the UK-wide coherence of policy that Government will expect and want to see. Consumers, business and employers will not expect, in a modern UK economy, to see trading standards effectiveness, capability and service delivery interrupted by the boundaries of England, Scotland and Wales.

Whatever models emerge, we would want to see this adding genuine development and investment in the profession, not just an extension of short-term funded projects that offer little career progression opportunities to hard working and highly skilled trading standards practitioners.

**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?**

Although details of how the TSPB might operate are quite thin in the consultation document, we have worked with our partners in our Chief Trading Standards Officer section (ACTSO) and the current Trading Standards Policy Board in designing potential models for future delivery and are satisfied we can build a robust delivery model for England and Wales.

During our pre-consultation response engagement with our members the majority saw greatest benefits coming from the TSPB model. The TSPB offers the greatest potential for joining up the landscape with organisations such as Citizens Advice, Which? and the new Competition and Markets Authority, and offers the greatest amount of scope for mobilisation of resource where it is needed the most. At a time where resource for enforcement is scarce this is a great attraction to the profession.

We think that the Policy Board should be given flexibility to decide which areas of enforcement activity should warrant national teams. We envisage that the TSPB would receive market studies and intelligence from a variety of sources, and Policy Board members would be able to prioritise and 'task' accordingly.

An indemnity fund is not just desirable but is absolutely essential in creating a mechanism that requires local authorities to take action on cases that may not necessarily be of any direct connection to the citizens within that council boundary. During our 'national trading standards conversation' events about 75% of those we asked said that they felt their council would take action in the national interest if there was appropriate funding and indemnity assurances.

Whilst this leaves a fair proportion of people who don't feel they would have the political support to take on the 'risk' of a national case, the fact would remain that success of the policy board would only rely on a small number of councils (c.15-20) to provide a national resilience.

**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?**

No, we feel that status quo is not a desirable option here. That's not to criticise those who are part of the consumer protection system at present, but the current landscape is not delivering what we would expect in the 21<sup>st</sup> century. The NAO report provides an evidence base for this.

We accept the argument that often competition and consumer issues are difficult to pull apart and that whilst some of our members (about 10% of those who attended our events) agree a joint board with equal representatives of CMA and TS personnel has its merits, most agree that the TSPB offers the greatest prospect of swift 'delivery of action' in the new landscape.

The JEB appears to be built on principles that holistic 'market' responses are needed in the new landscape (i.e. consumer and competition issues are inextricably linked) and therefore the JEB would agree on where the money could be spent. That being the case, we do not understand why the models we have seen so far only appear to offer a JEB solution that would prioritise the former 'consumer' budget lines of the Office of Fair Trading rather than a true 'markets' JEB which would be able to allocate and prioritise the whole resource that is at the disposal of the new CMA.

Whether the TSPB or JEB is chosen by Government as the new successor model for enforcement, we would want to see much greater integration with trading standards, citizens advice and other players such as Which? and consumer groups so that there is a forum that has structural 'inlets' for sources of intelligence and market studies. This would mean that the decision makers are making decisions in the face of the full landscape of emerging threats that are being identified by the different bodies.

In relation to CMA and consumer powers, it makes sense for them to retain the full suite of tools available to them, but they should only be used for rectification of structural market failures. That said, we recognise that at the start of studies and investigations it is often not clear whether the problem will end up being a consumer or competition issue, so flexibility will be the key.

We recognise that this could lead to funding difficulties in that the CMA will want to make a case for retention of funding; this would be an undesirable side-effect of the new arrangements and would divert valuable resources away from the TSPB - something which Government should avoid.

As previously stated, for the TSPB to work, as much resource as possible needs to go to the front line. We therefore call for strong management of the process by Government so that the structure that is chosen is not 'handcuffed' and its potential successes capped from the start by a failure to fund the structure adequately.

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

Of course the TSPB itself is serving business by regulating the 'level playing field', but other options should be explored to ensure businesses have a 'voice' in the new landscape. Whilst we do not see benefit from businesses having a direct influence on enforcement decisions, there should be mechanisms for business representatives to feed into the Board emerging threats and concerns and to help identify effective solutions.

Most business organisations we have talked to about the prospect of TSI being at the heart of the new TSPB seem to be reassured about the intentions of the Policy Board. Our **130 year** track record and broader view of policy would seem to business leaders to be a welcome part of the Policy Board machinery.

An obvious route would be through TSI, which has a broader membership base in both public and private sectors. The other obvious route would be through the newly tasked Better Regulation Delivery Office (BRDO), which would have a mandate for ensuring consistency amongst regulators through schemes such as Primary Authority.

The exact nature of how the BRDO might fit into the new landscape will no doubt emerge as Government reflect on the recent consultation responses to the review of the LBRO.

Our professional standards are built upon competence. We feel that businesses will be reassured by the high standards we set for our newly designated 'Trading Standards Practitioners' and our ambitions to achieve Chartered Status in 2012.

**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 have already started to expose our thoughts that a common understanding and close relationship between CMA and TSPB would be crucial in making the new regime work. Yes, we agree that the CMA should have a degree of discretion over when a market has structural market problems that could give rise to consumer enforcement powers. We believe that this approach is in the best interests of consumers. Similarly, it could prove wasteful to adopt a policy that suggests that the CMA stops a market study when it becomes obvious that it is a consumer issue.

The complexities of market functionality mean this may only ever be identified once the study is nearing completion. A suggestion that this work would be abandoned suggests waste in the system which it can ill afford to have.

TSI would like to see a study carried out as part of the transition management process that identifies the best mechanisms for interaction between the different bodies at the centre. We feel there are too many vagaries around possible options and models to give precise views here as to the case-handling inter-relationships, but it is a piece of work that should be carried out once Government have identified their preferred option for a successor model.

**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**

Yes, we can see that the Government's proposed approach is a sensible one in ensuring effective collaboration, but, again, exact details of how this will work in practice are yet to be developed.

We are not sure that we can see the logic behind a proposal to maintain a 'joint resource'. We would prefer to see a world where there is enough maturity in the relationship between CMA and TSPB to respond jointly should the situation arise.

We see greater benefits emerging from having a flexible approach to prioritisation of allocating resource. We fear that identification of a 'fund' for joint cases would merely create the emergence of 'conspicuous production' in that cases would be identified as being suitable targets for this funding. This would reduce the flexibility of response that the TSPB is designed to deliver.

**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?**

In short, yes. 'Trading Standards' and 'TSI' are brands with 130 years and more of history behind them. The trading standards brand is widely recognised and gives confidence to consumers, businesses, and markets in general.

Evidence of this can be seen by the exposure that trading standards receive through the media. Consumer issues are widespread, in demand, and of huge interest to the viewing public. Our media team receive dozens of calls every day from national news and feature production companies who want to talk 'trading standards' and who want a trading standards professional to talk to them on camera.

In some respects the 'trading standards' brand enjoys a much bigger profile than the local authority to which it is accountable, and consumers often do not associate trading standards and the local authority as being the same thing. We see this as a credit to our professional body which tirelessly advocates the virtues of our profession and the life-changing outcomes it produces.

So whilst our colleagues may often feel that the brand does not deter illegal behaviour, it certainly does carry a lot of confidence, reassurance and expectation amongst consumers and businesses. Any faith invested in us by Government will certainly not be misplaced.

**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, our long track record, specialisms in this area and UK-wide remit make us perfectly placed to take on this function which is so crucial to effective enforcement.

We have a track record of rolling out national training programmes for the OFT and Department of Health, as well as hosting specialist call centre operations such as the UK European Consumer Centre which is based within our head office facilities and supported by BIS and the European Commission.

TSI, as the professional body for Trading Standards Practitioners (TSPs), believes that its existing Trading Standards Qualifications Framework (TSQF) forms the basis for any

regulator working in this area, either in a public regulatory body or in a co-regulatory context.

We are pleased that Government have recognised the TSQF as being the 'industry standard' within the profession and that Government recognise the importance of competency.

The TSQF provides a flexible framework that provides confidence and assurance for all stakeholders that the regulator has the required knowledge, skills and attitude to work in a way that delivers effective regulatory outcomes.

Stakeholders may also be confident and assured that a TSP keeps up to date with these required attributes.

Local authorities need encouragement and financial support to invest in the achievement and maintenance of professional standards and this role in particular is crucial to achieving that.

#### **Case Study - Training on the Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulations 2008**

*These regulations came into force in October 2008, and had a major effect on the rules relating to doorstep selling, particularly as the Regulations apply not only to unsolicited visits, but also to solicited visits.*

*Sylvia Rook, Principal TSI Trainer, reviewed and assessed the detailed Regulations and developed a training course covering the Regulations and impact of other legislation, such as the Fraud Act 2006, Consumer Protection from Unfair Trading Regulations 2008, the Companies Act 2006.*

*The course was developed in discussion with the BIS subject specialist who gave feedback before roll-out. The one-day course includes presentations, audience interaction and participation, an interactive workshop giving delegates the opportunity to work through practical scenarios and apply the legislation.*

*The course is continuously reviewed and updated in the light of legal opinion and the introduction of the Provision of Services Regulations 2009. Communication with BIS ensures further development as informed interpretation of legislation is given. This course has been delivered to local authorities and regional groups around the country.*

#### **Case Study – PROSAFE**

*TSI has developed and delivered a secure online learning solution providing training to Market Surveillance professionals and use of best practice. This is available to authorised professionals throughout the EU Member States, with the learning platform hosted and supported by TSI.*

*This provides PROSAFE with their own branded web site, using learning plans to guide the delegates in a structured way through the learning materials and modules. There are self assessment tests within the learning paths to measure students' knowledge, and a final test before a certificate can be produced as evidence of knowledge levels.*

**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 have a strong presence in Europe already, particularly in the field of product safety market surveillance and food law. We are a founding member of PROSAFE and the European Food Law Association (UK), designed to harmonise enforcement and policy issues across the European Union.

Indeed, our international pedigree stretches back a long way. TSI and LACOTS (Local Authority Coordinating Body on Food and Trading Standards) played a leading role in forming the International Markets Supervision Network which was the predecessor body for ICPEN (International Consumer Protection and Enforcement Network).

We played a founding role in the creation of ICPHSO (International Consumer Product Health & Safety Organization).

We are an active contributor to the EUROSAGE Board and to WELMEC (the European legal metrology body).

We have a policy team already in place and this extra responsibility would be a natural extension of our existing delivery.

We draw upon over 40 lead officers who are experts in their field and who provide policy capacity and counsel to the Institute as part of the TSI response mechanism to shaping and developing policy in the UK.

TSI also hosts the UK European Consumer Centre and European Centre for Services which are teams who specialise in cross-border disputes and single market enhancement. The Centres are staffed by multilingual legal case handlers so we feel very well placed to accommodate international responsibilities.

**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 anticipate any major problems as a result of this and believe that the process could be managed in other ways as part of the transition.

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

Not necessarily. This would depend on the future shape of the CMA and whether or not the TSPB is to be created.

We don't see particular merit in creating a TSPB to lead on consumer policy and then asking the UK's lead competition body to chair the consumer concurrencies group in which they will have little interest.

A representative from TSPB or TSI (if we have responsibility for international liaison) would be better suited to this role.

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

**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?**

This depends on which model of enforcement Government decides to implement. It would seem logical for the UK's lead consumer body to be responsible for issuing reasoned responses to super-complaints, but this places new burdens on the TSPB.

We would want to further explore the costs and capacity requirements around this and would want to ensure that it is properly resourced.

**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. The trading standards profession has a range of skills and expertise that could be turned into national solutions. We have already seen several national projects being embraced by local authorities. and the response we have seen from our colleagues leaves us with no doubt that the lead authority or centre of excellence model could be developed to cover areas such as these.

**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?**

This depends on how long the delay is and the likelihood of it happening at all. It would seem to be most logical to implement the new landscape in one joined-up programme so as to minimise the risk of confusion, duplication of effort and overlapping responsibilities.

If the creation of CMA were to be delayed then we would expect the rest to be delayed as well unless elements could be implemented as part of a step by step implementation programme.

**Case Study - The European Commission has proposed to designate 2013 as the "European Year of Citizens".**

*The idea comes as the EU marks the 20th anniversary of the establishment of "union citizenship" under the Maastricht treaty. Announcing the plan on Thursday, EU Commissioner Viviane Reding said that since the creation of such citizenship "tangible progress has been made that directly affects the lives of millions".*

*"To take just one example: nowadays travelling abroad entails cheaper travel costs, hassle-free border crossings, package holiday guarantees, access to healthcare systems and cheaper calls when you phone home." "These are just some of the benefits derived from EU citizenship."*

*The Commission said its goal is to make sure that it removes the remaining hurdles people face when exercising their rights abroad.*

*Reding, the Commissioner responsible for justice and citizenship, said "Free movement is the most cherished right in the EU. It is synonymous with union citizenship.*

*"Businesses and citizens are reaping huge rewards as the EU steadily breaks down internal barriers to the free movement of goods, services and people.*

*"I want to build on our achievements so that all EU citizens feel comfortable when travelling, shopping, studying or settling in another EU member state", said Reding, a Commission Vice President.*

*"If Europeans do not know their rights, they cannot effectively exercise them. Today 48 per cent of Europeans feel that they are not well informed about their rights." She added "The European Year of Citizens will help us change this. It will be a good opportunity to remind people what the EU can do for every one of us."*

## Conclusion

The institutional changes offer a real chance to operate differently, with greater flexibility across the landscape to deal with a range of emerging threats, regionally, nationally and internationally.

The acid test for the changes will depend not on whether the new institutions operate effectively but on whether:

- Consumers are further empowered
- Consumer detriment is reduced
- The new system can tackle the full range of consumer harm
- Enforcement models are investments in the profession - or are they short term 'add-ons'?
- The new system will offer greater accountability

We have offered our thoughts in this response as to what we think will work best and what needs to be considered further. The new landscape should embrace traditional

enforcement as well as new co-regulatory approaches and a more dynamic approach to education.

When education and enforcement come together, consumers are empowered; this is good for business and consumers alike. Overall we are pleased that Government are reviewing the institutions at the heart of the consumer regime. Government should now focus not just on who shall do what, but on what should the landscape deliver. From there the solutions to some of these complex proposals will become more evident.

We must learn from the conclusions highlighted by the NAO and ensure that we are building something that delivers on outcomes and that does not just deliver the status quo.

Government will know only too well that in a system that is seeing c.30% taken from its local enforcement resilience there will need to be a new mechanism to deliver on international, European, national, regional and local matters.

The UK needs a consumer policy delivery mechanism based on solid foundations, that acts as a framework that will allow Government to meet its ambitions while both allowing trading standards services to deliver locally and regionally and also still bridging its accountability to national government.

The Trading Standards Institute is that mechanism, and we hope that Government uses our capabilities to best effect for the benefit of professionals, consumers and businesses of the United Kingdom.

Trading Standards Institute – 27 September 2011

## TSI North East



## NORTH EAST BRANCH

Andrew Stephenson  
TSI North East Branch Representative  
Sunderland City Council  
Civic Centre  
Sunderland  
SR2 7DN

Telephone: 0191 561 1944  
Fax: 0191 553 1658

### Consultation on Institutional Changes for Consumer Information, Advice, Education, Advocacy and Enforcement 2011

Thank you for the opportunity to allow this section to respond to the above consultation exercise. This section represents the North East Region of the professional body for the Trading Standards profession and it should be emphasised that these are our Branch views only. It is likely that you will receive a response in due course from the Trading Standards Institute nationally.

Firstly, we would like to express that this is a pivotal time for the Trading Standards community. It is exceedingly rare that an opportunity presents itself to shape the manner in which our service operates. However, this presents major challenges given the current economic climate and the way in which local authorities nationally have to cut their cloth according to the austerity measures that the government are forcing them to make.

As a general point, the ambition that the consultation wishes to fulfil cannot be truly achieved without adequate resources. These resources (or skills) are not going to be available from within local authorities who are losing staff at an alarming rate. It can only therefore be provided by central funds at a level and sufficiently targeted to make structures workable. Given the inescapable austerity agenda behind this consultation however, is there going to be a mis-match between additional duties for our members and the amount of money freed up to provide an effective service? There is undoubtedly a real danger that this may be so.

There are a number of issues to which we would like to make a contribution. However, the Branch response reflects answering those questions that are particularly pertinent to our membership. Where the subject matter is not as relevant to the Branch or the Branch does not feel it possesses the expertise to provide a reasoned response, a "no response" comment has been made by the question concerned. Hopefully this will assist you in the decision making process.

**Q1 How do you think the provision of consumer information to consumers can be improved upon?**

It is well known that many local authorities (including a large number in this region) provide a valuable resource to their residents in the form of a consumer advice service. This provides the most vulnerable with a source of independent information and assistance that is currently not supplied by the Citizens Advice Bureaux.



## NORTH EAST BRANCH

Andrew Stephenson  
TSI North East Branch Representative  
Sunderland City Council  
Civic Centre  
Sunderland  
SR2 7DN

Telephone: 0191 561 1944  
Fax: 0191 553 1658

Whilst researching some of the issues involved here, our members have been discussing the implications of the changes with those CAB branches to which local relationships have been established. It is clear that, whilst in general terms a one stop shop for advice and information nationally may have its advantages, the autonomous nature of individual CAB offices (that lest we forget are run by volunteers) suggests that in practice this may not work the way in which it has been envisaged.

The fear is that in spite of assurances to the contrary, greater emphasis will be given to bureaux locally to provide 2<sup>nd</sup> tier advice, in direct opposition to local authority consumer advice services.

In the final paragraph of point 2.14 of the consultation, there is a clear inference that local authorities should jettison consumer information and advice provision as the CAB will pick up the slack. This Branch does not believe that comments such as this are especially helpful. Local CAB managers have expressed concerns that they do not know how this is going to work and so instead of improving the situation, there is a real danger of making provision of information and advice a lot worse (as well as putting the employment of some of our members in jeopardy).

Whilst there is recognition that comparison websites could provide information to consumers, this branch is of a view that these sites should not be relied on to any great extent. It is far too easy for product and service reviews to be hijacked by one or two individuals (or for that matter, by the provider of the goods) to supply a false impression of its value.

In terms of the transfer of Consumer Direct to the CAB, this could be generally supported, providing the infrastructure allows at least the same service to both Consumers and Local Authorities alike. The bringing together of first stop consumer information to one central hub has advantages of certainty and branding. However, in spite of the confidence in the CAB implied on page 14 of the Impact Assessment to this consultation to provide the expertise required, the truth is that this is unchartered water for them and is going to provide the CAB with a very steep learning curve if they are going to hit the ground running by 2012. It is absolutely imperative that the CAB and TSI work together in order to ensure that as smooth a transition takes place and that the necessary competencies for staff are obtained.

- Q2** Do you agree that the OFT's consumer information role should be transferred to the Citizens Advice service?

In the short term, this generic information role is suitably placed within the Citizens Advice Service remit. However, only better use of the education system (see response to Q4) will provide longer term benefits.



## NORTH EAST BRANCH

Andrew Stephenson  
TSI North East Branch Representative  
Sunderland City Council  
Civic Centre  
Sunderland  
SR2 7DN

Telephone: 0191 561 1944  
Fax: 0191 553 1658

**Q3 Do you agree that the Extra Help Unit should be transferred to the Citizens Advice service?**

The impact assessment does not provide a compelling economic justification for transferring the Extra Help Unit to the Citizens Advice Service. However, the consultation objective of abolishing Consumer Focus no longer provides this function with a home. Given the integration of services within the CAB remit, it makes no sense not to move the Unit here. Nevertheless, members have expressed concern that additional pressures such as having this additional function could affect the quality of the service provided.

**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 the most valuable and how they should be managed and co-ordinated?**

Not in its entirety. Whilst there may be a role for the CAB to educate particular target groups, it would be going too far to expect them to provide consumer education across the board.

It is high time that consumer education was tackled via the school curriculum so that continuing generations of empowered students could be better informed. For too long, governments have taken a reactive approach and looked to assist vulnerable groups when a problem arises (for which there is still a role that CAB should play a part) but failed to address the longer term solution of educating at source. A section of TSI, the Consumer Education Liaison Group already produces valuable teaching material for young people. In conjunction with adding consumer education to the school syllabus, it would be nonsense to not make use of the expertise of Trading Standards professionals in this field that is already in place.

**Q5 Do you agree that the proposed Trading Standards Policy Board and TSI should coordinate and support business-facing educational activities?**

The Trading Standards Policy Board is charged with a number of responsibilities within this consultation. This operational role is perhaps one to which it needs not play an active part. TSI, providing it is supplied with sufficient support, ought to be capable of performing this role without the need for the TSPB to get involved (other than a general overseeing capacity).

**Q6 No response**

**Q7 No response**



## NORTH EAST BRANCH

Andrew Stephenson  
TSI North East Branch Representative  
Sunderland City Council  
Civic Centre  
Sunderland  
SR2 7DN

Telephone: 0191 561 1944  
Fax: 0191 553 1658

**Q8** *No response*

**Q9** *No response*

**Q10** **What characteristics would a Kitemark based code certification process need to have to meet industry requirements?**

*No response*

**Q11** **What is your view on extending the Primary Authority concept to code certification?**

*No response*

## **CONSUMER ADVOCACY**

**Q12** *No response*

**Q13** *No response*

**Q14** *No response*

**Q15** *No response*

**Q16** *No response*

**Q17** *No response*

**Q18** *No response*

**Q19** *No response*

## **ENFORCEMENT**

**Q20** **Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?**

It is obvious that some of the Office of Fair Trading's current workload in terms of competition policy and market analysis does not fit especially well within a local authority remit. It would therefore be appropriate to suggest that Option 3 would be the best fit. However, if the ring-fenced money suggested in paragraph 5.49 materialises for this purpose, it needs to not be subject to extensive conditions that would make it difficult to access.



## NORTH EAST BRANCH

Andrew Stephenson  
TSI North East Branch Representative  
Sunderland City Council  
Civic Centre  
Sunderland  
SR2 7DN

Telephone: 0191 561 1944  
Fax: 0191 553 1658

**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?**

Primarily, this Branch would not wish the Trading Standards Policy Board to be an ineffective quango. It does therefore require to be adequately supported and with a very specific remit. The Impact Assessment on Page 2 suggests that there would be a one-off cost of £100000 to form the TSPB with ongoing costs only associated with expertise provision for enforcement cases. Given the secretariat that would be required if all the functions suggested in this consultation go to the TSPB, this figure is highly optimistic at best.

Whilst having a Chief Officer from each region represented on the board it may be more appropriate to have an independent chair to ensure impartiality and proper scrutiny and fairness. At the same time however, we also need to be mindful that Heads of Service representatives have day jobs and may not be able to find the opportunity to meet very frequently. This may make fulfilling the operational principles in paragraph 5.54 slow and frustrating for partners in the process.

More fundamentally however, it also has to be recognized that local authority structures now locate most Chief Trading Standards Officers (and it must be emphasized at this point that it is them the Branch require on the board rather than Regulatory Services leads) at level 3 or 4 in the management structure and therefore may not possess the necessary support to either attend or decision make (if it has an impact on his/her own authority) at TSPB meetings.

What is not clear from the consultation is the power that the TSPB are to be given if a chosen lead authority or region either refuses or is reluctant to take enforcement action against large businesses. If the TSPB are toothless, the whole system breaks down. Responsibility and accountably are key to the effectiveness of the board and there is a concern that the TSPB may not have the authority to direct/manage work, especially on a Regional enforcement level. Moreover, this is inextricably linked to legal risk, which is where the indemnity fund becomes crucial. The recent high profile case loss by Oldham Trading Standards highlighted how costly it can be to unsuccessfully pursue a rogue trader. Without commenting on the case itself, it seems ludicrous that a small Metropolitan Borough was left to bear the risk of the entire case. If Government wishes to have local authorities taking on complex investigations in the courts, they need to have an indemnity mechanism in place so that Trading Standards services can justify their actions to their stakeholders.



## NORTH EAST BRANCH

Andrew Stephenson  
TSI North East Branch Representative  
Sunderland City Council  
Civic Centre  
Sunderland  
SR2 7DN

Telephone: 0191 561 1944  
Fax: 0191 553 1658

Specialist national teams should be set up where an insufficiency of incidents are likely to occur in any one local authority area for its staff to build up and maintain the necessary experience and competence. If these specialist teams are to be set up in the regions, it is imperative that sufficient funding is made available should there be cessation of the function in the future. The region cannot afford to be left to count the cost of a change in government policy and be left "holding the baby" as it were.

- 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?

It must be emphasised that this is not the preferred option of this Branch. Nevertheless, a high level of intelligence sharing would be mutually beneficial but whether the costs of a Joint Enforcement Board are justified is debatable. However, Trading Standards/TSPB/TSI must continue to communicate with OFT/CMA (and other partners in the process, such as the CAB) so that each party knows what the other one is doing and exchange information.

- Q23** In relation to the various JEB models, how would you ensure effective Trading Standards participation in the JEB?

Not preferred option so no further comment

- Q24** How can your preferred new model best work with businesses?

The movement of large businesses towards primary authority arrangements makes their involvement inevitable (and necessary). There is a need for better intelligence sharing with businesses, whose complaints systems contain vast amounts of additional data. The Branch feels that there ought to be an obligation on business to share their data with enforcers.

It must also be emphasised that this Branch would not approve of having businesses as an active member of the TSPB. It may be beneficial to use a third party representative (such as LBRO) to air their views to the Board.

## COMPETITION AND MARKETS AUTHORITY

- Q25** Do you agree that the CMA should retain a consumer enforcement role in those cases where a potential breach of consumer law may be connected to a structural market problem?

Yes



## NORTH EAST BRANCH

Andrew Stephenson  
TSI North East Branch Representative  
Sunderland City Council  
Civic Centre  
Sunderland  
SR2 7DN

Telephone: 0191 561 1944  
Fax: 0191 553 1658

- Q26** In an Option 3 based model, should this enforcement role be subject to procedural limitations?

No

- 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

- 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 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?

At a recent Branch meeting, Consumer Focus put together a strong case for retaining a role that the consultation is asking the CAB to perform. It would therefore depend on the priority of Government as to whether effective enforcement or cost savings is the influential factor in this decision.

Whilst information coming from the CMA has to be given due consideration by the Trading Standards Policy Board, it would be wrong to place a duty on the TSPB to prioritise cases referred by them. The TSPB ought to have the freedom to determine its own enforcement priorities.

- Q30** Do you agree that the Government's proposed approach is a sensible way of ensuring effective collaboration between various bodies in the proposed new landscape?

Yes, but with reservations that any additional burdens placed on the TSPB as a result of this may cause meetings to be extremely lengthy and cumbersome.

A clear accountable and auditable infrastructure is paramount in making the system work together with an appropriate level of funding to provide



## NORTH EAST BRANCH

Andrew Stephenson  
TSI North East Branch Representative  
Sunderland City Council  
Civic Centre  
Sunderland  
SR2 7DN

Telephone: 0191 561 1944  
Fax: 0191 553 1658

the skills base required for the secretariat and for the Board, authorities and/or regions to conduct their affairs.

- 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?

Yes, but it needs to be set at a level which would not remove a disproportionate amount of money from the central pot. It is vital that it is not overly bureaucratic in its administration as this causes delays and costs money.

## OTHER CURRENT OFT ROLES

- 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?

Whilst local authority Trading Standards services are well established in using many tools to deter illegal behaviour, the fact is that self regulatory schemes are only as effective as those who sign up to them (who generally have a willingness to comply with the law anyway). This is not to say that such schemes do not hold a value and should be encouraged. However, they cannot replace enforcement and there is always going to be a role for Trading Standards officials to investigate businesses who do not see abiding an industry code as a priority for them.

Priority (and resources) has to be given to tackle those businesses who have no interest in these schemes and are breaching legal requirements. This of course does not always mean taking the route of prosecution. Local Authority Trading Standards provide an excellent business advice service, to encourage compliance with the law.

The North East Branch would struggle to find a justification for the creation of a national enforcement squad for this, when localism is the prime mover at present. Any issues of this kind should be able to be dealt with through existing services and/or regional teams.



## NORTH EAST BRANCH

Andrew Stephenson  
TSI North East Branch Representative  
Sunderland City Council  
Civic Centre  
Sunderland  
SR2 7DN

Telephone: 0191 561 1944  
Fax: 0191 553 1658

- Q33** Do you agree the TSI would be the appropriate home for the OFT's professional guidance and training functions in the event of creation of a new single Competition and Markets Agency?

Since the demise of Local Government Regulation there has been a decline in professional advice and guidance for Trading Standards Services. Whilst the Communities of Practice specialist working groups have attempted to fill the gap, they are no replacement for having an established point of referral. TSI have the experience of delivering limited guidance and training functions already and so are the natural successor for the OFT's (and indeed LGR's) role in this.

Having said this, TSI head office has a very small secretariat and would not be capable of performing this role at all without substantial additional resources. It may be ambitious to expect there to be sufficient funding to employ specialist policy officers, but there needs to be sufficient competence in those performing such a role that the guidance and training provided can be seen to be credible by the Trading Standards community. In turn, business benefits from receiving accurate, consistent advice and enforcement.

- 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 enforcement role?

Yes, but resources are required to conduct this effectively.

- 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?

A central co-ordinating role should be retained, but it could be a function that TSI could administer. The TSPB already appear to have a strategic and tactical function. To add a co-ordinating role of this kind to their portfolio may be too onerous.

- Q36** Do you agree that responsibility for chairing the consumer concurrencies group should remain with the CMA?

Yes



## NORTH EAST BRANCH

Andrew Stephenson  
TSI North East Branch Representative  
Sunderland City Council  
Civic Centre  
Sunderland  
SR2 7DN

Telephone: 0191 561 1944  
Fax: 0191 553 1658

- 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

- Q38 Do you think that the supercomplaints process should be extended to require the Trading Standards Policy Board to issue a reasoned response if the subject matter of the complaint relates to consumer enforcement?**

Whilst this may be a sensible proposal, it is putting an additional burden on the TSPB which they may not have the capacity to undertake effectively. The Local Better Regulation Office would be better placed to handle these types of issues, though the TSPB should be permitted to have an input into the nature of the allegations.

- Q39 Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?**

There are examples of where local authorities have taken on a national function on behalf of government. For instance, Staffordshire TSD operates on behalf of the Ministry of Justice for administering the requirements of the Compensation Act 2006. It would therefore be reasonable to expect that a lead authority could take on the OFT's role in this context, providing that sufficient resources were provided to allow this to be conducted in an effective manner.

- 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?**

It is essential that the proposed changes are implemented as soon as possible if the April 2013 date is not feasible. The longer it is delayed, the more uncertainty there will be across the profession and for our members. However, what the consumer landscape does not need is for this to be deadline focussed when the infrastructure is not ready for it. Implementation must be completed when all parties are fully prepared.

Once again, thank you for providing the opportunity for this Branch to respond with what I trust will be of value to the consultation process.

Yours faithfully

Andrew Stephenson  
TSI North East Branch Representative

## TSI Scotland



## Scottish Branch

**Trading Standards Institute Scottish Branch 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 UK 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 Citizens Advice Scotland. The acronym LATSS is used to represent Local Authority Trading Standards Services in England, Wales and Scotland. Where the term Citizens Advice Service is used this refers to the full spectrum of the Citizens Advice family ie Citizens Advice, Citizens Advice Scotland and the Citizens Advice Bureaux network throughout the UK. 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 Trading Standards Institute Scottish Branch (TSI Scottish Branch). TSI Scottish Branch represents members of the Trading Standards Institute (TSI) based in Scotland and is a branch of TSI.

1.4 In formulating this response, TSI Scottish Branch anticipates that there is likely to be one solution for England and Wales, and a different separate solution within Scotland.

1.5 The consumer landscape proposals focus on the fair trading elements of our work, our members 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.

1.6 TSI Scottish Branch would like to add that whilst we recognise that the consultations scope is currently limited to BIS policy areas any future model should provide 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 animal health, giving clearer accountability and greater flexibility in delivery, response and use of resource.

1.7 TSI Scottish Branch believe that this consultation and the discussions surrounding it could and should provide an opportunity to consider devolving the majority of the legislative areas that Trading Standards

Services are responsible for to the Scottish Parliament. This would ensure that any legislation properly reflects the Scottish legal system.

1.8 Although not within the scope of the consultation paper the TSI Scottish Branch members have been concerned for sometime with the capacity of some Scottish local authorities to provide an effective Trading Standards Service because of limited resources and the profile of the service within local government. Having consulted our members on several occasions we know that our members favour either a national or a regional (within a Scottish context) Trading Standards Service. On that basis we believe that the discussions and negotiations surrounding the consultation paper and the implementation of any agreed option should also be an opportunity to discuss the future of the Trading Standards functions within Scotland and how they could be best delivered in the future. Any such discussions should include whether a national Scottish service or Scottish regional services would be a more effective delivery mechanism than the current local authority model.

1.9 The TSI Scottish Branch is aware of the SCOTSS (and other) responses to this consultation and our members broadly support the SCOTSS proposal, however our members believe that any opportunity for a constitutional review of how Trading Standards and its associated legislation is provided within Scotland should be taken.

## 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. We do not believe that ‘pick-lists’ could be used to answer queries effectively as many complaints have the potential to be complex in their nature. We would not support any reduction in the standards of advice from that currently provided.

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

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

We accept that the OFT's consumer information role will 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 where Citizens Advice Bureaux exist they are under intense funding pressures. In some areas of Scotland there are no Citizens Advice Bureaux. Therefore some of the envisaged improvements at local level may be difficult to achieve and gaps in provision may still exist.

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

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

The proposals already recognise how important the Consumer Direct data is for LATSS. LATSS have an intelligence-led approach to enforcement. The referrals and Consumer Direct 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 and notifications from Consumer Direct and there should be no reduction in the quality and quantity of information they currently receive from Consumer Direct. LATSS should be able to access the data from a single source of information.

Many LATSS still provide first and second tier consumer advice TSI Scottish Branch believe that it is important that this continues.

We recognise that locally Citizens Advice Bureaux fiercely guard their autonomy and a concern remains that any proposals by Citizens Advice nationally to deliver parts of the service using local Citizens Advice Bureaux centres may not materialise.

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

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

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

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

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

As the UK Government notes, consumer education activities for the public at a local level are usually carried out by 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.

We welcome the recognition that local authorities should remain responsible for direct delivery of education to consumers at a 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 LATSS 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-Gateway. 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.

**Chapter 3 – Consumer Code Approvals**

***Key Proposals***

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

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

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

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

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

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

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

Response to questions 6 to 11

TSI Scottish Branch 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. We believe that there are great opportunities to build on these existing Local Authority Assured Trader Schemes when developing any new code certification, however, this would need to be adequately funded, supported by the Government and nationally recognised.

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

It may be that instead of Primary Authorities undertaking code certification work that to ensure consistency this could be undertaken more effectively by a single body such as TSI.

**Chapter 4 – Consumer Advocacy**

***Key Proposals:***

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

*All Consumer Focus functions in relation to gas, electricity and (except Northern Ireland) postal services*

*Key, non-sector specific advocacy functions of Consumer Focus*

*Sectoral consumer bodies for water (in England and Wales), transport, communications and legal services, if the relevant Departments and Devolved Administration responsible for those bodies so decide*

*Redress schemes could be set up by business for consumers in the water, rail, coach, bus and tram sectors to mirror those in the energy and postal services sectors, if the relevant Departments and Devolved Administrations so decide.*

*Consumer Focus’s functions in respect of postal services consumers in Northern Ireland, undertaken by its committee known as Consumer Focus Post, should be transferred to the General Consumer Council for Northern Ireland.*

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

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

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

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

Response questions 12 to 15

TSI Scottish Branch recognises the importance of consumer advocacy and it's effective delivery. We also believe that the proposal to combine as many sectoral advocacy schemes is sensible. Anyone taking on the coordinated, publicly-funded, consumer advocacy function needs to have real teeth to be able to take on cases that would not otherwise be taken.

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

- In partnership with Ofgem, Money Advice Scotland and Citizens Advice Scotland, the Energy Best Deal Scotland campaign has enabled front line advisers to provide much needed advice and support for vulnerable households to obtain a better deal on their gas and electricity. Across Scotland, 325 advisers were trained as a result of the campaign in 2010-11, leading to thousands of consumers receiving vital and expert advice about how to switch their energy deal and cut their fuel bills. In 2011-12, they continued to deliver training and working to widen the impact of the campaign by embedding switching in mainstream energy advice programmes, working with partners on specific initiatives and promoting a web-based version of the training.
- In October 2010, following many years of strong advocacy by Consumer Focus Scotland, a new statutory duty on public sector scrutiny bodies to promote continuous improvement in user focus under the Public Services Reform (Scotland) Act 2010 came into force.
- Following their sustained campaign, for an improvement in the digital services available to consumers across Scotland, the Scottish Government has published a national digital strategy in March 2011. This includes a number of the key issues raised by us, including broadband availability and digital participation.
- They have played a key role in helping to shape the content of the Private Rented Housing (Scotland) Act 2011, which will introduce new protections for tenants, including the provision of better information about landlords and their properties and improved regulation of the sector. They also called repeatedly for the introduction of a tenancy deposit scheme to protect tenants and ensure their deposits are not withheld unfairly, and the Scottish Government passed regulations for such a scheme in March 2011.
- Consumer Focus Scotland campaigned for many years for the introduction of the Home Report in Scotland, and was closely involved in its implementation, leading to greater certainty and better upfront information for those buying or selling a home in Scotland.
- Consumer Focus Scotland called repeatedly for greater choice and protections for people who use legal services, to increase their access to justice. The Legal Services (Scotland) Act 2010, which opens up the

Some LATSS currently offer 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. TSI Scottish Branch would not wish any changes to undermine any locally delivered support.

However, TSI Scottish Branch believes that the interaction between Consumer Focus Scotland and the Scottish Government and the differences in the landscape in Scotland make it essential that Consumer Focus Scotland be retained rather than transferring consumer advocacy to Citizens Advice.

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

In view of our response above we would assume that Consumer Focus Scotland should retain its existing information gathering powers and therefore make no further comment on this question.

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

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

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

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

TSI Scottish Branch believes that 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?**

In principle TSI Scottish Branch supports the transfer of the majority of the OFT's consumer enforcement functions to trading standards with some functions (for cases involving structural market problems) remaining with the CMA. Rather than the governance being dealt with by the TSPB, we are aware that SCOTSS has proposed an alternative option for Scotland. Our members have broadly supported SCOTSS proposal, with the very clear proviso that adequate funding has to be provided for it. Our members believe that an opportunity for a review of how Trading Standards in Scotland operates and whether or not the associated legislation is devolved should be undertaken.

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. For example 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.

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

In principle TSI Scottish Branch supports what SCOTSS has proposed as an alternative option to Option 3 for Scotland. Our members have broadly supported SCOTSS proposal, with the very clear proviso that adequate funding has to be provided for it. Our members believe that an opportunity for a review of how Trading Standards in Scotland operates and whether or not the associated legislation is devolved should be undertaken.

**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.

The TSI Scottish Branch would not prefer to maintain the status quo in terms of powers and responsibility but would prefer a full review of Trading Standards in Scotland and whether the associated legislation should be devolved.

We believe that since the JEB would not be controlled by heads of trading standards it could not be held accountable in the same way.

### **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**

The TSI Scottish Branch 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 available resources for LATSS to deliver the new consumer landscape under the proposals.

The TSI Scottish Branch believes there must be effective communication and a good working relationship between existing bodies, any new bodies and the CMA to ensure that intelligence can be shared and assurance received that cases can be dealt with appropriately.

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

Consideration of intelligence from CMA, Consumer Focus Scotland and Citizens Advice on consumer detriment will be a vital element regardless of whatever model is decided upon for Trading Standards in Scotlands future work on setting enforcement.

### **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

The TSI Scottish Branch 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, the consumer advocacy bodies and other Trading Standards 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 the "Fighting Fund" that BIS made available to support LATSS enforcement activity is extremely welcome, we feel that the bureaucracy associated with the application and decision process is 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?**

The TSI Scottish Branch do believe that branding the Trading Standards brand is a well recognised and strong one. We also believe that the threat of enforcement can help to deter non-compliance.

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

Guidance and training

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

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

Most international liaison and OFT's general consumer policy work

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

The TSI Scottish Branch 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 Scottish / TSPB nominated representative to attend as well. This would avoid duplication of effort and reduce costs to the UK.

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

***QUESTION 35. Do you think the requirement for 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 TSI Scottish Branch does not believe that there will be any difficulties if the requirement for LATSS and other designated bodies (under Part 8 of the Enterprise Act) is removed. This requirement was neither necessary nor helpful to enforcement or compliance.

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

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

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

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

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

Response to questions 37 and 38

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

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

The TSI Scottish Branch does not believe that a lead local authority should 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?***

The TSI Scottish Branch believes that it is critical that the timing of any of the proposed changes are matched to ensure effective service delivery.

## **1. 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 Bill Harris Chair of TSI Scottish Branch ([William.Harris@fife.gov.uk](mailto:William.Harris@fife.gov.uk)) or Brian Wilson, Secretary of The TSI Scottish Branch ([wilsonb@stirling.gsi.gov.uk](mailto:wilsonb@stirling.gsi.gov.uk)).

Bill Harris  
Chair TSI Scottish Branch

## Turton, Howard

**FAO David Evans  
Consumer and Competition Policy Directorate  
3<sup>rd</sup> Floor  
1 Victoria Street  
London SW1H 0ET**

**EMPOWERING AND PROTECTING CONSUMERS**

**Consultation on Institutional Changes for Consumer Information,  
Advice, Education, Advocacy and Enforcement**

Responder:

Howard Turton

***NOTE: This response is my personal opinion and does not represent the views or opinions of either my direct employers (Redcar and Cleveland Borough Council) or my governing body (the North East Trading Standards Association) both of which will likely make responses independently.***

While being employed within the Trading Standards profession for coming up to 25 years, mainly as an employee of a Local Authority Trading Standards Service, I restrict these comments to the area in which I currently work; Regional Enforcement and Intelligence.

**General Observations**

Firstly I would like to applaud BIS for the foresight and vision it has had in regard to the setting up and continued funding for Scambusters Regional Teams. While there are still issues surrounding the operational activity of such teams, particularly in relation to being fully accepted and utilised by a substantial number of LATSS, they have been a great success in delivering on cross border enforcement throughout the Country. This success should not be lost within a Landscape review which both supports their continuation but has in my opinion, inherent threats to their progress.

While the current economic climate is one of the drivers behind the changes proposed I have long believed that many Trading Standards functions would be better suited to a more accountable regional or national oversight. The proposals being floated here go some way to providing that Trading Standards national brand but also requires an organisation and structure which meets the needs of consumers, business and the enforcement professionals themselves. While I am naturally drawn to Option 3, whichever option is taken forward there will still remain an inherent conflict between the local and national / regional under the proposals and unless this is bottomed out could cause delivery problems in the future.

Without some type of construct which provides levers or sanctions throughout the new structures I can see the process of National / Regional delivery being constricted by the overriding principle that Chief Officers will still be working for individual Local Authorities. In a world where the gaps that already populate the enforcement landscape are expected to get bigger, the current proposition of Regional Teams being tasked by LATSS has at its heart an innate conflict of interest. Whilst there may

be a collective support for the idea of regional enforcement, in practice many teams currently struggle to get work tasked to them. The threat implied by the regional teams appears to be too great a barrier when compared against the benefit the Teams could and would deliver if utilised to the full. There may indeed have been specific financial issues behind the cessation of the SELT / EETSA / LOTSA Scambusters team but the fact that it no longer exists is a pointer to a potential future where Trading Standards may direct resources to individual Services or in a manner not suited to deliver an all encompassing Regional Enforcement resource as it now stands.

ACTSO state in their interim response to the draft Consultation (29.04.11):

*"It is crucial that BIS are clear about the funding available and the outcomes it requires, but then leaves the mechanism to deliver this to be agreed via the agreed governance mechanism. We need to minimise the bureaucracy and costs associated with contracting."*

I have concerns over this statement in light of the fact that Regional Teams are not mentioned in the documents; which I accept is a first response but does point towards their underlying thinking. And while LGR stated in their draft response to the draft consultation:

*"Expanded regional teams could provide sufficient investigative capacity to take on the larger cases,"*

there is no ringing endorsement of the Scambusters teams in either document (though I would welcome LGRs wish to have a "*closer role in the governance arrangements*" of the teams).

Even with a declining skills / resource level (perceived in some areas, actual in others and impending in yet more) it is not in the interests of LATSS to give work to another agency when that in itself may be used to argue against the continuance of the current service provision in the said LATSS. In many Unitary Services (and the North East is completely unitary) Service Managers stand at levels 3 or 4 in a Councils Management tier. Not only does this mean that there is little, or reducing, contact with Local Elected Members it also means those making the decisions on spending do not necessarily see the bigger picture and are more focused on the Councils bottom line.

The current austerity regime means Services are under constant threat and an argument that a Regional Team enhances a team's work is extremely easy to turn into a reason for reducing the strength of that Service. This all affects the ability or desire of LATSS to Task work to Regional Teams and I cannot see it changing dramatically in the short term. The new set up therefore needs a way of apportioning true responsibility on the board to be able to deliver at a regional level.

Similarly, while resources will always be finite and therefore limit the amount of work any organisation may carry out, I see no detail on the prioritisation and acceptance of work by Regional / National regulators whose enforcement officers are actually employed by Local Authorities. In the current system if a LATSS declines acceptance of a job it may be forwarded to the OFT. The OFT may also determine it's not a priority for them. This may give an opportunity to a Regional Team but, while there may be justification, capacity and a desire to act upon it, the Regional Team still requires a host to work through. If no host comes forward then the work "falls through the cracks". I don't see any explanation how this system will change under the proposals mooted. How will a piece of work that has been prioritised and accepted

for further work be taken forward when Regional Enforcers are totally reliant on their LATSS colleagues? Without some type of authority to direct activity, with the expectation that it will be fulfilled, I can see the new system being frustrated to the same degree it is at present in many cases.

At the recent Public accounts Committee (05.09.11) the Chair opened by asking whether the current arrangements work well bearing in mind:

*"it seems to me that having one Department setting the regulations but then having no control over funding the local authorities that are primarily there implementing the regulations is too fragmented and does not allow effective delivery of consumer protection against detriment"*

The key words being "control" and "effective delivery" it is clear that whatever is decided must have clear accountability lines to the outlined vision. The Chief Executive of the Trading Standards Institute identified in his evidence that "*I am going to put on the record that you are saying that there ought to be both a national infrastructure and, as I understand it, minimum standards.*" If enhanced Regional Teams are part of those minimum standards then I would welcome this but the consultation remains quiet on this aspect. I just hope Ed Davey's view that "*enforcement will be consistent across the country and based on evidence of consumer harm (Foreword to Consultation)*" is achieved in the way BIS and Government desire.

In closing these general comments I should say that whatever structure is developed it will need adequate resource to function. As the Secretary / Chairman of the North East Branch of the Trading Standards Institute I include the following from the draft response of that body to the consultation:

*As a general point, the ambition that the consultation wishes to fulfil cannot be truly achieved without adequate resources. These resources (or skills) are not going to be available from within local authorities who are losing staff at an alarming rate. It can only therefore be provided by central funds at a level and sufficiently targeted to make structures workable. Given the inescapable austerity agenda behind this consultation however, is there going to be a miss-match between additional duties for our members and the amount of money freed up to provide an effective service? There is undoubtedly a real danger that this may be so.*

Maintenance of current funding for regional teams within the new Landscape is crucial to the outcomes they can produce.

### Specific Issues

#### ENFORCEMENT

#### **Q20 Which option for reform of enforcement powers and responsibilities do you prefer, if any, and why?**

I step back from supporting any individual option but would require that whichever is taken forward adequately deals with the issues of a strong and suitably empowered regional enforcement structure within it. While I have a declared interest Government has accepted that the Scambusters Regional Teams have been a success. Despite the many difficulties we have had to manage year on year we are seeing encouraging changes which point

towards more understanding of our role from LATSS. However, this is painfully slow. The Landscape Review is a vehicle which can speed up this process dramatically yet there is also the potential that the foresight shown by BIS in creating these teams could be lost if the new Board is not directed in a manner which supports the Teams.

Theoretically a TSPB (JEB for that matter) that receives a set amount of funding to spend on regional / national enforcement could decide not to spend it within one or more regions due to the fact that its prioritising process identifies work which does not fall within those region's borders. This could skew the work with some regions seeing more funds put into them than others. Effectively, unless the Board has set parameters across which it is empowered to spend its funds, i.e. the maintenance of core Regional Teams, it may decide to commission work on a truly National basis – perhaps through a pool of “regional” enforcement officers available to all. If funds are not secured independently for individual regional teams (ring-fenced within the ring-fence) this may well happen. When I put this question at one of the Regional TSI sponsored events regarding the Landscape Review I was advised that the Board would be unlikely to prioritise in this manner. Unless the structure specifies a requirement for continued regional delivery teams there is no guarantee that unlikely will not be the desired outcome.

**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?*

The concerns already expressed about the Management Tier at which TS Managers sit within Local Authorities stand in relation to this question. What is clear is that such managers (some of whom will be regional representatives on the board) MUST have a background in Trading Standards. Generalist Regulatory Services (or higher level Managers) must not be allowed to sit in their place. Whatever the structure it must be Trading Standards led.

The issue of whether the Board actually has the authority or power to direct investigations against larger businesses is also an important matter. How is that authority going to be created through the powers placed being upon the Board? The comments earlier about “falling through the gaps” are just as pertinent to this question. Certainly an indemnity fund will assist in encouraging Local Authorities to take on cases through a host and in association with a Regional Team, or directly by an individual LATSS. But it is not a given that this will happen in all cases. The threat to the outcomes required of the new model is inherent in this and has to be considered when setting the underlying standards for whatever delivery option is adopted.

I have no firm views on the set up of National Enforcement Teams within LATSS. These can work, as indicated by the Ministry of Justice Team operated by Staffordshire Trading Standards, but surely it is more cost effective to maintain them within one organisation rather than break them apart and have diseconomies of scale? The shared resource for specific legal services in particular, a necessity for matters such as Unfair Contract terms, Estate Agency etc., would surely be better directed within one organisation than a number?

On an enforcement level, whether they remain in one organization or a number, these National activities should utilise Regional Enforcement Teams to assist in their enquiries in the future. Currently the OFT use LATSS to assist in the legwork associated with large cases or specialist areas – this work should be driven through Regional teams in the new Landscape.

- 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 stated I have concerns over the powers and responsibilities envisaged in whatever model is adopted. A concern of the current set up at an operational level is however linked to the current work by BIS to agree a uniform set of “Trading Standards” enforcement powers. This activity is welcomed and would assist enforcers and business alike. However they should be adopted across all TS legislation and not just for Fair Trading issues.

- Q23 *In relation to the various JEB models, how would you ensure effective Trading Standards participation in the JEB?***

Note previous concerns regarding all options and the ability of the Board to direct enforcement action appropriately.

- Q24 *How can your preferred new model best work with businesses?***

While the Regional Enforcement Teams will have regard to large businesses, their main targets will be medium sized or organised crime styled trading bodies. Therefore, our work will more than likely not have direct contact with large businesses (presumably Retail / Manufacturing conglomerates) other than through the outcomes we deliver in creating a fairer playing field for all.

#### Regional Intelligence

It is noted that the consultation is more about policy and strategy issues than the operational but there is little, if any, discussion on Regional Intelligence functions which cover both.

Originally set up with ring fenced money through the OFT, those Regional Intelligence Officers that remain are now funded through a variety of means, some directly via Scambusters money.

In any Landscape aimed at addressing regional and national threats the value of these positions is undeniable. Fundamental to strategic thinking, future planning and operational delivery the Regional intelligence function underpins the prioritisation procedures underlying operational tasking across local, regional and national boundaries. It is therefore vital such roles are identified as critical to the new Landscape and adopted, at the very least, within any minimum standards drawn up for the future delivery of Consumer Protection in the Great Britain.

Thank you for taking the time to consider this response.

**Howard Turton  
Regional Enforcement Manager (NETSA Enforcement Unit)**

## UKAS



Email: [david.a.evans@bis.gsi.gov.uk](mailto:david.a.evans@bis.gsi.gov.uk)

David Evans  
Consumer and Competition Policy Directorate  
1 Victoria Street  
London  
SW1H

Direct line: +44(0) 20 8917 8443  
Direct fax: +44(0) 20 8917 8643  
Email: [malcolm.hynd@ukas.com](mailto:malcolm.hynd@ukas.com)  
Your reference:  
Our reference:  
Date: 26 September 2011

Dear David

## **CONSULTATION ON EMPOWERING AND PROTECTING CONSUMERS**

Thank you for the opportunity to comment on the above consultation. I am responding on behalf of the United Kingdom Accreditation Service (UKAS), which is the sole national body recognised by Government for the accreditation, against recognised standards, of organisations providing calibration, testing, certification and inspection services. UKAS is appointed as the national accreditation body by The Accreditation Regulations 2009 (SI No 3155/2009) and operates under a Memorandum of Understanding with the Secretary of State for Business, Innovation and Skills. In essence, UKAS assesses the assessors who operate across a wide range of disciplines.

UKAS has a particular interest in the proposals outlined in Chapter 3 of this consultation on Consumer Code Approvals. Para 3.8 states that the Government is exploring alternative national accreditation systems which could be put in place for to replace the current Consumer Codes Approval Scheme currently run by OFT.

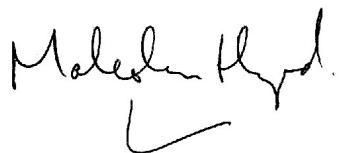
As the national accreditation body, UKAS is ideally placed to undertake this function. UKAS already accredits the certification of many similar schemes such as quality management systems, customer service excellence and the Gas Safe register for gas installers. We would be very happy to consider the possibility of accrediting the code operators against the international standards for certification, which would provide additional market confidence in their competence, consistency and impartiality.

We also note the suggestion, in para 3.10, that the BSI Kitemark scheme could be used to provide confidence in Consumer Codes. BSI runs a number of certification schemes, compliance with which is demonstrated by the display of the Kitemark certification mark. UKAS accredits BSI for many of the Kitemark certification schemes and agrees that this could be one solution available for Consumer Codes. However, it should be noted that there are many other similar certification schemes run by a variety of other organisations that could also be considered for this purpose. It may also be more cost effective for the code operators to be directly accredited by UKAS.

UKAS would be happy to provide further advice to BIS on the certification options available for CCAS and the role accreditation could perform in providing confidence in the certification options selected.

Thank you once again for the opportunity to comment on your Department's proposals. Please let me know if you would like further information or to discuss the options further.

Yours faithfully

A handwritten signature in black ink, appearing to read "Malcolm Hynd". Below the signature is a simple, curved line indicating a handwritten flourish or a signature mark.

Malcolm Hynd  
External Affairs Manager

## UKCTA – UK Competitive Telecommunications Association

# **Empowering and protecting consumers**

**UKCTA Response to BIS**

**Submitted to BIS 27th September 2011**

UKCTA is a trade association promoting the interests of competitive fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. Its role is to develop and promote the interests of its members to Ofcom and the Government. Details of membership of UKCTA can be found at [www.ukcta.com](http://www.ukcta.com).

UKCTA welcomes the opportunity to comment on the BIS consultation setting out proposals for empowering and protecting consumers. We have focused our comments on a few key areas which are of particular interest to our association and where we feel our association can provide a considered insight from the perspective of competitive fixed telecommunications operators.

In relation to consumer advocacy, UKCTA is supportive of the proposal that Citizens Advice should be the lead national, publicly-funded consumer advocate. It makes sense to rationalise the number of bodies that currently exist with the purpose of advocating consumers' interests.

We note the separate proposal to simplify sectoral advocacy by integrating the functions of various bodies, such as the Ofcom Consumer Panel, into a single regulated industries unit. We are supportive of a proposal to have a single consumer advocacy body covering communications issues. We would be concerned if consumer advocacy on communications issues were spread across multiple statutory consumer bodies. This leads to confusion of roles and powers and can lead to a dilution of resource and impact.

In relation to consumer enforcement, the Government proposes in the main the creation of a new Trading Standards Policy Board (TSPB) to strengthen consumer enforcement by improving national leadership and coordination capability. In addition the envisaged Competition and Markets Authority would have responsibility for investigating and tackling enforcement in markets in which there are structural market problems. UKCTA generally welcomes the proposal to have a single consumer enforcement body although we believe further clarification of enforcement responsibility and capability is likely to be necessary in order to ensure that industry can be certain that the TSPB has the right expertise and to

clarify which organisation will take the lead on specific consumer protection and enforcement issues. There should be no possibility of “double jeopardy” for businesses in being liable for enforcement action by more than one body for essentially the same issue.

UKCTA has a separate concern in relation to enforcement in that we do not believe the consultation adequately addresses the current use of concurrent powers by sector regulators. With regard to the communications industry, we would question whether the role of Ofcom in enforcing consumer protection rules that are specific to the communications sector is appropriate in the context of the rationalisation efforts set out in the consultation document. It is of course the case that the EU Communications Directives require the implementation of specific consumer protection rules in the communications sector. However, we are concerned that Ofcom has taken an unduly onerous approach and in many cases gone beyond what the EU Directives require.

By way of example, in recent years, Ofcom has imposed new requirements in relation to additional charges in consumer contracts (guidance on the Unfair Terms in Consumer Contract Regulations), broadband speed code of practice, 0845/70 pricing, 070 pricing, sales and marketing practices, broadband migration codes and complaint handling. None of these requirements are mandated by the EU Directives and, while there may be an argument for why these regulations are required, UKCTA’s concern is that Ofcom has reached its views with specific reference to the communications market without considering whether general consumer protection rules warrant such detailed intervention. UKCTA therefore believes that the consumer enforcement role currently performed by Ofcom should be taken over by Trading Standards and/or the Competition and Markets Authority (in line with the sharing of enforcement responsibility between those two bodies as set out in the consultation document). We believe this would align the required regulatory intervention in the communications industry with other industries and would ensure that consumer interest is protected in an equivalent manner across the board. There may be a need to retain some consumer enforcement powers in Ofcom but only in so far as this is specifically required or mandated by the EU Communications Directives or otherwise justified on a case-by-case basis.

- END -

## Underage Sales

**From:** Tony Allen [mailto:[tony.allen@underagesales.co.uk](mailto:tony.allen@underagesales.co.uk)]  
**Sent:** 16 September 2011 15:08  
**To:** Evans David (CCP)  
**Subject:** TRIM: Empowering & Protecting Consumers Consultation Response

Dear Mr Evans,

Thank you for providing an opportunity for interested parties to respond to the consultation on Empowering & Protecting Consumers.

I run a social enterprise based in Stockport that aims to bring a comprehensive and authoritative resource for all issues associated with the sale of age restricted products. In particular, we specialise in helping small, independent businesses tackle under age sales. We are relatively new to market, but intend to make a big impact on this issue for communities. We, therefore, have particular interest in your consultation, both as a small business and from the perspective of our clients, who are mainly small independent businesses. I am a former senior Trading Standards Officer with considerable experience in this field.

We do not regard our response as confidential and we are content for you to use any extracts of it, subject to attributing them to us. We would also be grateful if, when referring to us, you could refer to our website at [www.underagesales.co.uk](http://www.underagesales.co.uk).

We make the following replies to the questions raised in your consultation paper:

Q1. There is a plethora of advice out there and, with the advent of the internet, clear evidence of duplication by public authorities. There seems to be no sensible reason why public authorities should be providing this advice it is a role that can adequately, properly and, with funding, effectively be provided by Citizens Advice.

Q2. Yes

Q3. Yes

Q4. Yes. To ensure adequacy of education provision, we recommend that the TSPB be given a commissioning role to act as 'client' (probably through CELG) in the work of Citizens Advice, but that CABx should be the provider.

Q5. Yes, but there is no reason why this coordination should be limited to activities by LATSS. My company is a source of indepth advice and assistance to small businesses and we would be happy to be 'commissioned' to provide such advice by TSPB or individual LATSS. We are currently working on such a scheme with Trading Standards North West. LATSS and TSPB should not have a monopoly to provide support services to businesses.

Q6. The kitemark through BSI seems the most logical alternative to CCAS.

Q7. Possibly, but unlikely to be universal. A British Standard for Consumer Codes is the most likely and most valuable addition to the landscape.

Q8. No comment.

Q9. See answer to Q7.

Q10. No comment.

Q11. This is unnecessarily complicating matters. If a BS were available, responsible code operators would want to sign up to it. The PAS is a diversion.

Q12. Yes.

Q13. Yes.

Q14. Yes.

Q15. No comment.

Q16. Option (b) - there should be separation of advocacy from enforcement and exercise of statutory powers. However, also agree that no reasonable request for information ought to be refused.

Q17. No comment.

Q18. No comment.

Q19. No comment.

Q20. Option 3 - it is the most practical solution and retains flexibility.

Q21. (a) Yes

(b) Yes

(c) That should be a matter for the TSPB to determine in light of all of the circumstances.

(d) No. The Government need to carry out some serious research into the concept of an indemnity fund and how it might operate. From my experience, the figures quoted in the consultation paper would not even scratch the surface. However, solving this issue is vital in delivering an effective consumer enforcement landscape. This subject ought to be subject to separate review, consultation and consideration. In addition, it ought to be linked to the relative merits of a local authority being the prosecuting authority (in England and Wales). It should draw on the lessons learnt in the Butterfield Review (2003) carried out following the collapse of confidence in the Revenue & Customs Prosecuting Department.

Q22. I don't think the status quo is really viable. The JEB model will merely provide for a frustrating round robin of cases that will never actually get addressed by anyone.

Q23. N/A

Q24. There is some merit in allowing a 'business representative' to sit on TSPB, but who, how and in what capacity is difficult to identify.

Q25. CMA should retain consumer law enforcement powers where there is a failure of the market as a whole (or as a significant proportion). By this I have in mind practices that 'snowball' from one operator taking advantage to others joining in. This can be as a result of inaction against the single operator or it may be uncertainty over interpretation of legislation. CMA ought to be empowered to tackle such market-wide abuse - this will reduce multiple prosecution and could nip the problem in the bud.

Q26. CMA ought not be able to take consumer law enforcement action without, at the very least, TSPB being aware of it. Approval might be adding an unnecessary layer of bureaucracy, but informing them is essential.

Q27. Yes

Q28. Yes

Q29. This seems like a very artificial line and could lead to problems. There is no reason why CMA referrals should have any greater priority than those referred to the TSPB by anyone else. Equally, they should not be inferior either.

Q30. Yes

Q31. Yes. Not sure what level it should be set at, but administration should be left to the Secretariat of the TSPB, which presumably would be TSI.

Q32. This is a confused question, but I think the answer is Yes.

Q33. Yes - although there is no reason why they ought to deliver them - they could just be a commissioning and approval body with other service providers.

Q34. Yes.

Q35. No. It was only ever an administrative process anyway. However, there should be a central repository of information (probably hosted by TSI) where checks can be made to avoid duplication of effort.

Q36. No comment.

Q37. Yes

Q38. Yes, but adequate resource would have to be allocated to deal with this and the potential for judicial review of their response.

Q39. This strikes me as fertile territory for a Community Interest Company. There seems no reason why the role should be restricted to a local authority.

Q40. Yes.

I hope that is helpful. Please get in touch if you require any clarification of the points made.

Best Regards

Tony

**Tony Allen**  
Managing Director

**www.underagesales.co.uk**  
Under Age Sales Ltd, Broadstone Mill, Broadstone Road, Stockport, SK5 7DL  
Tel: 0161 443 4111 Mob: 07802 978749  
Registered Number: 07357348  
VAT Registration: 996 2087 72

## **University of East Anglia**

## BIS consultation: Empowering & Protecting Consumers

---

### Consultation response from the ESRC Centre for Competition Policy

University of East Anglia, Norwich Research Park, Norwich NR4 7TJ

#### Contributing authors:

- Professor Catherine Waddams \*(*editor*)
- Mr Henry Allen
- Dr Michael Harker
- Professor Morten Hviid
- Dr Daithí Mac Síthigh

The response to each question in this consultation response has been drafted by a named academic member of the Centre, who retains responsibility for that section. The document has been edited by Professor Catherine Waddams following discussions held in the Centre and it has the broad agreement of the group of contributors.

The support of the Economic and Social Research Council is gratefully acknowledged.

#### ● The ESRC Centre for Competition Policy (CCP)

*CCP is an independent research centre, funded by the Economic and Social Research Council (ESRC), and established in 2004 as a 10-year Centre of Research Excellence. CCP's research programme explores competition and regulation policy from the perspective of economics, law, business and political science. CCP has close links with, but is independent of, regulatory authorities and private sector practitioners. The Centre produces a regular series of Working Papers, policy briefings and publications, and a bi-annual newsletter with short articles reflecting our recent research. An e-bulletin keeps academics and practitioners in touch with publications and events, and a lively programme of conferences, workshops and practitioner seminars takes place throughout the year.*

*Further information about CCP is available at our website: [www.competitionpolicy.ac.uk](http://www.competitionpolicy.ac.uk)*

CCP welcomes the consultation on Empowering and Protecting Consumers, particularly given its previous research in this area cited by the consultation document<sup>1</sup> and our findings that while UK consumer protection was among the best in the world, it suffered from overly complex law and inconsistent enforcement. We respond below only to the questions for which we have some basis from CCP's research programme.

We are surprised that in consulting on institutional remedies, the BIS consultation pays little direct attention to consumers or what we know about their behaviour. In particular we would have liked to see more discussion of how consumer protection should be related to the needs of particular groups of consumers (for example, should the average or the vulnerable consumer be the object of such protection?). There is a danger that in trying to protect vulnerable consumers, and particularly in trying to address various issues of cognitive hazard, authorities may generate worse outcomes for consumers in aggregate. Vulnerable consumers may benefit especially from consumer advocacy, which we should have liked to see discussed further in the consultation document.

In response to individual questions:

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

(Michael Harker)

Consumer law is clearly complex and difficult to comprehend, especially for those with limited cognitive abilities. The provision of consumer information in a readily accessible format and by trusted groups (such as Which? and Citizens' Advice) is welcomed. It should not be assumed, however, that online provision can completely remove the need for personalised information and advice (as was the case with Consumer Direct).

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

No (see below)

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

No (see below)

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?

(Catherine Waddams)

Questions 2-4 all ask whether we agree about transferring various roles from the OFT to the Citizens Advice service. We disagree that this transfer should take place,

---

<sup>1</sup> University of East Anglia (2008), Benchmarking the performance of the UK framework supporting consumer empowerment through comparison against relevant international comparator countries

[www.bis.gov.uk/files/file50027.pdf](http://www.bis.gov.uk/files/file50027.pdf)

both because we believe that such functions should be closely related to competition enforcement, and because we do not think that the Citizens Advice service is sufficiently well resourced to undertake adequately the required roles. Because it is funded from local government services, it has already experienced serious cut backs in financial resource; and the service does not have sufficient experience in dealing with the complexity of consumer decision making. Both our own research<sup>2</sup> and Ofgem's work show that consumers often make errors, particularly if they are approached by sales people, and Ofgem's recent work suggests that despite their remedies to help consumers make better choices, an increasing proportion of consumers are becoming disengaged from the market<sup>3</sup>. Moreover competition authorities are increasingly using consumer remedies to help markets work better, even when the basic problem is not necessarily rooted in consumer behaviour<sup>4</sup>. It is therefore important to keep the consumer information and competition rôles closely related, rather than treating consumer information as a separable remedial function.

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

(Daithí Mac Síthigh)

No, we believe that these functions should be retained within the competition authority and that the appropriate national body to co-ordinate such functions should be the CMA which should be constituted to include consumer functions. However if this is not the outcome, it is better that there should be some body overseeing such functions, rather than not doing it at all.

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?

(Henry Allen)

In principle it seems like a reasonable idea given the circumstance. However, this is predicated on the ability of those previously employed in Consumer Focus being able to still carry out the vital work that they do. It is fundamental that there is an advocacy body specifically dedicated to working alongside regulators, policy makers and business to ensure that consumers are represented in non-market scenarios. The concern would be that the focus of Citizens Advice as an information service for consumers and citizens *within markets* might detract from identifying common issues across markets. This would tilt the balance of power away from consumer advocacy and towards producers. So this change would only be the correct decision if the sectoral advocacy functions are kept intact and able to function even more effectively

---

<sup>2</sup> Do Consumers Switch to the Best Supplier? by Chris M. Wilson and Catherine Waddams Price, Oxford Economic Papers, 62: 647-668, 2010

<sup>3</sup> Retail Market Review, Ofgem, 2011

<sup>4</sup> Assessing the Effectiveness of Potential Remedies in Consumer Markets, a report for the Office of Fair Trading by Luke Garrod, Morten Hviid, Graham Loomes and Catherine Waddams, 2008

as lobbyists in cross-market scenarios. Therefore merging sectoral advocacy functions should only be undertaken if there is a clear common concern. Individuals and teams with specialist sector specific knowledge should be retained, as in-depth knowledge on developments is crucial to successful advocacy on consumers' behalf, and ultimately to making the markets work in the consumer interest.

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

(Henry Allen)

By and large, yes. The conditions set out seem to be actively concerned that consumers are given adequate representation in regulated sectors, as well as ensuring that the relevant bodies have the powers necessary to hold companies to account. The levy on businesses to fund the body is a sensible way to proceed as it will keep the body independent from government. Ensuring the capability to research emerging concerns is fundamental to the sound operation of a worthwhile advocacy group. If it were *merely* reactive then it would only be doing half its job.

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?

(Henry Allen)

Abolishing Consumer Focus outright seems to be going too far. Putting Consumer Focus under the umbrella of Citizens Advice would be a more reasonable approach as it would keep what is a necessary advocacy organisation intact with the relevant experience and expertise gained over the years, whilst consolidating some of the bureaucracy. As stated in answer to Q.12 & Q.13 it is imperative to consumer representation to have dedicated proactive advocates both researching and lobbying, on both in-market and cross-market scenarios. Consumer advocacy needs to be proactive as merely reactive appeals put power in the hands of producers, as there is a clear collective action problem for consumers.

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?

(Daithí Mac Síthigh)

It is fundamental to the necessary functioning of consumer advocacy that the successor to Consumer Focus has the powers to gather the required information from regulators, businesses and any person that supplies goods or services in the course of a business. A toothless advocacy body would be a waste of resources and merely a nod to an effective regulated market. In this respect option a) would be preferable as it will ensure that the adequate powers are directly transferred to Citizens Advice without considerable compromise.

Moreover if information-gathering powers are transferred to Citizens Advice, there needs to be a mechanism by which CA is accountable to a public body (and ideally subject to judicial review in respect of this function) for its use of those powers. The most appropriate method of conferring information-gathering powers for this purpose would be by way of primary legislation specifying the extent of the powers as well as the name of the relevant body, rather than an enabling provision that would allow any number of bodies to be designated at any future time by a Minister.

**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?

(*Morten Hviid*)

The document provides no evidence on (a) how successful the redress schemes have been in the sectors where it is used and (b) on the scale of the problem in the water and transport sectors. It is hence not possible to offer any comment on the costs and benefits of the scheme. However if a scheme is to be introduced it would, as is pointed out in both 4.57 and 4.58, be essential that “dispute resolution by the independent ombudsman is separated from sectoral advocacy.”

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

Option 1 – Transfer of all OFT/CMA powers to Trading Standards

As the Government observe, this will result in duplication, inconsistency of approach and, without a complex enforcement system in place at the “supra-local level”, will lead to under-enforcement of national cases.

Option 2 – All enforcement (other than at local level) is undertaken by the CMA

This is perhaps the most efficient model, reduces duplication and would ensure that the CMA has a full complement of powers with respect to consumer detriment.

Option 3 – Transfer of majority of OFT consumer enforcement powers to TSs

(*Michael Harker*)

If some powers are to be transferred, then it is welcomed that the CMA retains remedies with respect to markets displaying structural problems.

If this option is pursued, then there needs to be substantial cooperation and coordination between local trading standards. The TSPB would need to play an important role here and be appropriately resourced. This does beg the question as to whether this is a more efficient system than option 1.

### **Division of labour between CMA and trading standards - Questions 20-24.**

(*Morten Hviid*)

BIS is correct that the choice is between option 3 and some minor tweaks to existing divisions. In both cases there will be some overlap and hence a need for coordination. Since this is all a matter of degree, it would be a surprise if a cost-benefit analysis did not come down on the side of the minor tweaking of the existing

system. It would then be possible to engage in an ongoing assessment of how the new system works, especially if a single CMA is created. In particular, it is not easy to predict how much would be lost in terms of competition enforcement by moving all or some of the current OFT powers to trading standards. The current insight from the academic literature<sup>5</sup> is that consumers play an important role in making markets work so that the OFT's current motto of making markets work well for consumers might plausibly be extended to "making consumers make markets work well for consumers". Arguably this is what empowerment is all about. A gradual approach, tweaking the existing division, appears the better approach unless demonstrable and significant benefits from option 3 can be identified.

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?

(Catherine Waddams)

Yes, we agree that it is crucial for the CMA to retain a consumer enforcement role where a potential breach of consumer law may be connected to a structural market problem. The recent cases which Ofgem has had to bring for mis-selling in residential energy, at precisely the time when it is trying to empower consumers to be more active and make better choices in the market, while exploring whether there are structural issues in the market, illustrate well the importance of having a single enforcement body. Such cases are by their nature complex, and any attempt for two enforcement bodies to deal with them independently would substantially weaken the competition regime and enable more abuses. Indeed we argue that the CMA should have far-reaching responsibility for enforcement of consumer law, as outlined in our responses to questions above.

Questions 26 and 27 are interrelated – if the CMA has substantial discretion, then these should be subject to procedural limitations

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?

(Michael Harker)

This should be pursuant to a full market investigation, especially given the extensive remedial powers currently enjoyed by the CC. In any case, recent case law has demonstrated that any substantial market intervention will need to be proportional to the detriment concerned, and underpinned by a rigorous cost benefit analysis.

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?

---

<sup>5</sup> See literature summarised in Luke Garrod, Morten Hviid, Graham Loomes and Catherine Waddams, 2009, "Competition Remedies in Consumer Markets", Loyola Consumer Law Review 21(4); 101-158, which builds on a previous OFT discussion paper, OFT994.

(Michael Harker)

Yes. Recent market investigations by the CC into final consumer markets – such as extended warranties, home credit and PPI – demonstrate that market remedies will need to be multi-faceted, for example, increasing competition through the provision of clearer information to consumers.

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?

(Catherine Waddams and Michael Harker)

It is very difficult to separate out a structural problem with a market; the current market investigation regime can be used to address consumer behaviour which results in detriment. To draw artificial boundaries between cases, especially where these need to be done before a full investigation has been carried out, would not be conducive to finding a remedy which is best placed to deal with the detriment. However it would be advantageous for the CMA to be able to summarily dismiss cases which turn out to have little merit, rather than the current arrangement where the Competition Commission must fully investigate all references which fall within its jurisdiction, even if they discover early evidence which indicates that a full inquiry is not merited..

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?

(Daithí Mac Síthigh)

At the moment, as the document makes clear, the OFT publishes guidance on consumer law. As we argue above, the CMA is the most appropriate body to handle these duties. If the CMA is not going to deal with this area, then it is appropriate that these important functions be transferred rather than abandoned. However it is hard to judge, from the consultation document, the capacity of the TSI (which is at present a charity) to undertake these functions. Furthermore the impact of any transfer on the legitimacy and (non-binding) authority of guidance needs further consideration, i.e. whether a statement of the law would be received differently depending on whether the ultimate author was the OFT as opposed to a private organisation.

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?

(Daithí Mac Síthigh)

International liaison should be linked to the responsible public authority, which is much better placed to speak legitimately and accountably for the UK than a body not answerable to Government or Parliament.

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?

(Morten Hviid)

The supercomplaint system should be carefully assessed, as should the selection of bodies given such powers. Ten years worth of cases have seen 13 supercomplaints submitted to the OFT. Not all of these have given rise to OFT investigations. Of the 13 cases, more than half have been made in sectors where there are pre-existing regulators who either had or should have had the powers to deal with the issues raised in the complaint (the FSA and Postcomm). It is hence not immediately obvious that this system presents good value for money as it is. We would recommend a careful analysis of the impact of the system before extending it.

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?

(Catherine Waddams)

Since we disagree with the proposed separation between competition authorities and consumer law enforcement, we would not like this change to proceed, whether or not the establishment of a joint CMA is delayed.

## US Federal Trade Commission to UK

**United States Federal Trade Commission Staff Comment on the  
United Kingdom Department of Business Innovation & Skills Consultation,  
*Empowering and Protecting Consumers: Consultation on institutional changes for provision  
of consumer information, advice, education, advocacy and enforcement***  
September 27, 2011

Staff of the United States Federal Trade Commission (FTC)<sup>1</sup> appreciates this opportunity to provide input to the consultation issued by the U.K. Department of Business Innovation & Skills (BIS), *Empowering and Protecting Consumers: Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement*. This comment focuses on the issues raised in Chapter 5 of the consultation paper on the enforcement of consumer protection law. Based on the FTC's experience in online markets and international enforcement cooperation, we suggest that it is critical to have an institutional arrangement for consumer protection enforcement that includes a strong national consumer protection enforcement body equipped with the resources, skills, and legal authority to engage in sophisticated regulation, enforcement, and international cooperation.<sup>2</sup> Although we agree with the consultation paper's premise that all consumer protection enforcement need not take place at the national level, it is important to consider the areas, such as cross-border online marketing and international cooperation, that require a centralized national enforcement approach to drive innovation and growth, deter unfair and deceptive practices, and empower and benefit consumers.<sup>3</sup>

This comment is in three sections. Section I provides general background on the FTC and its enforcement activities, including online and international consumer protection, as context for FTC staff's responses. Section II provides details about the FTC's experiences working with the OFT. Section III contains FTC staff's conclusions and recommendation for a strong national consumer protection enforcement authority.

---

<sup>1</sup> This comment reflects only the views of FTC staff and not necessarily the views of the Federal Trade Commission or any individual Commissioner. On June 10, 2011, the FTC submitted a staff comment in response to the Government's companion consultation paper, *A Competition Regime for Growth: A Consultation on Options for Reform*. A copy of that comment is attached.

<sup>2</sup> We do not offer an opinion on consumer protection enforcement involving more local issues such as doorstop selling or home repair scams. As in the U.K., in the U.S. the enforcement of consumer protection law occurs not only at the national level but also at the state level, chiefly through the states' Attorney Generals, and at the county level, through local agencies. The FTC works closely with the Attorney Generals' offices and often the states will work together to tackle widespread, nationwide problems. This multi-level approach helps to avoid significant enforcement gaps.

<sup>3</sup> In 2005, former FTC Chairman Deborah Platt Majoras submitted a comment in response to an earlier consultation on the U.K.'s consumer protection framework emphasizing the benefits of maintaining consumer protection and competition functions in a unified agency to maximize consumer welfare. See *Comment of Deborah Platt Majoras, [Former] Chairman, United States Federal Trade Commission on Proposed Consumer Trading and Standards Authority*, available at <http://www.ftc.gov/bc/international/docs/majorasresponsesdti.pdf>. Many of the observations in that comment about the effectiveness of institutional arrangements that link consumer protection and competition functions apply equally to the current consultation.

## I. The FTC and International Consumer Protection

The FTC deals with issues that touch the economic life of every American. It is the only federal agency in the United States with both consumer protection and competition jurisdiction in broad sectors of the economy. It has a strong market orientation, grounded in the important role that enforcement of consumer protection and antitrust laws have played in maintaining the competitiveness of U.S. markets. The FTC pursues vigorous and effective law enforcement; develops policy and research tools through hearings, workshops, and conferences; and creates practical and plain-language educational programs for consumers and businesses in a marketplace that is increasingly global and characterized by changing technologies.<sup>4</sup>

In the consumer protection enforcement area, the FTC enforces a general prohibition against “unfair and deceptive acts or practices” in commerce as well as numerous specific consumer protection laws and rules.<sup>5</sup> To enforce these substantive provisions of law, the FTC Act authorizes the agency to file federal district court lawsuits seeking preliminary and permanent injunctions and equitable monetary redress for injured consumers. From April 2010 through March 15, 2011, the FTC filed 38 actions in federal district court and obtained 82 judgments and orders requiring the defendants to pay nearly U.S. \$368 million in consumer redress or disgorgement of ill-gotten gains.<sup>6</sup>

Many of these cases deal with online (and now, increasingly, mobile) markets. They address breaches of consumer law refashioned for the online context such as undisclosed and “fake” product endorsements.<sup>7</sup> They also address Internet-enabled violations such as “scareware” that interferes with consumers’ computers.<sup>8</sup> The FTC has developed innovative approaches to insure that it has the necessary technical expertise, understanding of online markets, and tools needed to monitor, investigate, and combat such deceptive and unfair practices in the global, high-tech marketplace. It has held numerous workshops on law, policy, and technology, bringing together stakeholders from industry, consumer groups, and academia. It has hired a chief technologist. It has also pioneered the use of new investigative tools to detect and capture information, including an Internet Lab facility that contains computers with IP addresses not assigned to the government and evidence-capturing software, and a mobile lab, which contains devices spanning various platforms and carriers, along with the software and other equipment. The FTC has also explored

---

<sup>4</sup> Information about the FTC is available at <http://www.ftc.gov>.

<sup>5</sup> A brief overview of the FTC’s investigative and law enforcement authority is available at <http://www.ftc.gov/ogc/brofvrw.shtm>.

<sup>6</sup> See *The FTC in 2011* (Apr. 2011), available at <http://www.ftc.gov/os/2011/04/2011ChairmansReport.pdf>.

<sup>7</sup> See, e.g., *In the Matter of Reverb Comms.*, FTC File No. 092 3199, press release and available at <http://www.ftc.gov/opa/2010/08/reverb.shtm> (settling charges against video game developer for allegedly having employees pose as ordinary consumers posting game reviews at the online iTunes store, and not disclosing that the reviews came from paid employees working on behalf of the developers); *In the Matter of Legacy Learning Systems, Inc.*, FTC File No. 102 3055, press release available at <http://www.ftc.gov/opa/2011/03/legacy.shtm> (settling FTC charges against a guitar lesson company that allegedly advertised its products through online affiliate marketers who falsely posed as ordinary consumers or independent reviewers). The OFT brought a similar enforcement action against Handpicked Media, Ltd. See Investigation into inadequate disclosures in respect of commercial blogging activity, available at [http://www.oft.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/handpicked\\_media](http://www.oft.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/handpicked_media). The challenged practices distort online product markets.

<sup>8</sup> *Federal Trade Commission v. Innovative Marketing, Inc. et al.*, Civil Action No.: 08-CV-3233-RDB (D. Md.), press release available at <http://www.ftc.gov/opa/2011/01/winsoftware.shtm>.

how to apply existing consumer protection laws to online markets, and has issued new rules, business guidance, and consumer education to allow consumers to benefit from emerging technologies and protect them from some of the risks.

International engagement is another important component of the FTC's consumer protection law enforcement efforts. The FTC has agreements and relationships with key foreign consumer protection enforcement agencies around the world, and works through several enforcement networks to exchange "best practices" and develop more effective methods of cross-border cooperation. Over the past five years, it has brought more than 100 cases with international components. In 2006, in response to a legislative recommendation from the FTC, the U.S. Congress passed the Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006 (SAFE WEB Act), which provides the FTC with enhanced tools in several key areas, including information sharing, investigative assistance, and cross-border remedial authority.<sup>9</sup> The FTC has repeatedly used these tools. As of September 1, 2011, the FTC has completed 56 information sharing requests from 14 agencies in six countries. In addition, the FTC has issued approximately 36 civil investigative demands (equivalent to administrative subpoenas) in nearly 20 investigations on behalf of nine agencies in five countries.<sup>10</sup>

These new powers have allowed the FTC to address practices that distort online markets for U.S. as well as foreign consumers. Using its SAFE WEB Act authority, the FTC has worked with its foreign counterparts to bring strong enforcement actions against practices such as unauthorized debiting, undisclosed negative option and affiliate marketing, domain name abuse, and spam and other technological abuses that harm consumers economically and undermine consumer confidence in online markets.<sup>11</sup>

## II. The FTC and the OFT

Building and maintaining strong bilateral relationships with foreign agencies is a critical element in international cooperation. Over the years, the FTC and the OFT have had a close and highly beneficial relationship on consumer protection enforcement and policy issues. The FTC views the OFT as one of its leading enforcement partners, and has valued OFT's extensive enforcement and market-oriented approach in international consumer protection enforcement and policy discussions. In particular, FTC staff shares the OFT's view, expressed in its most recent annual plan, that "continuing online innovation must be met with strategic enforcement to tackle new and complex forms of unfair trading that harm both consumers and markets."<sup>12</sup>

---

<sup>9</sup> The SAFE WEB Act, which is incorporated into the FTC Act, is available at [http://www.ftc.gov/ogc/FTC\\_Act\\_IncorporatingUS\\_SAFE\\_WEB\\_Act.pdf](http://www.ftc.gov/ogc/FTC_Act_IncorporatingUS_SAFE_WEB_Act.pdf).

<sup>10</sup> See FTC, *The U.S. SAFE WEB Act, The First Three Years: A Report to Congress* (Dec. 2009), available at <http://www.ftc.gov/os/2009/12/P035303safewebact2009.pdf>, for a summary of SAFE WEB actions through December 2009. The FTC provides updated information on its use of its SAFE WEB authority each year in the agency's Annual Reports, which are available at <http://www.ftc.gov/os/annualreports/index.shtm>.

<sup>11</sup> *Id.*

<sup>12</sup> OFT, *Office of Fair Trading Annual Plan 2011-2012* (2011), available at [http://www.oft.gov.uk/shared\\_oft/about\\_oft/ap12/oft1294.pdf](http://www.oft.gov.uk/shared_oft/about_oft/ap12/oft1294.pdf).

The FTC and OFT are parties to two memoranda of understanding that address consumer protection issues and have worked together on numerous investigations and cases.<sup>13</sup> In one of the earliest examples of coordinated Internet enforcement cooperation between the two agencies, the FTC and the OFT brought parallel actions against a London-based trader alleging misleading advertising for domain names that could only be accessed through difficult-to-locate alternative networks.<sup>14</sup> In another case involving an online pyramid scheme that affected consumers in more than 200 countries, *FTC v. SkyBiz.com, Inc.*, the FTC and the OFT worked together to locate more than 25,000 U.K. consumers eligible for monetary redress.<sup>15</sup> More recently, the OFT provided the FTC with investigative assistance in an international pay day lending case, *FTC v. Cash Today, Ltd.*, involving U.K.-based defendants who targeted U.S. consumers using unfair and deceptive debt collection tactics.<sup>16</sup> The FTC alleged that the defendants engaged in abusive behavior, improperly disclosed consumers' purported debts to third parties, and failed to make written disclosures to before consummating a consumer credit transaction, such as the amount financed, the annual percentage rate, payment schedule, total number of payments, and any late payment fees, in violation of U.S. federal statutes. The FTC obtained a \$1 million settlement from the defendants and strong injunctive relief.

Earlier this year, using its authority under the SAFE WEB Act, the FTC reached a settlement in *FTC v. Javian Karnani* with a California-based Internet marketer that sold cameras, video games, and other electronic goods to thousands of U.K. consumers.<sup>17</sup> Because the defendants used website names such as www.bestpricedbrands.co.uk, www.bitesizedeals.co.uk, and www.crazycameras.co.uk, consumers believed they were buying from a company operating in the U.K., and were therefore protected by manufacturer warranties that were valid there. The FTC's complaint, filed in a federal court in 2009, alleged that when consumers received the goods, they discovered they had been charged unexpected import duties, were left with invalid warranties, and would be charged draconian cancellation and refund fees if they attempted to return the merchandise. The defendants promised fast shipping dates, but usually did not meet those dates. Without the prior consent of consumers, the defendants allegedly shipped the goods much later than promised. When customers tried to cancel these delayed orders, they were often unable to do so. Ultimately, the defendants agreed to a settlement order prohibiting them from misrepresenting the location, quality, quantity, characteristics, and model numbers of products they sell, their policies regarding cancellation, exchange, or return, and the existence of product warranties, among other provisions.

FTC staff have also worked side by side with OFT staff to develop sophisticated consumer protection strategies for online markets. In 2010, as part of its International Fellows program,

---

<sup>13</sup> For a list of the FTC's international cooperation agreements, see <http://www.ftc.gov/opia/agreements.shtm>.

<sup>14</sup> See *FTC v. TLD Network, Inc. et al.*, Case No. 02 CV 1475 (N.D. Ill.), press release and stipulated final judgment available at <http://www.ftc.gov/opa/2002/12/tld3.shtm>; see also OFT, Press Release, *Misleading domain name ads stopped* (Aug. 29, 2002), available at [http://www.oft.gov.uk/news-and-updates/press/2002/pn\\_53-02](http://www.oft.gov.uk/news-and-updates/press/2002/pn_53-02).

<sup>15</sup> OFT, Press Release, *Skybiz victims sought: US redress system could benefit UK victims of scam* (June 20, 2005), available at <http://oft.gov.uk/news-and-updates/press/2005/111-05>.

<sup>16</sup> *FTC et al. v. Cash Today, Ltd. et al.*, Case No. 3:08-CV-590-RCJV PC (D. Nev.), available at <http://www.ftc.gov/opa/2009/09/cash.shtm>.

<sup>17</sup> *FTC v. Javian Karnani et al.*, Civil Action No. 09-CV-5276 (C.D. Cal.), available at <http://www.ftc.gov/opa/2011/06/bestbrands.shtm>.

the FTC selected an OFT attorney to join the FTC's Division of Advertising Practices for five months and work on Internet enforcement issues.<sup>18</sup> The FTC also sent one of its investigators to London for several months to work with the OFT's Internet Enforcement team.

The FTC has also worked closely with the OFT through joint enforcement networks such as the International Consumer Protection and Enforcement Network (ICPEN) and through two U.S.-Canada-U.K. law enforcement partnerships. In addition, in 2004, together with the FTC, the OFT co-founded the London Action Plan (LAP), an international public-private network that fights spam and other high-tech messaging abuses. The LAP now includes over 40 public authorities, including consumer protection, telecommunications, and data protection regulators, from 27 countries.<sup>19</sup>

More recently, the FTC and OFT have been working in parallel on matters such as negative option marketing. This marketing practice occurs whenever a marketer takes a consumer's silence as agreement to continue a transaction, such as billing monthly for membership in an Internet discount buying club. While these offers can provide benefits to consumers, they also pose a high risk of deception. Unscrupulous marketers use negative options that are not adequately disclosed to trap consumers in a cycle of recurring charges for goods or services they do not want and never knew they purchased.<sup>20</sup> The FTC has filed several civil law enforcement actions to stop these practices.

Just a few months ago, for example, the FTC filed suit against an individual defendant, Jesse Willms, and ten companies he controls for using deceptive negative option marketing for everything from acai berry weight-loss pills, teeth whiteners, and colon cleansers to work-at-home schemes, government grants, free credit reports, and penny auctions over the Internet.<sup>21</sup> In *FTC v. Willms et al.*, the FTC alleges that consumers provided their credit and debit card numbers to cover small shipping and handling fees, but many were then charged for the "free" trial plus a monthly fee – typically \$79.95 – and for additional products and "bonus offers." Significantly, as the FTC's complaint alleges in that case, Willms used entities incorporated in the U.K. as part of his operation, and marketed these negative options to large numbers of U.K. consumers. He ultimately took in more than \$450 million from consumers in the Australia, Canada, New Zealand, the U.K., and the U.S.

### **III. The Need for a Strong U.K. National Enforcer**

Based on our experiences detailed above with respect to Internet marketing and enforcement, and with cross-border consumer protection cooperation, we believe there is a critical need for a strong consumer protection enforcement body at the U.K.'s national level. Such a governmental enforcer is not only necessary for domestic consumer enforcement cases on systemic or market-

---

<sup>18</sup> FTC, *The FTC in 2010*, available at <http://www.ftc.gov/os/2010/04/2010ChairmansReport.pdf>. The International Fellows program provides opportunities for counterparts from foreign agencies to spend several months working directly with FTC staff on investigations, subject to appropriate confidentiality protections.

<sup>19</sup> Information about the LAP is available at <http://www.londonactionplan.com>.

<sup>20</sup> For background on negative option marketing, see FTC, *Negative Options: A Report by the staff of the FTC's Division of Enforcement* (Jan. 2009), available at <http://www.ftc.gov/os/2009/02/P064202negativeoptionreport.pdf>.

<sup>21</sup> *FTC v. Willms, et al.*, Case No. 2:11-cv-00828 (W.D. Wa.), press release and complaint available at <http://www.ftc.gov/opa/2011/05/jessewillms.shtm>.

wide issues, as suggested in the consultation paper, but also for consumer protection violations that cross international borders, most often in the online world.

U.K. consumers are concerned about online marketing. In its December 2010 online enforcement strategy, the OFT cited research showing that one in four U.K. consumers worries more about online shopping than offline and, overall, one in seven consumers has experienced a problem when buying online, of whom 37% have indicated reluctance to make another purchase online.<sup>22</sup> Similarly, in a March 2011 survey conducted by the private research firm YouGov, 21% of U.K. shoppers said they had been the victim of an online financial fraud and 67% were worried that this was something that could happen to them.<sup>23</sup> The FTC also has over 100,000 cross-border complaints in its Consumer Sentinel Network including more than 5,000 complaints from U.K. consumers lodged between October 1, 2009 and September 30, 2010. In 2010, U.K. consumers were the third largest contributor of complaints to e-consumer.gov, a cross-border portal for electronic commerce-related complaints developed by ICPEN.<sup>24</sup>

These numbers underscore the need for the national enforcer to have broad consumer protection authority. Such authority should not be limited only to structural market problems or require *prima facie* evidence of a competition problem, as proposed in the consultation. It should also include authority over a wide range of conduct in online markets that undermines consumer confidence in the global electronic marketplace.

We also believe that it is important to vest the national enforcer with appropriate resources, information sharing powers, and capacity to carry out cross-border functions, especially enforcement cooperation on complex, Internet-based, matters. If the national body is limited in using its consumer protection powers only as an alternative tool for effective delivery of competition, there may not be an enforcement entity that has the sophistication, capacity, and resources to develop the tools to address enforcement challenges in online markets as the FTC, and the OFT, have already done.

We are also concerned that the Government's proposal to have Local Authority Trading Standards Services (LATTS) handle enforcement cases that contain an "international dimension," with oversight by a Trading Standards Policy Board (TSPB) located within the Trading Standards Institute (a non-governmental professional body), will lead to delay, inefficiency, and serious enforcement gaps. In an age of limited resources, it would be difficult for an agency like the FTC to work quickly and efficiently with a multiplicity of LATSS. Even more importantly, under the U.S. SAFE WEB Act, the FTC may only share certain categories of

---

<sup>22</sup> OFT, *Protecting consumers online – a strategy for the UK* (Dec. 2010), available at [http://www.oft.gov.uk/shared\\_oft/consultations/e-protection/OFT1252.pdf](http://www.oft.gov.uk/shared_oft/consultations/e-protection/OFT1252.pdf).

<sup>23</sup> YouGov, *Security for Online Shoppers* (Apr. 14, 2011), available at <http://today.yougov.co.uk/consumer/security-online-shoppers> (article) and <http://today.yougov.co.uk/sites/today.yougov.co.uk/files/yg-archives-ewise-pay-onlinepayments-140211.pdf> (poll results).

<sup>24</sup> FTC, *Cross-Border Fraud Complaints, January – December 2010* (Apr. 2011), available at <http://www.ftc.gov/sentinel/reports/annual-crossborder-reports/crossborder-cy2010.pdf>. This report includes complaints filed through the econsumer.gov website, which is available in seven languages, at <http://www.econsumer.gov>.

information and provide investigative assistance to governmental enforcers.<sup>25</sup> The FTC would not be able to use the Act’s authority to cooperate with a professional body like the Trading Standards Institute or any body, like the proposed TSPB, located within it. This could create enforcement gaps that would harm both U.S. and U.K. consumers.

This view is shared by the larger international community. In 2003, the Organisation for Economic Co-operation and Development (OECD), of which the U.K. is a member, issued *Guidelines for Protecting Consumers from Fraudulent and Deceptive Practices Across Borders*.<sup>26</sup> They set forth a consensus view on the necessary ingredients for international consumer protection cooperation including effective domestic frameworks. In the *Guidelines*, the OECD called on its member countries to “introduce and maintain an effective framework of laws, consumer protection enforcement agencies, institutions, practices, and joint initiatives designed to limit the incidence of fraudulent and deceptive commercial practices against consumers.” Significantly, the *Guidelines* call for the consumer protection enforcement agency to be a “national public body.”<sup>27</sup> We believe that the U.K., in considering proposals for reform of its consumer landscape, should keep these principles in mind and ensure that the U.K. maintains a national consumer protection authority equipped with the resources, skills, and legal authority to engage in sophisticated regulation, enforcement, and international cooperation in an increasingly global and online world.

FTC staff again appreciates the opportunity to submit this comment. Please feel free to contact Hugh G. Stevenson, Deputy Director for International Consumer Protection in the FTC’s Office of International Affairs, at [hstevenson@ftc.gov](mailto:hstevenson@ftc.gov) or +1 202-326-3511, or Stacy Feuer, Assistant Director for International Consumer Protection in the same office, at [sfeuer@ftc.gov](mailto:sfeuer@ftc.gov) or +1 202-

---

<sup>25</sup> The FTC Act, as amended by the U.S. SAFE WEB Act, defines “foreign law enforcement agency” as follows:

“Foreign law enforcement agency” means—

(1) any agency or judicial authority of a foreign government, including a foreign state, a political subdivision of a foreign state, or a multinational organization constituted by and comprised of foreign states, that is vested with law enforcement or investigative authority in civil, criminal, or administrative matters; and  
(2) any multinational organization, to the extent that it is acting on behalf of an entity described in paragraph (1).  
15 U.S.C. § 44, available at [www.law.cornell.edu/uscode/html/uscode15/usc\\_sec\\_15\\_0000044---000-.html](http://www.law.cornell.edu/uscode/html/uscode15/usc_sec_15_0000044---000-.html).

<sup>26</sup> OECD, *OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders* (2003), available at <http://www.oecd.org/dataoecd/24/33/2956464.pdf>.

<sup>27</sup> *Id.* (emphasis added). The OECD 2003 Guidelines define “consumer protection enforcement authority” in Section I.3.D:

For the purposes of these Guidelines, “consumer protection enforcement agency” means any national public body, as determined by each Member country, that has as a principal mission implementing laws against fraudulent, misleading, or unfair commercial practices affecting consumers and has powers (a) to conduct investigations or (b) to pursue enforcement proceedings, or both.”

The Guidelines also recognize the need for consumer protection enforcement agencies to have the “necessary authority to obtain evidence sufficient to investigate and take action in a timely manner against fraudulent and deceptive commercial practices, including the ability to obtain necessary information and relevant documents.” Sec. II.B.

326-3072, if you have any questions or would like any additional information about the issues raised in this Staff Comment.

## **VBRA – Vehicle Builders & Repairs Association**

Department for Business Innovation and Skills  
FAO Anthony Morris  
1 Victoria Street  
London  
SW1H 0ET

22<sup>nd</sup> August 2011

Dear Sir,

**Consumer Landscape Consultation (June 2011)**

**Questions to which VBRA wish to provide answers as follows plus further observations.**

**Background**

VBRA is the trade Association for vehicle accident damage repairs holding CCAS approval of its code since 2004, the second code to be approved. The costs of achieving approval, to the Association, were significant. Implementation costs to our members were less onerous as this was simply an extension of our then existing methodologies on auditing members under our [already] existing code where very few changes were required to meet CCAS approval.

The use of the code, particularly the well respected and universally well known OFT 'badge' is of great value to members in promoting their businesses and to the public in the reassurance that the code is 'overseen' by OFT.

As will be seen by reference to our annual reports, issues reaching VBRA as code sponsor where consumers feel the need to complain are few and far between BUT the existence of the CCAS encourages our members to deal properly with their customers to resolve issues before they reach a stalemate stage which involves us.

**Question 11 – Do you think [primary authority style] approval arrangements would be beneficial to consumers, code sponsors and member firms?**

1. Our significant preference would be that the existing OFT arrangements (and badge) remain in operation
2. If the OFT is to cease operation, whatever alternative arrangements come into play we suggest there should be a very long overlap period during which the OFT logo can be used in connection with approved codes during migration to any replacement scheme. This is important for consumers as there is inevitably an education process to be gone through over any change of name/authority; similarly there is a process of rebranding that members and the association will need to go through – this is an expensive process for the businesses involved and for us as sponsor.

3. We have incurred cost on behalf of our members in the past in achieving approval and do not want to have to go through a reaccreditation process to maintain what we already have
4. There is a very low tolerance level towards any increase in costs of operating an approval scheme and to have nothing in place of the existing arrangements will be tantamount to Government asking us to throw away our current investment. Our members are significantly disadvantaged by Insurance Companies exerting undue control over their businesses whereby they (the insurers) set the rate of pay and the individual businesses are not allowed to determine their own destiny – even allowing for commercial reality). Profit rates are so low there is no tolerance for increased extraneous costs.
5. A move to a Primary Authority style regime would not be seen by us as a complete negative BUT the comments above regarding costs of operation are very important to us.

**Question 12 – Do you think that the arrangements above mean that BSI could offer a suitable alternative approval mechanism, in the absence of CCAS?**

Allowing BSI anywhere near this issue would be seen as a **very big negative** by the industry we represent. I comment above in bullet point 4 to the unfair dominance of insurers in the ‘repair equation’; BSI are directly linked through the Kitemark scheme for body repairers with those very same insurers who insist on kitemarking before they will allow work to be done. Whilst this has had some effect on improved uptake of training it has otherwise only brought huge extra cost and bureaucracy to the equation and further enhanced the insurance industry stranglehold over the repair sector. It is likely that if BSI is offered as a confirmed option, VBRA members would withdraw from any such (CCAS Style) scheme.

BSI whilst regarded generally as an august body is held in low esteem by the repair sector as a cost generator with no direct benefit to business. The body repair Kitemark (PAS125) does not contain a code of practice nor any form of consumer redress.

**Other Options for Code Approval**

Trading Standards are well regarded and have a high public profile. Control of CCAS would be acceptable to our members under their title (but still allowing a long transfer period from OFT to TS badging). Problems we see here would be the plethora of apparently similar and competing ‘good trader’ type schemes they run ‘locally’ which simply muddy the waters for the consumer.

Any replacement for the current scheme **must** have a **nationwide identity** (UK including Scotland, Wales and NI) and the recognition must be across as wide a range of codes as possible or the view of consumers is simply that individual industries are safeguarding their own interests rather than the interests of their customers.

Yours faithfully,

**Malcolm Tagg FCII FIMI  
Director General**

## **Virgin Atlantic Airways**

## Virgin Atlantic Response to BIS consultation document

### Institutional changes for provision of consumer information, advice, education, advocacy and enforcement

Virgin Atlantic is grateful for the opportunity to respond to the consultation and hopes that the comments contained are helpful.

As a UK business with over 7000 employees in the UK alone, Virgin Atlantic prides itself on the excellent levels of customer service it provides. As a business maintaining our reputation for excellent customer service we continue to listen to and understand our customer voice as we believe that this helps us to focus our service and develop our product most effectively. More importantly it ensures that customers return to us, as we are very aware that – thanks to the liberalised sector in which we operate - they do have a choice and can take their business elsewhere.

We also see how consumers have much more access to information through technology and this has changed the landscape of consumer choice and consumer power.

It can be confusing for consumers when they are faced with a number of organisations who claim to represent their interests. Streamlining and refining these channels would enable a focus on specific consumer challenges. As the consultation recognises good businesses have long since developed voluntary codes of practice that do go beyond the law.

We welcome any proposal that looks to make the consumer journey a simple one as well as recognising that over regulation is not always the best response to meeting consumer needs, particularly when this regulation is designed for the lowest common denominator and risks undermining the service provision or potential for market differentiation of the best performing companies.

We would view any regulatory environment that encourages a competitive market as positive. However we would highlight that many UK businesses compete both inside and outside of the UK, under a variety of different regulatory regimes, leading to customer confusion when the UK's own good practice is not followed by all participants in the same markets, making it ever more difficult to ensure consumers receive the same level of protection.

## **Wandsworth Council TS**

## **Wandsworth Council**

### **Response to Department for Business Innovation and Skills Consultation paper:**

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

##### **QUESTION 1.**

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

##### **Response**

Consumers should be able to access consumer information and advice from a range of sources. The Consumer Direct telephone advice line and the internet provide valuable sources 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. The Citizens Advice Bureaux have traditionally offered this service and we believe that the proposals for the CAB to deliver the 'Consumer Direct' consumer advice helpline and associated web-site will present an opportunity to integrate these services with their traditional local facilities which will be of benefit to consumers.

##### **QUESTION 2.**

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

##### **Response**

Yes. See response to question 1. Local trading standards services should be represented at a national level on a governance board to replace the current 'Consumer Direct' service. 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 as 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 on a local or regional basis.

It may be appropriate for LATSS to also have a complementary mechanism in place at a regional or local level for raising local issues, problems or concerns with Citizens Advice and vice versa.

It is important that LATSS are able to continue to receive and act on timely referrals from Consumer Direct and there should be no reduction in the quality and quantity of information they currently receive. We would expect the proposed arrangements to result in an increased level of intelligence and referrals to LATSS provided protocols for exchange of intelligence are put into place at a local level as very few referrals from CAB are currently received.

**QUESTION 3.**

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

**Response**

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

**QUESTION 4.**

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

**Response**

We support 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 as proposed. Citizens Advice Bureaux will need to work closely with LATSS 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 to complain effectively, educating them on the extent, and limits, of their consumer rights, 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 the Citizens Advice Bureaux run have a high media profile to communicate messages to a wide audience. We would hope to see close working relations between the CAB and the Trading Standards Institute who are already active in this area through their Consumer Education Liaison Group.

As the Government acknowledges, consumer education activities for the public at a local level are usually carried out by LATSS using materials developed by the OFT and we welcome the recognition that local authorities should remain responsible for direct delivery of education to consumers at a local level. ‘Skilled to Go’ and ‘No Cold Calling Zones’ have been very successful and should be continued. We believe the government must strike the right balance of funding between Citizens Advice Bureaux and local authorities to support both national and local consumer education.

The primary role for overall co-ordination will sit with Citizens Advice Bureaux if, as proposed, they are given the key national responsibility for this work. However, it is important that they work closely with the proposed TSPB, or alternative arrangements put in place, 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?**

**Response**

Yes. At a local level, most business-facing educational activity is currently carried out face to face with local businesses by LATSS staff or by localised training initiatives. Nationally, there are websites such as 'Business Link' and 'Everything Regulation When Its Needed' (ERWIN). TSI's role to date has been to provide valuable educational materials for LATSS use and business training such as the fair trading award.

It will be important that at a strategic level these are joined up under the scrutiny of the TSPB. However for any of this 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?**

**Response**

The OFT process for approving codes has proved to be a very lengthy process because of the stringent and rigorous requirements imposed by the OFT, which are ultimately to the benefit of consumers. It is essential that whatever new arrangements are made for existing and future CCAS members, they must maintain the status of the current OFT approval, with its nationally recognised independent status. We would like to see the scheme taken over by an independent organisation which consumers and businesses can recognise and have confidence in.

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.

**QUESTION 7.**

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

## **Response**

The private sector already has a range of codes of practice, although many of them do not meet the very high standards required by the OFT for approval. Our concern is that standards of protection for consumers would fall below the stringent requirements of the OFT scheme, which is the gold standard for consumer codes of practice. A private sector scheme of approval will always be subject to commercial pressure which risks a lowering of standards.

We feel that resources will be an issue for local authorities and the voluntary sector in running an alternative system of accreditation. We do not therefore believe a private or voluntary sector solution is an effective alternative to the integrity of the OFT approved codes scheme.

### **QUESTION 8.**

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

## **Response**

The process for code approval adopted by the OFT was extremely lengthy so any future scheme must be capable of being completed in a timelier manner, though not at the expense of the quality of the resultant code.

### **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?**

## **Response to questions 9 and 10**

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

### **Question 11.**

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

## **Response**

Whilst a Primary Authority concept has potential, it would lack credibility, at least in the medium term, with consumers, who have no concept of the scheme.

**QUESTION 12.**

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

**QUESTION 13.**

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

**QUESTION 14.**

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

**Response to questions 12, 13 & 14**

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

Anyone taking on the coordinated, publicly-funded, consumer advocacy function needs to have significant status and combining these functions into one organisation would give it sufficient authority to be able to take appropriate action against major companies that would not otherwise be available.

**QUESTION 15.**

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

**Response**

We have no comment to make.

**QUESTION 16.**

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

**Response**

We have no strong views on this other than 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?**

**Response**

We generally welcome redress schemes that are accessible to consumers and which provide a convenient and cost effective alternative to litigation, to the benefit of both consumers and businesses.

**QUESTION 18.**

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

**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 and 19**

We have no comment to make.

**QUESTION 20.**

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

**Response**

We generally support Option 3 which envisages the transfer of the majority of the OFT's consumer enforcement functions to LATSS with cases involving structural market problems remaining with the CMA and believe that LATSS have the skills, experience and willingness to deliver the outcomes the Government seeks. Our only concern is that adequate resources must be transferred to LATSS in order for them to undertake this additional work.

As well as helping local consumers and businesses, LATSS already do a considerable amount of consumer protection work which has a regional and/or national impact. There are many examples of this happening at present, which include work undertaken to combat counterfeiting, dealing with e-crime, internet scams and rogue traders targeting vulnerable consumers across the country. These are areas the OFT have generally declined to get involved with to date. LATSS also provide Home Authority and Primary Authority support for businesses who operate regionally or nationally.

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. Option 3 also gives LATSS greater freedom and flexibility to be able to work together nationally, regionally and locally and does not impose top down targets and strategies. Clearly the success of this will be dependent upon the amount of funds made 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 Trading Standards Policy Board (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**

Effective leadership, organisation and resourcing of the TSPB will be the most crucial elements of ensuring that the proposed changes to enforcement work effectively. We support 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 senior and experienced trading standards officers 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 would expect the TSPB to direct the work currently done regionally/nationally by local authorities 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, which 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 effective manner but the Government must not dictate what action should be taken. It is important that the TSPB has complete control of the funding for investigations and any legal action.

Clear political accountability and oversight is crucial. We believe that this role should be similar to an overview and scrutiny role within local authorities, whereby designated councillors oversee and scrutinise the TSPB's decisions, performance and financial control. We believe that this should be delivered by the Local Government Group (LGR). The TSPB must have effective

representation from each English region and from Wales and Scotland, and should be modelled on the Local Government Group (LGR), Trading Standards Policy Forum. The Trading Standards Policy Forum comprises: LGR officers; TSI officers; a representative of the Association of Chief Trading Standards Officers (ACTSO); and a regional representative nominated by each region/country from their Heads of Trading Standards Group. The forum is the high level advisory group to LGR on Trading Standards matters. It may be appropriate to include representatives of the Citizens Advice service and the CMA on the TSPB, but this would be dependent upon the TSPB terms of reference.

The ‘Chairman’ of the TSPB 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 may be appropriate to appoint an independent Chairman. If it is determined that an independent chairman is required, then we believe it must be someone with significant experience of Trading Standards issues and it may be appropriate for funds to be made available for remuneration. It is difficult to see how an existing head of trading standards could undertake these duties in addition to their normal duties.

The TSPB will need a 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. A decision will need to be made as to who should deliver the secretarial function.

Transformation of this type cannot be achieved if the relationship between BIS and the TSPB is seen as a form of outsourcing or procurement arrangement. It can only work as a partnership between central and local government services. In terms of any transition, the TSPB will be extremely reliant upon BIS providing advice and support on contractual or legal issues.

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

We would expect the delivery mechanisms to be focussed on commissioning groups of authorities, or lead authorities, with support where appropriate from the regional groups, to deliver functions and projects, using funding allocated. It may also be appropriate that other functions may be carried out by other organisations such as TSI and the private sector, particularly in relation to training.

We would not expect individual local authorities, or even all regions to undertake work or apply to lead on any the national work. It would be for each authority or region to assess their capabilities in terms of expertise and resources before applying to lead a project as it is crucial that any region or council that bids for aspects of the work are absolutely confident they can deliver. We do have concerns that some of the regions will not have the appropriate capability and it is a matter for concern that these projects will be dominated by a few authorities or regions.

We would expect the current ‘Scambuster’ and illegal money lending teams to continue using the same delivery mechanisms, but under the governance of the TSPB rather than direct governance of BIS.

**Indemnity Fund** - any individual local authority taking on a national case must not be put at financial or legal risk and a method of underwriting or insuring against any such risk must be developed. It is essential that all the costs of the investigations and legal liabilities are underwritten. Without the indemnity fund being in place we cannot envisage any council undertaking any national high risk investigation or legal action.

**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, 23 and 24**

We do not wish to maintain the status quo in terms of powers and responsibility as this would produce additional bureaucracy and the costs associated with a new organisation, but with few clear benefits.

As the Government identifies in the consultation paper, there would not be the necessary resources to create national and regional enforcement infrastructures in LATSS. The JEB would also not be controlled by heads of trading standards and could not be held accountable in the same way. This option would make it far more difficult to achieve the leadership role that the Government hopes 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 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.

**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 questions 25, 26, 27, 28 and 29**

We agree that there are benefits in CMA retaining a consumer enforcement role only in those cases where a potential breach of consumer law is connected to a structural market problem, such as the bank charges type of case. 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 are concerned that if this was the case, it would reduce the resources for LATSS to deliver the new consumer landscape under the proposals. There must be effective communication and a good working relationship between the TSPB and CMA to ensure that intelligence can be shared and 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 but we do not believe that there should be a duty on the TSPB to investigate cases referred to them by the CMA or others.

**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**

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

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

**QUESTION 32.**

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

**Response**

LATSS have extensive enforcement experience of dealing with rogue traders and illegal activities within their own communities, including many with a national impact. LATSS take far more prosecutions than the OFT and have confiscated a substantial amount of assets from criminals in the consumer protection field. We believe that the threat of enforcement can help to deter non-compliance and can effectively back up self-regulatory schemes. LATSS have always used a wide range of tools to ensure compliance including cautions, fixed penalty notices, civil orders, injunctions and criminal prosecutions. We do not believe that there will be any problems with an enforcement model 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?**

**Response**

TSI could well 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, there are other sources of what is essentially legal and enforcement training and we expect some form of procurement process to be in place if this guidance and training function is to be purchased via LATSS or the TSPB.

**QUESTION 34.**

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

**Response**

We are aware of TSI's strong role and expertise in relation to European and international work in consumer protection and their involvement as the European Consumer Centre, but TSI is not a publicly accountable body and we would therefore prefer to see it sit with the LATSS secretariat.

**QUESTION 35.**

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

**Response**

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

**QUESTION 36.**

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

**Response**

We agree that the Chairmanship of the consumer concurrencies group should pass to the CMA. Though the relevance to the CMA is likely to be limited if most consumer protection functions are removed from it, it is a publicly accountable body.

**QUESTION 37.**

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

**Response**

Yes, as we anticipate that most 'supercomplaints' will relate to market failings.

**Question 38.**

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

**Response**

Yes, it is essential that the work of TSPB is seen to be transparent and is accountable for its decisions.

**QUESTION 39.**

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

**Response.**

We agree that a lead local authority could take on the OFT’s estate agency and related anti-money laundering functions. However, fraudulent activities or activities where consumers are misled by estate agents are currently dealt with by LATSS under legislation such as the Fraud Act, the Property Misdescriptions Act and the Consumer or Business Protection from Unfair Trading Regulations. LATSS already carry out inspections on behalf of the OFT and we believe that it could take on the OFT’s estate agency and related anti-money laundering functions, although this would need to be supported by appropriate funding arrangements.

**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?**

**Response**

We agree that the proposed changes to the consumer landscape should go ahead in April 2013 even if the creation of the CMA is delayed.

---

## Warwickshire CCTS\*



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

### **“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 Service of Warwickshire County Council.

#### **SPECIFIC CONSULTATION QUESTIONS**

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

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

We believe the key issue is injecting sufficient resource in good time to ensure proper preparation of processes, training of staff and putting information sharing gateways in place between CAB and TS before the system goes live. We believe there is a lot of merit to having an interactive website with template letters to enable consumers to help themselves, however vulnerable consumers still have the option for telephone, face to face assistance.

It is vital that the data obtained from consumers is accurately recorded on a database that can be accessed by Trading Standards (TS). Without ready access to this information Trading Standards Services will not be able to seek out, and swiftly respond to, trends in consumer complaints.

Yes the transfer of information should pass to CAB to incorporate within their current consumer information provision and they already have good communication skills of dealing with people.

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

Yes.

##### **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 co-ordinated?**

Yes the CAB should take on national educational roles with support from local authorities where they may ‘opt in’ to campaigns relevant to them. National awareness weeks create good publicity and awareness for consumers, especially if backed up by local Trading Standards Services.

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

It makes sense and creates consistency for one body to offer and provide business advice booklets. The quality of advice should be to current OFT standard and, where practicable, be sector specific.

**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?**

Answer to Q6-11.

Businesses could be encouraged to make use of their trade bodies' codes of practice or make use of local authority approved trader schemes in the absence of the CCAS. BSI already provide a centre of excellence in the creation of standards and auditing work; we believe their involvement could provide considerable benefit in terms of maintaining standards and consistency nationally.

Using primary authority to operate the certification would be very resource intensive for a local authority unless significant financial resource was provided by the code provider.

**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?**

Q12-19

Combining as many functions in one place will create a strong brand that consumers will recognise as being able to assist them.

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

We prefer option 3, however following recent budget reductions we have concerns as to whether sufficient resources are currently available in local authorities to be diverted to new responsibilities.

**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?**

Q21-23

Our main concern with the new model is that a new infrastructure, people and skills will be required to take on the work. We consider this to be a particular problem if new project teams are funded for relatively short periods of time, as it takes time to put infrastructure in place and develop staff to become experts in a particular field.

We believe the focus of the national teams should be specified, for example national consumer protection cases (including unfair terms), doorstep crime rogues, scams, loan sharks. Conversely, regional “Scambusters” teams currently investigate any cases with level 2 (ie cross boundary) implications. We believe that continued funding of generic regional teams would not be consistent with the new model of enforcement.

We believe an indemnity fund is an essential ingredient to effective enforcement. Definition of the criteria for accessing the fund needs to be drawn up.

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

Working with business will still be mainly delivered by local authorities.

**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?**

**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?**

Q26-28

Yes we agree. The CMA should have flexibility and not be restricted.

**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 should be no duty on the TSPB to prioritise cases. The TSPB should take an intelligence-led approach in its work, drawing information / referrals from a number of sources, and task teams according to areas of greatest priority.

We believe the CMA should continue to carry out market studies to identify areas of detriment.

**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, we agree.

**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 bodies should be able to communicate and work together without the need for formal restrictions of the use of any portion of the funding, unless that funding was an additional resource.

**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 branding is irrelevant to the issue of deterring illegal behaviour, instead the key issue is the availability of effective sanctions against non compliant businesses. We are aware that new sanctions for Trading Standards enforcers (made under the Regulatory Enforcement & Sanctions Act) were due to be piloted; we would welcome progress in this area.

**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?**

Q33-34

Assuming TSI were awarded the contract on conclusion of an appropriate procurement process, we agree this could be an appropriate home.

**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?**

This requirement should be removed. The CRW/CRC databases do however need to be maintained to ensure consistent enforcement under the EA2002.

**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?**

An independent chairman should be appointed, to ensure that there is no conflict of interest.

**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?**

Q37 – 38

Super complaints should be made to CMA due to their wider structural view of the effected market, but not to the TSPB unless it was relevant to one of the specific national teams.

**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 this duty should fall to a fully funded specialist team, which could be hosted by a local authority.

**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, the changes should be implemented as soon as possible to remove any uncertainty for business and the enforcement community.

## **FURTHER INFORMATION**

If you have any queries about the content of our response and wish to discuss the matters further, please contact Janet Faulkner via [janetfaulkner@warwickshire.gov.uk](mailto:janetfaulkner@warwickshire.gov.uk)

**Janet Faulkner  
Group Manager Trading Standards**

23 September 2011

## Water UK



27 September 2011

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

1 Queen Anne's Gate  
London SW1H 9BT  
Telephone 020 7344 1844  
Fax 020 7344 1866  
e-mail [contact@water.org.uk](mailto:contact@water.org.uk) website  
[www.water.org.uk](http://www.water.org.uk)

Pamela Taylor  
Chief Executive

Dear David

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

Water UK represents all UK water and wastewater service suppliers at national and European level. We provide a positive framework for the water industry to engage with government, regulators, stakeholder organisations and the public.

We are pleased to respond to this consultation. In doing so, we are focussing on the consumer advocacy proposals, which have a particular relevance to the water sector, rather than on other parts of the consultation.

Consumer representation and advocacy plays a key role in the water sector, due to the regulated monopoly nature of the sector and the complexity of the multi-stakeholder issues affecting it. This complexity is notably greater than in other regulated utilities, due to the larger number of regulated companies – so in effect price reviews consist of over twenty separate local price review processes – and the fact that, in contrast to other regulated sectors, it is the whole value chain that is regulated rather than only part of it.

Continued...

The water industry therefore supports the principle of having a strong, independent consumer body with a specific focus on water.

While the new institutional model proposed in the consultation for consumer advocacy may be appropriate for general consumer advocacy, in our view it is not appropriate for the water sector, and it would diminish the effectiveness of consumer advocacy and the handling of customer complaints compared to the current arrangements.

In holding this view, we support and endorse the recommendation of the *Review of Ofwat and consumer representation in the water sector* (“the review”) that the Consumer Council for Water (CCWater) should be retained in its current role in relation to England and Wales.

We would also note that under the current arrangements, there is absolute clarity that money that is ultimately raised from water consumers to fund CCWater is used for the benefit of water consumers and not for other purposes. In any alternative cross-sectoral model for consumer advocacy, that absolute clarity could be lost, especially in an overall context of constraints on public expenditure.

The water industry is already starting to plan for the next price review, where it is crucial that consumers’ views are fully taken into account, and wishes to engage effectively with consumer representatives. At the same time, CCWater needs to develop and adapt to meet future needs.

In view of this, any remaining uncertainty over the future of CCWater is unhelpful. We therefore urge the UK and Welsh Governments to confirm the retention of CCWater, in line with the review’s recommendation, at the earliest possible opportunity.

The situation in Scotland is different, following the recent transfer of responsibilities from Waterwatch Scotland to Consumer Focus Scotland (for consumer advocacy and information) and the Scottish Public Services Ombudsman (for resolving complaints).

These new arrangements have only just been put in place. While early indications are positive, a period of stability is needed to allow these new arrangements to bed in. This is particularly important given that consumer advocacy will play a key role in ensuring that consumers’ views are at the heart of the next price review in Scotland, which will take place in 2014.

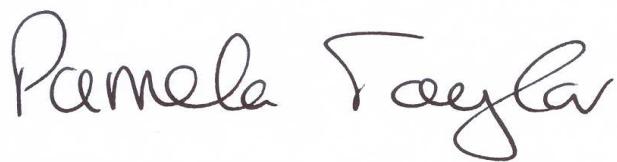
Continued...

In view of this, it would be premature to consider any further changes to consumer representation and advocacy in Scotland in relation to the water sector.

In the annex to this letter we expand on these in points in response to relevant consultation questions.

Given that, as the consultation notes, the decisions for sectoral bodies are to be made by relevant Departments or Devolved Administrations, I am copying this response to Sonia Phippard at Defra, Nicola Thomas at the Welsh Government and Bob Irvine at the Scottish Government.

Yours sincerely

A handwritten signature in black ink that reads "Pamela Taylor". The signature is fluid and cursive, with "Pamela" on the top line and "Taylor" on the bottom line.

**Pamela Taylor**

cc     Sonia Phippard, Defra  
         Nicola Thomas, Welsh Government  
         Bob Irvine, Scottish Government

Encl.

## Annex      Responses to consultation questions

### Response to specific consultation questions

Water UK represents all UK water and wastewater service suppliers at national and European level. We provide a positive framework for the water industry to engage with government, regulators, stakeholder organisations and the public.

In responding to this consultation, we are focussing on the consumer advocacy proposals, which have a particular relevance to the water sector, rather than on other parts of the consultation. We are therefore only providing responses to the specific consultation questions below.

#### **Q12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?**

Consumer representation and advocacy plays a key role in the water sector, due to the regulated monopoly nature of the sector and the complexity of the multi-stakeholder issues affecting it. This complexity is notably greater than in other regulated utilities, due to the larger number of regulated companies – so in effect price reviews consist of over twenty separate local price review processes – and the fact that, in contrast to other regulated sectors, it is the whole value chain that is regulated rather than only part of it.

The water industry therefore supports the principle of having a strong, independent consumer body with a specific focus on water.

While the new institutional model proposed in the consultation for consumer advocacy may be appropriate for general consumer advocacy, in our view it is not appropriate for the water sector, and it would diminish the effectiveness of consumer advocacy compared to the current arrangements. We therefore do not consider that the vision of combining as many sectoral advocacy functions as possible into the Citizens Advice service is the correct one, and in particular do not support including the water sector advocacy function in the Citizens Advice service.

In holding this view, we support and endorse the recommendation of the *Review of Ofwat and consumer representation in the water sector* (“the review”) that the Consumer Council for Water (CCWater) should be retained in its current role in relation to England and Wales.

This review was established jointly by Defra and the Welsh Assembly Government, with terms of reference to consider (*inter alia*):

- How effective the current arrangements, involving Ofwat and the Consumer Council for Water, are in protecting consumers and ensuring that their views influence the way the water sector is managed and regulated

We agree with the findings of the review that retaining CCWater would:

- Maintain a strong specialist focus for consumer representation in this monopoly sector;
- Have one organisation handling all of the water consumer functions, ensuring knowledge gained from one activity is transferred to another;
- Retain legitimacy in the eyes of the other sectoral players during the price review as a true customer representative with the necessary expertise;
- Potentially provide a vehicle for other functions; and
- Maintain an approach which has been shown to work well in practice

We also share the concerns expressed by the review that moving to the alternative model proposed in the consultation, based around the Citizens Advice service, would risk less effective consumer representation due to the loss of a specialist sector body and in particular a loss of effectiveness at a time of major change in the way the sector is regulated.

Despite the comments above, the industry recognises and values the important role that Citizens Advice plays in providing advice and support to individual consumers, particularly some of the most vulnerable consumers, and the role it plays more broadly in advocating the interests of vulnerable consumers.

The industry, and individual companies, has positive relations with Citizens Advice, and wishes to build on these relationships.

There can however at times be a tension between advocating the interests of individual vulnerable customers (or vulnerable customers more generally) and advocating the interests of consumers as a whole – which is a further reason why it would be more appropriate to maintain the current distinction between the separate, and valuable, roles played by Citizens Advice and CCWater.

There are particular issues to consider in relation consumer advocacy for the water sector in Scotland. These are covered in our response to Question 15 below.

**Q13. Do you agree with the design principles for the regulated industries unit as set out in paragraph 4.34?**

As set out in our answer to question 12, we do not support the inclusion of water sector advocacy within any proposed regulated industries unit, as in our view this would weaken advocacy of water consumers' interests. In contrast we support retaining the current arrangements of CCWater fulfilling this role.

In view of this, if the government were minded to establish a “regulated industries unit” with a remit covering some other regulated sectors, we suggest that a design principle should be that such a unit should have strong links with, and where appropriate work in partnership with, sector-specific consumer advocacy bodies such as CCWater.

This would be to ensure that any learning points between different regulated sectors, such as on best practice on consumer advocacy and on the combined impact of infrastructure investment across different sectors, could be captured effectively, without the disruption and loss of effectiveness that would be caused by institutional changes.

**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?**

As our role primarily relates to the water sector, we are not best placed to provide a view on this question. However, as noted above, we support the retention of CCWater as an independent, sector-specific consumer advocate, and so would not support its role being transferred to Citizens Advice, whether or not Consumer Focus was abolished.

We note the comments in the consultation about pressures for individual consumer bodies to reduce their budgets in the current economic climate. We would observe that these pressures are likely to be particularly acute for consumer bodies that are dependent in whole or in part on public funding, such as Consumer Focus, as opposed to those – such as CCWater – that are funded by the companies (and ultimately the customers) in specific sectors without recourse to public funds.

We comment below in our answer to Q15 on Consumer Focus Scotland.

**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?**

The current arrangements for water consumer representation in Scotland are different from those in England and Wales. Responsibilities have recently been transferred from a single water consumer body, Waterwatch Scotland, to Consumer Focus Scotland (for consumer advocacy and information) and the Scottish Public Services Ombudsman (for resolving complaints).

These new arrangements have only just been put in place. While early indications are positive, a period of stability is needed to allow these new arrangements to bed in. This is particularly important given that consumer advocacy will play a key role in ensuring that consumers' views are at the heart of the next price review in Scotland, which will take place in 2014.

In view of this, it would be premature to consider any further changes to consumer representation and advocacy in Scotland in relation to the water sector. The best way to reflect Scottish consumer interests would be ensure that the arrangements for representing consumers in Scotland were based on the needs of Scotland, rather than simply seeking to apply a standard model across the whole of Great Britain.

In relation to Wales, the current consumer arrangements for the water sector allow for specific Welsh consumer interests to be reflected, through the regional structure of CCWater. As noted above, we support the retention of CCWater for both England and Wales.

In relation to Northern Ireland, the consultation's proposals would not affect the consumer arrangements for the water sector in Northern Ireland, and we agree that this is appropriate.

**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?**

As noted above, we would not support the transfer of consumer advocacy for the water sector to Citizens Advice. We therefore do not support any transfer of information gathering powers in relation to the water sector.

Should Citizens Advice have legitimate reasons for wishing to have specific information relating to the water sector, it could request information directly from individual companies, from the sectoral consumer body, CCWater, or from the regulator Ofwat, as at present.

**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?**

In the water sector, arrangements for customers to seek redress differ between Scotland and England and Wales.

In Scotland, following the transfer of responsibilities from Waterwatch Scotland, customers who are not satisfied by the outcome of a complaint to their water and sewerage service provider can seek assistance from the Scottish Public Service Ombudsman.

These new arrangements have only just been put in place. While early indications are positive, a period of stability is needed to allow these new arrangements to bed in. In view of this, it would be premature to consider any further changes to the means for Scottish water customers to seek redress.

In England and Wales, customers can seek assistance from CCWater, as the statutory consumer body, and these arrangements work effectively.

As noted above, we support the retention of CCWater and therefore do not see any need to consider changing the current arrangements for customers seeking redress.

We also note that water companies already have strong incentives to resolve complaints effectively and efficiently through the regulatory Service Incentive Mechanism, through which customers score companies on their overall customer experience, and there is a specific incentive to resolve customer complaints without needing to involve CCWater.

## Welsh Government

**Carl Sargeant AC / AM**  
**Y Gweinidog Llywodraeth Leol a Chymunedau**  
**Minister for Local Government and Communities**



---

Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref  
Ein cyf/Our ref CS/06022/11

Ed Davey MP  
Parliamentary Under-Secretary of State for  
Employment Relations and Consumer and  
Postal Affairs  
Dept for Business, Innovation & Skills  
1 Victoria Street  
London  
SW1H 0ET

September 2011

A handwritten signature in black ink that reads "Dear Ed,"

**Empowering and Protecting Consumers**

As Minister for Local Government and Communities, I have pleasure in forwarding the attached submission from the Welsh Government in response to the consultation on your proposals for institutional changes for the provision of consumer information, advice, education, advocacy and enforcement (Empowering and Protecting Consumers).

Yours sincerely

A handwritten signature in black ink that reads "Carl".

**Carl Sargeant AC / AM**  
**Y Gweinidog Llywodraeth Leol a Chymunedau**  
**Minister for Local Government and Communities**

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

*Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)*

English Enquiry Line 0845 010 3300  
Llinell Ymholaethau Cymraeg 0845 010 4400  
Correspondence.Carl.Sargeant@wales.gsi.gov.uk  
*Printed on 100% recycled paper*

Response of the Welsh Minister for Local Government and Communities to  
*Empowering and Protecting Consumers*, the UK Government's consultation  
paper on institutional changes for provision of consumer information, advice,  
education, advocacy and enforcement

As Minister for Local Government and Communities in the Welsh Government, I welcome the opportunity to respond to Empowering and Protecting Consumers, the UK Government's consultation on its proposals for institutional changes for the provision of consumer information, advice, education, advocacy and enforcement.

Consumer policy is not devolved, but the Welsh Government has a close interest in the UK Government's proposals on several levels. Our priority is to ensure that the people of Wales continue to have strong, well-informed and accessible mechanisms to protect them from consumer exploitation. We also consider that several of our policies, especially in support of vulnerable groups (such as those concerning fuel poverty and financial inclusion), complement very closely key elements of the UK Government's own consumer policy.

I welcome the UK Government's preparedness to engage with the Welsh Government in developing the proposals set out in the White Paper and its recognition of the need to respect the devolution settlement with regard to Wales.

#### 1. Consumer advocacy

The Welsh Government has considered very carefully the proposals to abolish the National Consumer Council (known as "Consumer Focus") and its statutory territorial committee for Wales (known as "Consumer Focus Wales"). Consumer Focus Wales, has done much outstanding work on behalf of consumers in Wales and has achieved a very high reputation for the quality of its research, investigation and reporting of a wide range of issues and concerns.

The Welsh Government considers that Welsh consumers need a strong independent voice, based in Wales to protect them from consumer exploitation. Accordingly, the Welsh Government wants to ensure that the activities, services and functions currently undertaken by Consumer Focus Wales are fully maintained after the changes envisaged in the Public Bodies Bill are implemented.

We acknowledge that since their publication, the proposals set out in the White Paper have been subject to further development and clarification in the discussions which have taken place between officials in our departments and officers of the organisations involved. Nevertheless, the Welsh Government continues to have concerns about how the UK Government's proposal to transfer responsibilities from Consumer Focus to Citizens Advice might work

in Wales, given the resources and role to date of the proposed successor body for Wales, Citizens Advice Cymru.

The Welsh Government's concerns focus on three issues:

- Governance of the proposed new organisation;
- Empowering the proposed new organisation; and
- Staffing and funding of the proposed new organisation.

(i) *Governance*

The Consumers, Estate Agents and Redress Act 2007 (the "2007 Act") established Consumer Focus Wales as a statutory territorial committee of Consumer Focus (the "National Consumer Council"). The 2007 Act also bestows on Consumer Focus Wales the exercise of specified functions of the parent body insofar as they are exercisable in relation to Wales.

The provisions mean that Consumer Focus Wales has a clear identity based in and drawn from Wales and has a clear remit to take up issues which are relevant to Welsh consumers.

In contrast, Citizens Advice Cymru is a weaker body constitutionally in relation to its parent body, than is the case with Consumer Focus Wales. Citizens Advice Cymru is not a separate entity (unlike Citizens Advice Scotland); nor does it have the degree of constitutional autonomy accorded by statute to Consumer Focus Wales.

The Welsh Government does not favour Citizens Advice Cymru becoming a separate body, but believes strongly that Citizens Advice Cymru must be given a clearer and a more robust constitutional identity within Citizens Advice (England and Wales) than it has at present.

To undertake the role exercised so successfully by Consumer Focus Wales, Citizens Advice Cymru must be governed by a Welsh Committee which is able to draw on experience and expertise from all relevant sectors across Wales (including those associated with the new responsibilities). Citizens Advice Cymru must also be given a clear remit to allow the organisation to take up issues across the board which are relevant to Welsh consumers.

Discussions are continuing with Citizens Advice and Citizens Advice Cymru about the governance arrangements, but the Welsh Government believes that further work is needed to ensure that the Welsh Committee of Citizens Advice Cymru is sufficiently representative of the organisation's enhanced responsibilities and that the remit accorded the body is sufficiently comprehensive. Without such development, the Welsh Government believes that Citizens Advice Cymru may not be able to provide the same level of service to Welsh consumers that Consumer Focus Wales has provided in recent years.

*(ii) Empowerment*

The 2007 Act bestows on Consumer Focus Wales powers and duties of investigation, reporting and representation in relation to businesses, public bodies, energy companies and postal services. These provisions provide the tools by which Consumer Focus Wales is able to take action to protect, support, educate and inform consumers across Wales.

The Welsh Government is concerned by the lack of detail in the UK Government's proposals about how the successor bodies will be empowered to carry out their important responsibilities. The Welsh Government believes that more clarification is needed about whether and how the powers and duties of Consumer Focus under the 2007 Act will translate to Citizens Advice.

Further clarification is also needed about the procedure whereby powers and duties that are transferred to Citizens Advice are to become exercisable in relation to Wales by Citizens Advice Cymru. Confirmation of such a procedure is needed to ensure that the new model for Wales truly replicates the existing one.

The Welsh Ministers have had a positive working relationship with Consumer Focus Wales, helped in no small way by the statutory obligations placed on the organisation to engage with the Welsh Ministers. The obligations cover consulting on forward work programmes, sending the Welsh Ministers copies of annual reports and providing advice and information on consumer affairs.

The Welsh Government would like to see such obligations retained for the Welsh successor body; the kind of work picked up by the consumer body complements very closely many of the key policy responsibilities of the Welsh Government.

*(iii) Staffing and Funding*

If the new arrangements are going to work effectively in Wales, a commitment is needed from the UK Government that the Welsh body will be resourced to ensure that there is no reduction in capacity or capability in the Wales-level organisation.

The success of Consumer Focus Wales is due in no small part to it having had funding and the staffing resources to undertake a wide range of activities on behalf of consumers in Wales. Citizens Advice Cymru is much smaller and does not have an equivalent dedicated policy and research capability focused on Welsh needs and circumstances.

The UK Government must ensure that the successor body for Wales has funding comparable to that currently available to Consumer Focus Wales, to enable the new organisation to afford consumers across Wales the same level of support which they enjoy under the current arrangements.

It is also important that the final decision on future arrangements is taken as soon as possible – the uncertainty is causing staff of Consumer Focus Wales to move to new postings elsewhere, which removes the possibility of their valuable experience and expertise being transferred to the new organisation.

(iv) *Alternative Proposal*

The Welsh Government will continue to work with all parties to try to ensure that the UK Government's proposals will deliver arrangements in Wales which will entail, at the very least, no reduction in the level of support afforded to consumers across Wales.

Nevertheless, we continue to have some concerns about the new arrangements. In particular we are concerned that the UK Government will not be able to use legislation in the same way as it was able to with Consumer Focus to place obligations on Citizens Advice, which is a third sector body. We also believe that there is a risk that the framework for the new bodies will be incomplete and, as a result, the services available to consumers in Wales will be impaired and even diminished.

Accordingly, the Welsh Government suggests that it is prudent for the UK Government to consider the safeguard of making provision which would permit the transfer of the Consumer Focus Wales functions to the Welsh Ministers and allow the Welsh Ministers in turn to transfer the functions on to an existing body or to a new body created by order for the purposes of exercising those functions.

2. Enforcement: Trading Standards and the Competition and Markets Authority

The Welsh Government notes with interest the UK Government's proposals which envisage the creation of a new Trading Standards Policy Board to provide leadership and co-ordination of Trading Standards in identifying and tackling regional and national threats and the establishment of the Competition and Markets Authority.

The UK Government's proposal for Trading Standards appears to be broadly in line with our own stated aspiration for an all-Wales service for Trading Standards. In addition, the Welsh Government is currently considering the recommendations of the Simpson Review Group (which examined how local government in Wales might perform better if it were to review and realign the commissioning and delivery of some of its functions). The Review Group considered various regulatory concerns (illegal money lending, trading standards, food standards and food hygiene, air quality and land contamination) and recommended that where the regulatory risks were regional or national the regulatory service should collaborate to deliver on a regional or national basis.

We believe that further dialogue is needed at all levels to consider the practicalities of achieving greater collaboration between Trading Standards services and also more co-ordination with other regulatory services and the new Competition and Markets Authority.

Towards these ends, the Welsh Government will be pleased to have conversations with the UK Government, the services and the regulators about the practicalities of more collaboration within Trading Standards, and how such collaboration might be resourced, retain local accountability and engage with the national enforcement agencies.

## West Yorkshire TS



Bradford Calderdale Kirklees Leeds Wakefield

# West Yorkshire Joint Services

West Yorkshire Joint Services  
P.O. Box 5, Nepshaw Lane South, Morley,  
Leeds, LS27 0QP  
Tel.: 0113 253 0241  
Fax: 0113 253 0311  
Web site: [www.wyjs.org.uk](http://www.wyjs.org.uk)

Chief Officer: Graham Hebblethwaite B.Soc.Sc., D.T.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”**

### **1. Background**

West Yorkshire Joint Services (WYJS) is responsible for the delivery of Trading Standards Services (WYTSS) across 5 metropolitan districts: Bradford, Calderdale, Kirklees, Leeds and Wakefield and in population terms is the largest single trading standards service in the country. WYJS welcomes the proposals to make Trading Standards central to the delivery of consumer enforcement functions. WYTSS officers have supported ACTSO in preparing their response and as such the WYTSS responses largely mirror those of ACTSO.

### **2. Specific Consultation Questions**

#### **Chapter 2 – Information, advice and education**

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

Consumers should be able to continue to receive a range of consumer information and advice. The specification for the CitA contract includes provision for enhanced services over and above telephone and online, including face to face via greater integration with the CAB network. 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, through LATSS or through specific local partnership arrangements with local Citizens Advice Bureaux.

It is important that the high level of consumer advice now provided by CD is maintained and new developments including web chat should be considered in the future.

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

WYJS 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.

At a national level in England and Wales, heads of trading standards should be represented by ACTSO on a governance board for the replacement for Consumer Direct services. Each trading standards service should 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.

WYJS is currently actively pursuing a continuing role in the delivery of the CD successor service and is planning to work very closely with CitA to ensure an improved service is created with TS stakeholder engagement a priority.

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

WYJS 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?*

WYJS 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.

One area that WYJS has pioneered with “Money Skills” is that of financial literacy, which we believe to be the most important area to focus on. Projects such as these are most effectively carried out by a specialist central team covering wider regions, which support local initiatives, but have cost effectiveness due to the wider coverage.

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. CitA through its bureaux network has the potential to provide enhanced more local coverage in partnership with LATSS. 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?*

Business Link and also Everything Regulation When Its Needed (ERWIN) are key players in this particular field and the Primary Authority scheme is important in ensuring that businesses receive the most effective support. The TSPB and TSI will need to support and add value without duplicating effort..

### **Chapter 3 – Consumer Code Approvals**

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

*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?*

To avoid the situation where businesses abide by the letter but avoid the spirit of a code, any such would need to have a strong principles based element. WYJS has some concern that Standards produced by BSI tend to be very focussed on developing specific and definite clauses and do not like including broader based requirements.

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

Further to Q9. WYJS has a concern that to facilitate auditing of a “kitemarked” code there would be a bias towards defined clauses which could lead to businesses being deemed compliant because they meet the letter of the code but are not fulfilling the spirit of a consumer code.

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

As Primary Authority for nearly 50 businesses WYJS has some concern that national interpretations of legislation are being made by individual authorities through the provision of Primary Authority advice, whereas previously LACORS / LG Regulation had mechanisms for interpretations to be made on behalf of the wider Trading Standards profession. Further there is the potential for different Primary Authorities to offer different advice on the same subject.

WYJS has a concern that a similar situation could occur with regard to code certification. Any mechanism that would allow consumer codes to be certified by a Primary Authority would need some form of national oversight.

WYJS considers that there should be provision for locally run schemes to be recognised within other similar schemes operated in other areas.

#### **Chapter 4 – 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?*

*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?*

WYJS 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.

*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?*

No comment.

*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?*

*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**

### **Options for reform**

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

WYJS wholeheartedly supports the separate ACTSO response and 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. WYJS 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. 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.

Like ACTSO, WYJS does not believe Option 3 would undermine the provisions of the Localism Bill, providing it gives LATSS greater freedom and flexibility to be able to work together nationally, regionally and locally and does not impose top down targets and strategies.

Clearly the success of this 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?*

WYJS endorses the separate ACTSO response in that effective organisation of the TSPB will be the most crucial element of ensuring that the changes to enforcement work effectively and mirrors the response as follows.

#### Principle

WYJS 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;
- 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, 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

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.

We would want this delivered by the LG Group with WLGA represented either by a directly appointed person or by an LG Group member from a Welsh Authority (this would be for the WLGA to decide). Reports could be given to a programme board within the LG Group but we are concerned that they would not have the time and capacity, alongside very full board agendas, to carry out an effective scrutiny role. Instead we would recommend that a small sub group of maybe 3-4 members take the role. Specific terms of reference and arrangements would need to be agreed later but we would envisage that they would need to meet for perhaps twice per year and may wish to receive written updates in between meetings.

### 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. It is understood that this could be provided by TSI, which would make sense. 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 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.

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. It is recognised that effective co-ordination at a regional level is essential to achieve this. In addition we would expect there to be representation from ACTSO, WHoTS, SCOTSS and TSI on that Board plus other representatives such as BIS.

In a similar way to the operation of the current TSPF, others would be invited at attend meetings to share information, intelligence and advice (e.g. Citizens Advice, CMA etc ), as required.

#### 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 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 . TSI would seem the most appropriate organisation to fulfil this role.

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

The TSPB would be a separate but linked group to the existing TSPF. WYJS agrees with ACTSO and 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.

WYJS believes that members of the TSPB should be the same as those nominated to the TSPF, albeit there should be a substitute nominee to help share responsibilities and workloads or to cover for absences.

We anticipate that in the first year the TSPB would need to meet more often than the TSPF. Travel costs for members of the TSPB would need to be

covered. If meetings are to be held on the same day, we recommend that the business is kept completely separate (e.g. by splitting the 2 parts as half a day each etc.).

### 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 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.

It is expected 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.

WYJS agrees with ACTSO 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 Scambuster and Illegal Money Lending teams, WYJS 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 but not be put at significant financial/legal risk and as such BIS, working with ACTSO and the TSPF, 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 it is unlikely that any council would want to 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?*

WYJS is not in favour of the compromise options in the JEB models which it considers would bring 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.

WYJS 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?*

WYJS endorses the ACTSO response and 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.

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, there should not 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?*

WYJS endorses the ACTSO views and 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. the "Fighting Fund" that BIS made available to support LATSS enforcement activity was welcome, but 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?*

WYTSS along with many other LATSS have years of enforcement experience of dealing with rogue traders and illegal behaviour within its communities including many with a national impact. Councils take far more prosecutions than the OFT and nationally 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. WYJS 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 would seem the most appropriate organisation and could of course buy in any necessary specialist expertise.

**Most international liaison and OFT's general consumer policy work**

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

TSI would seem the most appropriate organisation to deal with this.

**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?*

WYJS agrees that the TSPB could coordinate responsibility for orders under the Enterprise Act

**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?*

WYJS agrees with the ACTSO response and 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?*

These proposals seem to make sense.

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

WYJS believes 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?*

WYJS agrees that the proposed changes to the consumer landscape should go ahead in April 2013.

## Which?

# CONSULTATION RESPONSE



Contact: John D Holmes, Principal Economist  
T: 020 7770 7645  
[john.holmes@which.co.uk](mailto:john.holmes@which.co.uk)

## Empowering and protecting consumers

This is Which?'s response to the BIS consultation "Empowering and protecting consumers: consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement", dated June 2011.

The consultation sets out many of the practical issues arising from some of the most significant reforms to consumer protection in over 30 years. It focuses upon the allocation of responsibilities and powers between agencies to enforce the law or raise standards of conduct in markets.

The consultation does not provide a full description or explanation of problems affecting existing delivery of consumer protection and therefore why such far reaching structural reforms are both necessary and sufficient to address these problems. Instead, a significant portion of this consultation deals with resolving problems in clarity of responsibility that arise solely as a result of the proposed reform.

Which? has approached this consultation as an opportunity to strengthen consumer protection. We shall be certain to play our role, whether individually or in partnership. Our views below reflect our position as Europe's largest independent consumer representative body.

### Structure of response

This response first summarises our general views on the proposed reforms. We describe the existing services and information that Which? supplies to consumers. We then set out our views on issues of key importance, including: the role of advocacy in relation to regulated industries, access to data, effective national enforcement and the implication of the proposed institutional boundaries on market studies and super complaints. We conclude with response to specific questions if appropriate and not addressed elsewhere.

## General views

Which? considers the objective of reforming the consumer landscape should be to achieve markets where consumers and fair dealing firms can rely upon:

- *Empowered, confident consumers:* people are better informed of their rights, able to secure prompt redress (with those less able to engage in markets receiving targeted and appropriate support) and readily able to access top quality, independent, trustworthy sources of information including aids to comparison and switching that support fair dealing firms;
- *Effective enforcement:* an effective national body takes prompt and courageous decisions against powerful vested interests, is genuinely collaborative and responsive to the concerns or issues raised by stakeholders and constructive in addressing them. For example, it acts promptly against rogue traders, takes action to address market structure, reaches decisions as promptly as practical in a manner that facilitates redress and is not ‘precious’ about prioritisation or hostile to super complaints;
- *Competitive markets:* fair dealing firms are supported and lauded, driving out the bad, and raising standards for transparency, fairness and sales practice, with markets open for new entry (at all scales) and exit.

As Which? has previously noted in our response to the reform of the competition regime we consider that an effective competition regime and effective consumer protection are intrinsically linked. We do not believe it feasible or sensible to impose an arbitrary distinction between what is a ‘consumer’ issue and what is a ‘competition’ issue. We therefore welcome proposals to ensure the Competition and Markets Authority (CMA) is responsive to both issues, with the CMA having consumer protection enforcement powers.<sup>1</sup>

- These proposals are significant and complex: success of these reforms should be judged solely on improved outcomes for consumers.

We consider that the government should make a clearer case for why these changes are necessary and sufficient to address weakness of existing consumer enforcement and advocacy. Consumer harm arising from unfair trading is estimated at £6.6 billion a year: it is a serious and pervasive cost to all consumers.<sup>2</sup> It is essential that these reforms are implemented without weakening existing advocacy or enforcement capability - indeed these should be demonstrably enhanced. The changes to the competition enforcement regime, and clear links between competition and consumer enforcement, mean there is a risk that the full implications of so many substantial changes may not yet be apparent. For example, while Which? welcomes the proposals to strengthen delivery of consumer protection, especially regional and national enforcement, the proposals for change inevitably bring transition risks as we move from old to new regimes. They also impose additional costs of integrating organisations and functions. The outcome of these reforms must be worth this cost.

We recommend the government establish a clear benchmark for both enforcement of consumer protection law and for provision of advice against which progress of these reforms can be monitored and reported. We understand that information on performance measures is already available to establish this benchmark. This information should be freely available in line with the government’s *Better Choice, Better Deals* agenda.

---

<sup>1</sup> See Which?’s response to the BIS consultation *A Competition Regime for Growth* (<http://www.which.co.uk/documents/pdf/bis-consultation-on-competition-regime-256029.pdf>).

<sup>2</sup> *Protecting Consumers - the system for enforcing consumer law*, June 2011, National Audit Office (HC1087).

- Effective consumer protection relies upon effective enforcement.

There must be sufficient resources to sustain and strengthen frontline enforcement of consumer protection regulations. Measures to improve co-ordination, effective use of resources and incentives to act on regional or national cases are welcome. This should not come at the expense of front-line enforcement overall. We note the findings of the recent NAO report into the system of consumer protection: the majority of funding for this vital work (86 per cent) is provided by local authorities but funding may fall by up to a third. The NAO makes clear the considerable value to consumers and economy as a whole, reporting a 6:1 ratio of benefit to cost.<sup>3</sup>

We recommend that funds allocated for specific purposes, such as those to support regional and national enforcement or general advocacy are effectively ring-fenced within the relevant executive body. We also recommend that the Government reviews the distribution of funds to ensure that front line consumer protection enforcement (undertaken by Trading Standards Services) and face to face advice (supplied by Citizens Advice) is supported and strengthened.

- The Government can and should do more to enable third parties to play a full role in reforms to the consumer landscape.

In making these changes, we consider the government can do more to facilitate existing third parties to play an effective and active role in providing advice and support to consumers, for example by ensuring that existing sources of information, known and trusted by consumers, are not duplicated by public money. In addition, the powers presently held by Consumer Focus should be preserved. We set out below more detail of our views on what constitutes an effective advocate for utility industries. Finally, in developing its reforms the government must set out a clear and practical timetable for implementation of these changes.

- Which? will continue to provide advice and advocate for better outcomes for *all* consumers.

Regardless of the government's final decisions on publicly funded advice, advocacy and enforcement, Which? will continue its mission to make consumers as powerful as the organisations they deal with everyday. We hope to work effectively with the institutions created from these reforms or expanded by them and are currently seeking ways to do this. However, we will not hesitate to challenge failures that result from the government's reform to the consumer landscape.

### **Which?'s existing work for *all* consumers**

The government's proposals relate to publicly funded institutions. In setting out our response we want to make plain the breadth of support already offered by Which? to all consumers. Regardless of the Government's final reforms we will continue to extend and improve this support, ensuring it can be accessed by more consumers. Which? provides 'premium' information that is reserved for our subscribing members; this has been the basis of our successful social enterprise for more than 50 years and enables us to operate without government funding. Member-only content is primarily reviews and recommendations of products and services, based on our original, independent testing and research. But a huge range of other material, for example our money and mobile phone research on which.co.uk, our Best Buys and Recommended Providers, is free to all consumers.

---

<sup>3</sup> Protecting Consumers - the system for enforcing consumer law, June 2011, National Audit Office (HC1087).

- Information, advice and product reviews

Which? provides almost 1,000 free advice guides on topics across the full range of areas of consumer interest and need. This includes money management and personal finance, consumer rights, energy saving advice, home, technology and motoring matters. This free content is accessed by millions of consumers each year. Our switching sites, including Which? Mobile and Which? Switch, offer a free switching service to all consumers. Which? Mobile also offers free product reviews.

Our online guidance includes detailed advice about consumers' rights under the law (see <http://www.which.co.uk/consumer-rights/>). This information is also available as a free consumer-rights 'app'. Which.co.uk also offers free to all consumers: 734 videos offering information on a range of subjects, such as how to fit child car seats; regular 'live events' where our experts answer consumers' questions on a range of issues from dealing with debt to product launches and topical events such as the Budget; and weekly podcasts on a range of topics including technology, money and cars. These are accessible to anyone from which.co.uk or iTunes; there are approximately 60,000 downloads monthly.

The results of Which?'s renowned product testing are made available to all consumers through Best Buy, Recommended Provider and Awards icons which are licensed for use by businesses, for example in their advertising and product labelling, and help people to make better purchasing decisions. We work in partnerships with other respected organisations to help our information reach a wider audience - for example our joint guide with the British Parking Association on consumers' parking and ticketing rights.

- Advocacy for all consumers

We ensure the results from our investigations, campaigns and legal actions are highlighted to all consumers through extensive media coverage every week. Evidence from Which? research and investigations underpins our advocacy to deliver positive change for consumers. We work to influence business behaviour, legislation and regulation by representing the consumer view to businesses, government, and regulators in the UK, EU and internationally. Our research and campaigns have helped consumers across markets including financial services, food and retail, legal services, utilities, health services, and consumer rights. This action can involve using our legal powers. Which? was one of the first consumer organisations given the power to make 'super complaints' on behalf of all consumers to the Office of Fair Trading (OFT), under the Enterprise Act 2002. We have made super complaints on issues including Northern Irish Banking, Scottish Legal Services and more recently on unfair payment surcharges. In addition, Which? was granted 'specified body' status under the Enterprise and Competition Acts, enabling us to take legal action in the Competition Appeals Tribunal (CAT) to secure redress for consumers who have been victims of anti-competitive behaviour by companies. Which? also has powers to take enforcement action against traders harming consumers' interests under Part 8 of the Enterprise Act 2002.

## Key issues

### Effective national enforcement of consumer protection law

Which? supports measures to strengthen national and regional enforcement of consumer law. This includes steps to create a specific body principally responsible for enforcement action. However, it is difficult to judge the merits of the specific institutional proposals to strengthen enforcement of consumer protection law. We set out some views here on the government's

preferred approach (option 3) and the alternative Joint Enforcement Board (JEB). We would welcome further articulation of the structure and objectives of these models of national enforcement.

Building on the principles for reform we set out above, any new body responsible for national enforcement must:

- have clear responsibility for consumer protection enforcement at a national and regional level, with clear accountability for the outcomes achieved - this supports as simple a structure as possible so there is clarity about who is making decisions on enforcement priorities;
- be outcomes focussed, with a clear duty to resolve case work promptly whenever it arises. As we note above, effective enforcement is vital to ensure that fair dealing firms are not systematically disadvantaged by rivals that take short cuts or shirk the law;
- be sufficiently resourced, with funds ring-fenced for enforcement *and* access to its own staff to direct enforcement activities, especially where cases may be long running and face significant challenge from very powerful firms;
- be clear about how priorities are set and open to input from partner organisations and third parties (such as Which?); and
- be a recipient of super complaints, in order to maintain parity with the *status quo*.

Ultimately, the purpose of reform must be to strengthen enforcement of the law. Which? will support whatever arrangements best protect consumers. The government must make the case, after due consideration and with clear reasoning, for the institutional reforms that will clearly do this.

#### *The Trading Standards Policy Board*

It is not yet clear to what extent the TSPB would itself be a new institution with direct control over resources such as trading standards officers. Our assumption is that it would likely extend current principles of supporting ‘centres of excellence’ or specialisation amongst local trading standards. For this model to be successful, we recommend that:

- Responsibility for decision making is made completely clear. In addition the TSPB may require enforcement personnel, be able to direct and sustain efforts in very difficult cases, and therefore need a strong ‘political will’ and the ability to commit significant resources.
- It should avoid unnecessary complexity, in particular for dealing with ‘institutional boundaries’ created by BIS’ definition of ‘structural market problems’ and ‘pure’ consumer issues (paragraphs 5.87 - 5.93). The proposed tri-partite decision making structure for settling institutional boundaries has not performed well in other settings where prompt enforcement action may be required (for example, financial services). Our proposal to abandon an arbitrary distinction between types of market study would deal with many cases of cross-body decision making, with the usual arrangements to co-ordinate between bodies dealing with the rest.
- As the principal agent of national consumer enforcement, the TSPB must be a recipient of super complaints. This would retain parity with existing arrangements for complaints to the OFT and therefore ensure consumer protection is not weakened, albeit that we have concerns over the impact on super complaints of these reforms (set out below).
- Paragraph 5.60 discusses establishing a form of indemnity to underwrite the risks of taking action against powerful firms or in complex cases. Which? supports this as a practical measure to support difficult enforcement actions. Which? is a designated enforcer under the Enterprise Act 2002, able to use Part 8 enforcement powers with a range of consumer protection law. However, we face two issues with taking action: (i) we do not have access

to information gathering powers since these are presently available solely to public bodies; and (ii) the risk to Which? of liability for other parties' legal costs. In line with the government's agenda to open up public services we consider there is a sound case to extend information gathering powers to Which? for the purpose of Part 8 enforcement and extension of any indemnity scheme to membership by Which?. These arrangements should be extended to any body meeting appropriate designation criteria to responsibly exercise private enforcement of consumer protection law. This would enable the third sector to play its full role in the future landscape.

#### *The Joint Enforcement Board*

One merit of this approach is the lower transition costs as the CMA remains the principal home of national enforcement and existing expertise of the OFT could be maintained. It would also formalise the influence of the trading standards service, strengthening its influence on enforcement priorities and practice. Furthermore, the JEB model may ensure that a single body is clearly accountable for national consumer enforcement. It could also complement steps to ensure all market studies, and all super complaints, can be undertaken by (or directed to) the CMA (see below). For this model to be successful:

- These arrangements must result in a sufficiently robust and proactive approach to consumer protection enforcement, an approach that the OfT has not always demonstrated in the past.
- The JEB must be clearly outcomes focussed.
- The JEB should receive resources from the CMA on a scale sufficient to fund significant cases.
- The JEB should be established so that it does not reinforce an arbitrary distinction between types of problem (the 'structural market problems' being the focus of the CMA).

#### Sectoral Advocacy - the Regulated Industries Unit

Consumer Focus has produced two documents relating to the role of a 'Regulated Industries Unit' (RIU), which sets out a case for consumer advocacy directly at the heart of key regulated industries.<sup>4</sup> We agree that there is a role for specialised and targeted input from a body solely concerned with the interests of consumers of regulated services. Although these industries benefit from a dedicated regulator charged with 'protecting the interests of consumers', this objective is often in competition with a number of others.

We consider that an RIU should be focused on providing technical input from a clear consumer perspective into the regulatory process. Despite its focus on the regulatory bodies and industries, nothing should prevent the RIU consulting widely to gather information from, or providing its analysis to, a range of interested parties.

The consultation sets out a number of design principles for the RIU (paragraph 4.34), with which we broadly agree. We believe it should have autonomy from any more generalist parent body and be able to clearly demonstrate that any funds it receives are used solely for the purposes of the RIU. It should have at its core complete independence from government, industry and regulators in policy making and advocacy, and have the resources to build specialised knowledge to challenge complex industry processes or well-established practices that harm consumers. It should be sensitive to the impact of different policies on the full range of consumers - reflecting the interests of all consumers and especially those hardest hit by the conduct of regulated firms or regulatory decisions.

---

<sup>4</sup> 'Consumer representation for the 21<sup>st</sup> century: a 'Regulated Industries Unit', June 2011 and 'Consumer Focus interim response to the consultation on 'Empowering and Protecting Consumers', July 2011.

We consider, therefore, that the RIU should have a clear role as a technically competent consumer representative, resourced to contribute in detail to the significant volume of consultations, industry processes and regulatory practices arising in energy and postal services. It would operate largely behind the scenes, publishing well researched information on the performance of the regulated industry that third parties may find useful. This is a distinct role from that of a public-facing ‘advocate’, which in contrast is high profile and aims to influence policy makers and public opinion through its research and public campaigns.

#### *What would the RIU do and what utilities should it cover?*

We expect an effective RIU to engage with industry and regulators to improve regulatory practice, ensure market outcomes serve consumers well and ensure that key public policy debates reflect consumers’ interests.

At present, the RIU appears likely only to include energy and postal services, i.e. those areas that Consumer Focus is responsible for. The recent Gray review of water regulation supported the existing role of the Consumer Council for Water. Other utilities have their own arrangements for consumer representation. We consider that concentration of consumer representation for all regulated utilities would offer significant benefits. A review should be carried out, once the RIU has settled in, of its performance with a view to widening its scope to cover other utility services so that cross-sectoral issues can be more effectively tackled.

#### *What powers should an RIU have?*

At present, Consumer Focus has two powers: first, investigation powers to look into complaints made by vulnerable customers or those facing disconnection; second, general information gathering powers, which aid investigations into business or regulator’s practice.

The RIU would not need the first, as this is a function of the Extra Help Unit. The powers of information gathering would be useful, but should be limited to its role as a sectoral consumer body. This power is necessary to uncover the business processes adopted by firms supplying essential utility services. In most cases, information gained through these powers could not be publicly disclosed due to confidentiality restrictions of the Enterprise Act 2002. However, it would still play an important role in influencing firms, encouraging best practice or making a strong case to regulators or other agencies that action must be taken.

We do not consider that the RIU would need ‘super complaint’ powers: it would already be embedded in industry and regulatory processes, and should have sufficient credibility for the regulator to take its concerns seriously given that its powers enable it to present a strong case for action. It should, however, be transparent. For example, the RIU should publish non-confidential versions of its findings or complaints to industry or Regulator.

Instead of super complaint powers, there are a range of additional powers that should be explored if the RIU is to carry the full weight of the consumers it represents:

- Powers of veto over amendments to existing licence conditions or introduction of new conditions.
- Powers to raise new licence modifications and consult upon their introduction, with a duty for the regulator to act on the findings.
- Powers to make market investigation references directly to the competition commission (or CMA as appropriate).
- Powers to establish, govern and monitor industry codes of conduct that support effective self or co-regulation and drive up standards, rewarding fair dealing firms.

There are a number of other areas where the RIU's role should be defined, which are considered below.

- *Should the RIU comment on public policy debates?* Clearly the RIU would act within its own objectives and these should include expressing the consumer perspective in policy debates built upon its evidence base and its experience of representing consumers of utility services. Europe in particular is setting the overall aims and objectives of much utility regulation and the RIU should include the European dimension in its analysis and commentary on policy.
- *Should it publish information for consumers' use?* The RIU should principally be focused on influencing regulators and firms. However, it is in a unique position to gather vital information on industry performance and consumer outcomes: these findings should be published. It would not, however, be a principal source of information or advice direct to consumers, but should work with organisations that are better placed to communicate to consumers.
- *Would the RIU handle complaints and vulnerable consumers?* As BIS propose, we consider that the 'extra help unit' operated by Consumer Focus fits well with Citizens Advice's current expertise. Individual consumers would usually seek redress through Ombudsman schemes linked to the regulated utilities. The RIU would not therefore handle direct complaints. It should however consider the impact of industry outcomes on all consumers, including vulnerable consumers, in a manner that drives better value. It should also review and challenge the effectiveness of ombudsman schemes and consumer redress.
- *How does it avoid capture?* The RIU would have a close working relationship with industry and regulators. There is always a risk that it becomes susceptible to seeing issues from the perspective of existing regulatory systems and business models of industry. It is vital that its governance structures are robust, it is transparent in setting out its mission and objectives and reports openly on its activities. The RIU's independence in policy making and advocacy must be enshrined in its constitution and core to its relationships with regulators and the government.

#### Access to publicly funded data about consumers' experience

The consultation has proposed that Consumer Direct will be managed by Citizens Advice (paragraph 2.13). The consultation notes that this change in its management will include measures to ensure appropriate access to the complaints data generated from this service. We fully support this step: in line with government policy elsewhere we note that "there should be an expectation that regulators, Government Departments, regulated businesses and public service providers will release the complaints and performance data they own unless they have good reason not to do so".<sup>5</sup> We consider publicly generated information should be made widely available to appropriate third parties at no or efficient cost. We understand and welcome that Citizens Advice will address this need as part of its adoption of this service.

#### Institutional boundaries: consumer market studies and super complaints

Paragraphs 5.78 - 5.86 of the consultation deal with the types of market studies currently undertaken by the Office of Fair Trading but which may not clearly fall to the CMA given the distinction envisaged by BIS of 'structural market problems'. The issue considered in the consultation is how to resolve studies of markets or issues that are neither 'structural market problems' or 'mixed' market studies that would fall to the CMA. Instead, certain studies would be referred to Citizens Advice for 'pure consumer market analysis' (paragraph 5.84).

---

<sup>5</sup> Annex A, page 51, Better Choices, Better Deals - Consumers powering growth, April 2011, BIS/Cabinet Office.

We do not consider these proposals likely to result in a more effective outcome for consumers, for the following reasons.

First, this problem arises solely as a consequence of BIS' decision to create a distinction between consumer enforcement issues and competition issues, by introducing the concept of 'structural market problems'. This term is not defined in the consultation. More importantly, problems in markets cannot necessarily or easily be identified as distinct categories before a careful study has begun.<sup>6</sup> To attempt to do so results in the risks that (i) no institution accepts responsibility for the issue (ii) there are significant delays in taking action to resolve problems and (iii) the wrong remedies are applied, for example where a body does not recognise or understand that a competition power (or consumer power) is more appropriate given its own, narrower, remit.

As we have noted, the reform of financial services regulation explicitly recognises that a joined-up regulator, reviewing problems from both a consumer and competition perspective, is a more robust solution than separating such powers. We consider a joined-up approach essential to improving consumer protection in financial services. We do not believe that BIS has made a case for why the remaining parts of the economy should be treated differently.

Second, market studies are not an enforcement tool. They possess no special powers of investigation or remedy making. There is little by way of statute that supports the basis for market studies. Instead, it is a tool for the OFT to keep itself informed of market developments. At present, all specialist consumer bodies keep under review issues and markets where harm to consumers is suspected. This is not, however, equivalent to the OFT's current market study practices, which have strength because of its role as an enforcement body of both competition and consumer protection law. The government's proposal introduces a 'class' of issue that neither the CMA nor TSPB will formally be obliged to review: a clear gap in the existing levels of protection.

Third, the current market studies regime has evolved significantly over time, with the OFT developing greater expertise about when a market study is suitable, the appropriate scope of a market study and the investigatory and analytical skills suitable for a study. The OFT's market studies make an objective assessment of the conditions of a market affecting consumer outcomes and fair dealing firms: it is not influenced by a wider agenda or mission. In addition, the OFT is at present able to follow-up any market study immediately with specific enforcement action, a market investigation reference or some other measure. Omitting a certain 'class' of issue from scrutiny by the CMA could weaken existing levels of protection, raising risks of incomplete analysis and partial remedies.

In addition, the implication of arbitrary distinctions between 'structural market problems' and 'pure consumer problems' means that super complaints dealing with 'pure consumer' issues, or requiring consumer protection enforcement as a principal remedy, will have no recipient body. Which? would be unable to make a super complaint to the CMA on, for example, pervasive and abusive contract terms by one or more large national retailers unless able to demonstrate a 'structural market problem'. This is not yet part of the test for super complaints. We set out the implications for super complaints of the government's complex proposals in response to questions 37 and 38 below.

To avoid weakening consumer protection the CMA must be responsible for conducting studies of all and any market, irrespective of any pre-conceived notion of whether 'structural' or other problems may or may not be present. It is better placed to have the expertise, from

---

<sup>6</sup> See pages 4 - 10 of our response to *A Competition Regime for Growth* (<http://www.which.co.uk/documents/pdf/bis-consultation-on-competition-regime-256029.pdf>).

competition and consumer enforcement investigations, to conduct efficient and proportionate studies. The CMA will recognise whether further enforcement action is required, initiating action itself or working closely with the TSPB, and to publish and distribute its findings to support consumer and other third sector bodies.

### **Response to specific questions**

We address any remaining issues through the questions raised in the consultation where we are able to do so and have not already outlined our concerns or proposals above.

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

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

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

Which? supports a stronger role for Citizens Advice to supply publicly-funded front-line information and advice. Which? will work with Citizens Advice, and other partners where appropriate, to strengthen the quality of information available to consumers and to avoid unnecessary duplication or confusion.

**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?

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

Which? is content for the OFT's consumer education role to be transferred provided this work is done to a high standard and in close co-ordination with other relevant bodies to avoid duplication. For example, Which? provides free information and advice to consumers. This service is provided free to the tax-payer. Our Best Buy scheme also raises awareness amongst consumers of those businesses performing well. Which? considers that business and trade bodies must also be prepared to play their role in educating their members as to compliance with consumer protection law and best practice.

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

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

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

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

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

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

We have considered questions 6 - 11 together. The CCAS is a method to help support self-regulatory schemes with a focus upon clarity of contract terms and fair treatment of consumers if things go wrong. We consider the better practice of firms that comply with existing codes should bring them benefits, while former code sponsors (usually trade bodies) are in a strong position to continue to support members to meet these standards. However, the government's decision to abandon the statutory basis of codes clearly has costs to business: existing 'OFT Approved' branding should be withdrawn and codes will no longer benefit from government 'approval'.

Although Which? has supported the principle of the CCAS, we have become concerned over its operation. Our research shows that in many cases it fails to adequately protect consumers. Our investigations have shown that monitoring by the trade associations is often ineffective with too much emphasis on consumer satisfaction surveys and not enough on mystery shopping or post-work inspections. Complaints handling processes often seem designed to discourage consumer complaints and we have seen scant evidence of effective disciplinary processes.<sup>7</sup> In part this arises from the difficulty of a trade body attempting to police its own membership on a voluntary code. Any new code schemes must consider how to ensure adequate standards and suitable sanctions can be encouraged amongst members.

We recognise that BSI has a strong reputation as a standards body. However, standards alone do not address the need for effective monitoring of performance and disciplinary actions. The BSI would need to address existing weaknesses of the CCAS. We also consider that any Kitemark code certification process should give equal or greater consideration to the needs of consumers in the relevant markets. A certification to a low standard may suit firms, granting them the significant advantages of a well known third party approval, but may not necessarily serve consumers to whom this scheme should ultimately be addressed.

Any new body offering accreditation of existing codes must:

- Undertake due diligence, to ascertain the existing quality and compliance of scheme members - it should only sponsor an existing scheme if satisfied that the obligations of the codes were widely adhered to if not exceeded, this is perhaps best achieved through mystery-shopping or pre-accreditation work inspections; and
- Ensure that consumers genuinely benefit from the functioning of the code before agreeing to extend accreditation.

Existing codes must offer a consumer-friendly complaints handling system which is free to access and non-binding on the consumer (e.g. an Ombudsman model). This approach was originally a part of the OFT core criteria but was watered down to permit existing arbitration-based schemes to join. In many cases, existing arbitration schemes require consumers to pay a fee to access them and are legally binding on the consumer - this is not acceptable. We would also like consumers who are unhappy with the trade association's handling of their complaint to be able to escalate their complaint to the oversight body to ensure that consumers have been treated fairly at all stages. There is a strong case to consult upon creation of a more general

---

<sup>7</sup> We have reported on garage services, building contractors, insulation and solar panel fitters amongst others where the existence of a code scheme has failed to raise standards or ensure redress when things have gone wrong.

ombudsman body that could deal with complaints across consumer markets and trades if businesses were unable to address the problems.

Of the organisations operating similar codes or systems of business quality assurance or approval our strong preference is for Buy With Confidence schemes operated by regional trading standards. This scheme appears to offer consumers confidence when choosing firms and operates reasonable standards to ensure compliance. It is selective about which firms may join. For example, a pre-accreditation process samples a random selection of customers and inspects the quality or work and service provided. Which? is now exploring with BWC the potential for a national partnership.

We do not favour Trustmark, which despite receiving government funding has demonstrated scant improvement in the home improvement sector. It has no process for enforcement of minimum standards, and relies on a member trade bodies to police members, for which there is no consistency across members. Rogue traders appear to be able to join the Trustmark scheme and even if expelled continue to use its logo with impunity.<sup>8</sup>

Lastly, the Primary Authority concept may suit existing codes. However, it should be clear that the primary authority's judgment or monitoring is not fettered, for example because it relies on funding from the code sponsor to support certification of existing or new schemes. The funding must be transparent and certification standards set to a high standard on an objective basis.

**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 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.

We believe a strategic partnership between Citizens Advice, CAS 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.

We believe that consumers in regulated industries 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 two 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 GB for representing consumers in regulated markets such as energy and post.

---

<sup>8</sup> See for example the cases cited to Parliament in November 2009 by the Secretary of State:

<http://www.publications.parliament.uk/pa/cm200910/cmhsrd/cm091123/debtext/91123-0021.htm#09112355000080>

- 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.

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

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.

A strong partnership between Citizens Advice, CAS 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 CAS.

**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?

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, CAS and Which? would offer a strong service for consumers, government, regulators and industry.

We believe it makes sense to focus resources for general government funded advocacy within Citizens Advice and CAS, working in partnership with Which? to share insight, approaches and information to minimise duplication and ensure strategic coordination.

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.

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 CAS 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 CAS as required, overseen by a strategic partnership.

**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 recognise that Northern Ireland already has different arrangements and agree with the proposals for moving responsibilities to NI specific consumer bodies.

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. We believe that the proposed approach to advocacy in regulated sectors should advocate strongly for all consumers, regardless of where they live in GB, when dealing with national regulators for 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.

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.

The possible Citizens Advice, CAS 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.

**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 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 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.

**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?

In general, Which? supports redress schemes, usually operated through an Ombudsman. They can be a cost effective and prompt method of resolving disputes where a business has been unable to satisfy a customer. Which? has a clear view of the criteria that such schemes must meet, not least of which is mandatory participation by business. However, these issues do not need to be decided yet and would warrant a separate and detailed consultation.

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

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

consumers elsewhere in the United Kingdom?

We support these proposals for Northern Ireland. There appear to be a number of benefits from combining consumer functions into a single organisation to protect the interests of NI consumers.

**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?

We have set out our views on the TSPB and JEB above.

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

**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?

Our views on the responsibilities of the CMA are set out above.

As is clear from our response we strongly disagree that an arbitrary categorisation of market studies is practicably feasible or, if it could be done, desirable. The CMA should conduct all market studies.

As a market study progresses, the CMA should have discretion over whether it or trading standards takes any enforcement action - if that is appropriate to the case in hand. However, this discretion must be limited with an obligation to efficiently and promptly resolve cases. This means that the CMA should complete consumer protection enforcement cases if it is best placed to do so.

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

**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?

Our view is set out above.

**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?

Our views are set out above where we deal with the issues arising from the proposed institutional boundaries.

We reiterate the issues and consequences affecting super complaints here. We consider that Which?'s proposal that the CMA retain responsibility for all market studies, with a duty to ensure prompt resolution of cases whether under consumer protection law or competition law, would resolve many of the issues set out below.

It is vital that the existing scope of the super complaint power is preserved in any new system. Super complaints can relate to any feature in a market that harms consumers, irrespective of the nature, cause or potential remedies necessary to resolve a problem.

The government's current proposals appear to risk an effective change in the test under section 11 of the Enterprise Act 2002 for making super complaints. The proposals will create distinctions between 'structural', 'mixed' and 'consumer' market studies. The implication is that designated bodies will need to identify 'structural market problems' as part of the super complaint test, in addition to describing consumer harm, the relevant market and features of the market giving rise to harm. This may also require a need to identify the specific legal instrument under which a remedy may be prosecuted, if this is relevant to identifying a 'structural' problem compared to some other problem. This makes it very much more difficult to determine if a super complaint can be made and imposes additional resource burdens on designated bodies.

Overall, the government's proposals risk complexity, delay and a diminution in the current scope and efficacy of the super compliant regime. If the government intends to change the

super complaint test, it should only do so following a full consultation that explores the consequences of this decision. Which? would be likely to oppose any change, as the current system has worked well for consumers, unless significant evidence was available that demonstrates consumers would be absolutely better off.

**Which?**  
October 2011

## **Woods, Helen**

**From:** Woods, Helen (PBRS)  
**Sent:** 09 September 2011 11:34  
**To:** Evans David (CCP)  
**Subject:** TRIM: Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement

Dear David

Below are my responses to Q7-11 of the consultation. I have focussed on this section as this relates to an area in which I have particular knowledge and experience.

I am a Trading Standards Officer, but the views expressed are entirely personal and do not represent any other organisation.

Regards  
Helen Woods

*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?*

I believe that an effective and established accreditation system already exists in the Buy With confidence scheme. The scheme has operated successfully for over 10 years and has stood the test of time. Its growth and expansion is hampered by limited resources, as well as limiting its ability to accommodate national businesses and trade associations (a number of whom have expressed an interest in joining). With adequate funding and support the scheme could be extended to fill the CCAS gap, as well as empowering consumers and supporting reputable business.

However, 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 audit of businesses. National schemes have previously suffered from trying to do too much too soon and in being removed from the business members. It must be recognised that a successful scheme must, of necessity, grow slowly within its capabilities.

*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 scheme was overly bureaucratic. However, the bar for CCAS approval was set high, the fact that so few codes were unable 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.

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

While I have no particular objection to this, I am not convinced that this would be any more successful than the CCAS system, unless criteria for approval were to be lowered.

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

I am concerned that this question looks only at industry needs, in my view the purpose of codes should be to improve customer service and confidence and raise standards and any certification process should reflect this. The Kitemark has a much higher level of public recognition than CCAS, however, what information consumers would draw from the presence of a kite mark I am unsure.

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

I would be 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.

## York City Council



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

Communities &  
Neighbourhoods

Steve Waddington  
Assistant Director  
20 George Hudson Street  
York  
YO24 1NE

Tel: 01904 554016  
Fax: 01904 551590

13<sup>th</sup> September 2011

Dear Mr Evans

  
1519

### **Empowering and Protecting Consumers**

I refer to the consultation document published in June 2011.

The government proposes to make radical changes to the way in which consumer protection advice and enforcement is undertaken in the UK. The consultation outlines many changes but I would like to respond on two issues which directly impact on the ability of the council to protect our residents and promote the economic interests of businesses that operate in York.

The consultation asks:

*"Do you agree that the OFT's consumer information role should be transferred to Citizens Advice?"*

Under this proposal the government proposes to transfer responsibility for the Consumer Direct (CD) service to Citizens Advice. CD information is essential for our successful trading standards service to target their resources effectively using an intelligence-led approach to enforcement and to identify those vulnerable residents who are in additional need of support.

Whilst we support this proposal we would stress that local authority access to CD information must continue and be improved where possible. Failure to do this would put at risk the well-being of our residents and make effective and targeted enforcement more difficult and ultimately more expensive.

The consultation asks:

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

We prefer Option 3 under which the majority of the Office of Fair Trading's consumer enforcement functions transfer to local authority trading standards services with some functions (for cases involving structural market problems) remaining with the Competition and Markets Authority.

In York we have a very successful and proactive trading standards service and the council is also the lead authority for the regional Scambuster Team. As well as helping our local consumers and businesses we already undertake (working with our local authority partners and other agencies) consumer protection work which has a regional and national impact.

Through our intelligence-led approach to enforcement, and using our extensive network of enforcement agency relationships we are often able to intervene in an effective and timely manner to minimise consumer detriment. Numerous examples are available to support the effectiveness of a 'local' approach to tackling a major issue and the proposed continuation of specialist enforcement teams on 'Scambuster' lines will greatly assist tackling those rogue traders who operate across local authority boundaries .

Option 3 would also remove the duplication of responsibility for enforcement in several areas of consumer protection work. With additional resources to build on the success of local authority delivery of trading standards services much more can be achieved. It will be essential however; that some of these resources are used to cover all the costs of an investigation of major national importance and any legal liability associated with the case is underwritten by government.

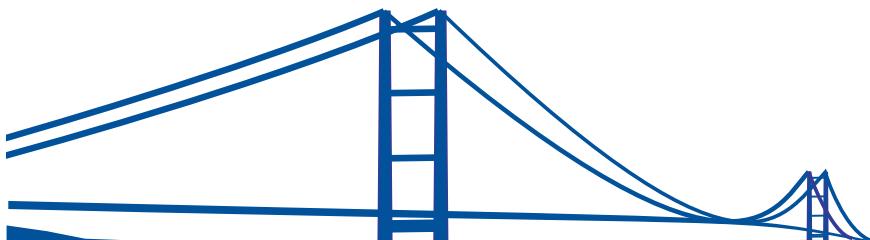
Yours sincerely



Sandy Fraser  
City of York Council  
Cabinet Member for Crime and Community Safety

## **Yorkshire & Humber Trading Standards Group**

## YORKSHIRE AND THE HUMBER TRADING STANDARDS GROUP



Linking Trading Standards in Yorkshire and The Humber Region

c/o PO Box 5, Nepshaw Lane South, Morley, Leeds, LS27 0QP  
Tel: 0113 383 6431 Fax: 0113 253 0311 Email:[ssimmons@wyjs.org.uk](mailto:ssimmons@wyjs.org.uk)

[graham.venn@northyorkshire.gov.uk](mailto:graham.venn@northyorkshire.gov.uk)

Submitted to: [david.a.evans@bis.gsi.gov.uk](mailto:david.a.evans@bis.gsi.gov.uk)

Date: 27<sup>th</sup> September 2011

Dear Mr Evans

**Yorkshire and the Humber Trading Standards Group 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”**

Yorkshire and the Humber Trading Standards Group (YAHTSG) is pleased to provide the attached response to this consultation.

YAHTSG consists of the following authorities:

Barnsley MBC, Doncaster MBC, East Riding of Yorkshire Council, Kingston upon Hull City Council, North East Lincolnshire Council, North Lincolnshire Council, Rotherham MBC, City of Sheffield Council, North Yorkshire County Council, West Yorkshire Joint Services and City of York Council.

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 01609 534824 or at [graham.venn@northyorkscc.gov.uk](mailto:graham.venn@northyorkscc.gov.uk).

Yours sincerely

Graham Venn  
Regional Chair, Yorkshire & the Humber Trading Standards Group

## 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. Each individual enquiry should be dealt with by an officer who provides bespoke advice and guidance relevant to the complaint. YAHTSG 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?***

YAHTSG 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?***

YAHTSG 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?***

YAHTSG 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).

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?**

YAHTSG response to questions 6-11:

YAHTSG 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?**

YAHTSG 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, YAHTSG 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. YAHTSG 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?***

YAHTSG 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 YAHTSG 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 YAHTSG 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?***

YAHTSG 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?***

YAHTSG 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?**

YAHTSG supports Option 3.

YAHTSG already does work which has a regional and/or national impact and the extension of our 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, the YAHTSG 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?***

YAHTSG'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?***

YAHTSG 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 tackling 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?***

YAHTSG response to questions 30-31:

YAHTSG 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. YAHTSG 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?**

YAHTSG 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?**

YAHTSG 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?**

YAHTSG 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.