

dti

**Reducing Administrative Burdens –
the Consumer and Trading Standards
Agency**

Consultation

05 July 2005

URN 05/1297

dti

The DTI drives our ambition of 'prosperity for all' by working to create the best environment for business success in the UK. We help people and companies become more productive by promoting enterprise, innovation and creativity.

We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

In Budget 2004, the Chancellor asked Philip Hampton to identify ways in which the administrative burden of regulation on businesses could be reduced, while maintaining or improving regulatory outcomes. The final report, published alongside Budget 2005, provided a number of recommendations for meeting this goal.

Among them, the Report highlighted the importance of risk assessment, and suggested that an effective system would ensure regulators take proper account of the nature of businesses, leading to a reduction in the requirement and number of inspections.

The Report further identified the need for proper advice, with benefits ranging from reducing the time taken for businesses to comprehend the regulations, to increasing the probability of compliance.

Form filling and the time it took, was something the Report suggested needed addressing, as businesses, especially the smaller ones, spent too much time and resource on it.

The Report also provided recommendations on the penalty regime with a view to ensuring businesses and regulators have an interest in proper sanctions against illegal activity, in order to prevent businesses operating outside the law from gaining a competitive advantage.

Finally, the Report recommended changes to the complicated regulatory structure, with the consolidation of some national regulators into groups with principle themes:

- Consumer protection and Trading Standards;
- Health and Safety;
- Food standards;
- Environmental protection;
- Rural and countryside issues;
- Agricultural inspection; and
- Animal health.

The following consultation looks at the options for creating a Consumer and Trading Standards Agency as identified in the Hampton Report.

Issued 05 July 2005

Respond by 12 October 2005

Responses to ctsa.consultation@dti.gsi.gov.uk

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Foreword



Fair trading is at the heart of our modern, diverse, competitive market. It has played a key role in shaping the dynamic and successful economy we enjoy today.

But the Hampton Report found that our businesses suffer from over-burdensome regulation and red tape. This harms not only business, but also consumers, who are unable to receive the high quality services, innovative products and freedom of choice that they deserve.

In addition, repetitive, routine work restricts the ability of our enforcement agencies to catch the serious rogues in the market; and diverts them from an effective combination of enforcement, advice and support, to poorly targeted and unproductive work.

The Government accepted the recommendations of the Hampton Report, and this consultation represents a major part of the work to implement them. It is the first step towards establishing a new Consumer & Trading Standards Agency, aimed at alleviating the burdens identified by Hampton. Its aim is to enable our businesses to perform at the level of the best not just nationally, but internationally, while maintaining the critical focus on consumer protection.

The time is right to develop a co-ordinated organisation that caters not just for business and not just for consumers, but for both. We will do this by taking forward the strategic leadership and flexible performance management of the Trading Standards Service, focused and effective advice for business, and a comprehensive education strategy for consumers.

These proposals are aimed at designing an Agency that meets this agenda, by extending competitive markets and working collaboratively across the sector to ensure a pro-active and unified approach to reducing the burdens on business. We look forward to receiving any comments or contributions that will help us to achieve these objectives.

A handwritten signature in black ink that reads "Gerry Sutcliffe". The signature is written in a cursive style with a long horizontal stroke at the bottom.

Gerry Sutcliffe
Parliamentary Under-Secretary of State
Minister for Employment Relations and Consumer Affairs

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Executive Summary

The Hampton final report was published in March 2005, and concluded that burdens on business could be reduced by streamlining the regulatory system to have fewer, larger regulators, with which business must interact. The Government accepted Hampton's recommendations, including that a new body should be created at the centre of Government to co-ordinate work on consumer protection and Trading Standards.

We are seeking views on the establishment of this body, to be known as the Consumer and Trading Standards Agency (CTSA).

We envisage that the CTSA will be a strong, proactive body, well able to respond to the needs of consumers and business in the 21st century. It will be consumer-focused, but will also promote the importance of competitive markets and innovation for providing fair outcomes for both consumers and business.

What functions will the CTSA have?

In line with Hampton's recommendations, the CTSA will co-ordinate all aspects of the work of the Trading Standards Service, apart from that covered by the Food Standards Agency (FSA), the proposed Animal Health Agency, or the Health and Safety Executive (HSE), it will cover issues such as fair trading, product safety and weights and measures. The Hampton Report recommended that the CTSA should comprise the consumer enforcement functions currently carried out by the Office of Fair Trading (OFT), as well as the functions of the National Weights and Measures Laboratory (NWML), the British Hallmarking Council (BHC) and the Hearing Aid Council (HAC).

In addition, the following functions will be carried out by the CTSA:

- *Advice for business:* The Hampton Report placed great importance on regulators giving advice to business. The CTSA should have a role in providing this advice, and in providing strategic leadership to the Trading Standards Service on giving advice to business.
- *Consumer education:* Empowered, informed consumers are better able to make decisions and are an important part of a successful market. The CTSA will have a responsibility to provide education for consumers and to provide strategic leadership to the Trading Standards Service on consumer education.
- *Consumer Direct:* Reflecting the close links between the need for effective advice, the Trading Standards Service and the CTSA's focus on

consumers, we consider that the CTSA would be the most appropriate body to have responsibility for managing Consumer Direct.

- *Co-ordinated Performance Framework for the Trading Standards Service:* As part of the Agency's co-ordination and strategic lead for the Service, we see the CTSA using its powers to set minimum performance levels for the Trading Standards Service and to encourage and support performance improvement and the spreading of best practice. Minimum performance levels will reassure business and consumers as to the level of service they can expect to receive.
- *Priority setting for Trading Standards:* We propose that the CTSA should work jointly with the FSA, the proposed Animal Health Agency and the HSE to give the Trading Standards Service consistent advice on priorities. There will always have to be local discretion and Local Authorities should be allowed to respond to what is important in their area, however to plan effectively there needs to be clearer direction from the centre. Centrally co-ordinated priorities will therefore give Local Authorities a clearer direction so they are better able to deliver and meet the needs of local business and consumers.
- *Consistency of inspection and enforcement:* The Agency will have a role in improving the consistency of regulation faced by businesses particularly those that trade in several Local Authority areas. In its manifesto, the Government said the CTSA would take a lead in enforcement where there is a national company with its headquarters in one Local Authority area, but with a number of outlets in others.

Redress

As our Consumer Strategy – *A Fair Deal For All*, sets out, problems encountered by consumers are best resolved at the earliest possible opportunity, and if at all possible without going to Court. We are therefore seeking views on whether the CTSA should have a role in providing the following redress measures which will be introduced as part of the Consumer Strategy:

- Quality assurance of third party alternative dispute resolution schemes
- Distributing assets recovered from cross border scams
- Acting as a third party to take representative action on behalf of a group of consumers

Options for fulfilling Hampton's requirements

Hampton identified two different options for the structure of the CTSA.

- *Option 1:* In this scenario the CTSA would be formed as a new and separate body. The OFT consumer functions would be transferred to the

new body, which would also include NWML, the HAC and the BHC. The OFT would continue to enforce competition law and conduct market studies.

- *Option 2:* In this scenario the CTSA would be established as part of the OFT. The other bodies that Hampton recommends should be included in the CTSA (NWML, the BHC and the HAC) would be added to the existing OFT structure.

Hampton's preference was for Option 1, on the basis that there would be significant managerial and organisational advantages in creating a body which was wholly focused on the major task of delivering a coherent enforcement network and performance management of local Trading Standards. The views expressed in the Hampton Report provide our starting point on this issue. However, Hampton also recommended that the Government should engage in further consultation on the issue of structure before reaching a final decision. The Government has accepted Hampton's recommendations, and is therefore seeking views on the best option for the structure of the CTSA, before reaching a conclusion.

Hampton also stressed the importance of maintaining the link between competition and consumer regulation (whatever structure is chosen for the CTSA).

Devolution

Consumer protection is a matter for Westminster in respect of England, Scotland and Wales, although other areas covered by the Trading Standards Service (for example health) are devolved. Consumer protection (other than safety in relation to goods) is a transferred matter in relation to Northern Ireland.

How to respond

The Department of Trade and Industry welcomes comments, including supporting evidence, by 12 October 2005.

Where possible please send responses by email only to the following address: ctsa.consultation@dti.gsi.gov.uk

When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

A list of those organisations and individuals consulted is in Annex E. We would welcome suggestions of others who may wish to be involved in this consultation process.

An electronic version is available at:
www.dti.gov.uk/ccp/ctsa/pdfs/ctsacondoc.pdf

If you are not able to reply by email, a response can be submitted by letter, or fax to:

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Confidentiality of responses

Your response may be made public by the DTI. If you do not want all or part of your response or name made public, please state this clearly in the response. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been requested.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Help with queries

Questions about the policy issues raised in the document should be addressed in the first instance to:

ctsa.consultation@dti.gsi.gov.uk

If you are not able to make contact in this way, you can also contact:

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Complaints

If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

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A copy of the Code of Practice on Consultation is in Annex D.

List of Questions

Chapter 3 – Powers of the CTSA

1. Do you think the powers listed in paragraph 39 are the right powers to carry out effective performance framework co-ordination? Are any of these powers unnecessary?
2. Do you think the application of these powers will be sufficient to achieve the efficiencies / reduction in burdens on business envisaged by Hampton? Do you think they will increase burdens on Local Authorities? If yes, please provide supporting evidence.
3. If you do not think the proposed CTSA powers are sufficient (Q2), what additional or alternative role / powers can be given to allow the CTSA to effectively co-ordinate the performance framework?
4. Do you think this is the right approach for the CTSA to take in using its powers? If not, what would be better?

Chapter 3 – Priority setting for the Trading Standards Service

5. Do you think this is the best process for identifying Central Government priorities for the Trading Standards Service?

Chapter 3 – Consistency of Inspection and Enforcement

6. Can you suggest a definition for the type of business that the CTSA might cover for Home Authority work? What criteria could be used to assess whether a business falls within the definition?
7. Do you agree that Option 3 would be the most effective in achieving the increased consistency the Government is trying to achieve?
8. Do you agree that Option 3 would be the most effective in achieving the efficiencies for business proposed by Hampton?
9. Do you think there are better options not identified here for improving consistency of enforcement by the Trading Standards Service?

Chapter 4 - Quality assurance of third party alternative dispute resolution (ADR) schemes

10. Do you agree that recognition of good quality ADR schemes would be an appropriate role for the CTSA?

Chapter 4 - Cross border scams

11. Do you agree that distribution of these recovered assets would be an appropriate role for the CTSA?

Chapter 4 - Representative action

12. Do you agree that the CTSA should be designated as a third party to bring proceedings on behalf of a group of consumers?

Chapter 5 - Option 1 – the CTSA as a wholly new body

13. Do you think that forming the CTSA as a separate body would be most likely to achieve the benefits to business and consumers outlined by Hampton and to support the Government's objectives in this area? What are the reasons for your views?
14. What would be the most effective means of achieving the cultural change needed to create a successful CTSA?
15. Can you see any other advantages / disadvantages of this approach?
16. Do you agree with the estimates of the costs of forming the CTSA as a separate body, set out in paragraph 78? Where possible please provide evidence for any costs and benefits, including details of any costs or benefits that you may incur as a result of these proposals.
17. Are there any other relevant factors that we should consider?
18. Do you agree with our recommendations on the likely effectiveness of these measures?
19. What combination of these measures do you think would be most effective in embedding the consumer / competition link in the CTSA?
20. Are there other measures you can identify that could be effective in maintaining this link?
21. How far do you think the link between consumer and competition issues should be embedded within the organisation? Is a link at senior level sufficient, or should there be links between the CTSA and the OFT at all levels?
22. If the CTSA is formed as a new body, how close do you think the relationship between that new body and Government Ministers should be? What are the reasons for your views?

Chapter 5 - Option 2 – the CTSA as part of the OFT

23. Do you think the link between consumer and competition enforcement is made satisfactorily in the OFT at present? Is it working effectively?
24. Can you think of ways in which this link might be strengthened if the CTSA were to be formed within the OFT?
25. Do you think that forming the CTSA within the OFT would be most likely to achieve the benefits to business and consumers outlined by Hampton and to support the Government's objectives in this area? What are reasons for your views?
26. What would be the most effective means of achieving the cultural change needed to create a successful CTSA?
27. Can you see any other advantages / disadvantages of this approach?
28. Do you agree with the estimates of the costs of forming the CTSA within the OFT? Where possible please provide evidence for any costs and benefits, including details of any costs or benefits that you may incur as a result of these proposals.
29. Are there any other relevant factors that we should consider?

Annex C – Partial RIA

30. Do you agree with the costs and benefits of the options for setting up a new CTSA? Where possible, please provide quantifiable evidence.
31. Do you agree with the costs and benefits of the options for a redress function within the CTSA? Where possible, please provide quantifiable evidence.
32. Do you agree with the costs and benefits of the options for improving the consistency of inspection? Where possible, please provide quantifiable evidence.
33. Do you agree with the costs and benefits of the options for maintaining the consumer / competition link? Where possible, please provide quantifiable evidence.

Chapter 1 – Background

1. In the 2004 Budget, the Chancellor asked Philip Hampton to consider the scope for reducing administrative burdens by promoting more efficient approaches to regulatory inspection and enforcement, without compromising regulatory standards or outcomes.
2. The Hampton final report was published in March 2005, and concluded that burdens on business could be reduced by streamlining the regulatory system to have fewer, larger regulators, with which business must interact. The Government accepted Hampton's recommendations, including that a new body should be created at the centre of Government to co-ordinate work on consumer protection and the Trading Standards Service.
3. We are seeking views on the establishment of this body, to be known as the Consumer and Trading Standards Agency (CTSA).
4. In line with Hampton's recommendations, the CTSA will co-ordinate all aspects of the work of the Trading Standards Service, apart from that covered by the Food Standards Agency (FSA), the proposed Animal Health Agency, or the Health and Safety Executive (HSE), so it will cover issues such as fair trading, product safety and weights and measures. The Hampton Report recommended that the CTSA should comprise the consumer enforcement functions currently carried out by the Office of Fair Trading (OFT), as well as the functions of the National Weights and Measures Laboratory (NWML), the British Hallmarking Council (BHC) and the Hearing Aid Council (HAC). In agreeing to implement Hampton's recommendations, the Government has committed to making these changes. This consultation asks for views on the best structure for the CTSA; whether it would be most effective as a stand-alone body or as part of the OFT.
5. The HAC and the BHC are currently investigating alternative streamlining arrangements to those set out in the Hampton Report. If these arrangements are in line with the spirit of what Government is trying to achieve, we will consider these alternatives. However, in the absence of any alternative arrangements, the default position is that the HAC and the BHC will be merged into the CTSA, as set out in the Hampton Report.
6. In addition to recommending that the CTSA should have the consumer enforcement powers of the OFT, the Hampton Report recommended that the CTSA should have a role in improving the consistency of regulation faced by businesses that trade in several Local Authority areas. There was also a Manifesto for Enterprise, Skills and Science commitment which said that the CTSA would lead in the inspection of the Trading Standards Service for national companies with outlets around the country.

Chapter 2 – Vision for the CTSA

7. We envisage that the CTSA will be a strong, proactive body, well able to respond to the needs of consumers and business in the 21st century. It will be consumer-focused, but will also promote the importance of competitive markets and innovation for providing fair outcomes for both consumers and business.

8. An effective CTSA would contribute to the Government's strategic priority of extending competitive markets. We are committed to ensuring that the UK framework for consumer empowerment and support is at the level of the best by 2008. An essential element of this framework (and for improving productivity) is ensuring a fair trading environment for business in order to enable and drive competition. This approach was originally set out the 1999 White Paper *Modern Markets: Confident Consumers* and is maintained in our current Consumer Strategy, *A Fair Deal For All*, which is the successor to *Modern Markets: Confident Consumers*.

9. An effective CTSA would also meet Hampton's call for a more coherent enforcement network, giving the Trading Standards Service strategic leadership and providing the co-ordinating performance framework and prioritisation role that currently prevents the Trading Standards Service from being as consistently effective as they might be. The CTSA could also provide greater focus for consumer regulatory issues, and act as a vehicle for improving redress for consumers. We are committed to a regime that delivers social justice, economic and environmental progress. The CTSA could contribute to the Government's objectives to shape more sustainable patterns of consumption and production across our society and economy.

Chapter 3 – Functions of the CTSA

10. The following functions will be carried out by the CTSA:

Enforcement for Business

11. The Hampton Report recommended that the CTSA should have the consumer enforcement powers of the OFT. Currently, the OFT has a range of statutory powers and duties in relation to consumer protection, many of which cover the same areas of business as functions performed by the Trading Standards Service, and some of which are shared with them. These powers cover regulation of the consumer credit market¹, and the enforcement of consumer law in areas such as distance selling, unfair contract terms and misleading advertising.

12. The OFT has power to prohibit unfit estate agents from doing estate agency work where they have behaved improperly or to issue warning orders to estate agents that can lead to prohibition if the agent persists in improper conduct. Furthermore, the OFT have a co-ordinating and enforcement role under the Enterprise Act whereby they take civil injunctive action (Stop Now Orders) against traders who breach consumer law in specified ways that harm groups of consumers, and co-ordinate action of the same kind taken by the Trading Standards Service and designated enforcers.

13. This co-ordination ensures that enforcement is consistent and effort is not duplicated around the country. The Enterprise Act also gives the OFT the power to direct which enforcer is best placed to take Stop Now enforcement action in relation to a wide range of domestic and Community derived consumer law. Enforcing consumer law, whether through the OFT or through the Trading Standards Service, does not necessarily require routine inspection of premises.

14. Hampton identified weaknesses in the multilateral engagement of Local Authorities in dealing with rogue trading. The CTSA will be empowered to develop an intelligence-led strategy for rooting out rogue business activity, using feedback from Local Authorities and consumers (especially through Consumer Direct).

Advice for Business

15. The Hampton Report placed great importance on regulators giving advice to business:

¹ Hampton suggested that the Government may want to consider whether the consumer credit functions of the OFT should be transferred to the Financial Services Authority. We will be consulting separately on this issue in early 2006.

'The review believes that, by eliminating unnecessary inspection, more resources could be directed to advice. This can reduce administrative burdens by reducing the time taken to comprehend regulations, and any data requirements under them. It can increase the probability of compliance, and hence regulatory outcomes. More broadly, better advice eases businesses' concerns about the requirements of regulation, and helps them to comply. The review's work and recent surveys suggest a large unmet need for advice.' (Hampton Report - page 5, para 12).

16. With this clearly in mind, we consider that the CTSA should have a role in providing this advice, and in providing strategic leadership to the Trading Standards Service on giving advice to business, for example by disseminating best practice and leading in the development of common advice tools. Organisations such as the OFT and NWML already provide advice to business and the CTSA's role would include and build on these advice functions.

17. For example, NWML currently makes a linkage between consumers and innovation by advising businesses on alternative ways to comply with regulations. If regulators provide advice that is less prescriptive and more flexible, the burdens on business will be reduced. This is an approach that should be adopted and encouraged by the CTSA. Similarly the OFT in enforcing the Unfair Contract Terms Regulations has not only described the kinds of terms to which they object, but given advice on how to avoid unfairness, supported by actual examples of drafting that they have accepted as fair.

18. The CTSA could also provide uniform information packs and education materials for businesses and consumers, improving the current level of information provision.

Consumer Education

19. Empowered, informed consumers are better able to make decisions and are an important part of a successful market. Consumers equipped with the skills, knowledge, information and confidence to exercise their rights are in a better position to get a good deal.

20. Consumer education is a useful tool in building successful markets and enabling consumers to exercise their rights. Effective education may prevent many problems from occurring in the first place, and could help reduce consumer detriment (currently at least £8 billion per year or 1 per cent GDP).

21. The OFT has the function of carrying out and supporting consumer education, under Section 6 of the Enterprise Act 2002, and consulted in 2004 on a new approach to consumer education in the UK. As a result, it has established and is leading a new Consumer Education Alliance, bringing together interested parties from the public, private and voluntary sectors.

22. Working groups have been established to look at, initially, the areas of:
- scams (particularly internet scams);
 - credit; and
 - signposting.

23. The CTSA, with its links to Consumer Direct and proximity to business and the Trading Standard Service, would be well placed to address consumer education needs quickly and effectively, incorporating and building on the work of the OFT. We consider that the CTSA should have a responsibility to provide education for consumers and to provide strategic leadership on consumer education.

Consumer Direct

24. Consumers are at the heart of modern, competitive markets, but these markets can only exist where consumers are confident about their choices and safe in their actions. It is important, therefore, that when things go wrong, they have quick access to high quality advice. Historically the availability of consumer advice has varied across the country with some areas delivering very good services and others providing none.

25. Consumer Direct aims to give people the knowledge, tools and confidence to be able to resolve matters themselves via a national telephone helpline and website. Consumer Direct will increase access to advice across Great Britain and will be fully rolled out in all regions by Spring 2006.

26. The service is being delivered in partnership with the Trading Standards Service, co-operating on a regional basis. Consumer Direct now provides the first tier advice on issues previously handled by the Trading Standards Service. This allows the Trading Standards Service resource to be freed up for second tier advice, enforcement and education work. In addition, the Trading Standards Service is the principal user of the intelligence that is generated from Consumer Direct complaint data.

27. Consumer Direct is already addressing the unmet need for consumer advice in the regions and nations where it is operating and demand for the service is high with over 50,000 calls a month. Consumer Direct remains a high quality service, the average time taken to answer a call is 10 seconds, with only 1% of calls being abandoned. A customer satisfaction survey demonstrated that where consumers could put a value on resolving their problem (e.g. replacement, refund, repair), the most frequent response was between £150 and £200. In addition, 75% of callers in the survey said that their experience with Consumer Direct was the first time that they had accessed such advice from any organisation.

28. Reflecting the close links between the need for effective advice, and the Trading Standards Service's and the CTSA's focus on consumers, we

consider that the CTSA would be the most appropriate body to have responsibility for managing Consumer Direct.

29. The CTSA would also have a role in analysing the data generated by the Consumer Direct central database, enabling it to work with the Trading Standards Service, targeting enforcement action on those areas causing particular concern. This is especially useful in identifying large-scale scams as they develop, which will cover more than one Local Authority area and therefore may not initially be picked up by an individual Local Authority. The CTSA could also bring some benefits for competition regulation, through information gathered by Consumer Direct on suspected regional or local cartels, resale price maintenance and the difficulties consumers face in obtaining goods or services as a result of anti-competitive agreements of practices.

Co-ordinated Performance Framework for the Trading Standards Service

30. Our Consumer Strategy – *A Fair Deal For All* - sets out our vision for the future of the Trading Standards Service which is the delivery of a high quality service that benefits all consumers and business, and a service that is well led, co-ordinated and targeted, producing value for money. Improving consistency will give both business and consumers confidence in the level of service they can expect to receive.

31. Hampton is clear that the CTSA should be responsible for a co-ordinated framework to secure minimum performance standards for Trading Standards from all Local Authorities and to support further improvement above these minimum standards, suggesting that it should '*dedicate significant resource to deliver a more coherent enforcement network and to improve performance in Local Authorities.....*' (Hampton Report – page 65, para 4.50). This should be part of the Agency's co-ordination and strategic lead for the service. It will bring together a number of different approaches that exist across Central Government Departments and agencies, as well as looking to harmonise current best practice developed by the other national regulators and the Trading Standards Service.

32. The Local Authority Better Regulation Group (LABREG) will be working with the NAO and the Audit Commission on a unitary performance management framework for the regulatory services. The CTSA's work on a co-ordinated performance framework will need to be aligned closely with LABREG's work.

33. However in order to operate a co-ordinated performance framework properly the CTSA will require the necessary powers to be effective.

34. The Trading Standards Service would still be a function of Local Government, accountable to their local communities and resourced by the Local Authority. However, in line with Hampton's recommendations, the CTSA will have a central co-ordination role for all Trading Standards issues except

where the Food Standards Agency (FSA), the Health and Safety Executive (HSE) and the proposed agency responsible for animal health have an interest. In these instances, we anticipate that the bodies involved would co-operate with each other to ensure that they are joined-up in their dealings with Local Government and that some common standards are agreed. The detail on how the proposed Animal Health Agency will operate and on its scope will be considered at a later date.

35. The CTSA will therefore have responsibility for Trading Standards issues that are reserved in relation to Great Britain (for example consumer protection) and, in England, some Trading Standards issues which are devolved. We will be doing further work with colleagues in the Scottish Executive and National Assembly for Wales on the question of consistency for business, consumers and Local Government when dealing with issues that are devolved.

36. There are two main issues in relation to the overall co-ordination role of the CTSA.

- The way in which the CTSA carries out its co-ordinated performance framework role.
- The process by which Central Government priorities for the Trading Standards Service will be agreed.

37. These issues are set out more fully below.

Powers of the CTSA

38. The Hampton Report recommends that the new Consumer and Trading Standards Agency should have powers to carry out its role effectively, and these should be analogous to those of the Food Standards Agency. The Government agrees with this recommendation, and accordingly proposes to give the CTSA powers along the same lines as those of the FSA. However, the way in which the CTSA exercises its powers will need to be proportionate and compatible with the Government's commitment to a more coherent and proportionate approach to inspection of local authorities as well as to the development of a more flexible performance framework for local government. As these plans develop we will consider how best to integrate the CTSA's co-ordinated performance framework and improvement work with the wider system to ensure a coherent and co-ordinated approach for local government.

39. The relevant powers of the FSA are:

- Require information from Local Authorities [related to Trading Standards issues covered by the CTSA] and publish the information
- Set Standards either generally for Local Authorities or for particular Local Authorities [in relation to the enforcement of Trading Standards issues covered by the CTSA]

- Make a report to an Authority relating to their performance including guidance on how to improve
- Direct an Authority to publish the report as indicated above and respond as to what action has been taken to improve
- Inspect records and take samples of documents if applicable
- Take over enforcement in a Local Authority area if it believes that the Local Authority is failing in its duty. [This will only be for those areas of legislation in which the CTSA has an interest.]

40. The CTSA will work with the new Local Services Inspectorate, which will coordinate inspections of local authorities, ODPM and other colleagues to ensure that powers are exercised in a credible, but proportionate way, compatible with the wider local government performance framework.

41. We see the CTSA using its powers to set minimum standards for the Trading Standards Service. Minimum standards will reassure business and consumers as to the level of service they can expect to receive. The DTI Consumer Strategy - *A Fair Deal For All*, explains that Central Government will begin taking this work forward with Local Government. The CTSA will continue this work, monitoring how the Trading Standards Service is doing against these standards using performance measures (particularly through a revised Best Value Performance indicator), including taking on the work currently handled by DTI on the National Performance Framework for Trading Standards. We also see the CTSA taking over the work DTI has taken forward, in partnership with Local Government, to introduce a voluntary system of peer review of the Trading Standards Service. This should be used, for example, to produce an improvement plan where it is considered that a Local Authority is not meeting the relevant standards. There should be effective communication channels built into the system so issues only escalate if there appears to be a lack of improvement.

42. In the main, the powers described above are the last resort to enable Central Government to ensure the new set of priorities for the Trading Standards Service is properly delivered. Just as we are aiming for a more proportionate and coherent regime for business, the Government is committed to developing a more flexible performance framework for Local Government that encourages improved performance with greater participation by local people, stronger accountability to the users of public services and better prioritisation of resources. The CTSA will be operating within a reformed performance framework for Local Government (as set out in March 2005²), including a new Local Services Inspectorate to be in place from 2008 and strengthened regional Government Offices co-ordinating Central Government's interaction with Local Authorities. As these plans develop we

² ODPM and HMT: Securing Better Outcomes: developing a new performance framework (March 2005)

will consider how best to integrate the CTSA's co-ordinated performance framework and improvement work with the wider system to ensure a coherent and consistent approach for Local Government. The CTSA will also need to integrate with the work of the FSA, the proposed Animal Health Agency and the HSE.

43. Whatever the extent of the powers given to the CTSA, they will need to cover Great Britain, as consumer protection is a matter for Westminster in respect of England, Scotland and Wales. However in using its powers the CTSA will need to be conscious of and sensitive to the devolved administrations. We therefore expect that there would be arrangements in place between the CTSA, the Scottish Executive and the National Assembly for Wales to ensure there is sufficient consultation and possibly joint working if any action is to be taken.

Q1. Do you think the powers listed in paragraph 39 are the right powers to carry out effective performance framework co-ordination ? Are any of these powers unnecessary?

Q2. Do you think the application of these powers will be sufficient to achieve the efficiencies / the reduction in burdens on business envisaged by Hampton? Do you think they will increase burdens on Local Authorities? If yes, please provide supporting evidence.

Q3. If you do not think the proposed CTSA powers are sufficient (Q2), what additional or alternative role / powers can be given to allow the CTSA to effectively co-ordinate the performance framework?

Q4. Do you think this is the right approach for the CTSA to take in using its powers? If not, what would be better?

Priority setting for the Trading Standards Service

44. The Trading Standards Service is responsible for enforcing legislation on behalf of a number of Central Government Departments and Agencies. As well as having a role to play in supporting the needs of individual localities, they are also at the heart of delivering a number of Central Government strategies and plans. Hampton identified the lack of collective agreement and effective priority setting from the centre as one of the problems that increases uncertainty and administrative burdens for business. A lack of central communication on priorities can lead to duplication of effort at a local level as well as uncertainty for business.

45. We propose that the CTSA should work jointly with FSA, the proposed Animal Health Agency and the HSE to give the Trading Standards Service consistent advice on priorities. There will always have to be local discretion and Local Authorities should be allowed to respond to what is important locally, however to plan effectively there needs to be clearer direction from the centre. Centrally co-ordinated priorities will therefore give Local Authorities a

clearer direction so they are better able to deliver and meet the needs of local business and consumers.

46. We propose that there will be one Central Government priority list for the Trading Standards Service which will be updated on a three yearly rolling basis. There will be a number of Central Government Departments as well as Local Government who will want to have an input into priority setting for the Trading Standards Service. We therefore propose that the Local Authority Better Regulation Group (LABREG) (formerly the National Regulatory Forum) will be the initial discussion forum. This will ensure there is the opportunity for both Central and Local Government to have input into the priority setting, and that this process can take account of the priorities set for other Local Authority regulatory services. The national regulators, the CTSA, HSE, Animal Health Agency and FSA will put together the priority list following discussion at LABREG. This list will then need to be agreed between these regulators and the relevant Ministerial Cabinet Sub Committee.

47. In this way the priorities list will be agreed by all the relevant Government Departments as well as by the four national regulators.

48. Any new initiative or policy area that will have an impact on either the Trading Standards Service or the priorities list will need agreement from the Ministerial group. We expect the CTSA to be the first point of contact for Government Departments who want to deal with issues relating to the Trading Standards Service, unless they are outside its remit and within the area of other thematic regulators.

Scotland and Wales

49. Consideration will need to be given to those issues that are of particular interest to Scotland and Wales. Whilst consumer protection is a matter for Westminster, other Trading Standards issues that the CTSA will cover are not, (for example, health). We therefore propose that there will be a separate list of priorities each for the English, Scottish and Welsh Trading Standards Service and we will consult the devolved administrations on the priorities for their countries.

Q5. Do you think this is the best process for identifying Central Government priorities for the Trading Standards Service?

Consistency of Inspection and Enforcement

50. The recommendations outlined by Hampton provide an opportunity to improve performance and enforcement and put in place more coherent arrangements that can start to address the difficulties associated with the fragmented nature of the existing structure. The outcome will be better, more clearly focused enforcement.

51. As set out earlier in this document the CTSA will have the consumer enforcement powers of the OFT. Hampton also recommended that the Agency should have a role in improving the consistency of regulation faced by businesses, particularly those that trade in several Local Authority areas. In its manifesto the Government said the CTSA would take a lead in enforcement where there is a national company with its headquarters in one Local Authority area but with a number of outlets in others.

52. The Trading Standards Service use the Home Authority Principle to co-ordinate their enforcement activities relating to large businesses with a number of outlets. The Home Authority will usually be the Authority where the business has its headquarters. The Home Authority seeks to provide a central contact point and provide more consistency in enforcement and advice. This is a voluntary scheme and often Local Authorities are unable to provide a full Home Authority service due to resource constraints. Hampton questioned the effectiveness of the Home Authority principle in his report citing variations in resources and service provision around the country as being a barrier to it ensuring any consistency. He also recognised that the operation of the Home Authority Principle is unfunded and can lead to some Authorities having a disproportionately high Home Authority burden.

53. For the CTSA to have a role in carrying out Local Authority work for national businesses, we will need to define what is meant by the term 'national'. It is important that this definition is both meaningful and covers only a limited number of businesses, to ensure that the CTSA is not overwhelmed by Home Authority work.

Q6. Can you suggest a definition for the type of business that CTSA might cover for Home Authority work? What criteria could be used to assess whether a business falls within the definition?

54. We have therefore considered options on how to address the inconsistency of enforcement for larger business. The options identified below relate to those issues covered by the CTSA. Other Trading Standards issues outside the remit of the CTSA would continue to be subject to whatever inspection regime they are currently under. Where it is possible we will look to see if there is any scope for co-ordination of the different regimes. Where these options involve cost burdens on Local Authorities, these will be met in line with the New Burdens Principle.

55. All options will give the CTSA powers to direct that a Local Authority should not inspect a business or take formal action against a business. These are necessary to ensure that national companies do not continue to face inconsistent approaches. Where such directions are given, the Local Authority will not normally have further responsibility for Trading Standards enforcement in relation to the business concerned. They would, however, still be responsible for any emergency enforcement action that it might be necessary to take against the business.

Scotland and Wales

56. The options identified below will only be for reserved areas (i.e. all CTSA Trading Standards issues in England, and reserved CTSA issues in Scotland and Wales). The Scottish Executive and National Assembly for Wales will want to consider further whether they wish to adopt a similar approach for their areas of interest once we have agreed a way forward.

Option 1

57. We propose that Local Authorities would continue to inspect and take enforcement action for larger business following the Home Authority Principle. However this will be under a more directed regime. The CTSA will produce guidance or directions that Authorities would be required to follow, for example to follow a certain risk assessment protocol. Any directed regime would need to be based on risk and take into account Hampton's recommendations on co-ordination and rationalising inspections by regulators.

58. This would ensure that all Authorities are applying the Home Authority Principle consistently but may not achieve the efficiencies for business as recommended by Hampton or reduce the problems of inconsistency. It might not ensure that all business would be subject to the same enforcement regime due to variations in the level of service provision and local decisions on enforcement action.

Option 2

59. We propose that the Home Authority would look at systems and processes in place in the business and undertake a random sample of premises to inspect. This sample will not just be in the Home Authority's own area but could be anywhere around the country. Other Authorities would therefore not inspect the business outlets in their area. The CTSA would be able to direct an Authority not to take action against businesses that were inspected as part of this regime. To ensure sufficient protection for consumers, there would need to be a built in alert system (via Consumer Direct for example) to ensure that where there were a large number of complaints about a particular premises these could be identified and addressed.

60. This approach will have resource implications for the Home Authority, as they would be required to travel around the country visiting the business' outlets and taking on enforcement activities of other Local Authorities. It is essential that the Home Authority which is taking on the inspection of a national company is not overburdened in doing so, as that could have a detrimental affect on the local consumers and business.

61. We would need to consider how to meet the increase in costs for the Home Authority in taking on this role. As mentioned above, any additional

cost burdens on Local Authorities will be handled through the New Burdens Procedure.

62. Benefits of this approach are that businesses with multiple outlets are not subjected to a large number of inspections and any enforcement action taken against a business is co-ordinated and consistent. However, different businesses could still be subject to different enforcement regimes if they have different Home Authorities. We also see real practical difficulties in operating this system, and in ensuring appropriate adjustments to the funding of individual Local Authorities.

Option 3

63. Under this option, we propose that the CTSA would undertake the same role as set out for the Home Authority in Option 2 above, and therefore Local Authorities would not inspect those businesses covered by these arrangements. Alternatively the CTSA could undertake the overall analysis of the business' processes and systems, but would contract with Local Authorities to inspect individual stores on its behalf. Either way it will be necessary for the CTSA to be able to direct a Local Authority not to take enforcement action to ensure there was no unnecessary duplication of enforcement.

64. Under this option there will be resource implications for the CTSA. How to meet these costs and the implications for the Trading Standards Service will need to be considered carefully to ensure that the service is not compromised as a result and that local businesses and consumers are not at risk from lack of an adequate Trading Standards Service. Any new burdens on Local Authorities will be handled through the New Burdens Procedure.

65. The benefits however will be that larger businesses will have a consistent approach to enforcement and a reduction in the burdens placed on them by numerous inspections. It would deliver greater consistency not only for each individual business, but also between different businesses.

66. We think that Option 3 would be the most effective at delivering the Government's manifesto commitment, as described in paragraph 51. We do not consider that Options 1 and 2 would effectively deliver this commitment, but would welcome views.

Q7. Do you agree that Option 3 would be the most effective in achieving the increased consistency the Government is trying to achieve?

Q8. Do you agree that Option 3 would be the most effective in achieving the efficiencies for business proposed by Hampton?

Q9. Do you think there are better options not identified here for improving consistency of enforcement by the Trading Standards Service?

Chapter 4 – Redress

67. As our Consumer Strategy sets out, problems encountered by consumers are best resolved at the earliest possible opportunity, and if at all possible without going to court. We propose that the CTSA should have a role in providing the following consumer redress services which will be introduced as part of the Consumer Strategy:

Quality assurance of third party dispute resolution schemes

68. Improving knowledge, use of and access to alternative dispute resolution (ADR) through Consumer Direct would bring benefits for businesses and consumers. Responses to the draft Consumer Strategy suggested a good deal of support for enabling recognition of good quality ADR, and promoting good schemes. In our final Strategy - *A Fair Deal For All*, we propose that Consumer Direct will refer consumers, when appropriate, to ADR schemes that meet certain quality criteria. There will be further consultation about what the standard for ADR schemes should be. We propose that the CTSA should be responsible for assessing whether ADR schemes meet these standards in order to allow Consumer Direct to refer people to them.

Q10. Do you agree that recognition of good quality ADR schemes would be an appropriate role for the CTSA?

Cross border scams

69. The Consumer Strategy sets out our proposals to enable assets recovered through a successful action in another country by overseas authorities to be returned to consumers in the UK.

70. Where it is possible, practical and cost-effective to identify the rightful owners, we propose that the CTSA should distribute recovered assets back to UK consumers. The costs of doing so would be deducted from the money given back to individuals (as is the practice of some foreign enforcers).

Q11. Do you agree that distribution of these recovered assets would be an appropriate role for the CTSA?

Representative action

71. The Consumer Strategy also sets out our proposals to introduce representative actions to ensure that consumers have better access to justice in cases where it was necessary to go to court to resolve a dispute. We

propose that the CTSA is designated as a third party to bring proceedings on behalf of a group of consumers.

72. Detailed proposals will be developed over the coming months, and we will consult further on how such a system of representative action might operate across Great Britain, in order to improve redress for consumers but avoid unnecessary litigation for business.

Q12. Do you agree that the CTSA should be designated as a third party to bring proceedings on behalf of a group of consumers?

Chapter 5 – Options for fulfilling Hampton’s requirements

73. In his report, Hampton identified two different options for the structure of the CTSA.

- Option 1 – the CTSA could be a wholly new body; or
- Option 2 – the CTSA could be formed as part of the OFT.

74. Hampton’s preference was for Option 1, on the basis that there would be significant managerial and organisational advantages in creating a body which was wholly focused on the major task of delivering a coherent enforcement network and performance management of local Trading Standards. The views expressed in the Hampton Report provide our starting point on this issue. However, Hampton also recommended that the Government should engage in further consultation on the issue of structure before reaching a final decision. The Government has accepted Hampton’s recommendations, and is therefore seeking views on the best option for the structure of the CTSA, before reaching a conclusion.

75. There are advantages and disadvantages associated with each of these options, which are discussed in more detail below. A table summarising these arguments can be found at Annex A. When considering these two structural options, it is important to bear in mind the role and character / function the CTSA should have, which is set out in our proposals in Chapters 3 and 4. The optimal structure for the CTSA will be the one that best supports the objectives Government is trying to achieve, to bring about the benefits for business and consumers outlined by Hampton. It is in this context that the options for the structure of the CTSA should be considered – and not as a stand-alone issue.

76. There may also be implications for the CTSA if Government decided to transfer the OFT’s consumer credit responsibility to the Financial Services Authority, which Hampton suggests might be considered. There would still be considerable work to be done in identifying how such a transfer could work and what the impact might be. We would aim to consult separately on these issues in early 2006. In the meantime, we will need to bear in mind that if we remove consumer credit work, this would have an impact on the size of the OFT.

Option 1 – the CTSA should be a wholly new body

77. In this scenario the CTSA would be formed as a new and separate body. The OFT consumer functions would be transferred to the new body, along with the functions of NWML, the HAC and the BHC. The OFT would continue to enforce competition law and conduct market studies.

78. Hampton estimates that the costs of this option would be between £7 million and £11 million and ideally less. These figures are based on the capital and non-capital per head costs of the Ofcom and Financial Services Authority mergers, so are rough estimates.

Advantages

79. The CTSA is taking on a significant new role in co-ordinating and performance managing local Trading Standards. Creating the CTSA as a separate, stand-alone body would bring the benefit of a 'new start' for the organisation. The bodies to be included in the CTSA would all have the chance to join the new body on a more equal footing. They would also have the opportunity to influence the development of the CTSA's character and structure, so that the culture of the organisation can reflect and support all of its functions equally. A separate CTSA would also have the opportunity to develop its own structure, priorities and objectives which are specific to its new role, rather than being immediately subsumed into the OFT's existing objectives and structure.

80. Initial discussions with stakeholders indicate that many would welcome a greater prominence being given to consumer and Trading Standards issues. A separate CTSA would send a stronger message that Government wants to make improvements in this area and break with past practice. A separate CTSA would also increase the profile of consumer enforcement, and bring it into line with the profile currently afforded to competition enforcement.

81. Delivering the Hampton vision for the CTSA will be a difficult delivery task. Making a success of the CTSA will require much input, time and effort from its senior staff. A separate CTSA where the senior staff could focus solely on consumer issues would increase the likelihood of success for the CTSA – and would mean that that success would not be at the expense of competition work.

82. Creating a separate CTSA would allow the opportunity to review the linkages between Government Ministers and consumer regulation and to change these if appropriate. For example, depending on the role of the CTSA, it might be desirable to establish a closer relationship between the CTSA and Government than currently exists with the OFT. This re-assessment would be much more difficult if the CTSA were created within the OFT as the OFT's linkages with Government are already established.

Disadvantages

83. The disadvantages associated with Option 1 are that setting up an entirely new body would require a bigger structural change. Although either structure for the CTSA would require some change, a separate CTSA would create more disruption and initial confusion while the new organisation embeds itself.

For these reasons, it is likely to take longer before a separate CTSA can operate effectively than it would take for a CTSA within the OFT to find its feet.

84. Establishing a separate CTSA is also likely to require more up-front expenditure than forming it as part of the OFT, although there may be ongoing efficiency savings associated with a new body, especially if it is located outside of London and the South East, as Hampton suggests.

Q13. Do you think that forming the CTSA as a separate body would be most likely to achieve the benefits to business and consumers outlined by Hampton and to support the Government's objectives in this area? What are your reasons for your views?

Q14. What would be the most effective means of achieving the cultural change needed to create a successful CTSA?

Q15. Can you see any other advantages / disadvantages of this approach?

Q16. Do you agree with the estimates of the costs of forming the CTSA as a separate body, set out in paragraph 78? Where possible please provide evidence for any costs and benefits, including details of any costs or benefits that you may incur as a result of these proposals.

Q17. Are there any other relevant factors that we should consider?

Link between consumer and competition regulation

85. In many ways competition and consumer regulation is intertwined. For instance, effective competition relies upon consumers being well informed when making choices between different products or firms. Equally, consumers benefit from competition law, for example, by the prohibition of a price fixing cartel or anti-competitive merger. Hampton stressed the importance of maintaining the link between competition and consumer regulation (whatever structure is chosen for the CTSA).

86. At a policy making level, the link between competition and consumers will continue to be maintained. However, there is a risk that by creating a separate body the link between competition and consumer enforcement may be weakened.

87. It is possible that Option 1 may make it more difficult to maintain the link between consumer and competition regulation that currently exists within the OFT, as the two functions would be in separate organisations. There is potential, however, to put in place measures that ensure the link is effectively maintained.

88. The following are possible measures that could be put in place to maintain a link between consumer and competition regulation, if the CTSA were to be formed as a separate body:

1. A general obligation for the CTSA to consider both the consumer and competition effects of its actions. This would mirror the OFT's existing practice.

89. This measure would be over-arching and would help shape the CTSA's priority setting and performance management of Trading Standards. A measure such as this would be essential to embed a culture in the CTSA where competition issues are routinely considered alongside consumer ones. There may be potential problems in implementing it effectively, due to the likely lack of competition expertise in a consumer-focused organisation, although a system of secondments from the OFT, or competition training for the CTSA staff are possible solutions.

2. A formal obligation for the CTSA to consult the OFT on competition effects.
3. A formal obligation for the OFT to consult the CTSA on consumer benefits / consumer protection, when conducting market studies.

90. These two options may usefully be considered together, as for the consumer / competition link to be effectively embedded, it would be necessary to impose obligations on both the CTSA and the OFT to consult one other. These obligations could be further reinforced through the structure of the two organisations, for example by establishing common Board membership for both the CTSA and the OFT, or maintaining regular meetings between the two at board level.

91. Market studies and investigations, publication of guidance and the consumer codes approval scheme are all likely to be impacted upon by such obligations. Potential problems could occur as the need to formally consult another body may result in time delays. However, obligations to consult the other body would ensure that both consumer and competition issues are formally recognised and considered, and that the relevant centre of expertise has the chance to feed in its opinion on issues of concern.

4. Designate the CTSA as a body with concurrent duties to consider supercomplaints (alternative to 5).
5. Impose obligation on the OFT or regulators with concurrent duties in relation to supercomplaints to consult the CTSA with regard to the consumer element of any supercomplaint (alternative to 4).

92. Supercomplaints are a particular issue for the link between consumers and competition, including how they are made, handled and investigated.

93. Under measure 4 above, the CTSA would have the power to investigate supercomplaints. In this scenario, it may be difficult for supercomplainants to understand to which body they should refer, and the CTSA would only be able

to look at supercomplaints that were focused only on consumer issues – it would need to refer competition issues (or mixed consumer and competition issues) to the OFT. This could prove difficult, as it may be hard to identify at an early stage whether the problems raised by a supercomplaint, and the features of the market involved, are strictly consumer oriented or a combination of consumer and competition issues.

94. It would be important for the CTSA and the OFT to work closely together, so that the CTSA could deal with supercomplaints relating to straightforward consumer enforcement themselves, but could pass more complicated market-based complaints on to the OFT, which will be better equipped to deal with them. Arrangements would need to be put in place to ensure that the CTSA and the OFT could work together to produce the best outcomes for consumers and business.

95. Measure 5 above would give the CTSA the right to be consulted on the consumer element of supercomplaints, rather than a role in investigating them. Although this option would still allow for consideration of both the consumer and competition aspects of a complaint, it may add another stage to the process of investigating supercomplaints. However, it may also be possible for the OFT to incorporate consultation with the CTSA into its existing consultation process. Indeed, the need for the OFT to formally consult the CTSA is not removed under measure 4 with respect to combined consumer / competition supercomplaints.

96. With either of measures 4 or 5, it would be necessary to impose a duty on the CTSA to respond to market study recommendations made by the OFT, to set out what action they plan to take (or if they do not intend to take any action, to explain the reasons for this). Equally it would be necessary to impose a duty on the OFT to consider any recommendations made by the CTSA on suggested subject areas for an OFT market study.

Q18. Do you agree with our recommendations on the likely effectiveness of these measures?

Q19. What combination of these measures do you think would be most effective in embedding the consumer / competition link in the CTSA?

Q20. Are there other measures you can identify that could be effective in maintaining this link?

Q21. How far do you think the link between consumer and competition issues should be embedded within the organisations? Is a link at senior level sufficient, or should there be links between the CTSA and the OFT at all levels?

97. If the CTSA is formed as a separate body, it will be necessary to decide what its relationship with Government Ministers should be. This is a decision that can only be taken once the role and function of the CTSA have been

agreed. However, it would be useful to consider at this stage how close this relationship should be.

98. This relationship with Ministers will also influence what type of body the CTSA will be, although as above, we do not intend to make a decision on this until we know more about the organisation's role and function. There are a number of structural options available, the broad characteristics of some of these options are as follows:

- Executive Agency – Carries out a service or function within Government (usually part of / sponsored by a Department), by a well-defined business unit that has a clear focus on delivering specific outputs and a framework of accountability to Ministers (although Ministers are not involved in general day to day running).
- Non-Departmental Public Bodies – Permits a service or function to be carried out at arm's length from the Government and one stage removed from Ministers. They operating under statutory provisions and are legally incorporated.
- Non-Ministerial Department – Small Government Departments in their own right, established to deliver a specific service. General Ministerial relationship varies, but the rationale is to distance day to day functions from Ministerial control.

Q22. If the CTSA is formed as a new body, how close do you think the relationship between that new body and Government Ministers should be? What are the reasons for your views?

Option 2 – the CTSA should be formed as part of the OFT

99. In this scenario the CTSA would be established as part of the OFT. The other bodies that Hampton recommends should be included in the CTSA – NWML, the BHC and the HAC – would be added to the existing OFT structure. There are a number of ways this could be done in terms of internal structure, ranging from a complete merger of all the bodies into the OFT's consumer side, to the creation of the CTSA as an Executive Agency of the OFT with a substantial autonomy.

100. Hampton estimates that the costs of creating the CTSA within the OFT would be between £2.5 million and £7.5 million and ideally less, but this is only a rough estimate.

Advantages

101. Option 2 has the benefit of requiring less structural change, as although it would require merging the functions from NWML, the BHC and the HAC into the OFT, it would not necessitate the creation of an entirely new body. This option would be likely to be the least disruptive means of setting up the CTSA, as although it would still require some structural change, this would not be of

the scale associated with setting up a new body. It would also be the cheaper of the two options, requiring less up-front expenditure than would be required to set up an entirely new body.

Link between consumer and competition regulation

102. As discussed earlier, it is important to ensure that a strong link between competition and consumer regulation is maintained, irrespective of the final structure. Encapsulating the both roles within the same body (Option 2) is the most obvious way of maintaining a link between competition and consumer enforcement. There is increasing evidence to suggest that the consumer and competition functions within the OFT are working better together, particularly through Enterprise Act market studies, and to split these two functions into separate organisations at this point might put this at risk. There is a greater chance of continuing the development of proper and effective links if the two functions remain in the same organisation.

103. Internationally, a number of leading competition authorities have significant consumer enforcement responsibilities, (e.g. The Australian Competition and Consumer Commission and the Federal Trade Commission). However, there is limited evidence to show that Option 2 is the only way to maintain the link between competition and consumer regulation.

Q23. Do you think the link between consumer and competition enforcement is made satisfactorily in the OFT at present? Is it working effectively?

Q24. Can you think of ways in which this link might be strengthened if the CTSA were to be formed within the OFT?

Disadvantages

104. However, there are also disadvantages to this option. Creating the CTSA as part of the OFT would make it more difficult for the body to establish a character of its own, as it would inherit the culture already present in the OFT. Equally, it would not allow the bodies to be included in the CTSA the chance to start off on an equal footing, as they would be joining an existing organisation whose structure is already established. To achieve the benefits identified by Hampton will require not only structural changes, but also a cultural change in the way the new CTSA will operate. It would be much more difficult to achieve this culture change – and to be perceived to have achieved it - within the OFT than with an entirely new body. In particular, the CTSA's main focus will be on consumer issues. Initial discussions with some stakeholders have indicated a perception that the OFT's stance on consumer issues is weaker than its approach on competition issues. Thus establishing the CTSA as part of the OFT risks a continuation of a situation where consumer issues are perceived to be secondary in status to competition ones.

105. Success in establishing and building the reputation of the CTSA will be a difficult delivery task, which will require significant time and effort from all staff and from senior staff in particular. If the CTSA is created as part of the OFT, the same senior staff will also have their existing agenda to deliver a world-class competition regime to consider and could not focus wholly on setting up the CTSA – as could be the case if the CTSA were a new body. As a consequence, there would be a risk that senior staff could be distracted from their other important work, or that setting up the CTSA does not receive the attention it needs from senior staff and as a result does not deliver the benefits outlined by Hampton.

106. There is also a question of the likely size of the CTSA. Depending on the role the CTSA will have, especially in the area of large business enforcement / inspection (discussed further in Chapter 3 above), creating the CTSA within the OFT could greatly increase its size. It is questionable whether the OFT is well equipped to deal with expansion on this scale, although it is worth noting, that between 2001 and today, the organisation has grown from 400 to 720 staff. The balance within the OFT of competition and consumer activities must also be considered. The number of OFT staff working on consumer issues and those working on competition issues is currently broadly similar (approximately 270 doing competition enforcement and market studies and 250 doing consumer activities) and subsuming the CTSA within the OFT would risk disturbing this balance.

107. Finally, creating the CTSA within the OFT means that the relationship between Government Ministers and the CTSA will automatically be the same as the relationship the OFT has with Government. Depending on the role the CTSA is given, it may be that the CTSA would be best served by a different e.g. perhaps a more direct relationship with Government than by an arms length relationship via an independently run OFT.

Q25. Do you think that forming the CTSA within the OFT would be most likely to achieve the benefits to business and consumers outlined by Hampton and to support the Government's objectives in this area? What are your reasons for your views?

Q26. What would be the most effective means of achieving the cultural change needed to create a successful CTSA?

Q27. Can you see any other advantages / disadvantages of this approach?

Q28. Do you agree with the estimates of the costs of forming the CTSA within the OFT? Where possible please provide evidence for any costs and benefits, including details of any costs or benefits that you may incur as a result of these proposals.

How to respond and what happens next

How to respond

The Department of Trade and Industry welcomes comments, including supporting evidence, by 12 October 2005.

Where possible please send responses by email only to the following address:
ctsa.consultation@dti.gsi.gov.uk

When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

A list of those organisations and individuals consulted is in Annex E. We would welcome suggestions of others who may wish to be involved in this consultation process.

An electronic version is available at www.dti.gov.uk/ccp/ctsa/pdfs/ctsacondoc.pdf

If you are not able to reply by email, a response can be submitted by letter or fax to:

Andy Cormie
Consumer and Competition Policy
Department of Trade and Industry
Bay 464
1 Victoria Street
London
SW1H 0ET

Tel (020) 7215 3818
Fax (020) 7215 6414

What happens next

The closing date for this consultation is 12 October 2005. We will then consider all views submitted before making any further decisions.

Hampton recommended that the CTSA is operational by 2009.

Annex A – Summary of advantages and disadvantages of the options for the structure of the CTSA – as discussed in Chapter 5

Option 1 – CTSA separate from the OFT	Option 2 – CTSA in the OFT
<i>Advantages</i>	<i>Advantages</i>
Much more opportunity for the CTSA to establish its own character – and for all the bodies it will subsume to influence that character	Smaller structural change
The bodies that will form the CTSA would start off on a more equal footing	Less disruptive for bodies involved
More likely to achieve cultural change needed to bring about the benefits identified by Hampton	Less up-front expenditure
Sends a strong message that Government wants to break with past practice and give consumer issues greater prominence	Likely to be shorter lead time before the CTSA can operate effectively
Senior staff would be able to focus solely on the CTSA, which would increase the chances of its success, while ensuring that success is not at the expense of competition issues.	Most obvious way of maintaining link between consumers and competition
A new CTSA could be created to suit the number of staff needed. Balance of staff would not be an issue.	
Gives the opportunity to consider the links between consumer regulation and Government and to change these if appropriate.	
<i>Disadvantages</i>	<i>Disadvantages</i>
Bigger structural change	More difficult for the CTSA to establish character of its own
More disruptive for bodies involved	The bodies that will form the CTSA would not start off on an equal footing

More up-front expenditure	Less likely to achieve cultural change needed to bring about the benefits identified by Hampton
Likely to be longer lead time before the CTSA can operate effectively	Risks continuation of a situation where consumer issues are perceived to be secondary to competition ones
Could be more difficult to maintain link between consumers and competition	Senior staff may be unable to deliver both a successful CTSA and a world-class competition regime
	The OFT could be ill equipped to deal with scale of expansion involved, and balance between number of consumer and competition staff could be disturbed
	More difficult to redefine the links between consumer regulation and Government – the CTSA would have the same relationship with Ministers as the OFT does

Annex B – Table of factual information on the organisations to be included in the CTSA

BODY	WHAT THEY DO / ROLE	STAFF	BUDGET	LOCATION
OFT (NMD)	<p>The OFT deals extensively with OGDs and has responsibility to enforce, publish guidance, undertake market-investigations advise business and consumers, take action and in some cases issue licenses under the following pieces of legislation – all of which are UK wide:</p> <ul style="list-style-type: none"> - Enterprise Act 2002 - Estate Agents Act 1979 - Consumer Credit Act 1974 - Consumer Protection (Distance Selling) Regulations 2000 - Unfair Terms in Consumer Contracts Regulations 1999 - Control of Misleading Advertising Regulations 1988 - The Financial Services (Distance Marketing) Regulations 2004 - Fair Trading Act 1973 - Competition Act 1998 	726 permanent staff.	<p>- Annual budget for SR04 is £52.6m admin, £2m litigation, £1.4m Capital.</p> <p>- Reviewed bi-annually in Spending Review.</p> <p>- 05/06 admin budget allocation: £13.22m to consumer work. £13.3m to competition work £6.6m to market studies and related work</p>	<p>- Main Office – Fleetbank House London.</p> <p>- Consumer Credit Licensing Bureau in Ealing – but they move to London May 2006</p>
NWML (EA)	<p>NWML’s main functions are in Weights & Measures, negotiating and implementing EU Directives, calibration, type approval of weighing and measuring equipment, liaising with the Trading Standards Service, approval of notified bodies, advising businesses on compliance and certification of manufacturers and installers.</p>	51 permanent members of staff and 2 temporary staff.	<p>NWML is a net running cost agency of DTI and its income for 2004 – 05 was £3.31m, most of which (£2.74m) was under DTI contract.</p>	Teddington, Middlesex
HAC (Executive NDPB)	<p>HAC was established to ensure adequate standards of competence and conduct among private hearing aid dispensers and their employers under the Hearing Aid Council Act 1989.</p>	9. Chief Executive is permanent, others are contractors	<p>Mostly self-funding, by a levy on Registered Dispensers.</p>	Milton Keynes
BHC (Executive NDPB)	<p>BHC regulates Assay Offices and advises SoS on issues under the Hallmarking Act 1973.</p>	1 part time Chairman, 1 hourly paid sec	<p>Funding by contribution from Assay Offices. No Government funding except for recruitment exercises.</p>	No offices

Annex C - Partial Regulatory Impact Assessment

Title of proposal

C1. This document considers implications and options for setting up a new Consumer and Trading Standards Agency (CTSA) based on the recommendations put forward in the Hampton Review '*Reducing administrative burdens: effective inspection and enforcement*'.¹

Purpose and intended effect

Background

C2. In the 2004 Budget, the Chancellor asked Philip Hampton to consider the scope for reducing administrative burdens by promoting more efficient approaches to regulatory inspection and enforcement, without compromising regulatory standards or outcomes.

C3. The Hampton final report was published in March 2005, and concluded that burdens on business could be reduced by streamlining the regulatory system to have fewer, larger regulators, with which business must interact. The Government accepted Hampton's recommendations, including that a new body should be created at the centre of Government to co-ordinate work on consumer protection and Trading Standards.

C4. Whether a wholly new body is created, or whether it could be based within the Office of Fair Trading, Hampton emphasised the importance of maintaining a link in the CTSA between consumer and competition policy, with consumer policy retaining a strong market-based approach. Hampton said he thought it was better to set up a new body, but recommended that the Government consult with stakeholders before taking a final decision on the question of structure. The Government have accepted Hampton's recommendations.

Vision for the CTSA

C5. We envisage that the CTSA will be a strong, proactive body, well able to respond to the needs of consumers and business in the 21st century. It will promote the importance of competitive markets for providing fair outcomes for both consumers and business. It will be consumer-focused, but will also provide a flexible and user-friendly service for business, to ensure that regulation doesn't stifle innovation.

¹ Available at http://www.hm-treasury.gov.uk/budget/budget_05/other_documents/bud_bud05_hampton.cfm

C6. An effective CTSA would contribute to one of the Government's top strategic priorities (as identified in last year's DTI Strategy) of extending competitive markets. As a Department we are committed to ensuring that the UK framework for consumer empowerment and support is at the level of the best in the world. An essential element of this framework (and for improving productivity) is ensuring a fair trading environment for business in order to enable and drive competition.

C7. An effective CTSA would also meet Hampton's call for a more coherent enforcement network, giving the Trading Standards Service strategic leadership and providing the co-ordinating performance framework and prioritisation role that currently prevents the Trading Standards Service from being as consistently effective as it might be. The CTSA could also act as a vehicle for improving consumer redress, an improvement that is identified in the Consumer Strategy (*A Fair Deal For All*) as something that would enhance the consumer regime.

Objectives

C8. Whilst Hampton's overall objective was to reduce the burdens on business, establishing the CTSA provides us with an opportunity to ensure additional benefits not just for business, but also for consumers and Government.

Benefits to Business

C9. Ensuring that business is not over-burdened by regulation is crucial to the success of the UK economy. Both small and large businesses will benefit from an organisation that has the power to prioritise and co-ordinate the work affecting them, especially through increased consistency and a clearer approach to enforcement. There are further benefits associated with a more organised, cohesive body, where businesses know who to contact with queries, and the advice provided to them is more uniform and received quicker as a result of closer links to regulators and enforcers. A unified organisation that provides access to complete information will lead to more comprehensive risk assessment. This benefits business through a reduction in the absolute number of inspections, enabling them to be more productive and innovative, and putting them in a better position to compete in a modern diverse market.

Benefits to Consumers

C10. Consumers will also benefit from a prioritised and co-ordinated organisation. With the ability to handle and investigate consumer complaints, the CTSA will be in a better position to take fast and effective action where necessary. We want consumers to feel safe and empowered in the market. A co-ordinated CTSA that has a responsibility to consider the needs of consumers will also be able to provide those consumers with advice that reflects the full spectrum of market issues. In addition, the proximity of the

CTSA's consumer functions to those of enforcement, will result in a pro-active approach to consumer education, reducing the vulnerability of consumers with regard to scams, and providing a mechanism for directing consumers to approved redress services.

Benefits to Government

C11. The CTSA will bring benefits for both Central and Local Government. The Trading Standards Service will be better able to carry out specific enforcement action as a result of efficiency savings from a reduction in the time spent on routine consumer complaints, and inspections. A co-ordinated and prioritised system also ensures clearer direction for the Trading Standards Service, enabling it to plan more effectively, balancing the requirements of Central Government with the needs of local communities. But it also means that Central Government will be better placed to produce strategic, flexible regulation that meets the needs of consumers, of business and of enforcers.

Consultation

List of those consulted in preparing the consultation:

- British Retail Consortium
- Citizens Advice
- Confederation of British Industry
- Federation of Small Businesses
- Hearing Aid Council
- Local Authorities Co-ordinators of Regulatory Services
- National Assembly for Wales
- National Consumer Council
- National Weight and Measures Laboratory
- Standards and Technical Regulations Directorate – DTI
- Scottish Executive
- Trading Standards Institute
- Which?

Options

The key options that we consider in this RIA are summarized below:

Option 1: Set up a new Consumer and Trading Standards Agency (CTSA) as an entirely new organisation

Option 2: Set up a new Consumer and Trading Standards Agency (CTSA) within OFT

C12. Both these options assume that the CTSA has a role providing:

- Advice for business;
- Consumer Education;
- Consumer Direct;
- Enforcement against business;
- Co-ordination of the performance framework for the Trading Standards Service

C13. We also assume that the new body would incorporate the National Weights and Measures Laboratory (NWML), the British Hallmarking Council (BHC) and Hearing Aid Council (HAC), as well as the consumer functions of Office of Fair Trading (OFT). There is a case for some DTI regulatory delivery functions to move to the CTSA, although we are still investigating this possibility.

Option 3: Do nothing

Option 4: Set up a new Consumer and Trading Standards Agency (CTSA) with a consumer campaigning role

C14. In addition to the options above we also considered whether the CTSA should have a consumer campaigning role rather than a neutral role. This was not considered necessary given the existence of bodies such as the National Consumer Council. Hence we have not included further information on costs and benefits of this proposal in the RIA.

C15. The RIA will, therefore focus on the first three options and will consider the costs and benefits of these.

Sub options

C16. However, within Options 1 and 2 there are several sub options on the exact role and operation of the new CTSA organisation.

Options for the CTSA's consumer role

C17. Work done as part of the DTI Consumer Strategy (*A Fair Deal For All*) concluded that the UK needs more effective mechanisms to obtain settlement for consumers where there is collective or individual harm.

C18. We therefore consider possible options for the CTSA's role which would help to meet these objectives:

- i. The CTSA taking a role to administer redress payments for consumers. This could include the CTSA receiving assets which have been seized abroad following civil or criminal proceedings in respect of scams. Where it was practical and the rightful owners could be identified, the CTSA could distribute these assets to UK consumers.
- ii. Quality control of alternative dispute resolution (ADR) schemes. Building on existing work by OFT, the CTSA would approve ADR schemes which met an agreed standard. Consumers could be signposted to these approved schemes through Consumer Direct.
- iii. The CTSA taking a role in representative action, acting as a third party to bring proceedings on behalf of a group of consumers.

Options for consistency of inspection

C19. We expect the CTSA to have a role in improving the consistency of regulation faced by business, particularly larger businesses that trade in several Local Authorities areas. At present, the Trading Standards Service will use the Home Authority principle to manage their relationship with larger business. This means that the Local Authority in which the main headquarters of the business is located, will act as the 'home authority', providing a central point of contact for the business and other Local Authorities dealing with its outlets, providing more consistent advice and enforcement.

C20. However the fragmented nature of the Trading Standards Service inevitably leads to inconsistency in advice and enforcement. We therefore see the CTSA as having a role in addressing this. The options we have identified will include all Trading Standards issues to be covered by the CTSA. Other Trading Standards issues outside the remit of the agency will continue to be subject to the existing inspection regime. The options we propose are as follows:

- i. Local Authorities would continue to inspect and take enforcement action for larger business under a directed regime.

- ii. The Home Authority would look at systems and processes in place in the business and inspect a random sample of premises.
- iii. The CTSA would undertake the same role as that set out for the Home Authority in Option (ii) above, and Local Authorities would not inspect the business; or the CTSA would undertake the overall analysis, but would sub-contract inspection of individual sites to Local Authorities.

Options for maintaining the consumer and competition link

C21. In setting up the new CTSA it will be important to maintain the link between consumer and competition policy. Hampton stressed the importance of this link and international best practice suggests that the most effective regulators consider consumer and competition issues simultaneously.

C22. There are several possibilities for maintaining this link which will be discussed further. Clearly the appropriateness and effectiveness of these will depend on whether the CTSA is formed as a new body or within OFT (Option 1 or 2).

- i. A general obligation for the CTSA to consider consumer and competition effects of action
- ii. A formal obligation for the CTSA to consult OFT on competition effects (consider with option iii).
- iii. A formal obligation for OFT to consult the CTSA on consumer benefits / consumer protection (consider with option ii).
- iv. Designate the CTSA as body with concurrent duties to consider super-complaints (alternative to v).
- v. Impose obligation on OFT or regulators with concurrent duties relating to super-complaints to consult the CTSA with regard to the consumer element of super-complaint (alternative to iv).

Costs and Benefits of core options within the RIA

C23. In this section we consider the costs and benefits of the main three options within the RIA, however, these depend on the exact remit and specification of the CTSA. The consultation should provide us with more evidence and analysis of the costs and benefits associated with the options, which can inform the final RIA.

Benefits

C24. In considering the benefits of each of the options we have addressed the benefits against each of the objectives set out earlier in this RIA:

- Benefits to business
- Benefits to consumers
- Benefits to Government

Option 1: Set up a new Consumer and Trading Standards Agency (CTSA) as an entirely new organisation

Benefits to business

C25. Hampton's recommendations stress the potential savings to business that should stem from the need to interact with fewer regulatory organisations. By reducing the number of regulators, and more specifically in the case of the CTSA, improving the co-ordination of those regulators, businesses will have fewer bodies to deal with. This means the volume of business and regulator interfaces will be simplified, resulting in less administration.

C26. In addition, a more co-ordinated regulator would be able to design and implement effective risk management processes and methodology. Linked with the assumed incorporation of Consumer Direct, an organisation such as the CTSA would therefore have complete information to factor into risk management frameworks. The result is a more prioritised work ethic for the regulator, encouraging more targeted inspections by Trading Standards, and hence reducing the associated burdens on business.

C27. A combined regulator with complete information from consumers and enforcers would also be able to make more strategic decisions, resulting in more coherent advice to business, and an ability to identify conflicting legislation earlier. Furthermore, the ability to effectively prioritise work, should mean that rogue traders are identified and tackled more rapidly making it easier for responsible business to compete on a level playing field.

C28. There are additional advantages for business, as parts of the Trading Standards Service with Home Authority responsibilities would have a clearer, more consistent approach to enforcement.

C29. Under this particular option, initial discussions with stakeholders have identified that a robust approach to performance management with sufficient levers to ensure Local Authorities improve is important. In addition, business would be more confident where all Authorities met a level of acceptable performance across the country, thus ensuring more consistency in service provision.

C30. This option would allow all bodies to join the CTSA on a level pegging, promoting confidence and certainty for business in the market. Industry stakeholders have also indicated that they see the OFT's stance on consumer issues to be heavy handed, introduction of a new, separate body could increase business confidence. Business have also stated that they favour the CTSA having closer links to Ministers, which would be easier to put into effect under this option.

Benefits to consumers

C31. It should be noted that the some of the issues mentioned in 'Benefits to business' above, also have advantages for consumers in so far as more effective and co-ordinated enforcement and advice improves business conduct. However, there are more detailed points to make:

Defining priorities

C32. Setting up a new CTSA that has the ability to define priorities for the Trading Standards Service has the potential to deliver large benefits for consumers. At present the Trading Standards Service has to deal with the requirements of a number of different Government Departments and agencies, all responsible for different areas of legislation. The Trading Standards Service has a finite amount of resource and prioritisation is essential.

C33. At present there is no centrally co-ordinated list of Central Government priorities for the Trading Standards Service. Some Departments or agencies will produce their own high level strategic priorities, for example Food Standards Agency produce an annual set of high level priorities for the enforcement of food regulations and Department of Trade and Industry has four high level priorities for its National Performance Framework for Trading Standards.

C34. The new CTSA organisation will have the ability to work with Ministers to determine key priority areas. These are likely to be areas with the largest consumer detriment, where early or rapid intervention will have the most impact or where other methods of addressing the potential problem, such as consumer education, are less effective. Ensuring that the Trading Standards Service can focus on key areas of consumer detriment is likely to mean that a larger proportion consumer detriment will be prevented or recovered.

Speed of response

C35. The setting up of a single body responsible for both Consumer Direct and oversight of the enforcement regime should make reaction to causes / potential causes of consumer detriment much faster.

C36. At present, the OFT receive a significant amount of their complaints and details that inform whether to undertake market investigations from the Trading Standards Service, supercomplaints, their own market research and direct consumer complaints. Not all of these will result or warrant the opening of a case, however they have the ability to search and file information on electronic case management systems, making the initial decision making easier.

C37. There are specific statutory response requirements under selected pieces of legislation and the system currently seems to meet requirements, however, the complaints handling system may appear to be fragmented as a result of different departments dealing with different complaints in different ways. Whilst sources of information for compliance and enforcement will remain diverse, the inclusion of Consumer Direct in the CTSA represents an opportunity to build on the existing framework, improving the quality of information and complaints handling. As such, consumers will ultimately benefit from more consistent and efficient enforcement of rogue traders.

C38. Under this specific option however, all bodies to join the CTSA on an equal footing – and would make it easier for the new body to establish a character of its own. A new body might also be more likely to achieve the cultural change required to bring about the benefits identified by Hampton. Initial discussions with stakeholders have indicated that some perceive the OFT's stance on consumer issues to be weak; a new body might be more effective in moving away from this perception.

Benefits to Government

C39. In addition to benefits for business and consumers, this option may also lead to potential efficiency savings as the merger of the different organisations may result, as Hampton suggests, in a small number of staff reductions due to some overlap in the roles at present. In addition it is likely that the CTSA's proposed performance framework co-ordination role for the Trading Standards Service could lead to savings in the existing interface between the Trading Standards Service and the OFT as internal links become stronger.

C40. Initial comments from the OFT suggest that if co-ordination of the performance framework for the Trading Standards Service were part of the same organisation *'this would probably reduce the total effort of co-ordination'*, though they note that this may in part be offset by increased need for internal co-ordination and that *'The need for nation-wide meetings, regional co-ordination etc would all continue, but be more internally focused'*.

C41. Under this option, setting up the CTSA as a separate organisation could have the advantage that this makes it easier to break past practice and ensure the organisation has a clear consumer focus. This is also the preference expressed by Philip Hampton in his report.

Option 2: Set up a new Consumer and Trading Standards Agency (CTSA) within the OFT

Benefits to business

C42. The benefits to business as discussed in paragraphs 25-28 in Option 1 above also apply if the CTSA were to be established within the OFT.

C43. Option 2 offers the further benefit to business of building on existing practices and relationships, maintaining an element of continuity. This will help ensure that advice and guidance on regulation will remain responsive and effective. Discussions with stakeholders have also indicated that this is an important issue.

C44. Creating the CTSA within the OFT is also likely to be more straightforward to implement, particularly in terms of legislation. It is possible that this option could therefore be implemented earlier than Option 1, bringing the associated benefits of the CTSA to business at an earlier stage.

Benefits to consumers

C45. As before, the benefits to consumers as discussed in paragraphs 31-37 in Option 1 above also apply if the CTSA were to be established within the OFT.

C46. However, under this particular option, consumers are also likely to benefit further from the OFT's Consumer Code, as using the existing structure for the code will ensure consistency in the new organisation's approach to consumer issues.

C47. Furthermore, recognition of the existing code by business will ensure consumers are better aware of those rogue businesses not affiliated, and result in less disruption than if a new code had to be developed.

C48. Finally, as in paragraph 44 above, there are likely to be associated benefits for consumers through simpler legislation that is quicker and easier to implement.

Benefits to Government

C49. The benefits to Government as discussed in Option 1 above in paragraphs 39-40 also apply if the CTSA were to be set up within the OFT.

C50. However, there would be additional efficiency savings associated with the continuity of retaining the existing functions and structure of the OFT. It may also be less resource intensive to establish the CTSA within the OFT than to create a new body.

Option 3: Do Nothing

C51. There are no benefits arising from this option either in terms of efficiency savings or through improved consumer outcomes.

Costs

Option 1: Set up a new Consumer and Trading Standards Agency (CTSA) as an entirely new organisation

Transitional costs

C52. If the CTSA were to be set up as an entirely new organisation the Hampton Team estimate that set up costs would be *'between £11 million and £7 million, and ideally less'*¹. This is based on the capital and non-capital per head costs of the Ofcom and Financial Services Authority mergers.

Ongoing Costs

C53. In this option, there will also be significant ongoing costs arising from the new functions of the CTSA. There are also likely to be increased costs due to decreases in efficiency caused by splitting the OFT.

Risks

C54. Under this option of creating a separate CTSA, it would be important to maintain the link between consumer and competition regulation (we discuss this more fully later in this RIA). In addition, there is a risk that the current link could be weakened.

Option 2: Set up a new Consumer and Trading Standards Agency (CTSA) within the OFT

Transitional costs

C55. Under this option the CTSA would be part of the OFT, with all the other organisations (NWML, BHC, etc) being added. The Hampton team estimate set up costs of *'between £2.5million and £7.5million and ideally less'* if this option were to be followed. This is based on capital costs only of the Financial Services Authority and Ofcom mergers and assumes that the cost of new staff could be managed within the existing budgets of their former organisations, and that a very small team in the OFT would be needed to manage the change.

¹ 'Reducing administrative burdens: effective inspection and enforcement' p69

Ongoing Costs

C56. There will be significant ongoing costs arising from the set up of the CTSA. Some additional accommodation costs may arise if there is insufficient space to house the staff from NMWL and BHC in the OFT, though this should be offset as these organisations will no longer need specific accommodation once they have moved. As mentioned in the benefits section, merging organisations into the CTSA will lead to efficiency savings, but there will be costs arising from the new functions of the CTSA.²

Risks

C57. Establishing the CTSA as part of the OFT risks continuation of a situation where consumer issues are perceived as being secondary in status to competition ones.

Option 3: Do Nothing

C58. This option will not lead to any additional costs though it fails to implement the recommendations of the Hampton Review. Any potential efficiency savings, or benefits to consumers from improved effectiveness of the proposed body will not be realised.

C59. Under any of these scenarios there may also be implications for the OFT if the Government decided to transfer the OFT's consumer credit responsibility to the Financial Services Authority, an option suggested by Hampton, although not discussed in any detail. The consequences are such that a decision on this matter will require some thought, and as such, the Department has decided to consult on this issue in early 2006.

Q31. Do you agree with the costs and benefits of the options for setting up a new CTSA? Where possible, please provide quantifiable evidence.

² A small additional ongoing cost may arise is in transfer of the BHC to the CTSA. As the BHC does not have any full time staff it is possible that it will be more cost-efficient to provide some new secretariat function from within the CTSA. The Secretariat function is currently provided by contract charged on an hourly basis of £200+/hour and funded by the Assay Offices. The DTI does not currently provide any funds for the BHC, and the difficulties in charging the Assay Offices for this separately might therefore lead this to be an additional cost. However the resource requirement for this is likely to be very small (a small fraction of one individuals time).

Consumer Redress sub-options

C60. The following provides consideration of the sub options outlined in the Options section at the beginning of this RIA.

Background

C61. Although consumer redress was beyond the scope of the Hampton Report setting up a new CTSA provides an opportunity to implement some of the proposals suggested in the Consumer Strategy *A Fair Deal For All*. The benefits and costs presented here summarise the relevant options in the Consumer Strategy RIA. **For more detail see Annex C1 which replicates the relevant sections of the consumer strategy RIA.**

Risk Assessment

C62. In the UK today many transactions operate effectively and do not generate any form of dispute. However when things do go wrong, consumers and business want to find a solution quickly and easily.

C63. A 2003 study compared the UK consumer policy regime with other countries that are members of the Organisation for Economic Co-operation and Development (OECD)³ It concluded that the UK was on a par with the best in terms of consumer rights in many areas but also found areas where the UK needs to improve. One of these areas was redress mechanisms which the study noted needed to be more efficient in righting individual and collective harm.

C64. The CTSA could have several roles (set out below). Comparisons with enforcement agencies abroad show that it is quite possible to combine redress and enforcement functions successfully in the same organisation.

See Annex C1 for information on the magnitude of the problem.

Benefits

Sub option i) The CTSA administering redress payments for consumers

C65. This could include the redistribution of assets to UK victims of scams where assets are seized by overseas authorities as a result of civil or criminal proceedings abroad. Where it was practical and possible to identify the rightful owners of funds, the CTSA would distribute assets back to UK consumers. Establishing this power would increase the chances of consumers getting

³ <http://www.dti.gov.uk/ccp/topics1/pdf1/benchmain.pdf>

some or all of their money back where they have fallen victim to cross-border scams.

C66. The CTSA is ideally placed to take on this role because of its consumer advice and information functions. It also has the advantage over consumer campaigning organisations in that its neutral stance should make it more acceptable to business.

Sub option ii) Quality control of Alternative Dispute Resolution (ADR) schemes.

C67. Improving the accessibility and performance of third party alternative dispute resolution (ADR) services will benefit both business and consumers by minimising costs and delays and will result in some cases being settled before going to court. Settling cases in this way can save money relative to going through the courts system.

C68. Including this option within the CTSA rather than within another organisation, has the benefit of ensuring that Consumer Direct information provided to consumers on redress methods, will sit in the same organisation as that providing the quality control of ADR schemes. This should ensure the most efficient interface between the two areas.

Sub option iii) The CTSA could also have a role in representative action

C69. Representative actions could provide consumers with better access to justice and redress. For a variety of reasons, consumers have difficulty in or are unwilling to pursue claims individually. A consumer acting alone may find it difficult to prove a trader was in the wrong, or the amount at stake may not be large enough to warrant individual action. However, with a group of consumers, the collective amount of detriment can warrant action.

C70. This proposal will be of benefit to all consumers especially the most vulnerable, as they often face more barriers than most in pursuing individual action. In time, representative actions could become an effective deterrent for traders acting unlawfully, benefiting legitimate business as the group action increases the chance of a trader facing more severe financial penalties.

C71. The CTSA is ideally placed to take on this role due to its consumer advice, information and enforcement functions, though we are also considering the options for additional organisations to take on this function instead or as well.

Costs

Sub option i) The CTSA administering redress payments for consumers

C72. The CTSA is likely to incur significant costs in administering consumer redress payments (depending on the extent and nature of redress cases). These costs could be recouped by taking a percentage of the money owed to

consumers⁴. However, this would mean that consumers would only receive a fraction of the money collected for distribution.

Sub Option ii) Quality control of alternative dispute resolution (ADR) schemes

C73. There will be administration costs and could also be costs to business and consumers that go to mediation. (see Annex C1 for an indication of the potential magnitude)

Sub option iii) The CTSA could also have a role in taking representative action on behalf of groups of consumers

C74. This option may impose significant costs on the CTSA. Taking the action is likely to be costly, in addition, that cost would be uncertain as the length of the court process may be unclear, cases could be appealed and legal costs are therefore variable. The CTSA may need to take an amount from any compensation award to consumers, but even this may not cover costs. The magnitude and uncertainty of costs could have the effect of screening such that only very strong cases go forward, minimising the risk of weak claims and damage to legitimate business. However, it could have the effect of stopping action from being taken and reducing the potential benefits to consumers.

C75. Business has expressed strong opposition to representative actions through concerns that they may result in increased insurance costs. We intend to consult further on the detail of how representative actions might be introduced in order to deliver the benefits outlined above whilst minimising the risk of unnecessary costs to business.

Q32. Do you agree with the costs and benefits of the options for a redress function within the CTSA? Where possible, please provide quantifiable evidence.

⁴ This is the approach used in other countries e.g. Canada where this option is in effect.

Consistency of Inspection sub-options

C76. The following provides consideration of the sub options outlined in the Options section at the beginning of this RIA.

Background

C77. Hampton recommended that the CTSA should have a role in improving the consistency of regulation faced by business that trade in several Local Authority areas.

C78. There is also a manifesto commitment that the CTSA should lead in the inspection of Trading Standards for large companies with outlets around the country. It also states that a Local Authority acting as the Home Authority should not be overburdened in carrying out this service.

Benefits

Sub option i) Local Authorities would continue to inspect and take enforcement action for larger business under a directed regime.

Business

C79. A directed approach from the centre to the Home Authority principle and to enforcement practice will ensure more consistent application as Local Authorities will be working within guidance provided by the CTSA. Any directed regime would need to be based on risk and take into account Hampton's recommendations on co-ordination and rationalising inspections by regulators

C80. All business, irrespective of their location will be faced with the same approach to enforcement and will know what to expect. Using the Hampton recommendations relating to assessing risk, those businesses that are of highest risk will be targeted, ensuring more effective enforcement against those who disregard the law.

C81. This approach will also maintain a local presence and access to local expertise for all business.

Consumers

C82. Improvements in consistency will raise consumer confidence that they are obtaining a similar service irrespective of where they live. Local presence will ensure that Local Authorities are able to react quickly to urgent issues as they arise or those that are a real concern to consumers locally

Government

C83. Whilst this approach will not have a significant impact on resources required by the Home Authority it will streamline the process, ensuring more efficient application. Government will work together across Departments to ensure there is more consistency in advice to Local Authorities on how to co-ordinate enforcement for larger business. Any additional cost burdens on Local Authorities will be handled through the New Burdens Procedure.

Sub option ii) The Home Authority would look at systems and processes in place in the business and inspect a random sample of premises.

Business

C84. The Home Authority will undertake enforcement activity for all the outlets for the business that falls within this category. This would be following an assessment of the processes and systems in place for the business and identifying a random sample of premises to inspect. This will ensure that larger business will have fewer inspections of their premises. They will also be reassured that any enforcement will be co-ordinated and consistent. However there will still be the alert system to ensure that those premises that are causing concern to consumers can be identified.

Consumers

C85. Those Local Authorities that routinely inspect larger business outlets will no longer be required to do so as the Home Authority will be taking forward enforcement action. This could free up resource in those Local Authorities to target enforcement on high-risk businesses and issues that are of concern to consumers and cause the largest consumer detriment

Government

C86. With less routine inspections by Local Authorities enforcement will be more targeted. Local Authorities benefit as there will no longer be duplication of effort and be able to target their resources more effectively. As mentioned above, any additional cost burdens on Local Authorities will be handled through the New Burdens Procedure.

Sub option iii) The CTSA would undertake the same role as that set out for the Home Authority in Option 2 above, and Local Authorities would not inspect the business

Business

C87. Taking on the enforcement of larger business at the centre via the CTSA will ensure that those businesses will benefit from a consistent approach to enforcement and advice from the centre. There will be fewer inspections and a larger business with a number of outlets will be treated as one entity maintaining consistency. Consistency will also be greater than under sub-option (i) or (ii). We think that this option would be the most effective at delivering the Government's manifesto commitment.

Consumers

C88. Generally the benefits for consumers will be the same as for the first two options. More targeted, effective enforcement will increase consumer confidence that serious breaches of legislation are being addressed.

Government

C89. As set out in the costs section later in this document, the resource necessary for a Local Authority to carry out its Home Authority functions can be disproportionately high for some Authorities. For example, Hampton highlighted how an Authority such as Hertfordshire County Council is a heavily burdened Home Authority with Tesco, Dixons, Kodak and Currys within its area. The benefits for Local Authorities, should the CTSA take on the role of Home Authority might be to free up this resource within the Local Authority to focus on other priorities; this would be handled through the New Burdens Procedure.

Costs

Sub option i) Local Authorities would continue to inspect and take enforcement action for larger business under a directed regime.

C90. Whilst this option may go some way in addressing consistency in enforcement across Great Britain, it does not go far enough to ensure the efficiency and consistency issues set out by Hampton, and we do not think that this option would effectively deliver the Government's manifesto commitment.

C91. As with all these options, the CTSA will need to work with other thematic regulators as well as the Scottish Executive and National Assembly of Wales to ensure consistency in application, otherwise any benefits to business and Local Authorities will be diminished.

C92. It would be unlikely to put any additional significant costs on Local or Central Government although there would be some resource necessary within the CTSA to monitor and manage a directed regime.

Sub option ii) The Home Authority would look at systems and processes in place in the business and inspect a random sample of premises.

C93. There will be significant resource implications for the Local Authority that is acting as the Home Authority. It has already been highlighted by Hampton that some Home Authorities have disproportionately high costs in carrying out the service which has to be funded from existing resource. It is difficult at this stage to determine what these costs are likely to be.

C94. The system will need to be flexible enough to ensure that urgent issues can be addressed quickly and action taken to protect consumers.

C95. There is also a risk that business will be subject to different enforcement regimes as different businesses have different Home Authorities. Again, we do not think that this option would effectively deliver the Government's manifesto commitment.

Sub option iii) The CTSA would undertake the same role as that set out for the Home Authority in Option 2 above, and Local Authorities would not inspect the business.

C96. This option would impose significant cost on the CTSA. At present it is difficult to calculate the level of the additional resource that will be required. This will be dependent on how many businesses fall into the category and we would need to do more work on what the likely costs could be.

Q33. Do you agree with the costs and benefits of the options for improving the consistency of inspection? Where possible, please provide quantifiable evidence.

Sub-options to maintain the consumer / competition link

C97. The following provides consideration of the sub options outlined in the Options section at the beginning of this RIA.

Background

C98. Consumers are at the heart of competition policy as competitive markets drive value for money and innovation. Markets work most effectively when consumers are well informed and able to make choices, exercising their power in a competitive market.

C99. It is also important that where measures to protect consumers are put in place, the potential impact on competition (such as introduction of a barrier to entry into the market), and any related consumer detriment, is considered.

C100. At present the OFT brings together consumer and competition functions, so there is an institutional impetus to balance both aspects, as well as a statutory duty for it to do so. In setting up a new CTSA either under Option 1 (as new a organisation) or under option 2 (within the OFT) it will be essential to maintain this consumer competition link is retained to ensure that:

- the OFT obtains information about problems in markets that have been encountered by those enforcing consumer legislation;
- consumer enforcement agencies can input into any remedies proposed by the OFT in relation to problems they find in markets, ensuring that the remedies are practical and effective;
- consumers are informed so they can take advantage of competitive markets, and know their rights.

C101. The sub options discussed in this section are most relevant if we are considering Option 1 (setting up the CTSA as an entirely new organisation), though they still apply under Option 2 (within the OFT), indicating how the link could be improved.

Benefits

Sub option i) A general obligation for the CTSA to consider the consumer and competition effects of action

C102. This option would ensure that competition issues were considered by the CTSA in all its work.

Sub option ii) A formal obligation for the CTSA to consult the OFT on competition effects. (consider with sub option iii)

Sub option iii) A formal obligation for the OFT to consult the CTSA on consumer benefits / consumer protection. (consider with sub option ii)

C103. These two options may usefully be considered together, as for the consumer / competition link to be effectively embedded, it would be necessary to impose obligations on both the CTSA and the OFT to consult one other. These obligations could be further re-enforced through structural options such as common Board membership for both the CTSA and the OFT, or maintaining regular meetings between the two at Board level. Market studies and investigations, publication of guidance and the consumer codes approval scheme are all likely to be impacted upon by such obligations.

C104. These obligations would ensure that both consumer and competition issues are formally recognised and considered, and that the relevant centre of expertise has the chance to feed in its opinion on issues of concern.

Sub option iv) Designate the CTSA as body with concurrent duties to consider supercomplaints (alternative to v).

Sub option v) Impose obligation on the OFT or regulators with concurrent duties relating to supercomplaints to consult the CTSA with regard to the consumer element of any supercomplaint (alternative to iv).

C105. Supercomplaints are a particular issue for the link between consumers and competition, including how they are made, handled and investigated. Complaints can be made by a consumer body designated under Section 11 of the Enterprise Act, and are both handled and investigated by the OFT.

C106. Both of these options would ensure that consumer and competition issues were considered in the supercomplaints procedures. Under option (iv), it would be important for the CTSA and the OFT to work closely together, so that the CTSA could deal with supercomplaints relating to straightforward consumer enforcement themselves, but could pass more complicated market-based complaints onto the OFT, who will be better equipped to deal with them.

Costs

Sub option i) A general obligation for the CTSA to consider consumer and competition effects of action

C107. This option addresses the risk that the CTSA may fail to fully consider all the potential competition implications.

C108. Even without these conflicts there may be problems in implementing this effectively, due to the likely lack of competition expertise in a consumer-

focused organisation, although secondments from the OFT or training are possible solutions.

Sub option ii) A formal obligation for the CTSA to consult the OFT on competition effects. (consider with sub option iii)

Sub option iii) A formal obligation for the OFT to consult the CTSA on consumer benefits / consumer protection. (consider with sub option ii)

C109. The main concern with this option is that the need to formally consult another body may result in time delays - impacting on prioritisation and enforcement (e.g. against rogue traders) and thus having negative knock on effects on consumers and legitimate business. It is unlikely that the consideration of both aspects will be as entrenched culturally as in an organisation that includes both consumer and competition sides.

Sub option iv) Designate the CTSA as body with concurrent duties to consider supercomplaints (alternative to v).

Sub option v) Impose obligation on the OFT or regulators with concurrent duties relating to supercomplaints to consult the CTSA with regard to the consumer element of supercomplaints(alternative to iv).

C110. In option (iv) it may be difficult for supercomplainants to understand to which body they should refer, and the CTSA would only be able to look at supercomplaints that were purely focused on consumer issues – it would need to refer competition issues (or mixed consumer and competition issues) to the OFT.

C111. Option (v) would give the CTSA the right to be consulted on the consumer element of supercomplaints, rather than a role in investigating them. Although this option would still allow for consideration of complaints that have both the consumer and competition aspect, it would not allow a direct link between a supercomplaint investigation and use of consumer enforcement powers. It would also add another stage to the process of investigating supercomplaints increasing the length of time this takes and would also risk making consumer issues secondary in importance to competition ones.

Q34. Do you agree with the costs and benefits of the options for maintaining the consumer / competition link? Where possible, please provide quantifiable evidence.

Small Firms Impact Test

C112. We do not anticipate that these proposals will have any significant or complex impact on small firms.

C113. Initial discussions with stakeholders have also identified that if Hampton's recommendations are implemented effectively, there is unlikely to be any significant or complex affect on small business. However, we will maintain discussions with stakeholders to monitor this and any other affects the proposals may have on small business.

Competition assessment

C114. We have applied the competition filter test to these proposals and do not consider that a detailed competition assessment is necessary.

C115. The business sectors that are relevant for the purposes of this assessment are all sectors that presently have an relationship with the Trading Standards Service, the OFT, NWML, BHC and HAC and / or would potentially have an interface with the CTSA going forward. This essentially includes all consumer retail businesses – a diverse sector covering a wide range of markets and incorporating a large number of firms of all sizes.

C116. The proposals put forward in this RIA will not have a significant impact on business. Where there is an impact on business, it should be positive through the reduction of the administrative burden as the CTSA provides a more co-ordinated approach to regulation. In addition, since the proposals aim to make the CTSA more effective than existing agencies in eliminating rogue traders from the market though improved prioritisation and enforcement, this should improve effective competition by allowing legitimate traders to operate on a more level playing field.

C117. Since these potential benefits to business will not have a significantly disproportionate effect on any particular firms this should not lead to any adverse competition effects.

Monitoring

118. The reporting and monitoring arrangements for the CTSA clearly depend on decisions surrounding the structure and remit. Once the consultation has been carried out we will consider the options for these arrangements more fully.

Summary of costs and benefits

C119. The intended benefit of establishing a new CTSA is the reduction of

administrative burdens on business. However, as identified in this Partial RIA, we anticipate a number of additional benefits to both consumers and the Government, which stem largely from a more co-ordinated structure with responsibilities across different areas.

C120. Whilst costs will vary according to the specific role of the CTSA, it is clear that there will be significant costs both in setting up a new Agency and also ongoing as the body performs functions and activities not currently undertaken by one particular organisation.

C121. The consultation should provide us with more evidence and analysis of the costs and benefits associated with the options, which can inform the final RIA.

Annex C1 - Redress section of Consumer Strategy RIA

This Annex replicates the redress section of the Consumer Strategy RIA (to be published in parallel to this consultation).

Regulatory Impact Assessment: Better access to resolving problems and obtaining redress

Purpose and intended purpose of the measure

Background

1. In the UK today many transactions operate effectively and do not generate any form of dispute. However when things do go wrong, consumer and business want to find a solution quickly and easily. The Comparative Study concluded that the UK needs more effective mechanisms for obtaining settlement for consumers where there is collective or individual harm.
2. When disputes do arise, they should be settled by direct negotiation and settlement between business and consumer. The majority of consumer disputes are already settled this way. Where simple negotiation fails, business and consumers can benefit from third party dispute resolution mechanisms that are speedy, low cost, fair and transparent. Bringing a case to court should be the last resort.

Rationale for Government Intervention

3. Between 38% and 44% of consumers reported having reason to complain about a good or service in 2000. The 2001 DTI consumer knowledge study found that in 2000, consumers aged 55 were less likely than average to have made a complaint (25%, average 35%); while 33% of people from socioeconomic groups C2D&E made a complaint compared with 45% of those from socioeconomic groups AB&C1.
4. Most consumers who complain do so to the product seller or service provider (87%) according to Office of Fair Trading's (OFT) survey¹. Indeed, 64% of disputes are settled by independent negotiation between consumer and business. The same survey suggests that at this stage 54% have their complaint resolved, but this means 46% are not happy with the result of their complaint – indeed if this occurs only 15% then pursue their complaint further. Disputes cause stress to the consumer, especially where they take time to be resolved.

¹ Competition Act and Consumer Rights, Synovate, April 2004. Prepared for OFT

5. The OFT's survey also found that 44% of consumer-facing businesses had no consumer policies in place for dealing with disputes, and 32% thought that a selection of consumer legislation including the Sale of Goods Act did not apply to them (based on prompted responses). 13% of firms dealing directly with consumers do not know they are legally obliged to refund faulty goods returned within 28 days with proof of purchase. According to the National Consumer Council's 2004 report, "Seeking Resolution" provision of alternative dispute resolution for consumer problems is ad hoc and presents a lottery for the consumer.

6. Consumer welfare is enhanced by the satisfactory resolution of complaints. However, business also benefits. The OFT's survey found that 70% of consumers who had their complaint resolved satisfactorily will continue to trade with the same company. Good complaints procedures and effective means by which to resolve disputes can improve business performance.

7. Where consumer legislation is breached, it is often difficult for the consumer to get compensation, for example a consumer may have defective work carried out on their property. Trading Standards Departments may be able to take "Stop Now" action against the trader, but the consumer may have difficulty recovering deposit paid and seeking compensation for time spent sorting out the problem and stress caused. To have a chance of compensation in this sort of example, the consumer would need to prove a civil case against the trader.

8. Another example of where consumers have difficulty recovering their money is with overseas scams. Even if an overseas authority is successful in taking civil or criminal action and manages to seize assets, there is currently no mechanism for re-distributing these assets to UK consumers. The OFT estimates that consumers lose £1 billion per year to scams, and a LACORS survey suggested that 54% of scams originate overseas.

Options

9. We considered 6 options, 4 of which could directly result in better access to resolving problems and obtaining redress for the benefit of consumers and business:

- Promote direct settlement between consumer and business
- Pilot quality assurance of third-party alternative dispute resolution services (ADR). If successful, promote signposting to good quality ADR schemes through Consumer Direct
- Introduce representative actions for consumers
- Make it easier for consumers' money to be returned to them if a trader has been found by a court to have acted illegally
- Enable a body (for example the new Consumer and Trading Standards body) to receive and distribute the funds of cross-border scams to affected UK consumers
- Do nothing

Option 1 – Promote direct settlement between consumer and business

10. Good business recognises that it can gain real commercial benefits by integrating effective complaints handling procedures into its customer service provision. Costs and delays are minimised. Most important customer loyalty and business reputation are preserved. We believe that direct settlement has a major role to play in front-line complaints handling.

11. A process of informed negotiation is key to the success of direct settlement. Consumers will have access to information about rights, responsibilities and processes through Consumer Direct, enabling them to take an active part in securing fair settlements. Indeed, this is already happening, and Consumer Direct will have nationwide coverage by spring 2006.

12. Business support programmes designed to promote awareness of business responsibilities and consumer rights can benefit traders of all sizes and ensure that a greater percentage of enquires are dealt with swiftly and effectively.

13. To facilitate direct settlement, we proposed, in our consultation, the creation of a good practice customer services training module that could be used by business. This would be available to business to use if they wish (there would be no compulsion to do so).

Option 2 - Pilot quality assurance of third-party dispute resolution services. If successful, promote signposting to good quality ADR schemes through Consumer Direct

14. Under section 8 of the Enterprise Act, the Office of Fair Trading has the

power to approve and promote consumer codes of practice that meet specified criteria. Code approval relies on having conciliation services and access to an independent redress scheme if conciliation fails to resolve a problem. Through, the Consumer Codes Approval Scheme, OFT therefore carries out some quality assurance of ADR schemes. For instance, the OFT will check as far as possible that the ADR scheme is fair, impartial, effective, and leads to speedy resolution.

15. This option would extend quality assurance of ADR schemes to cover schemes that are not part of codes seeking OFT approval. We would undertake a pilot to determine whether it is practical to identify dispute resolution schemes that meet certain core quality standards (yet to be determined).

16. If successful, this identification would be extended and consumers could then be referred to these schemes through Consumer Direct. This approach would help increase the coverage of approved schemes and grow consumer confidence in third party dispute resolution.

Option 3 - Introduce representative actions for consumers

17. Introduce representative actions by designating an appropriate body, or bodies to take action on behalf of groups of consumers, acting for the whole group in a civil action. We will consult on the detail of representative actions in due course. However, the principle would be that the designated body would take action for restitution and compensation on behalf a group of named consumers with very similar claims. An example would be where a statutory right had been infringed, or where there is a breach of contract between the consumer and trader.

Option 4 - Make it easier for consumers' money to be returned to them if a trader has been found by a court to have acted illegally

18. Even where liability is established through an individual or representative civil action, or through a prosecution, there often remain other consumers, who, although not party to the action, nevertheless have suffered detriment as a direct result of the wrongful activities of business. In the UK, there is currently no mechanism to allow the proceeds acquired by such traders to be recovered and redistributed to those additional consumers who have suffered loss, without those consumers each taking their case to court.

19. We considered whether certain agencies should be given new powers to work with the courts and with traders found guilty of offences or liable in a civil action, to recover and redistribute, to the consumers affected, the proceeds of the traders' wrongful trading.

Option 5 – Enable a body (for example the new Consumer and Trading Standards body) to receive and distribute the funds of cross-border scams to affected UK consumers

20. There is currently no mechanism in the UK framework for redistributing funds recovered from scams overseas. This option would see the redistribution of assets to UK victims of scams where assets are seized as a result of civil or criminal proceedings abroad. Where it was practical and possible to identify the rightful owners of funds, the CTSA or another body would distribute assets back to UK consumers. Establishing this power would increase the chances of consumers getting their money back where they have fallen victim to cross-border scams.

Option 6 - Do Nothing

21. Existing information and advice on consumer and business rights can be found at trading standards, www.businesslink.gov.uk and www.consumerdirect.gov.uk. There are market driven solutions such as the numerous private sector courses offering customer relations training. We could leave the third party dispute resolution industry, to react to market demand without government intervention. The Department of Constitutional Affairs is also currently piloting the National Mediation Helpline, which runs until November 2005. It offers a free service that explains the basic principles of mediation and puts enquirers in touch with a professional and experienced mediator.

Costs and benefits

Option 1- Promote direct settlement between consumer and business

22. We believe that high quality customer service can prevent enquiries escalating into disputes, avoiding the cost and delays of formal processes. It preserves business reputation and maximises the opportunity for greater customer satisfaction. Business and stakeholders have emphasised that improved levels of skills and knowledge is a key factor in delivering good customer service. This means that not only business owners, but also their employees who deal face-to-face with the consumer, have the skills and information necessary to handle enquiries swiftly and fairly. Empowered employees are better able to resolve problems effectively by assessing cost, commercial benefit and potential customer satisfaction.

23. We considered whether a good practice customer service-training module would be of benefit to those businesses that deals directly with customers. We proposed exploring with business representatives the scope for developing the creation of a good practice customer services training module for the benefit of all customer-facing traders will result in some costs to business while agreeing the content of the module and further costs in training time. Business expressed some support for the formation of this module through the consultation responses, but we did not see a clear need for something different from that offered by the relevant courses by the numerous private sector organisations and from the information government offers through, www.businesslink.gov.uk and www.consumerdirect.gov.uk.

Option 2- Pilot quality assurance of third-party dispute resolution services. If successful, promote signposting to good quality ADR schemes through Consumer Direct

24. We believe that improving the accessibility and performance of third party dispute resolution services will benefit both business and consumers by minimising costs and delays and will result in some cases being settled before going to court. Settling cases in this way can save money relative to going through the courts system.

25. We want to pilot a means of quality assuring ADR schemes to see if this would be practical. This will mean costs to Government in designing and funding the pilot.

26. If the pilot proves successful and a national rollout results, there will be costs to government in monitoring continuation of standards of ADR schemes. There may be costs to business that run ADR schemes as they work to comply with the core quality standards required, and prove their compliance. However, the scheme would be voluntary.

27. There may also be costs to business and consumers that go to mediation. To try and illustrate possible costs we have taken, as an example, the

Department of Constitutional Affairs' National Mediation Helpline, a pilot project that will run until November 2005, in conjunction with the Civil Mediation Council, leading mediation organisation and the Law Society. This helpline offers a free service that will explain the basic principles of mediation and put enquirers in touch with a professional and experienced mediator.

28. Costs for the mediator are split between the parties and are charged by the type of claim. Advertised fees are: for small claims under £5,000, the fees will be £250 + VAT, and mediation will last for 2 hours. For fast track claims worth between £5,000 and £15,000, the fees are £500 + VAT and expected to take 3 hours. For multi-track claims worth between £15,000 and £50,000, the fees will be £750 + VAT. Fees will be decided on an individual basis directly with the mediator when the value of the claim is over £50,000. Fees are equally split between the 2 parties.

29. Any VAT registered business will be able to claim back the VAT element of the bill but the consumer will not be able to do so, therefore mediation could work out to be more expensive for consumers than business, or those small businesses whose turnover is below the VAT threshold and have selected not to register. It is fully expected that ADR would only be viable for larger value transactions due to the time involved and the cost of ADR.

Option 3- Introduce representative actions for consumers

30. Representative actions could provide better access to justice and redress for consumers. For a variety of reasons, consumers have difficulty in or are unwilling to pursue claims individually. A consumer acting alone may find it difficult to prove a trader was in the wrong. The amount at stake may not be large enough to warrant individual action, but with a group of consumers, the amount of detriment can warrant action.

31. This proposal will be of benefit to all consumers but will be of additional benefit to vulnerable consumers, as they may face more barriers than most in pursuing individual action. In time, representative actions could become an effective deterrent for traders acting unlawfully and benefit legitimate business. This is because the action raises the chances of a trader facing more severe financial penalties for their actions.

32. Representative actions would impose significant costs on designated bodies. Not only could taking the action be costly, that cost would be uncertain as the length of the court process may be unclear, cases could be appealed and legal costs are therefore variable. Designated bodies may need to take an amount from any compensation award to consumers, but even this may not cover costs. The magnitude and uncertainty of costs could have the effect of screening such that only very strong cases go forward, minimising the risk of weak claims and damage to legitimate business. However, it could have the effect of stopping action from being taken and reducing the potential benefits to consumers.

33. The nature of representative actions would be such that the details of each individual's claim would need to be assessed. This means that the costs of preparing a case rise with the number of consumers claiming, there is no automatic benefit from economies of scale. This will make it difficult to pursue cases where the individual detriment is small (for example, less than £100) but the number of consumers is high (for example, greater than 1,000).

34. If the above concerns about costs and risks to designated bodies can be addressed, representative actions could result in more cases going to court, as many decide against individual action at the moment.

35. Business has expressed strong opposition to representative actions. There is concern that representative actions may result in increased insurance costs. Further, there is concern about the affect on reputation of legitimate businesses of false claims. The risks surrounding false claims can be mitigated by putting in place safeguards to ensure the strength of cases put forward.

36. For reasons of cost as detailed above, and because it is unclear how easy it would be to gather together claims, it is not yet possible to estimate how many cases there might be in a year. Initial discussions with trading standards have highlighted their interest in pursuing such actions on scams, road working (e.g. tarmac scams) and home working schemes. Some consultation responses from trading standards have also indicated a potential role for the service if representative actions were linked to Stop Now Orders.

Option 4 - Make it easier for consumers' money to be returned to them if a trader has been found by a court to have acted illegally

37. This may have the dual effect of benefiting consumers who may recoup some of the money lost through a trader's illegal action as well as potentially acting as a deterrent. Consultation responses have highlighted that this policy proposal could be extremely resource intensive. Businesses have also expressed strong concerns at the possible costs to them if action, for example to freeze assets is not subsequently found to be justified. In the consultation document we asked for evidence for the need for stronger powers, and when they might be used. We did not receive substantial evidence of need in the consultation responses and so do not intend to proceed with this proposal.

Option 5 - Enable a body (for example the new Consumer and Trading Standards body) to receive and distribute the funds of cross-border scams to affected UK consumers

38. Establishing this power would benefit consumers who fall victim to cross-border scams, by introducing the possibility of getting at least some of their money back.

39. The OFT estimates consumers lose £1 billion per year to scams. A LACORS survey on scams found that 54% of scams aimed at consumers originated from outside of the UK. This demonstrates the magnitude of consumer losses, and whilst the new power will lead to only a limited re-distribution of assets, it is still likely to lead to the recovery of millions of pounds.

40. There would be administrative costs for the authority that is given this power. These could be recouped by taking a percentage of the money owed to consumers (as foreign enforcers do). This would, make it less likely that consumers will be fully compensated, but even receiving only part of their money back would still be a significant improvement on the current situation where consumers cannot recover any of their money.

Option 6 – do nothing

41. There will be no cost to business however the 2003 study comparing the UK consumer regime with other OECD countries concluded the need for the UK to improve its redress mechanisms, which need to be more efficient in righting individual and collective harm. If no action is taken to improve redress the UK will remain below the level of the best. UK consumers will be at risk of scams and dishonest practices targeting them because of inadequate redress sanctions.

Preferred options

42. We propose to strengthen redress in three ways:

1. Pilot quality assurance of third-party alternative dispute resolution (ADR) services and if successful, promote signposting to good quality ADR schemes through Consumer Direct. We need to explore the effect of this proposal more thoroughly and will undertake a pilot scheme that will allow us to develop the programme in a limited area, and test out its usefulness and affordability with Consumer Direct and other users before committing to any larger-scale project. We will also aim to evaluate any different impacts depending on size of business.
2. We will introduce representative actions, consulting further on the practicalities of this, including how to avoid spurious actions.
3. Enable a body to administer / redistribute funds from overseas scams

Annex D –

The DTI Consultation Code of Practice Criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your Department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office's web site, address <http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm>

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

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Annex E – Organisations to be consulted

This consultation document has been sent to the following organisations. We would welcome suggestions of others who may wish to be consulted.

British Chambers of Commerce
British Hallmarking Council
British Retail Consortium
Citizens Advice
Citizens Advice Scotland
Commission for Racial Equality
Confederation of British industry
Convention of Scottish Local Authorities
Energywatch
Equal Opportunity Commission
Federation of Small Businesses
Financial Services Authority
Food Standards Agency
General Consumer Council for Northern Ireland
Heads of Trading Standards Services – England, Scotland, Wales, N. Ireland
Health and Safety Executive
Hearing Aid Council
Law Commission
Law Society
Local Authorities Coordinators of Regulatory Services
Local Government Association
National Consumer Council
National Weights and Measures Laboratory
Northern Ireland Local Government Association
Ofcom
Office of Fair Trading
Ofgem
Ofwat
Postcomm
Postwatch
Scottish Consumer Council
Scottish Executive
Society of Chief Officers of Trading Standards in Scotland
Society of Chief Trading Standards Officers
Trading Standards Institute
Watervoice
Welsh Assembly
Welsh Consumer Council
Welsh Local Government Association
Which?

END