

**dti**

Extending Competitive Markets: Empowered  
Consumers, Successful Business

Summary of Responses to Consultation

June 2005

URN 05/1305

**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.

## **Extending Competitive Markets: Empowered Consumers, Successful Businesses (Consultation)**

### **Summary of Responses to the consultation which ran from July 2004 to October 2004**

#### **Overview**

There were over 100 responses to the consumer strategy consultation. A list of respondents is attached at appendix A.

The overall analysis relates to GB. Where we identified particular issues for Scotland and Wales these have been highlighted in the summary.

Business generally welcomed the strategy and the coordinated policy of enhancing competitiveness within the economy. CBI's view is that the greatest challenge is to find ways to deal with those areas of business which deliberately mislead, take advantage of vulnerable consumers or otherwise ignore the law. BRC welcomed the emphasis on consolidation and advocated that Government develop responses to problems through bringing together consumer, business and enforcers.

The consumer bodies welcomed the opportunity to respond to the consultation. However the fact that the scope of the strategy is limited to DTI's remit is seen as a problem by some consumer bodies who would like to see a more integrated approach (across DTI and Government). Trading standards representatives echoed this.

Consumer bodies felt the draft strategy needed to develop a stronger and clearer approach to protecting the vulnerable consumer. They thought it was too driven by the competitive markets / empowered consumer approach.

Not all respondents commented on all the questions.

#### **Tackling Problem markets**

##### **Q1. Do you agree with our analysis on intervention?**

Business welcomed the analysis on intervention and the commitment to evidence-based, focussed and evaluated intervention. Key points made by business were that:

- the costs and benefits of intervention, and of not taking action, must be carefully examined and assessed;
- intervention should be goal based and not unduly prescriptive. Self-regulatory solutions should be sought;
- important to focus on fragmented markets such as garages, builders, and plumbers.

Amongst consumer bodies there was concern that:

- action against problems will be delayed by this process and regulation is seen too much as a last resort;
- this analysis does not work in near monopoly markets (eg post, train operators);
- economic detriment is not a sufficient measure – what about externalities such as environmental protection, sustainability, public and domestic safety, security of supply / impact of disconnections;
- standards could be developed more as an intervention tool.

The Trading Standards community generally agreed with the analysis. LACORS was concerned that cartel activity had been missed out and that the level of consumer detriment should be included.

OFT endorsed this approach, but advocated care with indicators such as complaints data, pricing and profitability.

Ofcom seeks the least interventionist regulatory approach. Other indicators of market failure might be low levels of switching, consumer awareness.

Ofgem agreed the analysis.

### **Consumer detriment and its relative impact**

Respondents identified a need to assess consumer harm fairly in the context of the size of the market. This works both ways: intervention in borderline cases can have serious unintended consequences on business and innovation; small-scale economic detriment can impact greatly on low-income consumers.

### **Sustainable consumption**

Several respondents cited sustainable consumption as an important area to cover in the rationale for intervention. Some wanted to see the development of a better evidence base to determine intervention. LGC Ltd (formerly the Laboratory of the Government Chemist) cited complex new technologies where consumers are not well placed to make judgements and where independent evidence is needed. This would increase ability to look at risks and balance evidence based safety concerns against media-led demands.

### **Disadvantaged / vulnerable consumers**

Consumer bodies argued that the rationale must include a developed approach on disadvantaged/vulnerable consumers

They thought DTI needed to work with other government departments and agencies to develop more sophisticated tools to assess the impact of decisions on disadvantaged consumers, and models to ensure that its policies are designed to meet the needs of disadvantaged consumers.

They also thought that vulnerable consumers are more in need of assistance. Research by SCC found that people on lower incomes, not in employment, living in council housing and without formal qualifications are consistently less aware of their rights and how to enforce them and find it more difficult to access advice.

Energywatch proffered the view that vulnerability is a circumstance, not a category of consumers and is better understood through the application of agreed criteria to consumers in a market place. In the energy market, vulnerability arises where consumers are unable to make a viable engagement with the market. Transaction may be hindered by a number of criteria. They thought DTI needs to develop criteria.

## **EMPOWERING CONSUMERS**

Some thought the whole strategy should be seen as empowering consumers, not just this section.

### **Advice and Information**

There was considerable support and willingness to engage with Consumer Direct. But there was also some confusion about the relative responsibilities of DTI (through Consumer Direct) and OFT for providing advice and information and about the future role of Trading Standards and the sectoral bodies.

The consumer councils would like to see the quality of second tier advice evaluated as part of the evaluation of Consumer Direct. Which? proposed that Local Authorities cease giving advice to consumers and business. Another comment was that the strategy could also usefully cover the provision of advice and help to visitors to the UK through the European Consumer Centre and EEJ-NET by Citizens' Advice.

### **Consumer Education**

The BRC underlined the role of well-informed consumers who need to be equipped with confidence, skills and knowledge. While the skills needed are generic, there is an element of specific knowledge about consumer rights and duties, so it is desirable for consumers to have at least an understanding of how and where such information can be obtained if there is a need. The BRC also expressed concern that the OFT's education strategy will only assist those who are already well educated and able to fend for themselves rather than the most vulnerable.

## **Code Branding**

**Q2. Do you agree that consumers would benefit from the development of a single brand in this area? How can we encourage local authorities and other providers to bring their schemes under this single umbrella? What would the costs and benefits of this approach be?**

Business respondents had mixed views on this issue. Some thought that whilst CCAS would work at national level, there would continue to be room for local specialist schemes. There was concern that this proposal would result in the loss of some valuable local schemes and schemes run by trade bodies and that some useful schemes could not be expected to meet the standards of the OFT CCAS approach. BRC favoured a gold, silver and bronze standard of accreditation so that a strong OFT CCAS does not undermine the important work carried out under local schemes. Another comment was that there could

be two or three brands to allow flexibility and innovation between schemes to flourish. The CBI doubted whether there would be sufficient incentives for business or benefits to consumers to make the proposal viable.

Among consumer groups, the proposal for a single recognised brand has wide support in principle. However there are reservations about achieving such a goal and comments that it will not suit all sectors, for example energy where non-OFT approved codes operate and are valuable. They thought consumers want to know about reliable local traders (builders, plumbers etc) who are unlikely to ever come within the OFT's CCAS scheme, at least in its current guise. This was a key concern for elderly consumers. Respondents thought the best local schemes need to be assessed and transferred to come under the OFT umbrella. There were some suggestions that the proposal would be more achievable if promoted well, with help to local schemes to meet the cost of alternative dispute resolution (ADR) requirements and a strong link to Consumer Direct.

The OFT supported the principle of developing and broadening the scheme as the single brand promoted by Government in the area of self-regulation through consumer codes of practice. This would include working with local trader schemes and research into the wider self-regulatory landscape. Nevertheless OFT thought it a very challenging proposal - many traders providing good products and services could be excluded from the core criteria and this would be a particular issue for SMEs. The research which OFT is already putting in hand would help to establish how self-regulation works and how to go forward.

Ofcom and Ofgem could see benefits to a single code but it would need to be flexible to suit other industry sectors and not duplicate the Ofcom approved code which is required under the Communications Act 2003.

The Trading Standards community almost all supported the proposal, although they thought it would not be a short-term solution. They thought that badging local trader schemes under the OFT scheme would benefit consumers by reducing confusion and be more attractive, although enthusiasm for this proposal would depend on the success of the OFT CCAS.

There is widespread agreement that the development of a single OFT brand must be flexible enough to accommodate local schemes and should draw on the experience of successful local schemes. The prevailing view was that the scheme should not be too onerous to ensure good uptake, although a fair proportion of respondents wanted the scheme to be tougher with minimum standards.

### **Trader Information**

#### **Q3. Do you agree with making trader information available as outlined?**

There was strong support for doing as much as possible in this area from all the consumer bodies and Trading Standards. Seven business respondents gave qualified support. OFT supported the proposal subject to a way being found of keeping information relevant and accurate.

The majority of TS respondents called for something on the lines of the North American Better Business Bureaux to be reconsidered – they felt the strategy conclusion was reached for the benefit of business and with no consideration for consumers. The BRC and CBI consider the BBB model to be inappropriate for the UK as they argue that the UK and US have very different markets with very different histories of consumer protection. The CBI also referred to the US BBB's limited coverage.

Despite support for this proposal in principle there were doubts about its ultimate effectiveness. Doubters included CBI and BRC. Trading Standards in Scotland thought the information too selective and disparate to be of much effect. SCOTTS pointed out that the vast majority of companies would not have any relevant information recorded against them. Energywatch had doubts that the information would be genuinely useful to consumers and fair to businesses without excessive cost.

The Office of Fair Trading and business respondents endorsed the strategy statement that enforcement data and complaints would not be made public. Others, including LACORS, Which, Citizens' Advice and Ofgem challenged this and felt that obstacles to publishing this data should be explored and overcome wherever possible. Without data on consumer complaints and enforcement action Energywatch regarded the proposal as "worse than useless". Citizens' Advice Scotland stressed the importance of making compliance with OFT sponsored codes and disputes through approved ADR providers available.

### **What publicly available information about traders should be included?**

The suggestions were:

- Criminal convictions
- County Court judgments, court orders, injunctions
- Enforcement action (formal cautions, prosecutions)
- License refusals
- Information held in the public area of the CRW website
- Consumer credit licensing public register
- Estate agents public register
- Members of a code sponsor under the OFT's CCAS
- Enterprise Act undertakings
- Recalls
- Membership status with trade associations and approval by quality certification schemes that relate to the core business
- Data held by other agencies and sectoral regulators, eg FSA VOSA
- Link to OFT register of convictions
- Contact addresses for traders and number of premises from which traders operate
- complaint information to be made available by business on a voluntary basis (e.g. e-bay model)
- complaints data on traders from Consumer Direct
- information about settlements / compliance with OFT sponsored code
- outcome of approved ADR disputes
- traders who have filed for bankruptcy

- Qualifications of operative
- Quality of service indicators

Business respondents did not agree that information about County Court Judgments or accounts filed with Companies House should be included. There was strong business opposition to giving consumers enforcement action information.

## **Scotland**

It was pointed out that County Court judgments do not apply in Scotland. Information on court decrees is collected by the Scottish Registry Trust but only in relation to small claims and summary cause cases (that is up to £1500). Currently consumers do not get access to decrees against traders for sums over £1500. The view was that there would be a huge gap in the information available and this would need to be addressed under this proposal.

### **What are the costs, benefits and practical considerations of this?**

Trading Standards' view was that this would take significant time and resources. Energywatch suggested an initial pilot before committing substantial resources to this. Access for consumers must be cheap.

An issue raised by respondents on all sides (Business, LACORS, TS, Energywatch) was the need to help consumers interpret the information and draw a fair conclusion. Larger businesses would be more likely to have come to the attention of the authorities, for example the ASA, than small ones, but this would not make them traders to avoid. Records would also need to be kept up to date promptly as a lack of a record would give consumers a false sense of security. Official registers tended to lag behind events and could not be relied on.

### **Consumer representation and the regulated industries**

There was considerable interest and some support for the idea of moving to a single representative council across business, consumer and regulated sector respondents, although the consumer councils in the regulated sectors were sceptical. A number of respondents from all sides would like to see these proposals developed with more detail on the costs and benefits to consumers and businesses. The remit of the review was seen by some as limited. The organisation Which? wanted to see an overarching review of consumer representation not just the sectoral bodies. Watervoice wanted to see the review extend to the whole regulatory regime.

The CBI supported a move to a single council in the longer term but stressed the need to retain a strong advocacy role for the benefit of domestic and business customers and a body of specialist knowledge for business consumers. CBI would like to see an evaluation of the costs and benefits of different structures.

The IoD opposed the proposal on the grounds there would be no benefits for consumers or businesses because the issues varied across sectors.

In the utilities sectors the Energy Retail Association, Albion Water, Scottish Southern, O2 supported the proposal, although some thought the National Consumer Council should take on the role rather than a new body (O2, ERA). There was strong support from Albion Water who thought the move would help to end the isolationist mentality of the water sector. Western Power on the other hand was concerned that the model proposed would lead to duplication of resources and responsibility. The Royal Mail Group endorsed the potential advantages of economy of scale, consistent standards, identification of key consumer issues and ability to learn from experiences of others.

Ofcom, Ofwat and Ofgem could all see synergies and efficiency and costs saving arguments for bringing councils together, although they did not necessarily support the model proposed. An alternative would be to formalise greater joint working. Consumer Action Network is a starting point. Ofwat recommended a study be carried out to assess whether the costs of Consumer Direct and the proposed single council will deliver savings. This should include applying the NAO recommendations to the sectoral consumer bodies. Ofgem does not agree there is a case to separate utilities from mainstream consumer representation.

Some respondents did not agree that multi-utility offerings were a driver for change as they did not think this was a developing trend. They thought that more often the companies are branching out into brand extension.

OFWAT contended that there are issues relating to water and sewerage which would need expert handling and regional issues which would need to be reflected.

Among the main consumer groups, support for bringing the councils together was subject to the case for consumer benefits being established and assurances that resources going into complaint handling would not be reduced. The aviation, post, rail industry and energy sector consumer representatives were sceptical and there was a view that separate bodies were better in sectors where a monopoly was still strong. There was concern that the model relied heavily on Consumer Direct which was not yet proven and that Consumer Direct would not be able to refer on to a specialist agency. It was not clear who would deal with complex complaints before they reached the dispute resolution stage. Citizens Advice Scotland was concerned that these types of complaints can involve extensive intervention by Citizens Advice Bureaux (CABx) pursuing the various complaints options. Energywatch doubted that Consumer Direct could cope with the volumes of complaints with implications for CABx.

The majority of Trading Standards respondents did not comment or did not have strong views about this. LACORS thought a single body was sensible. TSI agreed there was potential for greater efficiency and economies of scale.

**Scotland** A stronger view emerged from the Scottish authorities who did not support a single utilities consumer council. They did not believe the benefits would justify the loss of expertise and identity. The Scottish Consumer Forum is demonstrating the benefits of closer working and this has resulted in the

Memorandum of Understanding for complaints handling between SCOTTS and Energywatch.

Many respondents including OFT did not comment on this section.

**Q4. What are the benefits of moving consumer representation to a single National Utilities Consumer Council?**

Benefits identified across all groups of respondents were:

- same treatment for businesses across competitive markets and for all consumers;
- cost/efficiency savings;
- increased customer recognition / less confusion;
- reduced antagonism between individual watchdogs and regulators;
- potential for stronger advocacy benefiting consumers and business;
- consistent standards;
- better identification of key issues;
- learning from others' experience.

**Q5. What would be an appropriate timescale?**

There were very few comments on the timescale for change. Comments included that the new council OFWAT should be assured of at least three years to demonstrate its effectiveness and efficiency. Anything less would jeopardise its potential success. Watervoice suggested the water industry be left out of the scheme subject to evaluation after five years. Western Power suggested 8 – 10 years.

The Royal Mail Group felt that the timing should take account of the speeds at which the individual utility markets are evolving, not least as far as liberalisation and competition are concerned.

**Q6. We invite views on the extension of ombudsmen schemes to other utility sectors, such as gas, electricity, postal services and water, and in particular on the costs and benefits involved.**

CBI supported the setting up of an ombudsman scheme on the Otelco model for the utility sectors, as did O2. CBI and Western Power saw this as a strong incentive for service providers to resolve complaints efficiently. IOD agreed there was a case for this and it would reduce conflicts of interest.

A few business respondents disagreed. Comments included that Consumer Direct plus Ofgem would work as a model for the energy sector, and that only a few complaints need independent arbitration and many of these will fall under Ofgem's powers, so that the cost of an ombudsman would not be justified.

One comment was that the new model should prioritise better handling of complaints by the utility companies through self-regulation and best practice such as the Energy Doorstep Sales Code.

Among the consumer groups no strong single view emerged. There was support for a consumer ombudsman from Citizens Advice and support for sectoral ombudsman from Age Concern and RoSPA. Postwatch, Water Voice and Energywatch were not convinced of the case for sectoral ombudsmen. Some respondents thought the case needs to be looked at sector by sector. Postwatch and Watervoice opposed an ombudsman scheme and sought stronger powers to deal with complaints.

The response from Otelo supported the separation of consumer representation & dispute resolution.

## **Wales**

The Energywatch Welsh Lay Committee did not agree that competitive markets are the best answer for consumers. Other comments were that referrals to the Competition Commission take time whilst vulnerable consumers fall into fuel poverty; barriers to switching hit low-income consumers; and that there would need to be a complaint handling tier between Consumer Direct and an ombudsman.

### **A clearer legal framework**

#### **Q7. What are your views on the options for a clearer legislative framework?**

The majority of respondents wanted to see change. There was support across the board for simplifying and rationalising the legislation on the lines of option 2. There was some interest in option 1 but also concern; respondents wanted to see more detailed proposals as to how this would work and qualified what support there was. Simplification of the law in relation to safety and supply of goods and services was frequently cited as a priority.

#### **Q8. What is your preferred option and what do you envisage to be the costs, benefits and practical considerations?**

There was unanimous support from business for reform of existing legislation with the consensus pointing to option 2. CBI and BRC welcomed the simplification proposals and would be prepared cautiously to explore the options for a more principle based legislative framework. Business would expect to see a real commitment to deregulation in exchange for a general duty, starting with the UCPD. There were doubts about the prospects of achieving this.

As a minimum BRC would like to see the consolidation and simplification of existing law and introduction of common definitions across the board. Other comments were that some movement to principle based consumer law was inevitable given the Unfair Commercial Practices Directive and this should not be tagged on to the existing framework; there should be an integrated approach across the EU. Given the UCPD and the need to change, BRC arrived at a preference for a coherent principled approach to legislation combined with Codes and Guidance which should only be statutory when really necessary, drafted in close consultation with stakeholders. Other comments were that business should be allowed to comply in different ways –

following guidance would only be one way of doing so; the Prices Code was seen as a good model.

The link with enforcement was essential. CBI want to see a clearer statement of existing consumer law and a modern hands off approach to enforcement based on risk assessment with a strong and unrelenting focus on the dishonest trader. BRC emphasised the need for professional enforcement, guaranteeing fair interpretation and consistency; the Enforcement Concordat should be the foundation stone for the new regime and compulsory.

BRC has grave doubts that DTI could commit to all of this and that Government will always be attracted to more prescriptive regulation. BRC needs to see what is planned to make a judgment about whether going further would be desirable.

Among consumer groups there was strong support for option 2, rationalisation and simplification. There is some interest in going further on the lines of option 1 (radical overhaul based on general principles) but this is seen as a huge long-term task which might not be justified. There was concern that general principles would be helpful but will not do away with the need for prescriptive regulation and will create uncertainty. Respondents would want to see further proposals on statutory guidance and other underpinning eg standards.

Citizens Advice and Citizens Advice Scotland advocated a mix of option 1 and 2 (ie option 1 to fill the gaps / keep some prescriptive regulation).

The Consumer Councils do not support option 1 and would like to see full consultation on the detailed proposals for option 2. They support the general duty to trade fairly.

Which? do not agree with options 1 or 2 which would not address the specific issues they wanted to see addressed, for example pyramid selling. Rather than major change they would prefer to see the implementation of the Unfair Commercial Practices Directive and see how that beds down.

RoSPA preferred option 2. Option 1 was seen as desirable but not easy to achieve. In the field of product safety, they felt the law needs to target unsafe products as well as those who put them on the market: if products were required to be marked with the relevant safety standard, failure to comply could be dealt with by general legislation eg trade descriptions rather than specific legislation; failure to meet the standard would also be covered by the General Product Safety Regulations.

Energywatch wanted more analysis to see how this would impact on consumers in individual sectors eg energy.

The OFT supported fundamental simplification of the UK legislative framework, with the Unfair Commercial Practices Directive providing a strong basis on which to build. They would like to see the review expanded to cover the range of consumer protection legislation and thought that the new framework must be clear and flexible, capable of responding to new unfair trading practices, and that a framework based on general principles must be accompanied by clear guidance.

LACORS and most Trading Standards respondents supported option 2. LACORS thought that option 2 might be the more deliverable option 1. There was some support for option 1 including from TSI, but there was concern that this would lead to inconsistent interpretation and disagreements between TS and business; detailed supporting guidance would be essential to overcome this.

The Law Commission's response was supported by the Scottish Law Commission and reflected their strong interest in simplifying the law. They suggested that the review should concentrate on 20 key statutes and 17 sets of regulations which they had identified; a number of relevant and practical examples were put forward to illustrate how the law might be simplified.

Part 6 of the Law Commission's response looked at the case for rules versus standards (fewer more general legislative instruments) and concluded that the correct balance would differ according to the issue at hand. They thought it would be overly simplistic to suggest that large volumes of detailed provisions can or should be reduced to a few general principles, and that a case where a standards approach has worked well is illustrated by the legislation on misleading prices; the general provision in the 1987 Consumer Protection Act (s20) supported by a Code of Practice set out a standard that has generally been able to cover new practices.

## **Costs**

Comments on costs:

- A radical reshaping of consumer law in terms of general duties would be costly and risky, creating confusion and uncertainty for both consumers and business.
- Principle based legislation would lack clarity creating complexity and costs for business.
- Option 1 will take significant Government resource
- Possible new burdens funding
- TSOs/advisers will need training
- Increased injunctive powers are more expensive in legal costs than criminal proceedings
- Fewer more general laws are more costly for the courts to administer
- More general laws can cause business to be more cautious and less innovative

## **Benefits**

Comments on benefits:

- Better consumer understanding of rights
- The key benefits of option 1 would be flexibility and future proofing.
- A simpler legal framework will make administration of consumer policy more straightforward and consistent.

## **Practical considerations**

Comments on practical considerations:

- A number of respondents would like to see plans to take forward this work
- A central fighting fund would help to decide important cases and set precedent

## **Guidance**

The issue of guidance on the law came up several times. Many respondents stressed the need for clear statutory guidance to accompany a principle-based framework. OFT saw itself as well placed to produce guidance – business respondents did not see this as the role of OFT because of its role as enforcer.

BRC worried that statutory guidance will become administrative law. Something like the Prices Code works. They firmly opposed guidance being drawn up by the regulator (eg OFT) and argued that it needs to be under control of a ministerial department. They thought there must be a legislative requirement to consult on guidance.

## **Extending protection to Business/Commercial consumers**

Energywatch would like to see more attention to this issue. Other comments were that SMEs have suffered as a result of concluding energy contracts with excessively long contracts or high costs for termination and that SMEs have had debt management and billing problems.

Business respondents believed that consumer protection legislation provides the appropriate legal framework for addressing these issues. Amway said that the regulatory framework for business to business and business to consumer transactions should be kept separate due to the specific nature of the relationships involved.

Hutchison 3G UK raised the issue that dominant companies in Australia use principle based legislation to challenge smaller competitors with the aim of damaging business campaigns and competitive deals for consumers; the general duty allows companies to take direct action against the smaller competitors and this can provide an opportunity to cause business disruption as they have more resource (both in terms of personnel and financial resource). This issue would need to be considered in any principle-based regime.

## **Judicial decision making**

Which? would like to see all reported case decisions recorded in a centralised network, initially for the UK and extending wider.

## **Resolving problems**

Encouraging good customer care was seen as a priority by consumer groups. Business welcomed the approach of developing good practice. Trading standards suggested promoting the TSI Fair Trading Award to encourage businesses to adopt nationally recognised training and qualifications to help empower staff.

**Q9. What are your views on the options for improving accessibility and quality of third party dispute resolution and in particular on the costs and benefits of our preferred option?**

Most business respondents who commented liked the proposal for Consumer Direct directing consumers to quality approved ADR schemes. The IoD broadly agreed. Tesco could see little value in ADR schemes although they could be improved to make them cheaper, quicker and more focused. They believed that improved access to court would be a more positive move because disputes are settled there according to the law and there is greater clarity of process. BRC was clear that any ADR system should always be predicated upon clear criteria for establishing the basis for reaching judgements and a requirement it should follow direct business to consumer negotiation not to be a substitute for it.

There was support among consumer groups for promoting good quality ADR schemes although this was seen as part of a bigger picture including the ombudsman issue. There were concerns that ADR should not be compulsory for consumers because it could become a time wasting diversion, and that pre action protocols (which do not apply in Scotland) could be a backward step.

The Consumer Councils supported the proposal. Citizens Advice would prefer Appropriate Dispute Resolution within a consumer ombudsman framework. CA Scotland thought the proposal did not go far enough; they advocate compulsory ADR for traders who should be required to belong to a scheme. Energywatch's view was that anything which falls short of a fully-fledged ombudsman scheme with statutory backing would not be sufficient.

Which? would like to see ADR proposals addressing tourist consumer problems and the effectiveness of the European Consumer Centre and the EEJ-NET service.

Trading Standards' view was that improved ADR would benefit everyone. The majority including LACORS wanted to see a mix of identifying the best practitioners and driving up quality and standards.

## **Scotland**

One respondent pointed out that Scottish Executive policy is to encourage the growth of mediation services. The Scottish Executive funds the mediation service in Edinburgh Sheriff Court, which deals mainly with consumer and landlord-tenant disputes. Limited funding is made available in relation to consumer disputes.

## **Costs**

Comments on costs:

- Would need to overcome consumer reluctance to use ADR; SCC research, only 22% had heard of arbitration, only 2% would consider using it.
- Cost to the consumer should be capped

## Benefits

Comments on benefits:

- save consumers time and money
- provide the ADR needed to obtain OFT codes approval
- accessible for utilities dispute resolution
- publish case outcomes as guidance to what is / is not acceptable, add to trader information
- avoids court costs

## Practical considerations

Comments on practical considerations:

- need better definition of what ADR is
- who would oversee the ADR schemes? – should come within OFT approved codes branding
- needs heavy promotion by Government
- working group needed to agree quality standards
- need to increase awareness and understanding of advisers, business & judiciary
- how enforce decisions?
- provide document only means of redress for consumers (Denmark model)

### **Q10. What are your views on our proposals for representative actions and public redress, and in particular on the costs and benefits of our preferred options, including your views on the exact powers that might be needed and the types and numbers of cases each year where these powers might be used?**

The key business representative organisations did not support representative actions (CBI, BRC and IoD). There was some genuine acknowledgment that they might help consumers but worries that they could become crusades for organisations seeking a change in the law. There were fears that claims would surge and overburden the system. CBI and IoD expressed fears that this proposal was a move towards American style class actions and CBI pointed to the Lord Chancellor's 2001 study which concluded there was no general case for representative actions. BRC could not see the case for action, given that the current system allowed group claims and did not prohibit a pro bono body hiring legal support.

Among the consumer groups (CA, CA Scotland, Consumer Councils, Energywatch and Which) there was widespread support for representative actions. This mechanism would help vulnerable consumers. Little detail about the powers needed and how they would be used came forward. The Consumer Councils support representative actions for England and Wales, but note the Scottish Consumer Council is lobbying for a class actions procedure for Scotland.

The OFT supported this proposal but queried why representative actions should be restricted to designated bodies. They thought that representative actions should be a new private right of action without prejudice to public

enforcement and therefore it would be inappropriate for OFT or other enforcement bodies to take such actions.

Trading standards unanimously supported representative actions. Birmingham estimated there could be 10 – 20 cases per year in Birmingham, one of the largest of the authorities, which would be suitable for representative action, and that it is likely that powers similar to those already contained in existing criminal legislation would be required to enable these tools to be fully effective.

## **Costs**

Comments on costs:

- Designated bodies will need resources to run actions
- Liabilities need to be explored (eg instructing solicitors)
- Costs to firms defending actions, especially small firms

## **Benefits**

Comments on benefits:

- Huge potential to unlock power of consumer organisations if they can act to deliver results for consumers with a common cause
- Could help to fill gaps in access to redress
- Help level playing field between consumers and providers especially in cases of legal complexity or specialist evidence
- Redress route for vulnerable consumers
- Consumers save time and money
- More economic for courts and defenders in time and money
- One decision – consistency across a group
- Deterrent value – where collective detriment is large but individual detriment is small

## **Most likely uses**

Comments:

- Defective product or services
- Deceptive advertising or sales practice
- Illegal credit card charges
- Unfair contract terms

## **Practical considerations**

Comments on practical considerations:

- Need discussion with civil procedure rules committee
- Including / adding consumers identified later
- Allowing court order to benefit whole class
- Opening up injunctive rights to private individuals

## **Small claims track**

LACORS supported the need to improve small claims procedures.

The Consumer Councils supported alignment of the small claims court thresholds. Citizens Advice Scotland took a different view. The Scottish LA Trading standards authorities supported alignment.

## **Scotland**

The Scottish courts come within the competence of the devolved Scottish administration. There is no streaming of claims and no pre-action protocols.

The proposal to align the small claims threshold with England and Wales is not fully supported by consumer representatives in Scotland. There is concern about the knock on effects of harmonisation on access to legal aid and on other business streams of the Scottish courts system. They thought that increasing the limit to £5000, as has been advocated by the Scottish Consumer Council (SCC paper), would have a negative impact on access to legal aid for the more vulnerable, although it is difficult to estimate the numbers. Other impacts identified were:

- companies may sue individuals more regularly
- the higher the value the more likely one party (business) will engage solicitor
- Advice services would need more funds to keep up with demand for representation

## **Public redress: Recovery and Redistribution of proceeds of wrongful trading**

### **Business respondents**

Business did not like these proposals which were seen as too wide ranging and involved radical new powers. There appeared no justification for sequestration in cross-border cases. CBI strongly opposed. If the proposals went ahead, business would want to see a mechanism narrowly limited to a specific problem. BRC did not support the public redress proposal for sequestration in the form suggested – again it was too wide ranging and could promote a compensation culture. They could support a more narrowly defined proposal aimed at “deliberate rip-off”. They thought there needed to be fuller debate and consultation.

The public redress proposals cover gaps in the existing framework and were supported by the Consumer Councils, Which? and the OFT.

The OFT gave strong support to developing mechanisms to freeze and sequester assets as a precursor to redress and to return recovered money to consumers, although further work would be necessary to develop these proposals and more could be learnt about the effectiveness of systems in other countries.

Ofgem supported the proposal for better public redress to compensate consumers more effectively.

LACORS agreed that the proposals could provide additional consumer protection but that they needed further consideration. LACORS was concerned that they would carry a huge financial and administrative burden.

Another comment was that the proposals could be developed in the light of the consultation on cross border enforcement cooperation and the work of the Assets Recovery Agency.

## **Practical considerations**

Comments:

- Difficult to identify consumers genuinely
- How calculate the loss/harm
- What method of distribution of compensation
- Substantial litigation to establish harm
- Would open business up to deliberate campaigns
- Freeze trader bank accounts before potential to compensate is lost
- Will require complex administration

## **Ensuring a fair and safe trading environment**

### **Overview**

The BRC expressed concern that an opportunity for a thoroughgoing review of trading service has been missed, in favour of tinkering at the edges. Areas of concern were patchiness in service provision, inconsistency in decisions, lack of observance of the Home Authority Principle, a wide variation in performance standards, a failure to provide some services in some authorities, a variety of service levels dependent upon the size of the relevant authority all lead to business concern. A highly professional, well resourced, targeted trading standards service providing fair, consistent, proportionate, risk based and effective enforcement is key to providing a level playing field for business and high levels of consumer protection.

CBI saw the challenge as securing the maximum level of compliance with the minimum amount of regulation across all economic operators. The CBI is concerned that the consultation makes no reference to resources; ensuring that the trading standards service is properly funded is absolutely fundamental to this debate. They thought the need for adequate resources must be addressed so that trading standards can make more efficient use of the very extensive enforcement tools which they now possess.

The Trading Standards Institute highlighted the role central government has to play as a facilitator of the environment in which services continuously modernise and develop and agreed that a cross-government approach needed to develop. They were disappointed that the scope of the strategy had not been able to embrace the responsibilities of other Government departments. TSI supported the central /local partnership approach , continuous reinforcement of the National Performance Framework and robust minimum standards. Nevertheless they thought problems relating to capacity and resource for trading standards remained. SOCTSO endorsed these views.

LACORS, CoSLA and the Welsh Local Government welcomed the positioning of trading standards within local government and recognition of the role of local services.

The view of the Society of Chief Officers of Trading Standards in Scotland was that the local authority structure is key to securing a vibrant future and appropriate commitment to the service from central and local government leadership is essential to secure this.

Resources was a key issue raised across the board in Trading Standards responses.

#### **Q11. What are your views on our proposals for stronger central coordination?**

Trading Standards generally welcomed the proposal for stronger central coordination but stated the need for careful handling to ensure local flexibilities are retained. LACORS stated that funding from the centre would be invaluable. There was a mixed reaction to giving OFT the role for coordination of enforcement and training in legislation, particularly as OFT does not cover the full TS remit.

Devolved administrations must be involved in the process. Audit Scotland operated differently from England. Expected benefits were:

- facilitate concerted and coordinated effort to deal with national issues
- links to better intelligence e.g. Consumer Direct
- consistent policies on dealing with issues
- facilitate partnerships with other agencies
- answer business concerns about inconsistent enforcement

There were only 6 business responses on this aspect of the strategy with 5 supporting. IoD disagreed with the proposal due to the belief that Government's role should be minimal and the possible conflict between national and local government involvement in regulation and the potential for merely another set of targets will ultimately result in deterioration rather than improvement in services. The Alliance against Counterfeiting and Piracy expressed concern regarding the lack of coordination and information sharing between rights' owners, enforcement agencies and Government and believe that central coordination could help.

#### **Q12. How can central and local government align priorities once a year?**

Trading Standards welcomed the proposed clarity of direction, underlining the need for this to be undertaken via the partnership arrangements set out in the earlier proposal. There was a strong call for priorities to be agreed on a 3 year rolling programme (instead of annually) and to only include a few key national priorities, leaving local government to determine other priorities. The importance of funding was highlighted in responses. Other comments were that Local Government Associations and the devolved administrations must be involved in the process and that there was a need to recognise that Scotland's services have more masters.

There was little response from business on this issue. IoD disagreed with this proposal as they thought it would probably be impossible to achieve. Another comment was that TS have wide ranging duties with some aspects needing national consistency and others led by local priorities. The Alliance supported the proposals. Tesco suggested including the clear principle that Trading Standards should aim to achieve compliance rather than punish non-compliance, with the emphasis on rogue traders and not on honest business.

### **Q13. Do you agree with our proposals for performance improvement of trading standards?**

Trading Standards expressed strong support for minimum standards and adoption of a single national framework – this was more or less unanimous. Respondents underlined the necessity of developing this in consultation with Local Government and with a clear acknowledgement of the need for Local Authorities to determine local priorities (however TSI acknowledge the TS role on a national and EU level). Standards should be based on outputs and outcomes rather than inputs and should be risk based.

There was some concern that minimum standards could result in authorities with a successful TS service cutting back the quality of services so they merely meet these minimum standards. Other comments were that the strategy needs to recognise the different agreements in Scotland and Wales (PSA applies to England only).

Business would like to see the option to develop Trading Standards into a national service retained. Their top priorities for TS were:

- consistency of application across the UK
- effective high quality TS service
- minimum performance standards with realistic targets
- a service which offers a professional structure
- appropriately resourced service with recognition that the key target should be emphasis on correction not punishment through a partnership approach as in the Enforcement Concordat.

Business expressed strong support for the Home Authority principle but were concerned that not all local authorities follow it. Both peer review and the performance framework were considered to be valuable initiatives requiring sustained support in the early years. They supported risk assessment of business and compliance mechanisms to ensure better use of resources, targeted at traders causing major consumer detriment.

The OFT consider the strategy proposals do not go far enough and called for stronger incentives and mechanisms to drive cooperation at TS level and strong leadership within central government. OFT support regional groupings as has worked for Consumer Direct. But they doubt the scope for redirection of existing resources. They see the National Performance Framework as a beginning but targets and performance cannot lead to consistency without the issue of resources and partnership working being addressed. OFT expressed serious concerns that the proposals will not deliver the necessary reform.

**Q14. Do you agree with our proposals to promote partnership working?  
How could these best work in practice?**

The majority of Trading Standards respondents welcomed remaining in local government. For many in the TS services, the main obstacle is seen to be lack of critical mass. It would be important to remember the role of devolved administrations.

**Regional working**

Trading Standards highlighted the sensitivities attached to regional working, while accepting its inevitability due to Whitehall's mechanism of funding through the Government Office regional structure. LACORS believed that tensions may occur with the LAs if joined-up working is imposed rather than voluntary. There was a strong push for DTI to continue funding regional coordinators and comments that meaningful joining up will only occur if the necessary funds are made available. A number of models and current projects were outlined in the responses to illustrate cooperation between local authorities e.g. Essex Trading Standards developed the 'Essex Doorstep Selling Initiative' to cut down on rogue doorstep traders; this was later rolled out to all members of the East of England Trading Standards Authorities. Essex and Suffolk Trading Standards share a trading standards database, thereby pooling intelligence, sharing best practice, and reducing IT costs; EETSAs have a coordinated training programme; LACORS' website provides a forum for the dissemination of best practice among local authority Trading Standards professionals.

The Scottish wing of TSI carried out a poll of its members and found a clear desire for larger structural units, with a dead heat between those wanting a Scotland-wide service and a series of joint boards across Scotland. However they concluded that joint boards would be the preferred choice; these joint boards would be established by statute (but it is not clear whether they would affect only TS services). The comments were that larger units would make it possible to get a uniform approach, providing a comprehensive service while retaining local links. There was pessimism about the proposal for joint working as Scottish TSI members had seen little evidence of these working over the past 8 years. There was a view that coordination between local authorities is common but full joint working is not.

SCOTTS, on the other hand, while recognising the difficulty that small authorities face does not think this is enough reason to join up; considerable resources will be required to encourage services to join up and action taken to ensure any finances allocated to encourage joint working are channelled through to the TS service.

**Specialist teams**

Individual Trading Standards stated that investigative capability comes with size. A number of potential problems were raised e.g. management of these teams, how work will be split between local authorities and specialist teams and financing. Concern was expressed that only the larger services would have the capacity to send staff to the specialist teams, with the result that the larger services will end up supporting the smaller ones.

Business expressed support for partnership working and ASDA highlighted West Yorkshire joint services as a positive example. IoD support joint working but stated that it should be encouraged not enforced. Hutchison 3G considered specialist teams to be a positive proposal.

Among the consumer bodies, the consumer councils and RoSPA supported the proposals. Citizens' Advice expressed support for regional working while Which? stated it's preferred option would be a National Service with regional working merely a second best option.

**Q15. Do you agree with our approach to people, skills and leadership?**

Trading Standards supported the proposals but highlighted the need for funds and a clear conversion route for staff with DCA to DTS. Other comments were that Scotland and Wales need to receive funding for recruitment and development to match that made available in England. TSI called for a further exploration into leadership skills in the context of the relationship between central government departments and Local Authority Trading Standards.

The CBI stated that a clear feature of any enforcement service should be an effective high quality and professional trading standards service operating to a high standard across the country. The service should offer a professional structure to attract a high calibre of staff, ensuring the staff are retained and are trained to a high level. IoD stated DTI's role should be as an enabler and no more while Tesco stated the contrary, that central government needs to give more attention to this issue.

The consumer councils referred to a worrying crisis in TS recruitment and retention. On leadership, the consumer councils support a wider objective to raise the profile of TS within local government and the outside world.

## Appendix A – Respondees to consumer strategy

Local Authority and Trading Standards Representative bodies	Local Authorities Co-ordinators Of Regulatory Services (LACORS) Society of Chief Officers of Trading Standards in Scotland (SCOTSS) Society Of Chief Trading Standards Officers (SOCTSO) Trading Standards Institute (TSI) Scottish Trading Standards Institute Welsh Local Government Association (WLGA) Consumer Network National Support Team East of England Trading Standard Authority (EETSA) SWERCOTS Midlands Coordinating Group on Trading Standards (MidCots) Crossing the Boundaries (CtB) London Trading Standards Authorities (LoTSA) South East Trading Standards Authorities (SETSA)	
Trading Standards Services	Angus Birmingham Bolton Cornwall Devon Dorset Durham East Ayrshire East Lothian Essex Falkirk Fife Glasgow Halton	Hertfordshire Highland Council Leicestershire Perth and Kinross Plymouth Poole Redcar and Cleveland Solihull Staffordshire Suffolk Surrey Tyne and Wear West Dunbartonshire Wiltshire
Individual Trading Standards Officers	5 individual responses	
Overall Business representation	Alliance against Counterfeiting and Piracy British Brands Group British Retail Consortium Confederation of British Industry Institute of Directors	
Trade bodies	National Panel of Approved Coal Merchants Scheme British Vehicle Rental and Leasing Association Energy Retail Association Mail Order Traders Association	
Individual Businesses	Albion Water	PWC

	Amway UK Asda Cattle PLC (confidential) Hutchison 3G UK LGC Ltd NTL O2	Royal Mail Group Scottish and Southern Energy Tesco Western Power Distribution Yell Ltd
Consumer Bodies	Age Concern (AC) Citizens Advice (CA) Citizens Advice Scotland (CAscot) National, Welsh and Scottish Consumer Councils (CCs) Royal Society for the Prevention of Accidents (RoSPA) Which BSI - Consumer and Societal Policy Unit	
Sectoral Bodies	Civil Aviation Authority & Air Transport Users Council (joint response) Energywatch Financial Services Consumer Panel Postwatch Rail Passengers Council and Committee Water Voice	
National Enforcement	Office of Fair Trading (OFT)	
Sectoral Regulators	CAA/Air Transport User Council (joint response) OFGEM OFWAT (confidential) OFCOM Information Commissioner – no comment	
Academic and legal	Law Commission (on legal framework only) Scottish Law Commission Dr Christian Twigg-Flesner - Society of Legal Scholars Cowan Ervine – Law Lecturer Dundee Chris Willett – De Montford University	
Others	BSI British Standards OTELLO Corgi – watchdog for gas safety North East Government Agency Intelligence Network (GAIN) Registry Trust 3 individual responses	
END		