

dti

A Fair Deal for All.

Extending Competitive Markets: Empowered
Consumers, Successful Business

Regulatory Impact Assessment

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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.

PARTIAL OVERARCHING REGULATORY IMPACT ASSESSMENT (RIA)

Introduction

This partial overarching RIA supports the consumer strategy *A Fair Deal For All*. It provides an overall assessment of the regulatory impact of the proposals for the strategy. The Government still has to explore the detailed implementation of some of these proposals; so there will be further consultations and further RIAs in respect of some aspects. More detailed RIAs on empowerment, legislation and redress are below.

Issue and Objective

The DTI has a Public Service Agreement (PSA) with HM Treasury to promote fair competitive markets by ensuring that the UK framework for competition and for consumer empowerment and support is at the level of the best by 2008. The rationale for this target was set out in the 1999 White Paper *Modern Markets: Confident Consumers*, which explained that well informed and active consumers supported by an effective system of law and enforcement could play a significant part in ensuring healthy competition in which responsive and innovative businesses can succeed.

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) (<http://www.dti.gov.uk/ccp/topics1/pdf1/benchmain.pdf>) 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; these included the legal framework, which is not as flexible as elsewhere, redress mechanisms which need to be more efficient in righting individual and collective harm, the UK's enforcement arrangements which are fragmented, the use of market intelligence and the availability of advice about suitable traders.

The DTI built on the 2003 study by completing an extensive review of consumer policy which resulted in the proposals outlined in the consultation *Extending Competitive Markets: Empowered Consumers, Successful Business* in July 2004. Our proposals address the areas outlined by the Comparative Study as needing to improve to meet the level of the best by 2008. This consultation closed on 31 October 2004. The Strategy takes account of and supports the responses from the consultation exercise.

The strategy aims to increase the empowerment of consumer and business to drive competition. We believe that a consumer regime that is equivalent to the level of the best means:

- Consumers are equipped with the skills, knowledge, information and confidence to exercise their rights to get a good deal.
- Strong consumer advocacy exists at the general policy making level and in special cases.
- Consumers have access to appropriate and convenient sources of advice and redress, including effective alternative dispute resolution (ADR).
- Consumer rights are proportionate, balanced with responsibilities, and clear and simple enough to be well-understood.
- Consumers are able to understand the impacts of their own consumption decisions on our shared environmental and social wellbeing.
- Vulnerable consumers are protected without placing undue restraints on markets overall.
- Enforcement is fair, consistent, effective and proportionate.
- Markets are regarded as fair by both consumers and business.

And this is underpinned by:

- A strong competition regime, and

- A rigorous evidence-based approach that ensures:
 - problems are identified,
 - interventions are justified by the evidence using appropriate risk assessment,
 - the effectiveness of interventions is evaluated, and
 - there are no unnecessary costs to business, consumers or Government.

Consultation

(1) Background

In order to judge the potential effects of the proposals on the business community, consumers and trading standards service, the DTI published a consultation in July 2004. We sought views on the full range of options including costs and benefits. We received over 100 responses and these fed into the strategy. Stakeholders generally welcomed the strategy. Business particularly welcomed the coordinated policy of enhancing competitiveness within the economy. The Confederation of British Industry (CBI) 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. The British Retail Consortium (BRC) welcomed the emphasis on consolidation and advocated that Government develop responses to problems through bringing together consumer, business and enforcers.

Consumer bodies felt the strategy needs to develop a stronger and clearer approach to protecting the vulnerable consumer. It was seen as too driven by the competitive markets / empowered consumer approach. Business and consumer groups diverged the most in their response to representative actions, a proposal which would allow designated bodies to take action on behalf of groups of consumers, acting for a whole group in a civil action, with consumer groups expressing strong support and strong opposition from business.

(2) Rationale For Government Intervention

The DTI's aim is to deliver 'prosperity for all', by supporting successful business; promoting world-class science and innovation; and ensuring fair markets. Productivity growth is the most crucial factor in securing long-term growth in living standards and DTI has identified 5 priority areas where we can make the most impact; extending competitive markets is one of these.

Competition for customers drives business to become more innovative, more efficient and better able to compete both in Britain and abroad. Competition provides benefits for consumers because they get more choice, lower prices and better quality service.

The past seven years have seen major reforms to Britain's competition regime. Consumers play a key role in driving competition. Empowered consumers are uniquely placed to reward the most efficient, innovative and service-driven firms. Empowered consumers must be informed about the price, quality and range of available goods; have the skills, knowledge and confidence to get a good deal, face no unnecessary restrictions to switching between suppliers; understand their rights, and have knowledge of, and access to, appropriate and convenient redress mechanisms. Firms that can succeed in a domestic market of empowered consumers are in a much better position to compete internationally. The more firms that do succeed in this way, the greater the impact on UK productivity.

There are therefore clear economic benefits to be gained from ensuring that the consumer policy framework is world class. The overall direction of the strategy is to put well-informed, confident consumers at centre stage driving innovation and economic success, creating a robust climate for business to operate in. Without this there is a risk that the existing framework will not measure up to the task, and an opportunity to promote UK competitiveness will be missed. The benchmarking study has already identified areas where the UK is weaker than its OECD counterparts and the strategy aims to remedy these deficiencies.

Consumer detriment

In 2000, the Office of Fair Trading (OFT) estimated consumer detriment, in the form of problems that the consumer becomes aware of, at £8.3 billion per annum. If this figure is adjusted to more accurately reflect lost welfare, (i.e. that consumer problems affect lower income groups proportionately more than higher income groups), then the figure is more like £9.6 billion. The figure incorporates losses including loss of value on goods and services, use of personal time, travel, legal or other advice and telephone bills. The approach was to survey 2,000 consumers and identify problems they had experienced as consumers over the previous twelve months, followed by more detailed questioning on the cost (including time) of putting such problems right.

The figure is an under-estimate in that it does not include costs of which consumers were unaware (such as not knowing they have been ripped off, or missing out on a bargain due to lack of confidence or too little shopping around). Furthermore, it does not capture the severe emotional stress often experienced by consumers. However, the survey found that in 45% of consumer problems, severe emotional stress was experienced.

The OFT's work on quantifying consumer detriment was subject to considerable margins of error, but represents the orders of magnitude of consumer problems. These estimation problems prevent the overall cost to consumers from being broken down by sector or nature of problem.

The same survey estimated the annual number of complaints at around 85 million per annum. The most common type of problem was defective goods or substandard service. The next most common problem related to unfair selling techniques, misleading claims and misinformation. Purchases that led to problems were spread across a wide range of sectors. The most common reported problems included food and drink; telephone services; clothes, shoes and jewellery; utilities; finance; post; travel; council services; medical professions; supermarkets; and household appliances and electrical goods. It

must be noted that even where action is successfully taken against traders it is difficult for consumers to obtain compensation.

OFT has collected complaints statistics from Trading Standards. These are the 'tip of the iceberg' as most consumers complain to the seller and give up if not satisfied at this stage, indeed there are usually in the region of 850,000 complaints reported to trading standards departments every year. The top ten sectors giving cause for complaint in 2003/4 are shown below. The strategy aims to drive out low standards. Businesses in these sectors will benefit from a healthier and stronger consumer regime. All business will benefit from a strong focus on customer service and intelligent complaints handling.

| Complaints to Trading Standards by sector reported to OFT | |
|--|------------------------------|
| | % Share of all complaints |
| Home maintenance, repairs and improvements | 10 |
| Second-hand motor vehicles | 8 |
| Upholstered furniture | 4 |
| Radio, TV and audiovisual equipment | 4 |
| Large white goods and major fixed appliances | 4 |
| Food and drink | 4 |
| Personal computers and related hardware | 3 |
| Clothing and clothing fabrics | 3 |
| Double glazing products and installation | 3 |
| Mobile phones and services | 3 |
| Total Complaints reported | 854,135 |

Source: OFT Annual Report 2003/04

Scams – The Office of Fair Trading estimates that UK consumers lose £1 billion per year to a variety of scams that exploit low cost, mass marketing

techniques. This includes up to £150million per year on telephone lottery scams, approximately £250million a year on prize draws, sweepstakes and foreign lottery mailings. While premium rate telephone number scams account for around £150 million per year.

LACORS carried out a survey in September 2004 and received responses from 101 local trading standards departments. They found the most frequent scams directed at consumers consisted of messages left on answering machines informing the consumer they had won a holiday. They were then required to call back using a premium rate telephone service at an average cost of £1.50 per minute.

LACORS also found that the most frequent business scams included anti-money laundering scams advising businesses that they have a legal duty to train and certify employees in relation to the Proceeds of Crime Act 2002 and the Money Laundering Regulations of 2003. The notice asks the traders to pay £75 per employee for a training pack. Other scams involved letters sent to traders advising them that they had to register under the Data Protection Act and pay an average charge of £100 per business.

They found that 87% of scams targeted at businesses and 46% of scams aimed at consumers originated from the UK. 24% of scams aimed at consumers originated from the EU (mainly Spain) and 15% from South Africa. Until now, even if assets are seized by overseas enforcement bodies as a result of action against those operating the scam, the UK consumer has not been able to get their money back.

How DTI will strengthen the consumer policy framework

We considered a number of options to address these problems under four headings: empowerment through advice and information; legislation; better access to resolving problems and obtaining redress; and enforcement. Separate detailed RIAs for empowerment, legislation and better access to resolving problems and obtaining redress (below) explain the proposals in

these areas. Enforcement issues are considered in the separate consultation on a new Consumer and Trading Standards Agency. The options we propose will build on Consumer Direct, which is central to our strategy to improve the consumer policy framework.

Consumer Direct In order to meet the demand for consumer advice and to provide a single access point for advice when things go wrong, the DTI, in partnership with local authority trading standards services, is establishing Consumer Direct, a telephone-based helpline and on line service that will offer general information on consumer rights. Consumer Direct will deal with enquiries from consumers either before they purchase or if they experience a problem and need advice on how to seek redress. The service aims to give people the knowledge, tools and confidence to be able to resolve matters themselves but it will also act as a gateway to other complementary services where further help is required or specialist advice is needed. Consumer Direct coverage will be nationwide by spring 2006. The Consumer Direct website can be found at: www.consumerdirect.gov.uk

By improving access to consumer advice over the telephone, Consumer Direct will help meet the substantial unmet demand that currently exists. The unmet demand for consumer advice nationally is estimated to be as high as 1.5 million calls per year on top of the enquiries dealt with by existing services. A customer satisfaction survey covering the first four regions showed that Consumer Direct is addressing this unmet demand as over 75% of callers said that their call to Consumer Direct was the first time that they had obtained consumer advice from any organisation.

OFT estimate that consumer detriment is up to £8 billion per year (1% GDP) and the Consumer Direct customer satisfaction survey showed that for consumers who were able to put a value on how much resolving their problem had been worth (for example through replacement, repair or refund) the most frequent response was between £150 and £200. Consumer Direct is central to the strategy to address consumer detriment.

Historically there has been very patchy consumer advice provision with some areas delivering very good services and others providing nothing at all. 84% consumers surveyed said that they were fairly satisfied or very satisfied with the service provided, 89% said that they would recommend Consumer Direct to their family and friends and 85% said that they would consider calling Consumer Direct again.

The Consumer Direct central database now gathers information on trade practices over a wide area and is already improving the intelligence available to Trading Standards. The referral arrangements between Consumer Direct and Trading Standards departments means that Trading Standards are able to focus on the work where they can add most value such as dealing with complex enquires and taking enforcement action against poor trading practice

The options considered in the 3 detailed RIAs to further address the problems outlined are:

Empowerment through advice and information

In order to increase consumer empowerment, the consultation considered the following additional options:

- Encourage Local Authorities and other providers to bring the variety of trader schemes under the umbrella of the Office of Fair Trading Consumer Code Approval Scheme (OFT CCAS)
- Improve access for consumers to the diverse information already in the public domain
- Do Nothing

Legal

In order to make the law clearer for the benefit of consumers and business, the consumer consultation considered the following options:

- Creating a new domestic legal framework based on general principles;

- Rationalising and simplifying domestic legal framework;
- Implement the unfair commercial practices directive
- Do nothing

Resolving problems

In order to make it easier for consumers and business to resolve problems, the consumer consultation considered:

- Promote direct settlement between consumer and business
- Pilot quality assurance of third-party dispute resolution services. 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 Agency) to receive and distribute the funds of cross-border scams to affected UK consumers
- Do nothing

Enforcement

The 2003 Comparative Study concluded that the UK delegation of the enforcement of a wide body of national legislation to local authorities led to fragmentation and inconsistency. It also concluded that bigger enforcement constituencies had a more joined up approach and provided better value for money.

The study also found that UK enforcement was not as intelligence led as it could be due to lack of systematic, comprehensive data relating to consumer complaints. The uncoordinated collection of complaints data by a number of different bodies contributed to this problem.

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. The Hampton report *Reducing administrative burdens: effective inspection and enforcement*.¹ 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 consulting separately on the options for a new Consumer and Trading Standards Agency (CTSA), but this would also meet Hampton's call and our own identification of the need for a more coherent enforcement network, giving Trading Standards strategic leadership and providing the performance management and prioritisation role that currently prevents Trading Standards from being as consistently effective as they might be. The options considered in this RIA for improving consumer redress could be delivered effectively through the new CTSA.

Consumer representation and the regulated industries

Our consumer strategy consultation paper: *Extending Competitive Markets: Empowered Consumers, Successful Business* included a section on consumer representation and the regulated industries. It complemented a joint DTI and Treasury report: *Consumer Representation in Regulated Industries* that was published the same day, setting out our recommendations to further enhance the effectiveness of the sectoral consumer bodies in the medium term, this can be found at:

www.dti.gov.uk/ccp/topics2/economic_regulation.htm. This report includes detailed costs of the current consumer bodies. The consumer strategy consulted on long-term proposals, which concentrate on (i) complaints

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

handling and the prospective role for Consumer Direct (ii) combining the consumer councils and (iii) alternative mechanisms for providing redress. Inclusion of this section in the consultation was aimed to gauge views and the responses will feed into longer-term exploration of the policy options. As we explore the options we will produce assessments of the costs and benefits for each.

General scale and effect

The effects of this Strategy are likely to be spread widely through the economy, rather than being focused on a particular industry sector or group of consumers. Nevertheless, some parts of the economy are likely to be more strongly affected than others.

Public sector – There will be impacts on OFT and trading standards from the options listed in this strategy and the proposals for a new Consumer and Trading Standards Authority. In particular, there could be one-off adjustment costs from the introduction of the Unfair Commercial Practices Directive and new initiatives to allow recovered assets to be re-distributed to scam victims. There could be further ongoing costs if public bodies carry out quality assurance of ADR schemes, and if the new CTSA administers the re-distribution of money recovered from scams. However, at the same time, Consumer Direct and, in the longer term, simplified legislation should reduce time spent by Trading Standards on routine complaints/requests for advice from consumers and business. Clearer legislation may reduce the scope for dispute, but increased quality of third party dispute resolution should mean that more problems are dealt with in this way rather than through the courts.

Business – The overall effect of the strategy will be to benefit businesses other than those that break the law. Consumer problems occur in a broad range of sectors. Consumer-facing firms will benefit from more demanding customers and hence more competition in their markets, and stronger redress/ enforcement action when they break the law. Businesses will face less unfair competition from unscrupulous trading practices. Those with an

international outlook should find that a more competitive domestic market, and more feedback from empowered UK consumers, will 'raise their game', putting them in a stronger position to compete internationally. A simplified legal framework across the EU could make it easier for business to comply with legislation, and this benefit may be particularly felt by small businesses breaking into new markets.

Consumers – we expect all consumers to benefit from the expected improvements in the regime. Groups which are seen traditionally as vulnerable, such as the elderly and those on low incomes are likely to benefit more than others from greater protection from Trading Standards and from the improvements in advice provision through Consumer Direct. Simplified legislation and redress will enable all to become more empowered.

Environmental impact – none of the options considered here will impose environmental costs. There may, however, be small environmental benefits as empowered consumers make more informed purchase decisions. As a result, where consumers prefer to take environmental issues into account, they will be more certain of the environmental credentials of the products or services they are purchasing.

Equity and Fairness

All consumers should benefit from improvements to the consumer regime, but vulnerable groups, such as the elderly and those on low incomes are likely to benefit more than others from greater protection from Trading Standards and from the improvements in advice provision. The proposals will not impose significant costs on any business sectors. Indeed, the proposals should reduce unfair competition from traders acting illegally.

(3) Competition Assessment

Competition cannot work effectively without strong and well-informed consumers driving by exercising options to switch and making informed

choices. The strategy will benefit competition by strengthening the framework for consumers. These factors are vital in making markets work. As a result, the strategy will have a positive effect on competition and is not expected to have a negative impact on any specific markets.

The strategy will affect those firms that provide products and services directly to end consumers in a wide range of markets. It should benefit all legitimate businesses by helping consumers to recognise reputable traders.

While the effects of the strategy may not be felt equally across the economy, as different markets have different levels of consumer detriment; they should have a similar impact on traders within a market, with the exception of those that break the law. More confident consumers will be freer to switch around suppliers, assisting market entry and expansion of smaller firms. New traders will not face a greater burden than existing traders, and are more likely to find entry barriers (in particular customer inertia) lowered. The proposals would not restrict the ability of traders to choose the price, quality, range or location of their products.

Small Firms Impact Test

Business stakeholders have consistently emphasised the need to simplify and rationalise the existing legislative framework. Complexity brings cost, especially to small business. UK small business spends an average 2-3% of their total working time complying with regulations, including time spent on tax, employment relations, health and safety and environmental issues. The Federation of Small Businesses operates a 24-hour advice line that fields approximately 140,000 enquiries each year.

The consultation raised particular issues for small firms in relation to some proposals. In particular, the Small Business Service view was that our recommendation to provide publicly available information in one place would disproportionately impact on small firms. Their view was that this could, for instance, result in an increase in the number of small firms contesting findings

made by the agencies that would be included in the register such as County Court Judgements (CCJ), HSE, Advertising Standards Authority etc. For example, many small firms will not contest CCJs due to resource limitations but in the future small firms may be more inclined to contest those decisions to avoid being included on a Government register of traders that consumers should avoid.

Subsequent to the consultation, a short questionnaire was sent to a sample of small businesses, asking questions about consumer law, codes of practice, alternative dispute resolution, representative actions and enforcement.

The majority of respondents wanted to see changes to consumer law, reiterating concerns detailed above about the burden of regulation. There were mixed feelings over whether one strongly recognised code would help their businesses. Only a small number of respondents had used ADR schemes, but of those that had, most felt using ADR was cheaper than the courts, possibly several hundred pounds cheaper.

A variety of concerns were raised about the possible introduction of representative actions, including the costs of defence for small business, potential abuse of the system (which could lead to unfair damage to business reputations) and fears that this is only really appropriate for large business.

Enforcement and Sanctions

Many of the proposals outlined here aim to improve the enforcement of existing legislation. As such there will be impacts on enforcement bodies in terms of small increases in one-off costs and ongoing administration costs. The implementation of the Unfair Commercial Practices Directive (UCPD) will have implications for enforcement; with the OFT and Trading Standards (amongst others) tasked with enforcing the Directive. These issues are being considered in detail in the consultation on UCPD implementation, to be published in Autumn 2005.

Monitoring and review

A balanced scorecard (a tool which seeks to monitor performance by accounting for a range of relevant factors) is being developed to monitor progress in raising consumer empowerment, as well as in implementing legislative change and achieving improvements in enforcement. This will lead to regular monitoring of our progress towards our goal of having the best framework for consumer empowerment and support.

Individual measures outlined here will also be subject to review. For example, the pilot on quality assurance of ADR schemes will be carefully evaluated to inform whether such quality assurance should be rolled out. The UCPD will be subject to evaluation after it is implemented. The Consumer Codes Approval Scheme will be subject to considerable monitoring activity, for instance, studies on consumer and business perceptions of codes will be carried out.

REGULATORY IMPACT ASSESSMENT: EMPOWERMENT THROUGH ADVICE AND INFORMATION

Purpose and Intended Effect of the Measure

Issue and objective

Issue

We want empowered consumers who have choices, information and skills to make decisions that give them a good deal. They are able to shop around; they have good information of products and services and the traders who provide them, and they are able to compare different deals in order to reach a decision that best suits their circumstances. When transactions go wrong they take action to settle disputes quickly and satisfactorily. Empowered consumers are a vital part of a successful market that make choices between providers and work with business to supply feedback and express their needs as well as being able to handle problems together when things go wrong.

Consumers can find it difficult to get the right information to make good purchasing decisions. Some consumers may be overwhelmed by the choice available in some markets. In order to be empowered, consumers need help to get access to information and advice; they need to know where to find this help, and they need to feel confident that what is provided is good quality.

Rationale for Government Intervention

We outlined consumer detriment in the overarching RIA. The OFT estimates consumer detriment at £8.3 billion per annum, measured as the loss to consumers caused by specific problems with products and services, and costs incurred in putting them right.

We have identified a number of challenges to our vision of consumer empowerment. These include:

- (a) Lack of information. Consumers often buy before they have perfect information about all the competing offers in a market. Consumers may find it easier to trust a reputable seller or one that belongs to a recognised code of conduct or approval scheme, however, the plethora of codes and quality marks can also make it difficult for consumers to make their decisions. The quality of certain goods can never be discovered by individual consumers – for example, those making health or environmental claims.
- (b) Understanding of rights and enforcement. Four out of every ten consumers do not feel well informed about their rights and of how to enforce them. Two out of every ten people do not feel confident about using their rights when they need to complain about goods or services.
- (c) Lack of access to appropriate advice and information. A quarter of all consumers find it hard to get advice when they need it. Work done for Consumer Direct suggests there is considerable unmet demand for advice. The Comparative study found that the provision of consumer advice in the UK in general is strong, although there was a relative weakness in relation to trader-specific information. But there are many different bodies providing similar services. Although this means that the level of provision is good, consumers are confused about where to get information and help, and there is a lot of duplication in the system.
- (d) Difficulty shopping around. Whether visiting several stores in person or comparing goods on the internet, this takes time and effort. Consumers try to minimise these costs, abstracting from the vast amount of information available about the many goods and services on offer. Sellers may make their goods and services unnecessarily complex, making direct comparisons difficult and weakening competition. A Trading Standards Institute study found that, for 23 out of 39 holidays surveyed, the highest price quoted was more than 10% above the lowest price. In one case, the highest price quoted for a holiday was double the lowest price. There is plenty of scope in a variety of areas to shop around to get a better deal.

- (e) **Switching Costs.** The consumer may find that, having dealt with a seller, they become 'locked-in' to that seller for future dealings. This may be simply because, having had experience of a supplier. The consumer finds 'loyalty' easier and less risky. Alternatively, the purchase may be for an open-ended stream of services (such as a current account or energy supply). Lock-in can also occur when the purchase of one good (such as a computer) entails the purchase of 'complementary' goods (such as software), which must be compatible. If the consumer is reluctant to, or cannot, switch away, there is less incentive for the seller to provide good value.

- (f) **Selling Techniques.** Consumers may experience nuisance, stress, or other problems due to the marketing techniques used by sellers. This can range from email spam, junk mail, and intrusive telesales to high-pressure doorstep selling. Complaints on selling practices amount to around 25% of all complaints to Trading Standards.

- (g) **Skills.** Millions of UK adults are lacking in basic literacy and numeracy skills which are crucial in acquiring information about products, in finding out about their rights, and in bargaining with sellers. Although some consumers who lack these skills can seek the help of friends and family, many others suffer as a result of their lack of 'life skills'.

A 2003 Norwich Union survey of homeowners aged 55+ found that one in four said they had been charged over the odds or received substandard work when having home improvements carried out. A 'mystery shopping' exercise by Surrey Trading Standards in 2004 found that the work of one in four tradesmen paid to carry out repairs was substandard.

Whilst there are a number of challenges to empowerment, we feel the most important to address are consumers' access to information, advice and codes of practice to enable consumers to more easily pick good suppliers.

(4) Current Programmes

We are already taking action to increase information and advice to consumers. Key programmes underway are Consumer Direct and the Consumer Credit Bill. There is also a scheme in place to strengthen codes of practice, with the Office of Fair Trading's Consumer Code Approval Scheme (OFT CCAS).

Consumer Direct

In order to meet the demand for consumer advice and to provide a single access point for advice when things go wrong, the DTI, in partnership with local authority trading standards services, has established Consumer Direct, a telephone-based helpline that will offer general information on consumer rights and help in getting the best deal. Consumer Direct will deal with initial enquiries from consumers either before they purchase or if they experience a problem, and will act as a signpost to other services for consumers (e.g. sectoral consumer bodies or more specialist advisers). Consumer Direct is expected to be nationwide by spring 2006. The Consumer Direct website also provides consumer information, and can be found at:

www.consumerdirect.gov.uk

By improving access to consumer advice over the telephone, Consumer Direct will help meet the substantial unmet demand that currently exists.

Consumer Credit

The Government's recent consumer credit review concluded that it was necessary to improve the transparency of the consumer credit industry so consumers can get the relevant information when they need it and will therefore choose the product that best suits their needs.

The aim is for a transparent process throughout the contractual process. Therefore, a number of regulations have been introduced, these are:

- The Consumer Credit (Advertisements) Regulations 2004 came into force on 31 October 2004 and require lenders to present a balanced picture of the costs of credit. Advertisements must be honest and truthful, and cannot highlight certain aspects of a product while hiding others in the small print. Key financial information must be presented together and with equal prominence.
- The Consumer Credit (Disclosure of information) Regulations 2004 sets out new rules requiring the provision of pre-contract information.
- The Consumer Credit (Agreements)(Amendment) Regulations 2004, which came into force on 31st May 2005, require lenders to provide consumers with the key information about a credit agreement before they sign and in a form which it can be taken away and studied.
- The Consumer Credit (early settlement) Regulations 2004, which came into force on 31st May 2005, introduce a new, fairer method of calculation the settlement figure when a consumer wishes to settle a loan early.

The Government is also taking action to encourage and support the timely and appropriate provision of free debt advice to consumers, empower them to tackle their over-indebtedness problems and be rehabilitated back into financial health, preventing financial and social exclusion. The DTI is leading on work to provide a sustainable and effective free debt advice provision framework.

Consumer Codes Approval Scheme

The OFT's Consumer Codes Approval Scheme was introduced by the Enterprise Act 2002. The OFT administers the Consumer Codes Approval Scheme. It allows for sector specific codes to be drawn up in association with a code sponsor. They are voluntary agreements but, once agreed they require code members to provide pre-contractual information. Independent compliance monitoring of trader performance will be carried out and published. If a trader operates in line with an approved Code it will be able to

use an approval logo, which will be promoted to consumers as a guarantee of a certain level of service. The case for OFT CCAS can be found in the Enterprise Act RIA and can be found at:

www.dti.gov.uk/ccp/enterpriseact/pdfs/ria-consumers.pdf

Further options considered

We considered and consulted on a number of options for improving access for consumers to information before a transaction takes place, these were:

- Encourage Local Authorities and other providers to bring the variety of trader schemes under the umbrella of the Office of Fair Trading Consumer Code Approval Scheme (OFT CCAS)
- Improve access for consumers to the diverse information already in the public domain
- Do Nothing

Option 1 – Encourage Local Authorities and other providers to bring the variety of referral schemes under the umbrella of the OFT CCAS

During our review, we concluded one problem for consumers was the plethora of codes and quality marks. We believe that consumers would benefit if there were better recognition of codes/schemes that can be relied on. We envisage that this logo will become a recognised brand that will give consumers reassurance on the willingness and ability of individual firms to deal with problems. We are fully committed to the OFT codes regime. We would like to build on the success of the OFT codes and indeed, the responses to the consultation expressed strong support for the expansion of the OFT codes so that it becomes the recognised brand that consumers can rely on. We want to encourage Local Authorities and other providers to bring the variety of schemes under the umbrella of the OFT CCAS, thereby building on the success of the OFT codes and supporting brand recognition. However, the decision to join the OFT CCAS is ultimately a business decision and we

recognise that some schemes, which provide a valuable service will choose to remain outside the OFT CCAS, it is not our aim to undermine these codes.

Option 2 - Improve access for consumers to the diverse information already in the public domain.

Data that is already in the public domain about company performance (but found in different places) could be brought together, for example information about county court judgments against a trader. In order to make it easily accessible it would be made available to individual consumers and advisers including Consumer Direct advisers would be encouraged to refer to it. . We considered action in specific areas where there is a particularly strong demand from consumers for more information.

Option 3 – Do nothing

Government would continue to support and promote existing measures designed to improve consumer access to information. There are a number of initiatives under way including the on-going promotion of better skills by improving the framework for consumer education with OFT acting as coordinator as well as the programmes outlined above. Market-based solutions such as the model used by e-Bay, where purchasers give feedback once a transaction is completed, exist in the UK and other models are in place in other countries for instance; the Better Business Bureau model (BBB) in place in North America gives factual information on companies as well as about the performance of a specific business. BBBs are trade sponsored and funded. Traders pay to be members of the scheme and agree that information on complaints made against them by consumers and any action they have taken should be made available on a public website. However, it would be for UK business to set and run such an organisation.

Costs and benefits

Option 1 – encourage Local Authorities and other providers to bring the variety of trader schemes under the umbrella of the OFT CCAS. This proposal builds on the current OFT CCAS by encouraging existing trader schemes to meet the schemes' criteria. We believe that as membership of the OFT CCAS grows this will result in increasing recognition of the brand and consumers will start to associate with a certain level of service.

Bringing local authorities and other providers under the OFT CCAS umbrella could help to rationalise the number of different schemes that exist and build a strong brand image. This would have benefits for businesses and consumers. Businesses would benefit from membership of a widely recognised scheme and consumers will be more confident in selecting traders, this will be to the advantage of higher performing companies.

The first OFT CCAS newsletter, published in 2003 summarised the findings of the baseline study of both consumers and businesses perceptions of codes of practice (similar surveys will be conducted in 2005 and 2006).

1000 business representatives were surveyed, concentrating on the 4 sectors of the code sponsors who had completed stage 1 of the OFT's 2 stage process towards approval at the time (estate agency, travel, vehicle bodywork repair and direct selling). The vast majority of business that were members of a trade association believed that the benefits of signing up to a code outweighed the disadvantages. The most important benefit cited by members of trade associations was helping to improve business reputation.

This survey also questioned 1000 people about their awareness and understanding of codes of practice. Three quarters of consumers claimed it was important to use a business that signs up to a code of practice while only 10% of consumers claimed to be completely unaware of the existence of any codes of practice. Most consumers saw the main benefits of dealing with a business that signs up to a code as being the resulting peace of mind

associated with making a purchase and reassurance that there is a mechanism for resolving problems should they arise.

We believe that building on the existing OFT CCAS offers a cost effective method of providing a recognisable brand for consumers that promises certain standards. There will be costs for providers of schemes as they adapt their schemes to meet the standards set by the CCAS. We expect most trade association members to have one-off costs for re-printing literature (this will not add costs to all as it is expected that some members will be due to reprint their literature anyway). On an ongoing basis there will be increased insurance costs for some trade sponsors to comply with the need to ensure that any deposits or prepayments by consumers are protected and are refunded swiftly where appropriate. This refers to when a code member is unable to meet a promise to deliver goods or services, this could occur for a number of reasons e.g. member has ceased trading due to liquidation or bankruptcy. There are one-off and continuing costs to trade associations (or indeed other bodies administering codes). These include one-off costs of a large amount of management time being devoted to getting code approval e.g. holding seminars, informing members, meetings etc. There will be ongoing costs for improving the administration of their current codes to meet the OFT CCAS criteria. The decision to join the OFT CCAS will, of course, be for trader schemes to make. There is no compulsion from Government to do so. Trader Schemes will want to join if they consider the benefits of doing so will outweigh the costs.

The cost of the OFT CCAS scheme for business is difficult to calculate, as there are a number of variables. The system is designed to adapt to different sectors and activities, all of which, will be subject to different demands and varying ways of tackling the different types of consumer detriment. For instance, economies of scale could be gained if a trade body has a large membership while the nature of products and services covered would also have an impact on how the scheme is run. Differences in costs will also occur as the sponsor body will have to work with the OFT to prove their code is

working, and it is expected that different bodies will have to collect different levels of evidence.

Many small firms are not members of a trade body having concluded the business case for the subscription are not warranted. Local Authority schemes provide a valuable service both to the small businesses and to consumers. Local Authority trader schemes such as Hampshire's "Buy With Confidence" scheme are designed to help businesses comply with the law while improving consumer protection through a partnership approach. Businesses sign up to a series of commitments set out in the scheme's rules. Business then gains from:

- independent recognition of business standards
- beneficial publicity
- proof of membership by Certificate for display on member business premises and use of logo
- pre-entry vetting to ensure credibility of the scheme and that high standards are maintained
- member company's names on a list held by the County Council to recommend to consumers
- a place with on the 'Buy with Confidence' website with a link to member businesses' site
- increased consumer confidence and reduced complaints
- better relationship with regulators based on cooperation rather than enforcement
- a named contact for member businesses with trading standards service
- information on new legislation, Trade scams etc

Hampshire trading standards provided rough estimates of the annual costs of providing their 'Buy with Confidence' scheme. They considered that staffing costs amounted to £70,000, printing came to £4,000, IT came to £5,000 and Promotion £1000 a year. Income from membership prescriptions amounted to around £25,000 leading to net costs of approximately £64,000. The costs will differ between the different local authorities.

Membership fees for traders joining a trading standards scheme varies by Local Authority, for example the membership fees for the East Sussex County Council “Buy with Confidence” scheme is £47 (VAT inclusive) per premises for firms with 1 to 5 employees, £94 (VAT inclusive) per premises for firms with 6 to 20 employees, and £141 (VAT inclusive) per premises for firms with 21+ employees. While Hampshire’s scheme costs a flat £100/premises (VAT inclusive) and Surrey County Council and Southampton City Council do not currently charge a fee. Traders will incur additional costs in ensuring they comply with the terms of the scheme. Joining CCAS is likely to increase those costs, for example, Hampshire County Council highlighted that OFT CCAS requirement for local trader schemes to protect deposit of prepayments as appropriate for the sector before being able to join the OFT scheme is particularly problematic. The core business groups subscribed to their trader scheme are small-medium sized enterprises that are more likely to require prepayments due to limited cash flow. These businesses will be least able to afford additional protection measures and may be deterred from joining a scheme that requires them.

Option 2 - improve access for consumers to the diverse information already in the public domain. The provision of information on the record of individual traders would help consumers make better choices about where to place their business. Consultation responses showed broad support for bringing together in one place the publicly available information and making it available to the public and to advisers, including Consumer Direct advisers.

Suggestions from consultation responses on the type of information such a service should cover included:

- County Court judgments, court orders, injunctions
- Enforcement action (formal cautions, prosecutions, criminal convictions)
- License refusals
- Consumer credit licensing public register
- Estate agents public register
- Members of a code sponsor under the OFT’s CCAS
- 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, e.g. FSA VOSA
- Complaints data on traders from Consumer Direct
- Outcome of approved ADR disputes
- Traders who have filed for bankruptcy
- Qualifications of operative
- Quality of service indicators

Even though many respondents supported this proposal, they also expressed a number of concerns. First of all, concern was expressed that the majority of information held would be of little or no use to consumers who will not necessarily have the knowledge and the skills to interpret it, for instance, accounts held at Companies House. Consumers will require help to interpret information and put it into context in particular, in terms of number of complaints relative to business turnover.

It is also possible that this will result in consumers gaining a false sense of security if a trader is not mentioned in the register, for instance, deliberately dishonest traders who change their name regularly will not be caught by this. There is also an inevitable time delay between a negative ruling and recording in the various organisations databases. Court rulings may be under appeal.

There could be other unintended consequences for instance; this could result in an increase in the number of small firms contesting findings made by the agencies that would be included such as County Court Judgements (CCJs), HSE, Advertising Standards Authority etc. For example, many small firms will not contest CCJs due to resource limitations but in the future small firms may be more inclined to contest those decisions to avoid being included on a Government register of traders that consumers should avoid.

There are considerable problems with making information relating to complaints and enforcement action into the public domain, in particular, due to data protection legislation. There are also difficulties in verifying complaints and guaranteeing the information is up to date. This aspect particularly concerned business.

If the information on the register is incorrect this could result in Consumer Direct Advisers giving out inaccurate or out of date information, as they will be reliant on numerous different agencies for information

Significant resources will be needed to set up and to maintain the register. Quality control/correctness of the information will need to be guaranteed and a mechanism will need to be set up to clear negative data in light of feedback. The consultation highlighted the considerable money and time required to bring together trader information and we have concluded that this is not a cost-effective proposal and would have very limited value. We do not therefore intend to proceed with it.

Option 3 – do nothing. There will be no additional cost to business. Flexibility remains for business to react to need through market led initiatives.

Preferred option

Our preferred option is to build on Consumer Direct and the OFT CCAS. We would encourage Local Authorities and other providers to bring the variety of referral schemes under the umbrella of the OFT CCAS. This option is the most cost effective and guarantees quality. The roll out of Consumer Direct will greatly assist consumers in gaining information regarding their rights before and after they buy.

REGULATORY IMPACT ASSESSMENT: LEGISLATION

Purpose and Intended Effect of the Measure

Issue and Objective

We aim to establish a legal framework for markets that is flexible, fair and transparent. An effective modern framework will encourage information flows, empower consumers, support business and be well understood. It makes the work of enforcement agencies easier and enables business and consumer advisers to offer the best possible advice. Most importantly, a modern flexible framework will be responsive to the rigorous demands of developing 21st century markets.

Background

The 2003 Comparative Study found our legislation to be “piecemeal” and inflexible. We want to consider options for reform of the legal framework so that it is flexible, fair and transparent; so it will empower consumers and support business.

Rationale for Government Intervention

Currently, consumers do not see themselves as well informed about their rights. Indeed in a 2004 survey², only 9% of consumers said they saw themselves as very and 49% as fairly well informed of their consumer rights. It is possible that the piecemeal and inflexible nature of our legislation, as identified by the 2003 comparative study is a major contributory factor to this problem. Furthermore, the same survey demonstrated that few firms can spontaneously name consumer legislation relevant to their organisation.

Legislation in its current form is not responsive to changing markets. For example, sector-specific legislation on timeshare has been changed and yet businesses can still find ways around it, as none of the changes altered the scope of the legislation.

(5) Options

We identified four options for overhauling the legislative framework:

- Creating a new domestic legal framework based on general principles;
- Rationalising and simplifying domestic legal framework;
- Review of existing legislation to ensure compliance with the unfair commercial practices directive
- Do nothing

Option 1 - Creating a new legal framework based on general principles

This would mean having a substantially reduced number of basic legal provisions, perhaps just three, regulating consumer information, consumer transactions and minimum standards for goods and services. Each provision would set out general principles, including those already prescribed under EC sectoral directives. These principles would be backed by detailed supporting statutory guidance. This would allow simplification of more detailed legislation if other provisions provided the same protection.

This is a major departure from the UK's traditionally detailed and prescriptive legislative format. It would require a commitment from Government and stakeholders to work in partnership particularly in the drafting of supporting statutory guidance.

Option 2 - Rationalising and simplifying

This could be achieved through a programme of consolidation and, where possible, repeal of existing legislation. It offers the opportunity to address existing high levels of complexity and duplication. However, it would not address the need for flexibility. The European Commission is reviewing the "consumer acquis", eight consumer directives on timeshare, package travel,

² Competition Act and Consumer Rights, Synovate, April 2004. Prepared for OFT

doorstep selling, distance selling, sale of goods and guarantees, injunctions, unit pricing and unfair contract terms. This could be an important vehicle for simplification.

Option 3 – Review of existing legislation to ensure compliance with the unfair commercial practices directive

The Unfair Commercial Practices Directive (UCPD) contains a general prohibition on business-to-consumer unfair commercial practices and specific rules aimed at combating misleading and aggressive practices. The Directive imposes maximum harmonisation, which means that existing domestic provisions that go beyond the requirements of the Directive would have to be amended or repealed. There is no question of “gold-plating”.

As part of the transposition of this Directive, the scope for simplification and rationalisation of the laws falling within the UCPD's scope will be assessed. This process should identify any opportunities to reduce burdens on business. However, this would not impact on the existing problems of complexity and duplication that extend well beyond the Directive's scope to areas other than unfair commercial practices. More detailed consideration will be given to the impacts of the UCPD in the partial RIA to accompany consultation on policy options for implementing the Directive, which will be published in the autumn of 2005.

Option 4 - Do nothing

This option does not address the problems identified with the UK's piecemeal consumer legislation. Further, now that the Unfair Commercial Practices Directive has happened, it is not a feasible option as some changes to legislation will be necessary (as outlined in option 3) to ensure compliance with the new directive.

Costs and Benefits

Option 1 - Creating a new legal framework based on general principles. Flexible legislation would stand up to changing market practices, thus reducing or avoiding the need for new regulations. For example, a more flexible and simple legal framework could guarantee the right to security of all transaction types, not only strengthening confidence in the current growth in internet trading and e-commerce, but capable of guaranteeing protection in the event of changing methods of transaction. Sector-specific legislation that we currently work with can suffer from loopholes, which demand further legislation to close. Principles-based legislation means fewer pieces of legislation to administer.

There may be consumer benefit from principles-based legislation. If it is well designed so that it is easy for consumers to understand their rights, consumers are more likely to invoke their rights and we might expect consumer detriment to fall. This benefit can be maximised by a strong supporting campaign to inform consumers of any changes.

Moving to general principle-based legal requirements would involve significant one-off costs to business, Government and advisers. Businesses will need to review their existing practices to ensure compliance with the new legislation. They will also need to train their staff in the new regime.

Completely changing the framework will be costly to Government, in terms of parliamentary time, legal advice and significant work over a number of years by civil servants. It is likely to exceed the indicative costs to Government of option 3 (explained below). Further one-off public and voluntary sector costs will be incurred as trading standards officers, OFT personnel and consumer advisers will need training for the new regime. In addition, an awareness-raising campaign strong enough to inform consumers of their new rights so that they benefit from the new regime could amount to in the region of £1 million.

There are risks (identified by a number of respondents to the consultation) that general principles-based legislation would cause confusion and expense while waiting for legal precedent to be set. Court administration costs may rise on an ongoing basis due to the greater uncertainty surrounding this kind of legal regime.

More accurate assessment of costs and benefits would only be possible with more concrete proposals for such a change in the framework, but on current information it seems that one-off costs to business could amount to millions of pounds, although ongoing costs should be negligible, indeed there are likely to be ongoing savings.

Option 2 - Rationalising and simplifying. Simplification and rationalisation of the law will help to ease administrative burdens on business, reducing ongoing costs of complying with consumer legislation. It would consolidate the statutes, iron-out anomalies and introduce consistent definitions.

Both consumers and business will benefit from more accessible legislation, both domestic and from the EU. This will raise the chances of business complying with consumer legislation and consumers understanding enough to invoke their rights, thereby reducing consumer detriment.

As any simplified legislation would replace existing legislation it would not impose any additional ongoing costs. We do not expect the outcome of the review of the consumer acquis to impose ongoing costs, indeed we will be working to help identify areas of savings.

However, there are likely to be some costs associated with training managers, consumer advisers and enforcement officers. Any outcome from the review of the consumer acquis could also impose one-off costs of this nature in the longer term.

The Law Commission in its response to the consultation estimated that a full redraft of all legislation on the sale and supply of goods and services could

cost Government something in the region of £2 million. This was based on the costs per page of the tax law re-write project and includes policy, legal and other expert advice, Parliamentary time and support staff.

Option 3 – Review of existing legislation to ensure compliance with the unfair commercial practices directive. Benefits may be felt by business as a result of clearer legislation in the areas covered by UCPD, which reduces the ongoing costs of compliance. Further research will try to establish the exact options for implementation available to us, and give a clearer indication of their benefits. The benefits are potentially similar in nature to those of option 1, but limited to a narrower field of legislation.

Consumers should benefit, as the new legislation should improve their knowledge and awareness of rights. They may also have greater confidence in shopping across borders with the protection the general duty not to trade unfairly brings. A significant proportion of complaints to Trading Standards departments (typically 25%) do relate to selling practices.

This option should introduce flexibility into UK consumer legislation via its catch-all provision, the “general duty not to trade unfairly”. This should reduce the need for further prescriptive consumer protection legislation, though overall this option would mean less flexibility than option 2. Adoption of the UCPD also provides an opportunity to simplify and reform the existing consumer protection acquis (8 EU consumer protection directives) as part of the Commission’s “Review of the Acquis”, exact options will be the subject of public consultation this Autumn.

Once again, this option will impose one-off costs on Business and Government. Businesses will need to review their practices to ensure compliance with the new directive, as well as holding training for staff on the changes to legislation. Whilst these costs may be substantial (likely to be millions of pounds) we expect them to be lower than for options 1 and 2 due to the reduced scope of the Directive.

There will also be costs to Government in reviewing existing legislation against the requirements of the Directive and making the necessary changes. Again, these costs will be lower than for options 1 and 2. There will be further costs for trading standards officers and consumer advisers, as well as costs in raising consumer awareness of the changes.

Option 4 - Do nothing. The UK would be in contravention of EC law if we did not implement the UCPD, we would therefore face infraction proceedings. Furthermore, we would not address the problems caused by our piecemeal consumer legislation and this would be to the detriment of our economy.

Preferred Option

Following the consultation we have identified strong support for simplifying legislation. There are benefits to principles-based legislation (option 1) but there are also risks associated with such a significant change. At this point, our preferred option is to pursue simplification and rationalisation of the consumer acquis through the Commission's "Review of the Acquis" in addition to implementing the unfair commercial practices directive.

REGULATORY IMPACT ASSESSMENT: BETTER ACCESS TO RESOLVING PROBLEMS AND OBTAINING REDRESS

Purpose and intended purpose of the measure

Background

Issue

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.

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

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.

Most consumers who complain do so to the product seller or service provider (87%) according to Office of Fair Trading's (OFT) survey³. 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.

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.

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.

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.

³ Competition Act and Consumer Rights, Synovate, April 2004. Prepared for OFT

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

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

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.

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.

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.

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

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.

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).

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

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

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.

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

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

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.

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.

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. 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.

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.

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.

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. 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. 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. 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.

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.

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.

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).

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.

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.

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.

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. 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.

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.

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. 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

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

End

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