making consumer organisations work for consumers in scotland
About the Scottish Consumer Council

The Scottish Consumer Council (SCC) was set up by government in 1975. Our purpose is to promote the interests of consumers in Scotland, with particular regard to those people who experience disadvantage in society. While producers of goods and services are usually well-organised and articulate when protecting their own interests, individual consumers very often are not. The people whose interests we represent are consumers of all kinds: they may be patients, tenants, parents, solicitors’ clients, public transport users, or simply shoppers in a supermarket.

Consumers benefit from efficient and effective services in the public and private sectors. Service-providers benefit from discriminating consumers. A balanced partnership between the two is essential and the SCC seeks to develop this partnership by:

- carrying out research into consumer issues and concerns;
- informing key policy and decision-makers about consumer concerns and issues;
- influencing key policy and decision-making processes;
- informing and raising awareness among consumers.

The SCC is part of the National Consumer Council (NCC) and is sponsored by the Department of Trade and Industry. The SCC’s Chairman and Council members are appointed by the Secretary of State for Trade and Industry in consultation with the First Minister. Martyn Evans, the SCC’s Director, leads the staff team.

Please check our web site at www.scotconsumer.org.uk for news about our publications.

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The SCC assesses the consumer perspective in any situation by analysing the position of consumers against a set of consumer principles.

These are:

ACCESS
Can consumers actually get the goods or services they need or want?

CHOICE
Can consumers affect the way the goods and services are provided through their own choice?

INFORMATION
Do consumers have the information they need, presented in the way they want, to make informed choices?

REDRESS
If something goes wrong, can it be put right?

SAFETY
Are standards as high as they can reasonably be?

FAIRNESS
Are consumers subject to arbitrary discrimination for reasons unconnected with their characteristics as consumers?

REPRESENTATION
If consumers cannot affect what is provided through their own choices, are there other effective means for their views to be represented?

We can often make our publications available in braille or large print, on audio tape or computer disk. Please contact us for details.

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Published by the Scottish Consumer Council
July 2004

ISBN 0-9546700-6-X
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1. Introduction – why we need strong consumer organisations

Consumer organisations are often known as “watchdogs”. This can give the misleading impression that they exist in isolation from the other players in a market, for example, businesses and regulators, and that they watch and campaign from the outside, often in an adversarial environment.

An effective consumer organisation is one that sees itself, and is seen by others, as integral to making markets work for consumers, in conjunction with the other stakeholders in that market. It will do this without compromising its independence and by maintaining its focus as an advocate for consumers.

Consumers will benefit where consumer organisations, regulators and providers work together, from a base of evidence, to develop markets that continually evolve in the consumer interest, rather than adding that interest on after the event. This is of equal importance in both the private and public sectors.

In a competitive market, this will encourage providers to see that taking the consumer interest into account at the earliest stage is compatible with achieving business benefits, and that it gives them the edge over their competitors. And consumers occupy a more powerful position. They are equipped with the tools they need to become pro-active partners in, rather than passive recipients of, a transaction. Where there is a real choice of suppliers, they are empowered to become selective about who they do business with.

If we want to book a holiday we can choose from hundreds of alternatives advertised in a variety of different brochures from the travel agent of our choice. If we want to buy a washing machine, we can choose from many different models available in the shop of our choice. However, from the consumer perspective, competition cannot be defined solely by the number of suppliers in a marketplace. No market works perfectly and a range of structural barriers can prevent consumers from gaining access to the benefits which true competition can bring by way of lower prices, better service and more value for money. The challenges facing consumer organisations to deliver for their constituents are greater where competition is not working or where it simply does not exist, both in the private and public sectors.

These challenges become greater still in relation to those goods and services that are essential to meeting our everyday basic needs. For example, there is a wide range of different suppliers in the privatised telecommunications and energy markets. Yet, the incumbent suppliers still retain dominant market positions against the background of consumers’ inability or unwillingness to switch supplier for a variety of reasons. These reasons range from the absence of clear, comparative information about tariff options to more pro-active attempts by suppliers to mis-sell a service or to prevent someone in debt from being able to move to
a cheaper supplier. The need for strong consumer advocacy in these areas, where people who are disadvantaged face particular detriment, not only adds value in economic terms – it plays a key role in social inclusion and in meeting public policy objectives.

The need for, and challenges facing, consumer organisations are just as relevant, and arguably stronger, in the provision of those publicly-funded services, such as education and health, which we all need and use on a daily basis, and where there is no choice of provider. There are no external market imperatives to creating and maintaining the services that consumers need and value and no competitive impetus to do so efficiently.

Consumer organisations are uniquely placed to provide the external pressures that are missing. By providing research-based evidence on consumers’ experiences to service providers at local level, consumer organisations can work with them in tailoring services and providing service options which are both geared to individual need but which meet wider social policy objectives of ensuring access to these services for all, including those who are the most disadvantaged.

This report is intended to give practical guidance on how consumer organisations can best represent and promote the consumer interest in Scotland. In doing so, it also takes account of the post-devolution political dimension and gives an analysis of consumer representation in the changed constitutional context.

The report aims to:

- present key outline elements for the structures of consumer organisations in Scotland, based on the experience of, and evidence from, existing consumer organisations,

- in the light of devolution, to clarify the structures that are needed to ensure that the interests of consumers in Scotland are represented and promoted at UK level and, subsequently, to ensure that UK government is appropriately focused on identifying the needs and wishes of consumers in Scotland,

- identify how best to ensure the sustainability of consumer organisations, so that the consumer interest continues to be a central plank of policy-making in both devolved and reserved policy environments,

- to provide support to existing and new consumer organisations which seek to achieve best practice in carrying out their functions.
2. Background

This report was prompted by the experiences and discussions of the Scottish Consumer Council (SCC)’s Chairmen’s Group. The Chairmen’s Group is a forum of the Chairmen and Chief Executive Officers of the statutory consumer organisations in Scotland. The purpose of the forum is to add value to consumer policy in Scotland by working together, discussing policy issues of mutual concern, and learning good practice from each other.

The following organisations are represented on the Group:

- Scottish Consumer Council (SCC)
- energywatch Scotland
- Postwatch Scotland
- Water Customer Consultation Panels (WCCP)
- Rail Passengers Committee Scotland (RPC Scotland).

The following individuals are also members of the Group:

- Chair of the Society of Chief Officers of Trading Standards Scotland (SCOTTS)
- Ofcom Consumer Panel Member for Scotland.

The Office of Fair Trading Representative in Scotland attends the Group’s meetings as an observer.

The funding, structure and operation of each of these organisations is different. Of course, there is no reason why they should be identical. Nevertheless, the Group has concluded that:

- There is a lack of clarity and consistency in structures and mechanisms for representing and promoting the consumer interest in Scotland.

- In the light of the post-devolution constitutional environment, there has been no serious over-arching policy approach, either by government or by the consumer movement, to addressing how consumer organisations should evolve to reflect the new political background and the changed policy environments.

- In devolved areas, and in the context of the increasing emphasis in recent years on increased public involvement in public service delivery, there is no template for good practice in Scotland for consumer/service-user organisations.

- UK consumer bodies should have a common approach to how best they can serve consumers in Scotland in the cross-border policy environment.

- Whether devolved or reserved, all consumer organisations need to be equipped to not only represent the interests of consumers within Scotland but also to be able to look outward and represent those interests at UK and EU level.
3. The Impact of Devolution

The Scotland Act 1998\(^1\) clearly set out the powers in particular policy areas which, following devolution, would be reserved to the UK parliament. These areas included competition policy, consumer protection and the regulation of markets in postal services, energy, transport, broadcasting and telecommunications. It was recognised that these markets operated within a UK-wide context and that regulation needed to reflect this. It was also recognised that companies needed to be able to compete effectively in the international marketplace if they were to thrive and benefit the UK economy as a whole and that this was a responsibility of the UK government on behalf of all citizens and consumers.

However, from the consumer perspective and in terms of how issues affect people’s daily lives, no one policy area works in isolation from others. The Scotland Act recognised that public bodies which were accountable to the UK parliament would continue to be significant in the social and environmental life of Scotland. The Scottish Parliament has the power to hold these bodies to account, through submission of reports or evidence, in relation to their activities in or affecting Scotland.

Take communications, for example. The regulation of communications being reserved to Westminster doesn’t detract from the fact that it is a crucial component of the social, environmental and economic fabric of Scotland and that it permeates a range of devolved functions:

- social inclusion
- education
- lifelong learning
- public service delivery
- economic development
- rural development
- cultural issues
- environmental issues

This principle works both ways. Water policy in Scotland is a devolved area, accountable to the Scottish Parliament. However, water is a basic essential that every consumer needs to be able to access and afford. Any approach to ensuring that this happens must take into account that this element of social justice can only be achieved by recognising the need to look outwards to reserved public policy areas such as social security, consumer protection, competition law and human rights.

From the consumer perspective, there can be tensions too where reserved policies are put into practice and services delivered by devolved bodies. This happens, for example, with regard to consumer protection. Consumer protection policies and the enactment of consumer protection legislation are decided at Westminster. However, the enforcement of consumer law is carried out by trading standards departments situated within, and resourced by, local government, a devolved function.

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\(^1\) Scotland Act 1998, Schedule 5
All of these issues should be taken into account by devolved and reserved political structures and by all public bodies. However, while other bodies will have responsibility for a singular aspect of policy or practice, consumer organisations play a particular role in assessing how these policies and practices inter-relate, particularly where cross-border issues are involved, and just how they affect consumers as a whole.

It is therefore particularly important that consumer organisations, whether established under reserved or devolved auspices, are structured so that they can:

- promote the interests of consumers within Scotland; and
- promote the interests of Scottish consumers in the UK and international environments.

In principle, this means that consumer organisations have to be effective in identifying and articulating the policy issues that are important to consumers in Scotland.
4. Towards Best Practice

The key issues for consumer organisations are:

- being clear about the different issues facing consumers and citizens;
- having a basis in statute;
- being independent and being seen to be independent;
- representing and promoting the interests of those most in need;
- having a policy-making function which is sensitive to the needs of consumers and stakeholders in Scotland;
- appointing the right people in the right way;
- being accountable;
- having statutory powers and knowing when to use them appropriately; and
- being given enough funding to be effective.

The following pages set out:

Principles of good practice for all consumer or service-user organisations; and
what UK consumer organisations need to do to best promote and represent the interests of consumers in Scotland.

**Consumer or Citizen? – Defining What We Mean by a Consumer Organisation**

When we talk about consumers, we mean people who purchase or use particular goods or services, whether provided in the public, private, or voluntary sector. However, our interest as citizens is likely to be wider, taking into account a general interest in our society as a whole. So this might include consideration of how the provision of a service would best benefit everyone, even if we have never needed to use that service itself. For example, we may wish to see our local community benefiting from an improved education service even although we have no children who would use that service. Or, we may never have reason to become a hospital patient but would still oppose the closure of a local hospital as being detrimental to the collective wellbeing of fellow citizens.

We are all citizens and we are frequently consumers in connection with a wide range of different issues, and at different times. Very often the distinctions can become blurred and they can frequently overlap. However, generally, a consumer organisation can be seen as a partisan advocate for consumers, a single-issue pressure group with that issue being the consumer interest. However, consumers are not a homogenous group and consumer organisations will have to take this diversity into account. Consumer organisations could range from being the watchdog for fuel services to being a group that promotes the interests of people who use the health service, or perhaps the civil justice system.
A consumer organisation is therefore different from other single-issue non-governmental organisations. For example, an environmental pressure group is likely to seek to promote environmental wellbeing in the citizen interest. It will seek to balance the tensions between a range of different interests. This would include sectors such as business, transport, farming, and economic development, in addition to consumers.²

**Security, Sustainability and Accountability – The Need for a Basis in Statute**

Having a basis in statute gives any organisation security against changes in the external political or economic climate. The subsequent accountability to parliament also offers protection against internally generated threats to the organisation’s sustainability.

If we take consumer representation seriously then the sustainability of consumer organisations must be integral to how they are structured and constituted. If we take consumer representation in Scotland seriously, then the constitutional arrangements for consumer bodies must also be set out in statute.

In order to be effective in identifying and articulating the policy issues which are important to consumers in Scotland, it is essential for consumer organisations to have clear and effective policy relationships with the Scottish Executive, the Scottish Parliament, and with the range of stakeholders within Scotland. This means maintaining a high profile, an evolving relationship with stakeholders within Scotland, and a continuous dialogue with the policy community. It is difficult to do this without an ongoing physical presence in Scotland. A UK statutory consumer organisation should have a statutory requirement to have an office and staff in Scotland.

The Gas and Electricity Consumers Council (energywatch)

“The Council shall maintain in each of England, Wales and Scotland, at least one office at which consumers may apply for information.”³

Having a statutory basis not only empowers consumer organisations. By giving them clearly defined functions, set out in statute, we can ensure that they are fully accountable to parliament and the public. Their primary duty should be to act as an advocate body for consumers. In carrying out their functions, they should have statutory powers to act as consumer advocates to government, parliament and regulators.

² For an analysis of the consumer interest in sustainable development, see Scottish Consumer Council, *Sustainable Development and the Consumer*, 2001
³ Utilities Act 2000, Part III
Consumer Trust – The Need for Independence

Consumers need to have faith that the body which is supposed to promote their interests is genuinely free to address those interests and to speak out on their behalf. Their perceptions of independence may be compromised, for example, if they cannot distinguish between the consumer organisation and the regulator. Consumer organisations need to have the practical and political freedom to be able to dissent from the views of government, regulators and other stakeholders.

In any sector, there must be a framework for ensuring that the interests of consumers are represented outwith the regulatory system. Effective representation of consumers’ interests is a key element in making any market work. Such a market can include regulatory failure. Even where they have a specific consumer protection remit, regulators have to balance many different interests in making their decisions and have to operate within a legal (and impartial) framework. Consumer advocacy fulfils a quite different role to regulation, providing a counterbalance to other more vociferous and powerful interests that are seeking to shape regulatory decisions.

A consumer body that is independent, and is seen to be independent, will increase public confidence in decision-making.

However, government has, understandably, a responsibility to spend public money wisely. In recent years, there has been a trend towards setting up consumer bodies under the auspices of the regulatory body, in order to avoid setting up another brand-new publicly funded organisation. If a consumer organisation is to be housed in, and financed through, the regulatory body then it must have all the capacity, functions and degree of arms length independence needed to do its job properly. It should also have a formal, comprehensive Memorandum of Understanding, required by statute, with the regulatory body, so that there is a mutual recognition of and respect for the need for both functions to be effective on behalf of consumers.

Water Customer Consultation Panels

The Water Customer Consultation Panels have an independent policy remit, a dedicated office and staff, and the resources to undertake research. They publish their own press releases and Annual Report.

energywatch/Ofgem Memorandum of Understanding

The Utilities Act 2000 required the Gas and Electricity Markets Authority (Ofgem) and the Gas and Electricity Consumers Council (energywatch) to agree a Memorandum that sets out agreed arrangements with a view to securing:

- co-operation and exchange of information between them; and
- consistent treatment of matters which affect both of them.

The Memorandum has to be submitted to the Secretary of State and a copy laid before parliament.
Perceptions of independence can also be compromised where there is a lack of clarity, from the consumer perspective, about whether a body that seeks to represent the consumer interest is free from other interests. For example, in Scotland, the bodies that are seen to represent the parental interest in education are composed of partnerships between representatives of both parents and teachers. There is, in fact, no organisation that seeks to advocate on behalf of parents and pupils only.

**Remit – Who is the Consumer?**

Large business consumers have the buying power and resources to make their voices heard and their interests are likely to vary from, and often be at odds with, those of individual consumers and smaller businesses. However, even small businesses have a vociferous voice through trade associations that can campaign effectively at strategic level. Individual consumers cannot make their voices heard collectively in this way – their issues and interests will always be diverse.

As strategic policy organisations, the National Consumer Council, Scottish Consumer Council and Welsh Consumer Council promote the interests of domestic consumers only. However, other consumer organisations, for example, Postwatch, have a remit that covers business users too. This reflects the fact that they also have a direct, operational relationship with consumers by, for example, handling complaints.

The operational support which a consumer organisation will provide to individual, very small businesses and to domestic consumers may, on the whole, be very similar as they are likely to experience the same service issues. However, the policy solutions for similar situations could vary for different groups. A consumer organisation which has a remit for both business and domestic consumers will have to be very clear about the impact of its policies for each and the possible tensions which might exist between the different interests. A good example of this is in relation to charges and the extent to which cross-subsidies between different groups exist.

Having responsibility for domestic consumers will target resources towards those most in need of an advocate body.

**Representing the Interests of Those Most in Need**

*The purpose of the National, Scottish and Welsh Consumer Councils is to make all consumers matter. However, they also have a specific remit for disadvantaged consumers.*
Policy-making – Sensitive to Scotland?

UK consumer organisations need to have mechanisms for policy-making that are sensitive to the needs of Scottish stakeholders, which have a clear relationship and direct liaison with the Scottish Parliament and the Scottish Executive and which subsequently ensure that the issues which are relevant to consumers in Scotland are addressed at UK level. In addition to having a fully staffed office in Scotland, there are five complementary components that are vital to ensuring that this happens:

- having a statutory non executive Committee or Council with policy responsibility;
- being well connected with stakeholders;
- carrying out research in response to Scottish issues;
- having access to Scottish complaints data; and
- having a forward work programme which is relevant to Scotland and to stakeholders in Scotland.

Having a Statutory Non-Executive Committee or Council with Policy Responsibility

As we have said above, consumer organisations need to be effective in identifying and articulating the policy issues which are important to consumers in Scotland. For UK consumer organisations, this is particularly important where these issues cut across devolved policy areas. The organisation must be able to respond, in policy terms, within Scotland as the policy solutions might be different from other parts of the UK. This needs collective discussion and support for staff from a body with a broad and informed policy perspective.

Consumer Council for Postal Services (Postwatch)

“As part of its arrangements for exercising its functions, the Council shall establish
(i) a committee for Scotland…”

In the interests of two-way communication and joined-up thinking, the Chairman of a Scottish committee should always be a member of the UK committee.

It will, however, be important not to duplicate the governance function of an organisation that is accountable at UK level.

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4 Postal Services Act 2000, Part III
Being Well Connected with Stakeholders

Consumer organisations in Scotland must have effective, pro-active mechanisms in place for seeking grass roots consumer views and feeding them back into policy and practice. They need to be in touch with issues of concern to consumers and be able to demonstrate that their activities in representing the consumer interest are valid.

**Using Consumer Volunteers**

The Scottish Consumer Council has a network of 100 individual volunteers and three community groups across Scotland. The Network informs the SCC of issues of concern to consumers at grass roots level, contributes ideas for future work and helps in small-scale pilot research projects.

**Liaising with Local Stakeholders**

In addition to holding public meetings, the Water Customer Consultation Panels hold regular liaison meetings with local stakeholders, including community groups, local authorities, NHS Boards, businesses and advice organisations.

Consumer organisations also need to be engaged with the range of stakeholders at policy-making level. This enables them to inform policy-making both at the earliest stages and throughout the process by working with people rather than against them.

**Working with Others**

The Scottish Consumer Council places great value on working with others in the development of policies affecting consumers. It participates, on average, in around forty external working groups each year, working with government, regulators, business and other organisations.
Carrying out Research in Response to Scottish Issues

If consumer organisations are to intervene in any kind of market then they must be able to demonstrate that this intervention is justified and that their proposed solutions are the correct ones.

Having a strong research focus will:

- ensure that consumers’ interests are identified correctly and their needs addressed in the right way;
- insure against unintended and counter-productive consequences for consumers of any intervention;
- ensure credibility with partners at policy-making level including government, business and regulators; and
- reassure providers of goods and services at local level that they are meeting the needs of consumers and service users.

All consumer organisations need to be resourced to carry out and commission independent research so that their policies are rooted in sound evidence.

The research issues that arise in the Scottish policy environment may well be different from those that are relevant at UK level. Credible consumer policy in the Scottish context must be based on research priorities which are identified by a consumer organisation operating within Scotland and which is engaged with stakeholders and aware of the policy issues that affect consumers.

Some UK consumer organisations have centralised research departments in London. Undertaking research itself can be managed from any location and may well be cost-effective. However, consumer organisations should have mechanisms in place to ensure that Scottish committees have a dedicated research budget, and that:

- Scottish research priorities are identified;
- they are incorporated into programmes of work; and
- the results are effectively disseminated and publicised within Scotland in reports that are relevant to the Scottish audience.

Having Access to Scottish Complaints Data

The right to handle consumer complaints is one not universally given to consumer organisations, and there are differences of opinion about whether or not such a role should necessarily be the domain of consumer bodies. What is crucial is that complaints are handled speedily, effectively and fairly, and by a body which is perceived to be independent. It is therefore not surprising that consumer organisations have tended to be given the responsibility of handling consumer complaints.
But there is always a danger that the complaints handling side of the organisation’s work could begin to dominate and divert from other consumer representation activities. Complaints handling can be very intensive of resources, and organisations with that responsibility should always ensure that, while handling complaints gives them hugely valuable information about the kinds of problems consumers experience, adequate resources must be available to deal with other important activities such as the organisation of public meetings, responding to consultations, carrying out policy research, and ensuring that the consumer viewpoint is represented effectively.

There are varying views about whether complaints handling should be carried out locally within each nation or region, or by a UK-wide central call centre. The resource implications of complaints handling could mean that a single call centre would be the most cost-effective option.

However, it may not be the best one for consumers in Scotland. Complaints data provide a vital source of intelligence about service quality and performance at local level. The qualitative component of this intelligence can be particularly useful but is often lost when large amounts of data are aggregated. Any complaints handling system must be capable of ensuring that relevant committee members and staff at Scottish level obtain a good grasp of the issues affecting consumers in Scotland.

Consumer Direct, funded by the Department of Trade and Industry, is being rolled out across Scotland during 2004, with total UK coverage planned for 2007. It will be a one-stop shop for all first-tier consumer enquiries and has the potential to combine this in the future with being a cost-effective, accessible, single consumer complaints handling centre. Consumer Direct could play a key role in empowering consumers with the skills and knowledge they need to resolve complaints themselves. It also has the potential to relieve specialist consumer organisations from what is undoubtedly a resource-intensive burden.

However, Consumer Direct’s possible inheritance of the complaints handling functions of existing sectoral consumer bodies must be accompanied by:

- its establishment of close links with relevant consumer organisations and with Scottish constituent parts of UK consumer organisations; and

- a clearly effective way of feeding its complaints intelligence data into the consumer policy functions of individual consumer bodies and to government, at both Scottish and UK level.

In the absence of the direct experience of working with businesses and service providers that a complaints handling functions allows, we believe that specialist consumer organisations should be given the powers to audit companies’ internal complaints handling. Very often, a complaint about an issue that could have been easily resolved at the initial stage proceeds to being a complaint about the way in which the company has handled the issue, rather than the issue itself. The problems with the process become larger than the original issue. Giving consumer organisations the power to audit how complaints are handled will help companies address problems at source and prevent them happening again.
Where complaints remain unresolved, consumers who become involved in disputes need to have access to an appropriate, affordable means of resolving them, without having to face the expense, the worry and the delay of going to court. Consumer organisations which have a complaints handling function should be conscious of the benefits of alternative methods of dispute resolution (ADR) and should be able to refer consumers to appropriate, local ADR schemes.\(^5\)

By referring consumers to ADR schemes and monitoring outcomes for consumers, consumer organisations would be well-placed at policy level to play a key role in defining the standards that consumers should expect from ADR, in keeping it on the agenda of policy-makers, and in driving it forward as an important avenue of redress for consumers.

With regard to ADR, UK consumer organisations will have to take account of the different civil justice system in Scotland, with regard to both their policy and their operational functions.

### Having a Forward Work Programme which is Relevant to Scotland and to Stakeholders in Scotland

All public bodies, including consumer organisations, should be transparent and inclusive about how they decide on work priorities. Resulting forward work programmes, which should be available to anyone, need to demonstrate that the work to be carried out is necessary, timely, relevant, and that it will achieve improvements for consumers in Scotland.

UK consumer organisations that produce one work programme document should be proactive in ensuring that its contents are relevant, practical and sensitive to the perspective of readers in Scotland. However, they should consider producing a simple workplan for Scotland. This need not be expensive but the gain in relation to raising profile and being relevant to stakeholders would be worth the small investment.

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**Meeting UK Corporate Objectives through Devolved Work Programmes**

*The Board of the National Consumer Council sets out the corporate objectives for the NCC, SCC and WCC. Each organisation draws up its own workplan in the context of the corporate objectives. The NCC Board approves the NCC workplan. The Councils of the SCC and WCC approve their respective workplans. The Board receives these for information and to assure itself that, on balance, the organisation as a whole is delivering on the corporate objectives.*

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Appointments – Appointing the Right People in the Right Way

Ensuring an effective consumer voice starts with appointing the right people to the task. The powers, resources and remit of a consumer organisation could be rendered irrelevant if the individuals serving on the committee are unable to articulate the consumer viewpoint; for example, if they lack the skills to do so, or if their interests are at variance with those of consumers.

Since 1995 in the UK, all ministerial appointments to public bodies are made in accordance with the “Nolan Principles” – of merit; independent scrutiny; equal opportunities; probity; openness and transparency; and proportionality. All ministerial public appointments are required to adhere to the Commissioner for Public Appointments’ (OCPA) Code of Practice6, which sets out the procedures to be followed from the planning stage through to the selection stage. Among other things, the Code covers the extent of the involvement of independent assessors in the process, the maximum period in office on the same body, and performance assessment. The Code also covers how to involve devolved administrations where relevant.

The Public Appointments and Public Bodies etc (Scotland) Act 2003 set out new arrangements for appointments to devolved public bodies. The Act allows for the creation of a new Commissioner for Public Appointments in Scotland. The Commissioner is required to prepare a Code of Practice with the aim of regulating the process for making appointments by Scottish Ministers.

The Scotland Act 19987 states that “a Minister of the Crown shall consult the Scottish Ministers before he exercises, in relation to a cross-border public authority, any specific function which relates to any appointment or removal of the cross-border public authority concerned or of any members or office-holders of the cross-border public authority concerned.”

These frameworks allow for consistency, fairness and appointment on merit and should be adhered to by everyone connected with appointing people to consumer organisations. However, this process is only formally required in relation to ministerial appointments. Many appointments to consumer organisations are not made by ministers and, as a result, different processes are followed for different organisations. This is particularly true for Scottish committees of UK consumer organisations which are, effectively, sub-committees of the main committee.

We consider this to be an anomalous situation in the context of the Scotland Act requirement that Scottish Ministers be involved in appointments to cross-border bodies. Scottish Ministers will have a legitimate interest in and views about the kind of people who should be appointed to Scottish committees.

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7 Scotland Act 1998, Part V
If Government is committed to having strong consumer organisations promoting the interests of consumers in Scotland, then it must send out the message that it takes appointments at the Scottish level seriously. All members of both Scottish committees of UK organisations and devolved consumer organisations should be appointed by Ministers. Ministerial involvement lends status and credibility to an appointment, and hence gives status and credibility to the committee on which the members serve.

The Scottish Executive has a policy of announcing all ministerial appointments. In order to improve awareness of the role of Scottish consumer committees and their members, all appointments to committees should be announced publicly, and in joint fashion where relevant, by both the Scottish Executive and the UK sponsoring department.

Chairs and members of some consumer organisations are appointed by the regulatory authorities that sponsor them. This could clearly be perceived as compromising the independence of the consumer organisation and, in our view, is unacceptable. Ministers must have powers of appointment in this case.

<table>
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<tr>
<th>Scottish Consumer Council</th>
<th>Rail Passengers’ Committee Scotland</th>
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<tr>
<td>In view of their independent policy remit, the SCC chair and council members are appointed by the Secretary of State for Trade and Industry and not by the Board of the National Consumer Council. The appointments are made in consultation with the First Minister.</td>
<td>Members are appointed by the Strategic Rail Authority. However, in recognition of the need to also work within the devolved transport arena, the post of Chairman is a Scottish Executive ministerial appointment.</td>
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So what does make a good consumer representative? In its most recent advertisement to recruit new members to the Scottish Consumer Council, the DTI stressed the importance of an ability to bring a consumer-focused approach to a broad range of issues and a concern about the consumer agenda in Scotland, as well as a varied personal experience of Scottish life, excellent communication skills, innovative thinking, and an ability to contribute to collective decision-making.

No doubt such a person specification could be applied across the board to all consumer body appointments in Scotland. The ability to focus on what is in the consumer interest across a broad range of issues is crucial. Knowledge of how an industry works, gained from years working within that industry, for example, should not take precedence over the importance of an ability to identify and articulate robustly the consumer perspective.

Members of consumer committees must be able to distinguish the different consumer and citizen perspectives and to advocate on behalf of consumers. People should therefore be appointed for the skills they bring to the table as individuals and not on behalf of any particular constituency.
Some consumer committees have dedicated places for local councillors or parliamentarians. However, democratically elected members could bring to the table a commitment to constituents that does not necessarily accord with the consumer perspective. A commitment to the consumer interest requires an independence from other influences – such as a concern for employment in a particular area, or for a particular political policy – which would not necessarily result in a clear articulation of consumer interests.

**Remuneration**

Effective consumer organisations will have a wide range of membership and expertise. However, many consumer committee members receive little or no remuneration for their work. This has the effect of excluding, for example, people on low incomes, or who cannot take time off work, or afford childcare costs.

There are differing views about whether those appointed to public bodies should be paid for their time. According to research carried out by MORI, there are three schools of opinion: some people support remuneration of appointees, favouring the argument that “you get what you pay for”. Others feel that there should be a token payment to acknowledge the contribution appointees make, without eating into the public purse. The third position – from the research, a view held by older members of the public – is that people should be motivated by public spirit, not financial gain. The research also found, however, that those appointed to remunerated appointed posts say that they would not have been able to take up the appointment if there was no remuneration.

Support for the view that appointments should be remunerated comes from the experience of the Rail Passengers Committee for Scotland. Since introducing payment, members have been able to fulfil a more substantial role. The numbers applying for vacant positions on the Committee have increased markedly and the applications now come from a much wider constituency.

The consumer movement has generally taken the view that paying consumer representatives attracts a wider pool of applicants, and that those applicants are of higher quality, that there is greater appreciation of their contribution if they are paid, and that they take their own role more seriously. If payments are not made, then those who are able to take up such positions will either be those who are being released by their employers to do the work, or they will be individuals who are either retired or do not need the money.

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For UK consumer organisations, appointments are made by ministers of Whitehall departments, where the rates of remuneration paid are a matter for the individual department. There is no uniform system for fixing the rate of remuneration. The Scottish Executive Financial and Central Services Department does, however, produce central guidelines on levels of remuneration for public bodies, for use by all departments within the Executive.

The National Assembly for Wales has also reviewed this matter. The review came up with four options including the maintaining the status quo but the other options it considered were having the same flat daily rate for every post; evaluating each individually; and grouping similar posts together and having a banding system.

The latter option is attractive for consumer appointments, since the banding of all these appointments together would lead to greater consistency across the board. Actual payments within the band would therefore only differ depending on workload. Of course this leaves the difficult question of which level of band consumer committees should be placed in, but the review suggested different factors (such as level of gross expenditure; the importance of consumer committees; complexity of the work; and access to government ministers, committees or the media). The review also proposed annual reviews of the bandings, and provision for adjustment should the nature of the posts change.

We agree that there should be a consistent and transparent system for remunerating members of consumer committees, based clearly on the degree of commitment and workload involved.

**Accountability – The Need for Openness**

Any organisation which fulfils a public function has to be properly accountable. This accountability is Janus-like in that it is has to face in two different directions at the same time – ensuring on the one hand that it is accounting for its activities to those whose interests it represents, and on the other that it is accountable to those who finance its activities for how it spends the money, and to other decision-makers interested in its work.

Consumer bodies need to be accountable if consumers are to have faith in their work. How members are appointed is one aspect of accountability, but it is also about openness in working practices, giving sufficient regular information about activities, declaring members’ interests, etc. Another aspect of this is ensuring that the organisation has mechanisms for keeping in touch with the opinion of the consumers it represents. Consumer committees will be quickly dismissed as irrelevant if they only represent the interests of the few who serve on them.

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9 Review of Remuneration of Chairs and Members of Assembly Sponsored Public Bodies and NHS Bodies – Consultation Paper, Department of Finance, Local Government and Communities, National Assembly for Wales, April 2000
It is important therefore that consumer bodies use all possible avenues available to them to connect with the constituency of consumers whose interests they represent. At the very least meetings of the committee should be open to the public, and agendas, papers and minutes should be publicly available. Efforts should be made to maintain an awareness of the real priorities of consumers, partly through research, but through more direct means too, such as public meetings and local volunteer committees.

The Rail Passengers Committee Scotland has a practice of holding some of its meetings with service providers in public, as a clear way of showing the consumers that the committee operates in the consumer interest.

energywatch Scotland holds roadshows throughout the country to publicise its advice, and runs frequent campaigns to inform consumers of their rights.

Being accountable to other stakeholders, such as the government department or public authority that sponsors the committee, is also important. For cross-border consumer organisations, accountability to government normally operates through the UK board or council of the committee. But there is also an issue about how Scottish committees account for their actions to the government machinery in Scotland.

Despite the reserved nature of many consumer committees’ policy areas, the reality is that for day-to-day activities, the Scottish Parliament and Scottish Executive do have a legitimate interest. The committees of the Scottish Parliament have become a powerful force since devolution, capable of exploring areas of relevance to the Scottish electorate and Scottish consumers at a level of detail similar to Westminster select committees, while also having a responsibility for line-by-line scrutiny of draft legislation.

Postwatch – Post Offices and Social Justice

Postwatch Scotland has found it is of great importance to be accountable to the Scottish Parliament and the Scottish Executive in its work. There have been several parliamentary debates on postal services. When the Scottish Executive’s Social Justice Division announced that it was making £2 million available to provide grants to improve and maintain post office branches that would otherwise not survive in areas of designated urban deprivation, but which provide socially important services and facilities to the community, there was a clear role for Postwatch in ensuring that the distribution of these funds served the interests of consumers.
Reporting on Activity

We mentioned earlier the importance of consumer organisations having a forward work programme that was relevant to Scotland and to stakeholders in Scotland. The same principle applies to reporting back on activity and impact.

Annual reports are a good way of reporting publicly and to government and other stakeholders. UK consumer organisations that produce one annual report should be proactive in ensuring that its contents are relevant, practical and sensitive to the perspective of readers in Scotland. However, more imaginative ways of reporting to the Scottish stakeholder community should be considered. These need not be expensive and could, for example, take the form of a briefing paper or a leaflet. The lines of formal accountability that require an annual report being laid before parliament will lie with the UK governing body. But Scottish committees should report to stakeholders in Scotland, on their activities as they relate, in policy terms, to Scotland.

The Scottish Consumer Council Annual Review

The Scottish Consumer Council has always produced its own annual report. The latest version of its annual review is only six pages long, but contains information about the organisation’s corporate objectives; main activities during the year; plans for the year ahead; staff and Council member details; and basic financial information. The report, which costs £1,000 to produce, is mailed to all MSPs, Scottish MPs, Scottish MEPs, and public bodies in Scotland. For the SCC, the annual report has always been an important way for it to account to Scottish consumers and others in Scotland with whom it has relationships. The SCC’s performance, in terms of its public sector accountability requirements, is included in the National Consumer Council’s formal Annual Report which is laid before the UK parliament.

This recognition in the Scottish Parliament for what is essentially a committee of a body that is accountable to the UK Parliament reflects what is now a constitutional reality in Scotland.
The Scotland Act allows for the modification of the functions and constitutions of cross-border bodies, which could include obliging them to present an annual report to Scottish Ministers, or to the Scottish Parliament. This could impose a formal duty on UK consumer organisations to report on activities in relation to Scotland to the Scottish Parliament or to Scottish Ministers.

In favour of such an approach is the argument that the operation of executive devolution in relation to energy and postal services, for example, means that the Scottish Executive and the Scottish Parliament are already heavily involved in the day-to-day administration of such services, while not having legislative responsibility. For example, the distribution of funds to post office branches by the Scottish Executive’s Social Justice Division was a matter for which the Executive was accountable to the Scottish Parliament. Similarly, various motions before the Scottish Parliament during its first session called for greater protection for consumers against mis-selling by electricity companies.

Against a formal duty to report, it could be argued that since the Scottish Parliament has no legislative power in reserved areas such as the provision of postal services and energy, there would be little point in this. However, the Scottish Parliament’s committees are involved in shaping policy and holding the Scottish Executive to account for its policy decisions in areas which are highly relevant to the work of energywatch and Postwatch, such as social inclusion, housing, energy efficiency and fuel poverty. It is very important that they should be able to ensure that they hear from them about their work.

It could also be argued that there is no need for a formal duty to report because these committees are already very good at bringing their activities to the attention of the Scottish Parliament and the Scottish Executive. However, a formal duty would provide a powerful incentive to ensure that Scottish consumer committees are adequately resourced to fulfil such an obligation.

Assessing Impact

Another key element of accountability lies in relation to performance measurement. As public bodies, consumer organisations will already be required to report on performance to sponsoring departments. The focus of this measurement should be on demonstrating impact. This means reporting on outcomes not outputs. It can be hard to assess an individual organisation’s impact on policy-making in isolation from the influence of other stakeholders. However, consumer organisations should strive to have in place performance indicators that reflect the value they are adding on behalf of consumers, rather than just how many reports they produce or media mentions they receive.

UK consumer organisations must be able to demonstrate clearly to stakeholders in Scotland how their activities have benefited consumers in Scotland. The starting point for this is the development of appropriate and meaningful indicators that can demonstrate the impact of a Scottish consumer committee. This must be followed up with data on performance that can be disaggregated from UK data and which, as a result, sets out an improvement agenda distinct to the Scottish committee and, subsequently, Scottish consumers.
**Statutory Powers – Knowing when to use them and when not to use them**

Effective, and respected, consumer bodies which follow the principles of good practice set out in this report will be able to achieve more by working with people rather than against them, using evidence-based powers of persuasion rather than “us and them” tactics.

However, this should be underpinned with relevant statutory powers to obtain results for consumers when all else fails.

**Access to Information**

We have already mentioned the merits of consumer organisations having memorandums of understanding with appropriate regulators. A voluntary approach to the sharing of information from both parties will work in the consumer interest and is likely to do so in a quicker fashion.

However, consumer organisations should have statutory independent rights of access to obtain information directly from both suppliers and regulators, should goodwill not be present.

There should be a statutory requirement placed on regulators to consult relevant consumer organisations on key regulatory issues. Regulators should be under a duty to explain the reasons for rejecting advice from consumer organisations.

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*energywatch and Postwatch both have formal powers of access to information from the regulator and regulated companies (in the case of Postwatch, from the regulator, a licence-holder or a universal service provider). Both bodies have the power to obtain information from service providers without having to go through the regulator to get it, but in both cases the consumer councils are required to have regard to the need to minimise the compliance burden. This means that they should check with the regulator first to make sure that the information is not already available there. Also, the regulator or service providers are permitted to refuse requests in particular circumstances (if it would threaten national security, or is price sensitive, or if it relates to court proceedings or enforcement action, for example).*

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*The Utilities Act 2000 (Supply of Information) Regulations 2000 (SI no 2000/2956)*
Super – Complaints

Super-complaints can be made to the Office of Fair Trading, or in some cases to an industry regulator, by a designated consumer body if it believes that a market feature, or a combination of features, is significantly harming the interests of consumers. This gives consumer organisations the opportunity to be pro-active in highlighting areas of market failure to the OFT.

Consumer bodies should actively consider applying for designated status but should give serious consideration to their ability to produce the necessary research evidence on the problems in a particular market and the corresponding resource implications of producing the evidence.

Scottish committees of UK consumer organisations will be unlikely to have the legal identity to apply for designated status. However, if an issue arose which impacted purely on the market in Scotland, we would expect the UK body to support raising a super-complaint on behalf of consumers in Scotland.

Home Credit

In June 2004, the National Consumer Council submitted a “super-complaint” on the £2bn home credit market – also known as doorstep lending – to the Office of Fair Trading.

“The complaint came in the wake of NCC research identifying a range of damaging impacts on the millions of vulnerable and low-income families who have little choice but to use this form of credit to help make ends meet. NCC’s report drew on a range of evidence including already-published research and new research commissioned by NCC. This included:

- secondary analysis of data on home credit use from the Continuous MORI Financial Services (MFS) Tracking Survey;
- qualitative interviews with home credit customers and collectors carried out by MORI and funded by the Joseph Rowntree Foundation;
- small-scale local surveys to explore the nature and extent of home credit use in deprived areas of England;
- consultation with a range of organisations involved in consumer protection and advice.”

Claire Whyley and Stephen Brooker, Home Credit – an investigation into the UK home credit market, National Consumer Council, 2004
Funding – Enough to be Effective

If consumer bodies are going to carry out their role effectively, then it is vital that they are properly resourced, with adequate executive staffing levels and appropriate budgets for research, policy development and campaigning. This issue has become all the more crucial since the establishment of the Scottish Parliament, because the need to be effective within Scotland now includes the ability to respond to the demands of the Parliament and the Scottish Executive. So it is important that resources for Scottish consumer committees take account of the additional resource implications of devolution.

As public bodies, consumer organisations have a responsibility to spend money wisely and to use resources effectively. Consumer organisations that communicate with each other, learn from each other and work together can add value and impact in policy terms. An open-minded approach should also be taken to pooling resources, but the focus should be on increasing effectiveness rather than saving money.

**Consumer Action Network**

The Consumer Action Network is an alliance of consumer organisations which seeks to maximise the efficient and effective use of resources by:

- exchanging information, experience and ideas about the provision of information, advice and casework handling for consumers;
- sharing intelligence and research concerning market developments, consumer trends and companies providing key services;
- developing best practice in specific areas of service delivery;
- where practical and appropriate, setting up arrangements for pooling resources, the commissioning of joint projects and initiatives.
5. Conclusions

Consumer organisations today operate within political, economic and social climates that present key challenges to be addressed going forward.

In the light of devolution, consumer organisations need to be confident that they have evolved to reflect the new political background and the changed policy environments. Whether devolved or reserved, they need to look in three directions in:

- representing the interests of consumers within the Scottish policy environment;
- representing the interests of Scottish consumers in the UK policy environment; and
- ensuring the promotion of all of these interests within the context of the European Union and its major influence on the policies which affect consumers’ everyday lives.

The economic context is one that provides more opportunities and choice for consumers, between and within markets, than ever before. Many of these markets now exist outwith the UK, extending internationally to Europe and beyond. The growth of e-commerce and the advent of the single European market have changed the way in which consumers and providers do business. If the UK joins the eurozone in the future this will change once again.

However, with new opportunities come risks and uncertainty. Greater choice of both products and providers can also bring greater complexity for consumers. Complex markets can mean that consumers need to be equipped with more sophisticated tools to negotiate their way around a market, to take best advantage of what’s on offer, and to protect themselves from unfair trading practices.

Consumer organisations need to be strong in assessing the risks and benefits on behalf of consumers. They need to be pro-active in working with market providers, policy-makers, and regulators in making sure that those risks and benefits are taken into account from the start. After that, they need to make sound decisions about whether to intervene in a market or not and be ready to justify those decisions to others.

However, as the opportunities for consumers grow, the gap between those who can take advantage of them and those who cannot widens. Disadvantaged consumers become excluded not just from luxuries and consumables but from essential, basic goods and services. The tensions between consumer choice and equity of access for all become issues of social policy. Consumer organisations face key challenges, and are well placed to play a central role, in seeking to resolve these tensions by developing policies which are based on consumer research evidence.
This extends to the provision of publicly funded services where there is very often a monopoly provider. Not only can the lack of competition result in limited choice for consumers, it can disincentivise any moves towards increasing efficiency and effectiveness, thus depriving consumers and citizens of a level of service which meets their needs and wants. Consumer organisations can apply the market pressures that are needed to improve services and, at the same time, have an overview of how this might impact on social equity.

If consumer organisations are to rise to these challenges, then they must be equipped, and equip themselves, to continue to best promote the interests of consumers now and in the years ahead. This report aims to give consumer organisations an agenda to build on.